

## General Terms and Conditions of TERRITORY GmbH

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### I. General terms and conditions for all deliveries and services

#### 1. Scope

1.1 These general terms and conditions form the basis of all deliveries and services to be provided by TERRITORY GmbH, Am Baumwall 11, 20459 Hamburg, Germany (hereinafter referred to as "TERRITORY" or "we"), including consultancy services, unless otherwise agreed in individual contracts. They are designed for the business-to-business sector and apply only to companies, legal entities under public law and special funds under public law. They do not apply to consumers. Our Terms and Conditions (T&Cs) shall also apply to all future deliveries, services or offers to you, our Client, even if they are not separately agreed again.

1.2 In these T&Cs, the generic masculine gender is used consistently for simplification and better readability. In principle, persons of any gender are included, unless the meaning dictates otherwise.

1.3. General terms and conditions of our Clients shall not apply, even if we have not expressly objected to their applicability in individual cases, or have provided or accepted deliveries or services without express objection. Even if we refer to a letter that contains or refers to terms and conditions of the Client or a third party, this does not constitute an agreement to their validity. By placing an order, you accept our terms and conditions as solely authoritative. Only those provisions of the contracting parties that deviate from these GTCs in the order or in other agreements or arrangements shall take precedence over these GTCs.

#### 2. Offer and conclusion of contract

2.1. All offers of TERRITORY are subject to change and non-binding, unless they are expressly marked as binding or contain a specific acceptance period. TERRITORY may accept orders or commissions within fourteen days of receipt.

2.2. The legal relationship between us and you shall be governed solely by the written contract, including these T&Cs. The contract fully reflects all agreements between the contracting parties on the subject matter of the contract. Verbal promises made by TERRITORY prior to the conclusion of the contract shall be legally non-binding and verbal agreements of the contracting parties shall be replaced by the written contract, unless it is expressly stated in each case that they shall continue to be binding.

2.3. Additions and amendments to the agreements, including these General Terms and Conditions, must be in the form of the original agreements in order to be effective. With the exception of managing directors or authorised signatories, the employees of TERRITORY shall not be entitled to make verbal agreements deviating from this condition. Transmission by telecommunication, in particular by fax or e-mail, shall be sufficient to comply with the requirement for the written form. Messenger services (e.g. WhatsApp) are not a means of communication authorised for business correspondence with us.

2.4. Information provided by TERRITORY on the object of the delivery or service (e.g. weights, dimensions, utility values, load capacity, tolerances and technical data) as well as our representations of the same (e.g. drawings and illustrations) shall only be approximately authoritative, insofar as the usability for the contractually intended purpose does not require exact conformity. They are not guaranteed characteristics, but descriptions or identifications of the delivery or service. Deviations that are customary in trade and deviations that occur due to legal regulations or represent technical improvements, as well as the replacement of components with equivalent parts, are permissible insofar as they do not impair usability for the contractually intended purpose.

2.5 We reserve the ownership or copyright of all offers and cost estimates submitted by us as well as drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids made available to the Client. The Client may not make these items accessible to third parties as such or in terms of content, disclose them, use them itself or through third parties or reproduce them, without the express consent of TERRITORY. At the request of TERRITORY, he shall return these items in full and destroy any copies that may have been made if they are no longer required by him in the ordinary course of business or if negotiations do not lead to the conclusion of a contract. An exception to this is the storage of electronically provided data for the purpose of normal data backup.

### 3. Prices, terms of payment, Client default

3.1. The prices apply to the scope of services and deliveries listed in the order confirmation. Additional or special services will be charged separately. Our current list prices at the date the contract has been concluded shall apply, unless other prices have been agreed. If the agreed prices are based on our list prices and the delivery is to take place more than four months after conclusion of the contract, the list prices valid at the time of delivery shall apply (in each case less an agreed percentage or fixed discount). All prices are in EURO. Statutory value added tax is not included in our prices; it will be stated separately on the invoice at the statutory rate on the day of invoicing. Incidental costs (packaging, shipping costs, transport insurance, customs duties, fees and other public charges for export deliveries) will also be charged separately.

3.2. Invoice amounts are payable within thirty (30) days, unless otherwise agreed. The date of receipt by us shall be decisive for the date of payment. A special written agreement is required for the deduction of a discount. Partial payments are not permitted.

3.3. If the Client fails to make payment when due, interest of 5% p.a. shall be payable on the outstanding amounts from the due date; the right to claim higher interest and further damages in the event of default shall remain unaffected.

3.4. We shall be entitled to execute or provide outstanding deliveries or services only against advance payment or the provision of security if, after conclusion of the contract, we become aware of circumstances which are likely to significantly reduce the creditworthiness of the Client and which jeopardise the payment of TERRITORY's outstanding claims by the Client from the respective contractual relationship (including from other individual orders to which the same framework agreement applies).

3.5. We shall have a right of retention to all materials, documents and data carriers provided by the Client until payment has been made in full.

3.6. A monetary debt owed by the Client shall bear interest during the period of default at a rate of nine (9) percentage points above the base rate for the year, subject to a minimum of nine (9) per cent for the year. The assertion of further damages and a statutory cost penalty in the event of default shall remain unaffected.

3.7. We shall be entitled to payment of a lump sum (default fee) in the amount of EUR 40 in the event of default on the part

of the Client. This shall also apply if the claim for payment from the Client is a payment on account or other payment by instalments. The lump sum for delay shall be set off against any damages owed only to the extent that the damage is based on the costs of legal action.

#### **4. Delivery, insurance, delivery date, transfer of risk, acceptance**

4.1. Unless otherwise stated in the order confirmation, delivery and performance are agreed "ex works". Transport packaging and all other packaging will not be taken back, with the exception of pallets. The Client is obliged to arrange for the disposal of the packaging at his own expense.

4.2. We shall only insure shipments against theft, breakage, transport, fire and water damage or other insurable risks at the express request of the Client and at the Client's expense. The method of dispatch and packaging are subject to our dutiful discretion.

4.3. Deadlines and dates for deliveries and services accepted by TERRITORY shall always be approximate only, unless a fixed deadline or a fixed date has been expressly accepted or agreed. If dispatch has been agreed, delivery periods and delivery dates refer to the time of handover of the physical objects to the transport company or postal service.

4.4. The start of the delivery period stated by us presupposes the clarification of all technical matters. Compliance with our delivery obligation further presupposes the timely and proper fulfilment of the Client's obligations. TERRITORY may, without prejudice to its rights arising from default by the Client, demand from the Client an extension of delivery and service deadlines or a postponement of delivery and service deadlines by the period in which the Client does not fulfil its contractual obligations towards TERRITORY.

4.5. The risk shall pass to the Client at the latest when the delivery item is handed over (whereby the start of the loading process shall be decisive) to the forwarding agent, carrier or other third party designated to carry out the shipment. This shall also apply if partial deliveries are made or we have assumed other services (e.g. shipping or installation). If the dispatch or handover is delayed as a result of a circumstance, the cause of which lies with the Client, the risk shall pass to the Client from the day on which TERRITORY is ready for dispatch and has notified the Client of same. Storage costs after the transfer of risk shall be borne by the Client. In the case of storage by TERRITORY, the storage costs shall amount to 0.25% of the net invoice amount of the items to be stored per expired week. We and you reserve the right to claim and demonstrate further or lower storage costs.

4.6. Insofar as acceptance is to take place, the contractual service shall be deemed to have been accepted if a) the delivery and, insofar as we are obliged to provide the installation, the installation has been completed, b) we have notified the Client of this with reference to the fictitious acceptance in accordance with this Condition 4.6 and have requested acceptance, c) twelve working days have passed since the delivery or installation, or the Client has started using the contractual service and in this case six (6) working days have passed since delivery or installation and d) the Client has failed to carry out the acceptance within this period for a reason other than due to a defect notified to TERRITORY, which makes the use of the contractual service impossible or significantly impaired.

#### **5. Liability for delayed deliveries**

5.1. We shall be liable in accordance with statutory provisions insofar as the underlying contract is a transaction for delivery by a fixed date. We shall also be liable in accordance with statutory provisions a) if, as a consequence of a late delivery for which we are responsible, the Client is entitled to claim that his interest in the further performance of the contract has ceased to exist or b) if the late delivery is due to wilful or gross negligence breaching the contract for which we are responsible; a fault on the part of our representatives or

vicarious agents shall be attributed to us. In all other respects, our liability for damages as a result of delayed deliveries shall be limited in accordance with Condition I. 7.

5.2. If we do not deliver the goods or do not deliver them in accordance with the contract, you must grant us a period of grace to effect performance. Otherwise you are not entitled to withdraw from the contract.

5.3. TERRITORY shall not be liable for a delayed delivery or one which is impossible, insofar as these have been caused by force majeure or other events that were not foreseeable at the time of the conclusion of the contract (e.g. operational disruptions of all kinds, difficulties in the procurement of materials or energy, transport delays, strikes, lawful lockouts, shortage of labour, energy or raw materials, difficulties in the procurement of necessary official permits, official measures or the lack of delivery, incorrect delivery or late delivery by suppliers), for which TERRITORY is not responsible. If such events make it much more challenging or impossible for us to deliver or perform the contract, and these are of a permanent nature, we are entitled to withdraw from the contract. In the event of temporary obstacles, the delivery or service dates shall be extended or postponed for the duration of the issue plus a reasonable period before these start. If the Client cannot reasonably be expected to accept the delivery or service as a result of the delay, he may withdraw from the contract by means of an immediate declaration.

#### **6. Performance obligations and warranty**

6.1. Our performance descriptions, information relating to the permitted purpose of use and our advertising statements do not constitute any warranties of characteristics or quality and are not to be equated with our contractual obligation to perform. Oral information or agreements not confirmed in writing or in text form are non-binding.

6.2. If disagreements arise between the contracting parties during the execution of the contract regarding the content of technical terms and symbols, quality requirements, format requirements or similar, compliance with the respective DIN/EN/ISO standards applicable at the time of the conclusion of the contract shall be deemed agreed.

6.3. A notice of defects for apparent performance deficiencies (i.e. defects which are recognisable on immediate, careful examination) must be given within seven working days upon the possibility of detection. With regard to other defects, our deliveries or services shall be deemed to have been approved if we do not receive notification of the defect within seven working days after the date at which the defect became apparent; however, if the defect was already apparent at an earlier time during normal use, this earlier time shall be decisive for the commencement of the notice period for defects. The condition for any warranty rights is that the Client has duly fulfilled its obligations under commercial law to inspect the goods and give notice of defects.

6.4. The warranty shall not apply if the Client modifies the object of delivery or service without our consent or has it modified by a third party and this makes it impossible or unreasonably difficult to remedy the defect. In any case, the Client shall bear the additional costs of remedying the defect resulting from the modification.

6.5. The Client shall support TERRITORY in the detection and rectification of the defect and shall immediately grant access to documents which contain more detailed circumstances relating to the defect. Where after appropriate investigation an alleged defect cannot be attributed to TERRITORY's obligation in respect to defect liability and the Client should have recognised this, the Client can be charged with the expenses incurred by TERRITORY for the verification and rectification of the defect at the respective applicable remuneration rates.

6.6. The warranty period shall be one year from delivery or, insofar as acceptance is required, from acceptance; this period shall not apply to claims for damages by the Client arising from injury to life, limb or health, or from wilful or gross negligence which breaches TERRITORY's or its vicarious agents obligations,

which shall become time-barred in each case in accordance with statutory regulations. If a defect claim has been asserted, we shall initially have the right to subsequent performance, at our election, by improving or replacing the deficiency. After two failed attempts at subsequent performance or where it is impossible, unacceptable, refused, or the subsequent improvement or replacement delivery is unreasonably delayed, the Client may reduce the price appropriately or may withdraw from the contract if the breach of duty is significant. If we are at fault for a defect, the Client shall be entitled to claim damages under the Conditions of I. 7.

6.7. TERRITORY shall immediately notify the Client of delayed performance. TERRITORY shall not be responsible for delayed performance due to force majeure (the impediment lies outside the control of the Parties and it could not reasonably be expected at the time of conclusion of the contract to take this reason into consideration or to avoid it or its consequences, such as a strike, lockout, official orders, general disruptions in telecommunications, epidemics and official orders issued in this context through no fault of the parties, death or the prolonged illness of an employee with special skills who cannot be easily replaced, etc.) or circumstances within the control of the Client (e.g. non-timely provision of cooperation services, delays by third parties attributable to the ordering party, etc.) and shall entitle it to postpone the provision of the affected services by the duration of the impediment plus a reasonable period before it starts. Where an impediment is temporary, performance periods shall be extended or the dates shall be postponed for the duration of the impediment plus a reasonable period before it starts. Insofar as one of the Parties cannot reasonably be expected to delay performance, it can withdraw from the contract by providing a written declaration.

#### **7. Liability for damages due to fault**

7.1. The assertion of claims for damages or reimbursement of expenses shall require a culpable breach of duty on our part, whereby we shall generally only be liable for gross negligence and wilful misconduct on the part of our legal representatives, employees and vicarious agents. Where there is simple negligence, we shall only be liable in the event of a breach of essential contractual obligations. Material contractual obligations are the obligation to deliver and install the delivery item or to perform the service in due time, the freedom of the delivery or service from defects of title as well as such material defects that significantly impair functionality or usability, as well as advisory, protective and obligation duties that are intended to enable the Client to use the delivery item or service in accordance with the contract or are intended to protect the life and limb of the Client's personnel or to protect the Client's property from significant damage. In this case, the liability for damages shall be limited to the damage typically foreseeable as a possible consequence at the date the contract was concluded. In the event of liability for simple negligence, our obligation to pay compensation for financial loss is also limited to an amount of 250,000 euros per claim, even where there is a breach of material contractual obligations; if the sum insured under our liability insurance is higher than 250,000 euros, our obligation to pay compensation is limited to this amount.

7.2. Our liability for indirect damage and consequential damage, in particular for the loss of profit, as a result of defects in the object of delivery or service, is limited to the amount of our contractual remuneration, insofar as no higher damage was foreseeable at the date of conclusion of the contract in the case of intended use and we cannot be accused of wilful misconduct. Insofar as TERRITORY provides technical information or acts in an advisory capacity and this information or advice is not part of the contractually agreed scope of services it owes, this shall be provided free of charge and to the exclusion of any liability.

7.3. We are liable for the Client's data losses if we or our vicarious agents have caused these data losses by gross or

wilful negligence and the Client has, by performing no less than daily data backups, ensured that the data can be reconstructed with reasonable effort. Data communication via the Internet cannot be guaranteed to be error-free and/or available at all times given the current state of technology. We are therefore neither liable for the constant and uninterrupted availability of our online servers nor for technical and electronic errors during the order process over which we have no control, in particular the delayed processing or acceptance of offers. Even if SSL encryption is used, there can be no complete protection against third parties gaining knowledge of data being transmitted without authorisation.

7.4. The above limitations of liability shall not apply if warranted characteristics or warranty services have not been provided, if there is a mandatory liability according to statutory provisions on product liability, for liability due to wilful misconduct or if personal injury (injury to life, limb or health) has occurred due to the actions of our legal representatives, employees or vicarious agents.

7.5. Any right of the Client to withdraw from the contract in the event of a breach of duty for which we are responsible and which does not consist of a defect in performance shall remain unaffected.

7.6. Unless otherwise stipulated above, liability for damages is excluded regardless of the legal nature of the asserted claim. Insofar as the liability for damages towards us is excluded or limited, this shall also apply with regard to the personal liability for damages of our organs, legal representatives, employees and other vicarious agents of TERRITORY.

#### **8. Property rights**

8.1. In the event that the delivery item infringes an industrial property right or copyright of a third party, we shall, at our discretion and at our expense, modify or replace the delivery item in such a way that the rights of third parties are no longer infringed but the delivery item continues to fulfil the contractually agreed functions, or procure the right of use for the Client by concluding a licence agreement. If we do not succeed in doing so within a reasonable period of time, the Client is entitled to withdraw from the contract or to reduce the purchase price appropriately. Any claims for damages on the part of the Client are subject to the limitations set out in Condition I. 7 above.

8.2. In the event of infringements of rights by products of other manufacturers supplied by us, we shall, at our discretion, assert our claims against the manufacturers and sub-suppliers for the account of the Client or assign them to the Client. In such cases, claims against us shall only exist in accordance with Condition I. 7. and this Condition I. 8. if the judicial enforcement of the aforementioned claims against the manufacturers and upstream suppliers was unsuccessful or is futile, for example due to insolvency.

#### **9. Offsetting and retention by the Client**

9.1. Offsetting against counterclaims of the Client or the retention of payments due to such claims is only permissible insofar as the counterclaims are undisputed or have been legally established or arise from the same order under which the delivery or service in question was made.

9.2. The Client may only assert a right of retention based on the same contractual relationship.

#### **10. Retention of title**

We shall retain title to delivered goods until receipt of all payments under the respective contract. Where the Client is in breach of the contract due to culpable conduct, in particular in the event of payment default, we shall be entitled, after setting a reasonable deadline, to take back the delivered item; the Client shall be obliged to surrender it. Our recovery of the delivered item always constitutes a withdrawal from the contract. This shall also apply where we have seized the delivered item.

**11. Information security and auditing**

11.1. The Client undertakes to generally ensure an appropriate and state-of-the-art level of information security regarding TERRITORY's information to which it has access within the context of executing the Agreement. If the information in question requires greater protection, TERRITORY may request proof from the Client of an appropriate level of information security (e.g. certificate, attestation, own auditing). Regardless of such, the Client shall inform us of its information security certifications (e.g. ISO 27001/27002 or TISAX), including their status, scope and applicability to the Agreement, without prompting, or at any time when requested; the same shall apply if there are any changes to these certifications. The Client must guarantee the integrity and auditability of its records in accordance with contractual, regulatory or statutory obligations and commercial requirements.

11.2. We may perform an audit to the extent necessary to check compliance with information security obligations at the Client's premises and its data centre, or arrange for a third party to perform the audit. For this purpose and following consultation and, where applicable, with the participation of the respective data protection officers, the Client shall grant unhindered access to any information processing systems, files and information that may be associated with the execution of the contract or that it is believed could be associated with same. The Client must provide TERRITORY with all the necessary information to fulfil the auditing function. The right to audit shall remain in force for three years after the end of the Agreement, calculated from the end of the calendar year in which this Agreement ends.

**12. Applicable law, place of performance, place of jurisdiction**

The laws of the Federal Republic of Germany shall apply to the exclusion of any conflict of laws provisions. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply. Unless otherwise stated in the order confirmation, Hamburg shall be the place of performance. If we are obliged to install an item which we have sold, the place of performance shall be the place where the installation is to take place. The place of jurisdiction is at our registered office. We and the Client are also entitled to bring an action or initiate other legal proceedings at the general place of jurisdiction of the other Party. Mandatory statutory provisions on exclusive places of jurisdiction shall remain unaffected.

## **II. Special Terms and Conditions for Marketing and Agency Services as well as Services for the Client's Corporate Communications and Employer Branding/Recruiting**

### **1. Order processing**

1.1 Offers which TERRITORY issues to the Client that contain prices can be accepted by the Client within two weeks of receipt. After expiry of the deadline, TERRITORY shall no longer be bound by this offer. If TERRITORY provides a mere cost estimate, this shall only be deemed to be an invitation to submit an offer by the Client to TERRITORY, which requires our acceptance. The scope of the services results from the respective product/service description given when the order is placed. Additional and/or subsequent changes to the product/service description must be made in writing. All offers by TERRITORY shall be prepared on the basis of the information and documents available to it on the project when the offer is prepared, as well as its understanding of the requirements of the Client, with due diligence in accordance with the state of the art customary in the industry. Concept changes or delays in the project plan for which the Client is responsible may lead to the provision of additional services and thus to an increase in costs.

1.2 Meeting minutes, which TERRITORY prepares and shares with the Client, shall be used as the basis for further service provision with regard to the agreements, instructions, order placements and other declarations contained therein, if the Client does not object to them within six working days.

1.3. Templates, files and other working materials such as negatives, models, original illustrations etc., which TERRITORY creates or has created in order to provide the service owed according to the contract, shall remain the property of TERRITORY. There is no obligation to surrender. When creating software, this also applies to the source code and the corresponding documentation.

1.4. An agreed postal delivery or publication date is only a fixed date if it is expressly designated as such in the order confirmation, a statement such as "planned postal delivery" or an "approximate" date does not satisfy this condition.

1.5. We reserve the right to make changes and extensions to the catalogue of services insofar as these are reasonable for the Client, taking into account his objective interests, and insofar as these are technical improvements, customary or minor deviations within a service item or adjustments required by law. The Client shall be informed in good time of any planned changes to the catalogue of services. This does not involve any additional costs for the Client.

### **2. Commissioning third parties**

2.1. TERRITORY shall be entitled to carry out the work assigned to it itself or to commission vicarious agents, freelancers and subcontractors to do so on its behalf.

2.2. TERRITORY shall be entitled to place orders for the production of advertising materials, in which TERRITORY has participated in accordance with the contract, on behalf of and for the account of the Client, provided that TERRITORY has previously given the Client the name and address of the third party and the Client has not objected in writing within a period of one week.

2.3. If the Client commissions TERRITORY as a media agency with the purchase of media services for placing advertising campaigns in media or platforms such as job portals, TERRITORY shall book in its own name and for its own account, specifying the Client within the budget, and shall place the advertisements according to a media plan agreed between the Parties or, if such a plan has not been adopted, at its own reasonable discretion, taking into account the interests of the Client. It shall sell the above media services to the Client in accordance with the general price list, unless the Parties have agreed otherwise. If volume discounts or scales are claimed, the Client will receive an additional charge in the event of non-fulfilment of the discount and scale requirements, which will be due for payment immediately. In this respect, the Client

shall indemnify TERRITORY against the media and platforms upon its first request.

2.4. The Client shall provide TERRITORY with the advertising media intended for an advertising placement/online integration on media or platforms in compliance with the administrative and technical specifications communicated to it by TERRITORY no later than five (5) working days prior to the first placement of such advertising, complete, error-free, in accordance with the contractual agreements and suitable for the agreed placement. The respective target addresses of the links (URL on the Internet) must also be indicated. The Client undertakes to maintain any linked content which he may have during the term of the contract. If it is apparent that the data supplied is unsuitable or damaged, a replacement shall be requested without delay. In the event of late delivery, subsequent amendment, or corrections provided by telephone, there is no guarantee that the entry will be published correctly. This also applies if deficiencies in the original only become apparent at the time of publication. As a media agency, TERRITORY shall not be liable for the legal admissibility of the content transmitted by the Client; the Client shall indemnify TERRITORY from third party claims in this respect. It is hereby clarified that TERRITORY is entitled, but not obliged, to carry out a content or technical check. However, it shall inform the Client in good time of any risks that it recognises.

2.5 The Client shall only be entitled, with the prior consent of TERRITORY, to involve another agency or other third party in the service process, which is to participate conceptually and/or in the production of the media services provided by us through the provision of preliminary services (in particular the supply of information, data and content for inclusion in the print/online media services).

2.6. The Client guarantees that these preliminary services in accordance with Condition II. 2.5. have been checked for all significant properties and accepted as being in order (approval granted) before being transferred to us. He shall be liable in the internal relationship of the Parties for the fact that a suitable advance performance for the services of TERRITORY is thus available; the latter shall not be subject to any inspection and information obligations with regard to the content of the advance performances. However, TERRITORY shall inform the Client of possible defects in the preliminary services, insofar as such become known to it during the preparation or execution of its activities. We have no warranty obligations with regard to these advance services, i.e. we are not obliged in this respect to remedy existing defects free of charge, which - irrespective of limitation provisions - are subject to the warranty for defects of the agency providing advance services or any other third party commissioned by the Client.

2.7. The Client shall also ensure, where we have granted consent to the involvement of third parties in accordance with Condition II. 2.5., that existing image rights are not infringed by the involvement of the other agency, that conceptual content which runs via the agency is developed uniformly across all marketing channels and is made available to TERRITORY for processing in due time via professional briefing specifications of the Client, that all communication and release processes continue to take place exclusively between us and the Client in accordance with contractual agreements and that we shall not be liable in terms of content and/or legality for microsites and/or other web content we have not designed and developed, but rather which has been provided by third parties commissioned by the Client.

### **3. Remuneration and terms of payment**

3.1. Advertising consultations carried out by us are subject to a fee. Unless special agreements have been made, copyright and ownership rights to the work submitted by us in the context of presentations shall remain with us. Condition II. 11. remains unaffected.

3.2. Unless otherwise agreed in the order, the services provided by TERRITORY shall be invoiced on an hourly basis

according to the time spent and the current hourly rates of the TERRITORY employees involved. Technical costs are calculated according to TERRITORY's current rates for technical costs.

3.3. Unless otherwise agreed, TERRITORY shall be entitled in the case of continuing obligations to invoice its services monthly at the end of each month.

3.3. For third party services, which TERRITORY is permitted to use for the fulfilment of the contract/order, and which are to be openly charged to the Client as agreed, TERRITORY shall charge a handling flat rate of 15 percent of the net amount of the invoice of the third party, unless otherwise agreed. In the event of the resale of media placements, the discounts and other benefits, including the agency commission, granted to TERRITORY by the media or platforms and linked to the isolated placement volume of the Client, shall be passed on to the Client in the settlement of a handling flat rate.

3.4. If the Client defaults on payment, we may demand advance payments for services to be provided in the future.

3.5. Agreed prices are net to which the applicable value added tax shall be added. Fees from collecting societies (e.g. for music used in the Client's advertising), customs duties and other levies, including those arising subsequently, shall be passed on to the Client. Services that are subject to the German Artists' Social Insurance Act (*Künstlersozialversicherungsgesetz*, e.g. for photographers or web designers) are subject to the applicable tax rates.

3.6. Where there are continuing obligations, the prices are fixed for a duration of two years and cannot be changed unless expressly agreed otherwise. If the Producer Price Index for services published by the Federal Office of Statistics (total index; 2015 = 100) changes after the conclusion of the contract, or the date on which the last adjustment on the basis of this item II. 3.6. took effect, either Party may, after two years at least, demand a price adjustment, if there has been an increase or decrease of more than 5%, by providing the contractual partner with a written declaration. Such adjustments can take effect at the earliest after the first of the next month following receipt of the declaration.

3.7. Unless otherwise agreed, invoices issued by TERRITORY shall be due for payment without any deductions within 30 days after receipt of an invoice that complies with the provisions of the VAT Act.

3.8. Within the scope of agency services, third-party technical costs such as typesetting, photography and reproduction costs are charged separately and are not included in the fee for conception, text, layout and reproduction artwork. Subsequent changes requested by the Client will be invoiced according to time spent, third-party costs, material, etc.

3.9. TERRITORY's remuneration shall not include travel to meetings with the Client at its registered office. These are to be compensated separately. Further trips will only be made upon request by the Client and will be remunerated by the Client. TERRITORY shall get advance approval for the costs incurred. These travel expenses shall be invoiced to the Client in accordance with the maximum tax rates, unless higher rates have been agreed.

#### 4. Cancellation policy

4.1. If we are not responsible for an early termination of the contract, if the Client has ordered services but not made use of them, or if we have already started preliminary work at the end of the contract with the knowledge of the Client, for example for editions of a publication that have not yet appeared, the services already performed shall be remunerated. Services prepared by third-party commissioning shall be deemed equivalent to services already performed, whereby the third-party commissioning must have taken place prior to receipt of a declaration or notification from the Client aimed at terminating the contract.

4.2. We shall receive a cancellation fee for the services not yet performed in the event of an early termination of the contract (Condition II. 4.1.). For this purpose, remuneration for the services already performed shall be deducted from the

remuneration agreed for the overall performance and the result shall be multiplied by 0.15. We reserve the right to demonstrate evidence of a higher loss due to default; the Client may prove that no loss was incurred at all or that the loss was significantly lower. Section 648 of the German Civil Code (BGB) remains unaffected. The cancellation fee is not payable if the Client has cancelled due to force majeure (Condition 2.3., 2).

#### 5. Documents

5.1. The Client shall retain copies of all documents and data carriers handed over to us, which we may access at any time free of charge. After performance of the services, we shall be entitled to destroy the documents received from the Client after prior unchallenged notification, provided that no return was agreed in advance, in principle at the Client's expense.

5.2. Insofar as we have designated our own written documents as "confidential", these may only be passed on to third parties with our express prior consent.

5.3. TERRITORY shall archive documentation after the end of the contract for the duration of the statutory warranty and liability periods as evidence of the proper provision of services.

#### 6. Copyright and rights of use

6.1. The granting of copyrights or other rights of use to the work results (drafts, texts, sketches, graphics, concepts, documentation, special production techniques, programmes, etc.) provided by us and released and paid for by the Client shall be non-exclusive within the scope of the respective concrete purpose of the contract, subject to individual agreement. Rights of the authors pursuant to Section 40a of the German Copyright Law (UrhG) shall remain unaffected in any case. In view of the compulsory author participation claims pursuant to Section 32b UrhG (*Urheberrechtsgesetz*, Act on Copyright and Related Rights), the customer shall upon request provide to TERRITORY all information required by that law concerning the scope of use of the work and shall also, in the event that rights are granted for unknown types of use, inform TERRITORY without delay about the subsequent inclusion of the new type of use of the work. With regard to integrated third-party components or standard layouts/designs, pre-existing rights and other usually non-exclusive third-party services, only simple rights of use are always granted and editing rights are excluded. This shall apply in particular to rights to planning procedures, methods and other know-how, to intellectual property rights and industrial property rights of TERRITORY or of a company associated with it, which relate to the work results or are embodied or depicted therein, but which already existed before the commencement of the service ordered by the Client (background IP) or which arise during the order but without any direct connection to the services to be provided (sideground IP). Adaptations of works or translations require our consent. The provision of the open data of the performance results (i.e. in an electronic version which is not encrypted or copyrighted) for independent processing is also not covered. This right can be acquired by separate regulation in individual cases, taking into account the inclusion of any third-party components, e.g. stock photos. The Client may have the rights of use granted to him exercised by technical or other service providers to the extent necessary.

6.2. The rights to all concepts, elaborated plans, texts, documents or other carriers of creative ideas that are not commissioned or implemented remain with us without restriction, so that these materials may not be used by the Client without our prior consent. Services of TERRITORY rejected by the Client (concepts, ideas, drafts, etc.) shall not be the subject of the transfer of rights to the Client. These rights of use shall remain with TERRITORY, as shall the existing property rights thereto. TERRITORY shall in any case remain entitled to use methods, techniques and experience developed in the course of the order without reference to the Client with other Clients of TERRITORY. If "transferable rights" are granted, the Client is only entitled to transfer the rights of use in whole or in part to subsidiaries or affiliated companies within a group.

Any use beyond the above provision shall require the separate consent of TERRITORY. Advertising materials presented as results at an advertising consultation are for illustrative purposes only; photos contained therein are not intended for publication.

6.3. In the case of generally non-exclusive third-party services and third-party licences (such as stock photos, videos, music, tones and fonts), the parties will agree in advance on the rights that can be acquired; a right to editing or legal transfer to third parties cannot be acquired. In the case of third-party agency images, the rights of use are generally non-exclusive and limited to a single use for a print edition or an online publication or advertising campaign. Archival use is only possible in the context of the original image use.

6.4. If TERRITORY uses third parties for the fulfilment of the contract, it shall acquire the rights of use to their services to the extent of Conditions II. 6.1. to 6.3. and transfer them to the Client accordingly. Should these rights not be available to this extent in individual cases or their acquisition is only possible with disproportionately high costs, TERRITORY shall inform the Client of this and proceed according to its instructions. Any additional costs incurred as a result shall be borne by the Client.

6.5. TERRITORY shall not acquire any rights to trademarks, logos or similar formats of the Client through the use within the contractual framework. Acts of use of all titles and labels developed for the Client shall be attributed to the Client.

6.6. If TERRITORY creates electronic programmes or programme parts within the scope of its contractual services, the respective source code and the corresponding documentation shall not be the object of rights granted to the Client.

6.7. All rights of use to our work shall remain with us until payment has been made in full. If rights of use have already been transferred to the Client in accordance with the contractual agreement, but the Client is in default of performance obligations under this contract, all rights shall revert to us after the fruitless expiry of a grace period for performance of the contract. The same applies in the event of a withdrawal from the contract for legal reasons.

6.8. Insofar as no overriding interest of the Client is opposed, we are entitled to refer to our authorship of the contractual products in the same. TERRITORY shall be entitled - even in the case of transfer of exclusive rights of use to the Client - to use the work results and the Client name free of charge within the scope of its own advertising, even after the end of the contract, in all media including the Internet and within the scope of competitions and presentations. We are also entitled to use the Client's trademarks and company logos for reference purposes as long as the Client does not object to this. We shall receive an appropriate number of free specimen copies of each advertising material designed by us in whole or in part and of any elements belonging to the corresponding promotion. We are entitled to use these advertising materials after distribution for the purpose of our own marketing efforts in all media (e.g. for publication, review, illustration, PR campaigns, participation in competitions), unless the Client expressly objects to the use for our own marketing efforts of the advertising materials which have been created for him.

6.9. For the negotiation of buy-outs for the use of third party work results, a service fee of 15 percent on the net usage remuneration of the respective third party shall be paid to TERRITORY by the Client.

6.10. TERRITORY shall not assume any liability for statutory claims of authors for a subsequent increase in remuneration or further participation of the author in the revenues and benefits from the use of the work; the Client shall indemnify TERRITORY against such claims upon first request.

## **7. Guarantee**

7.1. TERRITORY shall provide its contractual services with the care customary in the industry in accordance with the state of the art and recognised professional principles. The Client shall

inspect the work and services provided by TERRITORY immediately after receipt, but in any case before use, and shall give notice of defects immediately after discovery. If the Client fails to immediately inspect or provide notification of defects, the Client shall have no warranty claims with regard to apparent defects, known defects or consequential defects.

7.2. The warranty of title and the liability for conflicting rights of third parties shall only apply to the use of the Performance Results directed to Germany, unless the contract specifies a different distribution area. If the Client has acquired the right to edit the service results and if changes are made beyond technical adjustments in format and layout without prior agreement with TERRITORY in a way that results in changes to the content, for example to factual statements, a title, logo or labelling, this shall be the sole responsibility of the Client.

7.3. If there is a defect for which TERRITORY is responsible, it may, at its own discretion, rectify the defect (repair) or deliver a replacement. In the event of rectification, it shall have the right to rectify the defect twice, in each case within a reasonable period of time. Otherwise, the statutory provisions shall apply.

7.4. The warranty obligation of TERRITORY shall expire with the expiry of one year after receipt of the delivery/service of TERRITORY or, insofar as an acceptance is required, from the acceptance by the Client. This does not apply in the case of liability for damages arising from injury to life, limb or health and does not apply in the case of liability for other damages based on gross negligence.

7.5. In the case of placement orders, TERRITORY shall not be liable for defective performance of the media (advertising media). In these cases, however, it will assign its claims for damages or warranty claims to the Client.

## **8. Duties of the Client and liability for content**

8.1. The Client shall ensure that all necessary acts of cooperation are performed by him and his vicarious agents in good time, to the required extent and free of charge for us. We may - without prejudice to our rights arising from default - demand a postponement of performance dates by the period of time during which the Client fails to comply with his obligations to cooperate.

8.2. The Client shall provide us with the information and materials (e.g. products, photos, texts, insights, etc.) necessary to fulfil the order. If the Client provides such templates for the planned services, he alone shall bear the responsibility for the content and the legal admissibility of these templates. It is the Client's responsibility to have these checked to ensure that they are legally unobjectionable. We will indicate legal risks to the Client if we become aware of them during preparation, but we do not provide legal or tax advice in individual cases.

8.3. If the Client provides products for product tests or advertising, then he shall indemnify us against all claims which are asserted against TERRITORY or against its employees and organs due to damage caused by a product defect. The Client shall be responsible for ensuring that all necessary technical, chemical, medical, pharmaceutical or other tests/examinations/analyses of the product have been carried out. He assumes responsibility that the product is suitable for the contractual use and that, insofar as an inspection (see above) was necessary and took place, it did not reveal any indication that the product could cause any damage. The Client shall be responsible for ensuring that all information required by law or regulation and/or necessary for the use of the product is provided to TERRITORY so that it can be passed on to the persons carrying out the tests. In all other respects, the provisions of the statutory regulations on product liability shall apply. Should operating instructions be necessary for the use of products, the Client shall also provide these. For consumer goods, the Client must ensure sufficient insurance cover against loss and damage by the test persons.

### **8.4. Basic support**

The Client shall ensure that contact persons, working materials and information are available to TERRITORY on the part of the

Client in good time upon request in order to discuss the issues to be clarified within the scope of the activities and to make any necessary decisions.

#### 8.5. Work equipment and information

The Client shall support TERRITORY in the cooperation with other specialist departments in the Client's company or third parties commissioned by the Client by, among other things:

- Provision of sufficient office and communication equipment when providing services at the Client's location.
- Availability and designation of professional and technically competent contact persons and deputies for the provision of services (holidays, illness, etc.).
- Provision of information, texts, illustrations and other materials, insofar as these are required for the creation of the commissioned service and any content to be included. These materials will be returned to the Client after completion of the project if explicitly requested by the Client. If the Client does not communicate anything to the contrary, TERRITORY may assume that the materials provided can be used free of licence and usage rights within the scope of the project.
- Access to the relevant technical systems.
- If applicable, provision of all documents and systems which may be still designated by TERRITORY, insofar as this is necessary and reasonable for the Client.

The Client shall ensure that all supplies are made properly and on time. Cooperation services agreed in writing in advance are independent obligations of the Client.

#### 8.6. Consequences of insufficient cooperation

If cooperation services or other preconditions are not provided in time, tasks taken on cannot be carried out according to the agreed schedule and this can lead to additional work and delays. Failures on the part of the Client may include:

- Delayed deliveries of relevant materials/information on the part of the Client.
- Delayed acceptance (holiday/illness/lack of substitute).
- Services that have already been scheduled and commissioned will be postponed.
- Delivery deadlines are not met.

If the services to be provided by the Client are to be provided by TERRITORY as a substitute, the resulting additional expenses and postponements shall be remunerated as such. If TERRITORY believes there is a breach of duties to cooperate, it shall inform the Client of this without delay.

8.7. The Client guarantees that he is the owner of the right to transmit to us the content necessary for the execution of the contract. This also applies to the existence of necessary consent from the authors and other persons who have rights to the content, and in the case of images of copyrighted works (including buildings) or natural persons, also to the necessary consent of these authors or the persons depicted, and in the case of minors, also from their legal guardians. The Client shall indemnify us against claims by third parties arising from alleged personal rights, licensing rights, property rights or exploitation rights, at our discretion also by a monetary payment. All claims from collecting businesses shall be borne by the Client.

8.8. Data carriers provided to us by the Client must be free of content and technical defects (including viruses) and must not infringe the personal rights, property rights or exploitation rights of third parties. If this is not the case, the Client shall compensate us for all damages arising from the use of these data carriers and shall indemnify us against all claims by third parties, also by monetary payment on initial request.

8.9. Insofar as we provide texts, sound and/or images for the performance of the contract, we warrant within the scope of the agreed liability that these materials can be used for the

contractual purpose. We are not liable for the harmlessness of concepts, briefing documents, contents and designs submitted to and approved by the Client. The risk that an advertising campaign to be carried out is legally permissible, in particular in accordance with the provisions of competition law and special advertising regulations, shall be borne by the Client. We will, however, indicate legal risks to the Client if these become known to us during the preparation of the advertising campaign. If the Client nevertheless insists on the realisation of the advertising campaign, TERRITORY shall not be liable for any resulting disadvantage and risk. However, TERRITORY shall not have any verification or reference obligations in the case of factual statements about the Client's company, products and services which originate exclusively from the Client. This also applies to current product descriptions or packaging texts taken from the Client's online shop, brochures or other advertising materials, provided that the inclusion/illustration of this content has been approved by the Client.

8.10. Slogans, claims, titles, logos and labelling intended for publication are determined by the Client at his own and sole responsibility. Title proposals by TERRITORY are working titles; subject to an agreement in the individual contract, TERRITORY is not obliged to carry out any legal examination with regard to third-party property rights (such as title or trademark rights) beyond an a Google identity search and in the national trademark register of its country of domicile. The obligation of TERRITORY to indicate the legal risks known to it with the due diligence of a prudent advertising merchant shall remain unaffected.

8.11. Unless otherwise agreed, an agency service or other media service submitted for acceptance (e.g. Internet pages, mailings, contents of other media) shall be released by the Client in writing or in text form. In the case of a service submitted for approval, also in the case of separable partial services, if no acceptance period or no specific acceptance date has been agreed in the individual case, the Client shall declare to us as soon as practicable in the ordinary course of business if changes in content are desired. Release shall be deemed to have been granted if the Client uses our performance without complaint with external effect.

### 9. Data protection and data backup

9.1. The Client confirms that personal data transmitted by him or at his instigation by third parties to TERRITORY has been processed in accordance with the relevant provisions of data protection, that any required consent of affected parties has been obtained and that the use of the data by TERRITORY within the scope of the order placed does not violate any of these provisions or exceeds the scope of consent.

9.2. The Client agrees that personal data (inventory data) and other information such as time, number and duration of connections, access passwords, uploads and downloads, are stored by TERRITORY for the duration of the contract/order, insofar as this is necessary or useful for the fulfilment of the contract.

9.3. The Client shall back up data and programmes in each case before handing them over to TERRITORY in order to enable recovery in the event of data loss.

9.4. If we process personal data within the scope of the order according to the Client's instructions, then we shall, at the Client's initiative, make an arrangement for commissioned processing in accordance with Art. 28 (3) GDPR, at the Client's election in accordance with the BITKOM standard or a model of the data protection supervisory authorities. This also includes state-of-the-art technical security measures (Art. 32, GDPR) and the obligation of employees to maintain data confidentiality (Art. 28 (3) b), GDPR).

### 10. Secrecy

10.1. The Client hereby undertakes to keep secret from third parties all information and documents accessible to him or transmitted to him in connection with the contract and its



execution, which are marked as confidential or are recognisable as TERRITORY's business secrets according to the other circumstances within the meaning of Section 2 (1), German Law on the Protection of Trade Secrets (GeschGehG), during the execution of the contract and also up to five (5) years after the end of the contract and - unless required to achieve the purpose of the contract - not to record, store or share them, neither to exploit them nor to make them accessible to third parties, unless they are intended to be made accessible to third parties or are already known to the third party. Third parties do not include auxiliary persons appointed to carry out the contractual relationship, such as consultants, subcontractors, etc., provided that they themselves have been sworn to secrecy or are subject to professional confidentiality. In the case of the digital exchange of confidential information, telecommunication, file hosting, storage or messaging services used by the Parties for this purpose by mutual agreement, they shall also not be regarded as "third parties".

10.2. Disclosure of information requiring confidentiality in accordance with Condition II. 10.1. shall only be possible if TERRITORY has given its prior consent, the Client is obliged to disclose by law or due to the order of a court or an authority, which must be notified to TERRITORY without delay, the information was already lawfully in the possession of the Client prior to disclosure, is already publicly known or becomes publicly known during the term of the contract without the Client being responsible for this, or if the information has become known to the Client by other means than by notification of TERRITORY without violation of a confidentiality agreement, legal regulations or official orders (reverse engineering ("deconstruction" in the sense of Section 3 (1) (2) b) GeschGehG) is excluded in this case). Disclosure to third parties may be justified under the conditions of Section 5, GeschGehG. If the Client invokes one of these exceptions, he must disclose the reason.

#### **11. Pitch agreement**

11.1. The Client undertakes vis-à-vis TERRITORY to treat the ideas, concepts and elaborations presented to it by TERRITORY prior to placing an order as strictly confidential and not to share them with unauthorised third parties, either in whole or in part, nor to exploit them for its own purposes, either unprocessed or processed, without the consent of TERRITORY.

11.2. If TERRITORY receives the order for implementation after the presentation, it shall grant the Client all the necessary rights of use within the scope of the concrete purpose of the contract. If TERRITORY does not receive an order, the Client is not authorised to use the idea and the work results presented by TERRITORY, whether they are protected by copyright or not, either in whole or in part, either itself or by transferring them to third parties. Presentations made by TERRITORY are recognised by the Client as confidential samples.

#### **12. Validity of the framework conditions**

Our general terms and conditions according to Condition I. for all deliveries and services shall apply subordinately to the same subject matter and otherwise supplementary to these Special Terms and Conditions for Marketing and Agency Services.

### III. Special Terms and Conditions for Consulting Services

#### 1. Scope of application

1.1 These terms and conditions form the basis for the performance of the consulting and support services described in the main contract on a service contract basis, which TERRITORY provides to you, our Client. This does not extend to advice on legal, tax and insurance matters; we do not provide such advice.

1.2 If the internal organisational guidelines of the Client require, in addition to the written agreement, that the Client also generates its own order, the Client shall ensure that the content of the order does not deviate from the contractual offer of TERRITORY.

#### 2. Subject of the Agreement

2.1. The description of the services, the expenses forecasted, the start of the services, the term and the expected end of the services are set out in the main contract. The general location for the implementation of the project is the Client's business premises at its registered office. Project work that does not require a local presence at the Client's premises can be carried out at TERRITORY's premises.

2.2. TERRITORY offers its Clients quality assurance with regard to the skilled implementation of management, organisational and system development projects. TERRITORY performs all consulting services with great care in accordance with the principles of proper professional practice, which are in line with the development of the industry and the needs of the Client. The achievement of a certain success of our service or a certain economic success as a result of our advice is not agreed or obligatory under the contract.

2.3. The appointment of consultants to perform the services specified in the main contract corresponds to the state of knowledge and planning at the time of execution of the main contract. Should it become necessary to change consultants, TERRITORY shall consider comparable qualifications. The use of names is confidential and does not entail the hiring of employees. The appointed personnel shall not be subject to the instructions of the Client, irrespective of the place of performance.

2.4. The Client is responsible for project organisation and design as well as project reporting. The Client's project manager bears the overall responsibility for the professional and timely realisation of the project in line with the budget. The project manager at TERRITORY will help the Client's project manager to achieve this. Furthermore, he shall be responsible for the management of the project team of the vicarious agents employed by TERRITORY in professional and disciplinary terms, irrespective of the place of performance.

#### 3. Cooperation of the Client

3.1. The Client shall designate a contact person who is available to clarify questions and is authorised to provide binding information and make decisions.

3.2. The Client shall ensure that all cooperation necessary for the provision of the agreed services is provided in good time, in full and free of charge for TERRITORY. All services to be provided by the Client shall be conditional for the contractual provision of services by TERRITORY. Even without a specific request, the Client shall inform us of all circumstances that may be of importance for the execution of the advice and in this respect provide us with all information, documents and contact details. If the Client does not fulfil these cooperation obligations or does not fulfil them on time, any resulting increases in charges or postponements of deadlines shall be borne by the Client.

3.3. The Client shall ensure access to its communication and data processing systems for TERRITORY to the extent necessary. Access is via workstations at the Client's premises and, if necessary, via a remote connection for TERRITORY in compliance with data protection. The Client shall provide adequate office space with appropriate equipment for the

provision of services, which shall at least include telephone with the option to dial domestically and abroad, access to the telephone network of TERRITORY, whiteboard and/or flipchart as well as access to copiers, printers, fax and meeting rooms.

#### 4. Remuneration and incidental expenses

4.1. A consultation day lasts an average of eight hours. TERRITORY shall maintain a record of the services performed and the consulting expenses incurred, which can be viewed by the Client at any time. Travel and accommodation costs and expenses for trips arranged by the Client shall be reimbursed to TERRITORY within reasonable limits.

4.2. Should TERRITORY determine in the course of the performance of the service that the effort estimates are likely to be exceeded, it shall inform the Client of this. The Client shall immediately decide on the further procedure and inform TERRITORY thereof in writing or in text form.

4.3 Unless expressly stated otherwise, all quotations are exclusive of the applicable value added tax. The services provided are invoiced monthly in arrears.

4.4. Should a contract not be concluded, but TERRITORY has already begun with preliminary work in the knowledge of the Client, TERRITORY shall be entitled to appropriate remuneration for this.

#### 5. Documents and rights of use

Conditions II. 5. and II. 6. shall apply accordingly.

#### 6. Validity of the framework conditions

Our general conditions according to Condition I. for all deliveries and services shall apply subordinate to the same subject matter and otherwise supplementary to these special conditions for consulting services.

#### **IV. Special Terms and Conditions for Print Orders**

##### **1. Validity of the General Terms and Conditions for the Printing Industry**

Unless otherwise stipulated in the printing contract, the printing industry terms and conditions published by the Bundesverband Druck und Medien (German Printing and Media Industries Federation) shall apply to the printing and dispatch of advertising materials in the version current at the time of conclusion of the contract.

##### **2. Storage**

In the event of agreed storage of the printed products produced by us with delivery on call, reasonable acceptance periods shall commence with notification to the Client in text form of the completed printing and storage. After two years, TERRITORY may destroy the remaining stocks then still in storage and settle the total remuneration, if not already done. The Client will be informed of this in advance.

##### **3. Validity of the framework conditions**

Our general conditions according to item I. for all deliveries and services shall apply subordinate to the same subject matter and otherwise supplementary to these special conditions for print orders.

## V. Special Terms and Conditions for Software Development

### 1. Subject of regulation

The subject of these special terms and conditions is the creation of software by TERRITORY against payment for permanent transfer to the Client on the basis of an agreed service description. This also includes software that is intended to run on mobile devices.

### 2. Schedule

2.1. A schedule by the Parties shall apply to the services to be provided and their sequence. The right of initiative for this lies with the Client.

2.2. Moreover, deadlines for the provision of services can only be confirmed on the part of TERRITORY by the contact person/project manager or the management. Deadlines shall be set in writing or given in text form.

2.3. TERRITORY shall notify the Client of delayed performance. TERRITORY shall not be responsible for delayed performance due to force majeure (e.g. strike, lockout, official orders, general disruptions in telecommunications, death or prolonged illness of an employee with special skills who cannot be easily replaced, etc.) and circumstances within the control of the Client (e.g. non-timely provision of cooperation services, delays by third parties attributable to the Client, etc.) and shall entitle TERRITORY to postpone the provision of the affected services by the duration of the impediment plus a reasonable period before it starts.

### 3. Approval/Acceptance

3.1. In principle, services are provided in stages, with the proviso that the obligation to provide services may end after each completed stage.

3.2. After completion of a project phase, TERRITORY shall inform the Client of this and make the results available to him for inspection and approval. The obligation to provide the services of the following performance phase is dependent on no termination taking place, neither in accordance with Section 648 BGB, nor for good cause (Section 648a BGB), and the reason for termination provided for in Clause V. 7.1. does also not apply.

3.3. After notification and making available of a project phase, the Client shall immediately check as to whether the services have been substantially performed in accordance with the contract.

3.4. The defects in connection with the release test are classified according to the following classes.

#### Defect class 1

A commercially or technically reasonable productive use of the service in question is not possible or only possible to a substantially limited extent and cannot be achieved by any other means within the scope of the agreed service description, or essential performance features are missed.

#### Defect class 2

The core and main functionality of the service is guaranteed, but errors or failures of agreed performance characteristics occur in essential sub-functions or sub-modules which prevent or significantly restrict working with these functions or modules.

#### Defect class 3

The core and main functionality of the service is guaranteed, but errors or failures of agreed performance characteristics occur in non-essential sub-functions or sub-modules (example: a report breaks down, but the necessary information is available). Errors occur which only have a minor impact on the functionality of the module concerned (example: spelling errors in the screen mask).

3.5. The classification of a defect into the classes according to Condition V. 3.4. shall take place in consultation with the contact person or project manager at TERRITORY. Should a mutually agreed classification not be possible, the Parties will agree by way of the escalation procedure.

3.6. The Client shall declare approval when the service has been rendered free of defects. Free of defects means that there are no defects in classes 1 or 2 (major defects). Any defects in classes 1 and 2 shall prevent acceptance and shall be rectified by TERRITORY within a reasonable period of time to be jointly specified in the protocol. Thereafter, the performance shall be submitted again for acceptance. For the rectification of defects in classes 1 and 2, TERRITORY shall have the right to subsequent performance twice within reasonable periods. If the third acceptance also fails, the Client may reject the performance. In this case, the Parties shall return to the other Party any benefits already received. Any defects assigned to class 3 ("residual defects") shall be recorded in the acceptance protocol and shall also be rectified by TERRITORY within a reasonable period to be jointly specified in the acceptance protocol.

3.7. If the Client does not immediately carry out an inspection for release or if the Client does not declare acceptance within 6 working days, TERRITORY shall issue another reminder in writing or in text form with a reasonable deadline of at least another 6 working days. If the Client does not carry out the inspection within this further period or does not declare acceptance, although he is obliged to do so, or if he does not notify any defects which prevent acceptance in accordance with Condition V. 3.6, the services concerned shall be deemed to have been accepted and payment of the corresponding fee shall become due. If the Client uses the software in productive operation for longer than one week, a release shall also be deemed to have been granted.

### 4. Cooperation

4.1. The Parties shall work together in a spirit of trust. If a Party is aware that information and requirements, whether its own or those of the other Party, are incorrect, incomplete, ambiguous or impracticable, it shall immediately notify the other Party of this and of the consequences of which it becomes aware. The Parties shall then seek and endeavour to reach a solution in accordance with their interests, if necessary in accordance with the provisions on changes in performance.

4.2. The Client shall support TERRITORY in the fulfilment of its service obligations under the contract. This includes, in particular, the timely provision of information, competent staff, means and connections of communication as well as hardware and software and the making available of premises, as far as this is necessary. The Client shall instruct TERRITORY in detail with regard to circumstances to be observed during work performed by TERRITORY in the premises and on the technical equipment of the Client. The Client shall cooperate at his own expense.

4.3 Furthermore, the Client shall take appropriate precautions to maintain its business operations in the event that the services to be provided by TERRITORY and which are important for the Client's processes are not available at short notice.

### 5. Project management

5.1. The contracting Parties shall provide each other with the names of contact persons and their deputies who shall responsibly and expertly manage the fulfilment of the contractual obligations for the contracting Party.

5.2. The project manager at TERRITORY shall head the project and shall be responsible for all questions arising during the project as well as for requesting and receiving all information owed by the Client and other acts of cooperation. The project manager shall at all times and without delay provide the Client with all information and take all decisions concerning the project. The project manager regularly monitors compliance with the schedule and the content of the assigned project as well as the quality of the work performed.

5.3. The Parties shall notify each other without delay of any changes to the persons appointed. Until receipt of such notification, the contact persons and/or their deputies named earlier shall be deemed authorised to make and receive declarations within the scope of their agreed power of representation.

5.4. The contact persons shall communicate at regular intervals on progress and obstacles in the implementation of the contract in order to be able to intervene in said through a steering process where necessary.

5.5. A steering committee consisting of responsible members of the Client as well as members of the management at TERRITORY shall be formed as an escalation committee, which shall be convened without delay in particular if compliance with the schedule and the content of the project is significantly jeopardised or if a decision is to be made on the extension of the project and these decisions require additional time and resources. The Steering Committee shall meet as soon as possible when called and shall make its decisions during the meeting.

5.6. Agreed changes to the services shall be documented by the project manager at TERRITORY and expressly confirmed by the Client. The documentation shall be in writing.

#### **6. Client's requests for change**

6.1. If the Client wishes to change the contractually determined scope of the services to be provided by TERRITORY after final agreement, it shall express this request for change to TERRITORY. Further proceedings shall be governed by the following provisions. The Client is entitled to withdraw his request for amendment at any time; the procedure which has already been initiated shall end immediately.

6.2. TERRITORY shall examine the effects the desired change will have, in particular with regard to remuneration and deadlines. If TERRITORY recognises that services that are currently to be provided should not be carried out or should only be carried out with a delay as a result of the examination, it shall inform the Client of this and indicate to the Client that the change request can still only be checked if the affected services are postponed for an indefinite period of time initially. If the Client declares its agreement with the postponed services, TERRITORY shall examine the amendment request.

6.3. After examining the request for amendment, TERRITORY shall explain to the Client the effects of the request on the contractual agreements. The submission shall contain either a detailed proposal for the implementation of the request for amendment or information on why the request cannot be implemented.

6.4. The Contracting Parties shall consult each other without delay on the content of a proposal for the implementation of the amendment request and attach the result of a successful agreement on the text of the contract to which the amendment relates as a supplementary agreement.

6.5. If no agreement is reached or if the amendment procedure ends for any other reason, the original scope of services shall remain in force. The same applies in the event that the Client does not agree to the postponement of the services for the further performance of the test in accordance with Condition V. 6.2.

6.6. The dates affected by the amendment procedure shall be postponed as necessary, taking into account the duration of the review, the duration of the vote on the amendment proposal and, if applicable, the duration of the amendment requests to be executed plus a reasonable period before it starts. TERRITORY will inform the Client of the new dates.

6.7. The Client shall bear the expenses incurred as a result of the request for amendment. This includes in particular the examination of the request, the preparation of a new proposal and any downtime. In the event that the Parties have agreed on daily rates, the expenses shall be calculated according to these, otherwise according to the usual remuneration of TERRITORY.

#### **7. Amendment proposals submitted by TERRITORY**

7.1. TERRITORY may submit a proposal to the Client for subsequent service phases to change the services, the schedule and the remuneration agreed to date in order to incorporate newly gained knowledge into the project and/or to take into account the respective state of the art. Unless

otherwise agreed, TERRITORY shall only be obliged to continue to act if agreement is reached on this proposal within a period of two weeks after submission of the proposal. If an agreement fails and TERRITORY does not withdraw its amendment proposal in accordance with Condition V. 7.2, the contract shall be terminated.

7.2. If the Client does not agree with the proposed amendment, TERRITORY can prevent the termination of the contract if it notifies the Client immediately, but no later than three working days after the expiry of the deadline specified in Condition V. 7.1. or otherwise agreed, that it will provide the services on the previous contractual basis. Any performance dates shall be extended by the period of time taken up by TERRITORY in accordance with sentence 1.

7.3. The rights of the Parties involved under Section 648, BGB shall otherwise remain unaffected.

#### **8. Test**

8.1. At the request of TERRITORY, the Client shall assume on its own initiative the duty to cooperate free of charge in the inspection of the services provided by TERRITORY for conformity with the contract (test). The test procedure according to this Condition V. 8. shall then replace the release/acceptance procedure according Condition V. 3.

8.2. TERRITORY shall inform the Client in good time before the test is carried out of the service section to which the test relates, the test procedure, the location, the time as well as the cooperation action to be performed by the Client during the test and request the Client to participate in the test. When determining the date of the test, TERRITORY shall take into account the legitimate interests of the Client.

8.3. As part of the test, a written test protocol is prepared in which the place, time, technical circumstances of the test, the test result as well as the participants in the test are recorded. Within the scope of the test, the Client shall check the services for their conformity with the contract and record in the protocol any recognisable disadvantage which is contrary to the contractually agreed quality.

8.4. If the Client does not record adverse services contrary to the agreed quality which he has recognised during the test or which he has not recognised due to gross negligence, the services shall be deemed to have been provided in accordance with the contract with regard to these unreported deviations. In the event that the Client does not or not completely fulfil his obligation to participate in the test, the services shall be deemed to have been provided in accordance with the contract, unless there are deviations which would have been recognisable in the event of dutiful participation. TERRITORY shall notify the Client of the significance of its behaviour according to Condition V. 8.2. Insofar as TERRITORY has fraudulently concealed quality discrepancies, it shall not be entitled to invoke the provisions of this Condition V. 8.4.

8.5. Any further obligation of the Client to highlight defects it has found shall remain unaffected.

#### **9. Obligation to give notice of defects**

9.1. The Client shall inspect the software including the documentation immediately after delivery by TERRITORY, insofar as this is feasible in the ordinary course of business, and, if a defect is found, notify TERRITORY immediately, insofar as neither the release procedure according to Condition V. 3 nor a test according to Condition V. 8 is carried out and no contract for work and services applies under law.

9.2. If the Client fails to give notice, the software including the documentation shall be deemed to have been approved, unless the defect was not recognisable during the inspection.

9.3. If, irrespective of a test in accordance with Condition V. 8., such a defect becomes apparent at a later date, notification must be made immediately after discovery; otherwise the software, including the documentation, shall be deemed to have been approved also in consideration of this defect.

9.4. In order to comply with the rights of the Client, it is sufficient to send the notification in due time.

9.5. If TERRITORY has fraudulently concealed the defect, it shall not be entitled to invoke Conditions V. 9.2. and V. 9.3.

#### **10. Impaired performance**

10.1. If the Client sets TERRITORY a deadline for performance or subsequent performance, it can only use the unsuccessful expiry of this deadline to withdraw from the contract or to claim damages instead of performance if it has informed TERRITORY when setting the deadline that it no longer wishes to make use of the performance of TERRITORY after the unsuccessful expiry of the deadline. If the Client has to issue a warning instead of setting a deadline, he shall also inform TERRITORY at the same time as the warning that he no longer wishes to make use of its service after the warning has failed.

10.2. The Client may only withdraw from the contract due to a breach of duty that does not consist in a defect of a purchased item or a work if TERRITORY is responsible for this breach of duty.

10.3. If the Client withdraws due to the breach of an obligation which relates to a definable service which can be provided independently of other services to be provided, taking into account the justified interests of the Client, the other services shall not be affected by this withdrawal.

10.4. If the software is not provided on time for an agreed acceptance test, the Client must send TERRITORY a reminder. The Client shall only be permitted to withdraw from the contract if the Client has set TERRITORY a reasonable deadline for completion after the agreed provision date. The deadline must be at least two weeks. Reminders and deadlines may only be set if the failure to meet the provision date is not due to subsequent requests for change made by the Client.

#### **11. Liability for material defects and defects of title**

11.1. The software and the user documentation must be of the quality laid down in the performance specification. This conclusively describes the functionality of the software. Insofar as compatibility with or the use of certain third-party software (browser versions, operating systems, etc.) is agreed, this refers to the latest version (release) at the time of conclusion of the contract.

11.2. The Client's claims for defects, with the exception of claims for damages, shall become time-barred after twelve months, unless the defect was fraudulently concealed. The limitation period begins with the transfer of the software.

11.3. The enforcement of defect liability claims is dependent on defects being reported within two weeks of their initial detection and being reproducible.

11.4. The rectification of defects, including the rectification of compatibility issues, shall be reserved for TERRITORY during the warranty period and shall only be permissible to be carried out by third parties if TERRITORY is unwilling or unable to do so.

11.5. As long as the Client has not yet paid the remuneration due according to this contract in full and he has no justified interest in retaining the outstanding remuneration, TERRITORY shall be entitled to refuse subsequent performance.

11.6. TERRITORY shall not be liable in cases in which the Client has made changes to the services provided by TERRITORY, unless these changes did not influence the occurrence of the defect. In the event of modification of the source code by the Client or a third party commissioned by the Client, warranty claims with regard to the performance of TERRITORY shall only exist if the Client proves that the modification of the source code has no influence on the defect in question.

11.7. The Client shall support TERRITORY in the detection and rectification of the defect and shall immediately grant it access to documents containing more detailed circumstances relating to the defect.

11.8. Before asserting claims for supplementary performance, the Client shall perform due diligence to examine whether there is a defect subject to supplementary performance. Insofar as an alleged defect is not subject to the obligation of subsequent performance (alleged defect), the Client may be

charged for the services provided by TERRITORY for verification and fault rectification at TERRITORY's applicable remuneration rates plus the expenses incurred, unless the Client could not have recognised the alleged defect even with the exercise of due diligence.

11.9. The place of performance for a subsequent performance shall be the TERRITORY registered office. Subsequent performance may be effected by the transmission of software by telecommunication, unless transmission by telecommunication is unreasonable for the Client, for example on the grounds of IT security.

#### **12. General liability**

12.1. TERRITORY shall be liable for wilful misconduct and gross negligence. TERRITORY shall only be liable for slight negligence where a breach of an essential contractual obligation, the fulfilment of which is conditional for the proper execution of the contract and on the observance of which the Client may regularly rely as a contractual partner, as well as in the event of damage resulting from injury to life, limb or health.

12.2. For software development, TERRITORY shall be obliged to provide the due care customary in the industry. In determining whether TERRITORY is at fault, it must be taken into account that software cannot be created without technical errors.

12.3. In the event of slight negligence, liability shall be limited to the value of the foreseeable damage that can typically be expected to occur.

12.4. TERRITORY shall not be liable for the loss of data and/or programs insofar as the damage is due to the fact that the Client has failed to carry out data backups and thereby ensure that lost data can be restored with reasonable effort.

12.5. The above provisions shall also apply in favour of the vicarious agents of TERRITORY.

#### **13. Remuneration**

13.1. The value of the remuneration for the services to be provided by TERRITORY shall be stated in the order confirmation. Insofar as nothing to the contrary is stipulated therein, the service shall be provided on a time and material basis at the remuneration rates specified in the TERRITORY price list. Services are only promised at a fixed price if our remuneration is expressly designated in the contract as a "fixed price" or "lump sum price". This agreement shall lapse if the project requirements are changed or extended by mutual agreement or at the request of the Client. If the Parties do not subsequently reach a new remuneration agreement, they will be billed on a time and material basis. Cost estimates or budget plans prepared by TERRITORY are non-binding. We shall inform the Client in good time if a significant (>20%) overrun of a cost estimate or of a fixed price originally agreed but then lapsed is to be expected.

13.2. The Client shall bear all expenses, such as travel and accommodation costs, expenses and third-party claims for payment (e.g. for licences) arising in the course of the performance of the contract, against evidence. Travel time shall be remunerated.

13.3. If the Parties have not reached an agreement on the remuneration of a service supplied by TERRITORY, the provision of which the Client could only expect according to the circumstances in return for remuneration, the Client shall pay the remuneration customary for this service. In case of doubt, the rates charged by TERRITORY for its services shall be deemed to be accepted.

13.4. Unless otherwise agreed in the Annexes, the remuneration relating to a performance phase shall be due for payment upon approval of a performance phase. Payment shall be made 14 days after receipt of the invoice. All contractually agreed remuneration is exclusive of statutory value added tax.

#### **14. Rights of use, infringements of property rights**

14.1. TERRITORY shall grant the Client simple rights of use, unlimited in terms of time and content and transferable within the scope of the purpose of the contract, to the software

provided in accordance with this contract and created by TERRITORY, including the documentation created by TERRITORY, subject to contrary provisions in individual cases. These include, in particular:

14.1.1. the worldwide right to reproduce permanently or temporarily, in whole or in part, by any means and in any form, for example for permanent and/or transient storage on electrical, electromagnetic, optical storage media, such as any type of hard disk, RAM, DVD, CD-ROM, memory cards, USB sticks etc.;

14.1.2. the worldwide right to distribute the software and copies thereof in any form and by any means, including the right to rent and to lend, regardless of whether the distribution is in tangible or incorporeal form, in particular to transfer the software via wired and wireless networks (e.g. for download, in Client-server environments or by way of application service providing);

14.1.3. the worldwide right of communication to the public by wire or wireless means, including making available to the public in such a way that the Software is accessible to members of the public from places and at times of their choosing.

14.2. If an "editing right" has been expressly granted, the Client shall be entitled to evaluate the accepted software also in connection with other works, to edit it, to change it subsequently, to supplement it, to extend it, to exchange or delete it in whole or in part, to redesign it himself or have it redesigned by other service providers, to disassemble it, to reassemble it or to translate it into other languages. However, any alteration or processing may invalidate the warranty (Condition V. 11.6.). Without expressly granting a "right to edit", the Client is only entitled to edit within the framework of the statutory exceptions in Sections 69(d) and 69(e), UrhG.

14.3. The Client shall not be entitled to transfer the aforementioned rights in whole or in part to third parties without the further consent of TERRITORY or to split off simple rights from them and grant them to third parties.

14.4. The aforementioned rights granted in accordance with Conditions V. 14.1. to V. 14.3. shall not apply to open source software or other integrated standard software that is not created specifically for a Client. This software is listed in an annex to the contract. The rights to which the Client is entitled hereunder, for example under a GPL licence, are set out in the aforementioned Annex.

14.5. TERRITORY shall assure the Client - with the exception of the standard software described in Condition V. 14.4., including documentation - that the rights are upheld. It further warrants that there are no other outstanding property rights in respect of this software and user documentation which conflict with the possible uses described above. TERRITORY shall indemnify the Client against all claims of third parties arising from infringements of property rights for which TERRITORY is responsible. The Client shall inform TERRITORY immediately of any claims asserted by third parties. If the Client does not inform TERRITORY immediately about the asserted claims, the indemnification claim shall expire. In the event of property right infringements, TERRITORY may - irrespective of any claims for damages by the Client - at its own discretion and at its own expense either make changes with regard to the affected service after prior consultation with the Client, which ensure that a property right infringement no longer exists, or acquire the necessary rights of use for the Client.

14.6. The above rights to be upheld do not give rise to a claim to the transfer of the source code underlying the software provided. The release of the source code shall be regulated in a separate agreement.

14.7. The transfer of the rights of use shall take place for the works referred to in Condition V. 1. after their creation and handover to the Client and only at the time of full payment of the remuneration for the performance phases relating to the work by the Client. TERRITORY shall revocably tolerate the use of the software by the Client until the remuneration has been paid in full. TERRITORY may revoke the use of such software

for which the Client is in default of payment for the duration of the default. For the software referred to in the Annex under Condition V. 14.4. the rules set out therein shall apply at the time of the transfer of rights.

## 15. Secrecy and communications

15.1. The documents, knowledge and experience provided to the other contracting party may only be used for the purposes of this contract and may not be made accessible to third parties unless they are intended to be made accessible to third parties or are already known to the third party. Third parties do not include auxiliary persons such as freelancers, subcontractors, etc., as well as affiliated companies (Sections 15 et seq., Stock Corporation Act/AktG) of Bertelsmann SE & Co. KGaA, Gütersloh, and Bertelsmann SE & Co. KGaA itself, which are appointed to perform the contractual relationship. In the case of the digital exchange of confidential information, telecommunication, file hosting, storage or messaging services used by the Parties for this purpose by mutual agreement, they shall also not be regarded as "third parties".

15.2. Furthermore, the Contracting Parties agree to maintain confidentiality about the knowledge gained during the execution of the contract. An exception exists in the case of a legal duty of disclosure.

15.3. The confidentiality obligation shall also apply beyond the termination of the contractual relationship. A corresponding duty of confidentiality shall be imposed on auxiliary persons commissioned to perform work.

15.4. If a Contracting Party so requests, the documents handed over by it, such as strategy papers, briefing documents, etc., shall be returned to it after termination of the contractual relationship, unless the other Contracting Party can claim a legitimate interest in these documents.

15.5. TERRITORY may name the Client for a testimonial or case study on its website or in other media. TERRITORY may furthermore publicly reproduce or refer to the services provided for demonstration purposes, unless the Client can assert a justified interest to the contrary.

## 16. Validity of the framework conditions

Our general terms and conditions according to Condition I. for all deliveries and services shall apply subordinately to the same subject matter and otherwise supplementary to these Special Terms and Conditions for Software Development.

## **VI. Special Terms and Conditions for the Provision of Language Services**

### **1. Order**

1.1 The subject of these special terms and conditions is the provision of the following language services by TERRITORY to the Client: Services in the areas of translation, localisation, proofreading (spelling, punctuation, syntax, typography), editing (proofreading plus content, layout, structure) as well as the creation of promotional or editorial foreign-language texts, in particular for use in the Client's corporate communications.

1.2 Editing does not include profound changes to the text, interventions in the structure of the text or its concrete expression, the rewriting of individual passages or substantial changes to the text. Orthography as well as the applicable correction mark rules shall be assessed according to the current edition of "Duden - Die deutsche Rechtschreibung" (Dudenverlag Mannheim) at the time of conclusion of the contract.

1.3. The order shall be made in written or electronic form by sending the document to be processed, e.g. to be translated (ideally in Word format .docx), and shall regulate the details (in particular the language into which the document is to be translated and the desired delivery date).

1.4. The Client shall provide us with all information and documentation necessary for the provision of the contractual services. In particular, the Client shall provide the binding original text for the services of TERRITORY. By doing so, he shall also ensure, without a separate declaration, that he possesses all the necessary rights thereto, which enable TERRITORY to provide the service. The Client bears sole responsibility internally for the content and legal admissibility of these templates. The Client undertakes to indemnify TERRITORY - in this respect and with regard to the contractual use within the scope of the contract - from third-party claims.

### **2. Service provision**

2.1. Unless otherwise specified, TERRITORY shall deliver its agreed outcomes to the Client electronically, such as by e-mail.

2.2. As a matter of principle, TERRITORY only uses translators for translations who are either native speakers of the target language and/or have a university or technical college degree in translation, interpreting, linguistics or an equivalent qualification.

2.3. TERRITORY shall only have legal translations (e.g. forensic texts, contracts, general terms and conditions, individual legal texts in the online area such as imprint, data protection declaration, terms of use, information in electronic business transactions and distance selling) carried out by lawyers or solicitors if this has been expressly agreed with the Client in advance. TERRITORY does not provide legal or tax advice in individual cases. If the Client wishes to declare the translation as legally binding for the intended target country (area of use of the target language) and no corresponding express promise has been made by TERRITORY, he must have the translation checked by a lawyer in the target country or otherwise legally at his own responsibility. TERRITORY shall not be obliged to carry out such an inspection subsequently.

2.4. TERRITORY will use translators for the translation who have already worked for the Client, if possible and reasonable. When preparing the quotation - especially for more extensive translation services - TERRITORY agrees with the Client on the target group of the text with regard to the requirements of the translation (necessary background knowledge, education, requirements of the subsequent readers, etc.) so that the appropriate translator can be used for the translation. Further quality assurance options are to be agreed between the parties.

2.5 TERRITORY shall not provide its services exclusively through its own personnel, but also through third parties, but it shall bear the responsibility for the quality of the service. The Client expressly agrees to the involvement of third parties for the services to be provided by us. TERRITORY will train the

support staff accordingly. TERRITORY shall be liable for the conduct of these auxiliary persons as for its own personnel.

2.6. TERRITORY can use a translation and terminology memory (translation memories) to reduce review efforts. A machine translation requested by the Client with subsequent post-editing by a specialist translator shall only be carried out after TERRITORY has checked the suitability of the text for this purpose including suitability for post-editing.

2.7. The Client shall submit subsequent requests for changes and/or additions (change requests) in the contractually agreed form. We are free to consider such change requests; however, we are prepared to comply with requests for changes or additions insofar as this is technically possible and financially reasonable for us. Insofar as this increases expenditure or affects deadlines, TERRITORY shall be entitled to an appropriate increase in remuneration or postponement of the deadlines. Insofar as the expenditure is reduced as a result, the Client may demand a reduction in the remuneration; however, we shall be entitled to reasonable compensation for the share of the originally agreed remuneration which is ultimately lost in the performance of the contract.

2.8. Changes to the agreed scope of services shall be agreed in a written addendum to the contract, which shall also include a provision on the remuneration for the change in services.

### **3. Warranty and liability**

3.1. Binding dates for the service are agreed within the individual assignment. If TERRITORY has not performed on time, not completely or not in accordance with the contract, the Client shall set it a deadline of at least one week for the performance, supplement or rectification before it can assert further warranty claims.

3.2. TERRITORY shall provide its contractual services with the usual commercial care and technical services in accordance with the general state of the art. It undertakes to deliver, to the quality standards agreed with the Client, a flawless service of average type and quality without abridgements, additions or other alterations to the original text. It guarantees that its service, in particular a translation, is not subject to defects that cancel or reduce its value in consideration of the original text, i.e. that there are neither translation defects that distort the meaning, which would prevent appropriate use, nor frequent and significant grammatical errors. This does not guarantee a complete absence of errors. For a quality translation, a certain freedom is necessary, meaning that stylistic improvements do not constitute a translation deficiency.

3.3. The warranty period shall be one year from delivery of the translation or, insofar as acceptance is required, from acceptance; this period shall not apply to claims for damages by the Client arising from injury to life, limb or health or from wilful or gross negligence which breaches the duties of TERRITORY, its legal representatives or its vicarious agents, which shall each be time-barred in accordance with the statutory provisions.

3.4. The Client shall inspect the work and services provided by TERRITORY immediately after receipt, but in any case before use, and shall give notice of defects immediately after their detection. If the Client fails to inspect or provide notification of defects immediately, there shall be no warranty claims with regard to apparent defects, known defects, or consequential defects. Refer to Condition VI. 2.3 for more.

3.5. In the event of damage caused by TERRITORY within the scope of the performance of the contract, TERRITORY shall be liable in accordance with the statutory provisions in the event of wilful misconduct and gross negligence, including that of its vicarious agents. The same shall apply in the event of negligent damage resulting from injury to life, limb or health. In the case of damage to property and financial losses caused by negligence, TERRITORY and its vicarious agents shall only be liable in the event of a breach of an essential contractual obligation, but the value shall be limited to the damages that were foreseeable and typical for the contract at the time of the conclusion of the contract. In this case of liability for simple



negligence, our obligation to pay compensation for financial loss is also limited to an amount of 250,000 euros per case of damage, even if it is a breach of material contractual obligations; if the sum insured under our liability insurance is higher than 250,000 euros, our obligation to pay compensation is limited to this amount.

3.6. Liability for pecuniary loss is excluded in all cases in which, by virtue of the contract, we act in accordance with the Client's express instructions or express specifications.

3.7. Direct recourse to the employees and subcontractors of TERRITORY, the attachment of indemnification claims of these against us by the Client or the assignment of the same to the Client shall be excluded.

#### **4. Rights of use of the Client**

4.1. The features, title, price and all other characteristics of the performance result to be published and its distribution and advertising are determined solely by the Client at his own responsibility.

4.2. The Client shall receive - subject to its rights to the original text - within the scope of the purpose of the contract, all rights to the comprehensive, spatially, temporally and content-wise unrestricted, use and exploitation (itself and/or by third parties) of the copyright-protected works (translations, etc.), which TERRITORY creates in fulfilment of its obligations from the contract with the Client. This includes the right to make changes, additions, abridgements, summaries as well as updating and other editing, in whole or in minor or large parts, also in other works of the Client. The work and its parts may be used in the Client's advertising. All rights of use to our work shall remain with us until payment has been made in full. If rights of use have already been transferred to the Client in accordance with the contractual agreement, but the Client is in default of performance obligations under this contract, all rights shall revert to us after the fruitless expiry of a grace period for performance of the contract.

4.3 The Client may transfer the rights granted to him under this contract in whole or in part to third parties without requiring the consent of TERRITORY.

4.4. Unless otherwise agreed, TERRITORY shall refrain from naming the author. A print release by TERRITORY with regard to the services rendered is not required.

4.5. Subject to the provision in Condition VI. 1.3., TERRITORY shall guarantee that the copyrights of third parties are not infringed by its activities. It also vouches for the fact that it has persons who collaborate on the translations or other services grant it the rights in accordance with this Condition VI. 4.2. and VI. 4.3. to the same extent, as well as the authorisation to transfer these rights to the Client.

4.6. All the intellectual property of the respective Party existing at the time of the conclusion of this contract as well as adaptations, modifications and further developments of the intellectual property existing at the time of the conclusion shall remain the property of the respective party. TERRITORY shall in any case remain entitled to use methods, techniques and experience developed in the course of the order without reference to the Client with other clients of TERRITORY.

#### **5. Remuneration**

Services shall be invoiced on the basis of an order; the sums shall be paid without deduction within 14 days of receipt of the proper invoice. The agreed remuneration for translations and proofreading shall only be due for payment after delivery of the corresponding service result if the Client does not give notice of concrete defects of the service within one week after delivery in commercial transactions or if he makes use of the service with external effect.

#### **6. Secrecy**

6.1. TERRITORY undertakes to keep confidential all of the Client's business secrets that become known to it in the course of its contractual activities. Publications beyond the activity and its results require the prior consent of the Client.

6.2. TERRITORY undertakes to treat all documents provided to it by the Client as confidential, to use them exclusively for the provision of its services and to protect them from access by third parties. In the case of a digital exchange of confidential information, the telecommunication, file hosting, storage or messaging services mutually used by the Parties for this purpose shall not be considered "third parties". The same applies to processors duly obliged in accordance with Article 28, GDPR. Unless storage or retention of these documents is required for accounting or legal reasons or on the basis of a contractual agreement between the Parties, they shall be returned by TERRITORY immediately after performance of the service or destroyed at the request of the Client. In the case of electronically transmitted information, intermediate data carriers, electronic copies and backup files shall subsequently be blocked for further processing and deleted as soon as possible. The provision in Condition VI. 6.3. remains unaffected. This obligation to protect confidential information does not include information that is publicly known or becomes known to the public through no fault of TERRITORY.

6.3. TERRITORY may store its translation memories for quality assurance purposes with regard to possible future orders. A copy of the translation memories shall be made available to the Client on request in a format generally suitable for further processing. The translation memories shall be deleted if an examination by TERRITORY at the end of the third calendar year beginning with the calendar year following the initial storage shows that longer storage is not necessary, because the Client has not placed any further orders in the meantime, for example.

6.4. Disclosure of confidential information to third parties shall be possible if the Client has given prior consent, the information was already lawfully in the possession of TERRITORY prior to disclosure, has become generally known through no fault of TERRITORY, has become known to TERRITORY by other means than through notification by the Client and no confidentiality obligation has been breached by anyone in the process, or in the case of disclosure due to legal permission, obligation and/or official or judicial order. The duty of confidentiality also does not exist vis-à-vis the courts and authorities insofar as there is a legal obligation (including under criminal law) to share/disclose or the respective information is relevant in a civil law suit between the Parties or one of the Parties and a third party. Disclosure to third parties may also be justified under the conditions laid down in Section 5, GeschGehG.

6.5. TERRITORY shall take all the necessary measures within its control to prevent third parties from gaining knowledge and exploiting the confidential information. It shall ensure that the information subject to secrecy cannot be read, copied, altered or removed without authorisation during electronic transmission or during its transport or storage on data carriers, and that it is subsequently possible to check and establish to which bodies such information has been transmitted by data transmission equipment.

#### **7. Validity of the framework conditions**

Our general terms and conditions according to Condition I. for all deliveries and services shall apply subordinately to the same subject matter and otherwise supplementary to the above Special Terms and Conditions for the Provision of Language Services.

## VII. Special Terms and Conditions for Digital Services, Hosting and ASP Services

### 1. Subject of the Agreement

1.1 TERRITORY GmbH (hereinafter: Provider) shall provide the Client with system resources on a virtual server and, depending on the agreement, additional services for data processing (including database management, data statistics and data analysis, data selections, maintenance and reconciliation). The Client may store content on this server in accordance with the agreed technical specification. Any processing of personal data by the provider shall be carried out in accordance with provisions for order processing to be made separately at the initiative of the Client pursuant to Art. 28, GDPR. Additional services can be requested if required. The scope of services may be updated at any time by mutual agreement between the Parties.

1.2 The contract exclusively describes the services to be provided by the Provider. These Terms and Conditions apply exclusively to service packages/contracts in which explicit reference is made to these Terms and Conditions or to the Provider's GTC. All other existing or new contracts with the Provider that do not refer to this shall remain unaffected by the provisions set out in these Terms and Conditions. In the event of contradictions, the provisions of the contracts shall apply in the following order: 1) the respective contract, 2) these terms and conditions.

1.3. The Client may only allow third parties to use the services provided by the Provider for commercial purposes if he has been permitted to do so in advance.

### 2. Hosting

#### 2.1. Technical organisational measures

The technical and organisational measures agreed in the contract are part of the processing agreement between the Parties. The implemented measures are subject to technical progress and further development. In this respect, the Provider is permitted to implement alternative adequate measures after approval by the Client. Urgent or safety-critical measures are to be implemented first and then reported to the Client, providing that these ensure at least the same level of security as the actual defined measures. Any significant changes must be documented.

#### 2.2. Private Cloud

The provider operates a dedicated private cloud. Client systems are depicted by a virtual model on this host system to ensure high availability and scalability.

#### 2.3. Infrastructure and data security

The specifications on infrastructure and data security are laid down in the contract. In case of doubt, a service of average type and quality must be provided.

#### 2.4. Server Client System

2.4.1. The Client is provided with a virtual and scalable machine (VPS) in the private cloud:

Fully managed virtual server in the private cloud

Resources of both the host system and the dedicated virtual machine can be expanded at any time

Complete maintenance of the applications

2.4.2. Initial server capacities are defined in the contract. System monitoring alerts the provider to possible resource adjustments. With a lead time of 24 hours (on working days), the resources can then be increased or decreased. The monthly allowance can be adjusted accordingly.

2.4.3. The content of the storage space designated for the Client is backed up by the provider every working day. The data backup is carried out on a rolling basis in such a way that the data backed up for one day of the week is overwritten when the data backup is carried out for the following same day of the week. The same principle is used for a weekly data backup, where the data is also overwritten on a rolling basis after four

weeks. The backup is always for the entire server content and may also include the data of other clients. The Client therefore has no claim to the surrender of any of the backup media, but only to the retransfer of this content to the server.

2.4.4. The Provider is entitled to adapt the hardware and software used to provide the services to the respective state of the art. If, as a result of such an adjustment, additional requirements arise for the content stored by the Client on the server in order to ensure the provision of the Provider's services, the Provider shall notify the Client of these additional requirements. The Client will decide without delay after receipt of the notification whether the additional requirements are to be met and by when this will be done. If the Client does not declare at the latest four weeks before the changeover date that he will adapt his content to the additional requirements in time for the changeover, i.e. at the latest three working days before the changeover date, the provider has the right to terminate the contractual relationship with effect from the changeover date.

2.4.5. Outside of release changes, the Provider may change the database software within the scope of technical possibilities and use it in the version currently offered by the manufacturer if the change to the software is reasonable for the Client, taking into account the interests of the Provider. The Provider shall notify the Client of a change in the software used no later than six weeks before the date of the change. However, the Client shall have no claim to the use of a newer version of the said software.

2.4.6. If the Provider has provided the Client with static IP addresses, the Provider may change the IP addresses assigned to the Client if this should become necessary for technical or legal reasons. The Client will be informed immediately of the pending change.

### 3. Technical support

#### 3.1. Update management

Update management is the responsibility of the provider and includes all revisions made to the major or minor versions.

##### 3.1.1. Basic definition of versions

The major version number (major) indicates extremely significant changes to the software.

The minor version number indicates functional extensions.

The revision number (patch) indexes bug fixes and security updates.

Upgrades and updates to the major or minor versions will be evaluated in terms of advantages and disadvantages and will only be carried out after consultation with the Client and are not part of this contract, and shall entail additional costs that shall be invoiced separately once clarification has been reached between the Parties.

##### 3.1.2. Standard procedure for importing minor versions and revisions

- Information about minor versions and revisions reaches the provider.
- The update information shall be checked and assessed, particularly with regard to security issues.
- In urgent cases, immediate importing of the revision and information to the Client.
- The update shall be installed on the staging server.
- Quality assurance on the staging server using automated test cases.
- The update shall be installed on the live server.
- Quality assurance on the live server using automated test cases.

The standard procedure also includes the testing of dependencies in the relevant installations.

##### 3.1.3. Going Live approval

No Client approval is required for the import of revisions in the running system. For changes in content or functionality, the Client reserves the right to approve Going Live.

### 3.2. Monitoring

The provider takes over the system and application monitoring with the following subtasks:

Setup and configuration of the service

Regular checking and monitoring of the monitoring display by a technical officer at the provider

Initiation of troubleshooting measures within the agreed service level

System monitoring includes the monitoring of accessibility via an internal monitoring service to be selected by the provider.

Application monitoring is the monitoring of the availability and loading time of software.

For the purpose of inclusion in communications in the event of monitoring alerts, the provider can input the e-mail address of the technical contact person provided by the Client in the group of recipients.

### 4. ASP services

The term "ASP services" includes application service providing together with associated services.

4.1. The object of application service providing is the provision of software by the provider for use by the Client via a remote data connection. The Provider shall make available to the Client the use of the Client and application software designated in the contract to the extent of the functions described in more detail therein and subject to the functional requirements also specified therein. The application software is provided by the Provider for use at the agreed handover point (interface of the data network operated by the Provider to other networks). The application software remains on the provider's server. The Provider does not owe the establishment and maintenance of the data connection between the Client's IT system and the transfer point operated by the Provider.

4.2. Outside of release changes, the Provider may change the application software within the scope of technical possibilities and use it in the version currently offered by the manufacturer if the change to the software is reasonable for the Client, taking into account the interests of the Provider. The Provider shall notify the Client of a change in the software used no later than six weeks before the date of the change. However, the Client shall have no claim to the use of a newer version of the software specified in the contract.

4.3 If requested by the Client, the provider will take over the planning and implementation of release changes. This service must be agreed in detail between the Client and the provider, also with regard to any hardware and database extensions to be modified and the consequences for the operation of the software and its costs. The implementation of a release change shall take place on the basis of a separate agreement.

4.4. The Client may simultaneously access the application software provided for him from the number of workstations specified in the contract. The workstations must meet the minimum technical requirements specified in the contract. The Client's workstations shall be connected via a data connection to be set up by the Client in accordance with the specifications in the contract.

4.5. The application software shall be made available to the Client for use at the Client's election in accordance with the provisions in the Service Level Agreement (SLA). The Parties may stipulate in the contract for the Provider that support services are provided to the Client in respect of the ASP Services.

4.6. Where the Provider uses software for the provision of the Service and the Provider is obligated to procure and provide the software pursuant to an individual contract (hereinafter referred to as "Provider Software"), the following shall apply:

4.6.1. Insofar as Provider Software includes software created by a third party or otherwise obtained from a third party, the

rights of use notified by the Provider in accordance with the specifications of the third party (e.g. manufacturer) shall apply to such software; the same shall apply to open source software (e.g. software subject to the General Public Licence (GPL)). Furthermore, the Provider grants the Client the non-exclusive, non-transferable right to use the Provider Software during the term of the relevant main contract to the extent necessary to receive the services owed by the Provider under the contract.

4.6.2. The Provider warrants that it is entitled to grant the designated rights of use to the Client. The Provider undertakes to defend the Client against the claims and to indemnify the Client against all third-party claims and all costs associated with the defence, including the costs of legal action within the scope of the limitation of liability, which are caused by the fact that the Client's use of the Provider Software infringes third-party rights.

4.6.3. The Provider shall inform the Client about new releases of Provider software which, in the opinion of the Provider, require adjustments on the part of the Client (e.g. its hardware or software) in order to ensure the agreed performance. The Provider shall, at the Client's request, continue to use the previous releases until any adjustments are made on the part of the Client. In the event of the continued use of previous releases, the Client is not entitled to assert warranty or liability claims against the Provider arising from the resulting restrictions or deficiencies of the service.

4.7. Insofar as the Provider uses software for the provision of the Service, the procurement and provision of which is owed by the Client pursuant to an individual contract (hereinafter referred to as "Client Software"), the following shall apply:

4.7.1. If Client software is used by the Provider within the scope of the provision of services, the Client grants the Provider the non-exclusive right to use the Client software, including updates, upgrades and further developments of the Client software, unlimited in terms of space and content, for the duration of the relevant individual contract. The Client shall give the Provider the documentation pertaining to the Client Software to the extent deemed necessary by the Provider in the context of the provision of the Service.

4.7.2. The Client is responsible for updates and upgrades as well as for further developments to the Client software.

4.7.3. The Client warrants that it is entitled to grant the Provider the rights of use. The Client undertakes to defend the Provider against the claims and to indemnify the Provider against all third-party claims and all costs associated with the defence, including the costs of legal proceedings, which are caused by the fact that the Provider's use of the Client Software infringes third-party rights.

### 5. Availability and Service Level Agreement

5.1. The Provider provides hosting services with an overall availability of 99.5%. The availability is calculated on the basis of the time allotted to the respective calendar month in the contractual period minus the maintenance times defined below.

5.2. Provider shall be entitled to perform maintenance on two (2) calendar days per week between the hours of 3am-6am for a total of ten (10) hours per calendar month. During maintenance work, the aforementioned services are not available.

5.3. The Provider is further entitled to carry out maintenance work for central data centre infrastructures, in particular for power supply, networks, routers, switches, LAN, system management, firewalls and shared storage systems on up to six (6) dates per calendar year. The maintenance work shall be carried out on the last Sunday of each calendar month from 2am to 8am (CET or CEST); the Provider shall inform the Client in writing or by e-mail of the start of the maintenance work fourteen (14) calendar days before it is carried out. Furthermore, the Provider is entitled to carry out maintenance work at any time in the event of imminent danger, in particular in the event of imminent Internet attacks and imminent data loss. However, the Provider will always endeavour to keep the

duration of maintenance work to a minimum. During the performance of maintenance work, the services specified in the service description may not be available to the Client or may be available only to a limited extent. This period shall not be taken into account when calculating the availability of an application or system at the Provider's expense; in particular, the Client shall not be entitled to assert warranty or liability claims against the Provider on the basis of such restrictions.

5.4. For better accessibility and faster implementation of tasks, the Provider shall set up a dedicated ticket management system for order acceptance and processing, and generally guarantees it will be accessible and responsive by e-mail and telephone on every working day (in Garbsen) from 9am–6pm.

5.5. The performance obligations with regard to the ASP services agreed in accordance with Condition VII. 4. shall be specified in the SLA in the Annex, unless the Parties agree otherwise in the contract.

5.6. If the Provider can outsource hosting to a hosting partner according to an explicit provision in the contract with the Client, the technical and organisational measures and the SLA of the hosting partner disclosed to the Client shall also apply in the relationship between the Provider and the Client and shall take precedence over the provisions of these T&Cs. Outside the times specified in Condition VII. 5.4., the hosting partner is always to be contacted by telephone, in which case the Provider will not be monitoring e-mail. In the event of service requests of an urgent technical nature, the Client is at all times expressly entitled and encouraged to contact the Provider's hosting partner directly by telephone. The response time generally starts with the monitoring alert or the receipt of the message from the Client. The hosting partner is the Provider's vicarious agent; the Provider is personally liable to the Client for the proper performance of the contract.

## 6. Requirements for the fulfilment of the contract

### 6.1. Conditions for infrastructure

In order not to have to carry out further development, optimisations and warranty cases in the live system (LIVE), which would cause downtime, for example, the Provider separates the Client's server environment into three instances: INT, STAGE and LIVE.

An integration system (INT) is provided for the acceptance of future technical developments. This is in its own Linux user environment and can be configured independently from LIVE and STAGE.

STAGE and LIVE are provided for the acceptance of content adjustments or necessary security updates. Both are in the same Linux user environment and therefore share the settings. The technical configuration of STAGE and LIVE is thus identical, but the databases and docroots differ.

At irregular intervals and after agreement of all participants, the status is imported from LIVE to STAGE or/and INT to prevent the systems from running too far apart.

### 6.2. System requirements

A rights/role concept defined for the Client is conditional for secure operation. Only the provider receives administration rights. However, if requested by the Client, the provider can add the role of user administrator. Uncoordinated changes by the user administrator may affect the warranty.

### 6.3. Cooperation obligations of the Client

6.3.1. The Client shall provide the Provider with the data or content required for the provision of the Services. The Client undertakes to transmit such data or content in a standard format or otherwise agreed format. The Client himself shall bear the associated expenses. The Client shall, at its own expense, take all necessary measures to enable the Provider to provide the Service. In particular, the Client shall respond to all requests from the Provider in order to enable the Provider to provide the Service.

6.3.2. The Client grants the Provider the right to reproduce, process and make accessible the data to be stored for the Client, insofar as this is necessary for the provision of the services owed under the contract. He is also entitled to store

the data in a backup computer centre. In order to eliminate faults, the Provider is also entitled to make changes to the structure of the data or the data format.

6.3.3. In the event that the Provider must use or install hardware at the Client's premises in order to provide the service, the Client shall in particular take the following measures:

- a) full, unhindered, secure and unrestricted (24 hours x 365 days) access to the Hardware for the Provider, its employees and subcontractors;
- b) Provision of an adequate workspace and equipment, in particular, where necessary, data network, telephone, electricity and light with sufficient space.
- c) The Client is not entitled to modify this hardware without the Provider's prior written consent.

6.3.4. Unless otherwise agreed in a service description/contract, the Client is solely responsible for its IT infrastructure, in particular for its installation and operation. The Client himself shall bear the associated expenses.

6.3.5. The Client shall inform the Provider in good time of scheduled activities which may have an impact on the quality of the services to be provided by the Provider, in particular which may lead to an increased system load.

6.3.6. The Client shall immediately notify the Provider of any errors arising, providing all information available to the Client that is relevant for the elimination of the error. The Client shall support the Provider to the extent necessary for the rectification of defects.

6.3.7. To the extent that the Client provides Hardware, the Client shall, at its own expense, enter into a customary maintenance agreement with the Hardware manufacturers or a company of the official distribution network in this respect, which shall take into account the agreements of the relevant main contract with regard to service levels. The Client shall notify the Provider of the conclusion of the contract and its content immediately after the conclusion of the relevant individual contract. Furthermore, the Client shall indicate the Provider as authorised to represent the Client vis-à-vis the relevant contractual partner with regard to the cancellation of maintenance services under the maintenance contract.

6.3.8. The Client shall ensure that programmes, scripts or similar installed by him or files uploaded by him such as images, texts etc. do not jeopardise the operation of the Provider's server or communication network or the security and integrity of other data stored on the Provider's servers. In particular, these programmes, scripts, files, etc. may only be installed or uploaded if they are technically flawless, have been checked for viruses, and in an otherwise suitable electronic state.

6.3.9. If programmes, scripts etc. installed by the Client endanger or impair the operation of the Provider's server or communication network or the security and integrity of other data stored on the Provider's servers, the Provider may deactivate or uninstall these programmes, scripts etc. If the elimination of the hazard or impairment so requires, the Provider shall also be entitled to interrupt the Internet connection of the content stored on the server. The Provider shall inform the Client of this measure without delay.

6.3.10. For access to the server intended for the Client, the Client receives a user ID and a changeable password. The Client may only share the password with those persons who have been authorised by him to access the storage memory. The Client is obliged to change the password if it fears that the password has become accessible to unauthorised third parties. If the password is entered incorrectly three times in a row, access to the storage memory is blocked to protect against misuse. The Client will be informed if it is blocked. He will then receive a new password from the Provider. In this case, the Provider is entitled to reassign not only the password but also the user ID.

6.3.11. The Client grants the Provider the right to reproduce the data to be stored by the Provider for the Client to the extent necessary to provide the services owed under this Agreement. He is also entitled to store the data in a backup computer

centre. In order to eliminate faults, the Provider is also entitled to make changes to the structure of the data or the data format.

6.3.12. If the Client does not fulfil his duties to cooperate or does not fulfil them properly, the Provider's obligation to provide services shall lapse to the extent and for the period in which the provision of services depends on the prior fulfilment of duties to cooperate by the Client.

#### 6.4. Third-party rights

6.4.1. The Provider shall take all actions with regard to the content transmitted by the Client to the server on behalf of and solely for the Client. In addition to the storage of content and its connection to the Internet, this also includes the implementation of data backup. Any infringements of the property rights of third parties resulting from these actions, in particular the infringement of copyrights, shall be the responsibility of the Client to the extent that the Provider has acted within the scope of its contractual obligations.

6.4.2. The Client undertakes not to store any illegal content on the storage memory provided that violates the law, official requirements or the rights of third parties. In respect to the relationship between the Provider and the Client, it is not the Provider's duty to check this content for legality. In particular, the Client is obliged to keep all content up to date and ensure the content does not violate applicable law.

6.4.3. The Provider is not, within the scope of the contractual relationship, responsible for the content and accuracy of the data provided by the Client or third parties commissioned by the Client. In this respect, the Provider is also not obliged to check the hosted content for possible violations of the law. The Provider shall take all actions with regard to the content transmitted by the Client to the server on behalf of and solely for the Client. In addition to the storage of content and its connection to the Internet, this also includes the implementation of data backup. Any infringements of the property rights of third parties resulting from these actions, in particular the infringement of copyrights, shall be the responsibility of the Client to the extent that the Provider has acted within the scope of its contractual obligations.

6.4.4. Where there is an imminent or actual breach of the above obligations, as well as in the event of the assertion of justifiable claims by third parties against the Provider to refrain from the complete or partial display of the content stored on the server via the Internet, the Provider shall be entitled, also taking into account the legitimate interests of the Client, to temporarily suspend its services, in particular the connection of the content to the Internet, in whole or in part with immediate effect. The Provider shall inform the Client of this measure without delay. The Provider's claim to remuneration remains unaffected.

6.4.5. Should a claim be made against the Provider by third parties due to at least an alleged infringement of protected positions in connection with services provided under this Agreement, the Client shall take the necessary actions to ensure that no further claims are made against the Provider. The Client shall indemnify the Provider against all third party claims and the reasonable costs of a legal defence. Further rights of the provider remain unaffected.

## 7. Delimitations

### 7.1. Optimisation and further development

Optimisations and new developments on database systems are offered/billed separately and are not part of a contract for hosting or ASP services.

### 7.2. E-mail hosting

The Provider does not host e-mail accounts without express agreement.

### 7.3. Going Live approval

No Client approval is required for the installation of security updates in the running system (see section 0). For changes in content or functionality, the Client reserves the right to approve Going Live.

## 8. Terms of payment

### 8.1. Prices

In the event of commissioning, the Provider shall receive a monthly fee for its services, which shall consist of the flat rates for hosting (Section VII. Fehler! Verweisquelle konnte nicht gefunden werden.), technical support (Section VII. 3) and ASP services (Section VII. 4), unless otherwise contractually agreed. Services actually rendered on a time and material basis (see Condition 8.4) will be invoiced additionally by the Provider with proof of performance at a cross-role hourly rate. Payments shall be made within 14 days of receipt of an invoice structured in accordance with Section 14 UStG [German Value Added Tax Act], without discount. All prices are quoted net.

### 8.2. Price adjustment

The server scaling/dimensioning of the system is based on the current request load at the time of conclusion of the contract. Due to different measures taken by the Client or due to the integration of further data to be hosted, there may be an increased request load - selective load peaks - which requires an increase in server resources (processor and main memory performance). This increase in resources - necessary to ensure stability and performance - must be notified to the Client in good time and will lead to a temporary or permanent increase in hosting costs after mutual clarification has taken place between the Parties.

### 8.3. Costs for ASP services

The Provider shall adjust the fees payable on the basis of this Agreement at its reasonable discretion to the development of the costs that are decisive for the price calculation. A price increase shall be considered and a price reduction shall be made if, for example, the costs for the procurement of hardware and software as well as energy, the use of communication networks or labour costs increase or decrease or other changes in the economic or legal framework conditions lead to changed costs. If the Provider gives the Client licences for the use of software on a permanent or time-limited basis and the software manufacturer increases licence and/or maintenance fees, the Provider reserves the right to adjust the remuneration accordingly. If one kind of expense becomes higher, e.g. labour costs, this may only be considered for a price increase to the extent that it is not offset by possible decreases in other areas, such as hardware and software costs. In the event of cost reductions, e.g. hardware expenses, the Provider shall reduce the prices insofar as these cost reductions are not fully or partially offset by increases in other areas. In exercising its reasonable discretion, the Provider shall choose the respective dates for a price change in such a way that cost reductions are not taken into account according to standards that are less favourable for the Client than cost increases, i.e. cost reductions shall have at least the same effect on prices as cost increases. The Provider shall inform the Client of changes in the price list in text form no later than six weeks before the changes come into force.

### 8.4. Additional services

8.4.1. If the Provider, in agreement with the Client, provides services which go beyond the scope of its contractual obligation under Conditions VII. Fehler! Verweisquelle konnte nicht gefunden werden.. to 0. or if it provides services which have only become necessary due to a breach of duties or obligations by the Client, it shall receive additional remuneration for this which shall be invoiced monthly at a cross-role hourly rate according to the actual expenditure incurred. The Provider shall charge a quarter of the hourly rate for each quarter of an hour incurred and for the last quarter of an hour commenced per day.

8.4.2. In general, the required workload for a task shall be assessed upon receipt of the request. In order to ensure the prompt processing of tasks, the Provider will only send the Client on request an estimate of the workload in advance in writing (e-mail or ticket management system suffices) for services expected to take three hours or more, and will ask for a separate order to be placed.

## 9. Guarantee

9.1. If the services owed by the Provider are to be regarded as work performances, the Provider shall be responsible for the control, management and monitoring of the performance of the services as well as for the results achieved in accordance with the service description in the contract. The Provider warrants that the work will be performed in accordance with the contract. The warranty period for work performances is usually twelve (12) months; Condition VII. 10 applies to claims for damages. The Client's obligations under Section 377 of the German Commercial Code (HGB) remain unaffected. However, in the event that the Provider fraudulently conceals a defect or has assumed a guarantee for the quality of a work, the statutory warranty period shall apply.

9.2. The Provider shall only assume guarantees for the quality of work in express and written form, i.e. by using the heading "Guarantee".

9.3. The Provider does not warrant and/or assume liability for the accuracy of any manufacturer's claims regarding the reliability or performance of any data processing equipment or software recommended by the Provider, to the extent that the Provider does not adopt such claims as its own. The same applies to a defective data processing system or software recommended by the Provider, unless the Provider is guilty of no less than gross negligence with regard to such a recommendation.

9.4. The Provider has no warranty obligations with regard to software brought in/licensed by the Client, which are advance services provided to the Client by third parties, i.e. it is not obliged in this respect to rectify existing errors free of charge, which - irrespective of limitation provisions - are subject to the warranty for defects of the original software programmer. The Provider shall support the Client within the scope of the contract in remedying such defects. With regard to third-party software licensed by the Provider and made available to the Client for use, the Provider guarantees usability for the contractually intended purpose and functionality in the manner provided by the third-party provider.

9.5. The Provider may first and foremost provide warranty by means of supplementary performance, either by rectification of defects or replacement delivery, at the Provider's discretion. The urgency of the fault rectification depends on the degree of operational impediment. If it proves impossible to eliminate the error, the provider will demonstrate an alternative solution and present it to the Client before implementation. Insofar as this alternative solution is reasonable for the Client, it shall be deemed to be supplementary performance. The Provider is also obliged to remedy insignificant defects; further rights, in particular to damages, termination and withdrawal, are excluded.

9.6. If the supplementary performance fails within a reasonable period, the Client may set another reasonable period for an additional attempt at supplementary performance. If this also fails, the Client has the right, after expiry of the second deadline, to reduce the remuneration or, in the case of significant defects, to terminate the contract in question; withdrawal from the contract is excluded. The right to extraordinary termination for good cause remains unaffected.

9.7. The Provider's warranty shall lapse in all cases in which defects and other impairments of the services are or may be caused by improper operation by the Client, by intervention by the Client, by services to be provided by the Client (in particular data and content) or by the system environment existing at the Client's premises for which the Provider is not responsible, as long as and insofar as the Client does not prove that these are not the cause of the occurrence of the defect. Services performed by the Provider on the basis of an alleged warranty obligation shall be invoiced on a time and material basis.

9.8. If the contractual use of the hosting services is suspended, the Client shall be released from payment of the fee for the impaired service for the period during which use is suspended. For the time during which the suitability for contractual

operation is reduced, the Client shall only pay an appropriately reduced fee.

9.9. In the case of ASP services in accordance with Condition VII. 4., the Client is entitled at any time to assert the rights to which he is entitled on account of the non-granting of the use of the software and the breach of duty in the performance of the associated services. If he asserts these rights, he may only assert the subsequent rights to a greater extent (prioritisation according to the agreed SLA):

For the duration of a Priority I fault, the Client shall be exempt from payment of the fee agreed for the provision of the software.

For the duration of a Priority II or III fault, the Client shall be released from the payment of the fee for the provision of the software in the amount of 80%, unless he can prove that due to the Provider's liability for defects, he is further released from the obligation to pay.

## 10. Liability

10.1. The provider's liability for damages resulting from the use of telecommunications services for the public is governed by the provisions of the German Telecommunications Act. Outside this scope, liability shall be governed by the following provisions.

10.2. The Provider shall be liable for wilful misconduct and gross negligence. The Provider shall only be liable for slight negligence in the event of a breach of a material contractual obligation, the fulfilment of which is conditional for the proper performance of the contract and the observance of which the Client may regularly rely on, as well as in the event of damage resulting from injury to life, limb or health. The Provider shall only be liable for foreseeable damage, the occurrence of which must typically be expected. In the event of slight negligence, liability shall be limited to EUR 25,000.

10.3. Claims for damages by the Client are excluded if the damage would not have occurred if the Client had properly backed up the data. Apart from that, liability for loss of data shall be limited to the typical recovery costs that would have been incurred if back-up copies had been made regularly and in accordance with the risk, except in cases of wilful misconduct and gross negligence.

10.4. Insofar as services are provided under a tenancy agreement, the Provider's strict liability for defects that were already present at the beginning of the contractual relationship in question shall be excluded; Section 536 a (1) of the German Civil Code shall not apply.

10.5. The aforementioned limitations of liability shall apply mutatis mutandis to the personal liability of the Provider's employees and its subcontractors.

10.6. The liability for guarantees assumed by the Provider as well as the provisions of the Product Liability Act shall remain unaffected.

10.7. Irrespective of the legal grounds, the Client's claims for damages against the Provider shall become time-barred one (1) year after the beginning of the warranty period, otherwise after the claim arises, unless shorter statutory limitation periods exist. However, the statutory limitation periods shall apply in the event of damage to life, limb, or health or freedom of a person, in the event of wilful conduct or gross negligence on the part of the Provider as well as in the event of a breach of essential contractual obligations, in the event of claims for defects if the Provider has fraudulently concealed the defects or has assumed a guarantee for a condition, as well as in the event of claims under the Product Liability Act.

## 11. Data and data protection

11.1. The Client has the right at any time to receive the personal data stored by the provider within the scope of the contract in a structured, common and machine-readable format. The Client may request the transmission of all data or of individual data sufficiently described by him. Furthermore, the Client also has the right to demand that the provider transmit the data to third parties. If the Provider provides one

of these services, the Client shall pay the fee provided for this in the respective current price list.

11.2. The right under Condition VII. 11.1. may only be exercised insofar as the transmission is technically reasonable and legally permissible.

11.3. If the Client processes personal data within the framework of the contractual relationship, he shall be responsible for compliance with the provisions of data protection law. The Provider shall process the data transmitted by the Client only within the scope of the Client's instructions. If he is of the opinion that an instruction of the Client violates data protection regulations, he shall inform the Client thereof without delay. Details of order processing shall be regulated in a separate agreement pursuant to Art. 28, GDPR.

11.4. The provider offers the Client encrypted transmission of the data. The implementation of encryption is regulated in a technical specification.

## 12. Confidentiality, disclosure and deletion obligations

12.1. The processing of personal data shall be assessed in accordance with Condition VII. 11. Supplementary regulations on the treatment of confidential information such as access codes etc. shall be agreed by the parties in a separate confidentiality agreement.

12.2. The Provider undertakes to delete all information and content made available to it by the Client in electronic form after termination of the contractual relationship, unless the Client expressly instructs it to archive it; at the Client's prior request, the Provider shall first provide the Client with a copy of the specific information or content designated in the request. Information and content that is in embodied form must be returned to the Client or destroyed at the Client's request or in the event of non-acceptance. Statutory obligations to preserve records shall remain unaffected. After the end of the contract, the Provider shall archive documentation for the duration of the statutory warranty and liability periods as proof of the proper provision of services.

12.3. Should services be required beyond the end of the contract for migration support, the Provider undertakes to offer these to the Client for a further three months in return for reasonable remuneration based on the terms of the contract.

## 13. Validity of the framework conditions

Our general terms and conditions according to Condition I. for all deliveries and services shall apply subordinately to the same subject matter and otherwise supplementary to these Special Terms and Conditions for Digital Services, Hosting and ASP Services.

### Annex to Clause VII - Service Level Agreement

#### 1. Subject of regulation

The following provisions of this Service Level Agreement (SLA) specify the access to the Software owed by the Provider under the Contract in terms of time and technology.

#### 2. Service levels

2.1. The Provider shall provide the services described below at the Client's election in accordance with the price list valid at the date of conclusion of the contract, unless otherwise stipulated in the contract.

2.2. The Client may choose from the software availability periods defined by categories A, B, C and D for the use of the software.

2.3. If the Provider does not make the software available within the scope of the contractual availability, the Client shall be entitled to restoration of availability in accordance with Condition 7 f.

#### 3. Technical availability

All non-time-based performance specifications in this Service Level Agreement refer to the quality of the software offered to the Client for use at the transfer point of the data network operated by the Provider in accordance with the Agreement (technical availability). Impairments in respect of data transmission from this transfer point to the Client and/or in respect to the Client's IT system itself shall not be taken into account.

#### 4. Time availability

4.1. Time availability indicates the percentage of the period covered by the respective service level for which the software is available at the handover point according to the following specifications:

Service category	Weekday	Period
Service level A	Working day (Monday to Friday excluding national holidays)	7am till 8pm
Service level B	Like category A	8pm till midnight
Service level C	Like category A	2am to 7am
Service level D	Saturday	2am till midnight
Service level E	Sundays and public holidays	2am till midnight

4.2. The Provider is not obliged to make the application software available for use outside the periods ordered by the Client. If the service period booked by the Client has expired, the Provider will close the application.

4.3 Availability is defined as follows for the aforementioned periods:

Service level A	98.5%
Service level B	97%
Service level C	95%
Service level D	98.5%
Service level E	95.0%

4.4. The actual availability achieved is calculated on the basis of the time period attributable to the respective service level on a daily basis.

4.5. For the calculation of actual availabilities, downtimes not attributable to the Provider shall be considered as available times. These innocuous downtimes are maintenance or other services agreed with the Client which do not allow access to the application software; maintenance work that becomes necessary unexpectedly, if this work was not caused by a breach of the Provider's obligations to provide the Services (force majeure, in particular unforeseeable hardware failure, strikes, natural events, etc.); Downtime due to virus or hacker attacks, insofar as the Provider has taken the agreed security measures or, in the absence of an agreement, the usual security measures; Downtime due to specifications made by the Client, due to unavailability of the Client's equipment or due to other interruptions caused by the Client (e.g. failure of the Client to cooperate); Longer periods of downtime caused by the Client blocking console or remote access; Downtime due to specifications of the software manufacturer; Downtime for the installation of urgent security patches; Downtime due to software errors in Client applications or due to errors in system and system-related software triggered by Client applications or data; Downtime caused by third parties (persons not attributable to the Provider).

Scheduled maintenance work and data backups are carried out daily between midnight and 2am. During this time, operation is not possible.

#### **5. Availability obligations**

5.1. The software is temporally and technologically available if it can be accessed during the relevant periods pursuant to Condition 4, Paragraphs 3 to 5 and the quality values specified in the contract are complied with at the transfer point (contractual availability).

5.2. The Client assumes the obligation to report any impaired availability to the provider. The Provider shall endeavour to eliminate the impairments without delay. There shall be no claim to restore the availability of the software insofar as the agreed availability is guaranteed.

#### **6. Priorities**

If the Provider's services do not correspond to the values specified under this Service Level Agreement, the Provider shall, in the event of impairment of both the temporal and technical availability, first restore the temporal availability of the services, then the data throughput owed, the response time behaviour, the packet delay and finally the packet loss rate.

#### **7. Fault reporting and service restoration**

7.1. The Client may report non-compliance with the contractual availability as a fault. He shall submit reports on faults which are to be handled in accordance with this SLA via the fault hotline given by the Provider only to the employees trained and authorised for this purpose. If the Client reports a malfunction, he shall give the provider a description of the malfunction in accordance with paragraph 2. When the Client is reporting the fault, the Client shall state who has been made available to the Provider as contact persons and how they can be reached by telephone. The contact persons shall be named in such a way that the Provider can always directly contact one of these persons during the duration of the disruption, at least during the Client's business hours.

7.2. Faults subject to the provisions of this SLA are classified as follows:

General inquiry - Priority III

Requests for content development, revision, addition or non-critical corrections. Defects are not (directly) recognisable to the end user and do not hinder the use/legibility/display of the page.

Content errors - Priority II

Corrections to existing content. Defects are recognisable to the end user, but do not hinder the use/legibility/display of the page.

Critical inquiry - Priority I

Defects that have a significant impact on the use/legibility/display of the page or hinder this.

7.3. If the disruption reaches a higher priority level, the Client must inform the provider immediately. The response time is calculated from the receipt of the Client's fault report by the provider. The decisive factor for the allocation of a fault to a particular class is the presence of the characteristics specified in the fault description.

7.4. Upon receipt of a proper fault report from the Client, the Provider undertakes to start analysing and, if possible, already eliminating the fault within the specified response times at the latest. Troubleshooting shall be carried out within the scope of the Provider's possibilities in compliance with its contractual obligations. A claim to the elimination of the fault within a certain timeframe does not arise as a result of the agreement of response times.

7.5. A malfunction to be remedied by the Provider shall not be recognised where impairments to data transmission are outside the data network operated by the Provider, e.g. due to line failure or malfunction at other providers or telecommunications providers, or a use of the system

capacities provided in breach of the contract, e.g. due to an excessive number of accesses by the Client.

7.6. The response time for the restoration of contractual availability runs in the case of priority III faults exclusively during the periods covered by the service categories A, B, C, D or E booked by the Client.

7.7. Liability for defects under the contract remains unaffected.

#### **8. Reports and assertion of claims**

8.1. The Provider shall provide the Client with a monthly review on compliance with contractual availability for evaluation. In addition, the Client can check the current data online at any time.

8.2. The Client shall only be entitled to the rights pursuant to Conditions 9 and 10 if he notifies the Provider in writing of its assertion without undue delay, at the latest, however, within two weeks after receipt of the monthly compliance review on the agreed availability and service quality.

#### **9. Compensation obligations in the event of a malfunction**

9.1. The following provisions supplement the statutory provisions on liability for defects under the contract without superseding them. The Client is entitled at any time to assert the rights to which he is entitled on account of the non-granting of the use of the software and the breach of duty in the performance of the services. If he asserts these rights, he may assert the following rights to a greater extent only.

9.2. For the duration of a Priority I fault, the Client shall be exempt from payment of the fee agreed for the provision of the software.

9.3. For the duration of a Priority II or III fault, the Client shall be released from the payment of the fee for the provision of the software in the amount of 80%, unless he can prove that due to the Provider's liability for defects, he is further released from the obligation to pay.

#### **10. Termination**

If three Priority I faults or eight Priority II faults occur within a period of four weeks, the Client may terminate the contract with a notice period of up to eight weeks to be determined by the Client.

#### **11. Remuneration**

No separate remuneration will be charged for the provision of the Services under this SLA. If, however, the Client has reported a fault to the Provider and it turns out after an inspection that the fault did not occur within the Provider's data network, the Provider may charge the Client for the services rendered to detect the fault at the Provider's hourly rates applicable to such services, unless the Client could not have recognised that the fault did not occur within the Provider's data network even if it had exercised due diligence.