End User License Agreement – EULA

Date: 01.06.2022

CONTENT

Part I:
General Part

§1 Scope and Licensor
§2 Offer and contract conclusion
§3 Prices, Terms of Payment and Refunds
§4 Delivery and transfer of risk
§5 Delivery Time, Force Majeure and Partial Deliveries
§6 Place of fulfilment
§7 Open Source Software
§8 Third-party Software
§9 Defects of title and third party property rights
§10 Liability
§11 Confidentiality, data protection and order data processing
§12 Audit rights
§13 Set-off and rights of retention
§14 Export restrictions
§15 Termination
§16 Final Provisions

Part II:
Particular Part
License conditions for permanent transfer of SW against one-off payment

§1 Scope
§2 Rights of use
§3 Transfer remuneration
§4 Defect rights
§5 Customer obligations to protect the software

Part III:
Particular Part
License conditions for temporary transfer of SW (incl. SaaS)

§1 Scope
§2 Rights of use
§3 Transfer remuneration
§4 Defect rights
§5 Contract duration, termination and termination effect
§6 Place of fulfilment
§7 Customer obligations to protect the software; access data
§8 Conditions of use and adjustments to the contractual software for the SaaS concept and the license conditions for the temporary provision of software (including SaaS)

Part IV:
Particular Part
Contract conditions for SW support

§1 Scope
§2 Type and scope of support services
§3 Incident classification
§4 Service and response times
§5 Personnel of Licensor and subcontractors
§6 Remuneration
§7 Customer obligations
§8 Defect rights
§9 Term and termination

Part V:
Definitions of terms

Annex
Data processing agreement

Part I: EULA

§1 Scope and Licensor

1.1 Licensor provides the (i) permanent transfer, (ii) temporary transfer (incl. SaaS) and (iii) support of contractual software to the customer exclusively on the basis of the conditions of these General License Terms (hereinafter referred to as EULA - "Enduser License Agreement"). "Licensor" is the entity that is named in the offer document for the contractual software. If the contractual software is provided directly by its programmer, i.e. AppNavi, AppNavi GmbH, Weihenstephaner Str. 12, 81673 Munich, Germany (hereinafter referred to as "Licensor") is the Licensor.

1.2 These EULA apply exclusively to companies, legal persons under public law or special funds under public law within the meaning of § 310 paragraph 1 BGB (hereinafter also referred to as "Customer"). Licensor and Customer are hereinafter referred to individually as "Party" and jointly as "Parties".

1.3 EULA of the customer that contradict or deviate from these EULA shall not apply (even if Licensor does not expressly contradict them), unless Licensor has expressly agreed to these EULA of the customer in writing.

1.4 The EULA consist of the General Part, the definitions of terms in Part V and the provisions of Particular Parts (e.g. license conditions for the permanent transfer against one-off payment, license conditions for the temporary transfer of software (incl. SaaS) or contractual conditions for software support). The EULA apply to all contractual relationships between Licensor and the customer. The respective individual contract concluded with the customer regulates which sections of the Particular Part of the EULA are additionally applicable. In the event of contradictory provisions, the following order of precedence shall apply: 1. provisions from the individual contract, 2. provisions from the Particular Part of the EULA, 3. provisions from the General Part of the EULA and the definitions of terms.

§2 Offer and contract conclusion

2.1 Unless otherwise stated in writing on the offer, an individual contract is only concluded through the written confirmation of the order by Licensor or with the execution of the order by Licensor. Verbal agreements or promises must be confirmed in writing by Licensor in order to be effective.

2.2 Licensor reserves the right of ownership to the offer documents made available to the customer, such as offers and cost estimates.

§3 Prices, Terms of Payment and Refunds

3.1 All prices are quoted in EURO and net, plus the statutory value added tax at the statutory rate owed in each case as well as any other fees, customs duties and public charges, with the exception of such taxes, fees and charges levied on income and profits of Licensor. Costs for dispatch and packaging shall be charged separately.

3.2 All account receivables are due upon invoicing and are payable without deduction within fourteen (14) days from the date of invoice. Discounts may only be deducted by special written agreement. The customer shall be in default without a separate request for payment after fourteen (14) days from the invoice date and receipt of the invoice. The customer's default in payment shall be subject to the statutory provisions.

3.3 Licensor reserves the right in the case of continuous obligations to increase the agreed prices accordingly by observing a notice period of two months in the event of an increase in its own costs. If the price increase exceeds 5% of the original price, the customer is entitled to terminate the contract at the end of the next calendar month after notification of the increase.

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

§4 Delivery and transfer of risk

4.1 The contractual software is either sent in digital form on data carriers or made available online for download or mainly online by way of a SaaS concept. Even if the software is provided by way of a SaaS concept, it is necessary for the customer to download a small code part (e.g. snippet or browser extension) and implement it in his application or browser. Details are regulated by the offer. In the case of a shipment, it will be sent to the customer's address stated in the offer, unless a different delivery address has been agreed upon. In any case Licensor is entitled to provide the product documentation only online on the Internet or online for download or as .pdf-document by e-mail. The customer shall immediately notify Licensor in writing of damages and losses during shipment, wrong deliveries or incomplete deliveries. Deliveries are ex works. If the software is only made available online or online for download, the transfer of risk takes place when access via the Internet is made possible or when the software is made available for download and the customer is informed accordingly. The customer shall bear the costs for the Internet connection as well as the costs of any download. Licensor does not owe the installation, adaptation, or commissioning of software or the training for this, unless the parties have made a written agreement to this effect.

4.2 Product documentation for the contractual software is provided by Licensor in German or English at its own discretion.

§5 Delivery Time, Force Majeure and Partial Deliveries

5.1 Deadlines and dates for deliveries and services shall only be deemed fixed dates if they have been explicitly agreed as such. In the event of delays for which Licensor is not responsible, the dates affected by the delay shall be postponed by the time of the delay and a reasonable period for resumption; other claims of the parties shall remain unaffected thereby.

5.2 If Licensor is prevented from providing services in cases of events beyond the sphere of influence of Licensor or for which Licensor is not responsible (hereinafter referred to as 'Force Majeure Event'), such as war, natural disasters, labor disputes, failure of the power supply or the Internet (in whole or in part), denial of service attacks or official orders, Licensor is released from the delivery and service obligation for the duration of the disruption and a reasonable resumption period. Licensor will adequately inform the customer about the Force Majeure event. If an end of the force majeure event cannot be foreseen or if it lasts unreasonably long, taking into account the agreed delivery or performance dates and the mutual interests, and if one party cannot reasonably be expected to adhere to the contract as a result, this party shall be entitled to terminate the individual contract extraordinarily. Further claims of the parties, in particular claims for damages, are excluded.

5.3 Reasonable partial deliveries are also permissible without separate agreement. Each partial delivery shall be deemed an independent transaction.

§6 Place of fulfilment

6.1 For all obligations arising from the contractual relationship, the place of fulfilment shall be Licensor's registered office in Munich, unless otherwise specified.

§7 Open Source Software

7.1 For open source software, only the license conditions of the copyright holder on which this software is based apply.

7.2 If relevant, Licensor refers to the use of open source software in the product documentation of the licensed software. The customer will

download the corresponding open source software - if he needs it - from the Internet himself under the conditions of the copyright holder. If Licensor delivers the open source software in exceptional cases, this delivery shall be free of charge and based on the license conditions of this open source software.

§8 Third-party Software

8.1 If the software supplied by Licensor also contains third-party software, the customer may use these programs exclusively as an integral part of the total solution supplied. The customer releases Zeit-Wert from any claims resulting from a breach of this obligation for which the customer is responsible. Licensor is entitled to replace the third-party software with similar products, provided that the functionality is essentially retained and that this is reasonable for the customer.

§9 Defects of title and third party property rights

9.1 Licensor shall only be liable for the infringement of third party rights by the contractual software or services rendered if the contractual software or services are used by the customer in accordance with the contract, in particular in the contractually provided environment of use. The customer must provide proof of contractual use.

9.2 Should third parties assert claims against the customer in connection with the use of the contractual software or the services provided (e.g. due to copyright infringement, infringement of industrial property rights or claims under competition law), the customer shall inform Licensor immediately thereof.

9.3 The customer shall not acknowledge the alleged infringements of industrial property rights and shall either assign Licensor or conduct any dispute, including any out-of-court settlements, only in agreement with Licensor, at Licensor's discretion.

9.4 If the contractual software or services provided by Licensor violate the rights of third parties, Licensor shall, at its discretion and expense,

a) grant the customer the right to use the contractual software or services or
b) modify the contractual software or services in such a way that they are essentially in accordance with the contract, but no longer infringe the rights of third parties or
c) take back the contractual software or services rendered with reimbursement of the remuneration paid by the customer (less a reasonable compensation for use), if Licensor cannot achieve any other remedy with reasonable effort.

The interests of the customer are taken into account appropriately.

9.5 Insofar as the customer himself is responsible for the infringement of property rights, claims against Licensor are excluded.

9.6 § 10 of these EULA shall apply mutatis mutandis to claims for damages and reimbursement of expenses.

§10 Liability

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

a) for intentional or grossly negligent damages caused by Licensor or its legal representatives and vicarious agents
b) for damages resulting from injury to life, body or health, for which Licensor, its legal representatives or vicarious agents are responsible;
c) in accordance with the Product Liability Act and
d) for expressly assumed guarantees and fraudulently concealed defects.

10.2 Licensor shall not be liable for damages caused by slight negligence on the part of Licensor or its legal representatives and vicarious agents, unless an obligation has been breached, the fulfilment of which is essential for the proper execution of the contract, the breach of which would endanger the achievement of the purpose of the contract and on the observance of which the customer could regularly rely. This liability is limited in the case of material damage and pecuniary loss to the contractual damage foreseeable at the time of conclusion of the contract.

10.3 The liability for loss of data is limited to the typical restoration effort that would have been required if backup copies had been made regularly and in accordance with the risk. The customer shall be responsible for proper data backup, unless the contractual software is made available by way of a SaaS concept.

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

10.5 For claims for reimbursement of expenses and other liability claims of the customer against Licensor, the above liability provisions shall apply accordingly.

10.6 The above provisions shall also apply in favor of the institutions (organs), legal representatives, employees and other vicarious agents of Licensor.

§11 Confidentiality, data protection and order data processing

11.1 Each party is obliged to treat the Confidential Information of the other party which becomes known in connection with the preparation and execution of the contract as confidential, not to pass it on to third parties and not to use it for purposes other than those of the contract, even after termination of the contract.

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

11.3 The confidentiality obligation shall not apply if the receiving party proves that the information concerned (i) was already known to it before cooperation with the disclosing party was started, (ii) was lawfully disclosed to the receiving party by a third party, in particular without breach of confidentiality obligations, and (iii) was generally accessible, without the receiving party being responsible for such general accessibility or (iv) the receiving party is required by mandatory law or regulation to disclose such information, but only to the extent that such disclosure is required by mandatory law or regulation and the receiving party has promptly notified the disclosing party in writing, to the extent permitted by law, of such obligation and has appealed against such disclosure.

11.4 If Licensor collects, processes or uses personal data on behalf of the customer (e.g. when providing the contractual software by way of a SaaS concept), this shall be done in accordance with the customer's instructions and only after conclusion of a corresponding order processing agreement (pursuant to Annex 'Data Processing Agreement'). The Customer shall comply with the obligations arising from the applicable data protection law (in particular the information obligations vis-à-vis the data subjects pursuant to Art. 13 and 14 DSGVO).

11.5 The contracting parties are aware that electronic and unencrypted communication (e.g. by e-mail) is associated with security risks. With this type of communication, you will therefore not assert any claims based on the absence of encryption unless encryption has been agreed beforehand.

§12 Audit rights

12.1 The customer must notify Licensor in writing in advance of any use of the software subject to the contract that goes beyond the contractually agreed scope of use. It requires a separate contract for the additional scope of use on the basis of the then current Licensor price list.

12.2 In the case of usage-based billing within the framework of a SaaS concept, AppNavi or Licensor independently checks compliance with the agreed scope of use using suitable technology in the portal. If no unlimited use has been agreed upon (e.g. in the case of a permanent software license or a time-limited software license in the system environment of the customer), the customer is obligated to prove the proper use of the contractual software once a year by written confirmation.

12.3 Insofar as the customer refuses to provide information and/or in Licensor's opinion there is a suspicion of an infringement of a right, Licensor is entitled, after giving at least two weeks' advance notice in good time, to check compliance with the contractually agreed restrictions of use at the customer's premises itself or by a third party on site or remotely who is obligated to secrecy. Such an audit shall be carried out during normal business hours and shall not unreasonably impair the customer's business operations.

12.4 The confidentiality interests of the customer as well as the protection of its business operations from impairment shall be taken into account in an appropriate manner. The customer shall cooperate in carrying out the audit in an appropriate manner, in particular by granting the auditor access to its business premises, systems, records and business processes, insofar as this is necessary for proper verification.

12.5 Each Party shall bear its own costs of the audit. If the underpaid fees exceed 5% of the contractually agreed license fees, the customer shall bear the reasonable costs of the audit.

12.6 If the scope of use exceeds the scope of the rights of use granted, the parties shall conclude a contract for the additional use.

12.7 Licensor is also entitled to retroactively calculate the additional license and support fees on the basis of the then current price list. The assertion of claims for damages and interest on arrears shall remain unaffected.

§13 Set-off and rights of retention

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

§14 Export restrictions

14.1 The products and services supplied may contain technologies and software which are subject to the applicable regulations of the Foreign Trade and Payments Act of the Federal Republic of Germany and the export control regulations of the United States of America or the countries in which the products are supplied or used. The customer shall be responsible for observing the import and export regulations applicable to the deliveries and services, in particular those of the USA. This also applies to access to the contractual software by means of a SaaS concept. The customer shall handle legal or official proceedings in connection with cross-border deliveries or services on his own responsibility, unless otherwise expressly agreed.

§15 Termination

15.1 The parties are entitled to terminate the individual contract at any time for good cause. An important reason, for extraordinary termination of the individual contract Licensor is entitled, in particular, if the customer (i) does not meet his payment obligations even after a reasonable period or (ii) violates license terms.

§16 Final Provisions

16.1 Licensor is entitled to name the customer in the context of marketing activities, marketing documents and other publications, in particular publications with advertising content, and to use the customer's logo and brand for this purpose. Licensor is also entitled to report on key data of the conclusion of the contract within the framework of the prescribed mandatory publications.

16.2 Licensor is entitled to transfer the contract to other group companies in accordance with §§ 15 ff AktG without the consent of the customer, provided that this transfer is not unreasonable for the customer.

16.3 An assignment or transfer of rights and/or obligations from this contract by the customer requires the prior written consent of Licensor.

16.4 The place of jurisdiction for all disputes in connection with these EULA and the individual contracts concluded under them is Munich (Munich Regional Court I). Licensor, however, remains entitled to claim against the customer before another legally competent court.

16.5 German law applies. The application of the UN Convention on Contracts for the International Sale of Goods is excluded.

16.6 Oral collateral agreements or promises do not exist. Late amendments and supplements to the contract as well as notices of termination, reminders and setting of deadlines by the customer must be in writing in order to be effective. This shall also apply to a waiver of this written form requirement. E-mail suffices for this written form.

16.7 Should any provision of these EULA or an individual contract be or become invalid or unenforceable in whole or in part, this shall not affect the validity of the remaining provisions. The parties will try to replace the ineffective or unenforceable clause with a clause which comes closest to the common will of the parties at the time of the conclusion of these EULA in trustful discussions.

Part II: Particular Part – License conditions for permanent transfer of SW against one-off payment

§1 Scope

1.1 As far as Licensor delivers the copy(s) of the contractual software for permanent transfer against one-time payment (sale), the provisions of this Part II (Particular Part - License Conditions for Permanent Transfer) apply in addition to the General Conditions in Part I.

§2 Rights of use

2.1 The contractual software is protected by copyright.

2.2 If no other intended use has been agreed in the contract, Licensor grants the customer with the conclusion of the contract the

- non-exclusive (simple),
- until the complete payment of the price at any time revocable,
- permanent,
- in any hardware and software environment exercisable

right to use the contractual software in accordance with this Part II of the EULA (in Particular Part § 2.4-2.14) and the product documentation, i.e. in particular to store and load it permanently or temporarily, to display and run it. This shall also apply to the extent that copies are necessary for this purpose.

2.3 Licensor grants the customer rights of use to new program versions supplied to the customer by Licensor in the same type and scope as they exist for the software supplied as the subject matter of the contract.

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

2.5 Unless otherwise agreed, the use of the contractual software is only permitted for own purposes in own business operations. In particular, the customer may not use the software for third parties, e.g. in the context of the provision of services (e.g. by way of an individual call-off, as a service bureau or other types of service).

2.6 If the individual contractual provision grants use by affiliated companies, the customer shall ensure that the associated company complies with the license terms. He shall be responsible for the fault of employees and representatives of affiliated companies to the same extent as for his own fault.

2.7 Without the prior written consent of Licensor, the customer is not entitled to make the contractual software or the associated product documentation accessible to third parties in the original or in copy, or to make it available to third parties for use or distribute it by rent. Excluded from the distribution prohibition is the distribution in accordance with the following § 2.9 of this Part II of the EULA.

2.8 It is the customer's responsibility to take appropriate technical and organizational measures to prevent the use of the contractual software beyond its intended use.

2.9 The further distribution of the purchased copies of the contractual software is only permitted if the customer imposes his contractual obligations regarding the content and scope of the rights of use (intended use) on the third party. With the transfer to the third party, the customer is no longer entitled to use the resold copies of the contractual software. All copies of the sold copies of the contractual software not handed over to the third party shall be deleted. Excluded from this are any copies of the contractual software that were created within the framework of data backup in accordance with the order. In addition, the customer is entitled to retain and use one copy exclusively for testing and archiving purposes, unless otherwise agreed.

2.10 The customer is not entitled to edit or otherwise change the software without the prior written consent of Licensor. In particular, the decompilation of the contractual software or reverse engineering is strictly prohibited. The customer's statutory minimum rights of use according to §§ 69d and 69e UrhG remain unaffected. If necessary to achieve interoperability, the customer must first request the necessary information from Licensor in writing within a reasonable period of time before decompiling the contractual software. If Licensor does not provide the information within the time limit, the customer is entitled to decompilation according to § 69e UrhG.

2.11 The customer is entitled to make a copy of the software subject to the contract for backup purposes. The customer must designate the backup copy as such and clearly designate the company "AppNavi GmbH" as the rights holder and the designation of the software as such. The copies of the contractual software used for software distribution for intended use or for proper data backup are part of the intended use.

2.12 If the rights of use are limited to a hardware or software environment defined in the individual contract, any use deviating from this requires the consent of Licensor. If a hardware or software environment defined in the individual contract is not functional, it may be used in another environment until it is restored, even without Licensor's consent.

2.13 The customer undertakes not to convert the contractual software into another code form or to make changes to the code, unless this is permissible under the statutory provisions.

2.14 The granting of rights in these EULA refers only to the contractual software in the object code. The customer shall not be granted any rights to the source code.

§3 Transfer remuneration

3.1 The customer has to pay the transfer remuneration regulated in the individual contract.

§4 Defect rights

4.1 Licensor undertakes to deliver the contractual software free of material defects and defects of title.

4.2 Only statements made in the product documentation as well as any additional specification that may exist shall be deemed to be the quality of the software that is the subject matter of the contract. Public statements, promotions and advertisements in e.g. flyers, presentations or websites which deviate from or go beyond this do not represent any contractual description of quality. The customer must ascertain the suitability of the software for his specific purposes on the basis of provider information.

4.3 The customer shall immediately inspect the software subject to the contract for its functionality and for defects and shall immediately notify us in writing of any defects that become apparent. Defects occurring later within the warranty period must be reported by the customer in writing immediately after they are discovered. Notified defects must be described in a comprehensible form.

4.4 Claims for defects by the customer are excluded if the defect is not reproducible or verifiable.

4.5 In case of defects of the contractual software, which cancel or reduce the suitability of the software for the usual or contractually agreed purpose, Licensor is obligated, at its discretion, within a reasonable period of time, to subsequent performance by repair or replacement. At Licensor's discretion, the rectification may also be affected by delivery of a workaround solution equivalent to its functionalities or a program serving to remedy the defect (e.g. Fix or Service Pack). Licensor may also offer a new software version (e.g. Product Release or Product Version) if the defect is remedied by this. The delivery of workarounds, error correction programs or new program versions shall be deemed subsequent performance and these shall be assumed by the customer, provided that the scope of functions remains essentially the same and the assumption is reasonable for the customer. Licensor, at least two attempts at rectification shall be permitted in each case. In the event of failure of

the rectification, the customer may at his discretion reduce the purchase price or withdraw from the contract. However, a withdrawal due to an insignificant defect is excluded.
The customer shall also be entitled to these rights if Licensor seriously refuses to remedy the defect or if the customer cannot reasonably be expected to remedy the defect.

4.6 Claims for defects shall not exist in the event of only insignificant deviation from the agreed quality, only insignificant impairment of usability or as a result of defects caused by external or contractually unconditional and other influences uncontrollable by Licensor, e.g. use of the contractual software in an unrecommended system environment or on an unrecommended platform in accordance with product documentation. The liability for defects shall lapse if the customer, without Licensor's consent, modifies the contractual software or has it modified by third parties, unless the customer can prove that the relevant defects were not caused by this modification and that the modification does not make the correction of defects impossible or unreasonably difficult. The provision of the preceding sentence shall also apply in the event of a connection with third-party hardware and/or software not authorized by AppNavi as well as in the event of non-contractual and/or improper use of the contractual software.

4.7 In the case of both legal and material defects, a reduction by the customer shall only be admissible if subsequent performance fails. Licensor shall be entitled to at least two attempts at subsequent performance.

4.8 If Licensor renders services during the troubleshooting or the removal of defects without being obliged to do so, Licensor is entitled to demand remuneration in accordance with the current hourly rates. The additional expenditure which Licensor incurs due to the fact that the customer does not properly fulfil his obligations to cooperate shall also be reimbursed.

4.9 In the event of defects in the standard software supplied by Licensor from other manufacturers, which Licensor is unable to eliminate for licensing or factual reasons, Licensor shall, at its discretion, assert its defect claims against the manufacturers or suppliers of the standard software for the account of the customer or assign them to the customer. If the claims against the third party cannot be enforced, the customer's claims for defects against Licensor regulated in these EULA shall remain valid.

4.10 It is the customer's responsibility to support Licensor appropriately in remedying defects, in particular to provide necessary information and to immediately take the necessary action to cooperate.

4.11 For claims for defects or claims for reimbursement of expenses on the part of the customer, the liability provision pursuant to § 10 of the General Part of the EULA shall apply.

4.12 The warranty claims expire after one (1) year, unless Licensor fraudulently concealed the defect. The limitation period shall commence at the point in time at which Licensor has fulfilled its delivery obligations in full. The shortening of the limitation period shall not apply in the cases specified in § 10.1 of the General Part of the EULA.

4.13 Licensor is not responsible for errors in open source software. Warranty claims regarding the Open Source Software used are excluded in relation to Licensor.

§5 Customer obligations to protect the software

5.1 The customer is obliged to take appropriate precautions to prevent unauthorized access by third parties to the contractual software and other license material. The delivered original data carriers as well as the security code shall be stored in a place protected against unauthorized access by third parties. Before the destruction, sale or other transfer of machine-readable recording media, data storage media or data processing devices, any information stored therein (in particular the contractual software) must be completely deleted.

Part III: Particular Part – License conditions for temporary transfer of SW (incl. SaaS)

§1 Scope

1.1 Insofar as Licensor only provides the customer with a copy(s) of the contractual software in the version provided within the framework of the agreement for use for a limited period of time, the provisions of this Part III (Special Part - License Terms for the Temporary Provision of Software) apply in addition to the General Terms in Part I. This also includes the temporary provision of the contractual software as part of a 'Software-as-a-Service' concept (hereinafter referred to as "SaaS concept").

1.2 They do not apply to additional services such as installation, integration, parameterization and adaptation of the contractual software to the needs of the customer.

1.3 If not expressly regulated in these EULA or in the individual contract, the additional regulations of Part IV of the EULA (Particular Part - Contractual Conditions for SW Support) do not apply to the temporary provision of SW. SW support services can, however, be agreed upon separately (e.g. in an individual contract). Part IV of the EULA (Particular Part - Contractual Conditions for Software Support) applies to these software support services, which must be agreed separately in writing.

§2 Rights of use

2.1 The contractual software is protected by copyright.

2.2 The contractual software is provided to the customer for the intended use for the period agreed in the individual contract. The scope of the intended use as well as the type and scope of the rights of use result from the individual contract, these EULA and the product documentation. If no additional rights of use are agreed upon in this contract or in the individual contract, Licensor grants the customer the following rights to the software that is the subject of the contract

- non-exclusive (simple),
- not transferable,
- limited in time and terminable for the term of the individual contract
- worldwide (excluding Canada and USA)

to use the contractual software in the agreed system environment in accordance with the provisions of this Part III of the EULA (in particular §§ 2.4-2.13) and the product documentation, i.e. in particular to temporarily store and load, display and run the software. This shall also apply insofar as duplications become necessary for this purpose. Insofar as the contractual software is provided for use within the framework of a SaaS concept, Licensor shall provide a code part (e.g. snippet or browser extension) that the customer must implement in his application or browser. In this case AppNavi respectively Licensor also provides an online portal in which certain customer-generated content of the customer (e.g. routes, news, hotspots; hereinafter referred to as "customer content") is stored. AppNavi respectively Licensor may use subcontractors for this purpose. The realization of an interface integration to the customer's existing system landscape (via the provided code part for use within the SaaS concept) is not subject of the terms of use, but requires a separate written agreement between the parties. In the case of the SaaS concept, the customer's access to the contractual software takes place via the code part provided by Licensor, which connects to the AppNavi/Licensor portal via the Internet browserbased. The intended use therefore only includes the access to this provided system environment besides the provision of the code part. A reproduction of the contractual software as such on the customer's own systems, which goes beyond the intended use of the provided code part or the loading of customer content (especially by downloading the contractual software) is expressly prohibited in this case.

2.3 Licensor grants the customer rights of use to new program versions delivered to the customer by Licensor in the type and scope as they exist for the delivered or within the framework of a SaaS concept provided contractual software. The transfer of new program versions is carried out immediately after the program version has been released by AppNavi in the context of a SaaS concept. The number and time of the release of a new program level is at the discretion of AppNavi.

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

2.5 Unless otherwise agreed, the use of the contractual software is only permitted for own purposes in own business operations. In particular, the customer may not use the software for third parties, e.g. in the context of the provision of services (e.g. by way of an individual call-off, as a service bureau or other types of service).

2.6 If the individual contractual provision grants use by affiliated companies, the customer shall ensure that the associated company complies with the license terms. He shall be responsible for the fault of employees and representatives of affiliated companies to the same extent as for his own fault.

2.7 The customer is not entitled without prior written consent by Licensor to make the contractual software or the associated product documentation available to third parties in the original or as a copy, or to sublease it to third parties for use or distribute it. The same applies to the access to the contractual software, if it is made available in the form of a SaaS concept.

2.8 It is the customer's responsibility to take appropriate technical and organizational measures to prevent the use of the software that is the subject of the contract beyond its intended use. It is the customer's responsibility to take appropriate technical and organizational measures to prevent the use of the software that is the subject of the contract beyond its intended use.

2.9 The customer is not entitled to edit or otherwise change the software without prior written consent of Licensor. In particular, the downloading of software provided by way of a SaaS concept, which goes beyond the loading of customer content within the scope of the intended use of the contractual software, as well as the decompilation of the contractual software or reverse engineering is prohibited. The statutory minimum rights of use to which the customer is entitled according to §§ 69d and 69e UrhG remain unaffected. The customer must - if necessary for the establishment of interoperability - before decompiling the contractual software first request the required information from Licensor in writing with an appropriate deadline. If Licensor does not comply with the provision of information within the deadline, the customer is entitled to decompilation according to § 69e UrhG.

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

2.11 If the rights of use are limited to a hardware or software environment defined in the individual contract, any use deviating from this requires the consent of Licensor. If a hardware or software environment defined in the individual contract is not functional, the use is permitted without the consent of Licensor until its restoration in another environment. The latter does not apply to the provision by way of a SaaS concept.

2.12 The customer undertakes not to bring the contractual software into a different code form or to make changes to the code, unless this is permitted under the statutory provisions. The changes to these code parts required for the intended use of the code parts provided within the framework of a SaaS concept are still permitted.

2.13 The granting of rights in these EULA only refers to the contractual software in object code and - in the case of the code parts provided within the framework of a SaaS concept - in HTML format. No rights to the source code are granted to the customer.

§3 Transfer remuneration

3.1 The customer has to pay the transfer remuneration regulated in the individual contract.

3.2 Licensor has the following right to adjust the price: The remuneration can be increased at the earliest twelve (12) months after conclusion of the individual contract. Further increases may be requested at the earliest after the expiry of twelve (12) months at a time. An increase shall be notified to the customer and shall become effective at the earliest three (3) months after receipt of the notification. The prerequisite for effectiveness is that Licensor provides for remuneration as a general list price and also achieves this from other customers. If the conditions for an increase of the remuneration are fulfilled, the customer has the right within the notice period to terminate the contract for the software affected by the increase at the earliest at the time the new prices come into force, if the increase exceeds 5% of the last valid prices.

§4 Defect rights

4.1 Licensor will maintain the contractual software in a condition suitable for contractual use during the term of the contract, i.e. guarantee the usability of the contractual software in accordance with the product documentation and any additional specification that may be available.

4.2 Only statements made in the product documentation as well as any additional specification that may exist shall be deemed to be the quality of the software that is the subject matter of the contract. Public statements, promotions and advertisements in e.g. flyers, presentations or websites which deviate from or go beyond this do not represent any contractual description of quality. The customer must ascertain the suitability of the software for his specific purposes on the basis of Licensor information.

4.3 The customer must report defects in the contractual software immediately after becoming aware of them in writing (if possible using the malfunction report form provided by Licensor) or via the hotline offered by Licensor, stating the information known to him and useful for its recognition. Notified defects must be described in a comprehensible form.

4.4 Claims for defects by the customer are excluded if the defect is not reproducible or verifiable. Also excluded is the strict liability of Licensor for defects of any kind according to § 536a Abs. 1 BGB (German Civil Code).

4.5 In the case of defects of the contractual software, which cancel or reduce the suitability of this software for the usual or contractually agreed purpose not only insignificantly, Licensor is obligated to restore the contractual condition within a reasonable period of time by repair or replacement. The rectification of defects can also be carried out at the discretion of Licensor by the delivery of a bypass solution equivalent to its functionalities or a program serving to rectify the defects (e.g. Fix or Service Pack). In the case of the provision of the contractual software by way of a SaaS concept, the remedy can take place by providing such an equivalent workaround solution in the cloud. Licensor may also offer a new software version (e.g. product release or product version) (or in the case of software provided by way of a SaaS concept: import), provided that the contractual state is restored by this. Licensor is entitled to at least two attempts at subsequent performance. The delivery or installation of bypass solutions, programs for error correction or new program versions is considered to be the restoration of the contractual state and these are to be taken over by the customer, provided that the functional scope is essentially maintained and the takeover is reasonable for the customer.

4.6 Claims for defects do not exist in the case of only insignificant deviation from the agreed quality, in the case of only insignificant impairment of usability or as a result of defects that arise due to external influences or influences that are not contractually presupposed and other influences that cannot be controlled by Licensor, e.g. - outside the use of the contractual software by way of a SaaS concept - use of the contractual software in a non-recommended system environment or on a non-recommended platform according to product documentation. The liability for defects shall not apply if the customer modifies the contractual software or has it modified by third parties without the consent of Licensor, unless the customer can prove that the defects in question were not caused by this modification and that the correction of the defects is not impossible or unreasonably complicated by the modification. The regulation of the preceding sentence shall also apply in the event of a connection with third-party hardware and/or software not authorized by AppNavi as well as in the event of non-contractual and/or improper use of the contractual software.

4.7 If Licensor renders services during the troubleshooting or the removal of defects without being obliged to do so, Licensor is entitled to demand remuneration in accordance with the current hourly rates. The additional expenditure which Licensor incurs due to the fact that the customer does not properly fulfil his obligations to cooperate shall also be reimbursed.

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

4.9 In the case of defects of the standard software of other manufacturers delivered by Licensor, which Licensor cannot eliminate for licensing or factual reasons, Licensor will, at the discretion of the customer, either assert its claims for defects against the manufacturers or suppliers of the standard software for the account of the customer or assign them to the customer. If the claims against the third party are not enforceable, the customer's claims for defects against Licensor regulated in these EULA shall remain valid.

4.10 It is the customer's responsibility to support Licensor appropriately in remedying defects, in particular to provide any necessary information, to cooperate to the best of his ability in error analysis and to immediately perform any other necessary cooperation actions (e.g. - if necessary - granting access to the information technology infrastructure concerned or carrying out the installations in accordance with § 4.11).

4.11 If a program (e.g. workaround solution, fix, service pack or product release) has to be installed for the elimination of defects and the software is not provided in the form of a SaaS concept, Licensor will transmit this to the customer on a suitable data carrier or make it available to the customer online for download and inform the customer that the program is available for download. The customer must carry out the installation of such programs independently. Required test runs are carried out independently by technically competent employees of the customer. If Licensor considers it necessary, the customer allows the presence of one or more employees of Licensor during the test runs. If necessary, other work with the IT system of the customer during the time of maintenance and service work is to be discontinued.

4.12 If Teleservice has been agreed, the customer shall provide the necessary technical equipment to the customer and enable access to

the system in accordance with the stipulations in a Teleservice Agreement.

4.13 The customer will nominate a central contact person for Licensor, who will contact Licensor in case of defects and who can make binding declarations and decisions for the customer.

4.14 If the customer does not or not timely and/or sufficiently comply with his necessary duties to cooperate, Licensor is released from its obligation to provide concrete remedy of defects.

4.15 For claims for damages or claims for reimbursement of expenses on the part of the customer, the liability provision pursuant to § 10 of the General Part of the EULA shall apply.

4.16 Claims for damages and reimbursement of expenses shall become statute-barred after one (1) year. The statute of limitations begins at the point in time at which Licensor has completely fulfilled its delivery obligations or - in the case of provision in the form of a SaaS concept - has enabled the customer to access the contractual software. The shortening of the limitation period does not apply in the cases stated in § 10.1 of the General Part of the EULA.

4.17 Licensor is not responsible for errors in open source software. Claims for defects with regard to the Open Source Software used are excluded in relation to Licensor.

§ 5 Contract duration, termination and termination effect

5.1 The duration of the provision of the contractual software is specified in the individual contract. If no date for the end of the provision period is agreed in the individual contract, the provision of the contractual software concerned may be terminated with a notice period of three (3) months to the end of a calendar month, but not before the end of a minimum contract period agreed in the individual contract. A different period of notice can be agreed in the individual contract. This clause shall apply accordingly to the provision of the contractual software by way of a SaaS concept.

5.2 The parties are entitled to terminate the individual contract during the rental period for good cause. An important reason, which entitles Licensor to terminate the agreement, exists in particular if the customer (i) does not meet his payment obligations after the expiration of a reasonable period of time (ii) violates the license terms or (iii) in the case of usage-based billing, does not use the service for more than twelve (12) months. The Customer's right of termination pursuant to § 543 (2) No. 1 BGB (German Civil Code) shall only be permissible in the event of substantial defects and only if substantial defects cannot be remedied despite the setting of a deadline and corresponding warning or if the remedy of the defect is to be regarded as having failed. Licensor shall be entitled to two attempts at remedy. In the cases of § 543 Para. 3 Sentence 2 No. 1 and No. 2 BGB (German Civil Code), the setting of a deadline and threat as well as the granting of a removal of defects is not necessary. In addition, Licensor may terminate the individual contract for use in the form of a SaaS concept for good cause if (iv) the contractual relationship between AppNavi or Licensor and one of their major subcontractors (e.g. for the provision of the portal or hosting) is terminated prematurely or (v) the customer endangers the security or stability of the SaaS system environment. In the latter case AppNavi and Licensor are also entitled to temporarily block the access of the customer until the threat has been removed.

5.3 Upon termination of the individual agreement on the temporary transfer of the Software (e.g. upon expiration of the rental period), the customer must immediately stop using the Software and destroy all copies of the Software or - upon request of Licensor - transfer all copies of the Software and documentation to Licensor. Excluded from this are any copies of the contractual software that were made within the scope of proper data backup. In addition, the customer is entitled to keep and use one copy exclusively for testing and archiving purposes, unless otherwise agreed upon, unless the software was provided by way of a SaaS concept. In such cases, the copy shall be returned or destroyed at the end of this period. Upon request, the customer shall assure Licensor in writing that he has complied with the obligations of this section.

5.4 The other statutory provisions shall remain unaffected.

§6 Place of fulfilment

6.1 The place of fulfilment is the customer's, unless otherwise agreed. If the software is provided by way of a SaaS concept, the place of performance is the registered office of the respective service provider used by Licensor, where the contractual software is operated.

§7 Customer obligations to protect the software, access data

7.1 The customer is obliged to prevent unauthorised access by third parties to the contractual software or other license material by taking appropriate precautions. The delivered original data carriers as well as the backup copies are to be kept in a place secured against unauthorized access by third parties. Before the destruction, sale or other transfer of machine-readable recording media, data storage or data processing devices, information stored therein (in particular the contractual software or access data to the Licensor-Portal) must be completely deleted.

7.2 When using a SaaS concept, the customer receives an e-mail with temporary access data with which he can temporarily log on to the Licensor portal. The customer must carry out this registration without delay and change the temporary access data immediately by means of access data chosen by the customer. The access data (especially user name and password) are to be treated strictly confidential. They must be kept secret from third parties. If the customer suspects that third parties have gained access to his access data, he shall immediately change them and inform Licensor of his suspicion. The customer shall take the necessary measures to prevent unauthorized use of his access to the Licensor-Portal.

§8 Conditions of use and adjustments to the contractual software for the SaaS concept and the license conditions for the temporary provision of software (including SaaS)

8.1 If the contractual software is provided by way of a SaaS concept, it is necessary for proper use that the customer downloads a small code part (e.g. snippet or browser extension) and implements it in his application or the respective browser. When creating customer content, it may occur that this is initially only recorded locally and only transferred to the Licensor portal when the customer saves this customer content. For both the creation and retrieval of customer content, an Internet connection to the Licensor portal must be provided by the customer at his own expense.

8.2 If the contractual software is provided by way of a SaaS concept, Licensor reserves the right to adapt the contractual software at any time with effectiveness, also within an existing individual contract, to changed technical conditions or with regard to further developments or technical progress. Licensor will inform the customer prior to the planned entry into force of the changes (e.g. through messages in the Licensor portal), insofar as the adaptation conditions the usability of previously generated customer content or e.g. adaptation effort on the part of the customer (e.g. for the code part implemented in the application).

8.3 Licensor is entitled to make adjustments to the license conditions for the temporary provision of software (including SaaS). If these changes affect the contractual relationship, Licensor will usually inform the customer with a lead time of no less than six (6) weeks before the planned entry into force of the changes (e.g. by means of messages in the Licensor portal). The notification will also contain information about the customer's right to reject the changes and the consequences resulting from this. In case of rejection, Licensor is entitled to terminate the usage agreement with the customer at the time the changes come into effect.

Part IV: Particular Part – Contract conditions for SW support

§1 Scope

1.1 Insofar as Licensor provides software support services, the provisions of this Part IV (Particular Part - contractual conditions for software support) apply in addition to the general conditions in Part I. The object of this Part IV are the support services of Licensor for the contractual software produced by AppNavi, unless otherwise agreed in the individual contract. The software support services do not refer to any open source software or any software from third party manufacturers.

1.2 Unless expressly agreed otherwise in the individual contract, Licensor shall provide its support services on the basis of the service contract and at the state of the art recognized at the time of the provision of the service.

1.3 The maintenance of the software is basically limited (in the case of temporary software licensing: exclusively) to the current, released product release (program version). Licensor informs the customer of the release of a new product release at an appropriate time in advance. The end of the support obligation for the previous product release is determined by Licensor at the same time as the announcement of the new product release. In this transition period between the release of a new product release and the end of the support obligation for the previous product release, the support obligation for the previous release is limited to error corrections. The development of new functionalities or the support of new system releases of third parties for the previous product release is not provided.

1.4 The obligation to support by Licensor presupposes that the respective program is installed on a platform which has been released by AppNavi and which is still being maintained by the manufacturer of the platform at the time of notification of the malfunction in relation to Licensor within the framework of the general support period for this platform. Individual support agreements between the manufacturer of the platform and the customer which extend beyond the general support period shall not be taken into account. The obligation to support the software shall not apply if the customer or a third party has made changes to the software which is the subject of the contract and which have not been previously approved by Zeit-Wert.

1.5 Services not covered within the scope of the software support agreement are all services beyond those listed in the individual contract and under 2.1-2.3, e.g.:

- 24-hour hotline beyond the agreed service times (including contact persons at any time of day or night),
- Support of the customer during the installation of the contractual software,
- Support of customer-specific adaptations,
- Training,
- Individual adaptation of the contractual software to new customer requirements,
- New modules for the contractual software, which Licensor distributes after the transfer of the contractual software,
- Data conversion from old to new data versions and conversion to other formats,
- Creation of routes and other customer content in the contractual software,
- Migration of routes and other customer content and
- On-site support at the customer's premises.

Services not covered by this Part IV shall require a separate (chargeable) agreement between the Parties.

§2 Type and scope of support services

2.1 Provision of new program versions

2.1.1 Insofar as the provision of new program versions has been agreed, this shall take place immediately after the program version of AppNavi has been released. This obligation applies to all new program versions unless otherwise agreed. The number and time of the release of a new program version shall be at the discretion of AppNavi.

2.1.2 Licensor always grants the customer the rights to new program versions that exist for the previous version of the contractual software or the previous program version.

2.1.3 However, parallel use of new and old program versions is only permissible to the extent that this does not result in the agreed rights of use being exceeded in their entirety. If Licensor is obliged to provide a new program version, this obligation shall also be fulfilled if the customer does not use the new program version.

2.1.4 The customer is entitled to make a copy of new program versions for backup purposes.

2.2 Resolution of Incidents

If incident resolution has been agreed, Licensor shall take the necessary measures. At the request of the customer, Licensor will provide information about this at reasonable intervals.

Within the scope of the obligation to provide a workaround, the customer can generally not demand any intervention in the object or source code of the contractual software.

In principle, the obligation to resolve the incident presupposes that the incident is reproducible or can be demonstrated using handwritten or machine-recorded output.

2.2.1 Unless otherwise agreed, a new program version must be accepted by the customer if it serves to eliminate faults. The customer is not obliged to accept a new program version if this cannot be reasonably expected of him because the new program version deviates substantially from the agreed execution.

If the customer does not accept a new program version for this reason, Licensor will propose a different solution at the request of the customer, provided that such a solution is possible and reasonable.

In the case of software provision by way of a SaaS concept, the new program version is automatically adopted by AppNavi respectively the Lic. In this case the customer has no right to choose.

2.2.2 If the customer has caused an incident intentionally or through gross negligence and if a lump-sum payment has been agreed for the support, Licensor can demand an appropriate payment from the customer for the resolution of the incident.

2.2.3 In the event of demonstrably unfounded reports of incidents, which can be traced, for example, to an operating error of the customer or the use of Licensor due to a malfunction or for a service, which is excluded according to this Part IV of the EULA, Licensor is entitled to charge the customer additionally for the services at the current Licensor hourly rates.

2.3 Hotline

2.3.1 If the provision of a hotline has been agreed in the individual contract and no deviating provisions are found in the individual contract, Licensor shall record telephone incident reports, if incident resolution has been agreed, and, if agreed, questions on the use of the contractual software via this hotline. Licensor will, as far as possible and reasonable for Licensor, remedy the reported incident by telephone instructions or, if agreed, by Teleservice (or in the case of SW provision by way of a SaaS concept through access to the AppNavi/Licensor portal) during the telephone call. and, if agreed, answer questions on the use of the contractual software. If this is not possible within a reasonable period of time, Licensor shall be obliged,

- otherwise clarify the use questions and submit the answers by telephone or e-mail; or
- to forward the incident report for incident resolution within his support organization. If no incident resolution has been agreed pursuant to § 2.2, Licensor shall submit to the customer an offer for incident resolution on the basis of the agreed remuneration

or, if no such remuneration has been agreed, on reasonable terms.

2.3.2 Licensor will only use personnel for the hotline who are qualified to record and clarify the incident report for the first time. Unless otherwise agreed, the hotline is to be staffed in German or English according to availability.

2.3.3 Unless otherwise agreed, the use of automated speech dialog systems (Interactive Voice Response Systems, IVR) is permitted. Outside the service hours or in the event of an increased number of services on the hotline which exceeds the number of free hotline employees, Licensor is entitled to initially record the fault messages by means of an answering machine.

2.3.4 Each party shall bear its own telecommunications costs.

§3 Incident classification

3.1 Unless otherwise agreed in the individual contract, a distinction is made between the following three incident classes:

3.1.1 A disruption preventing operation exists if the use of the contractual software is impossible or severely restricted.

3.1.2 An operational disruption exists if the use of the contractual software is considerably restricted.

3.1.3 A slight disruption exists if the use of the contractual software is possible without or with insignificant restrictions.

§4 Service and response times

4.1 If no service times have been agreed, the periods from Monday to Thursday from 9:00 a.m. to 5:00 p.m. and Fridays from 9:00 a.m. to 4:00 p.m. (with the exception of public holidays at the registered office of AppNavi) shall be regarded as service times.

4.2 If no reaction times have been agreed, support services must be commenced immediately after receipt of the corresponding notification or occurrence of the agreed event within the agreed service times.

4.3 In the case of support services under a time and material contract, a declaration of how production is to be carried out shall suffice to meet the deadline, e.g. in the case of rectification of an incident, a declaration of operational readiness.

§5 Personnel of Licensor and subcontractors

5.1 Licensor provides the service through sufficiently qualified personnel. Unless otherwise agreed, communication with the customer shall take place according to availability in German or English.

5.2 Licensor may use subcontractors for the provision of services.

§6 Remuneration

6.1 The customer pays the SW support fee agreed in the individual contract annually in advance. The remuneration for support services remunerated according to expenditure is due monthly in arrears, unless otherwise agreed. Licensor may refuse the execution of the contractual services, if and as long as the customer is in default with the payment of the software support fee.

6.2 If the customer has allowed the support agreement to expire and wishes to resume support at a later point in time, Licensor is entitled to resume support only if the customer pays a fee that corresponds to the remuneration that would have been due if the support services had been taken without interruption. Licensor is also entitled to resume support only under the condition that the customer acquires a hardware or software update subject to a charge, insofar as this is necessary for resuming support.

6.3 If remuneration according to expenditure has been agreed in the individual contract for a support service, the following shall apply:

6.3.1 Unless otherwise agreed, the remuneration according to expenditure is the remuneration for the time spent. Travel times, travel costs and incidental expenses shall be remunerated separately according to time and effort. Waiting times of Licensor for which the customer is responsible will be remunerated as working hours. However, Licensor must allow for the crediting of what Licensor saves by not providing its services or acquires or maliciously omits to acquire through other use of its services. The payment of a compensation according to expenditure requires undersigned proof of the services and the further costs claimed by Licensor.

6.3.2 Unless otherwise agreed, Licensor shall submit a cost estimate based on the prices agreed in the individual contract within a reasonable period of time in the case of remuneration based on expenditure. In addition, the type and scope of the services as well as planned execution deadlines must be specified. If the preparation of the cost estimate requires more than just insignificant expenses, these shall be remunerated separately. The customer shall immediately accept or reject the offer.

6.3.3 Unless otherwise agreed, no more than one daily rate shall be paid per employee per calendar day. An agreed daily rate can only be invoiced if at least eight hours have been worked. If less than eight hours are worked per day, these shall be invoiced on a pro rata basis. If an hourly rate has been agreed, any hours commenced shall be remunerated pro rata.

6.4 Unless otherwise agreed, Zeit-Wert has the following right to adjust prices: An increase in remuneration may be announced for the first time 12 months after the commencement of performance under the individual contract; further increases may be announced at the earliest 12 months after the previous increase becomes effective. An increase becomes effective three months after the announcement. The increase must be reasonable and not contrary to the market trend relevant to the service and may not exceed 5% of the remuneration applicable at the time of the announcement of the increase.

§7 Customer obligations

7.1 The customer shall ensure that he fulfils all cooperation obligations necessary for the support services in good time and free of charge.

7.2. The customer is obliged to cooperate to the best of his ability in the fault analysis.

7.3 If a program (e.g. workaround, fix, service pack or product release) must be installed in order to remedy the incident, Licensor shall transmit this to the customer on a suitable data carrier or make it available to the customer for download online and inform the customer that the program is available for download. The customer must install such programs independently. He is obliged to install the provided software, unless this is unreasonable for him. Required test runs shall be carried out independently by technically competent employees of the customer. If Licensor considers it necessary, the customer permits the presence of one or more Licensor employees during the test runs. If necessary, other work with the customer's IT system shall be discontinued during the support and servicing period.

7.4 The customer shall provide Licensor with the necessary information and documents from his sphere of responsibility in a timely manner. This also includes allowing Licensor access to the AppNavi/ Licensor portal of the customer if required. Insofar as services on site have been agreed upon, the customer shall grant Licensor employees access to his premises and the information technology infrastructure available there in a timely manner and hand over the documentation available at his premises in a timely manner, in each case insofar as this is necessary for the provision of the service and the legal and agreed upon personal requirements (e.g. security checks according to the Security Audit Act - SÜG -) are fulfilled. If the customer does not, not in time or incompletely comply with his cooperation services in spite of Licensor's request, Licensor may submit an offer to provide these services itself instead of the customer. Other claims of Licensor remain unaffected.

7.5 The customer has to report incidents or defects by stating the information known to him and useful for their recognition. If no other form of incident reporting has been agreed, the customer will generally report the incident via the hotline or on a form provided by Licensor. Within the bounds of reasonableness, he shall take the measures that enable the incident or defect to be identified and analyzed, e.g. by providing the technical information available to him in good time.

7.6 If Teleservice has been agreed, the customer shall provide the necessary technical equipment to the customer and enable access to the system in accordance with the stipulations in a Teleservice Agreement.

7.7 The customer will designate a central contact person for Licensor, who will contact Licensor in the event of incidents and who will be able to make binding declarations and decisions for the customer.

7.8 Obligations to cooperate are essential obligations of the customer. If the customer does not fulfil his obligations to cooperate or does not fulfil them on time and/or to a sufficient extent, Licensor is released from its obligation to provide the specifically requested support service.

§8 Defect rights

8.1 For claims for damages or claims for reimbursement of expenses on the part of the customer, the liability provision pursuant to § 10 of the General Part of the EULA shall apply.

8.2 The warranty claims due to defects in the care service expire after one (1) year, unless Licensor fraudulently concealed the defect. The limitation period shall commence at the time at which Licensor fully meets its respective performance obligations. The shortening of the limitation period shall not apply in the cases specified in § 10.1 of the General Section of the EULA.

8.3 If Licensor renders services during the troubleshooting or the removal of incidents without being obliged to do so, Licensor is entitled to demand remuneration in accordance with the current hourly rates. The additional expenditure which Licensor incurs due to the fact that the customer does not properly fulfil his obligations to cooperate shall also be reimbursed.

8.4 The liability for defects shall lapse if the customer changes the software subject to the contract or has it changed by third parties without Licensor's consent, unless the customer proves that the relevant defects were not caused by this change and that the confirmation of defects is not rendered impossible or unreasonably difficult by the change. The provision of the preceding sentence shall also apply in the event of a connection with third-party hardware and/or software not authorized by AppNavi as well as in the event of non-contractual and/or improper use of the contractual software.

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

8.5.1 In the event of defects in the contractual support services or new program versions, which cancel or reduce the suitability of these for the usual or contractually agreed purpose, Licensor is obligated to first of all, at its discretion, to supplementary performance by repair or replacement within a reasonable period of time. The rectification of defects can also be carried out at the discretion of Licensor by delivery of a workaround solution equivalent to its functionalities or a program serving to rectify defects (e.g. Fix or Service Pack). Licensor may also offer a new software version (e.g. product release or product version), provided that the defect is remedied by this. The delivery of workarounds, programs for error correction or new program versions is considered as subsequent performance and these are to be taken over by the customer, provided that the scope of functions is essentially retained and the takeover is reasonable for the customer. Licensor is permitted at least two attempts at rectification. If the rectification of defects fails, the customer can choose to reduce the support fee or withdraw from the contract. A withdrawal due to an insignificant defect is excluded.
The customer shall also be entitled to these rights if Licensor seriously refuses to remedy the defect or the customer cannot reasonably be expected to remedy the defect.

8.5.2 Warranty claims shall not exist in the event of only insignificant deviation from the agreed quality, only insignificant impairment of usability or as a result of incidents caused by external or contractually unconditional and other influences uncontrollable by Licensor, e.g. use of the contractual software in an unrecommended system environment or on an unrecommended platform in accordance with product documentation.

8.5.3 A substitute performance is excluded.

8.5.4 It is the customer's responsibility to support Licensor appropriately in remedying incidents, in particular to provide necessary information and to immediately take the necessary action to cooperate.

§9 Term and termination

9.1 If no end of the respective term is agreed in the individual contract, it may be terminated in whole or in part with a notice period of six (6) months to the end of a calendar month, but not before the end of a minimum contract term agreed in the individual contract. A different notice period may be agreed in the individual contract.

9.2 The right of both parties to extraordinary termination for good cause remains unaffected.

Part V: Definitions of terms

Ancillary costs
Expenses of Licensor that are necessary for the provision of services and are not travel expenses.

Contractual software
The software specified in the respective individual contract is the software that is the subject of the contract.

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

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

Fix
A fix refers to the update of a product release to correct one or more errors. A fix usually does not contain any functional enhancements or changes to the product release. However, it is not possible to completely exclude functional enhancements or changes to product functions using fixes.

Flat fixed price
Unilaterally unchangeable total remuneration owed for the support service, unless a separate, possibly flat-rate remuneration has been agreed for individual services. Material costs, travel times, travel expenses, ancillary costs are included in the fixed price.

Incident
Impairment of the suitability of the software subject to the contract or the support service for the contractually agreed or, if no such agreement exists, for the presumed or otherwise normal use.

Individual contract
Individual contract refers to a contract between Licensor and the customer for licenses, support or services.

Open source software
Open source software within the meaning of these EULA is open source software components from other manufacturers which may be copied, distributed, used as well as modified and distributed in modified form in compliance with the respective conditions of the open source license.

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

Parametrization
The individual adaptation of software, mostly standard software, to user requirements by setting the attributes within the software.

Patch
Temporary correction of a defect and/or an incident in the standard software without intervention in the source code.

Product generations
The introduction of a new product generation legally and functionally represents the introduction of a new, independent product which only has a thematic connection with its predecessor generation (in the sense of the task, e.g. "user provisioning" or "role modelling"). The delivery and support of a new product generation requires the conclusion of a new contract. Existing license or support agreements for a previous generation do not entitle the customer to the delivery or support of a new product generation.

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

Program level
Generic term for patch, update, upgrade and new release(s).

Reaction / response time
Period of time within which Licensor is to begin troubleshooting. The period begins with the receipt of the corresponding notification within the agreed service times and runs exclusively during the agreed service times. If a notification is received outside the agreed service times, the response time begins with the start of the next service time.

Release/Version
New development stage of a standard software which differs considerably in the functional and/or data spectrum from the previous release or version (e.g. change of the version number from version 1.3.5 to 2.0.0).

Remote access
Remote access (remote access) means the possibility of accessing the contractual software directly from a remote location as well as the customer's IT systems - to the extent required for troubleshooting. The aim of the access is activities within the scope of software support / incident analysis. Remote access is a type of teleservice.

Resolution time
Period of time within which Licensor must successfully complete the incident rectification. The period begins with the receipt of the corresponding notification within the agreed service periods and runs exclusively during the agreed service periods. If a notification is received outside the agreed service times, the recovery time begins with the start of the next service time.

Reverse Engineering
Procedure for extracting the source code from an existing software by decompiling or analyzing the structures, states and behaviors.

SaaS (Software as a Service)
Provision of the contractual software on servers that are operated for or by AppNavi or Licensor, without providing the customer with a copy of the contractual software.
Service time

Times during which the customer is entitled to contractually owed services by the Licensor.

Software Installation (Installation)
To bring about the executability of software on a certain hardware according to an agreed procedure.

Software integration (integration)
The coupling of different software systems (standard software or individual software) to form a complete system by actively, process-oriented and automatically exchanging data and information between the previously separate software systems.

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

Standard Software
Software programs, program modules, tools etc. that have been developed for the needs of a majority of customers on the market and not specifically by Licensor for the customer, including the associated documentation.

System environment
Technical and administrative application environment of a system designated in the individual contract for which AppNavi has released the contractual software.

Teleservice
Services involving the use of technical equipment for remote communication from a location outside the site of operation of the IT system.

Third-party software
Software programs / products manufactured by other companies and supplied by Licensor are referred to as third party software / products.

Ticket system
A ticket system (also known as an incident / service management system) is an IT system with which messages and inquiries can be received, classified, confirmed and processed with the aim of answering or solving problems and whose progress can be monitored and monitored. The ticket system confirms receipt of the message by repeating its contents.

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

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

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

Workaround solution
Temporary bridging of a defect and/or malfunction.

Annex: Data Processing Agreement (DPA)

Preamble

The customer named in the order commissions Licensor as the responsible party (hereinafter referred to as "responsible party") to provide the IT services described in more detail in the order (hereinafter referred to as "IT services") on the basis of a service agreement. The IT Services shall be further specified in Part I (General Part) and in addition - depending on the commissioned service - in Part III (Particular Part - License conditions for temporary transfer of SW (incl. SaaS) and/or Part IV (Particular Part - Contract conditions for SW support). The Parties therefore agree as follows:

§1 Commissioned Data Processing

1.1. Subject matter of this DPA is a commissioned data processing according to Art. 28 GDPR. The Data Controller instructs both the Data Processor and the Sub-Processor to process personal data on behalf of the Data Controller. The Data Controller is a controller within the meaning of Art. 4 no. 7 GDPR and shall therefore be responsible for the permissibility of the processing of Personal Data, including the disclosure of Personal Data to the Data Processor and the Sub-Processor, and for safeguarding the data subject's rights.

1.2. The Data Processor provides IT services to the Data Controller by using the Sub-Processor. This may require both the Data Processor and the Sub-Processor to access personal data within the meaning of Art. 4 no. 1 GDPR stored on IT systems con-trolled by the Data Controller ("Personal Data").

1.3. Personal Data relates to IT administration staff of the Data Controller and its customers and consists of (i) contact details (first name, last name, email address), (ii) IP addresses, (iii) log data generated by IT systems and (iv) user data obtained from tele media services (e.g. from websites, apps for mobile devices).

1.4. Data processing by the Processor shall generally take place in the European Economic Area (EEA) and/or Switzerland. If, exceptionally, processing takes place outside the EEA or Switzerland, the Processor shall comply with the provisions of Chapter 5 of the GDPR. The exact location of the data processing is specified for each individual sub-processor.

1.5. To the extent required to render the IT services, Personal Data will be temporarily stored with the Data Processor or the Sub-Processor.

1.6. Insofar as communication with the Data Controller is required in relation to the processing of Personal Data, both the Data Processor and the Sub-Processor will use the email-address datenschutz@appnavi.eu as communication channel.

§2 Obligations of Data Processor and the Sub-Processor

2.1 Both the Data Processor and the Sub-Processor shall process Personal Data exclusively for the purpose of performing the IT services in accordance with the DPA, the applicable data protection law and the instructions of the Data Controller in accordance with Section 1.1 and Section 3 of the DPA. Both the Data Processor and the Sub-Processor shall not process Personal Data for any other purposes, in particular not for their own business purposes, unless required to do so by EU or EU Member State law to which the Data Processor or the Sub-Processor is subject. In such a case, both the Data Processor and the Sub-Processor Processor shall notify the Data Controller of that legal requirement before processing, unless that law prohibits such notification on important grounds of public interest.

2.2. Unless required for performing the IT services, both the Data Processor and the Sub-Processor Processor are not entitled to create copies of Personal Data without the prior written approval of the Data Control-ler. This shall not apply for backup copies, which are necessary to ensure proper data processing, to comply with statutory access or retention requirements or for the purpose of preserving evidence. Any disclosure to third parties shall be permitted only subject to compliance with the conditions in Section 9 of the DPA.

2.3. Processing of Personal Data outside the permanent establishment of the Data Processor, the Sub-Processor or any of their Sub-Processor (see Section 9 of the DPA) shall be only admissible with the prior approval of the Data Controller in writing or electronically by e-mail. In case of processing of Personal Data in private residences, the Data Processor or the Sub-Processor including their Sub-Processors have to ensure that this processing complies with this DPA and any applicable data protection law, in particular appropriate technical and organizational measures are required according to Section 6 to mitigate the risk associated with processing Personal Data in private residences.

2.4. Both Data Processor and Sub-Processor shall label Personal Data stored on electronic storages adequately. The same applies to Personal Data stored on portable physical storages (e.g. hard drives, sticks etc.) if such storages are used. If Personal Data is processed for different and/or restricted purposes, both Data Processor and Sub-Processor Processor shall label such Person-al Data electronically with the respective purpose.

§3 Rights of the Data Controller

3.1. The Data Controller is entitled to give at any time instructions on the nature, scope and procedure for processing Personal Data and on the handling of rights exercised by data subjects (e.g. with respect to the rectification or erasure of Personal Da-ta or the restriction of processing). Any instructions shall be given in writing or electronically by e-mail. Instructions given orally shall be confirmed in writing or electronically by e-mail without delay.

3.2. Both the Data Processor and the Sub-Processor provide the Data Controller with the contact details of their employees authorized to receive instructions from the Data Controller immediately after signing the DPA.

§4 Information and Support

4.1. Both the Data Processor and the Sub-Processor shall inform the Data Controller without undue delay about all cases of severe operational interruptions, suspected breaches of data protection obligations or other irregularities in connection with processing Personal Data.

4.2. Both the Data Processor and the Sub-Processor shall inform the Data Controller without undue delay and within a maximum of 48 hours after becoming aware of personal data breaches within the meaning of Article 4 no. 12 GDPR relating to Personal Data and assist the Data Controller in ensuring compliance with its obligations pursuant to Articles 33 and 34 GDPR taking in-to account the nature of processing and the information available to it. Both the Data Processor and the Sub-Processor shall take necessary measures for securing the Personal Data and for mitigating any risks for the data subjects and shall align these measures with the Data Controller without undue delay.

4.3. Both the Data Processor and the Sub-Processor shall inform the Data Controller without undue delay about (i) current communications with supervisory authorities to the extent that processing Personal Data is concerned and (ii) orders, investigations and other actions by the supervisory authorities. Both the Data Processor and the Sub-Processor shall provide information to third parties and supervisory authorities only upon prior consultation with the Data Controller.

4.4. Both the Data Processor and the Sub-Processor shall notify the Data Controller without undue delay if they believe that an instruction violates any applicable provisions of data protection law. Both the Data Processor and the Sub-Processor are not obliged to follow

the relevant instruction until it has been confirmed or changed by the Data Controller.

4.5. Both the Data Processor and the Sub-Processor shall ensure – to the extent legally required – that they have designated a data protection officer in accordance with the legal requirements and shall provide the Data Controller with the contact de-tails of the data protection officer. Any change of the data protection officer shall be communicated to the Data Controller without undue delay prior to the change becoming effective.

4.6. Both the Data Processor and the Sub-Processor shall assist the Ordering Party in ensuring compliance with the obligations pursuant to Articles 35 and 36 GDPR regarding data protection impact assessments and prior consultations taking into account the nature of processing and the information available to it.

4.7. Both the Data Processor and the Sub-Processor are obliged to provide the Data Controller with the records of processing activities pursuant to Article 30 para. 2 GDPR in connection with the processing of Personal Data to the extent necessary for the Data Controller to fulfill its obligations under Article 30 para. 1 GDPR.

§5 Data Secrecy

5.1 Both the Data Processor and the Sub-Processor confirm that they are well acquainted with the relevant provisions under da-ta protection law and warrants that the persons authorized to process Personal Data are prohibited from processing Personal Data outside the scope required to render the IT services and the instructions of the Data Controller.

5.2. Both the Data Processor and the Sub-Processor warrant that the persons authorized to process Personal Data have commit-ted themselves to data secrecy and confidentiality or are subject to an appropriate statutory obligation of data secrecy and confidentiality, and that these persons have been made familiar with the provisions relating to data protection relevant to them. This confidentiality obligation shall survive the termination of the DPA.

§6 Technical and Organizational Measures

6.1 Within their respective areas of responsibility, both the Data Processor and the Sub-Processor shall provide an internal organizational structure that gives due consideration to the special requirements of data protection, and warrants to implement all technical and organizational measures required pursuant to Article 32 GDPR ("TOM") prior to the start of processing Personal Data and to adhere those TOM for the duration of processing Personal Data.

6.2. The TOM shall ensure a level of security appropriate to the risk, including inter alia as appropriate:

- the pseudonymisation and encryption of Personal Data;
- the ability to ensure the ongoing confidentiality,
- integrity, availability and resilience of processing systems and services;
- the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident;
- a process for regularly testing, assessing and evaluating the effectiveness of TOM for ensuring the security of the processing. measures against the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Data transmitted, stored or otherwise processed.

6.3. Both the Data Processor and the Sub-Processor (i) may adapt the TOM to the respective current state of the art to ensure a level of security appropriate to the risk and (ii) shall document changes to the TOM and provide the Data Controller with such documentation upon request.

6.4. The Data Controller reserves the right to carry out measures aimed at detecting misuse, where appropriate, even including an inspection into the personal data of the employees of both the Data Processor and the Sub-Processor (individual identification and name, contact data) having access to systems controlled by the Data Controller. By way of internal measures that may also include involvement of the employees' representation (if any), both the Data Processor and the Sub-Processor shall ensure the lawfulness of the use of such data by the Data Controller.

§7 Handling Requests of Data Subjects

7.1. Both the Data Processor and the Sub-Processor shall support the Data Processor in responding to requests for exercising the data subject's rights laid down in Chapter III GDPR (e.g. rights of access, of rectification or erasure of data or of restriction of processing) to a reasonable extent and, whenever possible, by appropriate TOM.

7.2. Where a data subject contacts both the Data Processor and the Sub-Processor with respect to exercising his/her rights under the GDPR, both the Data Processor and the Sub-Processor shall refer such data subject to the Data Controller to the extent that it is possible to make an allocation to the Data Controller based on the information provided by the data subject. Both the Data Processor and the Sub-Processor shall pass on to the Data Controller the request of the data subject without undue delay and no later than the following working day that on which the request of data subject has been received, jointly with the necessary information to solve the request.

§8 Monitoring of data processing

8.1. Both the Data Processor and the Sub-Processor shall monitor its internal processes as well as the TOM on a regular basis in order to ensure that the processing falling within its area of responsibility (including processing by its Sub-Processors) is per-formed in compliance with the requirements of the applicable data protection law and that the protection of the data sub-jects' rights is guaranteed.

8.2. An audit of the processing of Personal Data by the Data Controller shall generally take the form of the Data Controller obtaining from both the Data Processor and the Sub-Processor self-disclosures (e.g. a security concept documenting the implemented TOM) or annual audit reports or any similar audit reports prepared by third parties. This applies as well to Sub-Processors referred to in Section 9.3.

8.3. The Data Controller is entitled to perform on-site inspections at the business premises of both the Data Processor and the Sub-Processor if (i) there are actual indications giving rise to the suspicion of violations of data protection provisions or (ii) the audit according to Section 8.2 cannot be conducted adequately due to inadequate documentation. The Data Controller is entitled to perform the on-site inspections itself or have them performed by a commissioned third party that is committed to secrecy and that must not be a competitor of both the Data Processor and the Sub-Processor. The on-site inspections shall (i) be limited to processing facilities and personnel involved in processing Personal Data, (ii) occur no more than once annual-ly or as required by applicable data protection law or by a competent supervisory authority or immediately subsequent to a material personal data breach that affected the Personal Data and (iii) be performed during regular business hours, without materially disrupting business operations and in accordance with security policies, and after a reasonable prior notice.

8.4. Both the Data Processor and the Sub-Processor shall actively support the Data Controller in exercising its right to inspect, shall grant to the Data Controller access to the data processing systems that are relevant for processing Personal Data in case of on-site inspections and shall reasonably support the Data Controller in carrying out the inspections.

8.5. Both the Data Processor and the Sub-Processor shall support the Data Controller in particular in case of data protection checks carried out by supervisory authorities and shall, to the extent the

processing of Personal Data is concerned, implement any orders of supervisory authorities in coordination with the Data Controller without undue delay.

§9 Engagement of Sub-Processors

9.1. To the extent the processing of Personal Data is concerned, both the Data Processor and the Sub-Processor may engage Sub-Processors, replace existing Sub-Processors or adjust the scope of their engagement without requiring a separate prior approval of the Data Controller,
- if the Sub-Processor has been chosen diligently and in particular in consideration of its suitability under data protection law and of the appropriateness of the TOM implemented by the Sub-Processor;
- if the Data Processor or the Sub-Processor and the respective Sub-Processor have entered into an agreement in accordance with Section 9.3; and
- if the Data Processor or the Sub-Processor notifies the Data Controller of any Sub-Processor in written form or by e-mail at least 30 days beforehand and the Data Controller does not object to the intended engagement of the Sub-Processor in written or by e-mail for good cause within 14 days as from receipt of such notification.

9.2. The Sub-Processor may only access Personal Data if the Data Processor or the Sub-Processor and its respective Sub-Processor have entered into an agreement pursuant to Section 9.3 of the DPA. This applies to each agreement with Sub-Processors in case more than one Sub-Processor is engaged.
The current Sub-Processors are considered to be approved by the responsible party in accordance with Section 9.1 of the DPA upon conclusion of the DPU:
Overview of Sub-Processors: https:/appnavi.eu/en/sub-processors.

9.3. The Data Processor or the Sub-Processor shall ensure by written agreement with the Sub-Processor that (i) the Sub-Processor is subject to the same data protection obligations applicable for the Data Processor and the Sub-Processor under the DPA and (ii) the Data Controller is entitled towards the Sub-Processor to the same rights of inspection pursuant to Section 8. Such assurance shall be designed in a way that the Data Processor or the Sub-Processor is entitled to execute such rights directly towards their respective Sub-Processors on behalf of the Data Controller.

9.4. Data Processor or the Sub-Processor shall review and enforce compliance of their respective Sub-Processors with the obligations stipulated in the agreement according to Section 9.3 in regular intervals and report significant findings (if any).

9.5. The Data Controller may object the engagement of a Sub-Processor for justified reasons, in particular if a Sub-Processor has breached its duties and/or the protection of the Personal Data is at risk.

§10 Data Ownership

10.1. If Personal Data are at risk due to attachment or seizure, insolvency or composition proceedings or other events or third par-ty measures at the level of the Data Processor or the Sub-Processor, the Data Processor or the Sub-Processor shall inform the Data Controller without undue delay. The Data Processor or the Sub-Processor shall inform all persons responsible in this respect without undue delay that the Personal Data sovereignty and the title to Personal Data or data storage media shall exclusively lie with the Data Controller.

§11 Deletion of Personal Data

11.1. Upon completion of the services or earlier upon the request of the Data Controller – at the latest upon termination of the DPA – both the Data Processor and the Sub-Processor shall delete any and all Personal Data pursuant to the prior instructions of the Data Controller. The same shall apply to test and junk data. This shall not apply for backup copies as described in Section 2.2 if deletion of Personal Data requires unreasonable costs or efforts. The deletion protocol shall be submitted to the Data Controller upon its request.

11.2. Documentation serving to furnish proof of proper data processing in accordance with the service relationship shall be retained by the both the Data Processor and the Sub-Processor beyond the termination or completion of the DPA in line with the applicable retention periods.

§12 Indemnification

12.1. Both the Data Processor and the Sub-Processor undertake to indemnify the Data Controller from liability claims asserted by data subjects if and to the extent that such claims root in breaches of their duties pursuant to the DPA and/or in accordance with the GDPR. Both the Data Processor and the Sub-Processor shall bear the burden of proof that these claims do not root in breaches of their duties pursuant to the DPA and/or in accordance with the GDPR. Until proof to the contrary has been furnished by the Data Processor or the Sub-Processor, it shall be assumed, that Data Processor or the Sub-Processor are in breach of their duties.

12.2. Both the Data Processor and the Sub-Processor further undertake to indemnify the Data Controller from administrative penalties imposed upon the Data Controller for insufficient implementation of TOM up to the extent the processing of Personal Data by the Data Processor or the Sub-Processor is concerned.

12.3. Both the Data Processor and the Sub-Processor shall be liable for fault of their Sub-Processors to the same extent as they are liable for their own fault

§13 Duration

13.1. The DPA shall enter into force upon agreement by the Parties and shall run as long as the Data Controller instructed the Data Processor to render the IT services.

13.2. The DPA can be terminated by each Party in case of any material breach of its provisions or applicable data protection law for good cause without further notice.

13.3. Termination notices shall be submitted in writing only.

§14 Final Provisions

14.1 Unless otherwise expressly provided in this Annex (Data Processing Agreement), the provisions of the EULA (in Particular Part I (General Part) shall apply accordingly.