

## General Terms of Contract for Software as a Service

(Status 07/2020)

### 1. SUBJECT MATTER, ANNEXES, GENERAL CONDITIONS.

**1.1 Subject Matter.** Subject of these "General Terms of Contract for Software as a Service" ("**GTC SaaS**") of Auerswald GmbH & Co. KG ("**We**" or "**Auerswald**") is the temporary provision of one or more Auerswald Services within the meaning of clause 2.3 for online use in the SaaS procedure within the meaning of clause 2.17 for the period of time booked or until cancelled by either party as well as associated support services. The GTC SaaS generally apply to all of the Customer's initial and subsequent Orders for the relevant Auerswald Services. The present GTC SaaS do not cover the granting of rights of use for Client Components, which may be made available to the Customer for use with the Auerswald Service. These are subject to separate "End User License Agreements for Software" (EULA, as defined in clause 2.11). For the EULA of Auerswald go to <https://www.auerswald.de/eula>.

**1.2 Annexes.** The GTC SaaS are comprised of this document as well as of the other documents referenced therein. However, a EULA applies only if it is in fact intended to make Client Compo-

nents available for an Auerswald Service. This will be indicated in the context of the Order.

**1.3 Deviating Terms of Contract.** General terms and conditions of the Customer that deviate from the GTC SaaS will not become part of this Agreement. This applies even if Auerswald does not expressly object to the inclusion.

**1.4 Entrepreneur.** The Customer confirms that the Customer concludes this Agreement solely in the exercise of their commercial or independent professional activity. Public enterprises which are commercially active are also deemed to be entrepreneurs, irrespective of their legal form or responsible body.

**1.5 Territory.** Auerswald retains the right to offer an Auerswald Service only to Customers who are located within a specific jurisdiction or territory, e.g. within the EU, and retain the right to reject contract applications from Customers from other jurisdictions or to terminate contracts for good cause where Customers have made false statements about their jurisdiction. The option of a user to use the Auerswald Service even if such user is located in an unsupported jurisdiction will not be affected.

**1.6 Contractual Text.** The Customer may view the text of the GTC SaaS and, possibly, of any EULA(s) applicable to Client

Components at any time during the Ordering process via a hyperlink and may download it in a reproducible form. Moreover, after conclusion of the contract, Auerswald will send the text of the GTC SaaS and, if applicable, the EULA(s) to the e-mail address provided by the Customer. For further details regarding the Order see clause 2.6 and 3.3.

**1.7 Contractual Language.** In the relationship between Auerswald and the Customer, only the German language version of the contractual text is decisive. Any versions provided in other languages are non-binding and are used only for simplification.

## **2. DEFINITIONS.**

**2.1 "Subscription period"** means the initial term of the subscription for the relevant Auerswald Service as specified in the service description and/or the Customer's Order(s) and any subsequent renewal period (if applicable).

**2.2 "Admin User"** is an Authorized User of the Customer with extended rights, who initially has unlocked a workspace in an Auerswald Service and is able to create additional Authorized Users.

**2.3 "Auerswald Code"** means the software, including any SDK(s), integrations, APIs and plug-ins developed and provided by Auerswald, which Auerswald makes available to the Customer for use with the Auerswald Service, usually by way of SaaS, but possibly also as a Client Component. Auerswald Code may contain software developed by third parties that is subject to

additional license terms, e.g. open source software that is subject to open source licenses.

**2.4 "Auerswald Service(s)"** comprises the products provided by Auerswald by way of SaaS pursuant to the Customer's Order, including any web interfaces and Client Components, in the respective current version.

**2.5 "Authorized Users"** are the Customer's users who are authorized as regards specifications and quota. Authorized Users may be employees, contractors or service providers (e.g. consulting or communications agencies), including employees, contractors or service providers of companies affiliated with the Customer, if such use is for the benefit and under the control of the Customer and does not exceed the number of Authorized Users licensed by the Customer.

**2.6 "Order"** means the Customer's offer to Auerswald, triggered by the Customer on the Auerswald website, to purchase the Auerswald Services mentioned in the Order.

**2.7 "Client Components"** means the software that may be required to use an Auerswald Service, e.g. a client to be installed on the Authorized User's system (so-called "fat client") or an app for mobile devices that is used to access the Auerswald Service.

**2.8 "Documentation"** means the technical and functional descriptions belonging to the respective Auerswald Service, it is also a description of services. The Documentation is provided exclusively in

digital, printable form, usually online, for access via browser. The Documentation covers, among other things, operating instructions, description of performance features, description of interfaces, etc.

**2.9 "Third-Party Services"** are all applications, integrations, plug-ins, software, code, online services, systems and other products originating from third-party providers that interact in any way with the Auerswald Service, but are not provided by Auerswald itself. In the relationship between Auerswald and the Customer, the Customer is responsible for the provision or use of the Third-Party Services, even if Auerswald may have mediated the conclusion of the Customer's contract with the Third-Party Service. This does not cover Third-Party Services that are part of Client Components. These are provided by or via Auerswald.

**2.10 "GDPR"** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation), including any new announcements and any successor regulations issued for this purpose.

**2.11 "End User License Agreements for Software"** or "EULA" are license terms for the provision of software. The [EULA of Auerswald](#) applies to Client Components provided to the Customer by Auerswald. In individual cases, the term "EULA" includes third-party license

terms, in addition to or in place of the EULA of Auerswald. In any case, Auerswald provides the Customer with a reasonable opportunity to take note of the EULA(s) before placing the Order under these GTC SaaS.

**2.12 "Customer"** or "You" means the natural or legal person who is a contractual partner of Auerswald, who places the Order and who uses the subscribed Auerswald Service(s) for their own purposes.

**2.13 "Customer Data"** means content such as texts, images, audio, or video files as well as any other files or data which the Customer uploads to the Auerswald Service, enters there, generates with the aid of the Auerswald Service, possibly transfers from external sources to the Auerswald Service via provided interfaces, or which are otherwise generated in the course of using the Auerswald Service. Customer Data are the Customer's property and in case of personal data, the Customer is the "controller" within the meaning of the GDPR. Auerswald processes such Customer Data on behalf of the Customer. Customer Data must be distinguished from Usage Data.

**2.14 "Usage Data"** are files and information created in the course of providing, administering or operating the Auerswald Service, e.g. protocols, measurement data such as availability, login data and other data about the circumstances of use, e.g. IP address used, data of user accounts of Admin Users and Authorized Users, data collected for use and invoicing of the Auerswald Service, data collected to monitor integrity, security

and availability of the Auerswald Service, data about the content and circumstances of support requests. Usage Data are the property of Auerswald and in case of personal data, Auerswald is the "controller" within the meaning of the GDPR.

**2.15 "Open Source License"** means license terms for a software that grants the user, e.g. the Customer, Usage Rights beyond the right to use the software, which usually are reserved to the copyright holder of the software, e.g. the right to edit the software, to combine it with other software or to distribute the software or a version derived from it, and where the license terms require that at least one of the following conditions is met: a) the source code or design information must be made available to anyone upon request, b) the right to edit the original or edited software is granted, c) a free license to use the intellectual property rights must be granted, d) the copyright holder of the unedited open source software must be indicated (copyright notice). Open Source Licenses within the meaning of this definition include, without limitation, the GNU General Public License (GPL) license family, the GNU Lesser General Public License (LGPL) and the Berkeley Software Distribution License (BSD) license family. Open Source Licenses are a special form of EULA.

**2.16 "Open Source Software"** means any software which is licensed under an Open Source License and which is either a) available only in source code form or b) in executable object code

form and where the source code is supplied together with the executable code or c) where the source code is made available free of charge (except for shipping and delivery costs).

**2.17 "SaaS"** is short for "Software as a Service" and means the provision of software online for use by the Customer, limited in time to the duration of the contract between provider and Customer. In case of SaaS, the software usually is accessed via a standard web browser; the Customer is not provided with a copy of the software. Depending on the Auerswald Service, the use of the software in question may also require the provision of a Client Component.

**2.18 "Affiliated Companies"** means companies which, as defined in Section 15 set seqq. of the German Stock Corporation Act (Aktiengesetz, AktG) are affiliated with Auerswald or with the Customer. Where the AktG does not apply, affiliated company means any organizationally independent entity that directly or indirectly controls Auerswald or the Customer, is controlled by one of them or is under common control by another party. Control is understood as the ability to govern or direct management and organization of a company, either by a majority of voting rights, by contract or otherwise.

**2.19 "Confidential Information"** includes codes, inventions, know-how, product plans as well as technical and financial information which is exchanged under this Agreement and which at the time of disclosure is identified as confidential or

should reasonably be deemed confidential given the circumstances surrounding the disclosure and the nature of the information disclosed.

Further terms are defined in other sections of these GTC SaaS or in the corresponding service descriptions of an Auerswald Service or of associated policies or Annexes.

### **3. REGISTRATION, ORDERS AND CONTRACT CONCLUSION.**

**3.1 Registration.** For the Customer to be able to order and use an Auerswald Service, the Customer first must create a free user account with Auerswald. The first created account is an Admin User, who has extended rights and, among other things, is able to book Auerswald Services and to create Authorized Users, who are authorized to use the Auerswald Service(s) booked by the Customer. The respective Auerswald Services booked by the Customer with Auerswald, the number of Authorized Users and capacities (e.g. storage) apply to the creation of Authorized Users.

**3.2 Account Security.** The Customer must ensure that all user IDs, passwords and other access data (e.g. API tokens) for the Auerswald Service, i.e. for both Admin Users and Authorized Users, are kept strictly confidential and are not disclosed to unauthorized persons. It is the Customer's responsibility to ensure that the Admin User's access data are accessible only to a person within their organization who is authorized to exercise the extended rights. If a person who has received access data as Admin User or

Authorized User is no longer working for the Customer, the Customer must immediately block the respective access. The Customer is responsible for all actions which are carried out using the access data of an Admin User or Authorized User, unless Auerswald is responsible for the loss of the access data. The Customer shall notify Auerswald without undue delay of any breach of security or unauthorized use of their account.

### **3.3 Orders and Conclusion of Contract.**

The information and selection options on the website represent Auerswald's offer to the Customer to place an order, i.e. a legally binding offer by the Customer to enter into a contract with Auerswald on the specified and included terms. The Customer may make such offer at the end of the ordering process, by clicking on the corresponding button ("Binding Order"); the declaration of acceptance from Auerswald will be sent to the Customer by e-mail. In detail, the conclusion of the contract includes the following steps: (1) Registration and creation of a user account for the Admin User; (2) selection of the Auerswald Service(s), with the associated conditions (minimum term, notice period, charges) displayed; (3) selection of number as well designation of Authorized Users; (4) selection of the desired payment frequency from the options offered; (5) summarized presentation of all costs or calculation bases, with the Customer having the option to check and, as the case may be, correct their entries within the framework of the order overview; (6) completion of the order and legally binding submission of the contractual offer by the Customer by clicking on "Binding Order". If Auerswald

accepts the offer, Auerswald will send the Customer a corresponding confirmation and also, depending on the Auerswald Service subscribed to, information on how any required Client Components may be obtained.

**3.4 Responsibility.** The Customer is responsible for their Admin Users and Authorized Users and liable for their conduct. The Customer guarantees that the Admin Users and the Authorized Users comply with the terms of these GTC SaaS.

#### **4. PROVISION, USE, TARGET CONDITION.**

**4.1 Provision.** Auerswald provides the Auerswald Services exclusively for online use and grants the Customer access to the relevant Auerswald Service for the duration and number of Authorized Users booked. The Customer will not be provided with a copy of the software with which the Auerswald Service is made available.

A possible transfer of Client Components is to be considered separately from this. Client Components will be made available to the Customer electronically, usually via download, in accordance with the EULA.

**4.2 Updates.** Auerswald is free to update the Auerswald Service as well as possible clients from time to time and to provide new functions, to further develop existing functions or to restrict or discontinue functions. Should Auerswald make changes to the Auerswald Services that

significantly affect the functionality described in the Documentation, Auerswald will notify the Customer in a suitable manner with a notice period of thirty (30) days in advance, either by means of an e-mail message or by way of clearly visible notification within the Auerswald Service. From receipt of the change notification, the Customer is entitled to terminate using said contact channel by issuing a declaration to Auerswald within said period; the demonstrated posting of the termination notice within such period is sufficient. The notification will contain information about the planned changes and about the Customer's right to reject such changes, and also about the contact address where the rejection must be sent to and, finally, the consequences of failure to reject. If the Customer rejects the changes, the Customer may not be able to use the service at all or no longer use it properly from the time the changes take effect as indicated by Auerswald. In the event of rejection, the Customer has an extraordinary right to terminate with immediate effect; the Customer must exercise such right no later than thirty (30) days after declaration of rejection.

**4.3 Data connection.** The internet/data connection between the Customer's end devices and the Auerswald Service is not covered by this Agreement. The Customer must maintain a data connection with sufficient speed to use the Auerswald Services. Transfer point of the Auerswald Services is the interface of the router in the data centres, where the Auerswald Services are provided from.

**4.4 Target Condition.** During the subscription period, Auerswald guarantees to the

Customer that the Auerswald Service essentially is operated in accordance with the service description, which is operated by answers to "Frequently Asked Questions" (FAQ) and possibly other documents referenced in the service description. Unless expressly agreed otherwise in the service description, Auerswald will take reasonable economic measures to ensure that the Auerswald Service is available during normal operating hours as stated in the service description. If the Auerswald Service is available outside operating hours, the Customer may use the Auerswald Service; however, availability is not guaranteed. The parties agree that the warranty exists and must be handled exclusively in the relationship between the Customer and Auerswald, even if the Contract with Auerswald was arranged for the Customer by a reseller.

**4.5 Third-Party Services.** Unless expressly stipulated otherwise in the service description, Auerswald is not responsible for Third-Party Services that are connected to the Auerswald Services via interfaces or in a similar manner. The Customer's use of the Third-Party Services is governed exclusively by the contractual terms of the provider of such services.

**4.6 Security.** Auerswald undertakes to take economically reasonable technical and organizational measures to protect its systems from unauthorized disclosure and modification. The security measures of Auerswald include **(i)** storage of Customer Data on servers in physically secure locations; and **(ii)** use of firewalls, access controls and similar security

technologies to protect Customer Data from unauthorized disclosure and modification. Additional security controls and further technical and organizational measures relating to personal data are specified in the processing contract (see **Annex 1**).

## **5. RIGHTS OF USE.**

**5.1 Use of Auerswald Services.** The Customer is entitled to use the Auerswald Service with the stipulated number of Authorized Users. Auerswald grants the Customer the worldwide, non-exclusive, non-transferable, non-sublicensable right of use, limited in time to the respective subscription period. The right of use refers to the Auerswald Service in its current form and assumes that the Customer complies with the provisions of these GTC SaaS.

**5.2 Marketing.** The Customer is not entitled to market the booked Auerswald Service(s) to third parties, either independently or in combination with other services, or to otherwise make them available to third parties for their purposes, or to grant third parties access for their purposes, unless this is expressly provided for in these GTC SaaS or the respective documentation.

**5.3 Editing.** The Customer is not entitled to process, modify or reverse engineer the Auerswald Service, with the exception of the purpose of interoperability with other computer programs in accordance with Section 69d para. 2 and 3, 69e of the

German Copyright Act (Urheberrechtsgesetz, UrhG).

**5.4 No Bypassing Protective Measures.**

The Customer may not bypass or break through any protective or security measures, limitations of the charge or other measures to limit use (usage control).

**5.5 Client Components.** If Client Components are provided in connection with an Auerswald Service, the rights of use are based on the corresponding EULA(s).

**6. CHARGES AND PAYMENT TERMS.**

**6.1 Charges.** The Customer is to pay the charges pursuant to the subscribed Auerswald Service(s) and the respective underlying service description, unless an Auerswald Service has been selected that may be used free of charge. If the service description includes provisions on the terms of payment, these shall take precedence over the provisions of this clause 6.

**6.2 Settlement of Charges.** Fixed fees are incurred in advance and will be invoiced to the Customer in advance at stipulated intervals, usually monthly. They are calculated pro rata temporis for the rest of the calendar month in which the subscription for the respective Auerswald Service starts and for the calendar month in which the subscription ends.

If an Auerswald Service is settled based on consumption, e.g. by phone minutes, or if the stipulated limits, e.g. storage volume, are exceeded when using an Auerswald Service, the Customer will be

invoiced retrospectively at stipulated intervals, usually monthly.

One-time charges, e.g. a registration fee, will be charged at the discretion of Auerswald immediately upon registration for the respective Auerswald Service, or with the first monthly invoice.

**6.3 Additional Services.** Auerswald may issue separate invoices for all services, products, functions or other items or services that are not included in the booked Auerswald Service or subscription, e.g. implementation or consulting services. Unless a charge has been stipulated for this in advance, Auerswald may charge the generally applicable list prices of Auerswald at the respective time.

If services are invoiced based on time expended/material costs, such settlement is based on the working time spent, travel time and waiting time, if any. If hourly or monthly rates are invoiced, each incomplete hour will be invoiced using a prorated rate. Surcharges will be charged for services to be provided outside the normal business hours of Auerswald (Monday to Friday from 8:00 am - 6:00 pm local German time, excluding public holidays at the headquarters of Auerswald). Moreover, Auerswald charges additional costs, e.g. costs for necessary travel and accommodation.

The Customer may at any time request from Auerswald an overview of the current list prices and of the hourly rates applicable at the customer's location.

**6.4 Payment Terms.** Invoices will generally be sent by e-mail to the e-mail address



provided by the Customer upon registration. Invoices sent by e-mail will be deemed received on the day on which they are sent. Upon request, a paper version may be sent as well; however, this will not postpone the date of receipt. Auerswald retains the right to charge the costs for the additional paper invoice to the Customer.

All amounts are due ten (10) days after the invoice date, without set-off or deductions, unless stipulated otherwise on a case-by-case basis. Depending on the means of payment, Auerswald may arrange for the corresponding collection of the amounts. Invoices must be paid in the currency indicated on the invoice.

The Customer acknowledges and agrees that the means of payment indicated at registration, e.g. a credit card, may be used for all amounts due during the subscription of the booked Auerswald Services; this also applies to one-time charges. Any exceptions, e.g. for services, must be agreed separately. Depending on the means of payment, the Customer will issue the relevant declarations and possibly make any required authorizations, such as for so-called "strong customer authentication" (SCA).

If and once offered by Auerswald, the Customer may change the means of payment during the subscription period.

If the customer has provided a credit card as a payment instrument, Auerswald may arrange for the credit card to be charged on the date of the invoice.

The Customer may be offered to pay by means of direct debit. The Customer must use a bank account with a bank in the Single European Payments Area (SEPA) and issue a SEPA direct debit mandate, authorizing Auerswald or a payment institution engaged by Auerswald to instruct the Customer's bank to debit the Customer's account with the respective invoice amount. The Customer agrees that the advance notice period before the account is debited is reduced from fourteen (14) days to one (1) day. Auerswald may in such case arrange for the account to be automatically debited with the outstanding amounts on the respective due date, usually monthly. One-time payments will be debited from the account no earlier than five (5) working days after receipt of the invoice. The Customer is responsible to make sure that the account has at all times adequate cover as of the due date(s); otherwise, Auerswald must compensate for any resulting loss, e.g. return debit charges from the bank.

**6.5 Disputes, Default.** If the Customer believes that an invoice is incorrect, the Customer must contact Auerswald at least in text form (e-mail) within sixty (60) days of receipt of the relevant invoice to be entitled to a correction or a credit note. Such period does not apply in the event of intent on the part of Auerswald; in such case, the statutory provisions apply. Auerswald may suspend access to the subscribed Auerswald Services due to non-payment of undisputed charges.

The Customer may offset or withhold charges and claims against Auerswald

only if Auerswald has explicitly acknowledged and agreed to this in writing, if the claims are not disputed by Auerswald or if they have been legally confirmed by a competent court or authority.

In the event of late payment, Auerswald retains the right to charge the legally permissible interest rate for business transactions applicable at the time. Auerswald retains the right to charge a flat-rate reminder fee or actual reminder costs for the second and each subsequent reminder in line with statutory provisions. If Auerswald deems enforcement or collection measures by third parties necessary, the Customer will also bear the costs incurred by Auerswald, including any lawyer's fees.

**6.6 Taxes.** Charges do not include VAT or any other taxes, duties or levies imposed by the tax authorities. The Customer is solely responsible for the payment of such taxes, charges or customs duties; the only exception are taxes based on the earnings of Auerswald. If Auerswald is legally obliged to withhold and pay taxes for the tax authorities, for which the Customer is responsible, Auerswald will invoice the Customer for the corresponding amount, unless the Customer provides Auerswald with a valid exemption certificate from the respective competent tax authority.

**6.7 Changes in Charges.** Auerswald may change the charges provided such changes are due to changes in Auerswald's cost structure in the areas of personnel, material, hosting, services for the Auerswald services, for example in the form of Third-Party Services, or by

other cost factors. In this case, Auerswald will notify the Customer at least in writing (e-mail), with prior notice of thirty (30) days. If a minimum period was stipulated for a subscription, Auerswald will not increase the charges during the first twelve (12) months of such minimum period, even if Auerswald has not expressly committed itself to stability of the charges.

If the Customer does not wish to accept the adjustment, the Customer may terminate the affected subscription with effect from the time the adjustment becomes effective. In this case, the Customer will send a letter of termination to Auerswald. If a change in the charges is required by law for Auerswald, e.g. due to the introduction of a tax or changes in value added tax, Auerswald will also notify the Customer of such change. However, the Customer has no right of termination.

Auerswald retains the right to add features and functions to the Auerswald Services booked by the Customer at any time, which are only available for an additional charge.

## 7. CUSTOMER'S OBLIGATIONS.

**7.1 General.** The Customer is obliged to ensure that its Authorized Users comply with and implement the following obligations, where applicable. The Customer

is liable to Auerswald for the behaviour of the Authorised Users.

**7.2 Conditions of Use.** The Customer is to meet at their own expense the conditions of use as required to use the Auerswald Service. The conditions of use are laid down in the service description.

**7.3 Access data.** The Customer will keep the access data to the Auerswald Service inaccessible and confidential.

**7.4 Data backup.** The Customer will periodically backup Customer Data to a location outside the Auerswald Service.

**7.5 Behavioural Duties.** When using the Auerswald Service, the Customer is responsible for compliance with statutory provisions and the following regulations. In particular, the Customer must not, (i) through their usage behaviour, act in violation of public morals, (ii) infringe industrial property rights and copyrights or any other third-party property rights, (iii) transmit content with viruses, so-called Trojan horses or other programming that may damage the Auerswald Service, or (iv) distribute pornographic content, advertising, unsolicited e-mails (spam) or inaccurate warnings of viruses, malfunctions etc., or encourage participation in prize competitions, pyramid schemes and similar campaigns. Furthermore, any actions are to be refrained from that are suitable to (i) cause an excessive strain on the Auerswald Service or otherwise impair or manipulate the functionality of the underlying technical infrastructure, or (ii) endanger the integrity,

stability or availability of the Auerswald Service.

8. BREACH OF DUTY, WARRANTY.

**8.1 General.** Unless stipulated otherwise below, the statutory provisions apply. In any case, Auerswald will not be liable for any defects that (i) result in or from Third-Party Services; (ii) misuse or non-compliance of the Documentation by the Customer; (iii) changes to the Auerswald Service not implemented by Auerswald, (iv) which consist in a version that is not the current version of the Auerswald Service; this applies to Client Components, in particular.

**8.2 Denial of Access.** Auerswald may (temporarily) deny the Customer's access to the Auerswald Services if: (i) the Customer is in breach of obligations under these GTC SaaS and, despite a warning, fails to stop such breach without undue delay; or (ii) the Customer is in arrears with a payment obligation by ten (10) or more working days; or (iii) the Customer has exceeded a limitation of the scope of use and continues to do so, despite notification by Auerswald; or (iv) the denial of access is necessary to prevent damage or liability to other customers or third parties; or (v) the denial of access is necessary to maintain security, stability, availability or integrity of the Auerswald Service. Unless this Agreement is terminated, Auerswald will cooperate with the Customer to restore access to the Auerswald Service without

undue delay, once Auerswald has verified that the Customer has removed the reason for the denial of access.

**8.3 Material Defects.** In the event of a material defect, Auerswald will remedy this material defect without undue delay. Auerswald will decide on the way in which material defects will be remedied. If a material defect cannot be conclusively remedied without undue delay, Auerswald may remedy the consequences of such material defect by way a work-around, provided the Customer can be reasonably expected to accept the work-around. Auerswald will then remedy the material defect within a reasonable period of time. The Customer's right of self-performance is excluded.

**8.4 Defects in Title.** In the event of a defect in title of an Auerswald Service, Auerswald may, at its sole discretion, remedy such defect in title, by (i) obtaining a license for the affected part of the Auerswald Service; (ii) modifying the Auerswald Service in such a way that an infringement is avoided, while the Auerswald Service is essentially equivalent; or (iii) cancelling the order for the affected Auerswald Service and refunding the Customer for all subscription fees paid in advance for the cancelled part of the relevant subscription period.

**8.5 Indemnification by Auerswald.** If a third party asserts claims in respect of the Auerswald Service, Auerswald will take over the defence against these claims and indemnify the Customer for and against such claims if Auerswald is responsible for the defect in title. The indemnification obligation will apply only in

respect of finalized claims of the third party.

**8.6 Indemnification by the Customer.** The Customer undertakes to indemnify and hold Auerswald harmless for and against any third-party claims and liabilities arising from Customer Data or from a breach or alleged breach of the provisions under clause 7 (Customer's Obligations).

**8.7 Procedure.** Each party's obligations to indemnify and hold harmless apply subject to the proviso that the party required to indemnify: (i) receives written notification of a claim without undue delay; (ii) has the exclusive right to control and direct investigation, defence and settlement of the claim; and (iii) receives all reasonably required assistance from the indemnified party at the expense (in respect of reasonable out-of-pocket expenses) of the party required to indemnify. Without the prior written consent of the indemnified party, the party required to indemnify may not enter into any settlements or acknowledge any claims if such settlement/acknowledgement would require the indemnified party to admit fault, pay amounts that the party required to indemnify must pay under this section, or take or refrain from taking any other actions (other than in respect of the Auerswald Service or functions). The indemnified party may participate in any litigation at their own expense through a legal counsel of their choice.

**9. LIMITATION OF LIABILITY.**

**9.1 Limitation of Liability.** Unless stipulated otherwise in this clause, the parties

and their suppliers will be liable only for a slightly negligent breach of material contractual obligations, if fulfilment of such obligation is essential for the proper performance of the Agreement and where the other party can regularly rely on fulfilment ("material contractual obligation"), and the parties and their suppliers will be liable only for the typically foreseeable amount of damage. Otherwise, any liability is excluded.

This also applies in case of indirect damage, consequential damage or loss of profit.

**9.2 Typically foreseeable damage.** The parties agree that the typically foreseeable damage for all damages under this Contract caused by the liable party and its suppliers will not exceed the amount that the Customer actually has paid or will pay to Auerswald for the Auerswald Services concerned or related services within in the twelve (12) months prior to the date of assertion of such claim. However, this clause 9 does not apply to: **(i)** the costs of defence and damages payable by a party required to indemnify to a third party pursuant to clause 8 (Indemnification); and **(ii)** to payment obligations on the part of the Customer as expressly stipulated in this Agreement.

**9.3 Exceptions.** None of the limitations in this clause 9 excludes either party's liability for damages arising directly from: (i) wilful intent; (ii) gross negligence; (iii) culpable injury to life, limb or health; (iv) breach of guarantee which must be expressly designated as a "guarantee "; or (v) mandatory liability under the German

Product Liability Act (Produkthaftungsgesetz).

**9.4 Absolute Liability.** The parties expressly agree that the absolute liability of Auerswald in the context of tenancies or comparable usage relationships is excluded for any defects that already existed at the time of conclusion of the Contract. Auerswald will be liable for such defects and violations only if Auerswald has acted culpably (*fault*) and only pursuant to the limitations of liability agreed in this Agreement. Furthermore, the right to remedy a defect pursuant to Section 536a para. 2 of the German Civil Code (Bürgerliches Gesetzbuch, BGB) is excluded.

## **10. TERM, RENEWAL.**

**10.1 Term.** This Agreement is effective from the date of effect of the Contract between Auerswald and the Customer. The contract period stipulated by and between the parties follows from the service description or the agreed subscription period.

**10.2 Subscription Term and Renewal.** By entering into this Agreement or by placing an order for the purchase of an Auerswald Service, the Customer agrees to pay the charges incurred pursuant to the payment frequency for the variant of the respective Auerswald Service booked by the Customer (cf. service description). In the absence of an agreement of a different starting date for the provision of the Auerswald Service, the subscription and hence the minimum



term begins once the Customer is activated for the booked Auerswald Service.

latest, Auerswald will erase the Customer Data.

## 11. CANCELLATION.

## 12. DATA PROTECTION.

**11.1 Cancellation.** The options for termination for convenience are determined by the minimum term or notice period specified upon purchasing the subscription, otherwise by the service description. Otherwise, any cancellation for convenience is excluded.

For customers for whom the use of the Auerswald Services involves the processing of "personal data" within the meaning of the GDPR or equivalent legislation, the separate processing agreement ("**PA**") agreed between the parties applies, which is appended to this Agreement as **Annex 1** and constitutes an integral part thereof.

**11.2 Cancellation for Good Cause.** Either party may cancel this Agreement for good cause without notice. If Auerswald cancels this Agreement for good cause, all payments for the remaining part of the subscription period will be due and payable by the Customer without undue delay. If the Customer cancels this Agreement for good cause, the Customer will receive a refund of the amount paid in advance for the cancelled portion of the applicable subscription period.

## 13. CONFIDENTIAL INFORMATION.

**11.3 Effects of Cancellation.** Upon cancellation of this Agreement, the Customer is no longer entitled to use the Auerswald Service. Auerswald will be entitled to block the Auerswald Service or to suspend it in such a way that the Customer can only backup the Customer Data. The Customer must backup any Customer Data stored in the Auerswald Service without undue delay. Thirty (30) days from the date of termination, at the

**13.1 Non-disclosure.** Each party (as receiving party): **(i)** must keep the Confidential Information of the respective other Party confidential and may not disclose it to any third party, unless permitted under this Agreement; and **(ii)** shall use the Confidential Information of the respective other Party only to perform its obligations and exercise its rights under this Agreement. Each Party may disclose the Confidential Information of the respective other party to its employees, agents or contractors and to its affiliate companies if they have a legitimate interest in knowing the Confidential Information (in case of Auerswald, this also includes said subcontractors), subject to the proviso that the party remains responsible for compliance with the provisions of this section (clause 11) by any recipients and that these recipients are bound by non-disclosure obligations no less stringent than those set forth in this section.

**13.2 Exemptions.** These non-disclosure obligations do not apply to (and Confidential

Information does not include) information that: **(i)** is or becomes publicly known through no fault of the receiving party; **(ii)** was known to the receiving party prior to receipt of the Confidential Information; **(iii)** was lawfully obtained by the receiving party from a third party without any breach of any non-disclosure obligation; or **(iv)** is developed by the receiving party without using the Confidential Information of the disclosing party. A party may also disclose the Confidential Information of the respective other party to the extent required by law or court order, provided that it notifies the other Party in advance (to the extent permitted by law) and assists the other Party in all efforts to maintain confidential treatment of the Information.

## 14. GENERAL.

**14.1 Assignment.** Without the prior written consent of the respective other party, neither party may assign this Agreement as well as the rights and obligations under this Agreement, except that either party may assign this Agreement as well as the rights and obligations hereunder without consent in connection with a merger, restructuring, acquisition or other transfer of all or substantially all of its assets or voting securities. Any attempt to transfer or assign this Agreement as well as the rights and obligations hereunder is invalid, unless it has been expressly approved. This Agreement is binding and applies for the benefit of the permitted successors and assigns of each party. However, the above does not affect the parties' options under

Section 354a of the German Commercial Code (Handelsgesetzbuch, HGB).

**14.2 Notifications.** Any notification or communication within the context of this Agreement must be made at least in text form. The Customer must send all notifications within the context of this Agreement (including notifications regarding violations of this Agreement as well as warranty and indemnification claims) either by post or by e-mail to Auerswald. Oral notifications will be confirmed in writing by the person making the notification. Auerswald may also provide notifications relating to the Auerswald Service, or other business-related notifications by way of clearly visible publication on the Auerswald Service. Each party agrees to receive electronic notifications.

**14.3 Advertising.** Unless stipulated otherwise in the respective order, Auerswald may use the Customer's name, logo and trademarks to identify the Customer as an Auerswald customer on the Auerswald website and in other marketing materials.

**14.4 Subcontractors.** Auerswald may use subcontractors and permit them to exercise the rights granted to Auerswald to provide the Auerswald Service and the associated services in the context of this Agreement, including e.g. the hosting service of Auerswald. However, subject to all terms and conditions of this agreement, Auerswald remains responsible for: **(i)** compliance with the terms and conditions of this Agreement of its subcontractors; and **(ii)** the overall performance of the Auerswald Services, if and



as required by this Agreement. Sub-processors of personal data may be subject to additional provisions; for further details, refer to the relevant PA.

**14.5 Independent Contractors.** The parties to this Agreement are independent contractors, and this Agreement does not create any partnership, joint venture, employment, franchise or agency relationship. Neither party is authorized to bind the respective other party or to enter into any obligations on behalf of the other Party without prior written consent.

**14.6 Force Majeure.** The parties are not liable for any delay or failure to perform their obligations under this Agreement if the delay or failure is due to causes not under their reasonable control, e.g. strikes, epidemics, pandemics, blockades, war, terrorist attacks, riots, natural disasters, failure or restriction of power supplies, telecommunications or data networks and services, or government actions.

**14.7 Export.** The Customer is responsible for obtaining all export or import permits required to use the Auerswald Services and for Customer Data.

**14.8 Amendments, Waivers.** Any amendment or supplement to this Agreement must be made in writing and be executed by an authorized representative of each party. In the event of any conflict between this Agreement and any order, this Agreement takes precedence, unless expressly stipulated otherwise. Any conduct or a failure to enforce or exercise rights under this Agreement does not imply any waiver. Waivers must be

made in writing and executed by an authorized representative of the waiving party.

**14.9 Severability Clause.** If any provision or part of this Agreement is or becomes invalid or unenforceable, this will not affect the validity of the remaining provisions. Auerswald and the Customer are obliged to the extent reasonable and in good faith, to replace the ineffective or unenforceable provision with an effective and enforceable provision that is equivalent in its economic success, provided that this does not result in a significant change in the content of this Agreement. The same applies to any unintended gaps in the Agreement.

**14.10 No Third-Party Rights.** This Agreement does not give any third party the right to enforce any provision of this Agreement. The Customer acknowledges and agrees that each order permits use by and for the legal person(s) named in the order only.

**14.11 Entire Agreement.** This Agreement constitutes the entire and exclusive agreement of the parties with regard to its subject matter. It supersedes all prior or contemporaneous, oral or written communications, offers and statements regarding the Auerswald Technology or any other subject matter covered by this Agreement. The provisions of the United Nations Convention on Contracts for the International Sale of Goods do not apply to this Agreement. All conditions provided by the Customer (including in the context of an order of the Customer or any other form of business used by the



Customer) serve administrative purposes only and have no legal effect. This Agreement may be signed in multiple counterparts, including in electronic form; each counterpart is considered an original and all copies together constitute one and the same Agreement.

**14.12 Applicable Law and Jurisdiction.** This Agreement is governed by the laws of the Federal Republic of Germany, excluding its conflict of laws provisions. Exclusive place of jurisdiction for all disputes arising under or in connection with this Agreement is Braunschweig, Germany.



## Annex 1 – Processing Agreement

### Processing Agreement

Processing agreement within the meaning of Article 28(3) of the General Data Protection Regulation (GDPR)

between the customer named in the main contract document of the SaaS Agreement

("Principal")

and

Auerswald GmbH & Co. KG  
Vor den Grashöfen 1

38162 Cremlingen, Germany

("Contractor")

(hereinafter jointly called "**Parties**" and each individually a "**Party**")

#### Preamble

Based on the Agreement concluded by and between the Parties (hereinafter: "**Main Agreement**"), the Contractor receives and processes in the context of the SaaS services provided by it, personal data of the Principal and of any persons using the services under the Main Agreement via the Principal (hereinafter called "**User**"), for example participants in a video conference. As part of the provision of services to the Principal, the Contractor processes the personal data provided by the Principal for this purpose. Data processing in the relationship between the Principal and the users of the SaaS services involved via the Principal is not the subject of this Processing Agreement.

Principal's description: *see description in the Main Agreement.*

The Contractor is a provider of customized communication solutions, in particular in the area of VoIP/All-IP, ISDN and analogue.

The Parties therefore are entering into this Processing Agreement (hereinafter called "**Agreement**") to ensure the lawful processing of personal data by the Contractor. The agreement insofar specifies the Contractor's obligations under data protection law.

Not theretofore, the Parties agree as follows:

#### 1. Scope

**1.1** The Contractor shall process personal data on behalf of and upon instruction of the Principal to fulfil the performance obligations incumbent upon the Principal under the Main Agreement. The personal data are described in the **data protection details** of the Main Agreement (hereinafter: "**Data**").

**1.2** Type, scope and purpose of data processing, data processing operations and the circle of data subjects follow from **Annex 3 (Details on data processing)**.

**1.3** The Contractor shall process the Data in accordance with the provisions of the Main Agreement, the present Agreement and upon documented instructions of the Principal.

**1.4** If the Contractor is of the opinion that an instruction of the Principal violates the General Data Protection Regulation



("GDPR") or any other data protection regulations of the European Union or its Member States, the Contractor shall notify the Principal accordingly. In such cases, the Contractor shall be entitled to suspend the execution of the instruction until the Principal has confirmed the instruction or amended it.

## **2. Principal's Obligations**

**2.1** Within the context of this Agreement, the Principal is responsible for compliance with the statutory provisions of data protection law, in particular, for the lawfulness of the transmission of Data to the Contractor as well as for the lawfulness of data processing and safeguarding the rights of the data subjects ("Controller" within the meaning of Article 4(7) GDPR). If any third parties assert claims against the Contractor due to the processing of their Data, the Principal shall indemnify the Contractor upon first request for and against all such claims.

**2.2** The Principal is the holder of all rights that may be required concerning the Data.

**2.3** The Principal shall notify the Contractor without undue delay and in full if the Principal discovers any errors or irregularities in connection with the processing of the Data by the Contractor under this Agreement or the Principal's instructions.

## **3. Contractor's Obligations**

**3.1** The Contractor shall process the Data in the context of the Main Agreement,

the present Agreement as well as the specific individual instructions of the Principal. The Contractor shall not be authorized to disclose the data to any third parties without relevant authorization. This shall not apply if **(i)** this is done in accordance with the Agreement and the Main Agreement, **(ii)** is requested by the Principal in writing or **(iii)** if it is required by statutory or legal requirements. In cases of clause **(iii)**, to the extent permitted by applicable law, the Contractor shall notify the Principal in advance about the intended disclosure and coordinate this with the Principal. The Contractor shall ensure that all persons who have access to the Data will process them according to the Principal's instructions.

**3.2** The Principal shall support the Contractor in case of controls by supervisory authorities to the extent reasonable and required, if such controls relate to data processing by the Contractor. The Contractor shall provide the Principal with the information required by the Principal to show it has fulfilled the requirements of the applicable data protection law with regard to such processing.

**3.3** Upon written request, the Contractor shall also support the Principal in complying with the following obligations, taking into account the type of data processing and the information available to the Contractor:

**3.3.1** guaranteeing the security of the processing of personal data,



- 3.3.2** reporting any breach of the protection of personal data to supervisory authorities and data subjects,
  - 3.3.3** possibly carrying-out of a data protection impact assessment if data processing by the Contractor is affected,
  - 3.3.4** possibly carrying-out a required prior consultation with the data protection authority, if data processing by the Contractor is affected.
- 3.4** The Contractor shall notify the Principal without delay if the Contractor becomes aware of any breach of data protection law in the course of processing on behalf of the Principal.
- 3.5** The Contractor shall oblige the persons involved in processing the Data to handle the Data confidentially.
- 3.6** The Contractor may demand reasonable compensation for any cooperation according to clause 3.2 and 3.3. However, not for cooperation according to clause 3.3.2 if the breach is due to the Contractor's fault.

#### **4. Technical-organizational measures**

- 4.1** The Contractor shall take the technical and organizational measures defined in

**Annex 1** before commencing processing.

- 4.2** The technical and organizational measures are subject to technical progress and further development. The Contractor may insofar change the technical and organizational measures at any time at its own discretion and use alternative, adequate measures. Changes shall be documented and the documentation shall be made available to the Principal upon request. The Principal shall be notified in writing of any significant changes. In the event of any substantial change, **Annex 1** shall be adjusted accordingly.

#### **5. Controls**

- 5.1** The Principal shall ascertain at its own expense, prior to the commencement of processing by the Contractor and thereafter regularly, the implemented technical and organizational measures under **Annex 1** and document the respective result. Moreover, the Principal shall be entitled to control the measures in agreement with the Contractor to the extent required or to have such controls carried out by neutral third parties to be named in the particular case. Controls shall be announced in due time in advance and take place during the Contractor's business hours. In so doing, the Principal shall take be reasonably considerate of the Contractor's operational procedures.
- 5.2** The Contractor undertakes to provide the Principal on request with the information required to carry out a comprehensive order control and to make the



relevant proof available. Proof that suitable measures have been implemented may also be provided by presenting current audit opinion as well as reports from independent auditors (auditors, auditing, data protection officer, IT security department, etc.) In such case, an on-site inspection by the Principal shall be excluded.

**5.3** If the Principal commissions a third party to carry out the control, the Principal shall obligate such party in writing to maintain secrecy and confidentiality vis-à-vis the Contractor, unless the third party is subject to a professional duty of confidentiality. At the Contractor's request, the Principal shall present the non-disclosure agreement without undue delay. The Principal may not commission a competitor of the Contractor to carry out the control.

**5.4** The Contractor may request reasonable compensation for its efforts in carrying out the control.

## **6. Subcontracting**

**6.1** The Contractor may enter into subcontracts with regard to the processing of the Data. The sub-processors listed in **Annex 2** shall be deemed accepted by the Principal upon signing of this Agreement.

**6.2** The Contractor shall notify the Principal about any intended change of subcontractor or a new subcontractor.

**6.3** The Contractor shall pass on the obligations stipulated in this Agreement to

its subcontractors, including the warranty for technical and organizational measures. The technical and organizational measures must comply with the requirements of the applicable data protection law.

**6.4** The Contractor shall conclude a confidentiality or non-disclosure agreement with the subcontractors unless they are subject to a statutory confidentiality or non-disclosure obligation.

## **7. Rights of data subjects**

**7.1** The rights of data subjects shall be asserted vis-à-vis the Principal.

**7.2** If a data subject asserts their rights against the Contractor, the Contractor shall forward the request to the Principal in due time.

**7.3** If a data subject asserts their rights against the Principal, the Contractor shall support the Principal with suitable technical and organizational measures in meeting such claims to the extent reasonable and required if the Principal is unable to meet the claim without the Contractor's support.

**7.4** The Contractor may request reasonable compensation for support under clause 7 of this Agreement.

## **8. Data protection officer**

The Contractor's body responsible for data protection can be contacted as follows:

Auerswald GmbH & Co. KG



-Datenschutzbeauftragter- (Data Protection Officer)

Vor den Grashöfen 1

38162 Cremlingen, Germany

e-mail: datenschutz@Auerswald.de

## **9. Liability**

**9.1** The provisions on liability, limitations and exclusions of liability under the Main Agreement in favour of the Contractor shall apply accordingly to the liability for violations of data protection within the meaning of this Agreement.

**9.2** If claims are asserted by third parties against the Contractor due to a violation of data protection laws by the Principal, the Principal shall indemnify the Contractor upon first request for and against any liability. Moreover, the Principal shall assist the Contractor in the legal defence to the extent required and shall reimburse the Contractor for any damage incurred due to the incident, including the reasonable costs of legal defence.

## **10. Contract Term and Return or Deletion of Data**

**10.1** The Agreement shall enter into force upon signing by the Parties and shall remain in force indefinitely. The Agreement shall end upon termination of the Main Agreement underlying data processing by the Contractor, without the

need for a separate cancellation of the Agreement.

**10.2** If necessary, the Parties shall agree on reasonable transitional regulations so as to ensure the compliance of the underlying processing operations, as the case may be, even beyond the end of the Main Agreement.

**10.3** As regards Data, original data carriers or documents which have been handed over or transmitted to the Contractor in the context of this Agreement, the Contractor is obliged, after **(i)** termination of the Agreement or **(ii)** upon the Principal's request (whichever occurs earlier) to either

- deliver them to the Principal,
- return them to the Principal, or
- after prior instruction of the Principal, to destroy them according to data protection requirements or to delete them from all data storage devices of the Contractor in such a way that these Data cannot be restored during or after their removal.

The Contractor shall confirm to the Principal in writing that the measures described in this clause 10.3 have been duly carried out.

**10.4** Documentation which serves as proof of data processing in accordance with the order and in due form shall be kept by the Contractor beyond the term of the Agreement in accordance with the



respective relevant retention periods. The same shall apply to any other documents that are subject to legal retention obligations (e.g. under tax law).

## **11. Miscellaneous**

**11.1** In case of changes to the actual structure of the performance relationship between the Parties, the Parties shall adapt the annexes accordingly and exchange them by mutual agreement. Upon the Parties' signing of the amended annexes these shall become effective and replace the previously valid annexes.

**11.2** This Agreement shall be governed by the laws of the Federal Republic of Ger-

many. Place of jurisdiction for all disputes arising in connection with this Agreement shall be Braunschweig.

**11.3** Any amendments or supplements shall be made in writing. This shall apply accordingly to any amendment or waiver of the above written form requirement.

**11.4** If individual provisions of this Agreement are or become invalid, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced by a valid provision which comes nearest to the economic purpose of the invalid provision. The same shall apply in case of any unintended gaps in the Agreement.

**Annex 1:**  
**Technical and organizational measures**

**Annex 2:**  
**Approved subcontractors and areas of activity of the subcontractor**



## **Annex 1: Technical and organizational measures**

The Contractor is obliged to ensure data protection. The Contractor shall take and maintain the following technical and organizational measures throughout the term of the Agreement:

### **1. Access control**

Reasonable measures to prevent unauthorized persons from accessing the data processing equipment, through:

- automated access control system;
- locking system with code lock;
- light barrier, motion detectors;
- key control (key issuance etc.);
- chip card/ transponder locking system;
- security locks;
- identity check at reception;
- careful selection of cleaning personnel.

### **2. Access control**

Reasonable measures to ensure that the persons engaged in data processing have access only to such data as are covered by their respective access authorization, through:

- allocating user rights
  - password assignment

- authentication with username / password
- key control;
- creating user profiles;
- authentication using biometric systems;
- use of intrusion detection systems;
- assigning user profiles to IT systems;
- use of VPN technology;
- security locks;
- encrypting mobile data carriers;
- use of central smartphone administration software;
- encrypting data carriers in laptops;
- use of anti-virus software;
- use of a hardware firewall;
- use of a software firewall;

### **3. access control**

Reasonable measures to prevent access to the data processing systems by unauthorized persons, through:

- creating an authorization concept;
- reducing the number of administrators the "absolute minimum";





- physical deletion of data carriers before reuse;
- use of document shredders or service providers;
- encrypting data carriers;
- administration of rights through system administrators;
- password policy;
- secure storage of data carriers;
- proper destruction of data carriers;
- logging of destruction.

#### **4. Disclosure control**

Reasonable measures to ensure that no unauthorized third parties read, delete, change or copy the data in case of further transmission of the data (electronically or by way of transport on data carriers), through:

- setting up dedicated lines or VPN tunnels;
- in case of physical transport: careful selection of transport personnel and vehicles;
- in case of physical transport: secure transport containers/packaging.

#### **5. Input control**

The Contractor shall ensure that it is possible to retrospectively check and determine if and when personal data

have been input into data processing systems, through:

- creating an authorization concept;
- granting rights to input, change and delete data only on the basis of the authorization concept.

#### **6. Order control**

The data processed and used by the Contractor may be processed only in accordance with the Principal's instructions. This shall be ensured through:

- selection of the Contractor from a due diligence perspective (in particular, with regard to data security).

#### **7. Availability control**

Reasonable measures to protect the data against accidental destruction or loss, through:

- uninterruptible power supply (UPS);
- equipment for monitoring temperature and humidity in server rooms;
- fire and smoke alarm systems;
- data recovery testing;
- storing data backups in a secure, off-site location;
- air conditioning in the server rooms;



- protective power boards in server rooms;
- preparing a backup & recovery concept:
- server rooms not to be located below sanitary installations.

## 8. Control of data separation

Reasonable measures to ensure the separate processing of data transmitted or accessed for different purposes, through:

- data backup
- setting up anti-virus/ firewall systems
- storing the data in separate archives.

## 9. Pseudonymization and encryption

Pseudonymization and encryption measures are in place. In particular, the Contractor uses only Internet connections protected at least through SSL encryption.

## 10. Recovery measures

Measures to quickly recover the availability of personal data and access to such data in the event of a physical or technical incident:

- All productive servers are secured based on the grandfather, father, son principle.

- Emergency drills are conducted monthly and a server urgently needed for business operations is recovered together with the data from the latest backup (full backup on the weekend or incremental backup during the week).

- The server, together with operating system, applications, configuration and (personal) data will be recovered on another server at a different location.

- Since the majority of the servers and applications used are operated virtually, the recovery hurdle is low and not hardware-specific.

- Instructions have been prepared for recovery, permitting persons who are not directly involved in the backup process, but are trustworthy, to recover data.

- The resilience of systems with personal data is ensured as follows:

- use of a firewall with a range of additional security aspects, including IDS and IPS, data leak prevention, two virus scan engines, blacklisting, IP filtering;

- access to backups and the relevant required access data is known only to a small, confidential group of people



## 11. Review procedures

Procedures for the regular review, assessment and evaluation of the effectiveness of technical and organizational measures to ensure the security of processing:

- The firewall appliance used issues out daily, weekly and monthly so-called "executive reports".  
These reports record important key figures such as malicious mails rejected, thwarted intrusion attempts and recorded traffic.
- Operating system and application version statuses are monitored centrally via management software and kept up-to-date at a security-relevant level.
- Physical access to the network is secured and is only available to trustworthy persons.
- Moreover, an anti-virus program with reporting is used. Violations will be reported immediately and prosecuted by IT.
- Employees are repeatedly sensitized to dealing with potentially malicious mails.

**Status: July 2020**



## Annex 2: Subcontractor

**Status: March 2020**

<b>Subcontractor name</b> Name and address of the company, name of the data protection officer or the contact person for data protection	<b>Purposes</b> Purposes, for which the subcontractor processes the data	<b>Processing</b> including information on data subjects and type of data, if different from Annex 1	<b>Place of processing</b>	<b>Transmission to bodies outside the EEA</b>
OVH GmbH Dudweiler Landstraße 5 66123 Saarbrücken, Germany Dr. Sebastian Kraska datenschutz@ovh.de	Cloud computing as part of the booked service	Transmission and hosting of the contractual data	Subcontractor's data centres, all located within the EU	Not applicable.
The Better Link GmbH 38162 Cremlingen, Germany info@thebetterlink.de	Technical operation of the service	Processing of data within the scope of the necessary technical provision	Subcontractor's IT systems and servers, all located within the EU	Not applicable.

### Annex 3: Details of the circumstances of data processing

<b>DATA PROTECTION-RELATED DETAILS OF THE CUSTOMER</b>	
<b>DESCRIPTION OF THE CUSTOMER:</b>	<p>The Customer is a medium-sized company which uses the offered service in the context of day-to-day communication with employees, customers and business partners to conduct interactive site-independent online meetings. Content-related purposes of the online meetings are e.g. consultative talks, presentations, project meetings etc.</p> <p>The service and its use is not designed for companies and sectors subject to special regulations and data protection regulations.</p>
<b>CATEGORIES OF DATA SUBJECTS</b>	<p>Customers of the Principal, users of the Services pursuant to the Main Agreement</p>
<b>DATA CATEGORIES</b>	<p>Last and first name, e-mail address, profile picture, account passwords; in addition for video chat: also videos of the face and audio recordings of the voice; in addition for paid services: bank account and payment details</p>
<b>PROCESSING OPERATIONS</b>	<p>Processing of data within the context of the services pursuant to the Main Agreement, processing of personal data input by users in the context of their use of the service as well as live recordings of their face or of the areas situated within the camera's recording range; audio and video recordings are processed only within a usage session and are not recorded any further afterwards; usage sessions (audio/video) are stored only if the function of recording a meeting is activated; chat histories if chat input is made, here too, stored only if the recording function is activated; chat histories can be retrieved by the user in their account as part of a meeting history;</p>



<b>SITE OF PROCESSING OPERATIONS</b>	On the subcontractor's servers or in its data centres pursuant to Annex 2, when using the video function, including on the user's respective computer that enables camera use
<b>PURPOSES</b>	Performance of the communication services offered under the Main Agreement with regard to communication between Principal and users; payment processing
<b>DURATION</b>	For the term of the Main Agreement, but with regard to audio/video recordings and chat records within individual usage sessions, only for the duration of the session. Storage periods are longer only if users activate the recording function: the recordings are either cached and offered to the customer for download after the session, or the customer is given cloud storage within their workspace; there is not additional or more extensive storage.
<b>RETENTION PERIODS</b>	The personal data are stored by the controller exclusively for the duration of the existence of the customer account or workspaces; after its deletion, any data still stored will also be erased, unless they have already been erased anyway (see above) upon expiry of the respective user session. Moreover, personal data are stored only to the extent that this is absolutely necessary to hedge against claims (e.g. 3 years in case of contractual claims) or due to statutory obligations (10 years pursuant to Section 147 of the German Tax Code (Abgabenordnung, AO)).
<b>TRANSMISSION OUTSIDE THE EEA</b>	The Contractor has its registered seat in Germany. Whether a cross-border and especially EU or EEA cross-border data flow takes place depends on whether the Principal uses the service abroad.