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## GENERAL TERMS OF USE

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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 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.
- 1.3 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 § 10 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.
- 2.2 To render performance, the Provider avails itself of the services of salesforce.com Germany GmbH, a provider of cloud solutions, Erika-Mann-Strasse 31-37, 80636 Muenchen, Germany (Tax ID DE 245335078). (see § 10). The system requirements and technical specifications of salesforce.com Germany GmbH (Tableau online product) are available under: <https://www.tableau.com/products/techspecs>

### § 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.
- 3.3 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 warrants 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. The user is obligated to notify the Provider of any defects encountered without delay. 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.

#### **§ 4 User's duties**

- 4.1 The user is responsible for ensuring that the IT infrastructure is adequate for fulfilling the contract. 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 § 7 of these terms of use apply as well.
- 4.2 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 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 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.
- 4.4 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.
- 4.5 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.
- 4.6 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.

#### **§ 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.

## **§ 6 Compensation**

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.

## **§ 7 Liability**

- 7.1 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 impending 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.
- 7.2 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.
- 7.3 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.

- 7.4 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.

## **§ 8 Term and termination**

- 8.1 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.
- 8.2 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.
- 8.3 Notice of termination must be given in writing.
- 8.4 In the event of termination, the user must cease its use of the software.

## **§ 9 Confidentiality and data protection**

- 9.1 "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.
- 9.2 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
- 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.
- 9.3 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 Involvement of services by salesforce.com Germany GmbH**

- 10.1 To render our services, we avail ourselves of the services of salesforce.com Germany GmbH, a provider of cloud solutions, Erika-Mann-Strasse 31-37, 80636 Muenchen, Germany (Tax ID DE 245335078).
- 10.2 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. Salesforce’s full privacy notice is available for perusal under <https://www.salesforce.com/company/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. Salesforce is certified under the current EU-US Privacy Shield. Also, you can find more information on the processing of your personal data in our privacy policy. Our privacy policy can be viewed at <https://skailark.com/privacy-policy/>.

**§ 11 Changes to these terms of use**

- 11.1 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.
- 11.2 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.

**§ 12 Miscellaneous**

- 12.1 This agreement is subject to German law.
- 12.2 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.
- 12.3 Ineffective individual provisions do not affect the effectiveness of the remaining provisions hereof.
- 12.4 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.

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Place, date

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Place, date

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skailark GmbH,  
represented by Dr. Christian Soyk

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represented by \_\_\_\_\_