

# General Terms and Conditions of Software as a Service (SaaS)

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## § 1 Scope of Application, General Regulations

- 1.1 These Software as a Service (SaaS) Terms and Conditions (hereinafter "**GTC Cloud**") of the Gesellschaft für Organisationsberatung und Softwareentwicklung mbH (hereinafter "**GFOS**") shall apply to the provision of GFOS Software as Software as a Service (SaaS) either (a) in the GFOS knownCloud or (b) in a third-party cloud environment contracted by Customer (the Cloud Environment operated for Customer hereinafter "**Customer Cloud**"). To the extent that the provision of additional IT services in connection with the SaaS services has been agreed in addition to the SaaS services, Part B (Additional Terms and Conditions for the Provision of IT Services) and Part C (Additional Terms and Conditions for IT Services under Contracts for Work and Services) shall apply to these additional IT services.
- 1.2 These GTC Cloud apply exclusively to entrepreneurs within the meaning of § 14 of the German Civil Code (BGB), i.e. to natural or legal persons who, when concluding a legal transaction, act in the exercise of their commercial or self-employed professional activity, including legal entities under public law and special funds under public law. Orders from consumers will not be accepted by GFOS. As "**Customer**" is hereinafter referred to as any company that enters into a SaaS contract with GFOS for the provision of GFOS Software as Software as a Service (SaaS) in the GFOS knownCloud or in a customer cloud as well as the possible provision of related IT services (hereinafter "**SaaS Contract**").
- 1.3 This T&C-Cloud and the documents referred to herein apply exclusively. Deviating, conflicting or supplementary T&Cs of the Customer shall only become part of the SaaS contract if and to the extent that the parties have expressly agreed on their validity in writing. This consent requirement applies in any case, for example even if GFOS begins to provide services to the customer without reservation in

knowledge of the customer's general terms and conditions or terms and conditions of purchase.

- 1.4 The documents referred to in these GTC Cloud, in particular the Service Catalogue and/or the Offer, are integral parts of the SaaS Agreement concluded between the Parties. Unless expressly stated otherwise, references to documents refer to the version of the documents in force from time to time.
- 1.5 Individual agreements (including ancillary agreements, additions and amendments) made in individual cases between GFOS and the customer shall in any case take precedence over these GTC Cloud. The content of such agreements shall be governed by a written contract or the written confirmation of GFOS.
- 1.6 References to the applicability of statutory provisions are only of clarifying significance. Even without such clarification, the statutory provisions shall therefore apply, insofar as they are not directly amended or expressly excluded in these GTC Cloud.
- 1.7 The terms of this T&Cs Cloud apply mutatis mutandis to the provision of application documentation and the publication of patches, updates, upgrades and new releases and versions of the SaaS Service to the Customer.

## § 2 Definitions

- 2.1 „**GFOS knownCloud**“: Hardware and software in the GFOS data center, including operating systems, databases and infrastructure, which GFOS makes available to the customer for the use of the SaaS service, as well as the related services described in the service catalog.
- 2.2 „**SaaS-Service**“: Respective GFOS software ordered by the customer, including application documentation in electronic form, which is provided as Software as a Service (SaaS)

either in the GFOS knownCloud or a customer cloud, plus the IT support services to be provided as part of the respective agreed support package.

- 2.3 **„GFOS Group“** means GFOS and all companies affiliated with GFOS within the meaning of Sections 15 et seq. of the German Stock Corporation Act.
- 2.4 **„Subsidiaries“** means, in relation to the Client's company, another company that is affiliated with the Client's company within the meaning of Sections 15 et seq. of the German Stock Corporation Act.

### § 3 Conclusion of Contract, Terms of Service and Scope of Services

- 3.1 All offers from GFOS are subject to change and non-binding, unless they have been marked as binding. They are merely requests to the customer to place orders. If the customer places an order on the basis of the non-binding offers, a SaaS contract – even in ongoing business transactions – is only concluded by the written order confirmation from GFOS (sufficient also by e-mail). In all other cases, the conclusion of the SaaS contract takes place at the latest when the SaaS services are executed. If an order confirmation is made by GFOS, the content of the SaaS contract, in particular the scope of the SaaS services as well as the delivery time or other performance deadlines, is determined solely by the SaaS contract.
- 3.2 Dates and deadlines are non-binding, unless they have been expressly agreed in writing as binding. GFOS shall only be in default with an obligation to perform if the customer has previously warned GFOS in writing and has unsuccessfully set a reasonable deadline for the provision of services.
- 3.3 GFOS shall provide the Customer with the technical possibility and authorization to access the SaaS Service via the Internet and to use the agreed functionalities within the framework of the SaaS Agreement. The functionality of the SaaS Service, the Service Levels, the technical usage requirements and other details of the access rights purchased by the Customer are defined in the Service

Catalog for the respective SaaS Service. GFOS will provide the SaaS Services to Customer based on the quality of service and service level set forth herein. However, the information in the service catalog is not to be understood as a quality guarantee for the respective SaaS services, unless they are expressly designated as such in the service catalog.

- 3.4 Depending on the agreements made between the parties, the respective SaaS service is made available in the GFOS knownCloud or in the customer cloud for use and retrieval by the customer. The relevant service transfer point for the SaaS services is the router output of the data center used by GFOS in the case of a provision in the GFOS knownCloud. GFOS is not responsible for failures or unavailability of hardware and software components, the Internet or other networks after this service transfer point. Likewise, GFOS is not responsible for failures and unavailability of the customer cloud. If the SaaS service is provided in the customer cloud, GFOS is only responsible for the operation of the GFOS software, but not for the underlying IT infrastructure. The customer is responsible for maintaining the VPN connection on his end. The connection of the customer to the Internet, the maintenance of the network connection, the procurement and provision of the hardware and software required by the customer as well as the customer cloud are not part of the SaaS contract and are solely the responsibility of the customer.
- 3.5 GFOS is entitled to adapt the SaaS Services to current technical developments or due to changes in the law, changes in case law, changes in the SaaS services of subcontractors or changes in economic circumstances, and to change the technical characteristics and functionalities of the SaaS Services in this context. GFOS will, as far as possible, inform the customer immediately in advance via e-mail of the planned adjustments. To the extent that such an adjustment not only improves the SaaS Services from the Customer's point of view, but also reduces the scope of services specified in the service catalog or changes them in an unreasonable manner for the Customer, GFOS must notify the Customer in writing of the adjustment at least six (6) weeks before it is carried out and provide the Customer with a correspondingly adjusted service

catalog. If the Customer does not object to the change to GFOS in writing within six (6) weeks of receipt of the notification, the change shall be deemed to have been approved and the amended version of the Service Catalog shall apply to contracts existing between GFOS and the Customer from this point on. GFOS will expressly inform the customer of this consequence when notifying the customer of the change. In the event that Customer does not accept the change, both GFOS and Customer shall be entitled to terminate the SaaS Agreement with effect from the effective date of the change.

- 3.6 Unless expressly agreed in the service catalog or in the respective SaaS contract, GFOS does not owe any further services, in particular no installation, setup, consulting, adaptation and/or training services. Further information on the SaaS services, e.g. in brochures, on websites or in the context of oral presentations, is not part of the agreed SaaS services, unless this information is also expressly mentioned in the service catalogue.

#### **§ 4 Rights of access and use, blocking of access, rights of third parties**

- 4.1 For the duration of the SaaS Agreement, GFOS grants the Customer the right to access and use the respective SaaS Services in accordance with the Agreement for the sole internal business purposes of the Customer or its Authorized Group Companies (as defined below) to the extent of the agreed employee licenses. Unless otherwise agreed in writing, the aforementioned access and non-exclusive rights of use are not exclusive, only to group companies that are designated to GFOS as group companies entitled to use them ("**Eligible Group Companies**") is sub-licensable and non-transferable. The regulations apply accordingly to updates and upgrades of the SaaS services provided by GFOS.

Unless expressly agreed otherwise, the Customer or the Authorized Group Companies may only use the SaaS Services in the Federal Republic of Germany and/or (a) expressly agreed third country(s). In no event may the SaaS Services be used in or from any country where the use of the SaaS Services is

prohibited by applicable import, export control or sanctions laws. Also, the SaaS Services may not be used by companies or persons with whom no business may be conducted due to applicable import, export control or sanctions law, e.g. because they are listed on an applicable sanctions list.

- 4.2 The customer shall protect the user and access authorization assigned to him or his users as well as identification and authentication safeguards against access by unauthorized third parties and shall not pass them on to unauthorized third parties. As soon as the Customer has indications that the rights of use and access have been unlawfully obtained by a third party or could be misused, the Customer is obliged to inform GFOS immediately. Insofar as the Customer is entitled to grant access to the respective SaaS Service to its Authorized Group Companies, the Customer remains the sole contractual partner of GFOS and the Customer shall be liable for any fault of these Authorized Group Companies as well as for its own fault. Customer will pass on all provisions of the SaaS Agreement to the Eligible Group Companies and require them to comply with the terms of the Agreement prior to Customer granting access. Upon request by GFOS, Customer will provide GFOS with copies of the contractual obligations of its Eligible Group Companies.
- 4.3 The Customer shall not misuse or allow the SaaS Services to be misused in any way, in particular shall not transmit any data with illegal content. The Customer shall also refrain from any attempt to access information or data without authorization, either by itself or through unauthorized third parties, or to interfere or cause to interfere with software operated by GFOS or GFOS subcontractors, or to penetrate data networks of GFOS or GFOS subcontractors without authorization.
- 4.4 The customer undertakes to back up its data in machine-readable form at intervals appropriate to the application, at least once a day, and ensures that the data can be recovered with reasonable effort; this does not apply if the customer contractually makes use of the GFOS knownCloud and the data backup is a contractual service of GFOS. The Customer shall protect the Customer Cloud and all

systems with which it accesses the respective SaaS Services by appropriate technical and organizational measures and shall regularly review these measures to ensure that the systems used by GFOS for the provision of services remain intact, in particular against access by unauthorized third parties, viruses, Trojan horses or similar malware.

- 4.5 GFOS is entitled to temporarily or permanently block the Customer's access to the respective SaaS Service if there are concrete indications that the Customer violates or has violated this GTC Cloud, the SaaS Agreement and/or applicable law, or if GFOS has another legitimate interest in blocking (e.g. maintenance measures to restore IT security, defense against cyber attacks, violation of license terms). When deciding on a blocking, GFOS will take appropriate account of the legitimate interests of the customer and threaten or announce a blocking in writing in advance with a reasonable amount of notice. In individual cases, a blocking can also be carried out without prior threat/announcement by GFOS in order to protect the legitimate interests pursued by GFOS with the blocking, unless a prior threat/announcement is required by law or for other legal reasons. The blocking of access does not also count as termination of the SaaS contract. GFOS may only maintain the blocking of access without termination for a reasonable period of time, in the event of a breach of contract by the Client, a maximum of three (3) months. GFOS' claim to payment of the remuneration for the SaaS services remains unaffected during the blocking. In the event of a breach of contract, the customer has a right to re-grant access after proving that he has ceased the use in violation of the contract and has prevented future use in violation of the contract.

## § 5 Permissible Scope of Use, Rights of Third Parties

- 5.1 The SaaS Services may only be used by Customer and Authorized Group Companies and only for the purposes agreed in the SaaS Agreement. The Customer may access the respective SaaS services during the term of the SaaS contract and use the agreed functionalities in accordance with the contract. The customer does not receive any additional rights, in particular to the GFOS software, the

associated IT services or the infrastructure services provided in the GFOS knownCloud, if any. Any further use of the SaaS Services requires the prior written consent of GFOS. GFOS reserves all rights to work products, trademarks, know-how and other intellectual property rights that exist for the respective SaaS services or that arise in connection with the use of the SaaS services.

- 5.2 In particular, the Customer may not use the SaaS Services beyond the agreed scope of use or allow them to be used by third parties or make them available to third parties. In particular, the Customer is not permitted to reproduce the SaaS Services or parts thereof or to sell, transfer, rent or lend the SaaS Services for a limited period of time. GFOS is entitled to take appropriate technical measures to protect against non-contractual use.
- 5.3 The SaaS Service may contain components of third-party software (including open source software), which will then be subject to separate license terms of the respective rights holders. The respective license terms of the rights holders are made available to the customer upon request and take precedence over the rights of use of this GTC Cloud; this also applies to warranty and liability exclusions of the Open Source Software license terms. Open Source Software and the separately applicable license conditions will be displayed, if necessary, in the respective service catalog and/or in that of GFOS *gfos* *readme.txt* software, *notices.txt* or *licenses.txt* and/or otherwise made available to Customer. The source code of the Open Source Software may be available under the link provided there or on request. Insofar as the license terms of an open source software require a right to edit for the customer's own purposes and thus to reverse engineer for the purpose of troubleshooting software accessing this open source software, GFOS hereby grants this to the customer; conflicting provisions in the respective SaaS contract shall not apply in this respect.
- 5.4 If a third party asserts justified claims against the Customer due to the infringement of copyrights, patents or other industrial property rights by GFOS or by the SaaS Services provided by GFOS and used by the Customer in

accordance with the contract, and the use of the SaaS Services is prohibited by the Customer in whole or in part, GFOS shall be liable to the Customer within the period specified in § 11.9 as follows, if and to the extent that GFOS is at fault in this regard:

- 5.5 GFOS is only obligated to deliver the SaaS Services free of any rights or claims of third parties that (i) hinder, restrict or exclude the use of the SaaS Services in accordance with the contract, (ii) which are based on industrial property rights or other intellectual property rights, and (iii) which GFOS was aware of at the time of conclusion of the contract or was not aware of as a result of gross negligence, provided that the right or claim is based on industrial property rights or other intellectual property
- a) under the law of the Federal Republic of Germany, provided that the customer of GFOS has its registered office or branch there; or
  - b) under the law of a third country only if GFOS has expressly agreed in writing with the Customer to use the SaaS services of GFOS in this third country.
- 5.6 GFOS shall, at its own option and expense, (i) provide the Customer with the opportunity to use the SaaS Services, or (ii) modify the SaaS Services in such a way that the third party's intellectual property rights are not infringed, but the SaaS Services substantially correspond to the agreed quality, or (iii) refund the remuneration paid for the SaaS Services for the period for which they can no longer be used in accordance with the contract. In addition, GFOS shall indemnify the Customer against legally established claims by third parties due to the infringement of intellectual property rights due to the contractual use of the SaaS Services as well as from the costs of legal defense caused thereby within the limits of the limitation of liability agreed in these GTC Cloud.
- 5.7 The customer will provide reasonable support to GFOS in all mitigation measures. The above obligations of GFOS pursuant to § 5.6 shall only exist to the extent that the Customer notifies GFOS immediately in writing of the
- assertion or threat of such claims, all out-of-court and judicial defensive measures and settlement negotiations are reserved for GFOS or are only conducted in written agreement with GFOS, the Customer immediately makes available any information requested by GFOS for the assessment of the situation or defense of the claims, and adequate support. The Customer undertakes to give GFOS and, if applicable, affected upstream suppliers of GFOS (e.g. software manufacturer from whom GFOS has obtained third-party software) the opportunity to participate in any legal dispute. The Customer shall support GFOS and, if applicable, the upstream suppliers of GFOS in all respects in the conduct of such a legal dispute. The Customer shall refrain from actions that could impair the legal position of GFOS or the upstream suppliers of GFOS. If the Customer discontinues the use of the SaaS Services for damage mitigation or other important reasons, the Customer is obliged to inform the third party that the cessation of use does not imply an acknowledgment of an infringement of intellectual property rights.
- 5.8 Claims by the Customer shall also be excluded insofar as the infringement of intellectual property rights is caused by the Customer's specifications, by an application of the SaaS Services that was not foreseeable by GFOS, by the use of the SaaS Services in an unagreed environment of use or by the fact that the SaaS Services are modified by the Customer or by third parties commissioned by the Customer or by third parties commissioned by the Customer or are mixed or used together with products or IT services not supplied by GFOS, unless such an infringement of intellectual property rights would have been caused even without such application, modification or use.
- 5.9 GFOS is entitled to check the actual scope of the Customer's license on the basis of the license sizes stored in the system and the number of active users ("license measurement"). The aim of the license measurement is to determine whether the agreed licenses are being used correctly. After completion, the customer receives a list of the license data determined as well as any resulting compensation adjustments. Objections to the

settlement from the license measurement must be submitted within 30 days of receipt at least in text form. If no notification is made within this period, GFOS is entitled to settle the bill on the basis of the statement.

## § 6 Availability of the GFOS knownCloud

6.1 The availability of the GFOS knownCloud per contract year (12 months) is at least ninety-nine point six percent (99.6%) (the "**Availability**" or short "**V**"). Availability refers exclusively to the availability owed at the service transfer point of the server (outgoing router of the data center used by GFOS). Impairments in the area of data transmission from this service transfer point to the customer and/or in the area of the customer's IT systems itself shall not be taken into account.

6.2 If the GFOS Software is provided in a Customer Cloud, the Customer must agree on the availability of the Customer Cloud with the third-party provider. In this case, GFOS is only obliged to provide the services described in the service catalog if there are errors in the GFOS software.

6.3 "Availability" means the ratio of (i) the difference between System Uptime and Unavailability during a SaaS Contract Year and (ii) the System Uptime during that SaaS Contract Year, expressed as a percentage.

6.4 The "system uptime" (short "**SL**") is the total amount of time during a SaaS contract year (in minutes) during which the customer is able to access the GFOS knownCloud in accordance with the access protocols. Initially, a system operating time of 24 hours per day, 365 days a year, is owed. However, the following periods are not to be taken into account when determining the system operating time:

- a) Disruptions in or due to the condition of the infrastructure or software not to be provided by GFOS, in particular disruptions for which the Customer is responsible, such as failures caused by inbound/outgoing hacking attacks (DDoS/viruses) due to faulty and/or inadequate maintenance of the Customer's own hardware and software;

- b) Disruptions or other events for which GFOS is not responsible, in particular external DNS and routing disruptions, attacks on the network or mail infrastructure (DDoS/viruses) and failures of parts of the Internet beyond the control of GFOS;

- c) Periods of Planned Unavailability in accordance with § 6.6 below;

- d) in cases of force majeure, where "**force majeure**" is any unforeseen, extraordinary event beyond the control of GFOS by which GFOS is unavoidably prevented in whole or in part from fulfilling its contractual obligations, and which could not have been averted or rendered harmless even by reasonable care on the part of GFOS. Force majeure in this sense is considered to be, in particular: unforeseen political events or unrest, including war, terrorist attacks, fire damage, strikes and lawful lockouts, as well as business closures through no fault of their own, unavoidable hacker and/or cyber attacks by third parties, such as DDoS attacks or ransomware attacks, natural disasters, such as floods, government orders, epidemics and pandemics, such as the Covid19 virus;

- e) in the event of impairments of data transmission outside the data network operated by GFOS or the GFOS subcontractors, e.g. due to line failures or disruptions at other providers or telecommunications providers;

- f) Faults that are due to the improper use or repair of the customer's hardware or software, or systems and software that have not been installed, operated and/or maintained in accordance with the manufacturer's guidelines or specifications.

6.5 "Unavailability" (short "**NV**") means the time during a SaaS contract year (in minutes) during which, although there should be system uptime, the customer is unable to access the GFOS knownCloud according to the access protocols. The availability is calculated as follows:

$$V \text{ (in \%)} = (SL - NV) : (SL) \times 100$$



Calculation results must be rounded up or down to one decimal place.

- 6.6 The following maintenance windows are agreed for periodic, planned or unplanned maintenance work on the server system or infrastructure of GFOS knownCloud, which is necessary for the maintenance and security of ongoing operations, as well as for the execution of data backups and the installation of updates or upgrades:

- a) Scheduled maintenance windows: daily, 11:00 p.m. to 5:00 a.m. and all day on up to two Sundays in a calendar quarter (with prior notice).
- b) Unplanned maintenance windows: In addition, further maintenance windows can be agreed between GFOS and the customer as required. In individual cases, GFOS also remains entitled to carry out maintenance work without an agreement with the customer if this is absolutely necessary for the maintenance and safety of ongoing operations and prior coordination with the customer is not possible due to time constraints. GFOS will inform the customer about the maintenance work at the latest after completion of the maintenance work.

The periods of planned and unplanned maintenance windows are collectively referred to as **"planned unavailability"**.

- 6.7 In times of planned unavailability, the customer has no legal claim to use the GFOS knownCloud, even if the GFOS knownCloud is available in whole or in part at these times. In particular, if a disruption or failure occurs when using the GFOS knownClouds during times of planned unavailability, the customer is not entitled to warranty or damages.

## § 7 Subcontractors

GFOS remains entitled to have parts of the SaaS services provided by subcontractors. In the provision of SaaS services, GFOS also reserves the right to draw on human resources as well as technical, professional and/or administrative support services provided by

other companies in the GFOS Group and accordingly to pass on order-related confidential information of the customer. All companies of the GFOS Group are obliged to secrecy. Notwithstanding the foregoing, the responsibility for the provision of the SaaS Services remains entirely with GFOS. Any claims for performance and liability can therefore only be asserted against GFOS, but not against other companies of the GFOS Group.

## § 8 Use of SaaS Services by the Customer, Participation Services

- 8.1 The customer supports the activities of GFOS necessary for the provision of services. This includes, in particular, the timely and complete provision and procurement of all necessary information for the proper provision of services. The Customer shall ensure that all cooperation services required for the provision of the SaaS Services are provided in a timely manner, in full and free of charge for GFOS. The Client shall ensure that the Client's employees who support GFOS in the provision of services are available at the agreed times. The customer is responsible for ensuring that its employees have the necessary knowledge, skills and experience to perform the tasks assigned to them. The customer's obligations to cooperate include, in particular, creating all prerequisites in the area of its operating sphere that are necessary for GFOS to properly provide SaaS services.

- 8.2 Customer shall use the SaaS Services solely for its internal business purposes or, where applicable, those of its Authorized Group Companies.

- 8.3 The Customer is responsible for monitoring the use of the SaaS Services and shall immediately notify GFOS in writing of any use that exceeds the contractual agreements, in particular if the agreed employee licenses are exceeded. In this case, the customer is obliged to sign an extension agreement that shows the additional use and the additional remuneration. The corresponding remuneration shall arise from the day on which the exceedance occurred. GFOS is entitled to check the contractual conformity of the use of the SaaS services, in particular compliance with the contractually agreed employee licenses.

- 8.4 The customer is responsible for the proper operation of the customer cloud as well as the data backup in the customer cloud. The customer maintains its internal systems and technical environments/equipment itself. These must comply with the minimum specifications published by GFOS and to be communicated by GFOS upon request in order to enable GFOS to provide services.
- 8.5 Customer shall supervise the provision of the SaaS Services by GFOS in accordance with its obligations under the SaaS Agreement.
- 8.6 The Client shall retain its own records in accordance with applicable law and, in particular, shall manage all original receipts of the information supplied to GFOS itself.
- 8.7 GFOS' SaaS services are based on the information provided by the customer. The customer is responsible for the accuracy and timely delivery of this information and therefore in particular for adverse effects caused by delays for which he is responsible as well as his own instructions.
- 8.8 Unless otherwise agreed, the Customer is responsible for communication links, including the Internet, in the event that the SaaS Services require the use of communication links to establish the connection with GFOS. The customer bears the installation, use, service and repair costs for the communication links. GFOS is not responsible for the availability or reliability of the communication links used by Customer to gain access to the SaaS Services.
- 8.9 In the context of the use of the SaaS Services by employees of the Customer, the Customer must ensure that the obligations arising for the Users from the SaaS Agreement are complied with. GFOS may block a User's access to the SaaS Services in accordance with § 4.5 if GFOS has reasonable grounds to suspect that this User has violated this T&C Cloud or is otherwise using the SaaS Services in a manner contrary to the Contract.
- 8.10 GFOS does not provide legal, accounting or tax advice to the Client and the Client relies solely on its own advisors in respect of such advice.
- 8.11 The Customer now and in the future has unlimited power of attorney from its Authorized Group Companies to use GFOS SaaS Services to execute the SaaS Agreement and obliges its Authorized Group Companies to properly perform the obligations contained in this SaaS Agreement. Furthermore, the customer has all necessary licenses, permits and approvals for the provision of his cooperation services.
- 8.12 The cooperation services to be provided by the customer represent a real contractual obligation towards GFOS and not just an obligation. As long as the customer's cooperation services are not provided in accordance with the contract, GFOS shall be released from the relevant performance obligation in whole or in part to the extent that GFOS is dependent on the respective cooperation or provision. The corresponding performance deadlines are postponed by a reasonable period of time. GFOS is not responsible for service disruptions caused by the non-contractual provision of cooperation services by the customer. Additional expenses incurred by GFOS as a result of the non-contractual provision of the cooperation services may be invoiced by GFOS separately according to expenditure. Any further claims of GFOS remain unaffected.

#### **§ 9 Remuneration for SaaS Services**

- 9.1 The contracted SaaS fees will commence in full one (1) month after the signing of the contract. Deviating regulations must be made in writing.
- 9.2 All prices of GFOS are generally in EURO plus VAT to be borne by the customer in the amount prescribed by law. The VAT will be shown separately in the invoice. The prices and price surcharges shall be determined in accordance with the GFOS price list generally valid at the time of conclusion of the contract, unless otherwise agreed in writing.
- 9.3 GFOS invoices are payable without any deduction (e.g. cash discount) within fourteen (14) calendar days of the invoice date, unless otherwise agreed in writing. The date of



payment is the date of receipt of money by GFOS or crediting to the account of GFOS.

- 9.4 GFOS will offer and invoice separately for one-off services or work, in particular in the context of the necessary implementation of the SaaS services that the Customer wishes, but which are not part of the SaaS services agreed in the SaaS contract, on the basis of a separate agreement in accordance with the applicable price list.
- 9.5 In the event of changes in market conditions, significant changes in procurement costs, changes in VAT or price increases by subcontractors, GFOS is entitled to adjust the remuneration for the SaaS Services. However, such a price adjustment is permitted no earlier than twelve (12) months after the conclusion of the SaaS contract and only once a year. GFOS will notify the Customer of the change in writing no later than six (6) weeks before it takes effect. In the event that Customer does not accept the Price Increase, both GFOS and Customer shall be entitled to terminate the SaaS Agreement in its entirety with one (1) month's notice to the end of the calendar month, provided that the price increase is more than ten percent (10%) of the previous price. In the event of termination, the prices that have not been increased until the termination takes effect shall apply.
- 9.6 If the customer concludes a contract with a fixed term of at least 36 months, he is entitled to receive a discounted price compared to the regular list price. The price advantage granted only applies as long as the contract actually reaches the full term of 36 months.
- 9.7 If the Customer terminates a contract with a fixed term of 36 months before the expiry of 24 months, GFOS shall be entitled to recalculate the price for the actual term of the contract in accordance with the applicable list price and to invoice the Customer. The recalculation will be made exclusively in the amount of the difference between the originally granted discounted price and the regular list price. This provision does not constitute a contractual penalty, but merely compensates for the price advantage originally granted. A price adjustment will not take place if the

customer cancels for good cause for which GFOS is responsible.

- 9.8 The customer can only offset claims that have been legally established or undisputed. He is only entitled to assert rights of retention against GFOS if the counterclaim asserted is undisputed or legally established. The assignment of claims against GFOS is excluded. However, the above does not apply within the scope of application of Section 354a of the German Commercial Code.

#### **§ 10 Deficiencies in performance**

- 10.1 A defect in SaaS services exists if they do not have the contractually agreed quality. The contractual nature of the SaaS Services results from the specifications in the service catalog of the respective SaaS Services. If the condition has not been agreed, it must be assessed in accordance with the statutory regulation whether a defect exists or not.
- 10.2 The Customer must report any defects in the SaaS Services to GFOS immediately and in writing (e-mail is sufficient), stating the information known to the Customer and relevant for their identification. The report must describe in detail the symptoms that have occurred, the program functionality and the system and hardware environment and contain the information relevant for remedying the defects, such as the number of affected users, description of the system and hardware environment and any third-party software that may be loaded simultaneously.
- 10.3 The customer must take the measures within the scope of what is reasonable to make it easier to determine the defects and the causes. GFOS will determine the cause of a defect at its own expense. GFOS will report regularly to customers on the status and success of these efforts. If the determination of the cause leads to the conclusion that a disruption of the SaaS Services is not due to a defect for which GFOS is responsible, GFOS only has to remedy the disruption if the customer agrees to bear the associated costs.

- 10.4 GFOS may, at GFOS' option, remedy defects in the SaaS Services by eliminating, circumventing or replacing them. If GFOS does not successfully complete the rectification of the defect within a reasonable period of time, the Customer may set a grace period for GFOS. After the expiry of the grace period, Customer may request a reasonable reduction in remuneration or terminate the SaaS Agreement; the customer's right to self-performance pursuant to Section 536a (2) of the German Civil Code (BGB) is excluded. There is no need to set a grace period for the remedy of defects if this is impossible, if it is refused or unreasonably delayed by GFOS, if there are reasonable doubts as to the prospects of success or if there is an unreasonableness for the customer for other reasons.
- 10.5 An immediate reduction of the current remuneration for the SaaS services is only permissible if the reduction claim is undisputed or legally established; the customer reserves the right to reclaim any overpaid amounts in accordance with the principles of unjust enrichment (§§ 812 et seq. of the German Civil Code).
- 10.6 The Customer's rights due to defects in the SaaS Services shall be excluded insofar as the Customer makes or has made changes to the SaaS Services without the consent of GFOS, unless the Customer proves that the changes will not have an unreasonable impact on GFOS' analysis and elimination of the defects.
- 10.7 If GFOS provides SaaS services in the identification or elimination of defects without being obliged to do so, GFOS may demand remuneration according to expenditure if the customer has at least grossly negligently failed to recognize the absence of a defect.

## § 11 Liability

- 11.1 GFOS is liable without limitation for damages caused intentionally or through gross negligence, for damages resulting from injury to life, limb and health, as well as for damages that justify an obligation to pay compensation pursuant to § 1 ProdHaftG.
- 11.2 In the event of simple negligence, GFOS shall only be liable to the extent that it is a breach

of essential contractual obligations, the fulfilment of which is essential for the proper execution of the SaaS contract in the first place and on the fulfilment of which the Client was entitled to rely. In all other respects, liability for damage caused by slight negligence is excluded. § 11.1 shall remain unaffected.

- 11.3 In the event of a simple negligent breach of material contractual obligations by GFOS, the obligation to pay compensation is limited to the foreseeable damage typical for the contract. The foreseeable damage typical for the contract is the damage that GFOS foresaw at the time of conclusion of the contract as a possible consequence of a breach of contract or that GFOS should have foreseen if it had exercised customary care. In addition, indirect and consequential damages resulting from a non-contractual provision of services are only compensable to the extent that such damages are typically to be expected when the SaaS services are used as intended. § 11.1 shall remain unaffected.
- 11.4 The liability of GFOS in the cases of § 11.3 is limited to two hundred and fifty thousand euros (€ 250,000.00) per claim. If, in the Client's opinion, the foreseeable contractual risk exceeds this maximum liability amount by more than negligible, GFOS is prepared to agree on an appropriately higher amount of liability in return for appropriate remuneration for the assumption of risk, provided that insurance cover can be agreed for this.
- 11.5 In the event of data loss or destruction, GFOS shall only be liable if GFOS has caused the destruction intentionally, through gross negligence or due to a breach of a material contractual obligation. In the above case, GFOS' liability for the simple negligent breach of a material contractual obligation is limited to the amount of the damage that would have occurred even if the customer had properly backed up the data.
- 11.6 Even if the Customer is entitled to grant access to the respective SaaS Service to its Authorized Group Companies, the Customer remains the sole contractual partner of GFOS and claims against GFOS can be asserted solely by the Customer. Customer shall indemnify GFOS against all claims in the event

that Authorized Group Companies assert claims directly against GFOS in connection with the SaaS Services.

- 11.7 Liability for damages due to a defect already existing at the time of conclusion of the contract is excluded in accordance with § 536a BGB.
- 11.8 The above provisions on the limitation of liability also apply to the personal liability of the employees, representatives and bodies of GFOS.
- 11.9 Claims for damages and claims for reimbursement of futile expenses of the customer shall become statute-barred within one (1) year; with regard to the beginning of the limitation period, § 199.1 of the Civil Code applies. This does not apply to claims for damages and claims for reimbursement of futile expenses due to injury to life, limb or health, to claims under the Product Liability Act and to the violation of a quality guarantee. This also does not apply to claims based on an intentional or grossly negligent breach of duty by GFOS or a legal representative or vicarious agent of GFOS.
- 11.10 A reversal of the burden of proof is not associated with the above provisions.

## § 12 Confidentiality, Data Protection, References

- 12.1 The Client undertakes to maintain the secrecy of such facts, documents and knowledge which come to its knowledge in the course of conducting its business relations with GFOS and which contain technical, financial, business or market-related information about the company GFOS, insofar as GFOS declares the respective information to be in need of secrecy or has a manifest interest in its secrecy (hereinafter collectively referred to as "**confidential information**"). The Customer shall use the confidential information exclusively for the purpose of the contractual implementation and execution of the contractual relationship with GFOS as well as the individual contracts based thereon.

- 12.2 The disclosure of confidential information by the customer to third parties requires the express and prior written consent of GFOS.

- 12.3 The duty of confidentiality pursuant to § 12.1 above does not apply if the respective confidential information can be demonstrated:

- a) is or becomes generally known without the customer's involvement, or
- b) was already known to the customer or is made known by a third party authorized to pass it on, or
- c) is developed by the customer without the involvement of GFOS and without the use of other information or knowledge obtained through the contractual contact, or
- d) must be disclosed due to mandatory legal regulations or court or official orders.

- 12.4 The customer is responsible for compliance with all relevant statutory data protection regulations, in particular for the lawfulness of the data transfer and data processing of personal data of its employees and other data subjects in connection with the provision of services by GFOS. GFOS will process the Customer's personal data within the scope of the contractually owed service provision and in accordance with the provisions of data protection law or the provisions of the SaaS Agreement.

- 12.5 The parties process personal data in compliance with the applicable data protection regulations, in particular Regulation (EU) 2016/679 (General Data Protection Regulation, "GDPR").

- 12.6 Personal data of the customer will be collected, stored, processed and used by GFOS if, to the extent and for as long as this is necessary for the establishment, performance or termination of the SaaS contract with the customer. Further collection, storage, processing and use of the customer's personal data will only take place if this is required or permitted by law or if the customer has consented. The Client is aware that in order to carry out pre-contractual

measures and fulfil the contract with the Client, it is necessary to collect, process and use the contact details of the Client's contact persons (name, e-mail addresses, etc.) on the basis of Art. 6 (1) (b) GDPR. In particular, GFOS is entitled to transmit the data to third parties if and to the extent that this is necessary for the implementation of pre-contractual measures and the fulfilment of the contract (e.g. for the provision of services, invoicing or customer service) in accordance with Art. 6 (1) (b) GDPR or fulfilment of a legal obligation within the meaning of Art. 6 (1) (c) GDPR. GFOS will also forward this data to third parties (e.g. debt collection agencies) for the purpose of enforcing claims in accordance with Art. 6 (1) (b) and/or (f) GDPR.

12.7 GFOS' data protection information is available at  
<https://www.gfos.com/de/datenschutz>.

12.8 Insofar as GFOS processes personal data on behalf of the Customer in the context of the performance of the SaaS Agreement, GFOS will only process the personal data within the scope of the contractually owed service provision or other written instructions of the Customer and in accordance with the data protection regulations. The details of the order processing will be determined by the parties in a separate "Agreement on the Processing of Personal Data on Order". In its area of application, this takes precedence over the provisions of this GTC cloud.

12.9 GFOS is entitled to refer to the contractual relationship with the customer in an appropriate form in brochures and publications (e.g. reference lists), this includes the use of the customer's company logo. If the customer does not agree to this, he will inform GFOS accordingly in writing or in text form.

### § 13 Reservation of self-supply, force majeure and other obstructions

13.1 If, for reasons beyond GFOS' control, GFOS does not receive the necessary services from the subcontractors from GFOS for the provision of the service owed by GFOS, or does not receive them correctly or in a timely manner, despite proper and

sufficient coverage prior to the conclusion of the contract with the customer, or if force majeure events (as defined in § 6.4 d) occur), GFOS shall inform the customers in writing or in text form in good time. In this case, GFOS shall be entitled to postpone the SaaS Services for the duration of the hindrance or to withdraw from the SaaS Agreement in whole or in part due to the part of the SaaS Agreement that has not yet been fulfilled, insofar as GFOS has complied with the above obligation to provide information.

13.2 The Customer shall only be entitled to terminate the SaaS Agreement after the fruitless expiry of a reasonable grace period due to the part that has not yet been fulfilled if it is objectively unreasonable for the Customer to continue adhering to the SaaS Agreement and the force majeure event has already lasted for more than 3 months. Further claims by the customer, in particular those for damages, are excluded in this case. The customer is obliged to remunerate SaaS services provided up to that point in accordance with what has been agreed in this respect.

### § 14 SaaS Contract Term, Termination, Termination of Contract

14.1 Unless otherwise provided by the parties, the SaaS Agreement shall have a minimum term of three (3) years ("**Minimum**"), which begins with the conclusion of the SaaS contract. Thereafter, the SaaS Agreement shall be extended by twelve (12) months at a time, unless it is terminated in writing with a notice period of three (3) months to the end of the Minimum Contract Term, thereafter at the end of the respective extension.

14.2 Either party is entitled to terminate the SaaS Agreement at any time for cause. Good cause exists if there are facts on the basis of which, taking into account all the circumstances of the individual case and weighing up the interests of the other party, the terminating party can no longer be expected to continue the SaaS contract ("**important reason**"). If the good cause is the violation of a contractual obligation, termination is only permissible after the unsuccessful expiry of a period set for

remedial action or after an unsuccessful warning, unless a deadline is dispensable pursuant to Section 323 (2) of the German Civil Code.

- 14.3 In particular, GFOS is entitled to terminate for good cause (i) if Customer is in default with the payment of at least two (2) monthly invoices or (ii) if the applicable import, export control or sanctions law does not allow GFOS to provide the SaaS Service.
- 14.4 Upon termination of the SaaS Agreement for any reason
- a) all rights of use and other rights granted to Customer under this SaaS Agreement shall automatically terminate;
  - b) any Confidential Information provided by either party to the other party under this SaaS Agreement or in connection with the terminated SaaS Services shall be returned at the request of such party; this does not apply to correspondence between the parties or to other documents to be retained by the respective party in accordance with the statutory provisions;
  - c) all unpaid remuneration and expenses are due for payment immediately.
- 14.5 Upon receipt of a notice of termination by GFOS or after a self-termination by the Customer, the Customer shall immediately ensure that its data managed in the GFOS knownCloud or in the respective SaaS service is backed up and migrated to a system of the Customer at the latest upon termination of the SaaS contract. Upon termination of the SaaS Agreement, GFOS will delete the Customer's data in accordance with the legal obligations. Upon request and for separate remuneration in accordance with the applicable service rates, GFOS will support the customer in the context of the migration.
- 14.6 Insofar as GFOS is commissioned by the customer to support the migration, GFOS will make the customer's data available for download in a standard format (standard market

format) on a data carrier or digitally in consultation with the customer

## § 15 Final Provisions

- 15.1 The place of performance for all contractual obligations is the registered office of GFOS.
- 15.2 GFOS is entitled at any time to transfer the rights and obligations arising from the SaaS contract to companies of the GFOS Group.
- 15.3 All agreements, ancillary agreements, assurances, amendments and additions to the SaaS Agreement (including this GTC Cloud) as well as other declarations in connection with the SaaS Agreement that trigger a legal consequence (e.g. setting of deadlines, withdrawal) must be in writing in order to be effective. This also applies to changes or additions to or the waiver of this written form clause. If written form is required, it is also ensured by transmissions by fax, digital / electronic signatures and signatures (e.g. DocuSign). However, the telecommunicative transmission of the relevant declarations by e-mail is not sufficient for this purpose. The priority of an individual agreement (§ 305b BGB) remains unaffected.
- 15.4 The place of jurisdiction for all legal disputes of the parties arising out of or in connection with the SaaS Agreement is, to the extent permitted by law, Essen, Germany; However, GFOS is also entitled to sue the customer at its general place of jurisdiction. The above jurisdiction agreement does not apply to the extent that a different, exclusive place of jurisdiction results from the law.
- 15.5 The SaaS Agreement (including this T&C Cloud) is governed by the laws of the Federal Republic of Germany. The provisions of private international law and the UN Convention on Contracts for the International Sale of Goods (CISG) do not apply.
- 15.6 Should any provision of this GTC Cloud or the SaaS Agreement be or become void in whole or in part, or should a gap in the SaaS Agreement or its supplements become apparent, this shall not affect the validity of the remaining provisions.

