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## General Terms and Conditions

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## Part I: General Terms and Conditions

### §1 Scope

- 1.1 AppNavi GmbH, Weihenstephaner Str. 12, 81673 Munich, Germany (hereinafter referred to as "AppNavi") provides the SW implementation services (to the customer exclusively on the basis of the conditions of these General Terms and Conditions (hereinafter referred to as GTC - "General Terms and Conditions"). The GTC apply to software implementation services. The licensing of the underlying software and its operation is based on separate General License Terms ("EULA").
- 1.2 These General Terms and Conditions 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"). AppNavi and Customer are hereinafter referred to individually as "Party" and jointly as "Parties".
- 1.3 Terms and conditions of the customer that contradict or deviate from these General Terms and Conditions shall not apply (even if AppNavi does not expressly contradict them), unless AppNavi has expressly agreed to these terms and conditions of the customer in writing.
- 1.4 In the event of contradictory provisions, the following order of precedence shall apply: 1. provisions from the individual contract, 2. provisions from this Part I of the General Terms and Conditions (Part I), 3. provisions from the definitions of terms (Part II).

### §2 Offer and contract conclusion

- 2.1 The subject matter are the services agreed in these General Terms and Conditions as well as in the individual contract. Unless otherwise stated in writing on the offer, an individual contract is only concluded through the written confirmation of the order by AppNavi or with the execution of the order by AppNavi. Verbal agreements or promises must be confirmed in writing by AppNavi in order to be effective.
- 2.2 The details of the implementation services (e.g. exact task description, project management, performance time, technical framework conditions and contractual basis for the performance of services) as well as the remuneration to be paid for the implementation services are regulated in the individual contract.
- 2.3 If the implementation services are provided on a service contract basis, AppNavi does not assume any responsibility for a specific service result. This responsibility lies exclusively with the customer.
- 2.4 AppNavi reserves the right of ownership to the offer documents made available to the customer, such as offers and cost estimates.

### §3 Provision of services

- 3.1 AppNavi shall provide its implementation service on its own responsibility to the state of the art recognized at the time of the provision of the service by sufficiently qualified personnel. Unless otherwise agreed, communication with the customer shall be in German or English, as available.
- 3.2 The parties agree that AppNavi's employees shall not be integrated into the customer's work organization but shall work independently under the sole supervision of AppNavi. This shall also apply if a joint team with the customer's employees has to be formed due to the particularities of the implementation services. All communication between the customer and AppNavi employees must take place via the central contact person of AppNavi named in the individual contract. Only the latter has the right to issue instructions to AppNavi employees (in particular with regard to the location, time and content of the contractual services or disciplinary measures). This shall also apply if the services are provided on the customer's premises.
- 3.3 Each party is entitled to exchange its central contact person at any time by written notification to the other party (e-mail sufficient).

AppNavi reserves the right to replace employees named in the offer or contract documents who are used for the provision of services, if any, after notification of the customer by employees with comparable qualifications and experience.

- 3.4 AppNavi may use subcontractors for the provision of services.

### §4 Change Request

- 4.1 Either party may at any time propose a change to the content and scope of the agreed Implementation Services (hereinafter referred to as "Change Request"). Change Requests must be submitted in writing to the central contact person of the other party.
- 4.2 The proposal must contain at least the following information: (i) objective specification of the change request; (ii) justification in functional and technical respects; (iii) expected effects on the time and schedule (and on any agreed milestone plan) and (iv) effort estimate including the effort incurred and still to be incurred for the review of the change request and the implementation of the change request procedure.
- 4.3 AppNavi will not refuse to execute a change request without good reason. Substantial reasons are, for example, if AppNavi is of the opinion that (i) the success of the implementation services would be jeopardized as a result of the execution; (ii) the change request is either not technically feasible or involves unreasonable effort or (iii) the resources required to carry out the change request are not freely available for AppNavi.
- 4.4 The customer can reject change requests of AppNavi without giving reasons. If he rejects change requests against the recommendation AppNavi, he assumes responsibility for the consequences resulting from the rejection. This does not affect the contractually agreed performance obligations of AppNavi.
- 4.5 Change Requests only become effective upon signing a written agreement which contains the changes associated with the execution of the Change Request (in particular with regard to the content and scope of the service, the schedule and schedule (and any agreed milestones) as well as the remuneration). AppNavi will continue the work on the basis of the existing individual contract until the changes have been agreed in writing.

### §5 Customer obligations

- 5.1 The customer shall ensure that he fulfils all cooperation obligations necessary for the implementation services on time and free of charge.
- 5.2 The customer shall designate a central contact person for AppNavi who can make binding declarations and decisions for the customer in relation to AppNavi. In addition, the customer's central contact person is responsible for establishing contacts to the specialist functions and other persons involved in the implementation project.
- 5.3 The customer shall provide AppNavi with the necessary information and documents from his sphere in good time and, if necessary, specify them in concrete terms.
- 5.4 The customer shall provide AppNavi with the access to systems, equipment, computer programs and IT systems required for the proper provision of services as well as with the necessary work rooms and equipment. The same applies to test plans and data as well as any necessary test environment.
- 5.5 If on-site services have been agreed, the customer shall grant AppNavi employees access to its premises and the information technology infrastructure available there in good time, insofar as this is necessary for providing the implementation services and the legal and agreed personal requirements (e.g. security checks in accordance with the Security Inspection Act - SÜG) have been fulfilled.
- 5.6 It is the customer's responsibility to regularly back up his data with the care of a prudent businessman. In particular, he shall carry out a complete data backup of all system and application data



immediately before each installation and/or other intervention by AppNavi or by third parties commissioned by AppNavi. The data backups must be stored in such a way that it is possible to restore the backed up data at any time.

Obligations to cooperate are essential duties of the customer. If the customer does not meet his obligations to cooperate or does not do so on time and/or sufficiently, the dates affected by the delay (including milestones) shall be postponed by the time of the delay and a reasonable resumption period. Any additional expenditure caused thereby shall be reimbursed by the Customer in addition to the agreed remuneration on the basis of the agreed daily rates (or, if not agreed in the individual contract, the average daily rate for the project). AppNavi can submit an offer to the customer to perform these services himself instead of the customer. Other claims of the parties remain unaffected.

## §6 Acceptance

- 6.1 Completed work must be accepted if the work has been produced essentially in accordance with the contract. Services, in particular consulting and support services within the framework of implementation, are not accessible as services for acceptance, unless the need for acceptance of the service is expressly determined. In the individual contract partial results can be defined, which are accepted separately. Accepted partial results serve as a basis for the continuation of the work and are not covered by any right to withdraw from the contract.
- 6.2 AppNavi shall make the work performance available to the customer for acceptance after completion. Unless otherwise agreed, the customer shall accept services provided for acceptance without delay, but at the latest within five (5) working days, if the services provided have no defects that prevent acceptance.
- 6.3 For the implementation services to be provided on the basis of a contract for work and services, the parties shall agree on the course and scope of the acceptance test in the individual contract. For the performance of the acceptance test, the customer shall provide test data in good time before the provision of the service in the formats specified by AppNavi. AppNavi is entitled to participate in the acceptance test and to inspect the actual results.
- 6.4 Defects preventing acceptance are only malfunctions preventing and obstructing operation (i.e. if the use of the contractual software is impossible or severely or considerably restricted. Slight disruptions (i.e. if the use of the contractual software is possible without or with insignificant restrictions) shall not prevent the acceptability of the service, but shall be remedied within the scope of the defect claims. They shall be recorded as defects in the written acceptance declaration.
- 6.5 The parties shall assign the deviations found during the acceptance test to the fault classes by mutual agreement. The customer shall document the result of the acceptance test, including any defects that may have occurred and their classification, in a final acceptance report within the acceptance period. If the customer has rightly refused acceptance, AppNavi will remedy the documented defects that prevent acceptance. The necessary parts of the acceptance test shall then be repeated.
- 6.6 Services shall be deemed to have been accepted if the customer begins with their productive use of the software or has not handed over a list of defects within the agreed period and a grace period of one (1) week set by AppNavi in which at least one defect preventing acceptance is specified.
- 6.7 If acceptance is excluded due to the nature of the service, acceptance shall be replaced by performance of the service.

## §7 Rights of use

- 7.1 AppNavi grants the customer rights of use to the copyrighted works which AppNavi has created specifically for the customer

within the framework of the implementation services and which are required for the contractual use of the contractual software, in the same manner and to the same extent as they exist for the contractual software supplied (cf. AppNavi's standard EULA for the contractual software).

- 7.2 The rights to existing materials or solutions, including changes and additions made to them (hereinafter referred to as "AppNavi Implementation Tools") shall remain with AppNavi. Insofar as AppNavi implementation tools are incorporated into work results, the rights of use granted to the customer only include the usage actions required for contractual use. An isolated use of the AppNavi implementation tools is excluded.
- 7.3 AppNavi is entitled, while maintaining its confidentiality obligations, to use without restriction the work results created within the framework of the implementation services, including the know-how acquired during the implementation of the project, in particular the concepts, procedures, methods and interim results on which the work results are based.
- 7.4 Insofar as results arise within the framework of AppNavi's implementation services which are patentable or otherwise patentable, AppNavi reserves the right to file a corresponding patent application in its own name and for its own account. In this case AppNavi will grant the customer the rights necessary for the contractual use of the contractual software. This industrial property right license is settled with the contractually agreed remuneration.

## §8 Remuneration, Prices, Terms of Payment and Refunds

- 8.1 The customer shall pay the implementation fee agreed in the individual contract. Unless otherwise agreed in the individual contract, the remuneration for implementation services shall be calculated on a time and material basis and shall be payable monthly in arrears for the services rendered in the respective month. AppNavi may refuse the performance of the contractual services and retain services if and as long as the customer is in default with the payment of the implementation services.
- 8.2 Services outside the agreed scope of services or subject matter of the contract shall be remunerated separately by the customer. The applicable daily rates of AppNavi shall apply. The foregoing shall also apply to services rendered due to incorrect or incomplete data of the customer, not verifiable notices of defects, improper system use or breach of duty of the customer.
- 8.3 Unless otherwise stipulated in the individual contract, travel times, travel expenses and incidental costs shall be paid separately according to expenditure. Waiting times of AppNavi for which the customer is responsible shall be remunerated in the same way as working times. However, AppNavi must be credited for what it saves by not providing its services or acquires or maliciously refrains from acquiring through other use of its services. The payment of a remuneration according to expenditure presupposes proof signed by AppNavi of the services and the further asserted costs.
- 8.4 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.
- 8.5 If the contract ends prematurely, AppNavi is entitled to the remuneration corresponding to the services rendered up to the end of the contract. If the customer cancels a contract for work and services properly, § 16.3 of these General Terms and Conditions shall apply.
- 8.6 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



- AppNavi. Costs for dispatch and packaging shall be charged separately.
- 8.7 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.
- §9 Delivery Time, Force Majeure and Partial Deliveries**
- 9.1 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 AppNavi 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.
- 9.2 If AppNavi is prevented from providing services in cases of events beyond the sphere of influence of AppNavi or for which AppNavi 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, AppNavi is released from the delivery and service obligation for the duration of the disruption and a reasonable resumption period. AppNavi 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.
- 9.3 Reasonable partial deliveries are also permissible without separate agreement. Each partial delivery shall be deemed an independent transaction.
- §10 Place of fulfilment**
- 10.1 For all obligations arising from the contractual relationship, the place of fulfilment shall be AppNavi's registered office in Munich, unless otherwise specified.
- §11 Defect rights**
- 11.1 The customer shall notify defects in writing immediately after discovery and describe them in concrete terms. For defects in title of the implementation services, § 12 of these General Terms and Conditions shall apply.
- 11.2 Warranty claims due to defects in the implementation services expire after one (1) year, unless AppNavi fraudulently concealed the defect. In the case of services rendered on the basis of a contract for work and services, the statute of limitations shall commence upon acceptance. In the case of partial performance, the limitation period shall commence upon acceptance of the partial performance concerned. In the case of services rendered on a service contract basis, the limitation period shall commence at the point in time at which AppNavi has fulfilled its respective service obligations in full. Any commercial obligations of the customer to give notice of defects shall remain unaffected. The shortening of the limitation period shall not apply in the cases specified in § 13.1 of these General Terms and Conditions.
- 11.3 If AppNavi renders services during the troubleshooting or correction of defects without being obliged to do so, AppNavi is entitled to demand remuneration in accordance with the current hourly rates. The additional expenditure which AppNavi incurs due to the fact that the customer does not properly fulfil his obligations to cooperate shall also be reimbursed.
- 11.4 Substitute performance by Customer is excluded.
- 11.5 It is the responsibility of the Customer to provide reasonable support AppNavi in remedying defects, in particular to provide information required free of charge and to cooperate without delay.
- 11.6 The liability provision according to § 13 of these General Terms and Conditions shall apply to claims for damages or claims for reimbursement of expenses by the customer.
- 11.7 If implementation services are provided on the basis of a contract for work and services, the following additionally applies:
- 11.8 In the case of defects in the implementation services which cancel or reduce the suitability of these for the usual or contractually agreed purpose, AppNavi shall, at its discretion, first be obliged to remedy the defect within a reasonable period of time by remedying the defect. At AppNavi's discretion, the rectification may also be affected by delivering a bypass solution equivalent to its functionalities or a program serving to remedy the defect (e.g. Fix or Service Pack). AppNavi may also offer a new software version (e.g. Product Release or Product Version), provided that the defect in the implementation service 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 is essentially retained and the assumption is reasonable for the customer. AppNavi, at least two attempts at rectification shall be permitted in each case. In the event that the rectification fails, the customer may, at his discretion, reduce the implementation fee or withdraw from the contract. Withdrawal due to an insignificant defect is, however, excluded.
- 11.9 The customer is also entitled to these rights if AppNavi seriously refuses to remedy the defect or if the customer cannot reasonably be expected to remedy the defect.
- 11.10 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 defects arising from external or contractually not presupposed and other influences not controllable by AppNavi, e.g. use of the contractual software in an unrecommended system environment or on an unrecommended platform in accordance with product documentation or changes made by the customer (unless the customer proves that the defect is not attributable to the change).
- §12 Defects of title and third party property rights**
- 12.1 AppNavi shall only be liable for the infringement of third party rights by the services rendered if the 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.
- 12.2 If the customer makes AppNavi software available or if AppNavi has to install the software on the hardware on behalf of the customer, the customer guarantees to be the owner of the licenses and rights required hereunder. The customer exempts AppNavi from all claims of third parties which are asserted in connection with this service or use.
- 12.3 Should third parties assert claims against the customer in connection with the use of the services provided (e.g. due to copyright infringement, infringement of industrial property rights or claims under competition law), the customer shall inform AppNavi immediately thereof.
- 12.4 The customer shall not acknowledge the alleged infringements of industrial property rights and shall either assign AppNavi or conduct any dispute, including any out-of-court settlements, only in agreement with AppNavi, at AppNavi's discretion.
- 12.5 If the services provided by AppNavi violate the rights of third parties, AppNavi shall, at its discretion and expense,  
a) grant the customer the right to use the services or





- b) modify the 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) reimburse the remuneration paid by the customer for the services (less a reasonable compensation for use), if AppNavi cannot achieve any other remedy with reasonable effort.
- The interests of the customer are taken into account appropriately.
- 12.6 Insofar as the customer himself is responsible for the infringement of property rights, claims against AppNavi are excluded.
- 12.7 § 13 of these General Terms and Conditions shall apply mutatis mutandis to claims for damages and reimbursement of expenses.

## §13 Liability

- 13.1 AppNavi shall be liable to the customer in accordance with the statutory provisions:
- a) for intentional or grossly negligent damages caused by AppNavi ;
  - b) for damages resulting from injury to life, body or health, for which AppNavi, 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.
- 13.2 AppNavi shall not be liable for damages caused by slight negligence on the part of AppNavi 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.
- 13.3 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.
- 13.4 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 § 13.1.
- 13.5 For claims for reimbursement of expenses and other liability claims of the customer against AppNavi, the above liability provisions shall apply accordingly.
- 13.6 The above provisions shall also apply in favor of the institutions (organs), legal representatives, employees and other vicarious agents of AppNavi.

## §14 Confidentiality, data protection and order data processing

- 14.1 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.
- 14.2 "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.
- 14.3 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.

- 14.4 If AppNavi collects, processes or uses personal data on behalf of the customer, 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).
- 14.5 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.

## §15 Set-off and rights of retention

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

## §16 Term and Termination

- 16.1 If the Implementation Services are performed on a service contract basis, either party may terminate the Service Contract for the Implementation Services at any time by giving two (2) weeks written notice (i) at the end of the month or - if individual payment milestones have been agreed - (ii) at the next payment milestone, unless otherwise agreed.
- 16.2 If the Implementation Services are performed on a contract for work and services basis, either party may terminate the contract for work and services relating to the Implementation Services at any time by giving four (4) weeks' written notice to the end of the month or periodically, unless otherwise agreed.
- 16.3 If the customer properly terminates a contract for work and services, AppNavi shall be entitled, in place of the remuneration in accordance with the rules of § 648 S. 2 BGB, that the customer (i) remunerates all work performed up to the premature termination of the contract on the basis of the agreed daily rates (or, if these were not agreed in the individual contract, the average daily rate under the contract for work and services) even if a fixed price or an upper price limit has been agreed and (ii) additionally pays a flat rate of 40 % of the part of the total remuneration for the implementation services originally agreed or expected at the time of the conclusion of the contract that is attributable to the services no longer to be performed due to the termination. The customer shall be entitled to prove higher saved expenses, the agreed flat rate shall be reduced accordingly.
- 16.4 The right of both parties to extraordinary termination for good cause remains unaffected. AppNavi is entitled, in particular, to terminate for good cause if the customer (i) does not meet his payment obligations even after a reasonable period or (ii) violates license terms.

## §17 Final Provisions

- 17.1 AppNavi 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. AppNavi is also entitled to report on key data of the conclusion of the contract within the framework of the prescribed mandatory publications.



- 17.2 AppNavi 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.
- 17.3 An assignment or transfer of rights and/or obligations from this contract by the customer requires the prior written consent of AppNavi.
- 17.4 The place of jurisdiction for all disputes in connection with these General Terms and Conditions and the individual contracts concluded under them is Munich (Munich Regional Court I). AppNavi, however, remains entitled to claim against the customer before another legally competent court.
- 17.5 German law applies. The application of the UN Convention on Contracts for the International Sale of Goods is excluded.
- 17.6 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.
- 17.7 Should any provision of these General Terms and Conditions 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 General Terms and Conditions in trustful discussions.



## Part II: Definitions of terms

### Ancillary costs

Expenses of AppNavi 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 AppNavi and the customer for licenses, support or services.

### Open source software

Open source software within the meaning of these General Terms and Conditions 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 general terms and conditions, 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 AppNavi 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 AppNavi 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, 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 AppNavi.

## **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 AppNavi 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 AppNavi 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 as the responsible party (hereinafter referred to as "Data Controller") commissions the licensor (hereinafter referred to as the "Data Processor") 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 the AppNavi EULA Part I (General Part) and in addition - depending on the commissioned service - in Part II (Particular Part - License conditions for temporary transfer of SW (incl. SaaS) and/or Part III (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 the Data 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 for safeguarding the data subject's rights.
- 1.2. The Data Processor provides IT services to the Data Controller by using Sub-Processors. 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 controlled 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.com](mailto:datenschutz@appnavi.com) as communication channel.

### §2 Obligations of Data Processor

- 2.1 The Data 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. The Data 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 is subject. In such a case, the Data 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, the Data Processor is not entitled to create copies of Personal Data without the prior written approval of the Data Controller. 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 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 has 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. The Data 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, the Data Processor shall label such Personal 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 Data 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. The Data 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. The Data 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. The Data 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 into account the nature of processing and the information available to it. The Data 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. The Data 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. The Data Processor shall provide information to third parties and supervisory authorities only upon prior consultation with the Data Controller.
- 4.4. The Data Processor shall notify the Data Controller without undue delay if they believe that an instruction violates any applicable provisions of data protection law. The Data Processor is not obliged to follow the relevant instruction until it has been confirmed or changed by the Data Controller.
- 4.5. The Data 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 details 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. The Data Processor shall assist the Data Processor 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. The Data Processor is 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 privacy

- 5.1. The Data Processor confirms that it is well acquainted with the relevant provisions under data 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. The Data Processor warrants that the persons authorized to process Personal Data have committed themselves to data privacy and confidentiality or are subject to an appropriate statutory obligation of data privacy 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, the Data Processor and 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. These TOMs ensure a level of protection appropriate to the risk, including, among other things, where necessary:
  - the pseudonymization 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. The Data 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 the Data 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), the Data Processor shall ensure the lawfulness of the use of such data by the Data Controller.

## §7 Handling Requests of Data Subjects

- 7.1. The Data 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 the Data Processor with respect to exercising his/her rights under the GDPR, the Data 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. The Data 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. The Data 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 performed in compliance with the requirements of the applicable data protection law and that the protection of the data subjects' 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 the Data 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 the Data 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 the Data 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 annually 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. The Data 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. The Data 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, the Data 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 and the respective Sub-Processor have entered into an agreement in accordance with Section 9.3; and
  - if the Data 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 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 data controller in accordance with Section 9.1 of the DPA upon conclusion of the DPU:

Overview of Sub-Processors: <https://appnavi.com/en/sub-processors>.

9.3. The Data 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 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 is entitled to execute such rights directly towards their respective Sub-Processors on behalf of the Data Controller.

9.4. Data 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 party measures at the level of the Data Processor, the Data Processor or the Sub-Processor shall inform the Data Controller without undue delay. The Data 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 – the Data 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 Data Processor beyond the termination or completion of the DPA in line with the applicable retention periods.

## §12 Indemnification

12.1. The Data Processor undertakes 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. The Data Processor and 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, it shall be assumed, that Data Processor is in breach of its duties.

12.2. The Data Processor further undertakes 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 is concerned.

12.3. The Data 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 the Data Processing Agreement, the provisions of the EULA (in Particular Part I (General Part) shall apply accordingly.