

General Terms and Conditions

Contractor:

Danielle Software & Service GmbH

Neue Mainzer Str. 52-58
60311 Frankfurt am Main

Danielle Software is a web service provided by the contractor.

Highlights

- Use of Service Desk for all customers' support requests and information provided by the contractor.
- User subscriptions for all internal business operations for customers.
- The rights of use are also valid for subsidiaries and branch offices.
- The number of user subscriptions is based automatically on the number of employees stored in the online application.
- The subscription fees for the user subscriptions are automatically collected by the contractor. Termination is possible at any time.
- The features are explained in a detailed online documentation.
- In the event of support requests, the contractor supports the customer quickly and readily using web-based systems or comparable means of communication.
- The contractor shall not pass on customer's personal information to third parties and will prevent unauthorised third parties from accessing the customer's information in evaluable or readable form.
- In the event of termination, customer information is available promptly on request.
- We are interested in maintaining good business relations with our customers and avoiding disputes. However, if problems do occur, we try to solve these quickly and unbureaucratically and, if necessary, we use a mediator for this purpose.

GENERAL TERMS AND CONDITIONS OF THE CONTRACTOR FOR THE PURCHASE OF SOFTWARE AS A SERVICE (SAAS)

PLEASE READ THIS AGREEMENT CAREFULLY. THIS AGREEMENT APPLIES TO YOUR USE OF THE CONTRACTOR'S SERVICES. WHEN YOU CONSENT TO THIS AGREEMENT EITHER BY CLICKING THE RELEVANT CHECKBOX OR BY COMPLETING AN ORDER FORM RELATING TO THIS AGREEMENT, YOU AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU CONCLUDE THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU SPECIFY THAT YOU ARE AUTHORISED TO ENTER INTO A BINDING AGREEMENT FOR SUCH AN ENTITY AND ITS AFFILIATED COMPANIES. IN THIS CASE, THE TERMS 'YOU' OR 'YOUR' REFER TO SUCH AN ENTITY AND ITS AFFILIATED COMPANIES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT NOR USE THE CONTRACTOR'S SERVICES.

IF YOU DOWNLOAD AND/OR VIEW ALL OR PART OF THE MATERIAL (AS DEFINED HERE), YOU ACCEPT ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT, PARTICULARLY AND WITHOUT LIMITATION THE RESTRICTIONS REGARDING: USE AS DEFINED UNDER CLAUSE 2-4; TRANSFERABILITY AS DEFINED UNDER CLAUSE 18; WARRANTY AS DEFINED UNDER CLAUSE 6; COMPENSATION AS DEFINED UNDER CLAUSE 11; AND LIMITATION OF LIABILITY IN PARAGRAPH 12. YOU CONFIRM THAT THIS AGREEMENT IS JUST AS ENFORCEABLE AS OTHER WRITTEN, NEGOTIATED AGREEMENT SIGNED BY YOU. THIS AGREEMENT CAN BE ENFORCED AGAINST YOU OR ANY OTHER LEGAL PERSON WHO HAS RECEIVED THE SERVICES AND IN WHOSE NAME THE SERVICES WERE DOWNLOADED OR USED, OR WHO HAS USED OR DIRECTLY BENEFITED FROM THE SERVICES. IF YOU DO NOT AGREE, DO NOT DOWNLOAD, VIEW OR USE THE MATERIALS.

BY CLICKING ON THE BUTTON "I AGREE", OR BY ACCEPTING THE CONTRACTOR'S OFFER, REGARDLESS OF IT'S FORM, OR BY PLACING AN ORDER, REGARDLESS OF IT'S FORM, YOU CONFIRM THAT YOU HAVE READ AND UNDERSTOOD ALL SECTIONS AND CONDITIONS OF THIS AGREEMENT, THAT YOU AGREE TO THESE AND THAT YOU ARE WILLING TO ACCEPT ALL THE OBLIGATIONS IMPOSED TO YOU AS FOLLOWS:

IF YOU ARE A DIRECT COMPETITOR, YOU ARE NOT ENTITLED TO RECEIVE THE CONTRACTOR'S SERVICES UNLESS YOU HAVE RECEIVED PRIOR WRITTEN PERMISSION. MOREOVER, YOU MAY NOT RECEIVE SERVICES FOR THE PURPOSE OF ASSESSING OR MONITORING THEIR QUALITY OR PERFORMANCE OR FOR OTHER PURPOSES OF BENCHMARKING OR COMPETITION.

THIS AGREEMENT was last updated on 08 February 2024.

Background Information

The contractor has developed certain software applications which are made available to subscribers via the internet. These applications can be operated from the data centre used by the contractor. In this case, all relevant data of the customer will be encrypted and cannot be decrypted by the contractor or the data centre operator.

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The contractor is obliged to provide the services in accordance with the terms and conditions set out herein, and the customer is obliged to use the services in accordance with the terms and conditions set out herein, and to pay the respective fee due. This agreement governs the rights and obligations of the contractor and the customer (hereinafter referred to as the "parties") with regard to the processing of personal information. This agreement applies to all activities in which the contractor's employees or subcontractors (third-party contractors) process the customers' personal information.

1. Interpretation

1.1 The terms used in this agreement are to be understood in line with the definition in the EU General Data Protection Regulation. The definitions and interpretation provisions in this section shall apply to this agreement.

Su bs cri pti on fee s:	the usage fees that the customer must pay to the contractor for each employee file
Cu sto me r:	any natural or legal person, authority, organisation or other party that commissions the contractor to process personal information
Cu sto me r dat a:	personal information entered by customers, authorised users, or by the contractor on behalf of a customer, in order to use the services or to facilitate the use of services by the customer
Do cu me nta tio n:	any document made available to the customer by the contractor
Bu sin es s da y:	any day that is not a Saturday, Sunday or public holiday
Su bs cri pti on ter m:	refers to the definition under clause 13.1 (i.e. the original term plus all subsequent renewal periods)
Ser vic es:	the subscription services provided by the contractor to the customer under this agreement, as described in the documentation
No n- co nfo rmi ty:	any defect, error or bug having a materially adverse effect on the appearance, operation or functionality of the services, but excluding any defect, error or bug caused by or arising as a result of: (a) an act or omission on the part of the customer, or an act or omission on the part of a customer's employee, manager, representative, supplier or subcontractor, or (b) incompatibility between the services and other systems, applications, programs or software
Us er su bs cri pti on s:	the user subscriptions acquired by the customer in accordance with clause 8.1 that allow authorised users to access and use the services and the documentation specified under this agreement

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Ap pli cat ion:	the contractor's software (on-premise) or cloud or SaaS application that provides the services
Ser vic e De sk:	the contractor's mandatory platform for support requests by the customer and for providing information to the customer, which manages ticket ownership (responsibility), ensures traceability and whose extracts are binding for the parties
Su pp ort ser vic es:	the contractor's policies for providing support in relation to the services as described in detail in the documentation
Vir us:	an object or a device (including software, code, files or programs) that can prevent, impair or otherwise adversely affect the use of computer software, hardware or networks, telecommunication services, equipment or networks; that can prevent, impair or otherwise adversely affect the access to or the use of programs or data, including the reliability of programs or data, (whether by complete or partial reorganisation, modification or deletion of the program or data); or adversely affect user experience, including worms, trojans, viruses and other similar objects or devices

1.2 The headings of clauses, tables (if available) and paragraphs do not affect the interpretation of this agreement.

1.3 The term "person" includes natural persons, legal persons or companies (whether with or without separate legal personality).

1.4 The term "company" "refers to all companies, organisations and entities, regardless of where or how they were registered or established.

1.5 Terms that denote the singular also include the plural and vice versa.

1.6 The reference to one gender also includes references to other genders.

1.7 The reference to a law or regulation refers to the currently valid status, taking into account all additions, extensions or new versions, and includes currently valid subordinate legal provisions.

1.8 The term "in writing" or "in the written form" includes faxes; e-mails are only included if explicitly specified.

1.9 "Clauses" refer to the clauses under this agreement.

2. User subscriptions

2.1 Subject to the purchase of the user subscription by the customer as defined under clause 3 and clause 8.1, to the restrictions under clause 2 and to the other conditions of this agreement, the contractor shall grant the customer a non-exclusive, non-transferable right to allow authorised users to use the application, the services and the documentation during the subscription term for the customer's internal business operations only.

2.2 The user subscriptions and the right of the authorised users to use the software, services and documentation during the subscription term are subject to the restrictions set out herein and in the documentation.

2.3 With regard to authorised users, the customer agrees that

(a) he will not allow user subscriptions to be used by more than one authorised user, unless they were fully re-assigned to another, individual, authorised user;

(b) every authorised user shall provide a secure password for the use of the services and documentation, that such a password shall be changed regularly and that each authorised user shall keep this password secret.

2.4 While the services are being used, the customer shall not store, spread or distribute viruses or materials that:

(a) are unlawful, harmful, threatening, libellous, obscene, harmful, abusive, racially or ethnically offensive;

(b) encourage illegal activities;

(c) clearly display sexual content;

(d) promote unlawful violence;

(e) discriminate on the grounds of race, gender, skin colour, religion, sexual orientation or disability; or

(f) lead to damage or injury of persons or property in any way or manner that is otherwise unlawful;

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furthermore, the contractor reserves the right to prevent the customer from accessing any material that violates the provisions of this clause, notwithstanding the contractor's other obligations and rights towards the customer.

2.5 The user subscriptions are personal for the customer, who, according to the agreement must refrain from:

- (a) accessing the software and the documentation fully or partially to create a product or a service that would be in competition to the services and/or the documentation; or
- (b) licensing, selling, renting, leasing, transferring, transmitting, distributing, displaying, disclosing or otherwise making the services and/or documentation accessible to third parties other than the authorised users in accordance with clause 18.1; or
- (c) redistributing, transferring, transmitting, selling, renting, leasing, sublicensing, charging fees for, pledging, offering as a security or otherwise encumbering or using the application on behalf of a third party or allow a third party to access it (except the authorised users), including but not limited to time-sharing or agreements with service providers; or
- (d) removing or altering trade marks, logos, copyrights and other property rights, legends, symbols or labels in any part of the online application or generated as a result of the online application;
- (e) attempting to gain access to the services or helping third parties to gain access to the services outside of the scope of the provisions of clause 2 herein.

2.6 The customer agrees to take all reasonable measures to prevent unauthorised access to or unauthorised use of the application and services and to inform the contractor immediately in the event of such unauthorised access or use.

2.7 The rights specified under clause 2 shall only be granted to the customer but are also valid for customer's subsidiaries and affiliated companies.

3. User subscriptions

3.1 Subject to clauses 3.2 and 3.3, the customer can acquire additional user subscriptions or reduce the number of existing ones during the subscription period. The contractor shall grant access to the application, the services and the documentation to additional authorised users in accordance with the terms and conditions of this agreement.

3.2 The contractor counts the user subscriptions and invoices the customer for this number of subscriptions using the chosen method of payment.

3.3 If the customer uses additional or fewer user subscriptions, the customer shall pay the adjusted new fees within the term provided.

4. Application & services

4.1 During the term of the subscription, the contractor shall make the application and services available to the customer.

The application and services involve processing of information as follows: collecting, capturing, organising, sorting, storing, adapting or modifying, reading, retrieving, using, disclosing by transmission, disseminating or any other form of providing, comparing or linking, restricting, deleting or destroying of data.

4.2 As part of the services and at no additional cost to the customer, the contractor shall provide the customer with the contractor's standard support services during normal business hours in accordance with the contractor's support guidelines in effect at the time the provided. Furthermore, the contractor shall grant the customer access to more information via the documentation in accordance with the terms herein. The following standard support services are provided via [Service Desk](#):

- (a) checking non-conformity and eliminating errors promptly in a subsequent version or proposing a workaround solution;
- (b) contacting and supporting the customer in relation to the customer's requests via web-based software or e-mail or a similar means of communication;
- (c) carefully checking a customer's suggestions for improvement (enhancements) and implementing them according to economically justifiable standards provided they are compatible with the product strategy and application;
- (d) making a fair offer for support requests, provided that the services are not part of the standard support services; and
- (e) informing the customer of new features in the application.

4.3 The contractor may, at its own and sole discretion, supplement or change the support policy from time to time. The customer may independently purchase additional support services at the currently valid rates.

4.4. The customer shall use the contractor's Service Desk for support via the internet.

4.5 The contractor shall provide the documentation for using the [Service Desk](#).

4.6 Should the contractor's conformity check suggest, at the contractor's reasonable discretion, that the reported problem is not due to non-conformity but rather to other causes, including but not limited to data entries that do not comply with documentation guidelines, misuse or incorrect use of the application by the customer, modifications or additions to the application that were not implemented by the contractor, or due to networks problems, the contractor shall not carry out the given task but shall make the customer an offer for this payable additional service which the customer can accept or refuse.

4.7 The contractual term shall begin on the date payment is made by the customer and continue to run for the period for which the file was paid unless notice of termination is given in accordance with clause 13 or any other form of termination permitted under this agreement.

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4.8 The contractor may outsource all or part of the services to a subcontractor without the customer's prior consent. However, outsourcing is only permitted if, by contract, the subcontractor is subject to data protection obligations comparable to or stricter than those specified herein. Customers must be able to exercise their rights effectively in relation to subcontractors, as well. The contractor shall carefully select the subcontractor, particularly taking account of the suitability of the technical and organisational measures taken by the subcontractor. The contractor shall regularly check that subcontractors fulfil their obligations. The checks and their results must be documented in detail so that they can be understood by a competent third party.

4.9 Subcontracting within the scope of this agreement only refers to services that are directly related to the provision of the main service. Additional services such as transport, maintenance and cleaning as well as the use of telecommunications services or user services are not included. The contractor's obligation to ensure data protection and data security remains unchanged in such cases.

4.10 Subsidiaries and affiliated companies of the contractor which have the same beneficial owner and are therefore part of the group and are located in the EU or the EEA, may be involved, as subcontractors, in the processing of personal information to the extent specified herein. All other obligations of the contractor in relation to subcontractors, which are set out herein, remain unchanged.

5. Customer data

5.1 If the software is operated by the contractor as part of an SaaS concept or in the cloud, the following customer information will be processed, provided that the customer enters or imports them into the application:

- (a) Personal information;
- (b) Education, further training, skills;
- (c) Contacts in emergencies, holiday addresses;
- (d) Employment contracts and any others;
- (e) Agreements such as regulations on expenses, shift work etc.
- (f) Department, tasks, organisation;
- (g) Agreements on holidays and working hours;
- (h) Sick notes and holiday slips;
- (i) Other documents and contracts with an employee.

All of the customer's employees, trainees and other staff members, managers, or freelancers are subject to processing, provided that they have been entered or imported into the application. The contractor shall not transfer personal information to third parties and shall thwart access to personal information by unauthorised third parties in an evaluable or readable form, unless access is called for by legal or official requirements of any kind. The customer has all rights, titles and interests in and to all customer information and is solely responsible for the legality, reliability, integrity, accuracy and quality of the customer's data.

5.1.1 If customer data is lost or damaged, the contractor shall make reasonable economic efforts to recover the lost or damaged customer data with the help of the most recent backup of such customer data held for archiving purposes by the contractor in accordance with the contractor's archiving procedures. The contractor shall not be responsible for the loss, deletion, modification or disclosure of customer data by a third party (except for those third parties subcontracted by the contractor to provide services related to customer data maintenance and backup).

5.2 In providing the services, the contractor shall comply with all legal data protection and security guidelines with regard to customer privacy and the security of customer data.

5.3 If the software is operated by the contractor as part of an SaaS concept or in the cloud, and if the contractor processes personal information on behalf of the customer in the execution of the contractual obligations, the parties agree that the customer is the data controller and the contractor is the data processor and, in any case, that:

- (a) the customer acknowledges and agrees that personal information necessary for providing the services and for the other obligations of the contractor shall be stored in accordance with this agreement as specified by the customer in the order;
- (b) the customer ensures that the customer has the right to transfer the personal information in question to the contractor so that the contractor can lawfully use, process and transfer the personal information in accordance with this agreement and on behalf of the customer;
- (c) the customer ensures that all relevant third parties are informed and have given their consent to this use, processing and transfer as specified in the applicable laws on data protection;
- (d) the contractor only processes personal information in accordance with the terms herein and with any other lawful instructions reasonably given by the customer from time to time; and
- (e) each party takes appropriate technical and organisational measures against unauthorised or unlawful processing of the personal information or its accidental loss, destruction or damage.

6. The contractor's obligations

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6.1 The contractor shall only process personal information as agreed in the contract or as instructed by the customer, unless the contractor is bound by law to implement a certain type of processing. The contractor shall not use the personal information provided for processing for any other purposes, in particular not for the contractor's own purposes.

If the software is operated by the contractor as part of an SaaS concept or in the cloud, the contractor undertakes to provide the services essentially in accordance with the documentation and with sufficient expertise and care.

6.2 As far as the customer is concerned, the contractor shall ensure:

- (a) that customer data processed within the scope of an order shall only be corrected, deleted or blocked in accordance with the contractual terms and conditions or on the customer's instructions;
- (b) that the persons involved in data processing have been informed of the relevant data protection regulations and of this agreement;
- (c) that the persons involved in data processing are suitably instructed and monitored on a continuous basis with regard to compliance with data protection requirements;
- (d) that all the licences, agreements and approvals required to fulfil the contractor's obligations resulting from this agreement have been obtained;
- (e) that all of the contractor's duties shall be performed with sufficient expertise and care in accordance with the terms herein;
- (f) that the service to be provided has the quality and functionality as conclusively described in the documentation;
- (g) that constant access to the application is possible in compliance with clause 6.4 (a);
- (h) that in the event of termination as specified under clause 13.1, all customer data stored on behalf of the customer is promptly made available to the customer, that it can be exported and stored, without assistance by the contractor, locally in the customer's IT environment, and that the services are essentially provided in accordance with the documentation (which may be subject to updating). After exporting, the customer data shall be deleted or destroyed promptly, provided there are no disputed claims or other storage obligations (commercial law, accounting). Data should be deleted in such a way that retrieval, even of residual information, is no longer possible with reasonable effort.

6.3 The contractor may provide information to third parties or data subjects only with the prior consent of the customer. The contractor shall immediately forward to the customer any inquiries addressed directly to the contractor.

6.4 The contractor shall appoint a competent and reliable person as data protection officer, if this is required by law. The customer can contact the data protection officer directly in the event of doubt. The contractor shall inform the customer, on request, of the contact details for the data protection officer or of the reasons why no officer has been appointed.

6.5 Generally, all data processing is carried out within the EU or the EEA.

6.6 The terms and conditions herein do not prevent the contractor from entering into similar agreements with third parties, or irrespective of this, from developing, using, selling or licensing documentation, products and/or services that correspond to those covered by this agreement.

6.7 The obligation under clause 6.1 does not apply to non-conformity that has arisen from the use of the services contrary to the instructions laid down by the contractor or modifications or changes to the services made by a party other than the contractor or the contractor's duly authorised subcontractors or agents. If the services do not conform with the preceding obligation, the contractor shall, at its own expense, make all commercially reasonable efforts to correct such non-conformity without delay or to provide the customer with alternative means of fulfilling the desired service. Such correction or replacement is the sole and exclusive remedy for the customer in the event of any breach of the obligation under clause 6.1. Notwithstanding the above provisions:

- (a) the contractor does not guarantee that the use of the services by the customer will be free from interference or failure; or that the services, documentation and/or information obtained by the customer through the services will meet the customer's requirements; and
- (b) the contractor is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the customer acknowledges that the services and documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

6.8 Notwithstanding the contractor's obligations undertaken in clause 6 above, the customer acknowledges that:

- (a) a complex application is never wholly free from defects, errors and bugs, and the contractor gives no warranty or representation that the services will be wholly free from such defects, errors and bugs;
- (b) the contractor does not warrant or represent that the services will be compatible with any application, program or software;
- (c) the contractor will not and does not purport to provide any legal, taxation or accountancy advice under this agreement or in relation to the services and (except to the extent expressly provided otherwise) the contractor does not warrant or represent that the services will not give rise to any civil or criminal legal liability on the part of the customer or any other person;
- (d) the contractor and its suppliers do not guarantee that the services will conform to the customer's requirements. The security mechanisms that are included in the services are subject to specific restrictions and it is the customer's responsibility to check if the services are consistent with the customer's requirements. The customer shall be entirely responsible for the selection of the services and their suitability for achieving the set goals. The customer agrees that the use of the software is no substitute for the exercise of commercial or professional judgment.

6.9 The customer:

- (a) grants the contractor:

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- (i) the non-exclusive right to use the customer information solely for the purpose of providing the application, insofar as this is necessary;
 - (ii) the necessary access to such information that the contractor could need for service provision;
- in order to provide the application and services, including but not limited to customer data, access to security information and configuration services;
- (b) is solely responsible for assessing the admissibility of the commissioned processing and for safeguarding the rights of data subjects;
 - (c) takes into account all applicable laws and regulations in the customer's activities within this agreement;
 - (d) issues and documents all orders, partial orders or instructions. In urgent cases, instructions can be issued by e-mail. Such instructions shall be confirmed and documented by the customer without delay;
 - (e) informs the contractor without delay if errors or irregularities are found during audits regarding the results of an order.
 - (f) is entitled to monitor, to an appropriate extent, the contractor's compliance with data protection regulations and contractual agreements, in particular by obtaining information and inspecting the stored data and the data processing programs as well as other on-site controls, or to commission a third-party to do so. Controls at the contractor's premises must be carried out without avoidable disruptions of the contractor's business operations. Such controls are carried out at reasonable notice and during business hours and not more frequently than every 12 months.
 - (g) shall fulfil all other customer obligations contained herein immediately and efficiently. In the event of any delays in the customer's provision of such assistance as agreed by the parties, the contractor may adjust any agreed timetable or delivery schedule as reasonably necessary;
 - (h) shall ensure that the authorised users use the services and documentation in accordance with the terms herein and the documentation, and shall be responsible for any violation of this agreement by an authorised user;
 - (i) shall acquire and maintain all licenses, consents and approvals, in particular those of the customer's employees with regards to the storage of their information in the application that the contractor and its subcontractors and agents require to perform their obligations under the terms herein, including but not limited to the services;
 - (j) ensures that its networks and systems comply with the relevant [specifications](#) provided by contractor; and
 - (k) shall be solely responsible for the provision and maintenance of the customer's network and telecommunications connections from the customer's systems to the contractor's data centres, as well as for any problems, conditions, delays, delivery errors and other losses or damages caused by or in connection with the customer's network or telecommunications connections or caused by the internet.

7. Changes

7.1 Should either party wish to change the scope of the services, it must inform the other party in writing of the details of the changes requested.

7.2 Should either party wish to change the scope of the performance of the services, the contractor shall provide the customer with a written estimate within a reasonable time of:

- (a) the time likely to be required to implement the changes;
- (b) any variations to the charges arising from the change;
- (c) any likely impact of the change on the services;
- (d) any other effects of the change on the conditions of the services.

7.3 If the contractor requests a change to the scope of the services, the customer has no obligation to agree unless and until the parties have agreed in writing on the necessary variations to the charges and any other relevant terms of the agreement to take account of the change.

7.4 If the customer wishes to proceed with the change, the contractor has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges and any other relevant terms to take account of the change.

8. Fees and payment

8.1 The customer shall pay the subscription fees for user subscriptions to the contractor in accordance with clause 8. The payment of subscription fees is an essential part of the contract.

8.2 The customer shall pay subscription fees for the services to the contractor in accordance with clause 8. The payment of the services fees is an essential part of the contract.

8.3 On the date the t herein come into effect, the customer shall provide the contractor with valid, current, complete and approved information, in a form acceptable to the contractor, as well as all other relevant, valid and complete contact and invoicing information.

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8.4 The contractor shall invoice the customer for the subscription fees as per the order. In the case of a payment by basic SEPA direct debit or corporate SEPA direct debit, the customer authorises the contractor to collect the invoice amount from the account specified by issuing an appropriate SEPA mandate.

The direct debit will be collected within a few days after conclusion of the contract.

The deadline for pre-notification shall be reduced to one day before the due date. The customer is obliged to ensure that there are sufficient funds in the account to cover the debt on the due date. The customer can request the reimbursement of the debited amount within eight weeks, starting on the debit date. The terms and conditions that have been agreed with the customer's bank shall apply. In the event of a return debit note due to the fault of the customer, the customer must bear the bank charges incurred.

8.5 If the contractor has not received payment in due time after the payment date, if the direct debit cannot be made for any reason whatsoever, or if the customer fails to pay the invoice within a reasonable period and without prejudice to any other rights and remedies the contractor, the following shall apply:

(a) The contractor may terminate the contract within 10 days without being obliged to pay damages to the customer.

(b) The contractor may, without limiting its other rights and remedies, demand the customer's unpaid fee obligations under this agreement so that they are due and payable immediately.

8.6 All amounts or fees under this agreement:

(a) are to be paid in Euro;

(b) are subject to clause 12.4(b), non-cancellable and non-refundable, except if otherwise agreed herein;

(c) do not include VAT and other applicable taxes; these shall be added to the invoice amount at the applicable tax rate. The customer shall pay all taxes related to these services in accordance with this agreement. If the contractor is required by law to pay or to collect taxes for which the customer is responsible, the contractor shall invoice the customer for these amounts, unless the customer can produce a valid tax exemption certificate issued by the competent tax authority that the customer shall submit to the contractor.

8.7 The contractor may increase the subscription fees within 60 days after prior notification to the customer. Subscription fees are deemed to have changed accordingly. Notwithstanding the aforementioned, the contractor, after notifying the customer, may increase the subscription fees and any other fees in relation to every average increase in the retail price index over a period of 12 months prior to the date of notification. Said increase shall take place 30 days after the date of coming into effect once the customer has been informed.

9. Property rights

9.1 The customer acknowledges and agrees that subject to the limited rights expressly granted herein the contractor and/or its licensors own(s) all intellectual property rights in the services and the documentation, including but not limited to its user interface, branding, and underlying technology. Unless expressly stated herein, this agreement does not grant the customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the services or the documentation.

9.2 The customer shall not perform or allow any actions that infringe, restrict or interfere with the contractor's ownership or rights to the services, the application and the related documentation. The customer shall inform the contractor within five (5) working days if the customer becomes aware of any unauthorised use of all or part of the application or services by another person, and the customer shall co-operate fully with the contractor in activities that are required to prevent such unauthorised use.

9.3 Ownership and rights to any content that may be accessed by means of the services are owned by the respective owners of such content. The right to the services, as granted by this agreement, does not include any rights in respect of such contents.

9.4 The contractor confirms that it is in possession of all the necessary rights related to the services and documentation in order to grant all rights according to the terms herein.

10. Confidentiality

10.1 The contractor undertakes to strictly maintain confidentiality during processing. Persons who may obtain knowledge of customer data processed in the order must undertake in writing to maintain confidentiality, unless they already have a legal obligation to observe confidentiality.

10.2 Each party may grant the other party access to its confidential information in order to fulfil the obligations set out herein. A party's information is not considered confidential if it:

(a) is or becomes publicly known other than through any act or omission on the part of the receiving party;

(b) was in the legal possession of the receiving party before disclosure;

(c) is lawfully disclosed to the receiving party by a third party, without any restriction regarding the disclosure;

(d) is independently developed by the receiving party and this independent development can be proven by written documents; or

(e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

10.3 Each party shall keep secret the other's confidential information and, unless required by law, not make the other's confidential information available to any third party, or use the other's confidential information for any purpose other than those authorised herein.

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10.4 Each receiving party shall take all reasonable steps to ensure that the other's confidential information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms herein.

10.5 Neither party shall be held responsible for any loss, destruction, alteration or disclosure of confidential information caused by any third party.

10.6 The customer acknowledges that details of the services and the results of any performance tests constitute confidential information of the contractor.

10.7 The contractor acknowledges that all customer data is considered confidential information of the customer.

10.8 Without restricting the confidentiality provisions herein, the parties agree that each party may use the non-confidential content of this agreement, to a reasonable extent, for ordinary marketing purposes, and that each party may use the other party's trademarks, service marks, logos and trade names for that purpose in accordance with the other party's usual policies and principles for the use of trademarks. Except as provided in this clause, the parties acknowledge and agree that nothing in this agreement transfers to either party any license, right, title or interest in the other party's trademarks.

10.9 Clause 10 remains in force even after this agreement has ended.

11. Compensation for damages

11.1 The customer shall defend, indemnify and hold harmless the contractor against claims, actions, proceedings, losses, damages, expenses and costs (including but not limited to reasonable lawyer's fees and costs) arising from or in connection with the customer's use of the services and, provided that:

- (a) the customer is informed immediately of any such claims;
- (b) the contractor agrees to help the customer to contest or settle such a claim at the expense of the customer; and
- (c) the customer has the exclusive right to contest or settle such a claim.

11.2 The contractor agrees to defend the customer, its officers, managers and employees against all claims that result from the infringement of a patent, with effect from the day of coming into force, infringement of copyright, trademark law, law on databases or an obligation of non-disclosure by the services and documentation and to compensate the customer for all amounts, provided that:

- (a) the contractor is informed immediately of any such claim;
- (b) the customer agrees to help the contractor to contest or settle any such claim; and
- (c) the contractor has the exclusive right to contest or settle such a claim.

11.3 In defending or settling a claim, the contractor may grant the customer the right to continue to use, replace or alter the services so that the services no longer infringe the rights of third parties or, if such legal remedies are not possible, the contractor may terminate this agreement with the customer within 7 working days without being liable to pay damages or other additional costs to the customer, except the repayment of the pre-paid subscription fees.

11.4 In no event shall the contractor, its employees, representatives or sub-contractors be liable to the customer if the alleged infringement is the result of:

- (a) a change in the services or documentation made by a party other than the contractor; or
- (b) the customer's use of the services or documentation in a manner contrary to the instructions given to the customer by the contractor shall; or
- (c) the use of the services or documentation by the customer after the contractor or an appropriate authority informed the customer about an alleged or actual infringement.

11.5 The customer's general and exclusive rights as well as legal remedies and all its liability obligations (including those of its employees, representatives and sub-contractors) with respect to the infringement of a patent, copyright, trademark law, law on databases or an obligation to maintain confidentiality are set out in the previous clause and in clause 12.4(b).

12. Limitation of Liability

12.1 This clause sets out the entire financial liability of the contractor (including any liability for the acts or omissions of its employees, representatives and sub-contractors) to the customer:

- (a) within the scope or in connection with this agreement;
- (b) with respect to the use, in full or in part, of the services and documentation by the customer; and
- (c) with respect of any representation, statement or tortious act or omission, including negligence, arising from or in connection with this agreement.

12.2 Unless it is expressly stated and provided for herein:

- (a) the customer assumes sole responsibility for the results arising from the use of the services and documentation by the customer as well as the conclusions drawn from them. The contractor shall not be liable for damages caused by errors or omissions in information, instructions, or scripts relating to the services provided to the contractor by the customer, or for actions taken the contractor at the request of the customer;

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(b) all warranties, representations, terms or other conditions under general law or common law are excluded to the maximum extent permitted by law for this agreement; and

(c) the services and documentation are made available to the customer on an “as is” basis.

12.3 The provisions of these terms of use shall not exclude or limit the liability of contractor for:

(a) death or personal injury caused by negligence; or

(b) fraud or fraudulent misrepresentation.

12.4 Depending on clause 12.2 and clause 12.3:

(a) the contractor shall not be liable for any loss of profit, loss of business, depletion of goodwill and/or similar losses or for any special, indirect or consequential loss, costs, damages, charges or expenses arising these terms of use; and

(b) the contractor's total liability for damages under this agreement (including damages subject to clause 12.2), tortious acts (including negligence or breach of law), misrepresentation, reimbursement or otherwise in connection with the performance or intended performance of this agreement is limited to € 5,000.00 (five thousand Euros).

13. Term and Termination

13.1 Unless otherwise terminated subject to clause 13, this agreement shall commence on the date of its entry into force and shall be valid for an indefinite period.

The customer can terminate this agreement at any time. The agreement shall end, at the earliest after 21 days, at the end of the month in question, unless it has been terminated otherwise and subject to the terms herein.

13.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the agreement without liability to the other if:

(a) the other party commits a material breach of any of its obligations under this agreement and fails to remedy the breach within 30 days (if remedial action can be taken) after that party has been notified of the breach in writing; or

(b) a court order or decision regarding the other party's insolvency has been made or a situation arises which entitles a court to make such a judgment with respect to the other party; or

(c) an application for the appointment of an insolvency administrator has been filed to administer the affairs, business and property of the other party or an application for the appointment of an insolvency administrator with respect to the other party has been filed at a competent court or a letter of intent to appoint an insolvency administrator has been filed by the other party, its directors or a person authorised for that purpose; or

(d) a receiver for the assets or operations of the other party has been named or a situation arises that entitles a competent court or creditor to appoint a receiver or administrator of the other party or another person takes possession of or sells the assets of the other party; or

(e) the other party enters into an agreement or settlement with its creditors or files an application at a competent court for the protection of its creditors; or

(f) the other party stops its business operations or threatens to stop its business operations; or

(g) there is a change of control of the other party; or

(h) similar actions are taken against the other party in any jurisdiction as a result of fault.

13.3 Upon termination of the agreement, for any reason whatsoever:

(a) the contractor shall provide the customer with the most up-to-date backup of customer information in its possession as an Excel file at the end of the contract, if the application does not allow the customer to download the stored customer data and store it in his own IT environment. The contractor shall make reasonable commercial efforts to provide the customer with the backup within 50 days of termination of the agreement, provided that the customer has paid all fees outstanding or resulting from the termination at this time. The contractor then deletes the customer data.

(b) all provisions of this agreement shall become ineffective, apart from the following provisions of this agreement that continue to exist and remain in force (unrestricted in accordance with their definition or otherwise): Clauses 1, 10, 11, 12, 13, 21.

(c) each party shall return any materials, property, documentation and other items (and copies thereof) belonging to the other party;

(d) all services that are to be provided by the contractor under this agreement shall be discontinued immediately; and

(e) the rights accrued by the parties at the time of termination or the continued existence of provisions after termination, which were explicitly defined or implicitly continue to exist even after termination, shall not be affected or restricted by this.

13.4 On termination of the agreement and at the customer's request, the contractor shall provide all reasonable services to support the customer during the proper transfer of all customer information, functions and operations involving the services back to the customer or to a third party specified by the customer. The period for implementing the reversion of the services shall be referred to as “transition”. The transition services shall be provided by the contractor to the customer at the contractor's daily service rate per man-day.

14. Force majeure

The contractor shall not be liable towards the customer if the performance of its contractual obligations or the performance of its business activities is prevented or delayed by actions, events, omissions or accidents outside of its reasonable control, including and without limitation to strikes, lock-outs or other industrial action, a breakdown in supply services or the transportation and telecommunication networks, force majeure, war, insurrection, civil unrest, malicious damage to property, rules, regulations or instructions, accidents, destruction of plant or machinery, fire, flooding, storm or failure of suppliers or subcontractors, provided that the customer is informed of such an event and its probable duration.

15. Waiver

15.1 A waiver of any right under the terms and conditions herein is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

15.2 Unless otherwise stated, the rights arising from this agreement are cumulative and do not exclude rights on the basis of statutory regulations.

16. Severability clause

16.1 If one provision of the terms and conditions herein (or part of a provision) is declared invalid, non-enforceable or unlawful by a court, an administrative authority or a competent jurisdiction, this provision shall be amended so that it has the same economic effect, as far as possible, as the original provision and so that it does not affect or limit the legality, validity and feasibility of the other provisions of these general business terms and conditions.

16.2 If invalid, unenforceable or unlawful provisions become valid, executable and legally binding by deletion of part or all of the provision, the provision shall apply with all changes necessary to implement the original intention of the parties.

17. Completeness of agreement

17.1 The terms and all documents referred to herein constitute (as long as there is no case of fraud) the final and complete agreement between the contractual parties and supersede all previous agreements, understandings or contracts between the parties in this respect. Any amendment to this contract must be made in writing and signed by or on behalf of the parties.

17.2 The parties acknowledge and agree that by accepting an agreement, they shall not assert any undertaking, promise, insurance, statement, representation, warranty or agreement (whether in writing or not) against any person (whether or not they are a party to the agreement) with respect to the contents of this agreement, unless explicitly stated in this agreement.

18. Act of transfer

18.1 The customer may not assign, transfer, commission, resell or otherwise trade any of its rights or obligations, in full or in part, under the terms herein, without the contractor's prior written consent.

18.2 The contractor may at any time assign, transfer, commission, resell or otherwise trade any of its rights or obligations, in full or in part, under the terms herein.

19. No partnership

No provision of the terms herein may or is intended to be used to form a partnership between the parties or to enable one party to act as a representative of the other party. Furthermore, no party is entitled to act on behalf of the other party, nor to otherwise bind the other party (including but not limited to warranties and assurances, the acceptance of an obligation or liability or the exercising of a right or power).

20. Third party rights

The terms herein do not transfer any rights to other persons or parties (other than the parties entering into the agreement and, if applicable, their successors or authorised agents).

21. Applicable law and jurisdiction

21.1 The agreement and all disputes or claims arising from or in connection with its subject matter are subject to and shall be construed in accordance with the laws of the Federal Republic of Germany, excluding the application of conflicts of laws, including the UN Convention on Contracts for the International Sale of Goods.

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21.2 The parties shall use their best efforts to negotiate in good faith and settle amicably any dispute arising out of or in connection with the terms herein.

21.3 If disputes cannot be settled amicably, the parties shall try to resolve any conflicts arising from or affecting the terms herein by mediation in accordance with the respective, current regulations on the settlement of disputes issued by the "Deutsche Institution für Schiedsgerichtsbarkeit" (DIS) (German Institution for Arbitration).

21.4 Unless otherwise agreed between the parties, the mediator will be nominated by DIS. The mediation will be initiated by submitting a written request for mediation to the DIS, Beethovenstr. 5-13, 50674 Cologne, Germany, by one of the parties together with the other party. Mediation shall begin at least fourteen (14) days after the date of the notification regarding the initiation of mediation procedure.

21.5 No party may commence any court proceedings in relation to any dispute arising out of or in connection with the terms herein until an attempt has been made to resolve the dispute by mediation beforehand, provided that the right to initiate proceedings is not prejudiced by a delay.

21.6 In the event that a dispute is not capable of resolution in accordance with the aforementioned DIS mediation procedure, then the parties agree that the dispute may be referred by a party to the courts of the Federal Republic of Germany which shall have final, exclusive and irrevocable jurisdiction to hear and decide any suit, action or proceeding, and/or to settle any disputes, which may arise out of or in connection with the terms herein or their formation or validity (including non-contractual disputes or claims) and, for these purposes, each party irrevocably submits to the jurisdiction of the courts of the Federal Republic of Germany.

22. Miscellaneous

22.1 For the duration of this agreement, each party shall take out appropriate insurance policies, at its own expense and in accordance with its obligations under this agreement, including and if applicable, commercial liability insurance, liability for errors and omissions, employer's liability and employee accident insurance as required by law.

22.2 Any insurance or agreement should have been concluded before the services started.

ANNEX 1

ANNEX ON THE DATA PROCESSING OF PERSONAL INFORMATION

This annex on the data processing of personal information regulates the rights and duties of the customer as well as the contractor in relation to personal information that is processed within the context of the contractor's general terms and conditions on behalf of the customer and its affiliated companies. This annex is an integral part of the terms and conditions. All the terms that were defined in the general terms and conditions and referred to in this annex have the same meaning as in the general terms and conditions.

1. Customer's obligations

1.1 The customer herewith confirms that the use of this subscription represents an order to process customer information that the contractor shall carry out within the context of the functionality offered to the customer.

1.2 The customer acknowledges that the customer and its affiliated companies (data controller in both cases, responsible for processing) have sole responsibility for the legitimacy of processing personal information as well as for safeguarding the rights of data subjects.

1.3 The customer shall ensure that its affiliated companies, where required by law, send their orders or information to the customer in writing, by e-mail, to authorise the contractor and its affiliated companies to process personal information under the agreement.

1.4 The customer shall ensure that the personal information is provided to the contractor for processing purposes. The results of data processing shall be provided by the contractor in accordance with the features implemented for the subscription.

1.5 The customer shall inform the contractor immediately if errors or irregularities in the processing of personal data are detected.

1.6 The customer shall ensure that its affiliated companies authorise the customer to authorise the contractor to act as its sub-contractor for the processing of personal information.

1.7 The customer shall ensure that there are no legal provisions facing the customer that would prevent the contractor from fulfilling its contractual obligations under this agreement in accordance with applicable law. This includes, among other things, the assurance that all data subjects have given their consent to the possible processing of personal information.

2. Contractor's obligations

2.1 The contractor processes, only in accordance with the instructions of the data controller, the personal information and other operating data that the customer has provided to the contractor; this can involve (unrestrictedly) the correction, deletion and/or blocking of data, if and to the extent that the functionality of the service makes it impossible for the customer to do so. The personal information shall not be used by the contractor for any purpose other than to provide the subscription regulated by this agreement. The contractor shall store this personal information only for the period of time defined by the customer. The storage times prescribed by law are not affected by this.

2.2 The contractor shall only employ staff to process personal information who is demonstrably committed to observe data secrecy in accordance with the relevant data protection laws.

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2.3. The contractor shall take every technical and organisational measure to fulfil the requirements in accordance with the applicable data protection laws. The contractor shall take and continuously implement every appropriate technical and organisational measure to safeguard personal information and to protect it from unauthorised or unlawful processing and unintentional loss, unintentional destruction or accidental damage. In particular, the contractor shall take the following measures for data protection purposes and shall regularly review their implementation:

- a. Access control: The contractor shall control and log access to the data processing systems.
- c. Access restriction control: The contractor shall define, implement and monitor a concept for user rights, password rules and login procedure for remote or physical access to the service by its staff for the purpose of operating, maintaining, supporting or securing the service.
- d. Transfer checks: The contractor shall secure the transfer of personal information in encoded form or by a safe alternative process. Transfers must be logged.
- e. Input checks: The contractor shall implement a detailed logging system for the input, change and deletion or blocking of personal information to the greatest possible extent that can be supported by the subscription.
- f. Job checks: The contractor shall define and implement control mechanisms to ensure strict compliance with the data controller's instructions as communicated by the customer, accepted by the contractor and set out in the terms and conditions for data processing.
- g. Availability checks: The contractor shall operate a state-of-the-art backup system and shall define a recovery procedure to protect personal data from accidental destruction and loss.
- h. Data separation: The contractor shall ensure that personal data collected for different purposes (e.g. different customers) can be processed separately by technical means and by means of defined organisational procedures. Technical means can be separate computer systems or a demonstrably logical separation in a multi-client architecture. Access by a customer to data of other customers is to be prevented.
- i. If the contractor provides the subscription to all customers via a uniform, hosted, web-based application, all appropriate and current technical and organisational measures apply to all of the contractor's customers for whom the subscription is hosted by the same data centre and who have subscribed to the same service. The customer is aware and agrees that the technical and organisational measures depend on technical progress and technical development. With respect to this, the contractor is authorised, in particular, to implement adequate alternative measures provided that the security level of the measures is maintained. In the event of essential changes, the contractor shall send the customer appropriate notification together with any necessary documentation by e-mail or by posting on the website for the subscription or an alternative website easily accessible to the customer.

2.4 If the security measures taken by the contractor do not comply with the legal requirements, the contractor shall inform the customer immediately.

2.5 The contractor shall notify the customer if the contractor believes that any instructions given by the customer on behalf of the customer violate data protection laws. The contractor is not obliged to carry out comprehensive legal checks.

2.6 The contractor shall inform the customer immediately of serious interruptions in the operating process, of suspected breaches of data protection regulations and other irregularities in connection with the processing of data. The notification must be made within 24 hours after the contractor has become aware of the relevant event at the latest, to an address specified by the customer. It must at least contain the following details:

- (a) a description of the nature of the violation of the protection of personal information, indicating, where possible, the categories and approximate number of data subjects, the categories concerned and the approximate number of personal data records concerned;
- (b) the name and the contact details of the data protection officer or another contact for further information;
- (c) a description of the probable consequences of the violation of the protection of personal information;
- (d) a description of the measures taken or proposed by the contractor to address the personal customer data breach, including, where appropriate, measures to mitigate its possible adverse effects.

2.7 On written request and at the customer's expense, the contractor shall adequately assist the customer in its obligations under articles 33 and 34 of the General Data Protection Regulation and in handling requests from individual data subjects and/or a supervisory authority for the processing of personal data controlled by the customer.

2.8 On expiry or termination of the subscription, the contractor must either (i) return to the customer all customer data and all copies or reproductions of such data (except backup media used for several of the contractor's customers which are regularly overwritten) or (ii) delete and/or destroy such personal data and media in production systems and document their deletion and/or destruction to the customer in writing in accordance with the terms and conditions (or any other relevant contractual provision) and the customer's instructions.

2.9 The mandatory provisions of the applicable data protection laws and regulations shall apply in addition and take precedence if and to the extent that they conflict with the terms of this annex.

3. Subcontractors

The contractor is entitled to subcontract the processing of personal data to a third party (the "sub-processor"); in doing so, the contractor remains responsible for all acts or omissions of its sub-processors, as for its own acts or omissions. The contractor transfers its obligations towards the customer according to this document to the sub-processors and shall oblige them to comply with all relevant data protection regulations. On request, the contractor shall inform the customer by e-mail or via the website or otherwise of the name, address and role of each such sub-processor. The contractor shall ensure that every sub-processor adheres to a sufficient level of data protection, either by law or through a contract with the contractor, which essentially provides no less protection than the obligations that the contractor undertakes under its terms and conditions.

4. Customer's control rights

4.1 The customer has all rights necessary to verify that the contractor processes the personal data properly in accordance with the agreement. These control rights are to be exercised in cooperation with the contractor.

4.2 The contractor shall secure, by contract, the customer's power of disposal and control rights arising from this annex with the contractor's sub-processors who may come into contact with the personal data. Where applicable data protection law requires that a data controller enter into a direct contractual relationship with the contractor, the contractor shall hereby authorise the customer to enter into the necessary agreement with the data controller on behalf of the contractor, but only on the basis of a contract template that the contractor shall make available to the customer on request.

4.3 Services provided by the contractor in connection with the customer's control rights shall be at the customer's expense.

5. Special confidentiality obligation

The contractor undertakes to keep all personal data disclosed to the contractor confidential and to use it exclusively for data processing in connection with the provision of the service, as provided for in the agreement. The contractor undertakes to impose the same confidentiality obligations on its employees who may become aware of personal data as entered above by the contractor. The contractor shall take all economically justifiable efforts to provide regular training on IT security and data protection to employees who are granted access to personal data.