



OD > AppNavi



## End User License Agreement – EULA

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## Part I: General Terms and Conditions

### §1 Scope of Application and Licenser

- 1.1 The Licensor provides the (i) temporary transfer (including SaaS) and (ii) support of the Contractual Software to the Customer exclusively on the basis of the terms and conditions of these General License Terms (hereinafter referred to as "EULA"). The "licensor" is the company named in the offer to the customer for the software covered by the contract. If the software covered by the contract is obtained directly from the manufacturer, i.e., from AppNavi, the licenser is AppNavi GmbH, Weihenstephaner Str. 12, 81673 Munich (hereinafter referred to as "AppNavi").
- 1.2 This EULA applies exclusively to companies, legal entities under public law, or special funds under public law within the meaning of Section 310 (1) of the German Civil Code (hereinafter also referred to as "Customer"). The Licensor and the Customer are hereinafter referred to individually as "Party" and collectively as "Parties."
- 1.3 Any terms and conditions of the Customer that conflict with or deviate from this EULA shall not apply (even if the Licensor does not expressly object to them), unless the Licensor has expressly agreed to these terms and conditions of the Customer in writing.
- 1.4 The EULA consists of the General Section, the definitions in Section IV, and the provisions of a Special Section (e.g., license terms for the temporary transfer of software (including SaaS) and contractual terms for software support). The General Terms and Conditions apply to all contractual relationships between the licenser and the customer. The individual contract concluded with the customer regulates which sections of the Special Part of the EULA apply in addition. In the event of conflicting provisions, the following order of priority applies: 1. Provisions from the individual contract, before 2. Provisions from the Special Part of this EULA, before 3. Provisions of the General Part of this EULA and the definitions of terms.

### §2 Offer and conclusion of contract

- 2.1 Unless otherwise stated in writing in the offer, an individual contract shall only come into effect upon written confirmation of the order by the licenser or upon execution of the order by the licenser. Verbal agreements or commitments require written confirmation by the licenser to be effective.
- 2.2 The licenser retains ownership of the offer documents provided to the customer, such as offers and cost estimates.

### §3 Prices, terms of payment, and refunds

- 3.1 All prices are quoted in EURO and are net, plus the statutory sales tax at the applicable statutory rate and any other fees, customs duties, and public charges, with the exception of such taxes, fees, and charges levied on the licenser's income and profits. Shipping and packaging costs will be charged separately.
- 3.2 All claims are due upon invoicing and are payable without deductions within a period of thirty (30) days from the date of the invoice. The deduction of discounts is only permitted with a special written agreement. The customer shall be in default without a separate request for payment after thirty (30) days from the invoice date and receipt of the invoice. The statutory provisions shall apply to the customer's default in payment.
- 3.3 In the case of continuing obligations, the licenser reserves the right to increase the agreed prices accordingly in the event of an increase in its own costs, subject to a notice period of two months. If the price increase exceeds 5% of the original price, the customer is entitled to terminate the contract at the end of the next calendar month after notification of the increase.

- 3.4 A refund of license, implementation, or support fees in the event of the contract continuing (e.g., in the event of a reduction in the number of users or a change in the license type) is excluded.

### §4 Delivery and transfer of risk

- 4.1 The contractual software is made available online for download or primarily online via a SaaS concept at the router output of the data center where the server with the contractual software is located. Even when provided via a SaaS concept, it is necessary for the customer to download a small piece of code (e.g., snippet or browser extension) and implement it in their application or browser. Details are specified in the offer. If the software is only made available online or online for download, the transfer of risk takes place when access is enabled via the Internet or when it is made available for download at the router output of the data center where the server with the contractual software is located and the customer is informed accordingly. The costs for the Internet connection and the costs of any downloads shall be borne by the customer. The licenser is not responsible for the installation, adaptation, or commissioning of software or training in its use, unless the parties have agreed otherwise in writing.
- 4.2 The licenser is entitled to make the product documentation available only online on the Internet or online for download or as a .pdf document by e-mail. The licenser shall provide product documentation for the contractual software in German or English, at its own discretion. The latest version is available at: <https://docs.appnavi.com/docs/getting-started>. The licenser will only make changes to the documentation if this is necessary for technical or economic reasons.

### §5 Delivery time, force majeure, and partial deliveries

- 5.1 Deadlines and dates for deliveries and services shall only be deemed fixed dates if they have been explicitly agreed as such. In the event of delays for which the licenser is not responsible, the dates affected by the delay shall be postponed by the duration of the delay and a reasonable period of time for resumption; other claims of the parties shall remain unaffected by this.
- 5.2 If the licenser is prevented from providing the service in cases of events beyond the licenser's control or for which the licenser is not responsible (hereinafter referred to as "force majeure events"), such as war, natural disasters, labor disputes, pandemics, power failures, or internet outages (in whole or in part), denial-of-service attacks, official orders, or errors in the customer's infrastructure, the licenser shall be released from its delivery and performance obligations for the duration of the disruption and a reasonable period of time for resumption. The licenser shall inform the customer appropriately about the force majeure event, except in the case of errors in the customer's infrastructure. If an end to the force majeure event is not foreseeable or if it lasts for an unreasonably long time, taking into account the agreed delivery or performance dates and the interests of both parties, and if it is therefore unreasonable for one party to adhere to the contract, that party shall be entitled to terminate the individual contract for cause. Further claims by the parties, in particular claims for damages, are excluded.
- 5.3 Reasonable partial deliveries are permissible even without a separate agreement. Each partial delivery shall be considered an independent transaction.

## §6 Place of performance

6.1 The place of performance for all obligations arising from the contractual relationship is the licensor's registered office in Munich, unless otherwise specified.

## §7 Open Source Software

7.1 For open source software, only the license terms of the rights holder underlying this software apply.

7.2 Where relevant, the licensor shall refer to the use of open source software in the product documentation for the software provided.

## §8 Third-party software

8.1 If the software supplied by the licensor also contains third-party software, the customer may only use these programs as part of the overall solution supplied. The customer shall indemnify the licensor against any claims resulting from a breach of this obligation for which the customer is responsible. The licensor is entitled to replace the third-party software with similar products, provided that the functionality remains essentially the same and this is reasonable for the customer.

## §9 Legal defects and third-party property rights

9.1 The Licensor shall only be liable for the infringement of third-party rights by the Software covered by the contract or the services provided if the Software covered by the contract or the services provided are used by the Customer in accordance with the contract, in particular in the contractually specified environment of use. The Customer shall be responsible for providing evidence of use in accordance with the contract.

9.2 If third parties assert claims against the customer in connection with the use of the contractual software or the services provided (e.g., due to copyright infringement, infringement of industrial property rights, or competition law claims), the customer shall inform the licensor thereof without delay.

9.3 The customer shall not acknowledge the alleged infringements of property rights and shall either leave any disputes, including any out-of-court settlements at the licensor's discretion, to the licensor or only conduct them in agreement with the licensor.

9.4 If the software covered by the contract or the services provided by the licensor infringe the rights of third parties, the licensor shall, at its discretion and at its expense

- a) obtain for the customer the right to use the contractual software or services provided, or
- b) redesign the Contractual Software or services provided in such a way that they are essentially in accordance with the contract but no longer infringe the rights of third parties, or
- c) take back the contractual software or services provided, reimbursing the customer for the remuneration paid for them (less reasonable compensation for use), if the licensor cannot achieve any other remedy at reasonable expense.

The interests of the customer shall be taken into account appropriately.

9.5 If the customer is responsible for the infringement of property rights, claims against the licensor are excluded.

9.6 Section 10 of this EULA shall apply accordingly to claims for damages and reimbursement of expenses.

## Section 10 Liability

10.1 The licensor shall be liable to the customer in accordance with the statutory provisions:

- a) for damages caused intentionally or through gross negligence by the licensor or its legal representatives and vicarious agents;
- b) for damages resulting from injury to life, limb, or health for which the licensor, its legal representatives, or vicarious agents are responsible;

c) under the Product Liability Act; and

d) for expressly assumed guarantees and fraudulently concealed defects.

10.2 The licensor shall not be liable for damages caused by slight negligence on the part of the licensor or its legal representatives and vicarious agents, unless an obligation has been breached whose fulfillment is essential for the proper execution of the contract, whose breach would jeopardize the achievement of the purpose of the contract, and on whose compliance the customer could regularly rely. This liability is limited to damage typical for the contract and foreseeable at the time of conclusion of the contract in the case of property damage and financial loss.

10.3 Liability for data loss is limited to the typical restoration costs that would have been incurred if backup copies had been made regularly and in accordance with the risk. The customer is responsible for proper data backup, unless the software covered by the contract is provided via a SaaS concept.

10.4 Claims for damages shall become time-barred after one (1) year. The limitation period shall commence at the time specified in Section 199 (1) of the German Civil Code (BGB). The shortening of the limitation period shall not apply in the cases specified in Section 10.1.

10.5 The above liability provisions shall apply mutatis mutandis to claims for reimbursement of expenses and other liability claims of the customer against the licensor.

10.6 The above provisions shall also apply in favor of the licensor's organs, legal representatives, employees, and other vicarious agents.

## §11 Confidentiality, data protection, and order processing

11.1 Each party is obliged to treat the confidential information of the other party that becomes known in connection with the preparation and execution of the contract as confidential, even after termination of the contract, not to disclose it to third parties and not to use it for purposes unrelated to the contract.

11.2 "Confidential information" is information that a reasonable third party would consider worthy of protection (e.g., software (in source and object code); know-how; processes; algorithms; interfaces; product documentation; offers; cost estimates; price lists; and all product and trade secrets) or that is marked as confidential. This may also include information that becomes known during an oral presentation or discussion.

11.3 The confidentiality obligation shall not apply if the receiving party proves that the information in question (i) was already known to it before the start of the cooperation with the disclosing party, (ii) was lawfully disclosed to the receiving party by a third party, in particular without breach of confidentiality obligations, (iii) the information was generally available without the receiving party being responsible for this general availability, or (iv) the receiving party is required to disclose it due to a mandatory legal or regulatory obligation, but only to the extent that the disclosure of this information is mandatory under law or regulation and the receiving party has, to the extent legally permissible, immediately notified the disclosing party in writing of the respective obligation and has appealed against such disclosure.

11.4 If the licensor collects, processes, or uses personal data on behalf of the customer (e.g., when providing the contractual software by means of a SaaS concept), this shall be done in accordance with the customer's instructions and only after conclusion of a corresponding order processing agreement (in accordance with the appendix "Order Data Processing Agreement"). The customer shall comply with the obligations arising from the applicable data protection law (in particular the information obligations towards the data subjects in accordance with type Articles 13 and 14 GDPR).

11.5 The contracting parties are aware that electronic and unencrypted communication (e.g., by email) is subject to security risks. In the case of this type of communication, they shall therefore not assert any claims based on the lack of encryption, unless encryption has been agreed in advance.

## §12 Audit rights

- 12.1 The customer must notify the licensor in advance and in writing of any use of the contractual software that exceeds the contractually agreed scope of use. This requires a separate contract for the additional scope of use based on the licensor's current price list.
- 12.2 In the case of usage-based billing within the framework of a SaaS concept, AppNavi or the licensor shall independently verify compliance with the agreed scope of use by means of suitable technology in the portal. In the case of a temporary software license in the customer's system environment, the customer is obliged to prove the proper use of the contractual software once a year by means of written confirmation.
- 12.3 If the customer refuses to provide self-disclosure and/or if, in the opinion of the licensor, there is suspicion of a legal violation, the licensor is entitled, after giving at least two weeks' advance notice, to verify compliance with the contractually agreed usage restrictions at the customer's premises or remotely, either by the customer itself or by a third party bound to secrecy. Such an audit shall be carried out during normal business hours and shall not unreasonably interfere with the customer's business operations.
- 12.4 The customer's confidentiality interests and the protection of its business operations from interference shall be taken into account in an appropriate manner. The customer shall co-operate in an appropriate manner in the performance of the audit, in particular by granting the auditor access to its business premises, systems, records, and business processes to the extent necessary for the proper review.
- 12.5 Each party shall bear its own costs of the audit. If the underpaid fees exceed 5% of the contractually agreed license fees, the customer shall bear the reasonable costs of the audit.
- 12.6 If the scope of use exceeds the scope of the rights of use granted, the parties shall conclude a contract for the additional use.
- 12.7 The licensor is also entitled to charge the additional license and support fees retroactively based on the current price list. The assertion of claims for damages and default interest remains unaffected.

## §13 Offsetting and rights of retention

- 13.1 The customer is only entitled to offset and retain due claims if the licensor has expressly agreed to this in writing or if the counterclaims are undisputed or have been legally established.

## §14 Export restrictions

- 14.1 The delivered products and services may contain technologies and software that are subject to the applicable provisions of the Foreign Trade Act of the Federal Republic of Germany and the export control regulations of the United States of America or the countries to which the products are delivered or in which they are used. The customer shall be responsible for complying with the import and export regulations applicable to the deliveries and services, in particular those of the USA. This also applies to access to the contractual software by means of a SaaS concept. The customer shall be responsible for handling any legal or official procedures in connection with cross-border deliveries or services, unless otherwise expressly agreed.

## §15 Termination

15.1 The parties are entitled to terminate the individual contract at any time for good cause. Good cause entitling the licensor to terminate the individual contract extraordinarily shall include, in particular, if the customer (i) fails to meet its payment obligations even after the expiry of a reasonable period of time or (ii) violates the license terms.

## §16 Final provisions

- 16.1 Contract-related information shall be communicated to the customer via the contact details provided by the customer on the portal. The customer is obliged to provide the necessary information on the portal and to update it immediately if necessary. The licensor may only use this contact information for advertising purposes with the express prior consent of the customer or to the extent permitted by law.
- 16.2 The licensor is entitled to name the customer in marketing activities, marketing documents, and other publications, in particular publications with advertising content, and to use the customer's logo and brand for this purpose. The licensor is also entitled to report on key data relating to the conclusion of the contract within the framework of the prescribed mandatory publications.
- 16.3 The licensor is entitled to transfer the contract to other group companies in accordance with Sections 15 et seq. of the German Stock Corporation Act (AktG) without the customer's consent, provided that this transfer is not unreasonable for the customer.
- 16.4 Any assignment or transfer of rights and/or obligations under this contract by the customer requires the prior written consent of the licensor.
- 16.5 The place of jurisdiction for all disputes in connection with this EULA and the individual contracts concluded under it is Munich (Munich Regional Court I). However, the Licensor remains entitled to bring claims against the Customer before another legally competent court.
- 16.6 German law applies. The application of the UN Convention on Contracts for the International Sale of Goods is excluded.
- 16.7 There are no verbal side agreements or promises. Subsequent amendments and additions to the contract, as well as terminations, reminders, and setting of deadlines by the customer, must be made in writing to be effective. This also applies to any waiver of this written form requirement. Email satisfies this written form requirement.
- 16.8 Should any provision of this EULA or an individual contract be or become invalid or unenforceable in whole or in part, this shall not affect the validity of the remaining provisions. The parties shall attempt, in good faith, to replace the invalid or unenforceable clause with a clause that most closely reflects the mutual intent of the parties at the time of conclusion of this EULA.
- 16.8 In the event of contradictions between this English translation and the German version of the of this End User License Agreement, the German version shall prevail.

## Part II: Special Section – License Terms for the Temporary Transfer of Software (including SaaS)

### § 1 Subject matter of the contract

1.1 Insofar as the Licenser grants the Customer temporary use of the copy(ies) of the Software covered by the Contract in the version provided under the Contract, the provisions of this Part II (Special Part – License Terms for Temporary Software Use) shall apply in addition to the General Terms and Conditions in Part I. This also includes the temporary provision of the software covered by the contract within the framework of a 'Software-as-a-Service' concept (hereinafter referred to as 'SaaS concept').

1.2 They do not apply to additional services such as installation, integration, parameterization, and adaptation of the Contractual Software to the customer's needs.

1.3 Unless expressly stipulated in these General Terms and Conditions or in the individual contract, the additional provisions of Part III of the EULA (Special Section – Contract Terms for Software Support) do not apply to the temporary provision of software. However, software support services can be agreed separately (e.g., in the individual contract). Part III of the EULA (Special Section – Contract Terms for Software Support) applies to these software support services, which must be agreed separately in writing.

### § 2 Rights of Use

2.1 The software covered by the contract is protected by copyright.

2.2 The software covered by this agreement is provided to the customer for its intended use for the period agreed in the individual agreement. The scope of the intended use and the type and scope of the rights of use are set out in the individual contract, this EULA, and the product documentation. If no other agreements on rights of use are made in this contract or in the individual contract, the licensor grants the customer a

- non-exclusive (simple),
- non-transferable,
- time-limited and terminable for the term of the individual contract,
- worldwide

The right to use the Contractual Software in the agreed system environment in accordance with this Part II of the EULA (in particular §§ 2.4-2.13) and the product documentation, i.e., in particular to temporarily store and load it, display it, and run it. This also applies if reproductions are necessary for this purpose. If the Software is provided for use as part of a SaaS concept, the Licenser shall provide a code component (e.g., snippet or browser extension) which the Customer must implement in its application or browser. In addition, AppNavi or the licensor shall in this case provide an online portal in which certain customer-generated content (e.g., routes, news, hotspots; hereinafter referred to as "customer content") is stored. AppNavi and the licensor may use subcontractors for this purpose. The implementation of an interface integration with the customer's existing system landscape (via the code part provided when using the SaaS concept) is not covered by the Terms of Use, but requires a separate written agreement between the parties. In the case of the SaaS concept, the customer's access to the contractual software is provided via the code section provided by the licensor, which connects to the AppNavi/licensor portal via the Internet using a browser. In addition to the provision of the code section, the intended use therefore only includes access to this provided system environment. In this case, any reproduction of the contractual software as such on the customer's own systems that goes beyond the intended use of the code part provided or the loading of customer content (in

particular by downloading the contractual software) is expressly prohibited.

2.3 The licensor grants the customer rights of use for new program versions delivered to the customer by the licensor in the same type and to the same extent as those existing for the contractual software delivered or provided within the framework of a SaaS concept. In the case of provision within the framework of a SaaS concept, new program versions shall be provided immediately after the program version has been released by AppNavi. The number and timing of the release of a new program version shall be at the discretion of AppNavi.

2.4 The contractual software, which is limited to a certain number of users, a certain number of uses, or applications, may only be used by the number of users specified in the individual contract or for the specified number of uses or applications.

2.5 Unless otherwise specified, the use of the contractual software is only permitted for the customer's own purposes in their own business operations. In particular, the customer may not use the software for third parties, e.g., in the context of providing services (e.g., by means of individual retrieval, as a service bureau, or other types of services).

2.6 If the individual contractual provision permits use by affiliated companies, the customer shall ensure that the affiliated company complies with the license terms. The customer shall be liable for any fault on the part of employees and representatives of the affiliated companies to the same extent as for its own fault.

2.7 Without the prior written consent of the licensor, the customer is not entitled to make the software covered by the contract or the associated product documentation available to third parties in the original or in copy, or to sublet it to third parties for use or to distribute it. The same applies to access to the software covered by the contract if it is made available by means of a SaaS concept.

2.8 The customer is responsible for taking appropriate technical and organizational measures to prevent any use of the software that is not in accordance with its intended purpose.

2.9 The customer is not entitled to edit or otherwise modify the software without the prior written consent of the licensor. In particular, downloading software provided by means of a SaaS concept that goes beyond the loading of customer content within the scope of the intended use of the contractual software, as well as decompiling the contractual software or reverse engineering, is strictly prohibited. The customer's statutory minimum rights of use pursuant to Sections 69d and 69e of the German Copyright Act (UrhG) remain unaffected. If necessary to establish interoperability, the customer must first request the necessary information from the licensor in writing with reasonable notice before decompiling the contractual software. If the licensor fails to provide the information within the deadline, the customer is entitled to decompile the software in accordance with Section 69e UrhG.

2.10 With the exception of provision by means of a SaaS concept, the customer is entitled to make a copy of the contractual software for backup purposes. The customer must designate the backup copy as such and clearly label it with the company name "AppNavi GmbH" as the rights holder and the name of the software. Reproductions of the Contractual Software for the purpose of software distribution for intended use or proper data backup are part of the intended use.

2.11 If the rights of use are restricted to a hardware or software environment defined in the individual contract, any use deviating from this requires the consent of the licensor. If a hardware or software environment defined in the individual contract is not functional, use in another environment is permitted until it is restored, even without the consent of the licensor. The latter does not apply to provision by means of a SaaS concept.

2.12 The customer undertakes not to convert the software covered by the contract into another code form or to make

changes to the code, unless this is permitted by law. Changes to these code parts that are necessary for the intended use of the code parts provided within the framework of a SaaS concept are still permitted.

2.13 The rights granted in this EULA refer only to the contractual software in object code and—in the case of code parts provided as part of a SaaS concept—in HTML format. The customer is not granted any rights to the source code.

### §3 Transfer fee

3.1 The customer shall pay the transfer fee specified in the individual contract.

3.2 If the customer delays payment of a due fee by more than four (4) weeks, the licensor is entitled, after issuing a prior warning with a deadline and upon expiry of the deadline, to block access to the software covered by the contract. The licensor's claim to remuneration remains unaffected by the blocking. Access to the software covered by the contract will be reactivated immediately after the arrears have been paid. The right to block access also exists as a less severe measure if the licensor has a right to extraordinary termination in accordance with § 5.2 of this Part II of the EULA.

3.3 The licensor has the following right to adjust prices: The remuneration may be increased at the earliest twelve (12) months after the conclusion of the individual contract. Further increases may be requested at the earliest after twelve (12) months have elapsed. An increase must be announced to the customer and shall take effect at the earliest three (3) months after receipt of the notification. A prerequisite for effectiveness is that the licensor provides for the remuneration as a general list price and also obtains it from other customers. If the conditions for an increase in remuneration are met, the customer has the right, within the notice period, to terminate the contract for the contractual software affected by the increase at the earliest at the time the new prices come into effect, provided that the increase exceeds 5% of the last valid prices.

### §4 Rights in case of defects

4.1 During the term of the contract, the licensor shall maintain the contractual software in a condition suitable for contractual use, i.e., ensure the usability of the contractual software in accordance with the product documentation and any additional specifications that may exist.

4.2 Only statements made in the product documentation and any additional specifications shall be deemed to describe the quality of the contractual software. Any public statements, promotions, and advertisements in flyers, presentations, or websites, for example, that deviate from or go beyond this shall not constitute a contractual description of quality. The customer must ascertain the suitability of the software for their specific purposes on the basis of information provided by the licensor.

4.3 The customer must report defects in the contractual software immediately after becoming aware of them in writing (if possible using the fault report form provided by the licensor) or via the hotline offered by the licensor, providing all information known to them that is useful for identifying the defect. Reported defects must be described in a comprehensible manner.

4.4 Claims for defects by the customer are excluded if the defect cannot be reproduced or proven. Likewise, the licensor's strict liability for initial defects pursuant to § 536a (1) BGB is excluded.

4.5 In the event of defects in the contractual software that significantly impair or reduce its suitability for the usual or contractually agreed purpose, the licensor shall, at its discretion, be obliged to restore the contractual condition within a reasonable period of time by repair or replacement. At the licensor's discretion, rectification may also take the form of delivery of a workaround solution with equivalent functionality or

a program designed to remedy the defect (e.g., a fix or service pack). If the contractual software is provided via a SaaS concept, rectification may take the form of provision of such an equivalent workaround solution in the cloud. The licensor may also offer a new software version (e.g., product release or product version) (or, in the case of software provided via a SaaS concept, install it), provided that this restores the contractual condition. The licensor is entitled to at least two attempts at subsequent performance. The delivery or installation of workarounds, programs for error correction, or new program versions shall be deemed to restore the contractual condition and shall be accepted by the customer, provided that the scope of functions remains essentially unchanged and acceptance is reasonable for the customer.

4.6 Claims for defects shall not exist in the case of only insignificant deviations from the agreed quality, in the case of only insignificant impairment of usability, or as a result of defects caused by external influences or influences not provided for in the contract and other influences beyond the Licensor's control, e.g. - outside the use of the contractual software by means of a SaaS concept - use of the contractual software in a non-recommended system environment or on a non-recommended platform according to the product documentation. Liability for defects shall not apply if the customer modifies the Contractual Software or has it modified by third parties without the Licensor's consent, unless the customer can prove that the defects in question were not caused by this modification and that the modification does not make it impossible or unreasonably difficult to remedy the defects. The provision in the preceding sentence shall also apply in the event of a connection with third-party hardware and/or software not authorized by AppNavi, as well as in the event of non-contractual and/or improper use of the contractual software.

4.7 If the licensor provides services for troubleshooting or rectifying defects without being obliged to do so, the licensor shall be entitled to demand remuneration in accordance with the licensor's current hourly rates. The licensor shall also be compensated for any additional expenses incurred as a result of the customer's failure to properly fulfill its obligations to cooperate.

4.8 A reduction by the customer is only possible in the case of undisputed or legally established claims. The customer reserves the right to reclaim overpaid amounts on the basis of the principles of unjust enrichment.

4.9 In the event of defects in the standard software from other manufacturers supplied by the licensor which the licensor cannot remedy for licensing or factual reasons, the licensor shall, at the customer's discretion, assert the customer's claims for defects against the manufacturers or suppliers of the standard software on behalf of the customer or assign them to the customer. If the claims against the third party are not enforceable, the customer's claims for defects against the licensor as regulated in this EULA shall remain in force.

4.10 The customer is responsible for providing the licensor with appropriate support in remedying defects, in particular by providing the necessary information, cooperating to the best of their ability in analyzing the error, and immediately performing any other necessary cooperative actions (e.g., if necessary, granting access to the affected IT infrastructure or performing the installations in accordance with Section 4.11).

4.11 If a program (e.g., workaround, fix, service pack, or product release) must be installed to remedy the defect and the software is not provided via a SaaS concept, the licensor shall transmit this to the customer on a suitable data carrier or make it available to the customer for download online and inform the customer that the program is available for download. The customer shall install such programs independently. Any necessary test runs shall be carried out independently by the customer's technically competent employees. If the licensor deems it necessary, the customer shall allow one or

more of the licensor's employees to be present during the test runs. If necessary, other work on the customer's IT system shall be suspended during the maintenance and servicing work.

4.12 If teleservice has been agreed, the customer shall provide the necessary technical equipment at the customer's premises and enable access to the system in accordance with the provisions of a teleservice agreement.

4.13 The customer shall designate a central contact person for the licensor who shall contact the licensor in the event of defects and who may make binding statements and decisions on behalf of the customer.

4.14 If the customer fails to fulfill its necessary obligations to cooperate, or fails to do so in a timely manner and/or to a sufficient extent, the licensor shall be released from its obligation to remedy the specific defect.

4.15 The liability provision in Section 10 of the General Part of the EULA shall apply to claims for damages or reimbursement of expenses by the customer.

4.16 Claims for damages and reimbursement of expenses shall become time-barred after one (1) year. The limitation period shall commence at the time when the Licensor has fully fulfilled its delivery obligations or, in the case of provision by means of a SaaS concept, has enabled the Customer to access the Software covered by the Agreement. The reduction of the limitation period shall not apply in the cases specified in Section 10.1 of the General Part of the EULA.

4.17 The licensor is not liable for errors in open source software. Claims for defects relating to the open source software used are excluded against the licensor.

**§ 5 Contract term, termination, effect of termination, and deletion**

5.1 The duration of the transfer of the contractual software is specified in the individual contract. If no date for the end of the transfer period is agreed in the individual contract, the transfer of the contractual software in question may be terminated with three (3) months' notice to the end of a calendar month, but at the earliest at the end of a minimum contract period agreed in the individual contract. A different notice period may be agreed in the individual contract. This clause applies accordingly to the provision of the contractual software by means of a SaaS concept.

5.2 The parties are entitled to terminate the individual contract during the rental period for good cause. Good cause entitling the licensor to terminate the contract shall include, in particular, if the customer (i) fails to meet its payment obligations after a reasonable period of time, (ii) violates the license terms, or (iii) does not use the software for more than twelve (12) months in the case of usage-based billing. The customer's right of termination pursuant to Section 543 (2) No. 1 of the German Civil Code (BGB) is only permissible in the event of significant defects and only if significant defects cannot be remedied despite the setting of a deadline and a corresponding warning or if the remedy of defects is to be regarded as having failed. The licensor is entitled to two attempts at remedy. In the cases of Section 543 (3) sentence 2 No. 1 and No. 2 BGB, it is not necessary to set a deadline and issue a warning or to grant a remedy. In addition, the Licensor may terminate the individual contract for use by way of a SaaS concept for good cause if (iv) the contractual relationship between AppNavi or the Licensor and one of its essential subcontractors (e.g., for the provision of the portal or hosting) is terminated prematurely or (v) the Customer jeopardizes the security or stability of the SaaS system environment. In the latter case, AppNavi and the licensor are also entitled to temporarily block the customer's access until the threat has been eliminated.

5.3 Upon termination of the individual contract for the temporary transfer of the Contractual Software (e.g., upon expiry of the rental period), the customer must immediately cease using the Contractual Software and destroy all copies of the Contractual Software or, at the licensor's request - hand over all

copies of the Contractual Software and the documentation to the Licensor. This does not apply to any copies of the Contractual Software that were made as part of proper data backup. In addition, unless the software was provided via a SaaS concept, the customer is entitled to retain and use one copy exclusively for testing and archiving purposes, unless otherwise agreed. In such cases, the software must be returned or destroyed at the end of this period. Upon request, the customer shall provide the licensor with written assurance that it has complied with the obligations of this section.

5.4 If the Contractual Software is provided via a SaaS concept and the existing contractual relationship with the customer ends (i.e., it is neither extended nor replaced by another paid or free contractual relationship with the Licensor for the use of the Contractual Software via a SaaS concept), the Licensor may continue to store the data stored by the customer in the tenant of the Contractual Software (e.g., routes, pins, insights data) for up to three (3) months after the end of the contract, provided that the customer does not expressly request the earlier deletion of the data in writing (email is sufficient). Within this period, the customer has the option of resuming the contractual relationship or replacing it with a new contractual relationship without having to recreate this data. Otherwise, after this period, the data will be irretrievably deleted automatically, provided that there are no legal retention obligations.

5.5 During the term of the contract, different retention periods apply to different types of data. Detailed information on this can be found in the product documentation.

5.6 Other legal provisions remain unaffected.

**§ 6 Place of performance**

6.1 Unless otherwise agreed, the place of performance shall be the customer's premises. If the software is provided via a SaaS concept, the place of performance shall be the registered office of the respective service provider used by the licensor, where the contractual software is operated. The licensor is entitled to store the contractual software and the customer's data in a backup system or separate data center for failover protection.

**§ 7 Customer obligations to protect the software and access data**

7.1 The customer is obliged to prevent unauthorized access by third parties to the contractual software or other license material by taking appropriate precautions. The original data carriers supplied and the backup copy must be stored in a location that is secure against unauthorized access by third parties. Before destroying, selling, or otherwise passing on machine-readable recording media, data storage devices, or data processing equipment, the information stored therein (in particular the contractual software or access data to the licensor's portal) must be completely deleted.

7.2 When using a SaaS concept, the customer will receive an email with temporary access data upon initial registration, which they can use to temporarily log in to the licensor portal. The customer must log in immediately and change the temporary access data to access data of their own choosing. The access data (in particular the user name and password) must be treated as strictly confidential. They must be kept secret from third parties. If the customer suspects that third parties have gained access to their access data, they shall change it immediately and inform the licensor of their suspicion. The customer shall take the necessary measures to prevent unauthorized use of their access to the licensor portal.

**§ 8 Terms of use and adjustments to the software covered by the contract in the SaaS concept and the license terms for the temporary transfer of software (including SaaS)**

8.1 If the software covered by the contract is provided via a SaaS concept, proper use requires the customer to

download a small piece of code (e.g., snippet or browser extension) and implement it in their application or browser. When creating customer content, it may happen that this content is initially only recorded locally and is only transferred to the licensor's portal when the customer saves this customer content. Both for creating and retrieving customer content, the customer must provide an Internet connection to the licensor's portal at their own expense.

- 8.2 If the Software covered by the Agreement is provided by means of a SaaS concept, the Licensor reserves the right to adapt the Software covered by the Agreement at any time, even within an existing individual agreement, to changed technical conditions or with regard to further developments or technical progress. The Licensor shall inform the Customer prior to the planned effective date of the changes (e.g., by posting a message on the Licensor Portal) if the adaptation affects the usability of previously generated Customer Content or if, for example, it results in adaptation costs on the part of the Customer (e.g., for the code section implemented in the application).
- 8.3 The Licensor is entitled to make adjustments to the license terms for the temporary transfer of software (including SaaS). If these changes affect the contractual relationship, the Licensor shall generally inform the Customer with a lead time of not less than six (6) weeks before the planned effective date of the changes (e.g., via messages on the Licensor's portal). The notification will also contain information about the customer's right to reject the changes and the resulting consequences. In the event of rejection, the licensor is entitled to terminate the usage agreement with the customer at the time the change takes effect.

## §9 Use of the Contractual Software only as a digital adoption solution; indemnification against third-party claims regarding customer data in the SaaS concept; improvement of the Contractual Software

- 9.1 When providing the software as part of the SaaS concept, the licensor, as a technical service provider, stores content and data for the customer that the customer enters when using the software covered by the contract. The customer undertakes to the licensor not to post any content or data that is criminal or otherwise illegal in absolute terms or in relation to individual third parties, and not to use any programs containing viruses or other malware in connection with the contractual software. Only content and data that is necessary for the purpose of the contractual software as a digital adoption solution may be stored. The customer remains responsible for personal data and must therefore always check whether the processing of such data via the use of the contractual software is covered by the relevant permissions.
- 9.2 The customer is solely responsible for all content used and data processed by them, as well as for any legal positions that may be required for this purpose. The licensor takes no notice of the customer's content and does not check the content used by the customer with the contractual software.
- 9.3 In this context, the customer undertakes to indemnify the licensor against any liability and any costs, including possible and actual costs of legal proceedings, if the licensor is held liable by third parties, including the customer's employees personally, as a result of alleged actions or omissions on the part of the customer. This does not apply if the customer is not at fault. The licensor shall inform the customer of the claim and, to the extent legally possible, give the customer the opportunity to defend against the claim. At the same time, the customer shall immediately provide the licensor with all information available to them regarding the facts of the case that is the subject of the claim.
- 9.4 Any further claims for damages by the licensor shall remain unaffected.
- 9.5 Even though the Licensor does not generally check the content used by the Customer with the Contractual Software in

accordance with Section 9.2, the Licensor reserves the right to analyze the type of use of the Contractual Software by the Customer in order to improve and expand the Contractual Software and the Licensor's product range. The Licensor will not process any personal data of the Customer for this purpose and will only use the results of the analyses in aggregated form, so that the confidentiality obligation under Section 11 of Part I is maintained.

## Part III: Special Section – Contract Terms for Software Support

### § 1 Subject matter of the contract

- 1.1 Insofar as the Licensor provides software support services, the provisions of this Part III (Special Part – Contractual Terms and Conditions for Software Support) shall apply in addition to the General Terms and Conditions in Part I. The subject matter is the support services agreed in this Part III to be provided by the Licensor for the Contractual Software produced by AppNavi, unless otherwise agreed in the individual contract. The software support services do not relate to any open source software or any software from third-party manufacturers that may be used.
- 1.2 Unless expressly agreed otherwise in the individual contract, the licensor shall provide its support services on a service contract basis and in accordance with the state of the art recognized at the time of service provision.
- 1.3 Support of the software is limited exclusively to the current, approved product release (program status). The licensor shall inform the customer of the release of a new product release with reasonable advance notice. The end of the support obligation for the previous product release shall be bindingly determined at the same time as the announcement of the new product release by the licensor. During this transition period between the release of a new product release and the end of the support obligation for the previous product release, the support obligation for the previous release shall be limited to bug fixes. The development of new functionalities or support for new third-party system releases for the previous product release shall not be provided.
- 1.4 The licensor's support obligation requires that the respective program be installed on a platform that is approved by AppNavi and that is still being maintained by the platform manufacturer at the time the licensor is notified of the malfunction within the general maintenance period for this platform. Individual support agreements between the platform manufacturer and the customer that extend beyond the general maintenance period shall not be taken into account. The obligation to provide support shall not apply if the customer or a third party has made changes to the contractual software that have not been previously approved by AppNavi.
- 1.5 Services not covered by the software support agreement are all services beyond those listed in the individual contract and under 2.1-2.3, e.g.:
  - 1st and 2nd level support
  - 24-hour hotline beyond the agreed service hours (including contact persons at any time of the day or night)
  - Support for the customer during installation of the software covered by the contract,
  - Support of customer-specific adaptations,
  - Training,
  - Individual adaptation of the contractual software to new customer requirements,
  - new modules for the Contractual Software that the Licensor distributes after transferring the Contractual Software,
  - Data conversion from old to new data versions and conversion to other formats,
  - Creation of routes and other customer content in the Contractual Software
  - Migration of routes and other customer content, and
  - On-site support at the customer's premises.Services not covered by this Part III require a separate (paid) agreement between the parties.

### § 2 Type and scope of support services

#### 2.1 Provision of new program versions

- 2.1.1 If the provision of new program versions has been agreed, this shall take place immediately after the program version has been released by AppNavi. Unless otherwise agreed, this

obligation applies to all new program versions. The number and timing of the release of a new program version are at the discretion of AppNavi.

- 2.1.2 The licensor shall always grant the customer the rights to new program versions that exist for the previous version of the contractual software or the previous program version.
- 2.1.3 However, parallel use of new and old program versions is only permitted to the extent that this does not result in the agreed usage rights being exceeded overall. If the licensor is obliged to provide a new program version, this obligation is fulfilled upon provision even if the customer does not use the new program version.
- 2.1.4 The customer is entitled to make a copy of new program versions for backup purposes.

#### 2.2 Troubleshooting

If troubleshooting has been agreed, the licensor shall take the necessary measures. At the customer's request, the licensor shall provide information on this at appropriate intervals. Within the scope of the obligation to provide a workaround, the customer cannot generally demand intervention in the object or source code of the software covered by the contract.

In principle, the obligation to remedy faults presupposes that the fault is reproducible or can be demonstrated on the basis of handwritten or machine-recorded outputs.

- 2.2.1 Unless otherwise agreed, the customer shall accept a new program version if it serves to remedy malfunctions. The customer is not obliged to accept a new program version if this cannot reasonably be expected of them because the new program version deviates significantly from the agreed version.

If the customer does not accept a new program version for this reason, the licensor will propose another solution at the customer's request, provided that this is possible and reasonable.

In the case of software licensing via a SaaS concept, the new program version will be automatically adopted by the licensor or AppNavi. The customer will then have no right to choose.

- 2.2.2 If the customer has caused a malfunction intentionally or through gross negligence and a flat-rate fee for support has been agreed, the licensor may demand reasonable compensation from the customer for rectifying the malfunction.

- 2.2.3 In the event of demonstrably unfounded reports of malfunctions, which are attributable, for example, to an operating error on the part of the customer, or in the event of the licensor's intervention due to a malfunction or for a service that is excluded under this Part III of the EULA, the licensor shall be entitled to additionally invoice the customer for the services at the licensor's current hourly rates.

#### 2.3 Hotline

- 2.3.1 If the provision of a hotline is agreed in the individual contract and there are no deviating provisions in the individual contract, the licensor shall accept telephone fault reports via this hotline, provided that fault rectification has been agreed and, if agreed, questions regarding the use of the software covered by the contract. The Licensor shall, as far as possible and reasonable for the Licensor, remedy the reported fault during the telephone call by providing instructions over the telephone or, if agreed, by means of teleservice (or, in the case of software provision by means of a SaaS concept, by accessing the AppNavi/Licensor portal). and, if agreed, answer questions regarding the use of the Software covered by the Agreement. If this is not successful within a reasonable time, the Licensor is obliged to

- clarify the questions regarding use by other means and provide the answers by telephone or email, or
- forward the fault report to its support organization for troubleshooting. If no troubleshooting has been agreed in accordance with § 2.2, the Licensor shall submit an offer to

the Customer for troubleshooting on the basis of the agreed remuneration or, if no such remuneration has been agreed, on reasonable terms.

- 2.3.2 The Licensor shall only use personnel for the hotline who are qualified to record and initially clarify the fault report. Unless otherwise agreed, the hotline shall be staffed in German or English, depending on availability.
- 2.3.3 Unless otherwise agreed, the use of automated voice response systems (IVR) is permitted. Outside of service hours or in the event of increased service volume on the hotline that exceeds the number of available hotline staff, the licensor is entitled to initially record fault reports using an answering machine.
- 2.3.4 Each party shall bear its own telecommunications costs.

## §3 Fault classification

- 3.1 Unless otherwise agreed in the individual contract, a distinction shall be made between the following three fault classes:
  - 3.1.1 A malfunction that prevents operation exists if the use of the contractual software is impossible or severely restricted.
  - 3.1.2 A malfunction that impedes operation exists if the use of the contractual software is significantly restricted.
  - 3.1.3 A minor malfunction exists if the use of the contractual software is possible without restrictions or with insignificant restrictions.

## §4 Service and response times

- 4.1 If no service times have been agreed, the service times shall be Monday to Thursday from 9:00 a.m. to 5:00 p.m. and Friday from 9:00 a.m. to 4:00 p.m. (with the exception of public holidays at AppNavi's registered office).
- 4.2 If no response times have been agreed, support services shall commence immediately after receipt of the relevant notification or occurrence of the agreed event within the agreed service hours.
- 4.3 In the case of support services based on a contract for work and services, a declaration of restoration, e.g., a declaration of operational readiness in the case of the elimination of a malfunction, is sufficient to meet the deadline if the work is completed successfully and on time.

## §5 Licensor's personnel; subcontractors

- 5.1 The licensor shall provide the service through sufficiently qualified personnel. Unless otherwise agreed, communication with the customer shall take place in German or English, depending on availability.

- 5. The Licensor may use subcontractors to provide the services.

## §6 Remuneration

- 6.1 The customer shall pay the software support fee agreed in the individual contract annually in advance. Unless otherwise agreed, remuneration for support services charged on a time and material basis shall be payable monthly in arrears. The licensor may refuse to perform the contractual services if and for as long as the customer is in arrears with the payment of the software support fee.
- 6.2 If the customer has allowed the support agreement to expire and wishes to resume support at a later date, the licensor shall be entitled to resume support only if the customer pays a fee corresponding to the remuneration that would have been due for uninterrupted support services. The licensor is also entitled to resume support only on condition that the customer purchases a chargeable hardware or software update, if this is necessary for the resumption of support.
- 6.3 If remuneration based on time and effort is agreed in the individual contract for a support service, the following applies:
  - 6.3.1 Unless otherwise agreed, remuneration based on time spent is the fee for the time spent. Travel time, travel expenses, and incidental expenses shall be reimbursed separately based on actual costs. Waiting times for the licensor for which the customer is responsible shall be remunerated as working hours.

However, the licensor must accept a deduction for any savings made by the licensor as a result of not providing its services or for any income earned or maliciously omitted to be earned through other use of its services. Payment of remuneration based on expenditure requires proof of the services and other costs claimed, signed by the licensor.

- 6.3.2 Unless otherwise agreed, in the case of remuneration based on actual expenditure, the licensor must submit a cost estimate within a reasonable period of time on the basis of the prices agreed in the individual contract. The type and scope of the services as well as the planned execution deadlines must also be specified. If the preparation of the cost estimate requires more than insignificant expenditure, this shall be remunerated separately. The customer shall accept or reject the offer without delay.
- 6.3.3 Unless otherwise agreed, no more than one daily rate per employee shall be remunerated per calendar day. An agreed daily rate can only be invoiced if at least eight hours of work have been performed. If less than eight hours per day are performed, these shall be invoiced on a pro rata basis. If an hourly rate has been agreed, hours commenced shall be remunerated on a pro rata basis.
- 6.4 Unless otherwise specified, the licensor shall have the following right to adjust prices: An increase in remuneration may be announced for the first time 12 months after the start of service provision under the individual contract, with further increases announced at the earliest 12 months after the previous increase takes effect. An increase shall take effect three months after the announcement. The increase must be reasonable and not contrary to the market trend relevant to the service and may not exceed 5% of the remuneration applicable at the time of the announcement of the increase.

## §7 Cooperation of the customer

- 7.1 The customer shall ensure that they fulfill all obligations to cooperate necessary for the care services in a timely manner and free of charge.
- 7.2 The customer is obliged to cooperate to the best of their ability in the error analysis.
- 7.3 The customer shall set up an appropriately trained (i) 1st level support team to receive fault reports, perform initial analysis, independently answer simple queries regarding the contractual software, and forward more complex queries to a 2nd level support team, and (ii) 2nd level support (especially in the areas of ticket processing, integration, customizing, content creation, testing, go-live, and author training), which independently answers inquiries forwarded by 1st level support from the customer's employees regarding the contractual software and prepares and forwards inquiries regarding more complicated product malfunctions to 3rd level support by the licensor. The customer may also have second-level support provided by a third party (e.g., an implementation partner of the licensor).
- 7.4 If a program (e.g., workaround, fix, service pack, or product release) must be installed to remedy a defect, the Licensor shall make it available to the Customer for download online and inform the Customer that the program is available for download. The customer must install such programs independently. The customer is obliged to install the software provided, unless this is unreasonable for the customer. Any necessary test runs shall be carried out independently by the customer's technically competent employees. If the licensor deems it necessary, the customer shall allow one or more employees of the licensor to be present during the test runs. If necessary, other work with the customer's IT system shall be suspended during the support and servicing work.
- 7.5 The customer shall provide the licensor with the necessary information and documents from its sphere in a timely manner. This also includes allowing the licensor access to the customer's AppNavi/licensor portal if necessary. If on-site services have been agreed, the customer shall grant the licensor's

employees access to its premises and the information technology infrastructure available there in good time and shall hand over the documentation available at its premises in good time, in each case to the extent necessary for the performance of the service and provided that the statutory and agreed personal requirements (e.g., security checks in accordance with the Security Check Act (SÜG)) are met. If the customer fails to cooperate despite being requested to do so by the licensor, or does so late or incompletely, the licensor may submit an offer to provide these services itself in place of the customer. Other claims of the licensor remain unaffected.

7.6 The customer must report malfunctions or defects, providing the information known to them and useful for their identification. Unless another form of fault reporting has been agreed, the customer shall generally report faults via the hotline or on a fault report form provided by the licensor. The customer shall take reasonable measures to enable the fault or defect to be identified and analyzed, e.g., by providing the technical information available to them in a timely manner.

7.7 If teleservice has been agreed, the customer shall provide the necessary technical equipment at the customer's premises and enable access to the system in accordance with the provisions of a teleservice agreement.

7.8 The customer shall designate a central contact person for the licensor who shall contact the licensor in the event of malfunctions and who may make binding statements and decisions on behalf of the customer. Users shall not have direct contact with the licensor. Malfunctions shall be reported via the customer's 2nd level support.

7.9 Cooperation obligations are essential obligations of the customer. If the customer does not fulfill its cooperation obligations or does not fulfill them on time and/or to a sufficient extent, the licensor shall be released from its obligation to provide the specifically requested support service.

## §8 Rights in case of defects

8.1 The liability provision in § 10 of the General Section of the EULA applies to claims for damages or reimbursement of expenses by the customer.

8.2 Claims for defects due to deficiencies in the support service shall become time-barred after one (1) year, unless the licensor has fraudulently concealed the defect. The limitation period shall commence at the point in time at which the licensor has fully fulfilled its respective performance obligations. The shortening of the limitation period shall not apply in the cases specified in § 10.1 of the General Part of the EULA.

8.3 If the licensor provides services for troubleshooting or rectifying defects without being obliged to do so, the licensor is entitled to demand remuneration in accordance with the licensor's current hourly rates. The licensor shall also be compensated for any additional expenses incurred as a result of the customer's failure to properly fulfill its obligations to cooperate.

8.4 Liability for defects shall not apply if the customer modifies the contractual software or has it modified by third parties without the licensor's consent, unless the customer can prove that the defects in question were not caused by this modification and that the modification does not make it impossible or unreasonably difficult to remedy the defects. The provision in the preceding sentence shall also apply in the event of a connection with third-party hardware and/or software not authorized by AppNavi, as well as in the event of non-contractual and/or improper use of the contractual software.

8.5 If support services are provided on a contract for work basis and in the case of the delivery of new program versions within the scope of support, the following shall also apply:

8.5.1 In the event of defects in the support services provided under the contract for work or in new program versions that render them unsuitable or less suitable for their normal or contractually agreed purpose, the licensor shall, at its discretion, be

obliged to remedy the defect within a reasonable period of time by repair or replacement. At the licensor's discretion, rectification may also take the form of delivery of a work-around solution with equivalent functionality or a program designed to remedy the defect (e.g., fix or service pack). The licensor may also offer a new software version (e.g., product release or product version) if this remedies the defect. The delivery of workarounds, programs for error correction, or new program versions shall be deemed supplementary performance and shall be accepted by the customer, provided that the scope of functionality remains essentially unchanged and acceptance is reasonable for the customer. The licensor shall be permitted to make at least two attempts at rectification. If the rectification fails, the customer may, at its discretion, reduce the support fee or withdraw from the contract. Withdrawal due to an insignificant defect is excluded.

The customer shall also be entitled to these rights if the licensor seriously refuses to remedy the defects or if it is unreasonable for the customer to expect the defects to be remedied.

8.5.2 Claims for defects shall not exist in the case of only insignificant deviations from the agreed quality, in the case of only insignificant impairment of usability, or as a result of defects caused by external influences or influences not provided for in the contract and other influences beyond the licensor's control, e.g. use of the contractual software in a non-recommended system environment or on a non-recommended platform according to the product documentation.

8.5.3 Substitute performance is excluded.

8.5.4 It is the customer's responsibility to provide the licensor with appropriate support in remedying defects, in particular to provide the necessary information and to take the necessary cooperative actions without delay.

## §9 Term and termination

9.1 If no end date for the respective term is agreed in the individual contract, it may be terminated in whole or in part with six (6) months' notice to the end of a calendar month, but at the earliest at the end of a minimum contract term agreed in the individual contract. A different notice period may be agreed in the individual contract.

9.2 The right of both parties to terminate the contract for good cause remains unaffected.

## Part IV: Definitions

### **Operating platforms (third-party platforms)**

Operating platforms are defined as the underlying execution environments of a product. Such operating platforms can be computer operating systems as well as application servers and runtime environments. To determine the respective operating platform, please refer to the individual section of the product documentation in which the installation requirements are described.

### **Data backup (proper)**

Data backup includes all technical and/or organizational measures to ensure the availability, integrity, and consistency of systems, including the data, programs, and procedures stored on these systems and used for processing purposes. Proper data backup means that, depending on the sensitivity of the data, the measures taken enable immediate or short-term restoration of the state of systems, data, programs, or procedures after a detected impairment of availability, integrity, or consistency due to a damaging event. The measures include at least the creation and testing of the reconstructability of copies of the software, data, and procedures in defined cycles and generations.

### **Data loss**

Loss (deletion) or loss of integrity and consistency of data.

### **Third-party software**

Software programs/products that are produced by other companies and supplied by the licensor are referred to as third-party software/third-party products.

### **Individual contract**

An individual contract refers to a contract between the licensor and the customer regarding licenses, support, or services or work.

### **Fix**

A fix refers to the updating of a product release to correct one or more errors. A fix does not usually contain any functional enhancements or changes to the product release. However, it is not possible to completely rule out functional enhancements or changes to product functions via fixes.

### **Incidental expenses**

Expenses incurred by the licensor that are necessary for the provision of services and are not travel expenses.

### **Open source software**

Open source software within the meaning of these EULAs refers to open source software components from third-party manufacturers that may be copied, distributed, used, modified, and distributed in modified form in compliance with the respective terms of the open source license.

### **Parameterization**

The individual adaptation of software, usually standard software, to user requirements by adjusting the attributes within the software.

### **Patch**

Temporary correction of a defect and/or malfunction in the standard software without interfering with the source code.

### **Fixed flat rate**

A total remuneration that cannot be changed unilaterally and is owed for the support service, unless a separate, possibly flat-rate remuneration has been agreed for individual services. Material costs, travel times, travel expenses, and incidental costs are included in the fixed flat rate.

### **Product release**

A product release refers to a fully installable version/edition of a product. A release contains both functional enhancements and bug fixes compared to its predecessor release. Releases follow the notation product name x.y, where x stands for the major release version and y stands for the minor release version. The decision as to whether a release change is executed as a minor release change (x.y.+1) or a major release change (x+1.1) is determined individually and subjectively by AppNavi depending on the degree of change. Within the scope of the EULA, no distinction is made between the two cases, i.e., a minor or major release change is treated equally.

### **Product generation**

The introduction of a new product generation legally and functionally represents the introduction of a new, independent product that is only thematically (in terms of the task, e.g., "user provisioning" or "role modeling") related to its predecessor generation. The delivery and support of a new product generation requires the conclusion of a new contract. Existing license or support agreements for a previous generation do not entitle the customer to the delivery or support of a new product generation.

### **Program status**

Generic term for patch, update, upgrade, and new release/version.

### **Source code**

Code of a program in the version of the programming language.

### **Response time**

Period within which the licensor must begin to remedy the fault. The period begins upon receipt of the corresponding notification within the agreed service hours and runs exclusively during the agreed service hours. If a notification is received outside the agreed service hours, the response time begins at the start of the next service hour.

### **Release/version**

New development stage of standard software that differs significantly from the previous release or version in terms of functionality and/or data spectrum (e.g., change in version number from version 1.3.5 to 2.0.0).

### **Remote access**

Remote access refers to the ability to access the contractual software directly from a remote location and, if necessary for troubleshooting, the customer's IT systems. The purpose of this access is to perform software support/error analysis activities. Remote access is a type of teleservice.

### **Reverse engineering**

A procedure for extracting the source code from existing software by decompiling or analyzing its structures, states, and behaviors.

### **SaaS (Software-as-a-Service)**

Provision of the contractual software on servers operated for or by AppNavi or the licensor, without a copy of the contractual software being provided to the customer.

### **Software installation (installation)**

Making software executable on specific hardware according to an agreed procedure.

### **Software integration (integration)**

The coupling of different software systems (standard software or custom software) into an overall system by actively, process-oriented, and automated exchange of data and information between the previously separate software systems.

### **Service time**

Periods during which the customer is entitled to contractually owed services from the licensor.

**Standard software**

Software programs, program modules, tools, etc., which were developed for the needs of a majority of customers on the market and not specifically by the licensor for the customer, including the associated documentation.

**Disruption**

Impairment of the suitability of the contractual software or support service for the contractually agreed use or, in the absence of such an agreement, for the intended or otherwise customary use.

**System environment**

Technical and administrative operating environment of a system specified in the individual contract for which AppNavi has released the contractual software.

**Teleservice**

Services using technical equipment for remote communication from a location outside the place of use of the IT system.

**Ticket system**

A ticket system (also known as a trouble ticket system) is an IT system that can be used to receive, classify, and confirm messages and inquiries, process them with the aim of responding or solving the problem, and monitor and track their progress. The ticket system confirms receipt of the message by repeating its content.

**Workaround**

Temporary bridging of a defect and/or malfunction.

**Update**

Bundling of several defect corrections and/or malfunction fixes as well as minor functional improvements and/or adjustments to the contractual software in a single delivery (e.g., change of version number from version 2.2.2 to 2.2.3).

**Upgrade**

Bundling of several defect corrections and/or malfunction fixes and more than minor functional improvements and/or adjustments to the contractual software in a single delivery (e.g., change of version number from version 2.1.7 to 2.2.0).

**Value Pack/Service Pack**

A Value Pack/Service Pack is an update to a product release. Value Packs/Service Packs do not have a full installation routine for the underlying product release. Instead, they are additive extensions to the product release in question. They contain both functional enhancements and bug fixes. The current Value Pack/Service Pack represents the highest/current fix level of the product.

**Contractual Software**

Contractual software is the software specified in the respective individual contract.

**Recovery time**

Period within which the licensor must successfully complete the troubleshooting. The period begins with the receipt of the corresponding notification within the agreed service hours and runs exclusively during the agreed service hours. If a notification is received outside the agreed service hours, the recovery time begins at the start of the next service hour.

## Appendix: Data Processing Agreement (DPA)

### Preamble

The customer named in the order, as the controller (hereinafter referred to as the "Controller"), commissions the licensor, as the processor (hereinafter referred to as the "Processor"), to provide the IT services described in detail in the order (hereinafter referred to as the "IT Services") on the basis of a service contract. The IT services are specified in more detail in Part I (General Section) and, depending on the service commissioned, in Part II (Special Section – License Terms for the Temporary Provision of Software (including SaaS)) and/or Part III (Special Section – Contract Terms for Software Support). The parties therefore agree as follows:

### §1 Order processing

- 1.1 The subject matter of this DPA is order processing in accordance with type 28 GDPR. The controller commissions the processor to process personal data in accordance with the controller's instructions. The controller is the controller within the meaning of type 4 No. 7 GDPR and is therefore responsible for the permissibility of the processing of personal data, including the disclosure of the data to the processor and ensuring the rights of the data subjects.
- 1.2 The processor provides IT services for the controller with the involvement of sub-processors.
- 1.3 The personal data relates to IT administration employees of the controller [and its customers, if applicable] and consists of (i) contact details (first name, last name, email address), (ii) IP addresses, (iii) log data from IT systems, and (iv) user data from telemedia (e.g., from websites or apps) (hereinafter "Personal Data").
- 1.4 Data processing by the processor generally takes place within the European Economic Area (EEA) and/or Switzerland. If, in exceptional cases, processing takes place outside the EEA or Switzerland, the processor complies with the provisions of Chapter 5 of the GDPR. The exact location of data processing is specified for each individual sub-processor.
- 1.5 Personal data is temporarily stored by the processor or sub-processor to the extent necessary to provide the IT services.
- 1.6 If communication with the controller is necessary in the context of order processing, the primary communication channel is email to [datenschutz@appnavi.com](mailto:datenschutz@appnavi.com) .

### §2 Obligations of the processor

- 2.1 The processor shall process personal data exclusively for the purpose of performing the IT services in accordance with the GTC, the applicable data protection law, and the instructions of the controller in accordance with Sections 1.1 and 3 of the GTC. The processor may not process personal data for other purposes, in particular for its own business purposes, unless this is required by the laws of the Union or the Member State to which the processor is subject. In this case, the processor shall inform the controller of this legal requirement prior to processing, unless the law prohibits such notification for important reasons of public interest.
- 2.2 The processor is not entitled to make copies of personal data without the prior written consent of the controller, unless this is necessary for the provision of IT services. This does not apply to backup copies that are necessary to ensure proper data processing, to comply with legal access or retention obligations, or to preserve evidence. Any disclosure to third parties is only permitted in compliance with the conditions set out in Section 9 of the GTC.
- 2.3 Order processing outside the premises of the processor or its subcontractors (see Section 9 of the GTC) is only permitted with the prior written or electronic consent of the controller by email. Order processing in private homes is only permitted if the processor has ensured that this data processing complies with the GTC and the applicable data protection laws. The processor shall therefore take at least the special

technical and organizational measures required under clause 6 to minimize the risk of data processing in private residences.

- 2.4 The processor must label the personal data appropriately. This also applies to personal data stored on portable electronic storage media (e.g., hard drives, USB sticks, etc.), if such storage media are used. If personal data is processed for other and/or restricted purposes, the processor shall label this personal data electronically with the respective purpose.

### §3 Rights of the controller

- 3.1 The controller is entitled to issue instructions on the type, scope, and procedure of data processing and on how to deal with the rights asserted by data subjects (e.g., with regard to the correction or deletion of personal data or a restriction of processing). All instructions must be given in writing or electronically by email. Verbal instructions must be confirmed immediately in writing or electronically by email.
- 3.2 The processor shall provide the controller with the contact details of the processor's employees who are authorized to receive instructions from the controller immediately after signing the DPA.

### §4 Information and support for the controller

- 4.1 The processor shall immediately inform the controller of any cases of serious operational disruptions, suspected data breaches, or other irregularities in the processing of personal data.
- 4.2 The processor shall inform the controller without delay, at the latest within 48 hours of becoming aware of any personal data breaches (Article 4(12) GDPR), and shall assist the controller in ensuring compliance with its obligations under the types 33 and 34 GDPR, taking into account the nature of the processing and the information available to it. The processor shall take the necessary measures to secure the data and mitigate the risks to the data subjects and shall coordinate these measures with the controller without delay.
- 4.3 The processor shall inform the controller without delay of (i) any ongoing communication between the supervisory authorities and the processor insofar as personal data are concerned and (ii) any requests, investigations, and other actions by the supervisory authorities. The processor shall only provide information to third parties and supervisory authorities after prior consultation with the controller.
- 4.4 The processor shall inform the controller without delay if it considers that an instruction violates applicable data protection regulations. The processor shall not be obliged to follow the instruction in question until it has been confirmed or amended by the controller.
- 4.5 The processor shall ensure, to the extent required by law, that it has appointed a data protection officer in accordance with the legal requirements and shall provide the controller with the contact details of the data protection officer. Any change of data protection officer shall be notified by the processor to the controller without delay before the change takes effect.
- 4.6 The processor shall assist the controller in ensuring compliance with the obligations under types 35 and 36 GDPR regarding data protection impact assessments and prior consultations, taking into account the type of the processing and the information available to it.
- 4.7 The processor shall provide the controller with the relevant records of processing activities pursuant to Article 30(2) GDPR in connection with the processing of personal data, insofar as this is necessary for the fulfillment of the controller's obligations under Article 30(1) GDPR.

### §5 Data confidentiality

- 5.1 The processor confirms that it is well acquainted with the relevant data protection regulations and assures that persons authorized to process personal data are prohibited from

processing personal data beyond the scope necessary for the provision of IT services and the instructions of the controller.

5.2 The processor guarantees that the persons authorized to process the personal data have committed themselves to data secrecy and confidentiality or are subject to a corresponding legal obligation of secrecy and that these persons have been made familiar with the data protection provisions relevant to them. This confidentiality obligation shall continue to apply even after termination of the DPA.

**§ 6 Technical and organizational measures**

6.1 The processor shall provide an internal organizational structure within its area of responsibility that takes into account the special requirements of data protection and shall ensure that all technical and organizational measures ("TOM") required under Article 32 GDPR are taken before the processing of personal data begins and are maintained for the duration of the processing.

6.2 These TOMs shall ensure a level of protection appropriate to the risk, including, where necessary:

- the pseudonymization and encryption of personal data;
- the ability to ensure the ongoing confidentiality, integrity, availability, and resilience of processing systems and services;
- the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
- A procedure for regularly testing, assessing, and evaluating the effectiveness of TOM to ensure the security of processing;
- Measures against accidental or unlawful destruction, loss, alteration, unlawful disclosure, or access to personal data transmitted, stored, or otherwise processed.

6.3 The processor may adapt the TOM to the current state of the art in order to ensure a level of security appropriate to the risk. The processor shall document changes to the technical and organizational measures and make them available to the controller upon request.

6.4 The controller reserves the right to carry out measures to detect misuse, where appropriate, including access to personal data (individual identification and name, contact details) of the processor's employees who have access to the controller's systems. The processor shall ensure the lawfulness of the use of this data by the controller through internal measures, which may also include the involvement of employee representatives.

**§ 7 Handling of requests from data subjects**

7.1 The processor shall support the controller in responding to requests for the exercise of the rights of the data subject set out in Chapter III of the GDPR (e.g., right of access, rectification or erasure of data or restriction of processing) to an appropriate extent and, where possible, through appropriate TOM.

7.2 If a data subject contacts the processor with regard to exercising their rights under the GDPR, the processor shall refer them to the controller, provided that it is possible to assign the data subject to the controller on the basis of the information provided by the data subject. The processor shall forward the data subject's request to the controller without delay, at the latest on the working day following receipt of the data subject's request, together with the information necessary to resolve the request.

**§ 8 Control of data processing**

8.1 The processor shall regularly monitor its internal processes and the TOM to ensure that the processing operations falling within its area of responsibility (including those of its subcontractors) are carried out in accordance with the requirements of applicable data protection law and that the rights of data subjects are protected.

8.2 An audit of the processing by the controller is usually carried out in the form of self-disclosures by the processor (e.g., a security concept for documenting the TOM) or annual audit reports by the processor or similar audit reports by third parties. This applies accordingly to audit documents of the subcontractor in accordance with Section 9.3.

8.3 The controller is entitled to carry out on-site inspections at the processor's premises if (i) there are concrete indications giving rise to suspicion of a breach of data protection regulations by the processor or (ii) the audit pursuant to Section 8.2 cannot be carried out due to insufficient documentation. The controller is entitled to carry out the on-site checks itself or to have them carried out by a third party commissioned for this purpose and bound to secrecy, who may not be a competitor of the processor. On-site inspections (i) shall be limited to processing facilities and personnel involved in the processing of personal data, (ii) may not be carried out more than once a year or in accordance with the requirements of applicable data protection laws or a competent supervisory authority, or immediately after a significant breach of the protection of personal data, and (iii) shall be carried out after reasonable prior notice during regular business hours without disrupting the business operations of the data processor and in accordance with the data processor's security policies.

8.4 The processor shall actively support the controller in exercising its right of control, grant the controller access to the data processing systems relevant to the processing of personal data in the event of on-site inspections, and provide the controller with appropriate support in carrying out the inspection.

8.5 The processor shall support the controller in particular in data protection audits by the supervisory authorities and, insofar as the processing of personal data is concerned, shall implement any requirements of the supervisory authorities without delay in consultation with the controller.

**§ 9 Commissioning of Subcontractors**

9.1 The processor may engage subcontractors for the processing of personal data, replace existing subcontractors, or adjust the scope of their contract, provided that the controller has given its prior approval. However, prior approval by the controller is not required if

- the subcontractor has been carefully selected, in particular taking into account its suitability in terms of data protection law and the adequacy of the TOMs implemented by the subcontractor,
- the processor and the respective subcontractor have entered into an agreement in accordance with Section 9.3, and
- the processor has informed the controller about the subcontractor at least 30 days in advance in writing or electronically by email, and the controller has not objected to the intended engagement of the subcontractor to the processor in writing or electronically by email for important reasons within 14 days of receiving this notification.

9.2 The data of the controller may only be made available to the subcontractor once an agreement has been concluded between the processor and the subcontractor in accordance with Section 9.3 of this DPA. If several subcontractors are used, this also applies to the responsibilities between these subcontractors. The current subcontractors shall be deemed to have been approved by the controller in accordance with Section 9.1 of the GTC upon conclusion of the GTC: Overview of subcontractors.

9.3 The Processor shall ensure by written agreement with the Subprocessor that (i) the Subprocessor is subject to the same data protection obligations as the Processor has entered into under this DPA, (ii) the Controller is granted the same control rights over the Subprocessor as the Controller has been

granted over the Processor in accordance with Section 8 of this DPA. This safeguard shall be designed in such a way that the processor can assert these rights directly against the subcontractor on behalf of the controller.

- 9.4. The processor shall verify and require that a subcontractor complies with the obligations in the agreement pursuant to Section 9.3 at regular intervals and shall report any significant violations (if any).
- 9.5. The controller may refuse to engage a subcontractor for legitimate reasons, in particular if a subcontractor has breached its obligations and/or the protection of personal data is at risk.

#### §10 Power of disposal over the data

- 10.1. If personal data held by the processor is at risk due to seizure or confiscation, insolvency or composition proceedings, or other events or measures taken by third parties, the processor must inform the controller immediately. The processor shall immediately inform all responsible parties in this context that data sovereignty and ownership of the data or data carriers lies exclusively with the controller as the responsible party within the meaning of the GDPR.

#### §11 Deletion of personal data

- 11.1 After completion of the service provision or at the request of the controller – at the latest after termination of the DPA – the processor shall delete all personal data in accordance with the previous instructions of the controller. The same applies to test and reject data. This does not apply to backup copies within the meaning of Section 2.3 if the deletion of personal data would cause disproportionate costs or additional expenditure. The deletion log must be presented to the controller upon request.
- 11.2. Documentation serving as proof of orderly and proper data processing shall be retained by the processor in accordance with the applicable retention periods beyond the termination of the GPA. Alternatively, the processor may hand over this documentation to the controller after termination or completion of the individual contract(s) and/or individual orders.

#### §12 Exemption

- 12.1 The Processor undertakes to indemnify the Controller against liability claims by data subjects, if and to the extent that such claims are based on breaches of the Processor's obligations under the DPA and/or the GDPR. The Processor shall bear the burden of proof that these claims are not attributable to breaches of the Processor's obligations under the DPA and/or the GDPR. Until proven otherwise by the Processor, it shall be assumed that the Processor has breached its obligations.
- 12.2. The Processor further undertakes to indemnify the Controller against any fines imposed on the Controller for inadequate implementation of TOM in relation to the processing of Personal Data.
- 12.3. The Processor shall be liable for the fault of its subcontractors to the same extent as for its own fault.

#### §13 Term

- 13.1 The GTC enters into force upon agreement by both parties and remains in force for as long as the controller commissions the processor to provide IT services.
- 13.2 The DPA may be terminated by either party without notice if there has been a material breach of the provisions of the DPA or applicable data protection law.
- 13.3. Any termination must be in writing.

#### §14 Final provisions

- 14.1 Unless expressly stipulated otherwise in this appendix (order data processing agreement), the provisions of the EULA (in particular Part I (General Provisions) apply accordingly.