

Terms and Conditions for Software as a Service (SaaS)

1. Scope

- 1.1** These Terms and Conditions apply to the provision of the Software as described at <https://doc.nexusgroup.com> (“**Software**”) under the software as a service model (hereinafter “**SaaS**”), i.e. where software functions are made available to the Customer, ordered by the Customer from Nexus by way of individual agreements (“**Individual Contracts**”). These General Terms and Conditions govern the business relationship between the Customer and Nexus (the “**Parties**”), even if not explicitly agreed upon in the individual case.
- 1.2** To the extent an Individual Contract does not contain any explicit deviating stipulations, the stipulations of these Terms and Conditions shall apply to all Delivery Services rendered by Nexus to the Customer. For the avoidance of doubt, any deviating stipulations in an Individual Contract shall prevail over these General Terms and Conditions.
- 1.3** Any general terms and conditions of the Customer that deviate from or supplement the provisions of these Terms and Conditions shall not become part of any Individual Contract unless agreed by both Nexus and the Customer in writing.
- 1.4** Nexus’s offers are non-binding, unless explicitly stated otherwise in the respective offer; therefore, the respective Individual Contract is concluded if the Customer accepts Nexus’ offer and Nexus has confirmed the order by way of an order confirmation (as a rule in writing).
- 1.5** Specific performance obligations shall only arise in connection with Individual Contracts.
- 1.6** Object of the contract is the provision of the Software as described at <https://doc.nexusgroup.com> (“**Software**”) under the software as a service model (hereinafter “**SaaS**”). Nexus shall run the Software on its own data processing systems (servers) in order to make it available to the Customer who may access the Software via the Internet and use the functionalities of the

Software as described herein. If Nexus software is needed for this purpose, Nexus shall provide the Customer with the client software (hereinafter “**Client Software**”) under the GTC for Software. If third party software is needed for this purpose, the Customer shall obtain and install it.

- 1.7** The object code of the Client Software shall be made available for download via the internet. The Customer shall install the Client Software itself and shall not be entitled to obtain a copy of the source code of the Client Software or any other means of access to the source code.
- 1.8** Services for the establishment of interoperability of the SaaS with other applications than those stated as supported application versions at <https://doc.nexusgroup.com>, shall only be rendered under a separate written contract to be concluded between Nexus and the Customer.

2. Service Level Agreement

- 2.1** Nexus shall provide the Customer with the SaaS in accordance with **Annex 2.1 “Service Level Agreement”** at the Internet connection point of Nexus.
- 2.2** The Customer shall be responsible to ensure its connectivity to the Internet, including the required data transmission rates.

3. Rights of use

- 3.1** Nexus grants the Customer a non-exclusive, non-transferable right, limited to the duration of the contract, to use the Software functions for its own purposes. The use for the Customer’s own purposes shall permit the use at the legal entity of the Customer and such entities explicitly indicated in the Individual Contract (if any).
- 3.2** The Customer shall not be granted the right to copy or reproduce the Software and shall not be entitled to download and/or execute the Software operated and made available by Nexus on its own systems. Nexus’s Software is protected by copyright and all pertaining

intellectual property rights, rights of use and other protected rights shall remain with Nexus.

3.3 Nexus warrants that the use of the SaaS by the Customer does not infringe any third-party rights. Should the contractual use of the SaaS be affected by third-party industrial property rights, Nexus shall be entitled to reasonably modify the SaaS in such a way that it no longer falls under the protection of such rights while at the same time preserving its essential usage functions, or to obtain authorisation that the SaaS may be used without restrictions and without additional costs.

3.4 The Customer shall not be entitled to grant any third parties access to the SaaS.

3.5 The access to the download of the Client Software made available to the Customer must be protected against unauthorised third-party access. The Customer shall instruct its employees to comply with the provisions of this agreement. The removal of serial numbers, copyright notices or other programme identification features from the Client Software is not permissible. The same applies with respect to the suppression of the on-screen display of such features.

4. Further obligations of the Customer

4.1 The Customer shall reasonably cooperate with Nexus and shall in particular

4.1.1 take appropriate precautions to protect access to the SaaS and the Client Software against unauthorised third-party access. To this purpose, it shall store the login data entrusted to it and administrated by it in a secure location and instruct its employees and other dependent persons entitled to use the SaaS accordingly. In the event the Customer reasonably suspects that its access credentials have been obtained by unauthorised third parties or are being improperly used by them, it shall immediately notify Nexus thereof in textual form;

4.1.2 comply with all applicable legal and statutory provisions when using the SaaS. In particular, the Customer shall be prohibited to store, transmit or otherwise publish any content that

infringes statutory provisions, especially in connection with industrial property rights or intellectual property rights of third parties;

4.1.3 protect its IT environment against malware with state-of-the-art anti-virus programmes prior to making use of the SaaS; and

4.1.4 in accordance with the Service Level Agreement immediately report any defect concerning the SaaS, state the circumstances in which such error or defect occurs, and actively support Nexus in troubleshooting.

4.2 Should a third party assert any claims vis-à-vis Nexus in connection with the violation of the Customer's obligations under this agreement, the Customer shall hold Nexus harmless from such claims and shall at its own cost defend Nexus against such claims. Nexus shall immediately notify the Customer of the assertion of any claims and provide it with all necessary information.

4.3 Access to the SaaS shall be restricted to the registered and logged-in users using their respective personal account. Group accounts are not permitted.

5. Claims for defects

5.1 Nexus warrants that for the duration of the contractual term the SaaS is provided in the quality agreed pursuant to the Individual Contract and the present Terms and Conditions and the SaaS is available as set out in the Service Level Agreement.

5.2 In case of non-fulfilment of the Service Level Agreement, the Customer shall be entitled to reduce remuneration as set out in Section 2 of the Service Level Agreement. Other remedies are excluded, unless Nexus has caused the non-fulfilment with negligence.

5.3 The Customer shall immediately notify Nexus of all defects of the SaaS. To the extent Nexus is unable to fulfil its performance obligations due to lacking or delayed cooperation by the Customer, Nexus shall be released from its performance obligations.

- 5.4** Nexus shall be obliged to remedy any problem regarding availability after receipt of a notice of any such problem within a reasonable deadline. Only problems with availability which can be reproduced are remediable. To the extent a problem with availability is caused by defective third-party software employed by Nexus to provide the SaaS, Nexus shall only be obliged to rectify availability by installation of available third-party software upgrades or by way of service calls.
- 5.5** If, for reasons attributable to Nexus, a defect is not successfully rectified within a reasonable deadline of at least four (4) weeks, the Customer shall be entitled to reduce the agreed remuneration by an adequate amount. The right to reduce the remuneration shall be limited to the amount reasonable in view of the restrictions of use caused by the defect.
- 5.6** The Customer shall cooperate in the remediation of any problems with availability and shall, in particular, provide all required information that Nexus needs for purposes of analysis and remediation of the defect.
- 5.7** The right to rescind from the Individual Contract regarding the SaaS due to problems with availability shall be excluded. The Customer's right to termination for good cause shall remain unaffected.
- 6. Remuneration, terms of payment, delay of payment**
- 6.1** Unless otherwise agreed in the Individual Contract, the Customer shall pay the agreed remuneration in advance and Nexus shall issue quarterly invoices. Should an Individual Contract commence or end in the course of a calendar year, the respective partial amount of the annual remuneration shall be paid to Nexus respectively be reimbursed to the Customer.
- 6.2** Nexus shall charge the remuneration as agreed in the respective Individual Contract plus VAT as applicable. For the avoidance of doubt, any taxes applicable to the Customer which apply in connection with the business relationship between the Customer and Nexus (e.g. sales taxes or source taxes) are to be borne by the Customer.
- 6.3** The Customer shall pay the due remuneration in full within thirty (30) calendar days from receipt of the respective invoice.
- 6.4** Should the SaaS be used by more users than agreed, the Customer shall inform Nexus prior to such increase and pay the remuneration for additional users as stipulated in the Individual Contract. The annual remuneration shall be adjusted *pro rata temporis*. Any access to the SaaS, e.g. login of or API access by a user, shall constitute a use of the SaaS.
- 6.5** Nexus shall be entitled to increase its remuneration in correspondence with the increase of its own costs; the increase of remuneration may, however, not exceed the increase in the German consumer price index. Nexus shall notify the Customer of any price adjustments at least three (3) months prior to their taking effect.
- 7. Data protection and data security**
- 7.1** Nexus and the Customer shall comply with all applicable provisions of data protection laws, in particular the General Data Protection Regulation (GDPR).
- 7.2** With respect to the collection, processing and use of personal data by means of the SaaS, the Customer shall be the solely responsible controller within the meaning of the GDPR and warrants that it is entitled thereto. The Customer shall hold Nexus harmless from and against all third-party claims raised against Nexus due to violations of applicable data protection law, unless Nexus has infringed its own obligations hereunder.
- 7.3** Upon conclusion of the Individual Contract on SaaS, the Parties conclude the data processing agreement (Art. 28 GDPR) pursuant to Section "Data Protection Provisions".
- 7.4** Nexus will use personal data of the Customer to provide the SaaS, for billing purposes and for the redemption of technical defects. For these purposes, Nexus shall, in addition to personal data, also collect data like e.g. IP address, date, time, type of browser and accessed web pages and functions.
- 8. Term, termination and exit management**

- 8.1** The Individual Contract shall enter into force upon signing by the Parties. The minimum lease period for the SaaS shall be thirty-six (36) months and shall commence on the date agreed in the Individual Contract.
- 8.2** The Individual Contract may be terminated by both Parties upon expiry of the minimum period at the earliest with a notice period of three (3) calendar months. If not terminated, the contractual period shall automatically be extended by twelve (12) months on each occasion and may be terminated with a notice period of three (3) calendar months to the expiry of the contractual term.
- 8.3** Each Party shall be entitled to extraordinary termination of the agreement for good cause. Important cause shall in particular mean that:
- (a) Performance under the contract becomes legally or factually impossible or economically unreasonable for reasons not attributable to the terminating Party.
 - (a) The respective other Party, despite prior warning, fails to fulfil its material contractual obligations within a reasonable deadline. A violation of material contractual obligations shall in particular include a significant default in payment.
 - (b) Fulfilment of the obligations under the Individual Contract is jeopardised due to deterioration of the financial situation of the respective other Party. Deterioration of the financial situation shall in particular mean a repeated delayed performance for more than twenty (20) days other than in cases of a *bona fide* dispute, or an unsuccessful enforcement attempt at the respective other Party.
- 8.4** Should the Customer be in default of payment pursuant to clause 8.3 (c), Nexus shall be entitled to claim damages in form of an immediately payable lump-sum in the amount of one quarter of the remaining monthly prices up to the end of the ordinary contractual term, unless Nexus is able to prove higher damages or the Customer is able to prove lower damages. Nexus's right to assert further claims for delayed payments shall be reserved.
- 8.5** Any declarations of termination shall require the written form (email suffices).
- 8.6** Each Party undertakes to immediately hand back to the other Party (or if requested delete) upon that Party's request all documents and documentation, records or concepts made available in the course of the contractual term upon termination of the Individual Contract.
- 8.7** Upon termination of the SaaS, irrespective of the reason thereof
- all of the Customer's rights of use in the Client Software shall expire. All rights granted by Nexus to the Customer granted hereunder shall revert to Nexus,
 - the Customer shall be obliged to delete all access data and any printouts of pertaining documentation. Nexus shall be entitled to request respective proof.
- 8.8** In case of ordinary termination, the Customer shall, prior to expiry of the SaaS, delete and store elsewhere all data stored on the servers of Nexus as part of the SaaS. The Customer shall be entitled to instruct Nexus to keep data available beyond the foregoing provided the Parties agree on a reasonable remuneration.
- 8.9** In case of extraordinary termination, the Customer's data shall, after termination of the licensing relationship, be deleted by Nexus, unless the Customer instructs Nexus to keep its data stored beyond such period and pays a reasonable remuneration for such service.
- 9. Changes and Amendments**
- 9.1** Nexus shall be entitled to reasonably change the SaaS, in particular if any changes in underlying software of third parties occur.
- 9.2** Any amendments of the Individual Contract shall be deemed accepted by the Customer, if the Customer does not object to such amendment within a period of six (6) weeks after receipt of a respective notification in textual form, provided however that Nexus has informed the Customer about the consequences of its non-objection in advance.
- 9.3** If the Customer objects to the envisaged amendment in due time, Nexus shall be entitled to terminate the respective Individual Contract at the earliest permissible date of

ordinary termination or with effect to the date of the implementation of the change if a continuation of the previous system is not feasible, in any event at the earliest three (3) months after the Customer has received the change notification.

10. Withholding of Performance and Set-off

10.1 The Customer shall be entitled to withhold or refuse performance with regard to claims that are undisputed or have been acknowledged by a final court decision or which are counterclaims from the same contractual relationship with Nexus. Other withholding rights are excluded.

10.2 The Customer shall only be entitled to set-off claims against those claims of Nexus if the Customer's claims are undisputed or have been acknowledged by a final court decision or are counterclaims from the same contractual relationship with Nexus. Other set-off rights are excluded.

11. Force Majeure

11.1 Malperformance shall not constitute a breach of contract to the extent it is caused by unpreventable occurrences, in particular epidemics and pandemics, earthquake, deluge, flooding, fire, explosion, blackout, embargos, governmental restrictions, riots, terrorist attacks, war or other military action, civil unrest, rebellion, vandalism, sabotage, strike at Nexus's or sub-supplier's plant, or other causes not attributable to the affected Party ("**Force Majeure**"). The obligations of the affected Party shall be suspended for the duration of Force Majeure.

11.2 The performance period shall be extended by the delay caused by the occurrence of Force Majeure plus an adequate restarting period.

11.3 In the event concrete indications exist that the impediment of performance due to Force Majeure will continue for more than one hundred and twenty (120) calendar days, either Party shall be entitled to terminate in writing any Individual Contract. If a one-off Individual Contract has not yet been performed, each of the Parties shall be entitled to rescind from the contract. All further rights shall be excluded in case of Force Majeure.

12. Liability

12.1 All rights of the Customer to claim damages or compensation for wasted expenditure shall, regardless of their legal nature, be subject to this Section 12.

12.2 Nexus shall be fully liable for damages caused by an intentional violation of its obligations.

12.3 Nexus shall also be fully liable for damages caused by a grossly negligent violation of its obligations, with the following exception: If the violation has been committed by a simple vicarious agent and has caused other damage than damage to life, body or health, Nexus' liability shall be limited to the foreseeable typical damage (as provided for in Section 12.5).

12.4 In case of simple negligence (i.e. not gross negligence), Nexus shall be liable as follows:

12.4.1 Nexus shall be fully liable for damages (i) to life, body or health, (ii) caused by a violation of a contractual guarantee or (iii) in case of claims under the Product Liability Act.

12.4.2 In all other cases than those addressed in Section 12.4.1, Nexus shall only be liable for the violation of such obligations that are material for the proper implementation of the Individual Contract and on the fulfilment of which the Customer relies and regularly may rely (essential duties). In such cases, liability shall be limited to the foreseeable typical damage as provided for in Section 12.5.

12.4.3 Nexus liability for simple negligence in all other cases not addressed in Sections 12.4.1 and 12.4.2 is excluded.

12.5 The Parties agree that the foreseeable typical damage shall not exceed the annual remuneration in case of the Individual Contract for SaaS.

12.6 Unless explicitly agreed otherwise, the Customer shall be responsible to back-up its data in accordance with current technical standards. If any data is destroyed or lost, Nexus' liability shall be limited to such amount that would have been required for the recovery or replacement of such data if the Customer had made proper backups. Recovery expenses shall extend to the

actually incurred additional costs for recovery and/or replacement of the data.

the information or the circumstances of the transmission.

12.7 All other liability of Nexus shall be excluded. The limitations of liability and exclusions of liability pursuant to this Section 12 shall not affect the liability of Nexus pursuant to the mandatory statutory provisions of the Product Liability Act, due to the fraudulent concealment of a defect or the assumption of a contractual guarantee for the quality of an item.

14.3 This obligation does not apply to such confidential information,

14.3.1 which were demonstrably already known to the other Party when the Individual Contract was concluded or which subsequently become known to the other Party by third parties, without this infringing any confidentiality agreement, statutory provisions or official orders.

12.8 The provisions of this Section 12 shall also apply in favour of Nexus' vicarious agents in case the Customer raises claims directly against any of them.

14.3.2 which are publicly known at the time of the conclusion of the Individual Contract or are made publicly known thereafter, unless this is based on a breach of the Individual Contract.

13. Marketing

Each Party shall be entitled to reference the name and trademark and/or the logo of the respective other Party on its website and in presentations for the term of the contractual relationship, unless the other Party objects in writing.

which must be disclosed by virtue of statutory obligations or by order of a court or authority. To the extent permissible and possible, the Party subject to the disclosure obligation shall give prior notice to the other party and the opportunity to take action against the disclosure.

14. Confidentiality

15. Applicable law and Place of Jurisdiction

14.1 The Parties undertake not to disclose to any third party confidential information of the respective other Party of which they gain knowledge within the scope of negotiating and implementing any Individual Contract, and to likewise bind their respective employees within the scope of the applicable employment law to secrecy.

15.1 These Terms and Conditions and any Individual Contract shall exclusively be governed by German law. The regulations of the UN Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG) shall be excluded.

14.2 Confidential information within the meaning of these Terms and Conditions is all information (whether in writing, electronically, orally, digitally embodied or in any other form) which is transferred from the holder to the recipient or to a person associated with the recipient within the meaning of Sects. 15 ff. AktG (German Stock Corporation Act) within the aforementioned scope. Confidential information includes, in particular, trade secrets, products, manufacturing processes, know-how, inventions, business relationships, business strategies, personnel matters, digitally embodied information (data), as well as any documents and information of the holder which are subject to technical and organizational secrecy measures and which are marked as confidential or are to be considered confidential due to the nature of

15.2 If the Customer is a merchant within the meaning of the German Commercial Code (HGB), a legal entity under public law or a special fund under public law, the exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is Düsseldorf. The same applies if the Customer is an entrepreneur within the meaning of Sect. 14 BGB. Priority statutory provisions, in particular those relating to exclusive jurisdiction, shall remain unaffected.

16. Miscellaneous

16.1 All changes, amendments, supplements or substantiations to the provisions of these Terms and Conditions as well as special guarantees and arrangements shall require the written form. The aforesaid also applies to any amendments of this Section 16.1.

16.2 Should a provision of these Terms and Conditions or any Individual Contract be or become invalid, this shall not affect the validity of the remaining provisions.

16.3 Any oral agreements shall be confirmed in writing.

Data Protection Provisions

With respect to personal data being processed by Nexus for and according to the instructions of the Customer as the data controller, the provisions of this Section "Data Protection Provisions" shall apply. In case of contradictions with other parts of these Terms and, the provisions of this Section shall prevail to the extent required for data protection compliance.

For the purposes of this Section, the Customer shall be referred to as "**Controller**" and Nexus as the "**Processor**".

1. Description of processing

1.1 Object, type and purpose of the processing

The object, purpose and subject matter of the processing directly results from the respective Individual Contract.

1.2 Duration of the processing

The duration of the processing corresponds to the term of the respective Individual Contract. The rights of extraordinary termination shall remain unaffected.

1.3 Type of data

The type of personal data to be processed under this agreement directly results from the respective Individual Contract.

1.4 Categories of data subjects

The categories of data subjects under this data processing result directly from the respective Individual Contract.

2. General duties of the Controller

2.1 The Controller is responsible for compliance with its statutory obligations, in particular for the assessment of whether the data

processing is permissible and if the data subjects' rights are protected.

2.2 The Controller shall inform the Processor immediately in writing in case of any errors or irregularities in connection with the data processing.

3. Instructions

3.1 The processing of data by the Processor shall be carried out only in accordance with documented instruction of the Controller. As an exception the Processor may be obliged to perform such transfer to a third country pursuant to mandatory statutory law or European law; in such case, the Processor shall inform the Controller of such legal obligations prior to the commencement of the processing (unless the applicable law prohibits such notification on the grounds of important public interests). In principle, the instructions of the Controller are contained in this data processor agreement; however, the Controller reserves a comprehensive right to issue instructions regarding the type, scope and means of the data processing, which it may specify by respective individual instructions. Instructions not included in the contract shall be treated as change requests and may be subject to costs.

3.2 Individual instructions and any resulting amendments of the object of processing or the processing itself shall be issued in text form or be documented accordingly. Orally issued instructions shall be confirmed in writing by the Controller without undue delay.

3.3 Personal data shall be processed within the territory of the Federal Republic of Germany, of the member states of the European Union, or of the signatories of the EEA Agreement and also in third countries, subject to compliance with the legal requirements for such data transfers (standard contractual clauses for data transfer between EU and non-EU countries "SCC"). In the event another processor is to be engaged, these requirements shall apply in addition to the provisions of Section 6.

3.4 The Processor shall immediately notify the Controller in writing (textual form, e.g. email, is sufficient) in the event it deems that an instruction issued by the Controller violates statutory provisions. The Processor shall

have the right to suspend implementation of the respective instruction until it is either confirmed in writing or amended by the Controller.

3.5 The Processor shall only process the data for purposes of this data processor agreement and within the scope of the Controller's instructions. In particular, the Processor shall, beyond the instructions given to it, not be entitled to use the data for its own purposes or to transfer it to a third party, unless it is obliged to do so pursuant to applicable statutory provisions. The personal data may not be copied or duplicated without the knowledge of the Controller; backup copies are to be exempt from this requirement to the extent required to ensure proper data processing, and data required for compliance with statutory retention obligations.

4. Confidentiality obligations of persons authorized to process the data

4.1 The Processor undertakes to treat the data as confidential. The Processor confirms that it is familiar with the applicable data protection provisions.

4.2 The Processor warrants that it has informed and instructed the persons it authorizes to process the personal data or persons subordinated to it (in particular its employees) with respect to applicable regulations and obligations under data protection rules and that it has bound them to confidentiality and to observing its instructions, or that such persons are subject to statutory confidentiality obligations. The Processor shall monitor compliance with data protection regulations.

5. Technical and organizational measures

5.1 The Processor shall comply with the principles of lawful data processing and warrants that, with respect to its processing of the Controller's personal data pursuant to this agreement, it will implement all respective measures as agreed hereunder. The Processor furthermore warrants that the data will be processed separately from data belonging to other controllers. It shall implement appropriate technical and organizational measures as contractually agreed and prescribed by law to ensure that the processing is performed in compliance with statutory requirements and that the rights

of the data subjects are protected. The measures to be taken are especially aimed to ensure data safety and to ensure a level of adequate safety pursuant to the risk regarding confidentiality, integrity, availability and resilience of the systems. To achieve this, the state of the art, costs for implementation and the type, scope and purpose of the data processing as well as the varying likelihood of occurrence and the severity of the risk for the rights and freedom of natural persons must be considered. The technical and organizational measures as defined and described in detail in the annex hereto shall be binding. Subject to Section 5.2, the Processor may adapt the technical and organizational measures in correspondence with technological or organizational developments during the term of this agreement.

5.2 In this respect, the Processor shall be permitted to adjust the measures stipulated in the annex and to e.g. implement adequate alternatives measures, which may, however, not fall short of the security level of the initially stipulated measures. Any substantial adaptations shall be documented and the respective documentation shall be made available to the Controller. The Controller shall have a right of objection if it has substantial doubts with respect to the adequacy or permissibility of the respective measures.

5.3 The Processor monitors and shall provide the Controller with proof regarding the implementation of the agreed technical and organizational measures and, on a regular basis, of the performance thereof. To this purpose, the Processor may submit to the Controller current audits, reports, or excerpts from reports by independent entities (e.g. auditors, revision, data protection officers, IT security departments, data protection auditors, quality auditors) or an adequate certification by IT security auditors or data protection auditors (e.g. according to the baseline security of the Federal Office for Information Security (BSI)).

6. Other processors

6.1 The engagement by the Processor of other processors in parts or as a whole shall require the Controller's written consent (textual form, e.g. email, is sufficient) as well as the compliance with the following requirements.

- 6.2** The Controller hereby consents to the engagement of group-affiliated companies and other companies supporting the Processor's general infrastructure (e.g., hosting, backup, maintenance, administration, helpdesk) as other processors. Moreover, the Processor is hereby granted the general right to engage other processors. The Processor shall inform the Controller in good time prior to the engagement or replacement of another processor or of any respective changes; in this respect, the Controller shall have the right of objection for justifiable reasons within a reasonable period; otherwise the consent shall be deemed given. Should the Controller object to the engagement, change or replacement of another processor, it shall be entitled to terminate this contract without sanctions by submitting a written notification of termination at least three (3) months prior to the envisaged engagement, change or replacement, including the reasons for its objection.
- 6.3** The Processor shall draft the contractual provisions of the subcontract with another/other processor(s) in correspondence with the data protection provisions under this contractual relationship between the Controller and the Processor. This shall also include the Controller's right to obtain, upon its written request, information from the Processor regarding the essential content of the subcontract and the inclusion therein of relevant data protection obligations; where required, the Controller shall also have the right to inspect the respective contractual documents.
- 6.4** The Processor shall be responsible for the other processor's compliance with the Processor's contractual and statutory obligations vis-à-vis the Controller as well as for the monitoring and supervision of such other processor.
- 6.5** To the extent the other processor renders the agreed service outside the EU/the EEA, Section 3.3 shall apply.
- 7. Rights of data subjects**
- 7.1** The Controller shall exclusively be responsible for the fulfillment of the data subjects' rights, in particular the right to information, disclosure, deletion and/or marking/blocking of data as well as the right to data portability. Unless accordingly instructed by the Controller, the Processor shall not be entitled to decide on any requests submitted to him by data subjects or to fulfil the respective requests.
- 7.2** The Processor shall immediately notify the Controller of any requests from data subjects received by it.
- 7.3** The Processor shall be obliged to assist the Controller with respect to the fulfillment of the data subjects' rights, in particular by providing respective information and by implementing appropriate technical and organizational measures, in order to ensure that the Controller is able to comply with its obligation to respond to requests by data subjects wishing to exercise their rights or, upon respective instruction, to perform the respective acts as requested by the data subjects.
- 8. Assistance to the Controller with respect to its statutory obligations**
- 8.1** To the extent required, the Processor shall assist the Controller in the evaluation of potential risks in connection with the data processing, in particular by providing information only available to the Processor, as well as in the implementation of appropriate and required counter-measures, including the principles of data protection by design and by default, and with respect to any prior consultations and/or data protection impact assessments.
- 8.2** The Processor shall inform the Controller immediately and in writing (email is sufficient) of any monitoring activities or other measures by the data protection authorities, in particular in connection with investigations regarding the violation of data protection provisions.
- 8.3** The Processor shall inform the Controller immediately and in writing (email sufficient) of (a) any breaches committed by it or its employees of obligations and/or stipulations under this agreement, (b) any unlawful transfers of personal data to third parties or other unlawful disclosures to third parties, (c) personal data breaches, (d) serious disruptions of operating procedures, suspicion of other personal data breaches, or other irregularities in the handling of the Controller's personal data. A personal data

breach must be notified without undue delay, i.e. no later than within 48 hours upon becoming aware of the breach.

- 8.4** The Processor is aware that, as a consequence of the incidents described under Section 8.3, the Controller may be under an obligation to notify the supervisory authorities and the data subjects. The Processor shall, after consultation with the Controller, take appropriate measures to secure the data and to mitigate possible adverse effects for the data subjects. The Processor shall support the Controller with respect to any notification obligations, which may arise, of the Controller vis-à-vis supervisory authorities and data subjects.
- 9. Return of the data and deletion**
- 9.1** The Controller's data shall remain its property and it shall have sole right of disposal over such data. The Processor shall immediately notify the Controller if the Controller's data are threatened by attachment, insolvency or settlement proceedings, or other incidents or third-party measures. In this respect, the Processor shall immediately inform all relevant third parties that the Controller is the sole proprietor of the data and has sole sovereignty over the data.
- 9.2** After completion of the contractual performance, or earlier if so requested by the Controller, but no later than upon termination of the Main Contract, the Processor shall, upon request of the Controller, return to the Controller the personal data as well as all documents made available to it, all processing and use results, and all data stocks related to the contractual relationship.
- 9.3** Any data remaining with the Processor shall be deleted pursuant to data protection regulations, to the extent no contrary statutory or regulatory obligations of the Processor exist (e.g. retention obligations pursuant to the German Tax Code/German Commercial Code). The same shall apply to any testing materials and rejects. Upon request, a protocol of the deletion shall be made available.
- 9.4** The Processor shall retain any documentation evidencing proper and contractual processing of the data beyond termination of the agreement according to the respective

retention periods, to the extent no contrary instructions are issued by the Controller. Alternatively, the Processor may hand over any such documentation to the Controller upon termination of the agreement.

10. Information and supervision

- 10.1** The Processor agrees that the Controller shall be entitled at all times to supervise, to the extent required, compliance with data protection regulations and the provisions of this agreement, in particular by obtaining respective information and by inspecting the stored data and the data processing systems and facilities.
- 10.2** In this respect, the Processor shall, upon request, provide to the Controller all information the Controller requires to perform its supervisory obligations and to make available to it all respective evidence. The evidence can be obtained via compliance to the agreed code of conduct, an accredited certification, recently made attestation, reports or excerpts of reports by independent authorities (e.g. auditors, internal audit, data protection officer, etc.)
- 10.3** The Processor agrees that supervisors nominated by the Controller in the individual case and/or the competent supervisory authorities shall be entitled to perform on-site checks regarding the compliance with data protection regulations and the provisions of this agreement, within the required scope and after prior arrangement of a respective date [once a year] or for specific cause, to the extent these are of relevance for this agreement and a secrecy obligation exists in particular with respect to the data of other customers. The Processor shall be entitled to compensation for any costs incurred by it in connection with the checks commissioned by the Controller.
- 10.4** The Processor shall, upon request, provide to the Controller proof of compliance with its obligations under this agreement by suitable means.
- 11. Data protection officer(s)/representative of the Processor**
- The Processor confirms that it has – to the extent a respective obligation exists pursuant to applicable law – appointed a data protection officer. Upon request, the

Processor shall provide the Controller with the contact details of such data protection officer or, if no respective obligation exists, of a person responsible for data protection at the Processor. Each Party shall immediately notify the respective other Party of any replacement of a data protection officer.

12. Miscellaneous

12.1 In case of a joint and severe liability, the Parties shall support each other to defend claims of data subjects brought against one of the Parties. Each Party shall be liable to the other Party in accordance with Art. 82 (5) GDPR. In between the Parties, the agreements of the Individual Contract and these General Terms and Conditions (limitation of) liability shall prevail.

12.2 No oral side agreements are enforceable. Any changes or amendments of this agreement shall require the written form to be valid. This shall also apply to an amendment of this written form requirement.

Should a provision of this agreement be invalid or unenforceable, this shall not affect the validity or enforceability of the remaining provisions. The invalid or unenforceable provision shall be replaced by a provision that comes closest to the purpose and intent of the respective provision.