GENERAL TERMS AND CONDITIONS
OF IT-POWER SERVICES GMBH (IT-PS)
FOR CLOUD-SERVICES

SECTION 1
SCOPE

1.1 These General Terms and Conditions (T&Cs) shall apply to Cloud-Services provided by IT-PS. Cloud-Services include services such as Software as a Service (SaaS), supply of Platform as a Service (PaaS) and Infrastructure as a Service (IaaS), provision of memory capacities as well as processing power and software solutions off-premise (i.e. not at the Client location).

1.2 Any terms and conditions of the Client which deviate from these T&Cs or from any amendments and modifications confirmed in writing by IT-PS are hereby expressly excluded. Any amendment or additional agreement must be confirmed in writing to be effective and shall only apply to the respective case.

1.3 Until IT-PS issues new T&Cs, these T&Cs shall also apply to all future cases, even if those are concluded without any reference to these T&Cs.

SECTION 2
OBJECT OF AGREEMENT

2.1 Upon signing the Agreement, the Client is granted a non-exclusive, non-transferable, spatially unlimited licence for the duration of the Agreement to store and manage his/her data as well as to use the processing power as agreed on the IT infrastructure operated by IT-PS at the cloud data centres by IT-PS (hereinafter called: Cloud-Services). The Client shall then be allowed to use the Cloud-Services (see Section 3) available on the servers of IT-PS and/or of third parties authorised by IT-PS for his/her purposes.

2.2 The Client shall rent the Cloud-Service for internal business use only and in compliance with the provisions hereof. The Client is not allowed to sublet or allocate Cloud-Service capacities of the Client to third parties, especially for commercial purposes, without separate special agreement with IT-PS in writing. The Cloud-Services shall be allocated to the Client limited in time and against payment.

2.3 If the Client wants to store personal data as defined by the General Data Protection Regulation (GDPR) on the cloud storage space, a separate agreement with IT-PS shall be needed (so-called data processing agreement pursuant Art 28 GDPR; see Section 11 below).

SECTION 3
SPECIFICATION OF SERVICES, AVAILABILITY

3.1 IT-PS shall grant the Client the spatially unlimited right for the duration of the Agreement to use the Cloud-Services agreed. Depending on the individual agreement, the Service shall include the following services:

Software as a Service (SaaS)

Platform as a Service (PaaS)

Infrastructure as a Service (IaaS)

Server Housing

Provision of data centre infrastructure

Provision of storage capacities

Provision of computer processing power

Provision of software solutions

3.2 The actual services of the Cloud-Services including technical specifications shall be agreed upon individually between the Client and IT-PS. The Agreement signed by both parties or the order confirmation signed by IT-PS shall be decisive for scope, type and quality of the supplies and services. Later changes of or additions to the scope of services need to be agreed in writing or need the written confirmation of IT-PS.

3.3 IT-PS shall be entitled to change and adjust the services of the Cloud-Services if required by technological development. IT-PS shall inform the Client in time prior to any change.

3.4 The Cloud-Services provided by IT-PS shall generally be available 24 hours per day, seven days a week, 52 weeks per year. In doing so a scheduled availability quota of about 99.5 % per period of record shall be assumed (quarter). Maintenance windows shall not be included when calculating availability. Maintenance works shall generally take place from Saturday to Monday starting at 00.00 and ending at 07.00 CET/CEST. These reserved windows shall only be used if

required for maintenance. In urgent cases maintenance work may also take place outside this window. If maintenance is needed it will be announced in advance.

SECTION 4
DUTIES OF THE CLIENT

4.1 Only the Client of IT-PS and employees of the Client shall be entitled to use the Cloud-Services. Should the Client wish that a third party uses the Cloud-Services, IT-PS must grant a written approval. The Client must confirm the identity of the persons to be authorised.

4.2 The Client shall guarantee to apply suitable software as well as hardware for the use of the Cloud-Services selected.

4.3 The Client shall back up all concerned data and shall create a copy except when otherwise stipulated. Further, the Client shall guarantee to observe the legal or contractual obligation to retain data.

4.4 The Client shall solely be responsible for the content and nature of the data stored as well as for the user behaviour. The respective responsibility of the Client shall be assessed as if the data is stored on his/her hard and software in-house. The Client, therefore, shall only be allowed to use the services provided by IT-PS as agreed in compliance with the respectively relevant national, international, inter-governmental, and supranational statutory provisions. In particular the Client shall
   a) not forward spam mails or other unsolicited bulk emails;
   b) not store or send illegal contents or other illegitimate or unauthorised con-tents;
   c) not create or apply computer viruses, computer worms, Trojan horses or other damaging computer codes, files scripts, spies or programmes and/or shall not send or store software viruses known to the Client (in terms of must know) ;
   d) not take any measures compromising or disturbing the integrity or service of IT-PS or data stored by it;
   e) not try to gain unauthorised access to the Cloud-Services or associated sys-tems or networks, especially by assuming another user's identity or by using fake identity information.

4.5 Furthermore, the Client undertakes to inform IT-PS via email immediately of any unauthorised use of his/her user account and any other known or assumed breach of data protection regulations. In this case, the Client has to take all reasonable measures immediately to stop such a breach of data protection without delay.

SECTION 5
CONCLUSION OF CONTRACT

5.1 Basis of the business relationship is the respective Agreement which shall define all agreed services (scope of services) and compensations.

5.2 In signing this Agreement the Client states that he/she has reviewed the contractual specifications and that the services agreed fulfil his/her requirements.

5.3 Any commitments made by IT-PS employees or agents shall be irrelevant unless confirmed in writing by the IT-PS management.

5.4 The offers by IT-PS are subject to change. The Agreement shall be become effective only after written order confirmation by IT-PS.

SECTION 6
PRICE AND PAYMENT

6.1 The amount of payment shall be shown in the Agreement in accordance with the fees regulations applicable from time to time or the price list or by IT-PS. All prices are exclusive of VAT. In signing this Agreement, the Client acknowledges the price and confirms its adequacy. The payment shall be guaranteed according to the consumer price index 2020 published monthly by Statistik Austria or according to the index replacing it. The day of order taking by IT-PS (Section 5.4) shall be the starting base. Index adjustment shall take place automatically on January first of the legal year during an existing contractual relationship.

6.2 Fees shall also be claimed for all contractual services that are not implemented as intended due to reasons not represented by IT-PS.

6.3 Unless otherwise individually agreed with the Client payment period for the Cloud-Services by IT-PS shall be one month.

6.4 Payment must be made in full and shall be due at the beginning of the respective invoicing period. In case of late payment, IT-PS shall be entitled to charge the legally applicable default interest. In case the due date of payment is exceeded, IT-PS shall be entitled to invoice reminder charges in the net amount of EUR 40,00 for each (separate) reminder and all arising costs for collection proceedings initiated by third parties (lawyer's fees, collection agency's fees) pursuant to the applicable lawyer's tariff and the collection fee regulations respectively.

6.5 Compliance with the agreed payment dates constitutes an essential condition for the implementation of delivery or performance of contract by IT-PS. In case of non-compliance with the agreed payment dates, IT-PS shall be entitled to terminate the Cloud-Services agreed for cause (see Section 7.3).

6.6 Payments with discharging effect can only be made directly to IT-PS. In case of several unsettled accounts, payments shall be offset with the earliest account. Payments shall always apply first to possible costs, then to the interests and finally to the principal claim.

SECTION 7
TERM, TERMINATION

7.1 Unless otherwise agreed individually with the Client, this Agreement shall be for an indefinite period.

7.2 Unless otherwise agreed individually with the Client both parties hereto may terminate this Agreement with a notice period of three months by the end of a payment period without giving reasons. Termination must be in writing or per email to the post address or email address specified in the Agreement.

7.3 Furthermore, the parties hereto shall be entitled to terminate this Agreement for cause without observing the notice period. Good cause shall be deemed to exist if the Client fails to make his/her payment on time, i.e. outstanding payment has not been made within 14 days following the expiration of the deadline set in the reminder.

7.4 Notices of termination by the Client shall be sent in writing either per email to office@it-ps.at or sent to the post address specified in the Agreement. The Client

needs to specify his/her name, company, address, company registration number, UID and his/her (registered) email address deposited with IT-PS for the termination to be legally effective. IT-PS may terminate this Agreement via simple email sent to the Client's last known email address.

7.5   IT-PS shall inform the Client of the impending termination of the Agreement and IT-PS' right to delete data stored by the Client (Client data) from the provided cloud storage within two weeks after proper notice of termination (Section 7.2) was given. IT-PS shall be entitled to permanently delete, i.e. unrecoverable, data stored by the Client in the cloud storage after a three-month period starting with the termination of the Agreement. IT-PS shall delete data regardless of quality, type, value, and importance of this data for the Client. At the request of the Client, which has to be received by IT-PS within three months following the termination of the Agreement in writing per email, IT-PS shall be willing to provide the Client with data detailed by the Client on machine-readable record carriers within one month and for money to be specified in the individual case. The Client shall receive files of the Client data in the technical format he/she has entered it and the metadata of the Client data in XML-Format. Therefore, IT-PS recommends that the Client himself/herself restores, saves, and withdraws his/her data from the cloud storage prior to the termination of the Agreement.

SECTION 8
WARRANTY

8.1   IT-PS shall guarantee that performance features as well as availability of the Cloud-Services meet the performance features detailed in Section 3 of these T&Cs and the Agreement concluded between IT-PS and the Client. However, IT-PS relies on available remote data transmission and adequate power supply. Should IT-PS be hindered or prevented to provide the service due to reasons IT-PS is not responsible for, IT-PS shall not be held liable in this respect and shall not be accountable.

8.2   Should the Cloud-Services as per Agreement not be available for the Client, the Client has to inform IT-PS immediately about this, the latest, however three days after noticing. Provided that it is possible, IT-PS shall restore the Cloud-Services pursuant to the service specifications in Section 3 of these T&Cs and the Agreement concluded between IT-PS and the Client within an appropriate period.

However, the Client shall be entitled to rescind the Agreement (conversion) unless it is a minor defect, or to demand a reduction of the payment if IT-PS fails to restore the defect, especially if IT-PS cannot or is not in the position to do so in an appropriate period or if IT-PS refuses or negligently delays to restore the defect.

8.3 Warranty claim shall not exist for insignificant defects. Defects that only concern a part of the Cloud-Services agreed shall not entitle the Client to object to the remaining Cloud-Services agreed.

SECTION 9
LIABILITY, DAMAGES

9.1 IT-PS shall not be liable for any damages, except where these violations of agreement arise from wilful act or gross negligence on the part of IT-PS. This shall in particular apply to consequential harm caused by a defect and loss of profit. Moreover, IT-PS shall not be liable for the loss of the Client's data. The Client shall back up all concerned data (Section 4.3). The Client's right to damages remains unaffected in compliance with Section 8.

9.2 If the liability of IT-PS is excluded or limited, then such exclusion or limitation shall also apply to the personal liability of employees, representatives, and assistants of IT-PS.

9.3 IT-PS shall not assume liability for data stored and processed by the Client within the scope of the Cloud-Services; the Client himself/herself shall be responsible for his/her data. The Client, therefore, agrees to use the Cloud-Services by IT-PS only in compliance with the laws.

9.4 IT-PS shall not give any warranty or assume any liability if the Cloud-Services are modified on the Client's or a third party's authority. Furthermore, IT-PS shall not be liable for deletions, correction, changes, damages, loss, or neglected storage caused by the Client. This disclaimer especially includes software viruses as well as any damaging computer codes, files, scripts, or programmes that may be contained in the files saved. IT-PS shall not be liable for faults which have been caused by improper handling.

9.5 If IT-PS is liable for damages, IT-PS shall be entitled to assign all claims by the Client against IT-PS to a third-party insurer.

SECTION 10
SUPPORT SERVICES

10.1 The Client shall be entitled to receive support services by IT-PS. Support requests and reports of malfunction to IT-PS shall be in writing per email to it@it-ps.at or by telephone.

10.2 The support services shall be structured according the following categories:
   a) Client support for problems concerning the use of the Cloud-Services.
   b) Error support if Cloud-Services do not meet the service specifications pursuant Section 3 or the Agreement between the Client and IT-PS.
   c) Error support if Cloud-Services do not meet availability pursuant Section 3.
   d) Provision and installation of updates.
   e) Other support services agreed upon.

10.3 If support is needed the error has do be described in detail so that IT-PS is in the position to perform the support services efficiently.

10.4 Error support may remain undone if error recovery causes unreasonably great effort compared to the loss of functional efficiency. If error recovery is linked to unreasonably great effort, both parties hereto shall be entitled to terminate the Agreement pursuant Section 7.3 of these T&Cs.

10.5 The following cases shall not entitle the Client to receive support services:
   a) the error is insignificant, and the Client can continue to use the Cloud-Services without restrictions.
   b) the error can be attributed to an unauthorised change of the Cloud-Services or an improper handling by the Client.

SECTION 11
DATA PROTECTION, CLIENT DATA

11.1 Provided that personal data is processed, the parties hereto undertake to observe the provisions of the General Data Protection Regulation (GDPR) as well as the Austrian Data Protection Act (DPA).

11.2 IT-PS shall process personal data only with a separate agreement (cf. Section 2.3 above). For this purpose, the Client and IT-PS shall additionally conclude a data processing agreement pursuant Art. 28 GDPR governing the mutual right and duties as to the processing of personal data.

11.3 IT-PS stores and processes name, address (postal address, e-mail address, telephone, and possible fax number) and, in case of direct debit, also account data of the Client. Disclosure of the Client's personal data is only permitted if needed to fulfil the Agreement and in compliance with the provisions of the GDPR and of the DPA.

11.4 Data and data contents (Client data) stored by the Client shall remain at the Client's disposal and control as regards IT-PS.

11.5 IT-PS guarantees not to access data and data contents (Client data) on the cloud storage without prior written consent by the Client, but to merely store this data and data contents on the cloud storage. Therefore, IT-PS shall not be responsible for the content or other nature of the data – neither towards the Client nor a third party.

SECTION 12
NON-DISCLOSURE

12.1 Within the scope of this Agreement it may happen that the parties to the Agreement exchange information.

12.2 Confidential information in terms of these T&Cs shall be all documents and files transferred and disclosed for the Cloud-Services by one of the parties in the context of this Agreement, and not only in terms of the GDPR and the DPA. This especially applies to trade and company secrets contained in the data in terms of the EU Directive (EU 2016/943) on the Protection of Confidential Know-How and Confidential Business Information (trade secrets).

12.3 Information
   a) that has been generally know at the signing of the Agreement,
   b) that has become generally known later but not because of a breach of confidentiality,
   c) that has been received by a third party entitled to transfer the information, or
   d) on which the parties agree in writing that it is not confidential

   is not considered confidential.

12.4 The parties hereto, especially their employees, shall treat confidential information strictly confidential. Confidential information shall only be used, if necessary, to implement the Agreement.

12.5 Each party hereto shall indemnify and hold harmless each other against all damages caused by the breach of this obligation.

12.6 In the event of any breach of secrecy, the party concerned shall be informed immediately in writing.

SECTION 13
PLACE OF JURISDICTION AND FINAL PROVISIONS

13.1 Any amendments, modifications, or side-agreements to these T&Cs as well as any warranty must be in writing to be legally applicable. This shall also apply to agreements to change this formal requirement.

13.2 The invalidity or unenforceability of any provision of these T&Cs or agreements amended by such provisions shall not affect the validity or enforceability of this Agreement. The parties hereto agree to replace any invalid provision with a provision that is valid and comes closest to the original intention of the invalid provision.

13.3 The Client shall not be entitled to setoff IT-PS' claims against counterclaims or to withhold payments referring to defects. The Client may setoff or assert his/her right of retention, only if the claims have expressly been accepted by IT-PS or have been established by a final and conclusive court.

13.4 These T&Cs and any contract amended by these T&Cs are subject to Austrian law to the exclusion of the reference provisions of international private law.

13.5 Place of performance shall be A-2512, Tribuswinkel, and exclusive place of jurisdiction shall be the respectively competent court. The laws of Austria shall apply to the exclusion of the reference provisions of international private law.

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