**License Agreement**

Contract Reference: SW2024/123

Between

**XY AG**

t.b.d.

Germany

(hereinafter referred to as ‘XY’ and/or ‘Licensor’)

and

**YZ GmbH**

t.b.d.

Austria

(hereinafter referred to as ‘YZ’ and/or ‘Licensee’)

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**PREAMBLE**

**Whereas**

(A) Licensor is a leading organization in the business of ….; and

(B) Licensee is an affiliated company of … with its registered offices in … and pursuing business in the field of ….; and

(C) Licensor has developed and brought to market a software-based internet platform under the trademark … which ….; and

(D) Since software development and … are not the core business of Licensor, Licensor intends to provide Licensee with an exclusive license for …; and

(E) Licensor remains interested in using the Licensed Product as a service and is therefore committed to supporting …..

**Therefore, the Parties have agreed:**

# SECTION I: GENERAL

1. DEFINITIONS AND ABBREVIATIONS

In this Agreement, the following definitions shall apply:

|  |  |
| --- | --- |
| Affiliate | Legal entity owned by one of the Parties, directly or indirectly controlled, for which purpose control means either ownership of more than fifty percent (50%) of the voting rights and/or share capital |
|  |  |
| Agreement | This License Agreement, including any side letters, attachments, exhibits, and annexes hereto, including all amendments and supplements to this Agreement as agreed in writing between the Parties |
|  |  |
| Calendar Day | Calendar Day is a subset of Day, relating to any Day of the week, month or year |
|  |  |
| Calendar Year | One year period beginning on January 1st and ending on December 31st of any year |
| DataDay | All information collected by Licensed Product and stored in related databasesCalendar Day |
|  |  |
| Know-howLicensed Product | Information in relation to Licensed Product, including, but not limited to any business, technical, and strategic data Object Code, Source Code, Data, Know-how, trademark, and the documentation of the software-based internet platform as described in Attachment 1 (‘Licensed Product’) |
| Object Code | A version of software that a computer can read, sometimes also called ‘machine-readable code’. Object Code is contrasted with Source Code |
|  |  |
| Party / Parties  | Licensee (YZ) or Licensor (XY) / Licensee (YZ) and Licensor (XY) collectively |
|  |  |
| Source Code  | The version of software that a human programmer can read, including but not limited to the database structure definition. The Source Code gets ‘compiled’ or translated into Object Code |
|  |  |

1. SCOPE OF THIS AGREEMENT

### Licensor has agreed with Licensee to grant Licensee a license to use and exploit the software-based internet platform set out in Attachment 1 (‘Licensed Product’) subject to the terms and conditions of this Agreement.

### The Licensed Product comprises of the Source Code, the Object Code, Data, Know-how, trademark and the related documentation in accordance with Attachment 1 (‘Licensed Product’).

1. GRANT OF RIGHTS

### Licensor hereby grants to Licensee the perpetual, exclusive, non-transferable, revocable, non-assignable, non-sublicensable right to use, to copy, to adapt and transform, and to decompile the Licensed Product without limitation in time, manner or place subject to the terms of this Agreement.

### The right to use and exploitation is limited to the purposes described in Attachment 2 (‘Purpose of Use’).

### The right to copy the Licensed Product granted to Licensee herein is limited to the installation of the Licensed Product on a computer system, in particular a data center on a dedicated server or in a cloud infrastructure, which is in Licensee’s immediate possession or via a recognized and quality certified IT services provider, in order to fulfill the Purpose of Use as well as to the right for an authorized person to make a copy for security backup purposes, as stated in sec. 69d para. (2) UrhG (German Copyright Act). Licensee is entitled to make the software publicly available for use by its potential customers as described in Attachment 2 (‘Purpose of Use’).

### The right to decompile the Licensed Product granted to Licensee herein is only granted under the terms of sec. 69e para. (1) nos. 1 to 3 UrhG and within the limits of sec. 69e para. (2) nos. 1 to 3 UrhG.

### No more extensive rights to use and exploit the Licensed Product are granted to Licensee.

1. DELIVERY AND INSTALLATION OF THE LICENSED PRODUCT

### Licensor shall deliver the Licensed Product for the exercise of the rights to use and exploit granted to Licensee herein in machine readable form at its option either stored on a type of data storage media in common use at the time or transferred by remote data transfer. The Parties agree Licensor’s registered office as the place of performance for the delivery of the Licensed Product. Licensee shall bear all costs and risks related to such delivery. Upon transfer of the Licensed Product, the risk of transportation (particularly the risk of accidental loss or destruction) of the Licensed Product passes to Licensee.

### Licensee is responsible for providing the system environment in accordance with the system requirements set forth in Attachment 3 (‘System Requirements’).

### The Licensed Product shall be installed by Licensee. Licensee must notify Licensor in writing of the respective installation locations of the copies of the Licensed Product. This shall also apply to any later change of installation locations.

### Upon breach of contract by Licensee, in particular on default of payment, Licensor shall be entitled to require at Licensee’s expense the return of the Licensed Product in which Licensor has retained ownership, or if applicable, to demand the assignment of Licensee’s right of return against third parties. In such case upon Licensor’s request Licensee shall confirm in writing that no copies of the Licensed Product thereof were retained and that all installations of the Licensed Product have been irrevocably deleted from Licensee’s or third party’s systems. Before the unconditional transfer of ownership, Licensee shall only dispose of rights in the Licensed Product with the written consent of Licensor.

1. SUPPORT TO LICENSEE

### Training

Upon Licensee’s request Licensor shall provide Licensee with training (2 Days) on the Licensed Product. This training shall be executed within 180 Days from the Effective Date and shall take place at Licensor`s facilities or such other location as may be mutually agreed upon. The training shall be held in English.

### Technical Documentation

### Licensor shall supply Licensee at no additional cost with the software documentation and user manual of the Licensed Product in English as electronic document within 30 Days after signature of this Agreement. Providing a manual constitutes one of the key obligations of licensor.[[1]](#footnote-1)

### Transfer of Users

#### Data of users, which are registered in the Licensed Product in the moment of delivery shall be transferred into Licensee’s control in accordance with the applicable data protection laws, in particular the European General Data Protection Regulation and the German Data Protection Act. Therefore, Licensee and Licensor shall comply with Attachment 4 (‘Controller-to-Controller Transfer of Personal Data’) and Licensor will inform the users about the transfer of the ownership of the Licensed Product and allow for users wishing to terminate their accounts to do so in accordance with the Terms and Conditions of the Licensed Product. Licensee is obliged to process personal data strictly in accordance with the data processing notice and the applicable data protection law. After the transfer and the written affirmation of Licensee that the transfer was successful, Licensor is obliged to delete the user data, unless binding legal retention periods or limitation periods agreed in the relevant contract with the user or applicable from binding law require or entitle Licensor to retain such data. If so, then Licensor shall block the data against any further use and delete such data upon expiry of the retention and limitation periods.

### Other Areas of Support

Licensor shall support Licensee **with the testing of newly introduced features** to the Licensed Product by Licensee **for a time period of five Calendar Years**. In the event neither Party terminates the support services with three months written notice towards the end of **the fifth** Calendar Year, the support services shall continue for an indefinite term. Both Parties are entitled to terminate the support services during the indefinite term with three months written notice towards the end of a Calendar Year.

1. INTENDED USE OF LICENSED PRODUCT

#### As Licensed Product is currently only available in Europe, Licensee intends to roll out Licensed Product respectively the Licensed Product to other regions beyond Europe whereby in particular North America and Asia shall be targeted. In this regard and as it is in the interest of Licensee, Licensee will apply reasonable efforts as Licensee shall not have the obligation to extend the reach of Licensed Product.

#### In order to support, operate and enhance the Licensed Product as described in Attachment 2 (“Purpose of Use”) Licensee will dedicate to the Licensed Product the necessary and reasonable expenses and staff to properly operate the Licensed Product. Furthermore, Licensee will execute reasonable sales and marketing activities for the Licensed Product.

#### New features described within Attachment 2 (“Purpose of Use”) will be evaluated, adopted, refined, upgraded and developed further or from beginning as listed depending on market expectations and customer feedback. Necessary and reasonable expenses for such development plans will be assigned but may be prioritized and/or modified accordingly.

#### Licensee shall aim to continue operations of the platform under the name XYZ and target to secure it with a trademark and other appropriate intellectual property forms within the respective region of operations under his own name. In case this is not achievable, Licensee can change the name of the platform according to their preferences with such one, which allows for such intellectual property registration. The name change can be done also partially with respect to different regions of operations (USA, Asia, other markets). For the avoidance of doubt, it is licensee’s obligation to secure a domain name for the web accessibility of the platform.

# SECTION II: COMMERCIAL

1. LICENSE FEES

### The license fees owed by Licensee to Licensor for the grant of rights hereunder are as defined below. The license fees represents

###  a one-time license fee: five annual instalments totalling X€

### Y€ due with transfer of Licensed Product or at the latest 1.1.2024

### Y€ due 31.12.2024

### Y€ due 31.12.2025

### Y€ due 31.12.2026

### Y€ due 31.12.2027

### An ongoing fee as percentage of the annual turnover for the duration of Licensor’s support pursuant to Article 5.4

### Licensee shall grant a fee in proportion to the total turnover which Licensee achieves with Licensed Product in any Calendar Year, where such total annual turnover shall be determined based on the volume of all business of whatever nature which accrues from the use of Licensed Product by customers of Licensee. The calculation shall be made on the base of the following scheme:

### Y.Z (Y point Z) percent on the total annual turnover as described above.

### At the end of each Calendar Year, at the latest on January 31st of the following Calendar Year, Licensee shall submit to Licensor an overview of the annual turnover achieved through the Licensed Product and the applicable fee calculation.

### Licensee shall pay the relevant fee within thirty (30) Calendar Days of receipt of Licensor’s confirmation of the license fee calculation.

### Calculation example: Assuming licensee achieved in the Calendar Year 2025 a total turnover of 1,000,000 € with Licensed Product Assuming the calculation is based on an agreed factor of 1.5 percent of such turnover. Then Licensee owes Licensor 1,000,000 € x 1.5% = 15,000 €to be paid by January 31st, 2026

### A perpetual, non-transferable, non-exclusive, irrevocable, sublicensable to Affiliates, worldwide, unlimited, and free of charge user license for the Licensed Product shall be granted by Licensee to Licensor. The Licensor thereby shall be entitled to use the Licensed Product only in accordance with the terms and conditions of Licensed Product in its respective applicable version.

### If Licensee is in default of payment, the outstanding amount shall bear interest at the rate of X percent over the then current basic rate of interest. This shall not affect any further, more extensive rights.

### All amounts stated are excluding any applicable Value Added Tax, unless explicitly stated otherwise. The current rate of statutory Value Added Tax shall be invoiced and paid in addition to all fees. Licensor shall state the rate and amount of Value Added Tax separately on the invoice.

# SECTION III: LEGAL

1. TITLE

Title to the Licensed Product shall transfer upon payment in full of all license fees pursuant to Article 7.1.1. above. Until then, the Licensed Product shall remain in the sole ownership of Licensor.

1. RIGHTS IN CASE OF DEFECTS

### In the moment of delivery, the Licensed Product provided by Licensor shall be substantially in accordance with the product description in Attachment 1 (‘Licensed Product’). Rights in case of defects shall be excluded in the case of minor or immaterial deviations from the agreed or assumed characteristics as well as in the case of just slight impairment of use. The description of the Licensed Product shall not be deemed guaranteed unless separately agreed in writing. Licensor is not obliged to create and deliver any updates, upgrades or new versions.

### If Licensee demands replacement performance because of a defect, that is present in the moment of delivery, Licensor has the right to choose between the improvement or replacement. If the defect is not cured within at least two attempts, provided that each attempt occurred within a reasonable grace period agreed between the Parties, then Licensee may, subject to the statutory prerequisites, at its option withdraw from this Agreement or reduce the price and claim damages or reimbursement of costs. Licensor is entitled at its own discretion to correct the defect by way of delivery or installation of a new program version or an update, if any.

### Defects must be notified in writing with a comprehensible description of the error symptoms, as far as possible evidenced by written recordings, hard copies or other documents demonstrating the defects. The notification of the defect should enable the reproduction of the error.

### Licensee’s rights in case of defects are limited to twelve (12) months and to the originally submitted copy of the Licensed Product as delivered to the Licensee on the date of delivery. The period shall begin on the date of delivery of the first copy of the Licensed Product including user manuals.

### Licensee shall inspect the delivered Licensed Product without undue delay for any transport damage and other apparent defects and preserve the appropriate evidence.

### Any claims for damages are subject to the limitations set forth under Article 11 (‘Liability, Damages’).

### Amendments or additions to the Licensed Product delivered which Licensee carries out itself or through third parties, shall cause Licensee’s rights in case of defects to be cancelled, unless Licensee proves that the amendment or addition did not cause the defect. Licensor shall also not be responsible for defects, which are caused by improper use or improper operation or the use of unsuitable means of operation by Licensee.

### Licensor may refuse to remedy defects or deliver replacements, until Licensee has paid the agreed fees to Licensor in accordance with Article 7 above, less an amount which corresponds to the economic value of the defect.

1. RIGHTS IN CASE OF DEFECTS IN TITLE

### The Licensed Product delivered or provided by Licensor shall be free from third party rights, which prevent the use in accordance with the Agreement. Excepted from this are customary reservations of title.

### If third parties substantiate any rights in the Licensed Product, then Licensor shall apply reasonable efforts, in order to defend the rights licensed to Licensee at its own expense against the third-party rights. Licensee shall inform Licensor in writing without delay of the claims substantiated of such rights by third parties and shall give Licensor all powers of attorney and authorizations which are necessary in order to defend the software against the third-party rights claimed.

### If the third-party rights might be affected by the Licensed Software in its version as delivered by Licensor, then Licensee authorizes Licensor to take over the defense on Licensor’s costs. If the claim of third-party rights applies to a part of the software created or adapted by Licensee after delivery, then Licensee shall carry out the defense upon its own costs. To the extent it is unclear, which element of the software might cause the third-party right infringement, then the Parties shall cooperate in carrying out the defense against the claims and support each other adequately upon their own costs. The Parties will share all information available as to support the successful defense.

### If third party rights are actually infringed by Licensor, then the Parties shall at the their consent opt to either (i) subsequently acquire additional rights to the Licensed Product on Licensor’s cost , or (ii) change or replace the Licensed Product in such a manner, that it no longer infringes the rights of third parties, provided and to the extent that this does not substantially impair the warranted functionality of the software; any costs incurred shall be borne by the Licensor

### In all other respects Articles 9.4, 9.6 and 9.8 apply accordingly.

1. LIABILITY, DAMAGES

### Licensor shall be liable under the terms of this Agreement only in accordance with the provisions set out below:

## Licensor shall be liable for losses caused by intentional or gross negligent conduct by Licensor, its legal representatives or senior executives and for losses caused intentionally by other assistants in performance

* + 1. Licensor shall be liable in accordance with the German Product Liability Act in the event of product liability.

### Licensor shall only be liable for loss of data during data transfer and subject to Article 11.1 and only to the extent up to the total amount of typical recovery costs which would have arisen had proper and regular data backup measures been taken.

### Under no circumstances shall the liability under this Article 11 include any indirect, incidental or consequential damages such as, but not limited to, loss of profit, loss of revenue or loss of use except for the extent of willful misconduct.

### Any more extensive liability of Licensor is excluded.

1. INDEMNIFICATION

### Licensee shall indemnify and hold harmless Licensor, its directors, officers, employees, agents, and subcontractors from any claims of any third party arising out of or in connection with the Licensed Product, unless the damages, loss, or other injury of such third party was caused by a violation of its contractual obligations on the part of Licensor. The indemnification includes all necessary costs, expenses, and fees incident thereto.

1. FORCE MAJEURE

### Neither Party shall be under any obligation to perform this Agreement or be liable for any delay or any other breach if and to the extent that such delay or other breach is due to reasons beyond such Party’s reasonable control such as but not limited to: acts of God or the public enemy, terrorism, war, insurrections or riots, blockades, fires, floods, explosions, earthquakes, storms, serious accidents, infectious disease ,epidemics, pandemics, endemics or quarantine, any act or omission of government or governmental authority, strikes or labor troubles causing cessation, slowdown or interruption of work, general hinderance in transportation, general supply shortages and interruptions (‘Force Majeure’).

### In case of Force Majeure the Party affected by such Force Majeure shall immediately inform the other Party in writing about the commencement of such Force Majeure, and when such Force Majeure has ended the relevant Party shall give written notice to the other Party of its termination.

### If Licensee is unable to perform its obligations under this Agreement due to Force Majeure, Licensor may after a reasonable time has expired since the onset of Force Majeure, withdraw from this Agreement by giving written notice to Licensee.

1. CONFIDENTIALITY

### The Parties shall treat as strictly confidential for the term of this Agreement and thereafter, this Agreement, including the document itself as well as individual provisions contained herein. In particular each Party shall treat as strictly confidential the contents of the negotiations leading up to this Agreement. Neither Party shall disclose this Agreement or the contents of the negotiations leading up to this Agreement to any employee, third party or other person except where such disclosure is necessary in order to fulfill the obligations under this Agreement and except that Licensor as well as Licensee may disclose this Agreement and the contents of the negotiations leading up to this Agreement to an Affiliate or a subcontractor, bound by a confidentiality obligation towards Licensor respectively Licensee, providing data services.

### Licensee shall treat as strictly confidential for the term of this Agreement and thereafter any information received in connection with this Agreement, including, but not limited to any business, technical and strategic data disclosed by Licensor, its customers or subcontractors at any time for any reason – comprising any and all such information in oral or visual form - and shall use such information solely for the performance hereunder. Licensee’s obligations of confidentiality as stipulated for in this Article shall include all necessary measures of IT data protection.

### The confidentiality obligations above shall not apply to the extent that the Agreement or the relevant information provided hereunder was already known by the other Party or publicly known prior to its disclosure; or becomes publicly known after its disclosure without any infringement of the Agreement on the part of such Party, or must be disclosed by either Party towards third parties on the basis of statutory provisions or instructions given by public authorities

### The disclosure of any documents, data, and other information to Licensee in connection with this Agreement shall not be construed as a grant or transfer of any rights, in particular but not limited to intellectual and industrial property rights such as patents or copyrights nor a permission to use such documentation, data or other information except for the purposes required by this Agreement.

* 1. None of the Parties will use the other Party's name or the other Party’s logo in any press release or product advertising, or for any other promotional purpose, without first obtaining that other Party's written consent.
1. NOTICES AND COMMUNICATION

### Unless otherwise stipulated in Article 15 below or elsewhere in this Agreement, all communication required under this Agreement shall be addressed to Licensor as follows:

**XY AG**

t.b.d.

Germany

to Licensee as follows:

**YZ GmbH**

t.b.d.

Austria

### Neither Party may claim that the other Party has received any message or correspondence if addresses other than those specified in accordance with this Article 15 (‘Notices and Communications’) or as otherwise stipulated in writing by the respective Party have been used unless it had been actually received by the right person.

1. EFFECTIVE DATE AND TERMINATION

### This Agreement becomes effective on … (‘Effective Date’). The Attachments to this Agreement shall become effective from the same date or the date expressly specified therein.

### Unless explicitly specified otherwise in this Agreement, this Agreement may only be terminated by any Party for substantial reasons. In case the breach can be cured, and it is reasonable to expect the Party, which is not in breach to grant the Party in breach a remedy period, the Party in breach shall be entitled to cure such Breach within a reasonable time.

### Licensor shall – under application of Article 16.2 sentence 2 - in particular be entitled to such termination for substantial reason, such as but not limited to:

* if Licensee is in breach of obligations under Article 17 (‘Corporate Social Responsibility’),
* if Licensor gains knowledge that Licensee is not compliant with competition regulations and/or is in breach of his obligations according to Article 18 (‘Compliance Regulation’).
* If Licensee is in breach of obligations according to Article 19 (‘Trade Control and Export/Import Compliance’)
* If Licensee becomes bankrupt and payment of fees under Article 7 (‘License Fees’) are still due.
1. Corporate Social Responsibility

In terms of a major contractual obligation Licensee undertakes to comply with the ten principles of UN Global Compact and four fundamental principles of International Labour Organisation (ILO) and the following precepts and prohibitions:

prohibition of child labor; prohibition of forced labor and all forms of slavery, exploitation, humiliation and abuse; prohibition of disregard for occupational safety and health and protection from work-related health hazards; disregard for freedom of association and the right to collective bargaining; prohibition of unequal treatment in employment; prohibition of the withholding of an adequate living wage; prohibition of the destruction of natural resources through environmental pollution; prohibition of unlawful infringement of land rights; prohibition of the commission or use of private or public security forces which, due to a lack of instruction or control, may lead to harm to life and limb; prohibition of any act or omission in breach of duty to act that goes beyond the foregoing and which is directly likely to impair, in a particularly serious manner, a protected legal position within the meaning of section 2 paragraph 2 of the Supply Chain Act and the unlawfulness of which is obvious upon reasonable assessment of all the circumstances in question; prohibition of the production, use and/or disposal of mercury pursuant to the Minamata Convention; prohibition of the production and/or use of substances within the scope of the Stockholm Convention (persistent organic pollutants - POPs) as well as the non-environmentally sound handling of wastes containing POPs; prohibition of the import or export of hazardous wastes within the meaning of the Basel Convention.

If Licensor requests information from Licensee in context of its risk analysis to be carried out under the Supply Chain Act to identify or assess human rights or environment-related risks, Licensee shall provide Licensor adequately with the required information to the extent permitted by applicable law or contractual obligations. Licensee agrees that for the purposes of its risk analysis, Licensor transfers relevant information on the contractual relationship with Licensee to a third party specialized on risk analysis that processes the information on behalf of Licensor.

If Licensee discovers or otherwise becomes aware of a potential violation of human rights or environment related obligations in its own business operations in relation to the provision of services to Licensor, it shall be obliged to inform Licensor thereof and the measures it has taken consequently.

Licensee shall cooperate with Licensor and support Licensor with best efforts to implement the measures required by the Supply Chain Act with a view to terminating, preventing, and minimizing human rights and environment-related risks and violations, particularly the implementation of required preventive and remedial measures.

Licensor expects Licensee to demand such compliance also from Licensee’s Subcontractors.

1. Compliance Regulation

Licensee represents, warrants and undertakes, as appropriate, that:

1. this Agreement and the relationship created hereby as well as Licensee’s activities hereunder do not and will not infringe any statutory regulations concerning bribery and/or corruption, including but not limited to the OECD (Organization for Economic Co-operation and Development) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the related implementing legislation and do not result in an infringement of such regulations on the part of Licensor and further warrants that, in connection with the provision of the services or any of them, Licensee will duly observe at all times throughout the period of this Agreement all applicable laws and the terms of this Agreement,
2. neither Licensee nor, to Licensee’s knowledge, any other person, including but not limited to employees or agents of Licensee has, either directly or indirectly, offered or will offer a monetary payment or benefit in kind, a loan, gift, donation or any other asset of value in favor of a person in charge or an employee of a government body, state authority or state agency, state- owned enterprise, international government organization, political candidate or political party or official of such party or a person acting in an official capacity for the above named persons or another person with the intention to obtain an unlawful advantage.
3. Trade Control and Export/Import Compliance

### Licensee (The Parties) herby acknowledge(s) that the export, re-export, import, shipment, purchase, sale, transfer or delivery of any item, software and/or technical documentation under this Agreement may be subject to applicable export, import and sanction laws and regulations (in their most current version), including but not limited to Germany, the European Union, the United States (as stipulated in the U.S. Export Administration Regulations (EAR), 15 CFR Parts 730-774, or in the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120-130), the United Nations (as stipulated the United Nations Security Council Consolidated List), and those of other relevant foreign jurisdictions (collectively hereinafter referred to as “Trade Control Laws”). Licensee warrants that neither itself nor any of its Subsidiaries are listed on any applicable sanctioned party list or controlled by a sanctioned person. If at any time following the entry into force of this Agreement Licensee or any of its Subsidiaries becomes a sanctioned person Licensee shall promptly notify Licensor. Licensee further acknowledges its respective obligation to comply fully with applicable Trade Control Laws in connection with the performance of this Agreement. The Parties agree to support each other in ensuring compliance with applicable Trade Control Laws by providing information, documents or certificates required by the other Party or relevant authority at no additional cost.

1. No Agency

## Nothing in this Agreement creates, implies, or evidences any partnership or joint venture between the Parties, or the relationship between them of principal and agent. None of the Parties has any authority to make any representation or commitment, or incur any liability, on behalf of any other.

1. Audits

### In the event that Licensor has reasonable suspicion that Licensee (including its subcontractors) is in breach of its obligations according to this Agreement such as but not limited to compliance in Articles 3 (‘Grant of Rights’), 17 (‘Corporate Social Responsibility’), 18 (‘Compliance Regulation’) or 19 (‘Trade Controls and Export/Import Compliance’), Licensor shall have the right, in accordance with the following provisions, to conduct an audit within Licensee’s organization to the extent necessary to determine whether a breach exists. Licensee shall also allow Licensor or an agent of Licensor to audit whether Licensee’s use of the Licensed Product is consistent with the rights granted to Licensee herein upon request by Licensor and provided there is a legitimate interest therein and to give full co-operation to Licensor or its agent carrying out such audit. Each Party shall bear its own costs for the audits unless culpable breaches of Licensee's contractual obligations are identified in the course of the audit. In this case, Licensee shall reimburse Licensor for all audit costs incurred and other related expenses. Except for cases of justified urgency, Licensor shall announce to Licensee such audit with a fourteen (14) Days prior written notice. Licensor, or a third party engaged by Licensor which is bound to confidentiality, may conduct the audit at Licensee’s premises during Licensee’s ordinary business hours.

1. MISCELLANEOUS

### Law

This Agreement and any legal matters that may arise out of or in connection with this Agreement shall be subject to and construed exclusively in accordance with the laws of the Federal Republic of Germany excluding German law’s conflict of law rules and excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

In the event of any conflict of the English legal meaning and the German legal meaning of this Agreement or any part thereof the German legal meaning shall prevail.

Mediation

(1) The Parties agree to enter into a mediation in case of dispute in relation to the Agreement prior to going to court. The mediation shall follow the following rules … (e.g. as laid out by Europ. Berufsverband Mediation)

(2) The mediation shall be confidential

(3) The mediation starts with one Party asking the other Party in writing to specify the subject of dispute

(4) If the Parties cannot agree mutually on a mediator, then a mediator will be ap-pointed by … (e.g. Europ. Berufsverband Mediation) 14 Days after the request.

(5) The legal recourse is not allowed for the period of the mediation and until a formal declaration of the mediator about the failure of the mediation has been issued. Statutory limitation remains inhibited until then. Urging preliminary ruling procedures remain unaffected.

### Jurisdiction

#### The courts of Frankfurt, Germany shall have jurisdiction. In case of any claims against Licensor, this jurisdiction shall be exclusive.

#### Nothing in this Article 22.2 (‘Jurisdiction’) shall limit the right of Licensor to bring proceedings against Licensee in connection with this Agreement in any other court of competent jurisdiction or concurrently in more than one jurisdiction.

#### Licensee has named the following person as its authorized representative to accept service of judicial documents and shall notify Licensor in writing of any changes and shall appoint another representative if necessary:

Name, Surname:

Street:

City:

Germany

Phone-No:

Fax-No:

### Waiver and Severability

Failure by either Party to enforce any of the provisions of this Agreement shall not be construed as a waiver of such provisions.

If any of the provisions of this Agreement are held unlawful or otherwise ineffective by any court of competent jurisdiction, the remainder of this Agreement shall remain in full force and the unlawful or otherwise ineffective provision shall be substituted by a new provision mutually agreed upon by Licensor and Licensee reflecting the intent of the provision so substituted.

### Assignment

In addition to any other statutory or contractual right of assignment, Licensor may assign its rights and obligations under this Agreement in total or in part to any of its Affiliates. Licensee shall be informed about such assignment duly in advance. The assignee shall perform the obligations under the Agreement in the quality and standards and in accordance with the terms and conditions laid down in this Agreement. Any other assignment of rights or obligations arising from the Agreement shall require the prior approval in written form of the other Party.

### Notification of Changes

Any changes or alterations, including change of address, ownership, company name, organization, approval etc. shall be immediately notified in writing to the addressee stipulated in Article 15 (‘Notices and Communication’).

### Entire Agreement

### This Agreement and its Attachments constitute the entire agreement reached between the Parties with respect to the subject matter hereof. Any writings or oral agreements reached during the negotiations or during the period of this Agreement shall not be binding upon either Party unless documented and altered in accordance with Article 22.9 (‘Alteration’). The Parties are only bound by agreement in writing. Nothing shall be regarded as agreed, until everything has been agreed.

### Order of Precedence

In the event a provision in an attachment, exhibit, annex to this Agreement or letter agreement relating to this Agreement deviates from any provision of Section I – III of this Agreement, such attachment, exhibit, annex, or letter agreement shall prevail only if it explicitly refers to the Article and provision of Section I – III it intends to deviate from. In all other cases the provisions of Section I – III of this Agreement shall prevail.

### Exclusion of General Terms and Conditions

The Parties acknowledge that pursuant to current practices, standard quotation forms, purchase orders and other forms (including terms and conditions contained in catalogues) are often utilized, which contain terms and conditions intended to be applicable to a purchase and sale between a buyer and a seller. Licensor and Licensee agree that, except as expressly provided in this Agreement, no such terms and conditions as appear on such standard forms or catalogues shall become part of this Agreement, despite the fact that such forms may be utilized by representatives of one or both Parties or accepted by the other without objection. It is the specific intent of the Parties that this Agreement shall prevail over any such form and that no modification of this Agreement shall be effective unless made in strict compliance with Article 22.9 (‘Alteration’).

### Alteration

This Agreement shall not be varied in terms or amended except by an instrument in writing explicitly named an amendment to this Agreement and signed by duly authorized representatives of the Parties.

### Interpretation

The table of contents, section names and headings are for ease of reference only and shall not be taken into account in construing this Agreement.

### Form of Agreement

Two originals of this Agreement shall be signed and executed by the Parties. One original shall remain with each Party. Each page of each original of the Agreement (including any attachments, exhibits, side letters etc.) shall be initialed by each Party. Each of the two originals shall constitute an original of this Agreement, but together the counterparts shall constitute one document.

1. SIGNATURES

**For and on behalf of**

**XY AG:**

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Town, Date: \_\_\_\_\_\_\_\_\_\_\_\_\_ Town, Date: \_\_\_\_\_\_\_\_\_\_\_\_\_

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**For and on behalf of**

**YZ GmbH:**

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Town, Date: \_\_\_\_\_\_\_\_\_\_\_\_\_ Town, Date: \_\_\_\_\_\_\_\_\_\_\_\_\_

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# Attachment 1: Licensed Product

Licensed Product is a software-based internet platform, which provides digital solutions…

# Attachment 2: Purpose of Use

Licensee agrees to adhere to the guidelines of promoting, operating and developing further the platform within the limitations and guidelines below. Licensee also agrees to adhere to the common good business practices, social norms, non-discrimination etiquette and fair and equal treatment of customers and clients.

**DOs**

A) Licensed Product is an online platform, which represents the relationships between parties in the field of…

B) The use of Licensed Product can be further extended for the following purposes:…

C) Licensed Product can be applied to other business segments within the original industry as well as any other industry where the business model can be applied.

D) Licensed Product can be used for activities as provided for by its present functionalities as well as the functionalities planned for future development. Thes consist of the following features:… to be introduced by ‘date’ and at an invest sum of X€

E) Licensed Product shall be rolled out according to the following rollout plan:… supported by the following marketing activities: … to be introduced by ‘date’ and at an invest sum of X€

F) Licensed Product can be used for activities as provided for by its present functionalities as well as the functionalities planned for future development.

G) Licensed Product can be used to collect information and data for the industry it operates at and the parties within this industry. The collection, handling and analysis of the information collected shall be in strict compliance with the applicable GDPR regulations.

H) ….

**DON’Ts**

A) Licensed Product shall not be used as a platform for …..

B) Licensee shall not intentionally terminate Licensed Product and related services from operation or take any actions which can have such or similar effect.

C) …

# Attachment 3: System Requirements

# Licensee is responsible for providing the system environment in order to operate Licensed Product in accordance with the following system requirements:

1. Libraries and license model

t.b.d.

2. System requirements, used recourses

t.b.d.

4. Libraries and their dependencies

t.b.d.

5. Procedures for set up

t.b.d.

6. …..

# Attachment 4: Controller-to-Controller Transfer of Personal Data

t.b.d.

1. [↑](#footnote-ref-1)