



# ToBeFlow

Process and Document Management

## TERMS OF USE TOBEFLOW

Version/July 2015

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### BEFORE USING THE PROGRAM, READ THIS DOCUMENT CAREFULLY

Using this application, either in the demonstration version or on a subscription basis, indicates that the USER read this document and agrees to its terms. If the USER does not agree with the conditions described herein he/she may not use the application.

### GLOSSARY

**USER** - Company or individual that subscribes the application or uses it in a demonstration version.

**HOSTING** - Hosting applications and associated information in an external server dedicated for this purpose, the same being available through the Internet access.

**AVAILABILITY** - Availability is the time when a server hardware is available and operational for the purpose of the hosting service.

### 1. TERMS OF SERVICE

**1.1 PONTUAL** is the author and the owner of the exploitation rights of the **TOBEFLOW** software.

**1.2 PONTUAL** is also legitimized to provide the hosting service for the respective data to third parties that contract the use of **TOBEFLOW**.

**1.3** The subscription or use of the service does not imply the transfer or possession of industrial and / or intellectual property rights licenses in favour of the **USER** nor any other existing right on the **TOBEFLOW** application.

### 2. SUBSCRIPTION / RENTAL

**2.1 PONTUAL** shall rent the user licenses of the **TOBEFLOW** application the **USER** requests, as the only means of increasing the number of users working simultaneously.

**2.2** The rental of licenses is limited solely and exclusively to their use, without the **USER** having any other right on these or on the **TOBEFLOW** application or any part thereof.

**2.3** The way in which the **USER** shall use the **TOBEFLOW** application and respective licenses is limited to the management of its organization, without being able to use the **TOBEFLOW** application for other purposes.

**2.4** The rental of the use of the **TOBEFLOW** application does not allow the **USER** to sub-rent, supply or distribute the **TOBEFLOW** application to third parties or get any kind of economic benefit from it or any part thereof.

**2.5** The **maximum data storage space** available, namely database and documents, is defined in the subscription plan contracted by the **USER**. If it exceeds this limit, the **USER** shall be charged the amount corresponding to the extra space used, according to the price list in force.

### 3. SERVICES

**3.1** The update of the **TOBEFLOW** application shall be made whenever **PONTUAL** deems it necessary in order to ensure the availability of all contracted features. This update must first be scheduled so as to cause the least possible impact on the course of the **USER** work.

**3.2** The telephone, remote or email support services to the **USER** are included, to answer questions or solve problems arising from the use of the application and respective modules.

**3.3** The **USER** shall have access to our ONLINE training sessions. The registration dates for these sessions are available on the ToBeFlow website.

**3.4** The support requests shall be made by telephone or internet through the following means: Telephone: 256 379 515 | e-mail: suporte@pontual.pt | Fax: 256 312 038.

**3.5** Technical assistance is carried out from Monday to Friday between 09h00 and 12h30 and 14h00 and 18h30 (*Mainland Portugal time zone*), except for national holidays and local holiday on 20 January.

**3.6** The subscription of the **TOBEFLOW** application **does not include** a set of services that require extra estimate, if the **USER** desires them, namely:

**3.6.1** Data Import in addition to those available on the ConnectFlow module;

**3.6.2** Adaptation of the application to specific situations of the **USER**, namely maps and reports;

**3.6.3** Availability of new applications or new software modules that require licensing;

**3.6.4** The correction of errors attributed to the handling of the application by staff not expressly authorized by **PONTUAL**;

**3.6.5** The tasks necessary for the recovery of lost or damaged information due to external factors to the application, such as vandalism, neglect, or any cause beyond the control of **PONTUAL** and not due to normal use of **TOBEFLOW**;

**3.6.6** Assistance provided at the **USER** facilities;

**3.6.7** Under no circumstances, the maintenance and technical support service herein contracted involves hiring an IT audit or the assumption by **PONTUAL** of the obligation to maintain and service the hardware, the operating system or any other problem that may appear on its computer equipment, limiting its coverage area only to the **TOBEFLOW** application and its operation.

#### 4. HOSTING

**4.1 PONTUAL** provides the **USER** with the hosting and maintenance of the **TOBEFLOW** application, using the computer equipment and systems that are available to **PONTUAL**.

The service shall include in addition to that:

- Daily backups;
- The administration of the IT platform.

**4.2 PONTUAL** may subcontract the provision of the contracted hosting service to third parties.

**4.3** Due to the existence of external factors that may influence the provision of hosting services, under the terms of this document, and that **PONTUAL** is not able to control, this does not guarantee that the communication and, therefore, the response time of the applications within the scope of this document, is permanently working in a reliable way, without delays or interruptions. Thus, **PONTUAL** shall not be liable, except in cases of wilful misconduct or gross negligence, for damages or losses caused to the **USER** that result from external circumstances and out of the technical scope of the experts of **PONTUAL**.

#### 5. HOSTING SERVICE OPERATION

**5.1** The **USER** shall work over the Internet, with the subscribed application, using the link provided by **PONTUAL** with the authentications of each authorized user.

**5.2 PONTUAL** states and guarantees the **USER** that it has the necessary means for monitoring the system where applications are hosted, so that, if necessary, and in the presence of a problem on the server, this problem is solved within a reasonable period of time.

**5.3** The response time to the requests is the time elapsed between communication of an incident by the **USER** and the beginning of the work to comply with the request. **PONTUAL** undertakes to ensure an average response time of less than 2 hours, always within the above specified timetable.

**5.4** Outside the opening hours, **PONTUAL** has the necessary means for monitoring the system where applications are hosted, so that, if necessary, and in the presence of a problem in any of the servers, it is solved timely.

#### 6. AVAILABILITY

**PONTUAL** undertakes to fulfil a 99.5% service level on the quarterly service availability of the servers' services, excluding at this level of service possible needs of programmed stoppages for system maintenance. The calculation of the availability is done according to the following formula: *Availability (%)= Three (3) months - Downtime*

## 7. PRICES AND PAYMENT

- 7.1** The subscription of the service implies the payment of a monthly fee according to the subscribed modules and the number of licenses required by the **USER** and disk space used, as indicated on the price list associated with the subscription plan.
- 7.2** **PONTUAL** may change the prices associated with the subscription plans, and the customer shall be notified in writing of the changes, which only become effective at the following monthly billing.
- 7.3** The billing related to the subscription shall be monthly and at the beginning of the month to which it relates. Its payment shall be made by direct debit and after the issuance of the invoice. The **USER** shall proceed to the activation of the direct debit after the start of this document and the data for this purpose shall be provided by **PONTUAL**.
- 7.4** **PONTUAL** reserves the right to suspend the service if the timely payment of the contracted Service does not occur.

## 8. LIABILITY

- 8.1** **PONTUAL** shall only be liable for the damages or losses caused directly to the **USER** or to third parties, if it acts negligently or in bad faith.
- 8.2** **PONTUAL** shall not be held responsible for the lack of access to certain data stored on the **TOBEFLOW** application, should such situations do not arise from problems in the **TOBEFLOW** application, if they are caused by problems with the existing computer equipment and belonging to the **USER** or to third parties, or by interacting with any other software interconnected with the **TOBEFLOW** application.
- 8.3** **PONTUAL** is exonerated from any liability before the **USER** or third parties, in cases where the anomalies are derived from actions or omissions directly attributable to the **USER**, its users, employees, suppliers, representatives, assignees, hired staff that is at their service or any other third party, as well as the direct or indirect consequences of misuse or breach by people who no longer work for the **USER**.
- 8.4** Costs, fines, penalties, compensations, charges, damages or fees that are a result of unfulfillment of its obligations by the **USER** shall not be the responsibility of **PONTUAL**.
- 8.5** Unpredictable situations or *force majeure*, based on the above, shall not exempt the **USER** from the fulfilment of payment obligations that are pending.

## 9. SUBCONTRACTING

**PONTUAL** informs the **USER** on the possibility of subcontracting third-parties whose intervention it deems appropriate to a better performance of the services, to perform any of its obligations under this document. When this occurs, it shall always safeguard the fulfilment of its obligations with regard to the rules imposed on the parties relating to data protection, and the **USER** shall give its express consent when such subcontracting so requires. In this case, and in order to receive the maintenance or technical support service contracted, the **USER** shall allow the connection via the Internet of the technical service of the said subcontractor to perform such services.

## 10. DATA PROTECTION

**10.1** Both parties undertake to comply with the provisions of the Personal Data Protection Law in force.

**10.2** For the provision of the services that are the object of this document, at certain times, **PONTUAL** shall have to access to personal data included in files provided by the **CUSTOMER**. This access shall not be considered as communication of data since it is required to provide the service contracted herein. Therefore, **PONTUAL** undertakes to treat such data according to the instructions given by the **CUSTOMER** and not to apply them or use them for other purposes than those established in the agreement or communicate them to other entities or even store them. Such data shall be protected by professional secrecy, and neither **PONTUAL** nor anyone who works for it or carries out work for it may use them or disclose them even upon the end of the contractual relationship with the **CUSTOMER**.

**10.3** Upon the completion of the agreed services, **PONTUAL** shall have to eliminate personal data provided by the **CUSTOMER**.

## 11. CONFIDENTIALITY

Both parties consider as confidential all past, present or future information that they obtain or that is disclosed to them by the other party, related to its research, development and commercial activities as well as the results of the services performed in accordance with this document, unless the mentioned information is previously known or has been publicly disclosed before receiving it or subsequently thereto. Both parties retain all confidential documents in the most absolute secrecy and shall not use them with written permission.

The breach of the confidentiality obligation by any of the parties or their staff members or employees shall be just cause for the dissolution or termination of this agreement, notwithstanding, if applicable, compensation for damage or loss.

## 12. USING THE TRIAL VERSION OF THE TOBEFLOW PORTAL

- 12.1 PONTUAL** offers the **USER** the possibility of subscribing a trial version without any payment or subscription fees.
- 12.2 PONTUAL** shall monitor the use of the portal by the **USER** as well as any information included in it.
- 12.3** The **USER** agrees with the experimental nature of the credentials entrusted to it during the trial version and it shall not enter real information or information of a religious or political nature or others that may be considered offensive to other users in similar conditions.
- 12.4** The **USER** shall be liable for all and any information entered by it or anyone in possession of its access credentials to this portal or as well as any manipulation of the existing information in the portal made by him/her or someone in possession of its access credentials.
- 12.5** The **USER** shall indicate a valid ID with a valid email address. The **USER** expressly agrees to proceed with the use of fictitious and non real information, only for the purpose of proof of concept. PONTUAL owns the rights to access, correction, editing and removal of the information entered on the portal in the trial version, without requiring any prior notification or authorization.
- 12.6** The **USER** shall, at any time, request the cancellation of the credentials used in the trial version. To do this, the **USER** must request the cancellation of its demo credentials, using the address <http://www.tobeflow.com/cancelmyaccount>. As with all accesses in a demonstration phase, the **USER** shall not have the possibility of recovering all the data he/she recorded on the platform since they shall be eliminated.
- 12.7 PONTUAL** does not claim any intellectual property on the information recorded in the trial version. However, when recording data on a shared platform for testing purposes, the **USER** agrees that the information can be seen and/or changed by the other users in similar circumstances.