GENERAL TERMS OF USE

skailark GmbH, represented by managing director Dr. Christian Soyk, Lenggrieser Str. 16, 81371 München, Germany (hereinafter "Provider"), for software products as SaaS or Cloud solution.

§ 1   Object of agreement

1.1   The following terms of use apply to business relations between the Provider and the user insofar as the latter is given access to the Provider's software for the length of a given contractual term to allow the software to be put to its intended use.

1.2   Even if it is not noted once more when similar contracts are executed, the present terms of use apply exclusively in the version provided to the user at the time it issues the declaration unless the contracting parties expressly agree otherwise.

1.3   Other supplies and services offered by the Provider, along with third-party software and hardware, may be subject to additional or supplemental contractual terms.

1.4   Businesses within the meaning of these contractual terms are natural or legal persons, or partnerships having legal capacity, who act in a commercial or independently professional capacity when entering into the legal transaction. Only businesses are users within the meaning of these terms of use.

1.5   Individual contractual arrangements take precedence over these terms of use. Deviating, opposing or supplemental contractual terms are not incorporated herein unless their applicability is expressly affirmed.

1.6   Access to the Internet or a mobile network as well as its use may be subject to the contractual terms of a given telecommunications provider.

1.7   Prior to the closing, the user must establish whether and to what extent the software's specifications meet its preferences and needs. To such extent, it must keep itself apprised of the software's main functional features and conditions.

1.8   The scope of software functions is typically a product of the user's Internet connection available at the time of the closing as well as its hardware and software environments. It is emphatically noted that the software's flawless and unrestricted quality, functionality and availability also commonly depend on third-party software components. The Provider advises the user that the services provided may be restricted or otherwise curtailed on account of factors outside of the Provider's sphere of influence. This specifically includes the actions of third parties not acting at the Provider's behest, technical Internet conditions over which the Provider has no control as well as Force Majeure. The user's hardware and software as well as its technical infrastructure, too, may have an impact on the Provider's services. Insofar as circumstances of this kind affect the availability or functionality of the services rendered by the Provider, the status of such services as having been rendered as agreed is not affected.

1.9   What matters to the specific scope of services as well as their nature and quality, along with the software's specific functionalities, are the agreements into which the parties entered pursuant to the offer underlying the contract as well as the Provider's order confirmation related thereto. In all other respects, the software's quality and functionality are set forth in the pertinent product specifications, which are not to be construed as a warranty. No warranty is provided unless expressly designated otherwise.

1.10   The Provider operates the software as a SaaS or Cloud solution. This allows the user, for the term of this agreement, to use the software stored and running on the servers of a service provider contracted by the Provider (see § 11 for details) by way of an Internet connection for its own purposes, as well as to store and process its data using the software temporarily and, if applicable, in part.

§ 2   Closing

2.1   The Provider's offers are non-binding and subject to change unless a given offer is expressly designated as binding in nature. Only a contract signed by both parties and the Provider's written order confirmation bind the parties, and the same is true once the Provider has commenced performance with respect to a service ordered. A given contract will specify the scope of services to be rendered by the Provider that the user desires as well as the fee the user is to pay for such services. The contract to be executed thus details the agreements as to the type and scope of software use that reference the present contractual terms as well as any attachment. The specific system requirements for the use of the software are agreed separately between the parties as part of the closing and are set forth, by way of the designations, in the pertinent product specifications referenced in the contract.

To render performance, the Provider avails itself of the services of Tableau International, U.C., a provider of cloud solutions, Shelbourne Road, Balls-bridge, Dublin 4, Ireland (Tax ID IE9852004O). (see § 11). The system requirements and technical specifications of Tableau International, U.C. (Tableau online product) are available under: https://www.tableau.com/products/techspecs. Reference is further made to § 2.2.

2.2   The closing between the Provider and the user is thus transacted subject to the proviso that performance may not be rendered, or may not be rendered in full, in the event of inaccurate or improper self-delivery. This is true only in cases in which the absence of supplies is not attributable to the Provider and the Provider entered into a specific coverage transaction with the requisite diligence. The Provider will make all reasonable efforts in order to render performance. Otherwise, any fee paid for it is immediately refunded. In the event of non-availability or partial availability, the user will be informed without delay.

2.3   Separate contracts are to be executed for supplies and services of another kind (e.g., consulting on software).

§ 3   Provider's duties

3.1   The Provider makes the latest version of the software available to the user for the duration of the agreement at the router port of the computing center where the server running the software is located ("Transfer Point"). For this purpose, the Provider sets up the software on a server that the user can reach via the Internet.

3.2   Establishing and maintaining the data link between the user's IT systems and the Transfer Point described is not part of the Provider's duties.

§ 4   User's general duties

4.1   The user must promote the software's proper use by proactively providing adequate assistance. It must supply the Provider with the information and data needed for proper performance. The user also bears responsibility for creating the technical requirements for the use of the object of agreement, especially with regard to the hardware and software used, the Internet connection and the current browser software.

Specifically, the user must see to regular data back-up and the use of up-to-date anti-virus software. The provider is not liable for damages caused by viruses that could have been prevented through the use of the appropriate software. In this context, the limitations of liability pursuant to this § 8 of these terms of use apply as well.

4.2   The user must take adequate precautions to prevent the software from not working properly, be it wholly or in part (e.g., data back-up, troubleshooting, regular test evaluation, emergency protocol). It is part of the user's responsibility to procure that the working environment is fit for the software. The user is obligated to report functional failures, breakdowns or other impairments of the software to the Provider without delay and in as detailed a manner as possible.

4.3   The user must, as a rule, observe applicable law, including but not limited to the pertinent data-protection regulations, provisions under the criminal code as well as these terms of use. Specifically, the user is obligated to:

4.3.1   to protect log-in data provided as well as any related identification and authentication mechanisms against unauthorized third-party access, and not to share such information with unauthorized third parties; it must further procure that staff to whom log-in data are provided act accordingly;

4.3.2   not to infringe third-party rights, including copyrights and ancillary copyrights, trademark, patent and other property rights as well as rights of personality;

4.3.3   to respect the private sphere of others – i.e., not to disseminate content that glorifies violence or is of a slanderous, threatening, harassing, injurious, racist or otherwise objectionable nature;

4.3.4   not to execute applications (such as viruses) that may lead to a change in the physical or logical structure of the networks; and

4.3.5   not to use the infrastructure provided to it, as well as any work product generated with it, for illicit marketing purposes, including but not limited to the transmission of unsolicited electronic mail.

4.3.6   Insofar as the user is provided with memory, it must not store unlawful contents that violate applicable law, official regulations or third-party rights. Specifically, it must not use memory provided to it for offers violating industrial property rights (such as trademark or patent rights, utility models or rights of use), copyrights, ancillary copyrights or any other right (such as rights to one's own likeness and name or other rights of personality), or to advertise or market such offers.

4.3.7   In the event that the user or its staff learn of instances in which log-in data or identification or authentication mechanisms are misused, it must immediately so inform the Provider. In cases of misuse, the Provider may block access to its service altogether. To undo such block, the user must then file a written application. The user bears liability for any misuse attributable to it.

4.3.8   The Provider reserves the right to delete information from servers and block user accounts if these terms of use are violated. In cases of violations of applicable law, the Provider may pass the information in question on to the competent authorities.

4.3.9 The Provider reserves the right to block access to agreed services either wholly or in part if and to the extent that the user makes unlawful use thereof or breaches the duties set forth in these terms of use. In such a case, the user will be promptly informed by email.

4.3.10 The Provider bears no liability for the user's own contents as a rule. Specifically, the Provider has no obligation to review such contents for possible violations of law. The user holds the Provider harmless from any and all justified claims that third parties assert against the latter on account of the infringement of their rights, for which the user bears responsibility. The user also bears the costs of the Provider's legal defense, along with any and all court and legal fees at the rates stipulated by law. The user must advance a reasonable share of such costs to the Provider.

4.4 The contents that the user places on any memory intended for it may be subject to protection under copyright or data-protection law. The user hereby grants the Provider the right to make the user's content placed on the server available upon request on the Internet, as well as to copy and transmit such content and duplicate it for purposes of data back-up.

§ 5 **Rights of use**

5.1 The software itself is executed solely on the servers of the Provider or service providers acting on its behalf. Subject thereto, the user is entitled, for the duration of the agreement, to a non-exclusive, non-transferrable and non-sublicensable right to serve and use the software and any data accessible via the software using its own Internet connection on their user interfaces in unaltered form and within the framework of the agreed type of use. Access to the user interface is limited to type and number of authorized users in accordance with the parties' contractual arrangements.

5.2 The user is not entitled to duplicate, process or decompile the software or any data accessible via the software.

5.3 The user is not entitled to provide the software or any data accessible via the software for third-party use. Specifically, it must not sell, lease or otherwise sublicense the same, or reproduce or make them available to the public.

5.4 In the event that the user violates any of the foregoing provisions, any and all rights of use granted as part of this agreement immediately lapse and are automatically returned to the Provider. In such a case, the user must immediately and completely cease its use of the software.

5.5 The user is barred from decompiling the program codes back into other code forms and otherwise reverse-engineering the software's various production stages – e.g., adapting the program for its own use. The Provider may terminate the rights pursuant to § 5 for cause. Cause is present, for instance, if continuing the agreement would place an unreasonable burden on the Provider, especially if the user fails to pay the fee or otherwise breaches § 5 in a material way. When the rights pursuant to § 5 arise or cease, the Provider may demand that the user return the items provided, or represent in writing that they have been destroyed, and that it delete and/or destroy all copies of such items, and represent in writing that it has done so.

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§ 6   Compensation

6.1   The amount of monthly compensation owed depends on the agreements into which the parties entered pursuant to the offer underlying the contract as well as the Provider's order confirmation related thereto. The Provider is entitled to increase the rates agreed for contractual services to offset rising personnel and other expenses to an adequate degree. The Provider will notify the user of such rate increases in writing or by email; price increases do not apply to periods for which the user has already made payments.

6.2   In the event that the agreement is not entered into on the first day of a calendar month, the fee payable for the first month is calculated on a pro-rata basis for the remaining days of the month, starting with the day following the software's provision. Unless the parties agree otherwise, the fee is due and payable in advance on the third business day of each quarter. In the first quarter of the contractual term, the fee is due and payable upon the software's provision in full.

6.3   The Provider invoices other services specifically agreed to be subject to compensation on the basis of expenditures incurred (time and materials) and subject to the general list prices in effect at the time of the order.

6.4   While the user is in default, it owes interest on any outstanding balance at a rate of nine percentage points above the prime rate. The Provider reserves the right to assert claims for greater damages related to default. The user must recognize the terms of payment agreed as a rule. In the event of default of payment, the Provider is entitled, without prejudice to additional claims, to preliminarily block access to agreed services or any part thereof. In such a case, the user will be promptly notified by email.

6.5   The user holds a right of set-off only if and to the extent that its counter-claims have been effectively established, recognized or are not disputed by the Provider. The user's right of set-off with respect to contractual and other claims arising from efforts to bring about or implement this contractual relationship are not affected. The user may exercise a right of retention only if its counter-claim is based on the same contractual relationship.

§ 7   Maintenance and warranty

7.1   Software applications provided are generally subject to the caveat that no software or IT infrastructure available on the market is 100% safe and free from defects. Among other factors, this owes to the multitude of viruses in circulation as well as the fact that there are, as a rule, security risks against which there may not yet be an effective defense under the current state of the art. The Provider is unable *per se* to provide protection against the improper use of or changes to software applications, the possible contamination of software components by computer viruses or other malware, or other security gaps found outside of the Provider's sphere of influence that are not otherwise attributable to the Provider. The services supplied by the Provider offer no protection against the possible infringement of intellectual property or other illicit activities of third parties – e.g., cyber or hacker attacks, data capture or exposure or other instances of the unlawful alteration of data or computer sabotage.

7.2   The Provider generally warrants that the services owed are free from significant defects and third-party rights that affect the regular use of such services. the Provider guarantees that the services it owes are of the quality common to services of this kind and reasonably expected by the user based on the specific type of service. According to the provisions of item 7.1, it is emphatically noted that, in terms of quality and functionality, the services owed by the Provider commonly rely on software and hardware

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components provided by third parties, over which the Provider may exert no influence, to rule out failure or limitation. Specifically, any change to such software components, or to the user's software or hardware environments, may curtail the functionality of the services provided by the Provider. Limitations caused by technical or other problems outside of the Provider's sphere of influence (Force Majeure, violence, third-party culpability, etc.) must not be attributed to the Provider.

7.3 The user is obligated to notify the Provider of any defects encountered without delay. In cases of material defects, this takes the form of a description of the time the defect occurred as well as of the specific circumstances. Defects afflicting the performance owed by the Provider are removed promptly upon the user's description of the error in question. In the event that the Provider is unable to remove the error within a reasonable period of time, the user may demand that the applicable fee be abated on a pro-rata basis. This is not true in the event that the defect is the product of circumstances attributable to the user, especially where the user failed to discharge its duty of assistance. In cases of recurring significant defects, the user may further terminate the agreement without notice. The user's other rights, if any, are not affected.

7.4 Unless expressly agreed otherwise, the Provider offers no guarantees to the user in a legal sense.

7.5 Any content placed within the infrastructure supplied by the Provider is content foreign to the Provider. Accordingly, legal responsibility for such content lies with the user.

7.6 Based on the current state of the art, online data communication cannot be warranted to be free from error and/or available around the clock. This is why the Provider assumes no warranty for technical defects not attributable to the Provider, including but not limited to the continual and uninterrupted availability of databases and their contents, or complete and error-free reproduction of user-supplied contents, if any.

7.7 In the event that services contemplated herein infringe third-party property rights, the user will inform the Provider without delay and provide it with such information and other reasonable assistance as it may need for purposes of a defense.

§ 8 Liability

8.1 The Provider does not guarantee the uninterrupted availability of systems and accepts no liability for systemic failures, service disruptions or breakdowns of technical equipment and services that are not attributable to the Provider. Specifically, the Provider bears no liability for fluctuations in the quality of access to services on account of Force Majeure or due to events for which the Provider is not responsible. This includes but is not limited to strikes, lock-outs, legitimate measures adopted in internal labor disputes as well as official directives. Further included is the full or partial breakdown of communication and network structures, along with gateways provided or operated by third parties, which are needed for the Provider's own performance. The Provider is entitled to postpone the services incumbent upon it for the duration of the impeding event, plus an adequate start-up period. The Provider assumes no liability for minor disruptions. Moreover, the Provider bears no liability for errors found in the sphere of risk of the user or third parties, including but not limited to errors caused by the improper use of or changes to the applications or other third-party software, the contamination of relevant software components by computer viruses, the use of unsuitable data carriers, defective hardware, power or data-line failures, errors owing to a lack of information security or unsuitable environmental conditions at the site of operations for applications.

8.2 In cases of slightly negligent breaches of duty, liability is capped at the average amount of such direct damages as may be foreseeable and typically associated with the contract in question. This also applies to slightly negligent breaches of duty committed by the Provider's legal representatives or (vicarious) agents. In cases of slightly negligent breaches of duty, liability is capped at two times the amount of the annual fee owed pursuant to § 6 per damaging event. The Provider bears no liability for the slightly negligent violation of insignificant contractual obligations. By contrast, the Provider is liable without limitation for any violation of the user's significant contractual positions. Significant contractual positions are those that the agreement must afford the user based on its content and purpose. The Provider further bears liability for violations of obligations the satisfaction of which (i) makes it possible for the agreement to be implemented as intended, and (ii) the user may rely upon.

8.3 The foregoing limitations of liability do not affect the user's claims under guarantees and/or product liability. Furthermore, limitations of liability do not apply in cases of fraudulent intent, violations of significant contractual obligations as well as such injuries to the user's body, health or life as may be attributable to the Provider.

8.4 The Provider is not liable for the loss of data and/or programs insofar as the damages are a product of the user's failure to back up data with a view to ensuring that lost data may be recovered at a reasonable expense. The Provider uses commercially reasonable endeavors designed to minimize errors or omissions in any data accessible via the software, which contains information received from third parties. The Provider makes no warranty or representation regarding the accuracy or completeness of such third-party data.

§ 9 Term and termination

9.1 As a rule, the agreement is entered into for one year from the time of closing. The specific minimum term depends on the agreements into which the parties entered in a given case. Thereafter, the agreement's term renews automatically for an indefinite period of time unless and until either party hereto terminates it on three months' notice with effect at quarter's end.

9.2 Moreover, either party hereto may terminate the agreement in writing without notice for cause. On the Provider's side, such cause for termination is present, for instance, if the user infringes the Provider's rights of use by making use of the software beyond the degree permitted hereunder and fails to discontinue such infringement within a reasonable grace period even after having been placed on notice by the Provider.

9.3 Notice of termination must be given in writing.

9.4 In the event of termination, the user must cease its use of the software.

§ 10 Confidentiality and data protection

10.1 "Confidential information" refer to the other party's information and documents that are designated as confidential or must be deemed as such in light of prevailing circumstances, including but not limited to information concerning operational processes, business relationships and know-how, along with – in the case of the Provider – any and all work products.

10.2 The parties agree to hold such confidential information in confidence. This duty survives the discontinuation of the agreement. It does not apply to confidential information that

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- were already demonstrably known to the recipient at the time the agreement is executed, or were disclosed to it thereafter through no violation of a confidentiality agreement, legal provision or official directive;

- are known to the public at the time the agreement is executed, or become known to the public thereafter through no breach of this agreement; or

- must be disclosed on the basis of legal obligations or at the direction of a court or government agency. To the extent permitted and possible, the recipient obligated to effect disclosure must notify the other party in advance and provide it with an opportunity to forestall disclosure.

10.3   The parties will grant access to confidential information only to third parties who are bound by professional secrecy or previously entered into obligations corresponding with the duty of confidentiality imposed by these terms of use. In addition, the parties will disclose confidential information only to staff who must have knowledge thereof for purposes of the implementation of the agreement, and who are bound by a relevant duty of confidentiality even beyond their departure to the extent permitted by employment law.

10.4   The processing of personal data on either side is subject to the provisions of the EU's General Data Protection Regulation (GDPR) and, specifically, the statutory privacy provisions of the Federal Data Protection Act (*Bundesdatenschutzgesetz - BDSG*). With respect to the involvement of Tableau International, U.C., reference is made § 11. The Provider's full privacy notice is available for perusal under https://www.taleau.com/de-de/privacy. They contain detailed information on how personal data should be handled, how they are to be protected and what related rights the data subject has. If and to the extent that the user processes personal data on IT systems for which the Provider bears technical responsibility, or if the user has a third party do so, a processing contract is to be entered into (processing contract pursuant to Art. 28 GDPR).

§ 11   Involvement of services by Tableau International, U.C.

11.1   To render our services, we avail ourselves of the services of Tableau International, U.C., a provider of cloud solutions, Shelbourne Road, Ballsbridge, Dublin 4, Ireland (Tax ID IE9852004O).

11.2   Subject to legal or contractual permits, personal data may be processed in a third country only if the special requirements of Arts. 44 et seqq. GDPR are met as a rule. Accordingly, data may be transmitted if the European Commission has found, for purposes of a decision pursuant to Art. 45 (1) and (3) GDPR, that the third country in question offers an adequate level of protection under data-protection law. By issuing such an adequacy decision, the European Commission attests to a level of data protection comparable to that recognized within the European Economic Area. Insofar as data are transferred between the U.S. and the E.U. under this agreement by way of exception, it should be noted that no such adequacy decision has been issued for the U.S. As a rule, therefore, other suitable guarantees must be provided to the effect that data protection in the U.S. is assured. Generally speaking, this could take the form of binding company guidelines, EC standard contractual clauses for the protection of personal data, certifications or recognized codes of conduct. While Tableau International, U.C., has agreed to be bound by standard contractual clauses formulated by the European Commission, U.S. companies are nevertheless obligated to surrender personal data to law-enforcement agencies without the possibility of legal recourse for data subjects. This is why it cannot be ruled out that U.S. authorities (e.g., intelligence agencies) process, assess and permanently store data found on U.S. servers for surveillance purposes. The Provider exerts no influence over processing activities

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of this kind. It may further be the case that data subjects are unable to effectively assert and/or enforce their rights of information against Tableau International, U.C. In addition, technical and organizational measures for the protection of personal data may not fully meet GDPR requirements in quantitative and qualitative terms. This leaves open the possibility that the standard contractual clauses of the European Commission that Tableau International, U.C., uses do not constitute adequate guarantees within the meaning of Art. 46 (2) lit. a) GDPR.

§ 12 Changes to these terms of use

12.1 The Provider reserves the right to change these terms of use at any time subject to adequate advance notice of at least six weeks. The Provider will inform the user of such changes in text form.

12.2 If the user does not object, the changes to these terms of use are deemed to have been accepted. In cases of objection, the contractual relationship continues on the basis of the previous version of these terms of use; however, the Provider may then terminate the agreement.

§ 13 Miscellaneous

13.1 This agreement is subject to German law.

13.2 The user is advised that IT services may be subject to export and import restrictions. Specifically, permits may be required, and the use of the software or any related technology may be subject to restrictions abroad. Performance may further be contingent upon the absence of obstacles owing to national or international regulations under export or import law, or any other legal regulations.

13.3 Ineffective individual provisions do not affect the effectiveness of the remaining provisions hereof.

13.4 All disputes arising from the contractual relationship are settled by the court with jurisdiction over the Provider's registered offices unless an applicable norm specifies another legal venue.

Place, date

Place, date

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skailark GmbH,

represented by Dr. Christian Soyk

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represented by _____

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