

General Terms and Conditions of Contract (AVB)

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I. General regulations

1. Definitions

- 1.1. "App" is an application that is operated on the Platform Software and that originates either from Softwarehelden or a third party or was developed by the Licensee itself. It is not possible to use an app without the platform software.
- 1.2. "Connection" refers to a connection between the platform software and data sources such as databases.
- 1.3. "Definition Of Done (DoD)" is a list of acceptance criteria relating to the respective user story in the sprint. The development team agrees the list of acceptance criteria together with the product owner on the basis of the latter's requirements. The DoD defines the criteria for the acceptance of the development results for the product owner.
- 1.4. "Documentation" includes user documentation, operating and installation descriptions, as well as developer documentation including interface descriptions.
- 1.5. "Development team" is a team of one or more customized software developers working for Softwarehelden that develops the customized software.
- 1.6. "Hotfix" is a correction of a defect and/or malfunction of the platform software (usually associated with a change in the last digit of the version number, for example from version 4.1.3 to 4.1.4)
- 1.7. "Customer materials" are information, documents, images, models or suitable digital data and/or other content and/or work documents of the customer transmitted or otherwise provided by the customer to Softwarehelden for the provision of services.
- 1.8. "Service Description" means all documents and materials provided by Softwarehelden that describe the Platform Software and the Apps provided by Softwarehelden, in particular release notes, information provided on the Softwarehelden website and the documentation of the Platform Software and Apps.
- 1.9. "License" is the contractual scope of use of the platform software and/or one or more apps and/or individual software granted to the customer by Softwarehelden in accordance with sections III or VII of these GTC. For the use of each Softwarehelden app, the customer requires user licenses to the extent that users access the respective app. The use of an app begins as soon as a request for data provided by the app in question is received in the backend via the platform software. The respective scope of the license granted results from the order confirmation or expressly granted license.
- 1.10. "Client license" is an additional license granted by Softwarehelden that allows a third party that is not the customer, without its own server license, to use the platform software licensed by the customer with the customer's consent for the third party's own purposes as a licensee. The client license always requires a license from the customer and is dependent on its existence. In

addition to the client license, the third party requires its own user license for the platform software and the respective apps from Softwarehelden, to the extent that users access them for the third party. Insofar as the third party has a client license for the respective subject matter of the contract, it is not a third party within the meaning of these GTC with regard to the rights of use granted.

- 1.11. "Major Update" is an update that is no longer downwardly compatible and bundles in-depth bug fixes and/or fault corrections and/or more than minor functional improvements and/or customizations of the Contract Software in a single delivery (usually associated with a change in the first digit of the version number, for example from version 4.1.3. to 5.0.0).
- 1.12. "Minor update" is a bundling of bug fixes, fault corrections, functional improvements and/or other adjustments to the contract software in a single delivery (usually associated with a change in the middle digit of the version number, for example from version 4.1.3 to 4.2.0).
- 1.13. "Object code" is the intermediate result of a compiler or translation process of the source code of software.
- 1.14. "Platform Software" means the Cluu software, regardless of the edition, including all modules, interfaces, functionalities and tools, with the exception of the apps.
- 1.15. The "product owner" is an employee of the customer. The product owner has the task of specifying the user stories relevant to the project and preparing them for processing by the development team. The sprint backlog is maintained by the product owner. The product owner represents the interests of the customer vis-à-vis the development team and is sufficiently qualified and informed by the customer to fulfill their role. They are also available to the development team during the sprint if clarification is required and for queries and will always answer questions promptly. The product owner is sufficiently authorized by the customer to fulfill their function and to make and receive binding declarations to Softwarehelden.
- 1.16. "Source code" is the code of a software in the version of the programming language.
- 1.17. A "sprint" is a time-defined development phase with the aim of implementing the user stories drawn from the sprint backlog in sprint planning, which were defined as the sprint scope, as far as possible. The duration of a sprint is usually two weeks. A sprint begins with sprint planning and ends with the sprint review. No changes are made to the user stories contained in the sprint scope during a sprint. A sprint ends at the end of the planned time period. During a sprint, the members of the development team coordinate with each other and with the product owner at regular meetings or via electronic communication on an ongoing basis.
- 1.18. The "Sprint Backlog" contains all of the customer's user stories that they have provided to Softwarehelden. The user stories are prioritized in the sprint backlog. Unless otherwise agreed, the user stories are included in the sprint scope according to their priority.
- 1.19. "Sprint planning" is the meeting in which the development team defines the scope of the sprint for the respective sprint. The basis for this is the sprint backlog prioritized by the product owner in advance and the user stories estimated by the development team with story points. Sprint planning is carried out at the start of each sprint.

- 1.20. "Sprint scope" is the collection of user stories that are to be processed in a sprint. The sprint scope can be supplemented by additional user stories in the sprint backlog during the course of the sprint, provided that the development team still has time available in the sprint.
- 1.21. "Softwarehelden" is Softwarehelden GmbH, Eichwiesenring 9, 70567 Stuttgart, Germany.
- 1.22. "Story points" are a unit of effort in agile development. Story points reflect the estimated effort required to develop the respective user stories, i.e. the technical realization of the development. One story point is roughly equivalent to one person-day of an average developer. The price for a story point is agreed separately between the parties.
- 1.23. "Ticketing system" is the solution used by the parties to coordinate the cooperation between Softwarehelden and the customer and for project management. The ticketing system is used in particular to provide and document services in accordance with section VII of these GTC.
- 1.24. "User license" is a license that grants the customer the right to allow a user working on their behalf to access the platform software and/or the respective app. User licenses can be issued either as concurrent user licenses, which permit non-simultaneous access by an unspecified number of unnamed users, or as named user licenses, which permit access for one named user in each case. The concurrent user license is released again for other users when the user actively logs out or, in the absence of a logout, one hour after the last time of use. A named user license can only be transferred to another user after a minimum usage period of three months has expired
- 1.25. "User" is a user of the platform software and/or an app.
- 1.26. A "user story" is a description of a functionality formulated in everyday language from the perspective of the relevant target group. It contains a description of a scenario or process with regard to the respective content or functionality of the development results. The customer provides Softwarehelden with their user stories. These are sorted into the sprint backlog by the product owner. User stories contain the specifications for the creation of the development results by Softwarehelden.
- 1.27. "Affiliated companies" are companies that are affiliated with a party within the meaning of Sections 15 et seq. AktG (German Stock Corporation Act).
- 1.28. "GCI" are these General GCI in their entirety, which consist of the provisions set out in the sections I - IIX.1

2. Scope of application

- 2.1. These GTC apply to all business transactions with the customer in relation to the contractual objects regulated in sections II to IX. These GTCS are conclusive in this respect. In particular, the Customer's general terms and conditions, such as terms and conditions of purchase, shall not become part of the contract, regardless of whether they contain provisions that deviate from or supplement these GTCS, unless Softwarehelden has expressly agreed to their validity.

- 2.2. These GTC shall only apply to entrepreneurs, legal entities under public law or special funds under public law.
- 2.3. In the context of ongoing business relationships, these GTC also apply to all subsequent transactions with the customer without Softwarehelden having to refer to their validity again in each case.
- 2.4. These GTCS also apply if Softwarehelden provides services for the customer without reservation in the knowledge that the customer's general terms and conditions conflict with or deviate from these GTCS.

3. Structure of these GCI

- 3.1. The AVB consist of several sections. They are made up of the general provisions set out in this section II , which are independent of the type of service, and the sections II - IX, which apply to the various services of Softwarehelden and supplement the general provisions. Which of the provisions of sections II – IX apply depends on which services or products are purchased from Softwarehelden:
 - 3.1.1. Section II applies to Purchase of the platform software and/or apps from Softwarehelden
 - 3.1.2. Section III applies to the Rent of the platform software or apps
 - 3.1.3. Section IV applies to Hosting
 - 3.1.4. Section VV applies to the Operation by Softwarehelden
 - 3.1.5. Section VI applies to the Maintenance of the platform software or apps by Softwarehelden
 - 3.1.6. Section VII applies to the Development and customization of software by Softwarehelden for the customer ;
 - 3.1.7. Section VIII applies to Consulting services by Softwarehelden for customers
 - 3.1.8. Section IX contains Special conditions for the use of artificial intelligence.
- 3.2. The General Terms and Conditions apply to all contracts to which these GTC apply, regardless of whether or not specific reference is made to them.
 - 3.2.1. The special regulations in sections II to IX supplement the general regulations and take precedence over the general regulations in the event of conflicts.
 - 3.2.2. Should specific provisions of sections II to IX be invalid or void for any reason, the application of the general provisions shall remain unaffected.
 - 3.2.3. The Scope of services for the use of artificial intelligence

- 3.2.4. These special terms and conditions apply if artificial intelligence is used as part of the services that Softwarehelden provides for customers as a component integrated into platform software and/or apps.

- 3.3. The scope of the use of artificial intelligence is set out in the respective order confirmation.

4. Use of infrastructure in third-party data centers

- 4.1. In most cases, Softwarehelden will integrate solutions provided by third-party providers in their data centers to enable the use of artificial intelligence as in the platform software and/or apps.
- 4.2. If the order confirmation refers to the involvement of a third-party provider for the use of artificial intelligence, the scope of services for the use of artificial intelligence shall be governed by the terms of use of the provider of such solutions
- 4.3. In the event of conflicts between the terms and conditions of a third-party provider and these GTC, in particular sections IX.4IX.5 and IX.6 of these GTC, the provisions of these GTC shall take precedence

5. Availability

- 5.1. The solutions that are integrated into the platform software and/or apps for the use of artificial intelligence may be provided on a different infrastructure than the infrastructure used for the platform software and/or apps. The availability may therefore differ from the availability of the platform software and/or apps as such.
- 5.2. Section IV.3 applies accordingly to the availability of the solutions that are integrated into the platform software and/or apps for the use of artificial intelligence.

6. Rights to the work results

- 6.1. Due to the way the algorithms and language models used to provide solutions in the field of artificial intelligence work, it cannot be assumed that these solutions produce work results in which intellectual property can be created or acquired. Particularly in the case of all types of intellectual property that require a creative or inventive achievement, the purely mechanical processing by artificial intelligence speaks against such requirements being met.
- 6.2. Softwarehelden provides the customer with all work results that are the result of the customer's use of artificial intelligence as a component integrated into the platform software and/or apps exclusively for use and does not assert any rights of its own to such work results. At the same time, however, Softwarehelden does not guarantee that the customer (i) will become the owner of rights to these work results through the provision of such work results, and (ii) insofar as the customer becomes the owner of rights to these work results at all, that such rights would be valid or enforceable against third parties.

7. Possible infringements of third-party rights

- 7.1. By commissioning Softwarehelden to integrate solutions provided by third-party providers into the Platform Software and/or Apps in order to enable the use of artificial intelligence, the Customer simultaneously agrees that the Customer Materials processed by the Customer with the Platform Software and/or the Apps will be transferred to one or more third-party providers for this purpose. Softwarehelden does not have any further information about how the third-party providers process the Customer's data and information to enable the use of artificial intelligence beyond the information specified in the third-party providers' terms of use and the generally available information about how artificial intelligence works.
- 7.2. The operation of the algorithms and language models used to provide solutions in the field of artificial intelligence requires that existing materials (e.g. texts, illustrations, photos, video recordings, etc.) have already been processed (so-called "training") to develop these algorithms and language models or, in the case of an existing online connection of these algorithms and language models, that such existing materials continue to be processed for this purpose on an ongoing basis. Such existing materials may be subject to third-party rights, in particular copyrights. Due to the way the algorithms and language models work, it cannot be ruled out that the work results may also contain components whose use could infringe the rights of third parties.
- 7.3. Softwarehelden therefore expressly disclaims any warranty that the use of artificial intelligence complies with applicable legal provisions and, in particular, that it does not infringe the intellectual property rights and/or copyrights of third parties, data protection law and/or the law on the protection of trade secrets.

8. Correctness of the content of the work results

- 8.1. Due to the way the algorithms and language models used to provide artificial intelligence solutions work, these solutions may produce results that are not factually correct. The results may also be inconsistent with reality and the data and information provided for processing (so-called "hallucination").
- 8.2. Softwarehelden therefore provides no guarantee that the work results generated through the use of artificial intelligence are factually correct.

9. Scope of use and rights of use

- 9.1. In order to integrate artificial intelligence solutions into the platform software and/or apps, Softwarehelden develops appropriate adaptations to control these solutions (so-called "prompts"), which prepare the queries for processing by artificial intelligence in such a way that the systems are generally able to deliver appropriate results.
- 9.2. To make it easier for the customer to use the software, Softwarehelden develops user-friendly customizations that facilitate control within the platform software and/or the apps (so-called "assistants").

- 9.3. Both prompts and assistants are provided as components integrated into the platform software and/or the apps. Depending on whether the customer purchases or rents the platform software and/or the apps, the scope of use and the granting of rights of use shall be governed by sections II.2 or III.2 accordingly.

10. Release of Softwarehelden by the customer

- 10.1. By commissioning Softwarehelden to provide the Platform Software and/or Apps, including the integration of solutions provided by third-party providers, in order to enable the use of artificial intelligence, the customer simultaneously agrees that the customer materials processed by the customer with the Platform Software and/or Apps may be transferred to one or more third-party providers for this purpose.
- 10.2. Softwarehelden does not have any further information about how the third-party providers process the customer's data and information to enable the use of artificial intelligence beyond the information specified in the third-party providers' terms of use and the generally available information about how artificial intelligence works.
- 10.3. Softwarehelden has no overview of and no obligation to check which third-party rights exist to customer materials that the customer processes using artificial intelligence as a component integrated into the platform software and/or apps, and to what extent the customer is authorized to process the customer materials in this way
- 10.3.1. It is therefore the sole responsibility of the customer to process only those customer materials using artificial intelligence as a component integrated into the platform software and/or apps with the platform software and/or apps for which the customer has sufficient rights for such processing.
- 10.3.2. Due to the way the algorithms and language models used to provide artificial intelligence solutions work, Softwarehelden cannot provide the Customer with any information about how exactly Customer Materials are processed by such solutions. In particular, Softwarehelden does not know whether and to what extent customer materials are reproduced, distributed, publicly reproduced or utilized in any other copyright-relevant manner by such solutions or whether the processing violates data protection law and/or the law on the protection of trade secrets.
- 10.4. In accordance with the provisions of these GTC, Softwarehelden is liable for ensuring that solutions provided by third-party providers are integrated into the platform software and/or apps in a technically flawless manner in order to enable or exclude the use of artificial intelligence. Furthermore, the Customer indemnifies Softwarehelden against all third-party claims that are asserted against Softwarehelden due to the solutions provided by third-party providers for the use of artificial intelligence by the Customer as a component integrated into the platform software and/or apps for processing the Customer materials.
- 10.5. The statutory liability of the customer, including towards Softwarehelden, remains unaffected.

- 10.5.1. Agreement on commissioned processing pursuant to Art. 28 GDPR again takes precedence over the General Provisions and the provisions of the other sections.

11. Conclusion of contract and content of the contract

- 11.1. The respective order confirmation from Softwarehelden is decisive for the content, scope and limits of the contract. If no order confirmation is issued, the offer accepted by the customer from Softwarehelden is authoritative and takes the place of the order confirmation
- 11.2. Unless otherwise stated in an offer, offers made by Softwarehelden are always subject to change and non-binding, unless they are expressly labelled as binding and/or contain a specific acceptance period. A contract is only deemed to have been concluded when the customer receives an order confirmation from Softwarehelden in text form that corresponds to the order or when he accepts an order confirmation from Softwarehelden that deviates from his order, but at the latest when Softwarehelden begins to perform the ordered services with the express or tacit consent of the customer.
- 11.3. If services of different types to be provided by Softwarehelden are part of an offer, several individual contracts shall be concluded for the different services in case of doubt, each on the basis of the corresponding provisions set out in the sections of these GTCS listed in accordance with Section I.3 .
- 11.4. The assumption of guarantees by Softwarehelden requires a clear regulation in writing by means of an individual agreement confirmed by the management of Softwarehelden in order to be effective.
- 11.5. In the event of obvious spelling and calculation errors in the offer or in the order confirmation, what was meant for the recipient without the spelling or calculation error shall apply.
- 11.6. Only if the parties have explicitly agreed the reason for and/or the purpose of a contract concluded subject to these GTC as the basis of the contract can the customer claim a free cancellation of the contract, a price reduction or other adjustments to such a contract or terminate such a contract if the reason for and/or purpose ceases to apply or changes in whole or in part.

12. Modalities for the provision of services

- 12.1. If laws or regulations that affect the contractual scope of services and/or the execution of services change after the conclusion of the contract, the parties shall endeavor to amend the contract by mutual agreement (including an adjustment of the remuneration, if applicable).
- 12.2. Unless otherwise agreed, Softwarehelden provides all services during normal business hours (Monday to Friday from 9.00 a.m. to 5.00 p.m. CET, excluding public holidays at the registered office of Softwarehelden).

- 12.3. Softwarehelden may use not only its own employees, but also affiliated companies, independent subcontractors and/or freelancers (hereinafter uniformly referred to as "subcontractors") to provide services, whereby Softwarehelden always remains directly obligated to the customer. The customer can only object to the use of a subcontractor if there is an important reason for doing so. The obligations under data protection law remain unaffected.
- 12.4. Softwarehelden's employees are at no time integrated into the customer's operational and work organization and are therefore not subject to the customer's instructions. Employees are named according to the current state of knowledge and planning. Should it become necessary to replace employees, Softwarehelden will ensure that they have comparable qualifications.

13. Fault reports

- 13.1. Notifications by the Customer of (i) defects in the Platform Software and/or the Apps in the case of Purchase of the platform software and/or apps from Softwarehelden in accordance with section II or Rent of the platform software or apps in accordance with section III , or (ii) malfunctions and/or failures in Operation by Softwarehelden in accordance with section VV or in Hosting in accordance with section IV are accepted by Softwarehelden via the ticketing system or by e-mail.
- 13.2. Outside normal business hours within the meaning of section I.12.2 or via other communication channels, Softwarehelden will only accept messages from the customer by prior separate agreement.
- 13.2.1. The conditions specified by Softwarehelden in the respective order confirmation apply to such separate agreements.
- 13.2.2. If specific response times have been expressly agreed, Softwarehelden will respond to the customer's report within these times. Softwarehelden is not obliged to rectify faults within the response time.
- 13.2.3. The services under such separate agreements are provided as Consulting services by Softwarehelden for customers in accordance with section VIII .
- 13.3. If the customer's reports in accordance with section I.13 do not relate to defects in the platform software and/or apps from Softwarehelden, but to other questions from the customer, services to answer them are provided as Consulting services by Softwarehelden for customers in accordance with section VIII .13

14. Prices and payment conditions

- 14.1. Prices offered and/or quoted by Softwarehelden without an explicit VAT statement or addition are net prices (excluding VAT). These net prices are automatically increased by the amount of VAT legally owed by Softwarehelden.

- 14.2. Unless the parties have agreed otherwise, the prices stated by Softwarehelden are exclusive of any packaging and transport costs. If services are provided for retrieval via a computer network, Softwarehelden bears the costs for making the services available on the network, the customer bears the costs for the retrieval.
- 14.3. Travelling expenses (2nd class train & taxi rides or car 0.50 €/km) and necessary hotel accommodation will be invoiced separately according to actual costs incurred. Travelling times are working times and will be invoiced as such.
- 14.4. Invoices are due for payment within 14 days of receipt of the invoice and are payable without deduction. The deduction of a discount must be expressly agreed in advance.
- 14.5. Payments for services provided by Softwarehelden that are billed for specific periods (e.g. monthly payment) are due in advance before the start of the respective service period
- 14.6. In the event of late payment, Softwarehelden may charge interest on arrears at a rate of nine percentage points above the applicable base rate of the ECB.
- 14.7. If the Customer is more than thirty (30) days in arrears with payment for Softwarehelden's services, Softwarehelden is entitled to suspend the provision of the services in question without further notice until the remuneration plus accrued default interest and other default costs or damages have been paid in full.
- 14.8. Softwarehelden is authorized to offset incoming payments from the customer against the oldest claim.
- 14.9. Softwarehelden is entitled to increase the agreed prices for Softwarehelden's services appropriately to compensate for increases in personnel and other costs in the case of contracts that constitute continuing obligations, in particular contracts in accordance with sections IIIIV and VI
- 14.9.1. Softwarehelden will notify the customer of these price increases in text form; the price increases do not apply to periods for which the customer has already made payments.
- 14.9.2. If a price increase amounts to more than 10% of the previous price, the customer is entitled to terminate the contract for the affected service of Softwarehelden as a whole with a notice period of four weeks to the end of a calendar month; if the customer exercises this right of cancellation, the previous prices will be charged until the cancellation takes effect. Softwarehelden will inform the customer of this right of cancellation together with each announcement.
- 14.9.3. An increase in prices within six months of the conclusion of the contract is excluded
- 14.10. If a significant deterioration in the customer's financial circumstances occurs after conclusion of the contract or if Softwarehelden becomes aware of a previously occurring deterioration in the customer's financial circumstances for the first time after conclusion of the contract, Softwarehelden is entitled to demand either advance payment or the provision of security at its own discretion. If the customer does not comply with such a request even after a reminder from Softwarehelden within a reasonable period set by Softwarehelden, Softwarehelden is entitled to
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withdraw from the contract. Softwarehelden's right to assert claims for damages remains unaffected.

15. Limitation of liability from Softwarehelden

- 15.1. In the event of slight negligence, Softwarehelden is only liable in the event of a breach of material contractual obligations. Essential contractual obligations are those obligations that are of particular importance for the achievement of the contractual objective, as well as all those obligations which, in the event of a culpable breach, could lead to the achievement of the contractual purpose being jeopardized. In these cases, liability is limited to compensation for foreseeable damage typical of the contract.
- 15.2. Provisions on the limitation of liability in these GTC do not apply in the event of injury to life, limb and health, in the event of claims under the Product Liability Act or pursuant to Art. 82 GDPR, in the event of recourse claims by the customer pursuant to Section 327u BGB and in the event of liability due to fraudulent concealment of a defect or from the assumption of a guarantee or assurance.
- 15.3. From 12 September 2027, provisions on the limitation of liability in these GTC shall also not apply if and to the extent that this excludes a legal remedy of the Customer within the meaning of Art. 13 para. 4 b) Data Act, which is available to the Customer in the event of non-fulfillment of contractual obligations and/or the liability of Softwarehelden in the event of a breach of one of the obligations referred to in Art. 13 para. 4 b) Data Act is excluded and/or legal remedies of the Customer and/or the liability of Softwarehelden in the event of a breach of contractual obligations are unreasonably limited.
- 15.4. Softwarehelden's liability for data loss is limited to the typical recovery costs that would have been incurred if the customer had made regular and risk-appropriate data backups, unless Softwarehelden caused the data loss intentionally or through gross negligence.
- 15.5. Pursuant to section I.22.2, the customer is obliged to back up its application data stored in or generated with the platform software or apps. In the event of data loss for which Softwarehelden is responsible, Softwarehelden is only liable to the extent of the restoration effort required if electronic backup copies are available. This limitation does not apply if the data backup was hindered or impossible for reasons for which Softwarehelden is responsible.
- 15.6. Contractual claims for damages and other claims by the customer due to breaches of duty expire twelve months after the statutory limitation period begins. In the event of intent or gross negligence on the part of Softwarehelden, fraudulent concealment of the defect, personal injury or defects of title within the meaning of Section 438 (1) No. 1 lit. a BGB and guarantees (Section 444 BGB), the statutory limitation periods apply, as do claims under the Product Liability Act and the provisions of the General Data Protection Regulation (GDPR).
- 15.7. Insofar as Softwarehelden's liability for damages is excluded or limited, this also applies to the personal liability for damages of Softwarehelden's employees, workers, staff, representatives, subcontractors and other vicarious agents.

- 15.8. Softwarehelden is not liable for whether the customer can convert Softwarehelden's services into its own economic success in the long term.

16. Force majeure, impossibility and right of cancellation

- 16.1. If Softwarehelden is prevented from providing a service due to an unforeseeable, extraordinary event that Softwarehelden cannot avert even with reasonable care, in particular in the event of natural disasters, energy supply or operational disruptions, official intervention, labor disputes, fire damage, floods, strikes, lawful lockouts, epidemics and pandemics, for which the Robert Koch Institute has defined a risk level of at least "moderate", or other cases of force majeure (hereinafter referred to as "force majeure"), the deadline for the provision of this service shall be extended without further ado by the duration of the hindrance and a reasonable start-up period after the reason for the hindrance has ceased to exist.
- 16.1.1. This also applies if these circumstances occur at a subcontractor or upstream supplier of Softwarehelden and/or during Softwarehelden's delay in delivery.
- 16.1.2. Force majeure includes currency, trade policy and other sovereign measures, operational disruptions (e.g. machine breakdown, lack of raw materials or energy), obstructions of transport routes, delays in import/customs clearance and all other circumstances for which Softwarehelden is not responsible and which make the fulfillment of Softwarehelden's contractual obligations impossible or significantly more difficult.
- 16.1.3. Softwarehelden will inform the Customer immediately of the beginning and end of such circumstances. If, due to the aforementioned events, the fulfillment of the contractual obligations becomes impossible or unreasonably difficult for Softwarehelden, or if the performance of the services under this contract is delayed in essential parts by a period of more than four months, each party is entitled to withdraw from the contract. If Softwarehelden's performance becomes useless for the customer due to the delay, the customer is also entitled to withdraw for this reason. At the request of the customer, Softwarehelden must declare whether Softwarehelden will withdraw or deliver within a reasonable period to be determined by Softwarehelden.
- 16.2. Claims for damages by the customer due to non-delivery or late delivery due to force majeure are excluded. The customer's statutory rights of cancellation shall remain unaffected by this.
- 16.3. Softwarehelden is entitled to withdraw from the contract if it becomes apparent after conclusion of the contract that Softwarehelden is unable to fulfill its contractual obligations for reasons for which Softwarehelden is not responsible, or that this is unreasonably difficult. If the customer is also not responsible for the impossibility or unreasonable impediment, Softwarehelden will inform the customer immediately after becoming aware of the impossibility or unreasonable impediment and immediately reimburse the customer for expenses incurred, in particular advance payments, plus 5% interest per annum. Further claims for damages and/or payment by the customer due to an impossibility or unreasonable impediment to the fulfillment of the contractual obligations for which Softwarehelden is not responsible are excluded.

17. Place of performance and general obligations of the customer to cooperate and provide information

- 17.1. The customer has informed himself about the essential functional features of the platform software or the services of Softwarehelden and bears the risk as to whether these correspond to his wishes and needs; in case of doubt, he must seek advice from Softwarehelden employees or expert third parties before concluding the contract.
- 17.2. Softwarehelden only provides services online via the Internet or at Softwarehelden's business premises. Only after prior separate agreement and/or if necessary will services also be provided at the customer's business premises. The customer has no further claim to the provision of services at the customer's location. Insofar as no activities at the customer's business premises are required and/or have been expressly agreed, Softwarehelden is free to choose the place of performance. Data protection obligations of Softwarehelden remain unaffected.
- 17.3. If online access to the customer's infrastructure is required for the provision of services by Softwarehelden, the customer is obliged to enable online access to its infrastructure and to provide and maintain corresponding access for Softwarehelden free of charge.
- 17.4. Insofar as the services are provided on the Customer's business premises, the Customer is obliged to support Softwarehelden to the best of its ability and to create all the necessary conditions for Softwarehelden to provide the services on its business premises in good time. In particular, the customer provides the necessary work equipment and workstations as well as system capacity and employees to an appropriate extent free of charge.
- 17.5. The customer shall provide Softwarehelden with all documents, authorizations and approvals owed by it under the contract and required for the fulfillment of the contractual obligations, provide the necessary information and carry out tests.
- 17.6. The customer will proactively provide Softwarehelden with all documents and information available to him and required for the provision of services in a timely and complete manner and ensure that a sufficient number of suitable contact persons with the necessary expertise are available on the customer's side. Unless otherwise agreed, Softwarehelden is not obliged to check the documents and information provided by the customer for completeness and correctness.
- 17.7. The services to be provided by the customer, in particular the customer's duty to co-operate, represent a genuine contractual obligation towards Softwarehelden and not merely an obligation.
- 17.8. If the customer does not provide the services to be provided by him or does not provide them in accordance with the contract and this has an impact on the services to be provided by Softwarehelden, Softwarehelden can - without prejudice to further rights - demand a corresponding appropriate adjustment of the contractual agreements (e.g. changes to the schedule and remuneration). If Softwarehelden incurs additional expenses due to the customer's failure to provide the services in accordance with the contract, Softwarehelden may invoice the customer separately for the additional expenses (time & material). All legal claims and other rights of Softwarehelden resulting from the customer's breach of duty remain unaffected.
- 17.9. The customer must inform Softwarehelden immediately in text form if and as soon as
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- 17.9.1. A defect is found in software provided and/or handed over to the customer by Softwarehelden,
- 17.9.2. The customer wishes to decompile, translate, edit or modify software provided and/or made available by Softwarehelden and/or
- 17.9.3. A third party claims or asserts rights that conflict with the customer's use of software provided and/or made available to the customer by Softwarehelden.

18. Exemption

- 18.1. The Customer must indemnify Softwarehelden against all third-party claims asserted against Softwarehelden (i) due to the Customer Materials and/or (ii) due to the use of Softwarehelden's software, apps and services by the Customer and/or (iii) due to breaches by the Customer of the obligations under Section I.22 and/or (iv) the prohibitions under Section I.22.3 .
- 18.2. Section I.18 does not apply if the customer is not responsible for the infringement or violation in question. The Customer's statutory liability, including towards Softwarehelden, remains unaffected.

19. Cancellation

- 19.1. The right of each party to terminate a contract extraordinarily and without notice for good cause remains unaffected. Softwarehelden shall also be deemed to have good cause in particular if the customer
 - 19.1.1. Is insolvent and/or insolvency proceedings have been opened against its assets or the application to open insolvency proceedings has been rejected for lack of assets; however, after the application to open insolvency proceedings against the customer's assets, Softwarehelden may not terminate due to a delay in payment of the remuneration that occurred prior to the application to open insolvency proceedings or due to a deterioration in the customer's financial circumstances;
 - 19.1.2. Violates an essential contractual obligation, in particular the contractual obligation to observe the law when using the contractual services of Softwarehelden, and does not immediately remedy this violation even after a warning or notification of the blocking of access by Softwarehelden.
- 19.2. Cancellation must be in text form to be effective.

20. Limited effect of terminations

- 20.1. The cancellation of a contract concluded on the basis of these GTCS and one of the provisions set out in the sections of these GTCS has no effect on the continuation of other contracts between Softwarehelden and the Customer.

21. Secrecy

- 21.1. "Confidential Information" is non-public information disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party") that relates to (i) the use of the Platform Software and Apps or (ii) services that Softwarehelden has provided to the Customer or that Softwarehelden has provided or will provide to the Customer (the "Contractual Purpose"). Such Confidential Information may either be communicated in text form and marked as confidential, or communicated in any other form, provided that it has either been communicated under confidential circumstances or would reasonably be considered confidential by the parties, including information obtained by the Receiving Party or its Affiliates during a visit to the Disclosing Party's premises by observation or otherwise.
- 21.2. The parties undertake to keep Confidential Information strictly confidential and not to disclose, make available, disseminate or publish it to any third party without the consent of the disclosing party and to use it only for the purpose of the contract.
- 21.3. The Receiving Party is not authorized to obtain Confidential Information or Trade Secrets of the Disclosing Party through reverse engineering. "Reverse Engineering" means any action, including observing, investigating, reverse engineering or testing, with the intention of obtaining or reconstructing Confidential Information and/or Trade Secrets. Mandatory copyright rights of the customer remain unaffected.
- 21.4. The Receiving Party further undertook to take all reasonable steps and to take at least reasonable confidentiality measures under the circumstances within the meaning of Section 2 No. 1 lit. b) GeschGehG to prevent any unauthorized use or disclosure of the Disclosing Party's Confidential Information.
- 21.4.1. The Receiving Party shall only make the Confidential Information available to those persons who need to know the Confidential Information of the Disclosing Party in order for the Receiving Party to fulfill its rights and obligations under this Agreement and shall only disclose it if the respective persons are under a reasonable obligation of confidentiality.
- 21.4.2. The parties shall be liable for the breach of confidentiality obligations by these persons acting on their behalf in the same way as for a breach by themselves.
- 21.4.3. The Receiving Party shall promptly notify the Disclosing Party if it becomes aware of any unauthorized use or disclosure of the Disclosing Party's Confidential Information and shall, at the Disclosing Party's request, take all reasonable steps to prevent any further unauthorized use or disclosure of the Disclosing Party's Confidential Information.
- 21.5. The confidentiality obligation of the Receiving Party shall not apply to Confidential Information for which the Receiving Party can prove that the respective information is

- 21.5.1. Was already generally accessible at the time of notification or became generally accessible after notification without the co-operation or fault of the receiving party, or
 - 21.5.2. Was already in the possession of the receiving party at the time of notification,
 - 21.5.3. Has been made available to the Receiving Party by a third party not bound to secrecy or non-utilization;
 - 21.5.4. Is required by law or court order to be disclosed to one or more public authorities; provided that the Receiving Party shall promptly notify the Disclosing Party of the obligation to disclose in order to allow the Disclosing Party to take reasonable steps in its discretion to prevent the Confidential Information from becoming generally available; or
 - 21.5.5. Has been developed by the Receiving Party independently and without breach of this Agreement.
- 21.6. The communication, disclosure or making available of Confidential Information by one of the parties shall only grant the receiving party rights, licenses or industrial property rights of any kind for the fulfillment of the purpose of the contract to the extent regulated in these GTC.
- 21.7. Unless otherwise provided in these GTC and/or one or more Annexes, the Receiving Party shall, upon termination of this Agreement for any reason whatsoever, return to the Disclosing Party or destroy all copies and documents and other records containing Confidential Information of the Disclosing Party at the request of the Disclosing Party. The only exceptions are copies which the Receiving Party is legally obliged or authorized to keep on the basis of a contract which the parties have concluded including these GTC and/or one or more annexes. Notwithstanding the foregoing, the Receiving Party may
- 21.7.1. For the purpose of proof or defense against possible later claims arising from this agreement,
 - 21.7.2. To comply with accounting or other statutory retention periods or to document decisions of supervisory boards or comparable bodies and
 - 21.7.3. To the extent that the deletion of electronic copies of the Confidential Information, which have only been created as back-ups in automated systems, would require a disproportionately high technical effort, the Confidential Information shall be retained.
- 21.8. As long as Confidential Information remains stored, the provisions on confidentiality shall continue to apply accordingly. Within thirty (30) days of receipt of the Disclosing Party's request, the Receiving Party shall confirm compliance with section I.21.7 in writing to the Disclosing Party.
- 21.9. The obligations arising from this section I.21 shall remain in force even after termination of the contracts that the parties have concluded incorporating these GTC and/or one or more annexes.
- 21.10. For each case of culpable infringement of the confidentiality obligations agreed in this section I.21, the customer shall pay Softwarehelden a contractual penalty to be determined by

Softwarehelden at its reasonable discretion and subject to judicial review. The right to claim further damages remains unaffected by this.

22. Further material obligations of the customer; prohibitions of use

22.1. The customer is obliged to

22.1.1. To comply with all applicable laws and other legal provisions when using the platform software, the apps and other services of Softwarehelden and to observe the rights of third parties;

22.1.2. To refrain from unauthorized uses, in particular the uses listed in section I.22.3 and

22.1.3. To keep the contact details, in particular the e-mail address, up to date at all times so that Softwarehelden can contact the customer.

22.2. The customer shall, if and insofar as it is technically possible, take appropriate data backup measures for the work results and application data stored in or generated by the platform software or apps and, in particular, back up the application data at appropriate intervals. Any obligation of Softwarehelden to back up data remains unaffected.

22.3. It is prohibited to the customer - even irrespective of a possible violation of the law ,

22.3.1. To use the platform software, apps or other services of Softwarehelden beyond the rights of use granted in each case, in particular to carry out a commercial, self-employed or other professional activity;

22.3.2. To capture, reproduce, process, store or otherwise use content and materials provided by Softwarehelden as services for the fulfillment of a contract concluded under inclusion of these GTC, regardless of whether such materials or content originate from third parties or from Softwarehelden, by means of manual or automated mechanisms (e.g. bots, robots or scrapers) not authorized by Softwarehelden;

22.3.3. To reproduce, distribute, publicly reproduce or otherwise use or exploit services provided by Softwarehelden for the fulfillment of a contract concluded under inclusion of these GTC or content provided by Softwarehelden in the provision of services without the express consent of Softwarehelden;

22.3.4. To enable third parties to use their own access data to access and/or use services provided by Softwarehelden for the fulfillment of a contract concluded subject to these GTC; and

22.3.5. To take or promote actions that impair the trouble-free operation of the IT infrastructure used by Softwarehelden and/or provided for use by the customer, such as denial-of-service attacks.

23. Data protection

- 23.1. The following regulations apply to the processing of personal data by Softwarehelden for the fulfillment of the contractual relationship(s) with the customer:
- 23.1.1. In order to conclude contracts with the Customer and execute contracts concluded with the Customer, Softwarehelden processes personal data of the Customer and/or persons working for the Customer in accordance with the Data Protection Information for Customers of Softwarehelden, which is attached to this Agreement. The Customer undertakes to inform the data subjects accordingly.
 - 23.1.2. The customer is responsible for the permissibility of the transfer of personal data to Softwarehelden and the processing by Softwarehelden in accordance with the contract.
- 23.2. The customer indemnifies Softwarehelden against claims by third parties due to the violation of data protection regulations, in particular liability in accordance with Art. 82 GDPR, insofar as the transmission of personal related data of third parties to Softwarehelden initiated by the customer violates data protection regulations.

24. Assignment and right of retention

- 24.1. The assignment of a claim of the customer against Softwarehelden is only legally effective with the consent or authorization of Softwarehelden;
§ 354a HGB remains unaffected.
- 24.2. Softwarehelden is entitled to a right of retention on these and the documents provided by the customer until full settlement of all due claims from all contractual relationships between Softwarehelden and the customer in connection with the use of the platform software, apps or services of Softwarehelden.
- 24.2.1. The right of retention does not extend to the customer's personal data.
 - 24.2.2. After settlement of the claims for which the right of retention was asserted, the customer must, at Softwarehelden's request, collect all documents in physical form and other items that were the subject of the right of retention. Softwarehelden's obligation to store the documents and objects expires six months after receipt of the request to collect them from the customer, otherwise after one year.
- 24.3. The customer is authorized to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.

25. References

- 25.1. Softwarehelden may publicly name the customer as such, e.g. on the Softwarehelden website, stating the company name.

- 25.2. For this purpose, Softwarehelden may also reproduce the customer's logo - if available - in the context of the naming, provided that this use by Softwarehelden is in accordance with decent practices in trade or commerce.

26. Non-solicitation clause

- 26.1. As part of the cooperation, the customer will be given access to Softwarehelden's employee base. The customer undertakes not to directly or indirectly poach or attempt to poach any employees of Softwarehelden itself or through an affiliated company within the meaning of §§ 15ff AktG during and up to twenty-four months after the end of the cooperation.
- 26.2. The customer bears the burden of proof that the employment of an employee of Softwarehelden is not based on enticement.
- 26.3. For each case of infringement of the agreed non-solicitation clause, the customer shall pay Softwarehelden a contractual penalty to be determined by Softwarehelden at its reasonable discretion and, if applicable, subject to judicial review. The right to claim further damages remains unaffected by this.

27. Export control

- 27.1. Deliveries and services under this contract are subject to the proviso that there are no obstacles to fulfillment due to national (e.g. AWG/AWV) or international export control regulations, such as embargoes or other sanctions. The customer undertakes to provide all information and documents that may be required for the export or shipment. Delays due to export checks or authorization procedures shall extend the stated delivery and performance dates accordingly. If the necessary authorizations are not granted or if the delivery and service cannot be approved, Softwarehelden is entitled to withdraw from the contract.
- 27.2. In the event of cancellation in accordance with section I.27.1, the assertion of a claim for damages or the assertion of other rights by the customer is excluded.
- 27.3. When passing on the platform software, apps and services supplied by Softwarehelden to third parties in Germany and abroad, the customer must comply with the applicable provisions of national and international export control law.

28. Place of jurisdiction and applicable law

- 28.1. If the customer has no general place of jurisdiction in Germany and/or if the customer is a merchant, a legal entity under public law or a special fund under public law within the meaning of Section 38 (1) ZPO, the following agreement on the place of jurisdiction shall apply: Subject to the two sentences below, the exclusive place of jurisdiction for all disputes arising from or in connection with the conclusion, fulfillment, termination and/or breach of the contract shall be Stuttgart, Germany. For exequatur proceedings, enforcement measures and proceedings as well

as measures and proceedings for interim legal protection, the place of jurisdiction is Stuttgart, Germany, but not exclusively. In addition, Softwarehelden is authorized to alternatively bring an action against the customer at any other national or international court with jurisdiction.

- 28.2. The law applicable to this agreement and decisive for its interpretation is exclusively German law, to the exclusion of private international law. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.

29. Ancillary agreements and legal consequences of partial nullity and/or the nullity of individual contractual provisions

- 29.1. There are no ancillary provisions outside of this contract.
- 29.2. Amendments or additions to this contract must be made in text form to be effective. This also applies to a waiver of the text form requirement.
- 29.3. Should any provision of this agreement be or become wholly or partially invalid, this shall not affect the validity of the remaining provisions. Alternatively: If and to the extent that individual provisions of these GTC are invalid, the legal consequences shall be governed by mandatory applicable law. If and to the extent possible, the partial invalidity or nullity of individual GTCS shall not affect the remaining GTCS and the (continued) validity of the contractual relationship between Softwarehelden and the Customer.

II. Purchase of the platform software and/or apps from Softwarehelden

1. Subject matter of the contract

- 1.1. The subject matter of the contract is either (i) the purchase of the platform software and/or (ii) the purchase of apps from Softwarehelden, in each case in the object code configuration listed in the order confirmation, the associated application documentation (in electronic form) (hereinafter the "application documentation") and any access data and/or license keys required to download and use the platform software and apps under the terms of use agreed in this contract, together the "contractual objects".
- 1.2. Third-party apps and customer apps are not covered by section II.
- 1.3. The source code of the contractual items is not part of the services owed and is not made available to the customer.
- 1.4. The quality of the contractual items delivered by Softwarehelden is determined by the service description valid at the time of dispatch or provision of the contractual items and available to the customer prior to conclusion of the contract, which is also described once again in the application documentation. Softwarehelden does not owe any additional quality of the contractual objects. In particular, the customer cannot derive such an obligation from other representations of the contractual objects in public statements or in advertising by Softwarehelden, its employees or sales partners, unless Softwarehelden has expressly confirmed the additional quality in writing.
- 1.5. Further services, in particular installation, configuration, training and instruction services are not covered by this contract in section II.

2. Scope of use and rights of use

- 2.1. The platform software can be installed and used on a local server of the customer (on-premise) or on a web server (cloud), provided these fulfill the technical requirements of Softwarehelden.
- 2.2. Unless otherwise agreed in the order confirmation, the customer may only use the contractual items for his own contractual use within the scope of the license.
 - 2.2.1. The contractual items are not intended to support the customer in providing comparable contractual items or services for third parties and may not be used by customers for such purposes
 - 2.2.2. The customer is not authorized to allow third parties to use the contractual items or to make them accessible to third parties. The customer is not authorized to reproduce, sell, transfer for a limited period of time, rent or lend the contractual objects. The customer is only authorized to pass on the contractual objects to third parties under the conditions of section II.6.

II. Purchase of the platform software and/or apps from Softwarehelden

- 2.2.3. In particular, the transfer and/or commercial subletting of the contractual objects to third parties through (i) a data center operation for third parties or (ii) the provision of the contractual objects for use (e.g. as application service providing) or (iii) the use of the contractual objects for the training of persons who are not employees of the customer is prohibited.
- 2.2.4. Dependent use by the customer's employees or other third parties subject to the customer's right to issue instructions within the scope of intended use is permitted
- 2.3. Reproductions of the platform software are only permitted to the extent that this is necessary for use in accordance with the contract. The customer may make backup copies of the platform software to the extent necessary in accordance with the rules of technology. Backup copies on movable data carriers must be labelled as such and provided with a copyright notice on Softwarehelden.
- 2.4. Upon full payment of the purchase price, Softwarehelden grants the customer a simple right of use, unlimited in time, to the contractual items for use in accordance with the contract to the extent specified in the order confirmation.
- 2.5. The scope of contractual use is limited to the license.
- 2.6. Unless otherwise agreed, the rights of use granted shall be limited to the country of destination agreed between the parties in which the contractual items are to be used. In the absence of an express agreement on a country of destination, the right of use shall be granted exclusively for the country in which the customer has its registered office. This geographical restriction refers only to the place of operation of the infrastructure on which the contractual objects are operated, not to access to this infrastructure by users, which is not subject to any geographical restriction.
- 2.7. The rights of use may only be exercised by a maximum number of users equal to the number of user licenses held by the customer. In the event of multiple use, section II.4.3 shall apply.
- 2.8. If the customer has only received the contractual objects in accordance with Section II.7 by way of download, he is entitled to copy the contractual objects onto a data carrier when passing them on in accordance with Section II.6. In all other respects, Softwarehelden's right to the online copy is exhausted in the same way as if the customer had received the contractual objects on a data carrier.
- 2.9. The customer is only authorized to make changes, extensions and other alterations to the contractual objects within the meaning of § 69c No. 2 UrhG to the extent that the law permits such inalienably. Before the customer eliminates errors himself or through a third party, he first authorizes Softwarehelden to attempt to eliminate the error. The customer is not entitled to his own rights of use and exploitation rights to such edits - beyond the rights of use granted under this contract. Insofar as the customer acquires rights to adaptations, Softwarehelden can - against appropriate remuneration - demand the granting of an exclusive or non-exclusive, spatially and temporally unlimited right of use with the right to grant sub-licenses.
- 2.10. The Customer may not commission third parties who are competitors of Softwarehelden with measures in accordance with Section II.2.9, unless it can prove that the risk of disclosure of

II. Purchase of the platform software and/or apps from Softwarehelden

Confidential Information of Softwarehelden (in particular of functions and design of the contractual objects) is excluded.

- 2.11. The customer is only entitled to decompile the contractual objects within the limits of § 69e UrhG and only if Softwarehelden has not provided the necessary data and/or information to establish interoperability with other hardware and software after a written request with a reasonable deadline.
- 2.12. If Softwarehelden provides the Customer with additions (e.g. hotfixes, additions to the user manual) or a new edition of the subject matter of the contract (e.g. minor update, major update) within the scope of rectification or maintenance, which replaces previously provided contractual items ("old software"), these are subject to the provisions of this agreement.
- 2.13. If Softwarehelden provides a new version of the subject matter of the contract, the customer's authorizations under this contract with regard to the old software expire as soon as the customer productively uses the new subject matter of the contract, even without an express request for return from Softwarehelden. However, Softwarehelden grants the customer a three-month transition phase during which both versions of the contractual objects may be used side by side. The customer's right to pass on the subject matter of the contract (regardless of the version) to third parties in accordance with section II.6 remains unaffected by this.

3. Special obligations to co-operate when providing the platform software

- 3.1. The customer installs the contractual items himself, unless Softwarehelden is commissioned separately with the installation.
- 3.2. The customer shall be solely responsible for setting up a functional hardware and software environment for the contractual items that is sufficiently dimensioned, also taking into account the additional load caused by the contractual items.
- 3.3. The customer shall thoroughly test the contractual items for freedom from defects and usability in the existing hardware and software configuration before using them. This shall also apply to contractual objects that he receives within the scope of the warranty and maintenance.
- 3.4. The Customer shall observe the instructions provided by Softwarehelden for the installation and operation of the contractual objects; the Customer shall inform itself at regular intervals about current instructions on the websites accessible via the Internet at <https://portal.softwarehelden.com> and take these into account during operation.
- 3.5. The customer shall take appropriate data backup measures for the work results and application data stored with the contractual objects or generated with the contractual objects and, in particular, back up the application data at appropriate intervals.

4. Purchase price

- 4.1. The purchase price for the contractual items is stated in the order confirmation.

- 4.2. The purchase price is due and payable upon invoicing, but not before delivery of the contractual items or their provision for retrieval in the network and information of the customer about the provision.
- 4.3. The customer is only authorized to use the contractual objects beyond the rights of use granted in this contract with the prior consent of Softwarehelden in text form. In the event of additional use without consent (in particular the simultaneous use of a larger number of users than agreed), Softwarehelden is entitled to charge the amount incurred for the additional use in accordance with Softwarehelden's price list valid at that time, unless the customer can prove that Softwarehelden's damages are significantly lower. Further non-contractual claims for damages remain unaffected.

5. Nature of the platform software

- 5.1. The scope of functions as well as the nature and quality of the contractual items are described by expressly agreed performance features (e.g. in product descriptions, documentation and specifications) and are deemed to be conclusively agreed unless and insofar as expressly agreed otherwise. Performance characteristics other than those expressly agreed are not owed. Softwarehelden does not owe any other, more extensive and/or additional quality within the meaning of § 434 Para. 3 No. 2 BGB. Softwarehelden shall only assume a commitment to a specific purpose of use or a specific suitability of delivered contractual items that goes beyond the warranty for this quality if and insofar as this is expressly agreed; otherwise the risk of suitability and use shall be borne exclusively by the customer.
- 5.2. A suitability for a specific use agreed between Softwarehelden and the customer for the contractual objects (e.g. in product descriptions, documentation and specifications) is deemed to be conclusively agreed if and insofar as nothing else is expressly agreed. This means: If the suitability of the contractual items to be delivered by Softwarehelden for a specific use is expressly agreed between Softwarehelden and the customer, the suitability of the contractual items to be delivered owed by Softwarehelden is limited to the use agreed with the customer. Softwarehelden does not owe any other, more extensive and/or additional suitability for normal use within the meaning of § 434 Para. 3 No. 1 BGB. The parties agree that there is no other and/or different "customary use" within the meaning of § 434 para. 3 no. 1 BGB beyond a use expressly contractually agreed by the parties (and thus also contractually assumed within the meaning of § 434 para. 2 no. 2 BGB).
- 5.3. If an agreement is made between the customer and Softwarehelden regarding the accessories to be supplied with the contractual items, this agreement is deemed to be conclusive if and insofar as nothing else is expressly agreed. This means: If it is expressly agreed between Softwarehelden and the customer which accessories are owed by Softwarehelden for the contractual items, the accessories owed by Softwarehelden are limited to the accessories agreed with the customer in the absence of an express agreement to the contrary. Softwarehelden then owes no further accessories.
- 5.4. A quality or specific use specified in accordance with Sections II.5 to II.5.3 or an agreement on the accessories to be supplied with the contractual items shall take precedence over objective requirements for the contractual items within the meaning of Section 434 (3) BGB.

- 5.5. If no agreement has been made on the quality or use of the contractual items to be supplied by Softwarehelden or on the accessories to be supplied with the contractual items, the following applies in each case:
- 5.5.1. Only public statements made by Softwarehelden or on behalf of Softwarehelden are decisive for the quality of the contractual objects.
- 5.5.2. Accessories are only instructions that enable sufficiently qualified specialist personnel to commission the contractual items together with the customer's existing platform software and apps.
- 5.6. The contractual items shall be provided to the customer in the version current at the time of delivery. The customer shall only be entitled to the provision of the source code of the contractual objects if such provision has been expressly agreed; the only exceptions to this are those open source programs whose license conditions expressly provide for the provision of the source code. If the contractual objects are provided to the customer exclusively in object code, the rights of use granted to the contractual objects also relate exclusively to the use of the contractual objects in object code. If this is necessary for the usability of the contractual objects, the customer shall receive instructions for use, e.g. as electronic online help.

6. Transfer of purchased platform software

- 6.1. The customer may only transfer the contractual items acquired in accordance with section II to a third party in a standardized manner and with the simultaneous, complete and final relinquishment of its own use of the contractual items. The temporary or partial transfer of use to third parties against payment is prohibited, regardless of whether the contractual items are transferred in physical or non-physical form. The same applies in the case of gratuitous transfer. An isolated transfer of license keys prior to receipt or downloading of the contractual objects - regardless of whether individual or all license keys provided to the customer - is not permitted.
- 6.2. The transfer of the contractual objects acquired in accordance with section II requires the written consent of Softwarehelden. Softwarehelden gives its consent if (i) the customer assures Softwarehelden in writing that it has passed on all original copies of the contractual objects to the third party and deleted all copies it has made itself, and (ii) the third party declares its agreement to Softwarehelden in writing with the terms and conditions of the GTC contained for the use and transfer of the contractual objects.

7. Protection of the contractual objects

- 7.1. Unless the customer is expressly granted rights under this contract, all rights to the contractual items (and all copies made by the buyer) - in particular the copyright authorizations, the rights to or in inventions and technical property rights - are the exclusive property of Softwarehelden. This also applies to adaptations of the contractual objects by Softwarehelden. The customer's ownership of the respective data carriers of such copies remains unaffected.

II. Purchase of the platform software and/or apps from Softwarehelden

- 7.2. The customer shall store the contractual objects provided carefully in order to prevent misuse. The customer will only make contractual objects (whether unchanged or modified) - in particular license keys - accessible to third parties with the prior express consent of Softwarehelden in text form. Third parties do not include the customer's employees or other persons who are on the customer's premises for the contractual use of the contractual items. Section II.6 remains unaffected.
- 7.3. The customer is not permitted to change or remove copyright notices, labelling and/or control numbers or symbols of Softwarehelden. If the customer modifies or edits the subject matter of the contract, these notices and labels must be included in the modified version of the subject matter of the contract.
- 7.4. The customer shall keep a record of the copies of contractual items made by him on data carriers and their whereabouts and shall provide Softwarehelden with information and access to this information on request
- 7.5. If the customer transfers data carriers, memory or other hardware on which contractual items are stored (in whole or in part, unchanged or modified) (i) to third parties without a transfer in accordance with section II.6 or (ii) gives up direct possession thereof, he shall ensure that the stored contractual items are completely and permanently deleted beforehand.
- 7.6. Softwarehelden would like to point out that the contractual objects transmit data on the scope of use of the contractual objects to Softwarehelden during operation. For this purpose, each time the contractual items are used, the usage is automatically compared with a Softwarehelden licensing server to determine whether the contractual items used by the user have the required license. For this purpose, a log is kept of who has used the respective license from when to when. If there are insufficient licenses, the use of the contractual objects concerned can be automatically prevented. The customer shall not interrupt or hinder the transfer. The customer must obtain any consents and authorizations required for the transfer in accordance with the statutory provisions applicable to it. The last sentence of section II.6.1 applies accordingly.
- 7.7. If the data collected in accordance with section II.7.6 on the scope of use of the contractual objects shows that the scope of use permitted by the license has been exceeded by the customer, Softwarehelden is entitled to take measures to ensure that the scope of use permitted by the license is complied with.
- 7.7.1. Softwarehelden will inform the customer that the licensed scope of use has been exceeded. In addition, Softwarehelden will first take measures that do not significantly impair the operation of the contractual objects and the use by the customer, for example by displaying notices when the user logs on to the platform software.
- 7.7.2. If the customer does not comply with the scope of use permitted by the license within a reasonable period of time after Softwarehelden has pointed out the excess and taken measures in accordance with section II.7.7.1, Softwarehelden is entitled to take further measures that may impair the operation of the contractual objects and the use by the customer. Such measures may also include a partial or complete blocking of access to the contractual objects.

- 7.7.3. Further rights of Softwarehelden due to the customer exceeding the scope of use permitted by the license remain unaffected.

8. Delivery, delivery time

- 8.1. Unless otherwise specified in the order confirmation, the contractual objects are delivered by Softwarehelden, at its own discretion, either (i) providing the customer with a program copy of the contractual objects, the license key(s) and the application documentation on a machine-readable data carrier or (ii) making the platform software and the application documentation available on the Internet and informing the customer of this and providing the customer with the license key(s).
- 8.2. For compliance with delivery dates and the transfer of risk, the time at which Softwarehelden hands over the contractual items and application documentation to the carrier is decisive for physical dispatch, otherwise the time at which the contractual items are made available on the network and this is communicated to the customer. If the contractual items or the application documentation are damaged or destroyed after the transfer of risk, Softwarehelden will provide a replacement against reimbursement of the copying and shipping costs. Sentences 1 and 2 apply accordingly to deliveries within the scope of subsequent fulfillment.
- 8.3. As long as Softwarehelden is waiting for the customer's cooperation or information, delivery and performance deadlines are deemed to be extended by the duration of the hindrance and by a reasonable start-up time after the end of the hindrance ("downtime") and there is no breach of duty for the duration of the downtime. In the event of force majeure, section I.15.1 shall apply.

9. Duty to inspect and Notify Defects; Deemed Approval

- 9.1. If the customer is a merchant or a trading company, he assumes an obligation to inspect and give notice of defects in accordance with § 377 para. 1 HGB (German Commercial Code) with regard to all deliveries of the contractual items by Softwarehelden in the execution of the purchase contract. The customer must notify Softwarehelden immediately in text form of any defects that become apparent during the inspection of contractual items. If the customer sends a notification of defects to Softwarehelden, the customer must immediately afterwards - e.g. by enquiring at Softwarehelden - ensure that Softwarehelden has received the notification of defects.
- 9.2. If the customer fails to give immediate notice of defects within the meaning of section 377 (2) HGB, the subject matter of the contract in question shall be deemed approved.
- 9.3. § Section 377 (4) HGB only applies if the customer makes sure that Softwarehelden has received a notice of defect immediately after sending it.
- 9.4. § Section 377 (5) HGB remains unaffected.

10. Material defects and defects of title, other defects in performance, limitation period

- 10.1. Softwarehelden warrants in accordance with the rules of sales law, subject to the restrictions provided for in the GTC and any fictitious authorizations that may apply, the agreed quality of the contractual items in accordance with section II.1.4 and that the use of the contractual items by the buyer to the contractual extent does not conflict with any third-party rights. However, the warranty for the freedom of the contractual items from third-party rights shall only apply to the country of destination agreed between the parties in which the contractual items are to be used. In the absence of an express agreement, the warranty shall apply to the country in which the customer has its registered office.
- 10.2. In the event of material defects, Softwarehelden initially provides warranty through subsequent fulfillment. For this purpose, Softwarehelden will, at its own discretion, provide the customer with a new, defect-free software version or remedy the defect and adapt the application documentation accordingly; Softwarehelden is also deemed to have remedied the defect if it shows the customer reasonable options for avoiding the effects of the defect.
- 10.3. If the contractual items delivered by Softwarehelden have legal defects at the time of transfer of risk, Softwarehelden will provide the customer with a legally flawless utilization option. Alternatively, Softwarehelden can also replace the affected contractual items with equivalent ones if this is reasonable for the customer. If an infringement of third-party property rights and/or a legal dispute with the third party about corresponding claims can be eliminated or avoided by the customer using a more up-to-date software version provided by Softwarehelden, he is obliged to adopt and use it within the scope of his duty to minimize damages, unless he can prove that the use of the more up-to-date version is unreasonable for him.
- 10.4. Softwarehelden is entitled to make subsequent fulfillment dependent on the customer having paid at least a reasonable part of the remuneration.
- 10.5. If Softwarehelden expressly provides the customer with software components for tests or demonstrations or for comparable purposes, it has not yet been tested whether such software components work faultlessly and stably in productive use. Claims against Softwarehelden due to defects in such software components therefore only exist if Softwarehelden has deliberately caused a defect or deliberately concealed it.
- 10.6. The customer is obliged to accept a new software version if the contractual scope of functions is retained.
- 10.7. If the subsequent fulfillment fails, the customer shall be entitled to set a reasonable grace period to remedy the defect. He must expressly point out in text form that he reserves the right to withdraw from the contract and/or demand compensation in the event of renewed failure.
- 10.8. If the rectification also fails within the grace period, the customer may withdraw from the contract or reduce the remuneration if he has pointed this out in advance and the defect is not insignificant. Softwarehelden shall pay compensation for damages or reimbursement of futile expenses due to a defect within the limits set out in section I.14
- 10.9. After the expiry of a deadline set in accordance with sentence 1 of section II.10.8, Softwarehelden may demand that the customer exercises his rights resulting from the expiry of

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the deadline within two weeks of receipt of the request. After expiry of the deadline, the right of choice is transferred to Softwarehelden.

- 10.10. If Softwarehelden provides troubleshooting services without being obliged to do so, Softwarehelden can demand the reasonably necessary and appropriate remuneration for this in accordance with Softwarehelden's usual rates, insofar as the effort was caused by the buyer. This applies in particular if a defect cannot be proven or is not attributable to Softwarehelden. Softwarehelden must also be compensated for the reasonably necessary and appropriate additional expenditure incurred by Softwarehelden as a result of the customer not properly fulfilling his obligations in accordance with section II.9. The customer is at liberty to raise the defense of contributory causation or contributory negligence on the part of Softwarehelden (§ 254 BGB).
- 10.11. If third parties assert claims that prevent the purchaser from exercising the rights of use granted to him under the contract, the customer shall inform Softwarehelden immediately in text form and comprehensively. He hereby authorizes Softwarehelden to take legal action against third parties in and out of court. If the customer is sued, he agrees with Softwarehelden and only takes legal action, in particular acknowledgements and settlements, with its consent.
- 10.12. Softwarehelden is obliged to defend against the claims at its own expense and to indemnify the customer against all costs and damages associated with the defense against claims, insofar as these are not based on the customer's conduct in breach of duty.
- 10.13. The customer can only derive rights from other breaches of duty by Softwarehelden if he has complained to Softwarehelden in text form and has granted him a grace period for remedy. This does not apply if a remedy is out of the question due to the nature of the breach of duty. The limits set out in section I.14 apply to compensation for damages or reimbursement of futile expenses.
- 10.14. Subject to the following paragraph, the limitation period for warranty claims is one year and begins with the delivery or provision (and notification of the customer thereof) of the contractual items; the same period applies to claims arising from other breaches of duty against Softwarehelden.
- 10.15. In addition, Section 377 of the German Commercial Code (HGB), in particular the fiction of authorization within the meaning of Section 377 (2) HGB and the customer's loss of rights associated with this, if applicable, shall remain unaffected by the provisions in this section II.10.

11. End of the right of use of the contractual objects

- 11.1. In all cases of termination of his authorization of use (e.g. by withdrawal, subsequent delivery), the customer shall immediately return all deliveries of the contractual items and delete all copies, unless he is legally obliged to retain them for a longer period. The customer assures Softwarehelden in text form that this has been done.

III. Rent of the platform software or apps

1. Subject matter of the contract

- 1.1. The subject matter of the contract is the provision of (i) the platform software and/or (ii) apps from Softwarehelden, each in object code in the configuration specified in the order confirmation, the associated application documentation (in electronic form) (hereinafter the "Application Documentation") and any license keys required to download and use the platform software under the terms of use agreed in this contract (together the "Contractual Objects") for a limited period of time in return for payment.
- 1.2. Third-party apps and customer apps are not covered by this contract in section III.
- 1.3. Unless otherwise agreed, Softwarehelden shall make the contractual objects available to the Customer for use in object code via download at the start of the rental period in accordance with III.8 . Section II.3 applies accordingly.
- 1.4. The provision of source codes is not part of the services owed and is not made available to the customer.
- 1.5. The quality of the rented contractual items is conclusively determined by the service description valid at the time the contractual items are provided and available to the customer prior to conclusion of the contract, which is also described again in the application documentation. Softwarehelden does not owe any additional quality of the contractual objects. In particular, the customer cannot derive such an obligation from other representations of the contractual objects in public statements or in the advertising of Softwarehelden, its employees or sales partners, unless Softwarehelden has expressly confirmed the additional quality.

2. Scope of use and prohibition of use

- 2.1. The platform software can be installed and used on a local server of the customer (on-premise) or on a web server (cloud), provided these fulfill the technical requirements of Softwarehelden.
- 2.2. Unless otherwise agreed in the order confirmation, the customer may only use the contractual items for his own contractual use within the scope of the license
 - 2.2.1. The contractual items are not intended to support the customer in providing comparable contractual items or services for third parties and may not be used by customers for such purposes.
 - 2.2.2. The customer is not authorized to allow third parties to use the contractual items, to make them accessible to third parties or to reproduce, sell or temporarily transfer, rent or lend the contractual items to .
 - 2.2.3. In particular, the transfer and/or commercial subletting of the contractual objects to third parties by (i) operating a computer center for third parties or (ii) making the platform

software available for use (e.g. as application service providing) or (iii) using the contractual objects for training persons who are not employees of the customer is prohibited.

- 2.2.4. Dependent use by the customer's employees or other third parties subject to the customer's right to issue instructions within the scope of intended use is permitted.
- 2.3. Reproductions of the rented software are only permitted if and insofar as they are necessary for the contractual use. Backup copies on data carriers must be labelled as such and provided with a copyright notice on Softwarehelden.
- 2.4. Upon payment of the rental fee, Softwarehelden grants the customer a simple right to use the contractual items for the duration of this contract for use in accordance with the contract to the extent specified in the order confirmation.
- 2.5. The scope of contractual use is limited to the license.
- 2.6. Unless otherwise agreed, the rights of use granted shall be limited to the country of destination agreed between the parties in which the contractual items are to be used. In the absence of an express agreement on a country of destination, the right of use shall be granted exclusively for the country in which the customer has its registered office. This geographical restriction refers only to the place of operation of the infrastructure on which the contractual objects are operated, not to access to this infrastructure by users, which is not subject to any geographical restriction.
- 2.7. The rights of use may only be exercised by a maximum number of users equal to the number of user licenses held by the customer. In the event of multiple use, section III.3.1 shall apply.
- 2.8. The customer is only authorized to make changes, extensions and other modifications to the software within the meaning of § 69c No. 2 UrhG to the extent that the law permits this. Before the customer eliminates errors himself or through third parties, he first authorizes Softwarehelden to attempt to eliminate the error. The customer shall not be entitled to any rights of use or exploitation rights of its own in respect of such modifications - over and above the rights of use granted under this contract. Insofar as the customer acquires rights to adaptations, Softwarehelden can - in return for appropriate remuneration - demand the granting of an exclusive or non-exclusive, spatially and temporally unrestricted right of use with the right to grant sub-licenses.
- 2.9. The Customer may not commission third parties who are competitors of Softwarehelden with measures in accordance with Section III.2.8, unless the Customer can prove that the risk of disclosure of Confidential Information of Softwarehelden (in particular of functions and design of the platform software) is excluded.
- 2.10. The customer is only entitled to decompile the contractual objects within the limits of § 69e UrhG and only if Softwarehelden has not provided the necessary data and/or information to establish interoperability with other hardware and software after a request in text form with a reasonable deadline.
- 2.11. If Softwarehelden provides the customer with additions (e.g. hotfixes, additions to the user manual) or a new edition of the subject matter of the contract (e.g. minor update, major update)

within the scope of rectification or maintenance, which replaces previously provided contractual items ("old software"), these are subject to the provisions of this agreement.

- 2.12. If Softwarehelden provides a new edition of the subject matter of the contract, the customer's authorizations under this contract with regard to the old software expire as soon as the customer starts using the new platform software productively, even without an express request for return from Softwarehelden. However, Softwarehelden grants the customer a three-month transitional phase during which both versions of the contractual objects may be used side by side.

3. Rent

- 3.1. The customer is obliged to pay the rental fee resulting from the order confirmation for the provision of the contractual items.
- 3.2. The customer is only authorized to use the contractual objects beyond the rights of use granted in this contract with the prior consent of Softwarehelden in text form. In the event of additional use without consent (in particular the simultaneous use of a larger number of users than agreed), Softwarehelden is entitled to charge the amount incurred for the duration of the additional use in accordance with Softwarehelden's price list valid at that time, unless the customer can prove that Softwarehelden's damages are significantly lower. Further non-contractual claims for damages remain unaffected.

4. Protection of the contractual objects, duty of care

- 4.1. Sections II.7.2 to II.7.7 apply accordingly.
- 4.2. The customer is obliged to take suitable precautions to ensure that unauthorized third parties cannot access the contractual items and any backup copies.

5. Obligation of the customer to notify defects and system changes

- 5.1. The customer is obliged to notify Softwarehelden immediately in text form of any defects in the contractual items. In doing so, he will take into account Softwarehelden's instructions for analyzing the problem within the scope of what is reasonable for him and forward to Softwarehelden all information available to him that is necessary for rectifying the defect.
- 5.2. The customer must inform Softwarehelden of any changes to the infrastructure on which the contractual objects are operated.

6. Rights of the customer in the event of defects

- 6.1. Softwarehelden is obliged to rectify defects in the contractual items.

- 6.2. Section II.10.5 applies accordingly.
- 6.3. Softwarehelden may choose to rectify defects by repair or replacement free of charge.
- 6.4. The customer is obliged to accept a new version of the contractual items if the contractual scope of functions is retained.
- 6.5. Cancellation by the customer in accordance with § 543 paragraph 2 sentence 1 number 1 BGB due to failure to grant contractual use is only permissible if Softwarehelden has been given sufficient opportunity to rectify the defect and this has failed. Failure to remedy the defect can only be assumed if it is impossible, if it is refused by Softwarehelden or unreasonably delayed, if there are reasonable doubts about the prospects of success or if it is unreasonable for the customer for other reasons.
- 6.6. The customer's rights due to defects are excluded if the customer makes or has made changes to the rented contractual items without Softwarehelden's consent, unless the customer proves that the changes have no unreasonable effects on Softwarehelden in terms of analyzing and eliminating the defects. The customer's rights due to defects remain unaffected, provided that the customer is authorized to make changes, in particular within the scope of exercising the right of self-remedy in accordance with § 536a paragraph 2 BGB and these have been carried out professionally and documented in a comprehensible manner.

7. Limitation of liability

- 7.1. The strict liability of Softwarehelden according to § 536a paragraph 1, 1st alternative BGB due to defects that already exist at the time of the conclusion of the contract is excluded.
- 7.2. Liability for slightly negligent breach of a material contractual obligation is limited to the total amount that the customer has or would have to pay as rent for the contractual items of Softwarehelden during the twelve-month term of the contract.

8. Contract term, termination of the tenancy

- 8.1. Unless otherwise agreed, the tenancy begins upon conclusion of the contract and has a term of twelve months. It is automatically extended by a further twelve months unless it is terminated by one of the parties at the end of the respective term with one month's notice.
- 8.2. The customer's cancellation rights in accordance with Section III.3 and Section III.6.5 of this contract remain unaffected.
- 8.3. The right of each party to terminate a contract extraordinarily and without notice for good cause remains unaffected. In addition to section I.18.1, Softwarehelden shall be deemed to have good cause in particular in any case in which the customer is in default of payment of the rent or a not insignificant part of the rent for two consecutive months or, in a period extending over more than two months, in default of payment of the remuneration in an amount equal to the remuneration for two months. If no monthly rent has been agreed between the parties, these provisions shall

apply accordingly to an amount corresponding to the proportion of the remuneration agreed between the parties for a period of use of two months. To calculate this share, the fee agreed between the parties shall be apportioned to the agreed period of use.

9. Return

- 9.1. Upon termination of the contractual relationship, the customer must completely and permanently delete the contractual items provided and any copies made of the contractual items provided by Softwarehelden.
- 9.2. The customer assures Softwarehelden in text form that the order has been completed.

IV. Hosting

1. Scope of hosting services

- 1.1. The subject matter of the contract is the hosting of infrastructure in third-party data centers for the operation of the platform software and apps for access via the Internet.
- 1.2. The scope of services is set out in the hosting offer. Insofar as reference is made in the offer to the terms and conditions of the provider of the infrastructure used for hosting, the scope of services is based on these terms and conditions, in particular with regard to availability.
- 1.3. The use of the platform software and apps requires the customer to have a contract for the purchase or rental of the platform software and/or apps provided via hosting.
- 1.4. As part of hosting, Softwarehelden manages a server for operating the platform software and apps, which is made available to the customer for access via the Internet.
- 1.5. Softwarehelden only provides services for the administration and maintenance of the platform software and apps after a separate agreement on operation by Softwarehelden has been concluded (section V).

2. Remuneration

- 2.1. The customer is obliged to pay the remuneration for the hosting services specified in the offer or the order confirmation.
- 2.2. Depending on the terms of the agreement, costumers may be required to make a payment on either a monthly, quarterly or annual basis.
- 2.3. The advance payment is due in advance on the third last working day of the respective preceding billing period. If the customer has justifiably cancelled the contract for cause, the advance payment shall be repaid pro rata temporis.
- 2.4. When setting the price for hosting, the parties have taken into account the prices of the third party providing the hosting infrastructure at the time the contract was concluded. If the prices of the third party change by more than 5% (increase or reduction), not only temporarily, compared to the time of the conclusion of the contract or the last price adjustment, each party shall be entitled to demand a corresponding adjustment of the remuneration. The party wishing to claim the adjustment (increase or reduction) for itself must inform the other party in text form of its intention to make the adjustment, stating the price development of the third party. The other party shall have a special right of cancellation in the event that it does not wish to accept the price adjustment.

3. Availability

- 3.1. Under availability, the parties understand the technical usability of the hosting at the transfer point for use by the customer. The transfer point for hosting is the router output of the data center in which the hosting services are provided.
- 3.2. Insofar as reference is made to the conditions of the infrastructure provider in accordance with section IV.1.2 , these conditions apply to availability.
- 3.3. Unless reference is made to the terms and conditions of the infrastructure provider in accordance with section IV.1.2 , Softwarehelden guarantees 24-hour availability per day for hosting in its area of responsibility.
 - 3.3.1. Necessary planned maintenance work by Softwarehelden is excluded from the availability according to section IV.3.2 and section IV.3.3 . Planned maintenance work is work on the infrastructure for hosting, the platform software or the overall system, which is necessary for technical adaptation, ensuring function and interoperability, technical development and other changes. Softwarehelden will inform the customer of this in advance.
 - 3.3.2. In addition to planned maintenance work in accordance with section IV.3.3.1 , availability in accordance with section IV.3.3 may be limited by unplanned and unforeseen downtimes. These are times when Softwarehelden Cloud is unavailable due to unplanned and unforeseen events for which Softwarehelden is not responsible, such as force majeure, interruption of the power supply, hardware and software errors and technical problems in the data lines.
- 3.4. The customer is responsible for fulfilling the technical requirements for using the hosted platform software
- 3.5. Unless otherwise agreed, support is provided exclusively via the ticketing system at <https://portal.softwarehelden.com> or by e-mail at support@softwarehelden.com.

4. Changing the infrastructure

- 4.1. The scope of hosting services is set out in the order confirmation. As long as this scope of services is fulfilled, Softwarehelden can choose at its own discretion which provider and which infrastructure is used for hosting.
- 4.2. Softwarehelden will inform the customer four weeks in advance of a planned change to another provider or infrastructure. Only if the parties have expressly agreed that Softwarehelden must use a specific infrastructure or provider for hosting must Softwarehelden obtain the customer's consent before switching to another provider or infrastructure.
- 4.3. Softwarehelden's obligations under data protection law, in particular from the agreement on order processing, remain unaffected.

5. Regulations in the event of defects of the hosting**5.1. Softwarehelden is liable for the fact that is hosting**

- 5.1.1. is suitable for the agreed purposes,
- 5.1.2. is free of defects for the entire term of the contract,
- 5.1.3. in particular, is free of viruses and similar malware that would jeopardise the suitability of the hosting for contractual use.

5.2. If Softwarehelden does not fulfill the agreed obligations or does not fulfill them in full, the following provisions shall apply.

- 5.2.1. If Softwarehelden defaults on the initial operational provision of hosting, liability is governed by sections I.14 to I.18. The customer is entitled to withdraw if Softwarehelden does not comply with a two-week grace period set by the customer, i.e. does not provide the full agreed hosting functionality within the grace period.
- 5.2.2. If Softwarehelden does not fulfill the agreed obligations in whole or in part after the initial operational provision of the hosting, the remuneration owed is reduced pro rata for the time in which the hosting was not available to the customer to the agreed extent. To calculate this proportion, the remuneration agreed between the parties is apportioned to the agreed period of use. If Softwarehelden is responsible for this non-fulfillment, the customer may also claim damages in accordance with this section IV.5 and sections I.14, I.15.1 and I.20.

5.3. In the event of hosting failures for reasons caused by Softwarehelden willfully or through gross negligence, Softwarehelden is liable in accordance with the statutory provisions, irrespective of the availability agreed in sections IV.3.1, IV.3.2 and IV.3.3.**5.4. The customer is obliged to immediately notify Softwarehelden in text form of any defects in the hosting such as malfunctions (e.g. inaccessibility) or legal defects (e.g. legal infringements alleged by third parties due to the use of the hosting). If the customer does not fulfill this obligation, § 536c BGB will be applied accordingly.****5.5. Softwarehelden must demonstrate that Softwarehelden is not responsible for the reason for the delayed provision or the service failure. If the customer has not notified Softwarehelden of the service failure, the customer must prove in case of dispute that Softwarehelden has gained knowledge of it in another way.****5.6. If third parties assert claims that prevent the customer from exercising the contractual authorisation to use the hosting services, the customer shall inform Softwarehelden immediately and comprehensively in text form.**

- 5.6.1. The customer hereby authorizes Softwarehelden to take legal action against third parties out of court and in court alone.
- 5.6.2. If the customer is sued, he will inform Softwarehelden of this and coordinate any legal actions that may affect Softwarehelden with Softwarehelden.

- 5.6.3. If reference is made to the conditions of the infrastructure provider in accordance with section IV.1.2 and the possible causes of a defect of title alleged by a third party would lie within the area of responsibility of the infrastructure provider, Softwarehelden is entitled to fulfill the customer's claims due to defects of title by assigning the claims against the infrastructure provider and to refer the customer directly to the infrastructure provider in this respect. The customer hereby agrees to such assignment and fulfillment of claims for defects.
- 5.7. The customer can only derive rights from other breaches of duty by Softwarehelden if he has complained to Softwarehelden in text form and granted Softwarehelden a grace period to remedy the situation. This does not apply if a remedy is out of the question due to the nature of the breach of duty

6. Limitation of liability

- 6.1. The strict liability of Softwarehelden according to § 536a paragraph 1, 1st alternative BGB due to defects that already exist at the time of the conclusion of the contract is excluded.
- 6.2. Liability for slightly negligent breach of a material contractual obligation is limited to the total amount that the customer has to pay for hosting during the twelve-month term.

7. Duties and obligations of the customer

- 7.1. As part of the customer's duties and obligations in the performance of the contract, the customer shall in particular
- 7.1.1. Only collect, process or use personal data when using hosting if there is a sufficient legal basis;
- 7.1.2. Before sending data and information to Softwarehelden for the use of hosting or uploading it to servers and/or storage space provided as part of hosting, check it for viruses and other malware and use state-of-the-art virus protection programs and other suitable and appropriate protective measures;
- 7.1.3. If it stores application data and other data on servers and/or storage space provided as part of the hosting, back them up regularly and in accordance with the importance of the data and make its own backup copies to enable reconstruction of the data and information in the event of loss; and
- 7.1.4. If and to the extent that the technical possibility to do so is made available to him by mutual agreement, regularly back up the application data generated and/or stored in the platform software and/or apps for which hosting is used by download; if Softwarehelden makes application data available to the customer by other means, this provision applies accordingly. Softwarehelden's obligation to back up data remains unaffected.

- 7.2. The customer assures that when using the server and/or space provided within the scope of hosting
- 7.2.1. The customer materials or other content used by him do not infringe any third-party rights, in particular no industrial property rights (e.g. trademark, patent, design and utility model rights), copyrights or personal rights and that he has the necessary rights and consents to store and/or process the content;
 - 7.2.2. He is authorized to use and process the personal data of third parties contained or stored in the customer materials used by him, or which he processes in any other way, for the purposes pursued by him;
 - 7.2.3. The customer materials used are free of viruses and other malware and
 - 7.2.4. That it will comply with all applicable laws and regulations.
- 7.3. The customer indemnifies Softwarehelden against all third-party claims asserted against Softwarehelden due to the content posted by the customer or due to violations of the obligations under section I.22.2 and/or the prohibitions under section I.22.3.
- 7.4. Section IV.7.3 shall not apply if the customer is not responsible for the infringement or violation in question.

8. Data backup

- 8.1. The customer is solely responsible for backing up the data on the hosted infrastructure.
- 8.2. Softwarehelden is not obliged to carry out a data backup without express authorization.

9. Contract term, termination

- 9.1. Unless otherwise agreed, the hosting contract commences upon conclusion of the contract and has a term of twelve months. It is automatically extended by a further twelve months unless it is cancelled by one of the parties at the end of the respective term with one month's notice.
- 9.2. The customer's cancellation rights in accordance with section IV.2.1 of this contract remain unaffected.
- 9.3. The right of each party to terminate a contract extraordinarily and without notice for good cause remains unaffected. In addition to section I.18.1, Softwarehelden shall be deemed to have good cause in particular in any case in which
 - 9.3.1. The customer is in arrears with the payment of the remuneration or a not insignificant part of the remuneration for two consecutive months or, in a period extending over more than two months, with the payment of the remuneration in an amount equal to the remuneration for two months. If no monthly remuneration has been agreed between the parties, these

provisions shall apply accordingly to an amount corresponding to the share of the remuneration agreed between the parties for a usage period of two months. To calculate this share, the remuneration agreed between the parties shall be apportioned to the agreed period of use.

10. Data protection

- 10.1. Softwarehelden provides hosting for the customer as a processor. Softwarehelden is not responsible for how the customer processes personal data in order to use the hosting. The corresponding data protection rights and obligations are governed by the order processing agreement between Softwarehelden and the customer.

V. Operation by Softwarehelden

1. Scope of services from operation

- 1.1. The subject matter of the contract is (i) the administration and (ii) maintenance of the platform software and apps on the customer's infrastructure or the infrastructure provided to the customer as part of hosting by Softwarehelden
- 1.2. The scope of services results from the conditions listed in the order confirmation, in particular from the Service Level Agreement of Softwarehelden.
- 1.3. The service requires (i) a contract of the customer for the purchase or rental of the platform software, as well as (ii) an infrastructure that can be used for this purpose, for which the contractual services are to be provided. This infrastructure can also be provided by Softwarehelden after the conclusion of a hosting contract in accordance with section IV.
- 1.4. As part of the administration, Softwarehelden installs the platform software and/or apps used by the customer and the hotfixes, minor updates and major updates for this software in the infrastructure.
- 1.5. As part of maintenance, Softwarehelden monitors whether the platform software and apps are accessible and therefore usable by accessing the infrastructure. If the customer is entitled to maintenance services for the platform software and apps from Softwarehelden, these are also provided as part of the maintenance on the customer's infrastructure.

2. Remuneration

- 2.1. The customer is obliged to pay the remuneration for the services resulting from the order confirmation.
- 2.2. The customer pays monthly, quarterly or annually in advance, depending on the agreement
- 2.3. The advance payment is due in advance on the third last working day of the respective preceding billing period. If the customer has justifiably cancelled the contract for cause, the advance payment shall be repaid pro rata temporis.
- 2.4. Softwarehelden is entitled to increase the remuneration for the first time after the expiry of twelve months from the date of operational readiness with three months' notice in text form to the end of the month. Further increases can be made at the earliest twelve months after the previous increase takes effect. The increase must be reasonable and in line with market conditions. It may amount to a maximum of 3% of the rent applicable at the time of the announcement. The customer has the right to terminate the tenancy agreement within a period of six weeks after receipt of the announcement of a rent increase.

3. Regulations in the event of defects

- 3.1. Softwarehelden is liable for ensuring that the platform software and apps are properly installed on the customer's infrastructure and that they work properly after installation. Softwarehelden's liability does not apply if and as long as the customer's infrastructure as such is not properly provided by the customer. Section II.3.2 applies accordingly.
- 3.2. If Softwarehelden does not fulfill the agreed obligations or does not fulfill them in full, the following provisions shall apply.
- 3.2.1. If Softwarehelden is in default with the services, liability is governed by sections I.14 to I.18. The customer is entitled to withdraw if Softwarehelden does not comply with a two-week grace period set by the customer, i.e. does not provide the full agreed functionality on the customer's infrastructure within the grace period.
- 3.2.2. If Softwarehelden does not fulfill the agreed obligations in whole or in part, the remuneration owed shall be reduced proportionately for the time in which the platform software and apps were not available to the customer to the agreed extent due to services not rendered. To calculate this proportion, the remuneration agreed between the parties is apportioned to the agreed period of use. If Softwarehelden is responsible for this non-fulfillment, the customer can also claim damages in accordance with this section V.3 and sections I.14, I.15.1 and I.20.
- 3.3. The customer is obliged to immediately notify Softwarehelden in text form of any defects in the services such as malfunctions (e.g. unavailability) or defects of title. The customer must specify the non-contractual provision of services to Softwarehelden in as much detail as possible.
- 3.4. Softwarehelden must demonstrate that it is not responsible for the reason for the service failure. If the customer has not notified Softwarehelden of the service failure, he must prove in the event of a dispute that Softwarehelden has gained knowledge of it in another way.
- 3.5. Functional impairments resulting, for example, from improper operation or configuration of platform software, apps and customized software by the customer, from errors in the customer's infrastructure or from other circumstances within the customer's sphere of risk do not constitute a defect.
- 3.6. The liability for defects presupposes that the customer's infrastructure fulfills the system requirements specified by Softwarehelden. In particular, the customer shall ensure sufficient bandwidth and protection of its network against unauthorized access from outside by means of suitable, state-of-the-art security measures. Details of the system requirements can be found, for example, in the order confirmation. The liability for defects also presupposes that the customer does not change the installed platform software and apps without the consent of Softwarehelden or use them contrary to the contractual specifications.
- 3.7. If Softwarehelden provides services according to the customer's specifications or installs components of third parties or the customer himself at his request or connects them to the platform software or the apps, Softwarehelden assumes no responsibility for the technical and legal properties of these third-party components or the consequences of the implementation of the customer's specifications.

- 3.8. If the customer has fulfilled his duty to inform in accordance with section V.3.3, Softwarehelden is initially entitled and obliged to provide the service concerned in accordance with the contract within a reasonable period of time and at no additional cost to the customer, provided that this subsequent fulfillment of the service is possible and reasonable (subsequent fulfillment). Softwarehelden is not obliged to subsequent fulfillment if Softwarehelden is not responsible for the non-contractual provision of services; the presumption effect of § 280 paragraph 1 sentence 2 BGB applies (accordingly).
- 3.9. If the subsequent fulfillment finally fails (at least 2 attempts at subsequent fulfillment per defect) or is refused by Softwarehelden, the customer can withdraw from the contract or reduce the remuneration. Due to the complexity of the platform software in interaction with apps and the customer's infrastructure, more than 2 attempts at subsequent fulfillment may be reasonable for the customer. In the event of only insignificant deviation of the contractual items from the agreed quality, there is no right of cancellation. Softwarehelden shall pay compensation for damages and reimbursement of wasted expenses due to a defect within the limits set out in section I.14 of these GTC.
- 3.10. Sections II.10.9 and II.10.10 apply accordingly.
- 3.11. The limitation period for claims for defects by the customer under this section V.3 is one (1) year from installation of the customized software or provision of other services for operation in the customer's infrastructure. This does not apply in the event of intent or gross negligence on the part of Softwarehelden, in the event of fraudulent concealment of a defect, in the event of a defect of title and in the cases of sections I.15.2 and I.15.3 of these GTC.
- 3.12. The customer can only derive rights from other breaches of duty by Softwarehelden if he has complained to Softwarehelden in writing and granted Softwarehelden a grace period to remedy the situation. This does not apply if a remedy is out of the question due to the nature of the breach of duty.

4. Limitation of liability

- 4.1. Liability for slightly negligent breach of a material contractual obligation is limited to the total amount that the customer has to pay for the contractual items of Softwarehelden during a twelve-month term.

5. Duties and obligations of the customer

- 5.1. As part of the customer's duties and obligations in the performance of the contract, the customer shall in particular
- 5.1.1. Ensure (remote) access to its own infrastructure for Softwarehelden to provide the services and grant Softwarehelden the necessary access and rights to do so;

- 5.1.2. Inform Softwarehelden in good time about changes to the customer's infrastructure that may affect Softwarehelden's services;
- 5.1.3. Inform Softwarehelden immediately of any faults and malfunctions in the customer's infrastructure;
- 5.1.4. Ensure the functionality of the customer's infrastructure and the ongoing provision of the infrastructure to the extent necessary for the operation of the platform software and apps;
- 5.1.5. Ensure that the customer's infrastructure is free of viruses and other malware and use state-of-the-art anti-virus software and other suitable and appropriate protective measures;
- 5.1.6. Regularly back up the infrastructure, including the platform software and apps, to enable reconstruction of data and information in the event of loss.

6. Contract term, termination

- 6.1. Unless otherwise agreed, the contract for the services shall commence upon conclusion of the contract and shall have a term of twelve months. It is automatically extended by a further twelve months unless it is cancelled by one of the parties at the end of the respective term with one month's notice.
- 6.2. The customer's cancellation rights in accordance with Section V.2.4 of this contract remain unaffected.
- 6.3. The right of each party to terminate a contract extraordinarily and without notice for good cause remains unaffected. In addition to Section I.18.1, Softwarehelden shall be deemed to have good cause in particular in any case in which the customer is in arrears with the payment of the remuneration or a not insignificant part of the remuneration for two consecutive months or in a period extending over more than two months with the payment of the remuneration in an amount equal to the remuneration for two months. If no monthly remuneration has been agreed between the parties, these provisions shall apply accordingly to an amount corresponding to the share of the remuneration agreed between the contracting parties for a period of use of two months. To calculate this share, the remuneration agreed between the parties shall be apportioned to the agreed period of use.

VI. Maintenance of the platform software or apps by Softwarehelden

1. Subject matter of the contract

- 1.1. The subject matter of the contract is the maintenance services to be provided by Softwarehelden to the customer for the platform software and/or apps created by Softwarehelden. Details of the maintenance services can be found in the corresponding service description in the order confirmation.
- 1.2. Softwarehelden provides maintenance services for customized software (see section VII.1) and/or for customer-specific adaptations to the platform software only under the conditions set out in section VII.

2. Remuneration

- 2.1. The remuneration agreed for the maintenance services is set out in the order confirmation. Unless otherwise agreed, the remuneration is due annually in advance at the beginning of the respective term as a lump-sum ongoing maintenance fee, for the first time after conclusion of the maintenance contract.

3. Scope of maintenance services

- 3.1. If the parties agree to pay a flat-rate ongoing maintenance fee, the following maintenance services are covered - unless otherwise agreed: provision of existing hotfixes, minor updates and major updates for the platform software and/or apps created by Softwarehelden.
- 3.2. The maintenance services only relate to the agreed scope. If the customer does not agree maintenance services for all contractual items used by it, maintenance of the contractual items covered by this maintenance contract may result in the contractual items not covered by the maintenance not functioning or no longer functioning without errors or no longer functioning to the previous extent in conjunction with the serviced contractual items due to a lack of maintenance.

4. Adaptation to changed mandatory legal framework conditions/changed requirements in the customer's sphere

- 4.1. Softwarehelden is not obliged to adapt the platform software and the apps to changing legal framework conditions (i.e. mandatory laws, legal regulations, regulatory requirements) or due to changing requirements in the customer's sphere within the scope of the maintenance services agreed in accordance with section VI. Corresponding services are provided by Softwarehelden against separate agreement and remuneration in accordance with section VII.

- 4.2. The mandatory statutory rights of the customer remain unaffected.

5. Rights of use

- 5.1. If Softwarehelden further develops the platform software and/or apps created by Softwarehelden, Softwarehelden will provide the customer with new program parts in the form of hotfixes, minor updates and major updates as part of the maintenance contract. These new program parts and the corresponding adaptations and additions to the associated application documentation together form the "additions".
- 5.2. The supplements in the form of the object code and the adaptations of the associated application documentation are provided as a download in electronic form via the Internet. Softwarehelden will provide the customer with the information required for the download. A transfer of the source codes of the supplements is not owed.
- 5.3. The customer is responsible for the proper and compliant installation of the additions. At the customer's request, Softwarehelden will support the customer in this for a separate fee.
- 5.4. Softwarehelden grants the customer rights of use to the supplements delivered in fulfillment of a maintenance contract to the same extent as these were granted to the contractual objects of the maintenance contract. The rights of use granted to the customer remain unaffected by a cancellation of the maintenance contract.

6. Guarantee

- 6.1. If the customer concludes a maintenance contract that begins at the latest at the end of the limitation period for warranty claims in accordance with section II.10.14, this period shall be extended until the end of the contractual term of the maintenance contract.
- 6.2. The provisions of sections II.9 and II.10 shall apply accordingly to the warranty for defects in the supplements provided as maintenance services. However, the limitation period for warranty claims for defects in the supplements provided as maintenance services shall in no case end before the end of the contractual term of the maintenance contract.

7. Contract term and cancellation rights

- 7.1. In the absence of an agreement on a specific contract term, a maintenance contract runs for an indefinite period. It can be terminated by the customer with a notice period of one month and by Softwarehelden with a notice period of six months to the end of the agreed contract period, and if no such period is agreed, to the end of each calendar month.
- 7.2. The right of each party to terminate a contract extraordinarily and without notice for good cause remains unaffected. Good cause exists for Softwarehelden in particular in any case in which the customer is insolvent or insolvency proceedings have been opened against his assets or the

application for the opening of insolvency proceedings has been rejected due to lack of assets; however, after an application for the opening of insolvency proceedings against the customer's assets, Softwarehelden may not terminate due to a delay in payment of the remuneration that occurred in the period prior to the application for the opening of insolvency proceedings or due to a deterioration in the customer's financial circumstances.

VII. Development and customization of software by Softwarehelden for the customer

1. Subject matter of the contract and agile collaboration

- 1.1. The subject matter of the contract may be the development, creation, delivery and maintenance of apps for the platform software according to requirements and on behalf of the customer (hereinafter referred to as "customized software") or other development work, e.g. creation of documentation or user stories by way of agile development (all services in this paragraph hereinafter referred to as "development results").
- 1.2. The customer provides Softwarehelden with user stories. The user stories represent the customer's requirements to be implemented by Softwarehelden in sprints as part of agile development. The user stories provided by the customer must contain the information and requirements necessary for implementation by Softwarehelden. If this is not the case, Softwarehelden can create a corresponding user story for the customer as a development result.
- 1.3. In principle, user stories in the sprint backlog can be changed or replaced before the start of a sprint at no extra cost.
- 1.4. The specific design of the development results to be developed takes place as part of the iterative procedure and the associated step-by-step concretization of the work owed. Irrespective of this, the development results must in any case fulfill the agreed acceptance criteria
- 1.5. Customized software as a development result does not include any documentation. The creation of documentation must be commissioned and remunerated separately.
- 1.6. If the customer or product owner wishes to give specific work instructions to the development team, these must always be given to Softwarehelden via the respective contact person so that Softwarehelden can instruct the development team or its employees accordingly.
- 1.7. Softwarehelden does not check whether the customized software to be developed works properly with apps already used by the customer or affects their function without an express and separately remunerated commission.

2. Special co-operation services of the customer

- 2.1. A shared understanding of the agile way of working and active participation on the part of the customer are prerequisites for the joint success of the project and meeting the deadline targets.
- 2.2. The parties undertake to actively use the ticketing system for communication, documentation and collaboration. The use of the ticketing system is indispensable for the structured, efficient and successful completion of the given complex technical task. At the same time, the ticketing system is the basis for transparent and comprehensible reporting of work progress at all times.

- 2.3. During the collaboration to carry out development work by means of agile development, the customer guarantees the communicative availability of the product owner for the development team for the entire duration of the project.

3. Granting of rights of use – Scope of use

- 3.1. Softwarehelden grants the customer, subject to the condition precedent of full payment of the agreed remuneration and subject to the following provisions, the exclusive right of use, unlimited in terms of territory, time and content and transferable, to the customized software and delivered parts thereof, including any documentation (hereinafter collectively referred to as "work results"), also for all future types of use, in particular
- 3.1.1. The right to permanent or temporary reproduction, in whole or in part, by any means and in any form, for example for permanent and/or volatile storage on electrical, electromagnetic, optical storage media, such as any type of hard drive, RAM, DVD, CD-ROM, memory cards, USB sticks, via remote data transmission in data centers, clouds, etc,
- 3.1.2. The right to distribute the work results and copies thereof in any form and by any means, including the right to rent and lend, regardless of whether the distribution is in physical or non-physical form, in particular to transmit the work results via wired and wireless networks (e.g. for download, in client-server environments or by way of application service providing, software as a service or cloud computing) and
- 3.1.3. The right of communication to the public by wire or wireless means, including making available to the public in such a way that the work results thereof are accessible to members of the public from places and at times of their choice.
- 3.2. The customer should be able to exercise all rights to the work results in the same way as an owner.
- 3.3. The customer is authorized to transfer the above rights in whole or in part to third parties without further consent from Softwarehelden or to split off simple rights from them and grant them to third parties.
- 3.4. Softwarehelden guarantees the existence of the rights granted to the work results. Softwarehelden further warrants that there are no other industrial property rights to the work results that conflict with the possibility of use described above.
- 3.5. Softwarehelden must release the source code of the customized software. This does not include the source code of platform software and apps from Softwarehelden.
- 3.6. The above granting of rights does not apply to platform software and apps from Softwarehelden. Softwarehelden grants the customer rights of use to the platform software and apps of Softwarehelden only on the basis of a separate agreement.
- 3.7. Furthermore, the above granting of rights does not apply to software from other manufacturers and open source software (together: "third-party software") used by Softwarehelden.
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- 3.7.1. If third-party software from other manufacturers is used, Softwarehelden grants the customer non-exclusive rights of use. Softwarehelden ensures that it has the necessary rights to do so. If certain requirements have to be met for the granting of rights of use, Softwarehelden will comply with these. A list of the standard software used from other manufacturers and the corresponding license conditions will be attached to the offer and made available to the customer on request.
- 3.7.2. If open source software is used, Softwarehelden will enclose a list of the open source software used and the corresponding license conditions with the offer and make it available to the customer on request.

4. Characteristics

- 4.1. If no agreement has been made regarding the condition (quality) of customized software to be supplied by Softwarehelden regarding the condition or use or regarding the accessories to be supplied with the customized software, the following applies in each case:
 - 4.1.1. The customized software is usually used together with the customer's existing platform software and apps to fulfill the agreed purpose.
 - 4.1.2. Accessories are only instructions that enable sufficiently qualified specialist personnel to put the customized software into operation together with the customer's existing platform software and apps.
- 4.2. The customized software is provided to the customer electronically.

5. Delivery periods, delay in delivery

- 5.1. Unless otherwise specified in the order confirmation, the customized software is delivered by Softwarehelden, at its own discretion, either (i) providing the customer with a program copy of the customized software on a machine-readable data carrier or (ii) making the customized software available via the Internet and informing the customer of this.
- 5.2. In the case of physical dispatch, the time at which Softwarehelden hands over the customized software and application documentation to the carrier is decisive for compliance with delivery dates and the transfer of risk, otherwise the time at which the customized software is made available on the network and the customer is informed of this. If the customized software or the application documentation is damaged or destroyed after the transfer of risk, Softwarehelden will provide a replacement against reimbursement of the copying and shipping costs. Sentences 1 and 2 apply accordingly to deliveries within the scope of subsequent fulfillment.

6. Acceptance

- 6.1. The development results as a result of the respective sprint are released by the product owner after the sprint reviews if and insofar as they fulfill the requirements of the respective user story and the associated DoD. The release by the product owner is documented in the ticketing system and is considered as acceptance of the development results of the respective user story. The parties may agree that the acceptance is not carried out by the release in the ticketing system, but by a separate acceptance protocol, which the customer signs.
- 6.2. The product owner checks whether the requirements specified in the user stories and the associated DoD have been successfully implemented.
- 6.3. In the course of the acceptance test, Softwarehelden must make the development results available to the customer, if necessary and at the customer's request, together with the source code of the customized software in a suitable and comprehensible manner. Insofar as the development results include the contents of a ticketing system operated by Softwarehelden, these must be made available to the customer in a retrievable manner.
- 6.4. Softwarehelden supports the customer during the acceptance test, if necessary.
- 6.5. If the Customer identifies defects during the Sprint Review, these shall be reported by the Customer to Softwarehelden in accordance with section VII.8.2. If not only insignificant defects are found, the customer is entitled to refuse acceptance in this respect.
- 6.6. If the customer defaults on acceptance, acceptance is deemed to have been declared 14 days after the default occurs. Acceptance is also deemed to have been declared if the customer takes customized software into productive operation before acceptance without the express consent of Softwarehelden.

7. Remuneration

- 7.1. The parties agree on remuneration for the provision of development services based on story points. The scope of the development services is assessed as follows before the start of agile development:
 - 7.1.1. The customer defines the user stories.
 - 7.1.2. Softwarehelden evaluates the realization of these user stories with a number of story points.
 - 7.1.3. The customer agrees to the specified number of Story Points.
 - 7.1.4. The number of story points agreed by the parties determines the remuneration owed for the respective development services.
- 7.2. If a user story is to be changed or replaced, Softwarehelden will assess how many story points will be required to implement the new or changed user story. Sections VII.7.1.2 to VII.7.1.4 apply accordingly.

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- 7.3. Softwarehelden bases the evaluation in accordance with section VII.7.1.2 on the information available to Softwarehelden at the time of the evaluation regarding the user stories and the associated requirements of the customer. As a rule, the Product Owner is responsible for providing this information, so that Softwarehelden may rely on their information.
- 7.3.1. When developing customized software in particular, this also includes the platform software and apps used by Softwarehelden as well as the customer's other IT infrastructure.
- 7.3.2. Softwarehelden is not obliged to procure information independently beyond the procurement of information from the customer in the context of agile development (for example in sprint planning or through user stories). However, Softwarehelden will take information about the customer and the customer's other IT infrastructure that is already available to Softwarehelden at the time of the evaluation into account in the evaluation.
- 7.4. If it turns out after the start of the sprint that the implementation of a user story by Softwarehelden was evaluated with too few story points because Softwarehelden did not have the information necessary for a correct evaluation, without Softwarehelden being responsible for the lack of this information, Softwarehelden can re-evaluate the affected user story in accordance with section VII.7.1.2 and demand that the number of story points for this user story be adjusted. If the customer does not agree within a reasonable period of time set by Softwarehelden, Softwarehelden may withdraw from the further implementation of the user story.
- 7.5. If, after the start of the sprint, it turns out that the implementation of a user story by Softwarehelden was evaluated with too few story points because the actual circumstances on which Softwarehelden based the evaluation have changed after the start of the sprint, without Softwarehelden being responsible for these changes in such actual circumstances, Softwarehelden can re-evaluate the affected user story in accordance with section VII.7.1.2 and demand that the number of story points for this user story be adjusted.
- 7.5.1. If the customer does not agree within a reasonable period set by Softwarehelden, Softwarehelden may withdraw from the further realization of the user story.
- 7.5.2. When developing customized software, Softwarehelden is not responsible for changes in the customer's IT infrastructure (including the platform software and apps used by the customer and the wider system landscape).

8. Rights of the customer in the event of material defects

- 8.1. Softwarehelden guarantees, in accordance with the following paragraphs, that the development results, in particular customized software, comply with the agreed specification and that the contractual use of the development results does not conflict with any third-party rights.
- 8.2. The customer shall report defects in the development results to Softwarehelden immediately after their discovery in a comprehensible form via the ticketing system or in text form. The customer shall take all reasonable measures necessary to identify, localize and document defects. This includes the preparation of a defect report, system logs and memory extracts, the provision of the affected input and output data, interim and test results and other information and

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documents suitable for illustrating the defect. The content of the defect report must - where possible - be designed in such a way that a defect can be reproduced.

- 8.3. Softwarehelden guarantees that the development results have the properties and functionalities described in the agreed specification in the user stories. Claims can only be asserted by the customer for defects that are reproducible or can be comprehensibly described by the customer.
- 8.4. Functional impairments that result, for example, from improper operation or configuration of platform software, apps and customized software by the customer, from the customer's system environment, from a change of operating system (including updates) or from other circumstances within the customer's sphere of risk do not constitute a defect. Functional impairments in apps already used by the customer that are caused by the customized software shall only constitute a defect if their necessary adaptation to the customized software has also been agreed.
- 8.5. The liability for defects presupposes that the customer complies with the system requirements specified by Softwarehelden. In particular, the customer shall ensure sufficient bandwidth and protection of his network against unauthorized access from outside by means of suitable, state-of-the-art security measures. Details of the system requirements can be , for example, in the order confirmation. Liability for defects also presupposes that the customer does not modify the development results without Softwarehelden's consent or use them contrary to the contractual specifications (e.g. customized software under other operating conditions or in connection with systems not approved by Softwarehelden).
- 8.6. If Softwarehelden performs services according to the customer's specifications or adapts components of third parties or the customer himself at his request or integrates them into the platform software or into the individual software or connects them with it, Softwarehelden assumes no responsibility for the technical and legal properties of these third-party components or the consequences of the implementation of the customer's specifications.
- 8.7. Identified and reported defects are rectified by entering them as a new user story in the sprint backlog so that they can be implemented in one of the subsequent sprints, unless the customer decides not to rectify the defects.
- 8.8. If the same defect is not remedied even after two sprints to remedy this defect, the customer shall be entitled to claim damages, terminate the contract extraordinarily, reduce the price or withdraw from the contract. In the event of only insignificant deviation of the contractual items from the agreed quality, there is no right of cancellation. Softwarehelden shall pay compensation for damages and reimbursement of futile expenses due to a defect within the limits set out in section I.14 of these GTC.
- 8.9. Sections II.10.9 and II.10.10 apply accordingly.
- 8.10. The limitation period for the Customer's claims for defects under this section VII.8 is one (1) year from acceptance of the customized software. This does not apply in the case of intent or gross negligence on the part of Softwarehelden, in the case of fraudulent concealment of a defect, in the case of a defect of title and in the cases of sections I.15.2 and I.15.3 of these GTC.
- 8.11. Sections II.10.5 to II.10.6 and II.10.12 apply accordingly.

9. Infringements of industrial property rights

- 9.1. If third parties assert claims against the customer arising from the infringement of their property rights as a result of the contractual use of the development results by the customer, sections II.10.3, II.10.11 and I.15.1 shall apply accordingly. In all other respects, the provisions for material defects in VII.8 of these GTC shall apply accordingly to the customer's claims based on defects of title.

VIII. Consulting services by Softwarehelden for customers

1. Subject matter of the contract

- 1.1. The subject matter of the contract is IT consulting services on a service contract basis within the meaning of §§ 611 ff. BGB (GERMAN CIVIL CODE). Softwarehelden does not owe any success beyond the provision of the services.
- 1.2. Softwarehelden provides contractual services only in accordance with section VII.
- 1.3. Details of the services to be provided by Softwarehelden can be found in the order confirmation.

2. Contractual regulations

- 2.1. The project and success responsibility for the commissioned IT consulting services remains with the customer. Irrespective of this, however, Softwarehelden is responsible for the contractual provision of the IT consulting services owed by Softwarehelden.

3. Qualitative performance problems

- 3.1. The customer must inform Softwarehelden immediately in text form if he recognizes that consulting services have not been provided by Softwarehelden in accordance with the contract.
- 3.2. If the customer has complied with his obligation to provide information in accordance with section VIII.3, Softwarehelden is initially entitled and obliged to provide the service concerned in accordance with the contract within a reasonable period of time at no additional cost to the customer, provided that this subsequent fulfillment of the service is possible and reasonable (subsequent fulfillment). Softwarehelden is not obliged to subsequent fulfillment if Softwarehelden is not responsible for the non-contractual provision of services; the presumption effect of § 280 paragraph 1 sentence 2 BGB applies (accordingly).
- 3.3. If a subsequent fulfillment of a non-contractual service provision for which Softwarehelden is responsible is not possible or is not successful in essential parts within a reasonable grace period set by the customer for reasons for which Softwarehelden is responsible, the customer is entitled to terminate the contract without notice for good cause. In this case, Softwarehelden is entitled to remuneration for the services rendered until the cancellation takes effect. However, the entitlement to remuneration from the above sentence 2 does not apply to those services that are of no interest to the customer as a result of the cancellation. The customer must substantiate to Softwarehelden in text form within two weeks of receipt of the cancellation which services this applies to.
- 3.4. Further claims due to qualitative deficiencies in performance are excluded. This exclusion shall not apply in the event of a) intent, b) gross negligence, c) the breach of obligations essential for the performance of the contract, the fulfillment of which is essential for the proper performance

of the contract and on the observance of which the client may rely, and d) injury to life, limb or health.

- 3.5. Claims due to qualitative performance deficiencies expire one year after the start of the statutory limitation period. The above limitation period does not apply in the case of qualitative performance defects due to intent or gross negligence on the part of Softwarehelden, its legal representatives or vicarious agents, injury to life, limb or health or liability under the Product Liability Act. In these cases, the statutory limitation period applies.

4. Rights of use

- 4.1. The provision of consulting services by Softwarehelden may involve Softwarehelden developing materials exclusively for use by the customer and making them available to the customer.
- 4.2. If copyrights and/or other industrial property rights arise in such materials, Softwarehelden shall grant the customer the rights of use to such materials to the extent regulated in section VII.3.
- 4.3. If third parties assert claims against the customer arising from the infringement of their property rights as a result of the contractual use of such materials by the customer, section VII.9 shall apply accordingly.

IX. Special conditions for the use of artificial intelligence

1. Scope of services for the use of artificial intelligence

- 1.1. These special terms and conditions apply if artificial intelligence is used as part of the services that Softwarehelden provides for customers as a component integrated into platform software and/or apps.
- 1.2. The scope of the use of artificial intelligence is set out in the respective order confirmation.

2. Use of infrastructure in third-party data centers

- 2.1. In most cases, Softwarehelden will integrate solutions provided by third-party providers in their data centers to enable the use of artificial intelligence as in the platform software and/or apps.
- 2.2. If the order confirmation refers to the involvement of a third-party provider for the use of artificial intelligence, the scope of services for the use of artificial intelligence shall be governed by the terms of use of the provider of such solutions
- 2.3. In the event of conflicts between the terms and conditions of a third-party provider and these GTC, in particular sections IX.4, IX.5 and IX.6 of these GTC, the provisions of these GTC shall take precedence.

3. Availability

- 3.1. The solutions that are integrated into the platform software and/or apps for the use of artificial intelligence may be provided on a different infrastructure than the infrastructure used for the platform software and/or apps. The availability may therefore differ from the availability of the platform software and/or apps as such.
- 3.2. Section IV.3 applies accordingly to the availability of the solutions that are integrated into the platform software and/or apps for the use of artificial intelligence.

4. Rights to the work results

- 4.1. Due to the way the algorithms and language models used to provide solutions in the field of artificial intelligence work, it cannot be assumed that these solutions produce work results in which intellectual property can be created or acquired. Particularly in the case of all types of intellectual property that require a creative or inventive achievement, the purely mechanical processing by artificial intelligence speaks against such requirements being met.

- 4.2. Softwarehelden provides the customer with all work results that are the result of the customer's use of artificial intelligence as a component integrated into the platform software and/or apps exclusively for use and does not assert any rights of its own to such work results. At the same time, however, Softwarehelden does not guarantee that the customer (i) will become the owner of rights to these work results through the provision of such work results, and (ii) insofar as the customer becomes the owner of rights to these work results at all, that such rights would be valid or enforceable against third parties.

5. Possible infringements of third-party rights

- 5.1. By commissioning Softwarehelden to integrate solutions provided by third-party providers into the Platform Software and/or Apps in order to enable the use of artificial intelligence, the Customer simultaneously agrees that the Customer Materials processed by the Customer with the Platform Software and/or the Apps will be transferred to one or more third-party providers for this purpose. Softwarehelden does not have any further information about how the third-party providers process the Customer's data and information to enable the use of artificial intelligence beyond the information specified in the third-party providers' terms of use and the generally available information about how artificial intelligence works.
- 5.2. The operation of the algorithms and language models used to provide solutions in the field of artificial intelligence requires that existing materials (e.g. texts, illustrations, photos, video recordings, etc.) have already been processed (so-called "training") to develop these algorithms and language models or, in the case of an existing online connection of these algorithms and language models, that such existing materials continue to be processed for this purpose on an ongoing basis. Such existing materials may be subject to third-party rights, in particular copyrights. Due to the way the algorithms and language models work, it cannot be ruled out that the work results may also contain components whose use could infringe the rights of third parties.
- 5.3. Softwarehelden therefore expressly disclaims any warranty that the use of artificial intelligence complies with applicable legal provisions and, in particular, that it does not infringe the intellectual property rights and/or copyrights of third parties, data protection law and/or the law on the protection of trade secrets.

6. Correctness of the content of the work results

- 6.1. Due to the way the algorithms and language models used to provide artificial intelligence solutions work, these solutions may produce results that are not factually correct. The results may also be inconsistent with reality and the data and information provided for processing (so-called "hallucination").
- 6.2. Softwarehelden therefore provides no guarantee that the work results generated through the use of artificial intelligence are factually correct.

7. Scope of use and rights of use

- 7.1. In order to integrate artificial intelligence solutions into the platform software and/or apps, Softwarehelden develops appropriate adaptations to control these solutions (so-called "prompts"), which prepare the queries for processing by artificial intelligence in such a way that the systems are generally able to deliver appropriate results.
- 7.2. To make it easier for the customer to use the software, Softwarehelden develops user-friendly customizations that facilitate control within the platform software and/or the apps (so-called "assistants").
- 7.3. Both prompts and assistants are provided as components integrated into the platform software and/or the apps. Depending on whether the customer purchases or rents the platform software and/or the apps, the scope of use and the granting of rights of use shall be governed by sections II.2 or III.2 accordingly.

8. Release of Softwarehelden by the customer

- 8.1. By commissioning Softwarehelden to provide the Platform Software and/or Apps, including the integration of solutions provided by third-party providers, in order to enable the use of artificial intelligence, the customer simultaneously agrees that the customer materials processed by the customer with the Platform Software and/or Apps may be transferred to one or more third-party providers for this purpose.
- 8.2. Softwarehelden does not have any further information about how the third-party providers process the customer's data and information to enable the use of artificial intelligence beyond the information specified in the third-party providers' terms of use and the generally available information about how artificial intelligence works.
- 8.3. Softwarehelden has no overview of and no obligation to check which third-party rights exist to customer materials that the customer processes using artificial intelligence as a component integrated into the platform software and/or apps, and to what extent the customer is authorized to process the customer materials in this way
 - 8.3.1. It is therefore the sole responsibility of the customer to process only those customer materials using artificial intelligence as a component integrated into the platform software and/or apps with the platform software and/or apps for which the customer has sufficient rights for such processing.
 - 8.3.2. Due to the way the algorithms and language models used to provide artificial intelligence solutions work, Softwarehelden cannot provide the Customer with any information about how exactly Customer Materials are processed by such solutions. In particular, Softwarehelden does not know whether and to what extent customer materials are reproduced, distributed, publicly reproduced or utilized in any other copyright-relevant manner by such solutions or whether the processing violates data protection law and/or the law on the protection of trade secrets.

- 8.4. In accordance with the provisions of these GTC, Softwarehelden is liable for ensuring that solutions provided by third-party providers are integrated into the platform software and/or apps in a technically flawless manner in order to enable or exclude the use of artificial intelligence. Furthermore, the Customer indemnifies Softwarehelden against all third-party claims that are asserted against Softwarehelden due to the solutions provided by third-party providers for the use of artificial intelligence by the Customer as a component integrated into the platform software and/or apps for processing the Customer materials.
- 8.5. The statutory liability of the customer, including towards Softwarehelden, remains unaffected.