

**General Terms and Conditions**  
**APRIL 2023**

## CONTRACTUAL BASIS

- 1.1** The parties to this contract are SLASCONE GmbH (registered in the commercial register of the Berlin District Court under registration No. HRB 174522; hereinafter "Provider") and Customer. Provider and Customer may be also referred to herein collectively as the "Parties" and individually as a "Party".
- 1.2** The language of the contract shall be English. All communications regarding the contract shall be in English.
- 1.3** Any special terms and conditions agreed upon by the Parties in writing – whether at the time of conclusion of the contract or afterwards – shall always take precedence over the provisions of these General Terms and Conditions.

## COMPENSATION, PAYMENT, SERVICE PROTECTION, DEADLINES

- 2.1** Provider's compensation normally comprises of net prices plus statutory value-added tax imposed thereon. The compensation and any other amounts payable under the contract shall be invoiced by Provider on a monthly basis. Where services are remunerated on the basis of their actual usage by Customer, Provider's invoices will be accompanied by relevant documentation evidencing the nature and duration of such usage.
- 2.2** Invoices are sent in electronic form only. The Customer must provide Provider with at least two valid email addresses, for invoicing purposes.
- 2.3** Customer must pay Provider's invoices within 20 calendar days from their receipt, free of charges for the recipient and without any deductions or withholding. If Customer is required by law to withhold or deduct any amount from the compensation or any other sums payable under the contract, Customer shall "gross-up" the respective payment so that the amount actually received by Provider is the full amount of the specified compensation and other payable sums. If Provider is required by law or elects to pay any taxes and duties levied or based upon Provider's compensation or other payable sums, such amounts shall be reimbursed by Customer to Provider.
- 2.4** The Customer may offset or withhold payments due to defects only if all of the following conditions are met: (a) Customer has a claim against Provider arising out of a material defect or defective title related to services; and (b) the claim is not time barred; and (c) the claim is undisputed or has been established in a legally binding way, that is through a court order or arbitral award.

- 2.5** If Customer fails to pay, in whole or in part, any amount owed due under this contract, by the stipulated payment date, Provider will send Customer a reminder notice in electronic form ("first reminder"). If Provider does not receive full payment of the delayed amounts within 30 calendar days from the receipt by Customer of the first reminder Provider shall send a second reminder for payment in electronic form ("second reminder"). If Provider does not receive full payment of the delayed amounts within 15 calendar days from the receipt by Customer of the second reminder, Provider will be entitled to suspend Customer's access to all services, without further notice being required. Such suspension shall not release Customer of its contractual obligations nor of its obligation to pay the compensation that corresponds to the suspension period. Services can be resumed, only as soon as all due amounts have been paid by Customer in full.
- 2.6** In addition to the above, if Customer fails to pay any amount due under the contract before the receipt of the second reminder, Provider shall be entitled to revoke agreed payment terms for any or all future payments and to render any future services only against advance payment or security (in the form of a performance guarantee on first demand) issued by a credit institution or credit insurer licensed to do business in the European Union. As regards services of a continuous nature which are chargeable on a recurring basis, the advance payment or the performance guarantee shall cover the full amount payable for the applicable billing period. For one-off services the advance payment or the performance guarantee shall cover the full amount of the compensation payable for such services. § 321 of the German Civil Code and § 112 of the German Insolvency Law – where applicable - remain unaffected.
- 2.7** No service deadline shall be fixed and firm unless this has been explicitly agreed in writing by the Parties. In all events, even where a service deadline has been agreed as fixed and firm, Provider shall be excused for not meeting any such deadline, where this is attributable to Provider's not having received services from its respective suppliers in a timely and contractually compliant manner.
- 2.8** Provider may increase the compensation not earlier than 36 months after the date of the execution of the contract. Further increases can follow not earlier than 12 months after each immediately preceding increase has become effective. An increase shall become effective 3 months after such has been notified to Customer. Customer will be entitled to terminate the contract in the event of an increase of more than 18%, termination being effective on the day when this increase is to come into effect. Customer must exercise such right of termination by giving Provider written notice thereof at least 30 days before the date on which the increase is to come into effect, otherwise Customer shall be deemed to have irrevocably accepted the increase and will not be entitled to dispute such and/or terminate the contract for this reason.
- 3.**
- 2.9** A license seat is defined as the number of active (not archived, not expired or deactivated) devices or users per product.

## CONTRACT DURATION AND TERMINATION

- 3.1** The contractually agreed services shall be provided by Provider from the date specified in the contract and until the expiry of the minimum term set forth below. The Parties hereby waive their right to an ordinary termination of the contract during this minimum term.

- 3.2** The minimum term of the contract shall be 12 months.
- 3.3** At the expiry of the minimum term, the contract shall be automatically extended for successive periods of 12 months, unless either Party has exercised its right to an ordinary termination of the contract by giving the other Party a notice to this effect at least 3 months before the expiry of the minimum term or of the respective extension period.
- 3.4** Each Party's right under the law to extraordinary termination for serious cause remains unaffected.
- 3.5** Every notice of termination must be in written or electronic/digital (§ 126a BGB) form to be effective. Section 20.4 applies.
- 3.6** Within thirty (30) days as of the expiry or termination of the contract, Customer may request that all of its data uploaded on the software or being in the possession of Provider are returned to Customer or deleted. If Customer does not exercise the right to choose between return or deletion of the data as per previous sentence, Provider shall bear no liability as regards such data and shall be entitled, after the lapse of the aforementioned thirty (30) day period, to permanently erase any data uploaded in the software by or on behalf of Customer, as well as any data otherwise in Provider's possession.

## **COLLABORATION, OBLIGATIONS TO COOPERATE, CONFIDENTIALITY**

4.

- 4.1** Customer is obliged to support Provider as necessary and create all the required conditions, lying within Customer's sphere of operations, for the proper performance of the contract. To this end, Customer shall provide to Provider all required information for the provision of the services and for the management of the contract, and shall grant Provider with remote access to Customer's Azure system (where applicable). Customer shall furthermore ensure that qualified staff members are available to support Provider where this is required for the provision of the services. Insofar as the contract contains agreements that services can be provided at Customer's site, Customer shall make available to Provider adequate workstations and work equipment, free of charge, at Provider's request. Provider shall bear no liability for delays or failure to provide the services or otherwise perform where such delays or failure are attributable to Customer's not complying with what is set out in this paragraph.
- 4.2** Customer shall immediately report to Provider any defects in the services in a comprehensible and detailed manner and in writing. All defect reports must include all information useful for defect identification and analysis, that is, indicatively, the work steps which led to the emergence of the defect, how was the defect detected and the consequences of the defect. Provider's relevant forms and procedures shall be used for this purpose, unless otherwise agreed in writing by the Parties.
- 4.3** Upon request, Customer shall appropriately assist Provider in reviewing and asserting claims against third parties involved in the provision of the services. This applies especially to recourse claims by Provider against its own suppliers.

- 4.4** Each Party shall keep the other Party's Confidential Information secret and confidential and shall not – without the other Party's prior written consent - disclose it to any person except to such limited group of its employees and – if permitted by the contract – third parties, whose duties give them a need to know such Confidential Information. Each Party shall ensure that any employee and third party to whom it discloses any Confidential Information in accordance with the contract has duly committed to be bound by the provisions of confidentiality set forth in this section. The obligations set out in this section shall apply during the term of contract and for a period of five years after expiry or termination of the contract for any reason whatsoever. "Confidential Information" means any information relating to the business (for example and not limited to proprietary and trade secret, technical information, technical plans) of either Party and to the identity and business of either Party's clients and potential clients and which both Parties regard, or could reasonably be expected to regard as confidential, whether or not marked or characterized as "confidential". The term "Confidential Information" covers also Provider's software and relevant documentation and presentations, or any part thereof.
- 4.5** The Parties are aware that electronic and unencrypted communication (e.g., via e-mail) is subject to security risks. In such case, they cannot make any claims based on the lack of encryption, unless encryption has been agreed beforehand.
- 4.6** Customer shall indemnify, defend and hold Provider harmless against any third party claim and all related demands, damages, losses, liabilities, fines, penalties, assessments, costs and expenses (including attorneys' fees), arising from or in connection with the violation of any applicable law which stems from Customer's unlawful use of the services or not in accordance with the contract, or which has occurred with Customer's consent. If Customer becomes aware or should have been aware that such a violation is imminent, Customer is obliged to immediately inform Provider.

5.

## HOSTING

- 5.1** The services shall be provided via software which runs in Microsoft Azure data centers only.
- 5.2** Customer can use its own Microsoft Azure subscription. In this case, (a) Customer shall bear and settle directly all costs related to Microsoft Azure; and (b) shall make available to Provider a dedicated Microsoft Azure resource group and corresponding administrative access, in accordance with the specifications set by Provider, as such shall be updated and communicated by Provider to Customer from time to time. This resource group shall be used exclusively for the operation of Provider's software. Customer may not change the content of this resource group without prior consultation with Provider. Provider shall bear no liability if the content of this resource group is changed by Customer or otherwise without Provider's prior written agreement, as well as in the event that this resource group is not in compliance with the specifications set by Provider.

6.

## SERVICE DESCRIPTION

- 6.1** Provider shall provide the contractual services, in particular access to the software, in Provider's area of disposal (from the data center interface to the Internet).

- 6.2** The scope of services, the intended use and the conditions of use of the contractual services result from the respective service description, in combination with the online documentation of the software. The online documentation is ultimately decisive for the quality of the functionality of the software, unless explicitly agreed otherwise. Provider is not obliged to any additional software description. The online documentation can be found at <https://slascone.com/docs>.
- 6.3** Provider has no obligation to provide any further services, such as – but not limited to - development of customer-specific solutions or customizations. Such services may be provided only if agreed by the Parties in a separate contract.

## PROFESSIONAL SERVICES (CUSTOMIZING)

- 7.**
  - 7.1** Where this has been agreed by the Parties in writing, Provider will render additional professional services through suitable staff members. Customer has no claim to request that the services are provided by specific employees of Provider.
  - 7.2** Provider shall determine the way services are rendered, unless agreed otherwise.
  - 7.3** Customer is not authorized to issue instructions to Provider's employees involved in rendering services.
  - 7.4** If Provider must present the results of the provision of the services in writing, only the written presentation is conclusive and definitive.
  - 7.5** Customer ensures that the contact person appointed by Customer timely provides to Provider with documents, information and data needed for providing the services. Customer must ensure that these documents, information and data are complete, correct and up to date. Provider may rely on the assumption that these documents, information and data are complete, accurate and up to date, and shall not be liable in the event that such assumption is proven to be false. However, although Provider shall not be obliged to examine such documents, information and data as to their completeness, accuracy and up to date status, in the event it reasonably determines that any of such documents, information and data is incomplete, inaccurate or not up to date, it shall be entitled to request that Customer takes required corrective action with no further delay.
  - 7.6** In this regard, Customer shall monitor service provision by Provider.
  - 7.7** As regards the service results output delivered to the Customer by the Provider within the scope of the contract, Provider grants Customer a non-exclusive, non-transferable, non-assignable, revocable for breach right to use these results in perpetuity and solely for Customer's own internal business purposes within the contractually intended context, unless agreed otherwise..
  - 7.8** Except as otherwise explicitly agreed in the contract, all rights to, title and interest in (including but not limited to intellectual property rights) in the services, the software used to provide the services and anything else delivered or made available by Provider to the Customer under or in relation to the contract, remain with Provider.
  - 7.9** Expenditures are considered approved and payable by Customer to Provider, if Customer does not dispute such in writing and in detail within 21 days of receipt of the relevant evidences by Provider.

**7.10** Subject to what is set out in the last sentence of this paragraph 7.10, if a service is not provided in compliance with the contract and Provider is responsible for this ("service Disruption"), Provider is obliged to make reasonable effort to take remedial action and provide the service to Customer in compliance with the contract within a reasonable period and without additional cost to the Customer. This obligation of Provider exists only (a) if Customer has notified Provider of the service disruption in writing and without delay, but no later than by the end of two weeks after acquiring knowledge thereof, unless agreed otherwise, and (b) due performance does not entail disproportionate expenditure for the Provider

**7.11** Section 16 applies to any further claims for compensation of expenditure and damage.

## SOFTWARE UPDATES

- 8.1** Subject to the paragraphs 8.4 and 8.5 Provider may make available updated versions of the software, even if Section 5.2 applies. Provider is not obliged to explicitly inform Customer about when such updates will or are made available and/or deployed.
- 8.2** Provider employs monitoring in order to identify performance peaks and bottlenecks and adjust or (in the event of Section 5.2) requests that Customer adjust the sizing of Microsoft Azure resources accordingly (cost optimization), even if Section 5.2 applies.
- 8.3** Provider will inform Customer without undue delay when the software can no longer be regularly developed or updated.
- 8.4** Provider is entitled to change, extend and further develop the software, including the online documentation, at its own discretion, provided that the contractual functional scope of the software is essentially retained and changes do not hinder the contractual and intended use of the software by Customer.
- 8.5** The right to change the software also includes the right to remove functions that are not essential or are no longer essential for the contractual use of the software. Such changes shall be notified to Customer at least 6 months in advance. Customer must review the changes and immediately inform Provider in writing if such changes will not allow use of the software for the intended and contractually agreed purpose. If Customer fails to so notify Provider within three months from having been notified of the changes, then such changes shall be considered accepted by Customer.

## AVAILABILITY

**9.1** Subject to Section 9.2, Provider's software and the services based on it will have an availability guarantee of 99.95%.

- 9.2** The software is hosted on Microsoft's Azure cloud, using Microsoft Azure resources. Thus, access to and use of the services is additionally governed by the applicable terms of Microsoft. Customer undertakes to comply with all such applicable terms of Microsoft as updated from time to time. Consequently, the availability of the provided software and services technically depends on the availability of the Microsoft Azure resources used in combination with the software. Provider has no control over Microsoft Azure resources, makes no warranties regarding Microsoft Azure's resources and bear no liability for any defect, error, interruption or other software failure and or service disruption or non-conformance attributable, in whole or in part, to the Microsoft Azure resources.
- 9.3** Such Microsoft Azure resources, as at the date of execution of the contract are: Application Gateway, Front Door, App Service, SQL Database, Active Directory B2C, Azure Maps, Storage Account. Microsoft Azure's service level (SLA) agreements can be found at <https://azure.microsoft.com/en-us/support/legal/sla/>.

## PERMITTED USE AND RESTRICTIONS

- 10.1** The contractual services may be accessed and used only by Customer, for customer's own internal business operations, and only for the purposes agreed in the contract. For the entire term of the contract, Customer may access the contractual services by means of telecommunication (via the Internet), and use the functionality associated with the software in a contractually compliant manner by means of a browser or other appropriate application (for example, an "app"). Any further use requires Provider's prior written consent. Provider and its licensors (as applicable) retain all rights, title and interest in and to any Intellectual Property Rights in the services and the software, the documentation and any modifications, derivative works, updates thereof, Customer has no and hereby acquires no interest in or right to use the services, the software and the documentation and any modifications and updates thereof, or anything else developed and made available or delivered to Customer, except in accordance with the terms of the contract.
- 10.2** Software or parts of it may not be copied, sold, transferred temporarily, leased or loaned by Customer.
- 10.3** Provider is entitled to take appropriate technical measures to prevent use of the services in violation of the contract, on the condition such measure do not materially impair contractually compliant use of the services.
- 10.4** In case of any contract violation by a specific user, Customer is obliged to supply Provider with any available information that Provider may request in order to support Provider's claims against such user, without this releasing Customer of or limiting Customer's liability, under the contract or the law, for such violation.
- 10.5** In case of a material breach of the contract Provider may revoke Customer's access (in full or in part) to the contractual services or terminate the contract. For the avoidance of doubt, revocation of access rights by itself shall not constitute termination of the of the contract. Revocation of access without prior notice may only last for a reasonable period of time not exceeding 3 months.
- 10.6** Provider's right to be compensated for damages or loss suffered in connection with any breach of the contract by Customer remains unaffected.



- 10.7** Customer has the right to regain access to the contractual services, if it can demonstrate to the satisfaction of Provider that the breach has ceased, and all consequences thereof have been remedied.

## SERVICE DISRUPTION

- 11.1** If a deadline for the provision of services by Provider may not be adhered for any cause ("Disruption") lying beyond Provider's reasonable control, such deadline shall be extended for as long as the Disruption lasts, plus an additional time period reasonably required for resuming performance. Each Party shall promptly notify the other of any Disruption it becomes aware of, as well as for the associated deadline(s) estimated extension time.
- 11.2** Should Provider incur any additional expenses as a result of a Disruption, Provider shall be entitled to be compensated therefor, unless such Disruption also falls beyond Customer's reasonable control.
- 11.3** In case that Customer is entitled to terminate the contract due to Provider's improper performance and / or can claim damages instead of the performance of the service, Customer will, upon Provider's request, declare in writing within a reasonable period of time whether Customer will exercise such rights or continue to procure the services under the contract. In the event of termination, Customer must pay to Provider the compensation corresponding to the use of the services until the time when termination comes into effect. In the event where fixed and firm deadlines have been agreed in writing and there is a delay in the provision of the services Customer's sole and exclusive remedy for such delay shall be the payment by Provider for each full week of delay of an amount equal to 0.5% of the price of the services that may not be used to the delay. In no event will the amounts payable by Provider to Customer for delayed services exceed 5% of the compensation corresponding to services that may not be used due to the delay. In the case of continuing obligations, the basis for the calculation of the aforementioned amount shall be the compensation for the relevant services for the full calendar year. The provisions of this paragraph shall not apply to the extent that delays arise out of Provider's gross negligence or willful misconduct.

## INCIDENT MANAGEMENT

- 12.1** Incident reports have to be created at <https://slascone.com/support/>. Provider shall receive Customer's incident reports and assign an ID to each report. Upon request by Customer, Provider shall acknowledge receipt of a report also notifying Customer of the ID assigned to it.
- 12.2** Incident reports will be categorized and handled according to an assigned severity level. The incident severity level is selected by Customer at the time of submission of the Incident Report, and will be updated by Provider as follows:

Level 1 - Critical

Critical production issue affecting all Users, including system unavailability and data integrity issues with no workaround available.

Level 2 – High

Major functionality is impacted or performance is significantly degraded. Issue is persistent and affects many Users and/or major functionality. No reasonable workaround is available.

Level 3 – Normal

System performance issue or bug affecting some but not all Users. Short-term workaround is available, but not scalable.

Level 4 – Low

Incidents that do not fall into Level 1 - 3 are assigned to Level 4. Other reports shall be handled by Provider in accordance with the specific agreement reached thereon by the Parties.

**12.3** Provider will use commercially reasonable efforts to respond to each case within the applicable response time described in the table below, depending on the severity level set on the case.

| Severity Level | Target Initial Response Time | Target Resolution or Workaround Time |
|----------------|------------------------------|--------------------------------------|
| <b>1</b>       | 2 hours (24x7)               | 12 hours                             |
| <b>2</b>       | 6 hours (24x7)               | 48 hours                             |
| <b>3</b>       | 1 business day               | 5 business days                      |
| <b>4</b>       | 2 business days              | 5 – 10 business days                 |

The business hours are defined in Section 13.3. Target response and resolution times are merely goals. Depending on the volume and severity of incident reports tickets submitted, response times and time to resolution may vary.

**12.4** In the case of serious disruptions and other disruptions, Provider shall promptly initiate relevant procedures according to the circumstances reported by Customer, in order to identify the cause of the defect.

If a reported incident does not turn out to be a defect in the contractual services, especially in the software, Provider shall promptly inform Customer about this.

Otherwise Provider shall initiate appropriate measures and exercise reasonable endeavors to further analyze and correct the reported defect or - in the case of third-party software - send the incident report, including the analysis results, to the supplier or manufacturer of the third-party software with a support request.

A workaround or remedy of a defect in the contractual services, especially in the software, Provider shall within reasonable time supply Customer with available measures such as procedural instructions or corrections to the supplied software. Customer shall promptly implement such measures and notify Provider with no delay of any remaining defects upon deployment of such measures.

## CONTACT POINT (HOTLINE)

13. **13.1** Provider shall make available to Customer a contact point (hotline) to process Customer's inquiries in connection with technical requirements and conditions for use of services and associated software, as well as individual functional aspects. Inquiries have to be created at <https://slascone.com/support/>. The hotline shall be available only during business hours, unless otherwise agreed in writing.
- 13.2** The hotline shall process properly submitted inquiries as part of normal business routine and answer such as soon as possible. In its responses, the hotline can refer Customer to available documentation and other training material for the software. If the hotline is not able to answer an inquiry at all or in a timely manner, Provider – on the condition that this has been expressly agreed in writing by the Parties - shall forward the inquiry for further processing, especially in case of inquiries regarding software or other components not developed by Provider.

Additional hotline services such as extended contact hours and periods as well as on-call service or the provision of services on-site at Customer's premises shall be only provided if they have been explicitly in advance and in writing.

14. **13.3** Business hours: All working days (calendar days with the exception of Saturdays and Sundays, and December 24 and December 31 each year) from 7:00 a.m. to 8:00 p.m. (CET or CEST). Incident reports with severity level 1 or 2 will be handled 365x24x7.

## MATERIAL DEFECTS AND REIMBURSEMENT OF EXPENDITURE

- 14.1** Provider warrants that the services shall be of such quality as contractually stipulated. Claims regarding material defects do not arise if the provider's services deviate just negligibly from the contractual quality.
- 14.2** Provider shall not be liable to Customer under Section 14.1
- i for defects caused by the excessive or improper use of the software, natural wear and tear of the software, failure of components in the system environment where the software runs,
  - ii defects which cannot be reproduced or otherwise proven by Customer; or
  - iii defects arising out of special external causes which are not a prerequisite under the contract.
  - iv defects arising out of any intervention or modification to the software (or any component thereof) and/or to the Microsoft Azure resources group made by Customer or any third party.
  - v defects attributable to Microsoft Azure resources, third party software and material.

Section 16 limitations also apply as a supplement to claims for compensation of damages and expenditure.

- 14.3** The limitation period for claims based on material defects is one year from the statutory beginning of limitation. The statutory periods for recourse according to § 478 of the German Civil Code remain unaffected. The same applies insofar as longer periods are prescribed, pursuant to § 438 Paragraph 1 Item 2 or § 634a Paragraph 1 Item 2 of the German Civil Code, in case of intentional or grossly negligent breach of duty by Provider, fraudulent concealment of defects, harm to life, body or health, as well as claims based on the product liability act.

Notice of a material defect by Customer and Provider's processing thereof shall not suspend the limitation period for such defect, unless relevant legal requirements for such suspension are met. Consequently, the limitation period shall not be renewed due to the submission or processing of a defect notice.

In all events, Supplementary performance (new delivery or reworking) by Provider may only impact the limitation period for the defect which triggered such supplementary performance.

- 14.4** Provider shall be entitled to be compensated for any expenses incurred due to
- a) action taken following a report without there actually being a defect, unless Customer could not have recognized by exercising reasonable effort that no defect existed, or
  - b) the defect reported may not be reproduced or otherwise proven by Customer, or
  - c) Provider has incurred additional expenses due to Customer's not fulfilling or not properly fulfilling its obligations (also refer to Sections 4.1, 4.2 und 15.2).

**15.**

## INDEMNIFICATION

- 15.1** Provider shall be liable to Customer for infringement of third-party rights by Provider's service, but only insofar as the service is used unmodified and in accordance with the contract and, in particular, in the contractually agreed or otherwise intended environment.

- 15.2** If a third-party claims that Providers' service infringes upon their rights, Customer shall promptly notify Provider in writing. Provider and, if applicable, its suppliers shall be entitled to, but not obliged, to take control of the defense against such claims, to the extent permitted by law, at their own expense.

Customer must not and is not authorized by Provider to recognize third-party claims, without Provider's prior written consent.

- 15.3** In the event that a third-party claim for infringement is upheld, Provider shall, at its own expense and discretion, upon having reasonably considered Customer's interests,
- a) cure the infringement by acquiring the rights that will allow the non-infringing use of the service by Customer pursuant to the contract; or
  - b) replace or amend the relevant software and services in order to cure the infringement on which the claim is based; or

c) if Provider cannot achieve any other remedy with reasonable effort, withdraw the service and refund the compensation paid by Customer (minus a reasonable reimbursement for use).

**15.4** Claims of Customer regarding defects in title shall be time barred according to Section 14.2 and shall be subject to the limitations set out in Section 16. Section 14.3 applies accordingly to Provider's additional expenditures.

## GENERAL LIABILITY OF PROVIDER

- 16.1** Provider is always liable to Customer
- 16.**
- a) for damage caused by Provider or their legal representatives or vicarious agents intentionally or through gross negligence,
  - b) for strict product liability according to the applicable law and
  - c) for damage which arises from harm to life, body or health, and for which Provider, their legal representatives or vicarious agents are responsible.
- 16.2** For material and pecuniary damages, this liability is limited to the damages which are typical and foreseeable under the contract. The same applies to loss of profit and savings which failed to materialize. Liability for other remote consequential damage is excluded.
- Section 14.3 applies accordingly to the statute of limitations. On contract conclusion, the Parties can agree further liability in writing, usually in exchange for a separate remuneration. An individually agreed liability amount shall take precedence. Liability as per Section 16.1 is not affected by this paragraph.
- Notwithstanding anything to the contrary in these terms and conditions, Provider's liability due to slight negligence arising from the respective contract and its execution with regard to compensation of damage and expenditure - irrespective of the legal grounds - shall be limited to 9% of the yearly remuneration agreed on contract conclusion. Liability as per Section 16.1 b) is not affected by this paragraph.
- 16.3** On the basis of a guarantee declaration, Provider is only liable for damage compensation if this was explicitly accepted in the guarantee. In case of slight negligence, this liability is subject to the limitations set forth in Section 16.2.
- 16.4** If recovery of data or components (e.g. hardware, software) becomes necessary, Provider is liable only for the expenditure required for recovery given proper data backup and failure precautions by Customer. In case of slight negligence by Provider, this liability arises only if Customer implemented appropriate data backup and failure precautions for the type of data and components before the disruption. This does not apply if agreed as performance to be delivered by Provider.
- 16.5** Section 16.1 to 16.4 apply accordingly to claims for compensation of expenditure and other liability claims of Customer against Provider. Section 11.3 remains unaffected.

## DATA PROTECTION

- 17.1** To the extent that Provider can access personal data belonging to Customer or present in their domain, said Provider shall act exclusively as a processor and only process and use these data to execute the contract. Provider shall observe Customer's instructions on handling such data. Customer shall bear any negative consequences of such instructions for contract execution. Customer and Provider shall agree details on handling of Customer's data by Provider in accordance with legal requirements concerning data protection.
- 17.2** Customer remains the data controller generally in the contractual relationship and in the context of data protection legislation. If Customer processes personal data in connection with the contract (including collection and use), said Customer assures that they are entitled to this according to the applicable provisions, in particular, those concerning data protection, and shall indemnify, defend and holds Provider harmless from claims by third parties in the event of a breach.
- 17.3** The following applies to the relationship between Provider and Customer: Customer is responsible for processing (including collection and use) of personal data vis-à-vis the data subject, unless Provider is answerable to any claims by the data subject as regards breaches of duty attributable to them. Customer shall review, process and answer any enquiries, requests and claims by the data subject. This also applies to claims raised by the data subject against Provider. Provider shall support Customer as part of their duties.
- 17.4** The software and any data processing is operated on servers within the EU or the European Economic Area. Provider uses the services of Microsoft Corporation, One Microsoft Way, Redmond, WA 98 USA to provide the service. The contractual partners are aware that the transfer of personal data to the USA cannot be ruled out when using Microsoft's services, but shall be carried out in accordance with Microsoft data privacy policy.
- 17.5** Employees of Provider as well as third parties who work on the behalf or have access to personal data have been obliged in writing to maintain confidentiality and to maintain data secrecy in accordance with Section 53 of the Federal Data Protection Act (BDSG).

## NON-CONTRACTUAL USE, DAMAGE COMPENSATION

- 19.** For each case involving unauthorized or excessive use of a contractual service by Customer's, Customer shall be liable to pay damages to Providers equal to the compensation which would have been due for contractually compliant use over the minimum contractual period applicable to this service. Customer reserves the right to prove it is not responsible for unauthorized use, or that there is no damage or that damages is less than the amount set forth above, Provider remains entitled to assert further damage claims.

## REFERENCE

Customer grants Provider the right to use the logo and name of Customer as a reference on its website and in sales and promotional material documents. Customer can revoke this approval at any time.

## MISCELLANEOUS

- 20.1** Customer is responsible for complying with import and export regulations applicable to deliveries and services, in particular those associated with the United States. For cross-border deliveries and services, Customer shall cover customs, fees and other charges. Customer is responsible for carrying out all arrangements and legal and official procedures in connection with cross-border deliveries and services, unless expressly agreed otherwise.
- 20.2** The contract shall be governed by German law. Application of the CISG is excluded.
- 20.3** Provider renders their services based on their general business terms. Customer's general business terms do not apply, even if Provider has not expressly opposed to their application contradicted them. Acceptance of services by Customer is regarded as recognition of Provider's general business terms, waiving Customer's general business terms. Other conditions are binding only if Provider has accepted to be bound recognized by them in writing; in this case, Provider's general business terms apply as a supplement.
- 20.4** Amendments and supplements to this contract may only be made in written or electronic/digital form.
- 20.5** All disputes arising out of the contract shall be submitted to the courts of Provider's registered seat. Provider may also file suit against Customer at Customer's seat.