General Terms and Conditions of AGILITA Deutschland GmbH for AGIL Software (SaaS)

1. General

1.1. Scope of Application

1.1.1. These General Terms and Conditions («GTC») apply exclusively to Customer's use of AGILITA's standard software that AGILITA makes available as Software as a Service («SaaS») under a Software Use Agreement in accordance with these GTC.

1.1.2. There are no oral collateral agreements. Amendments and supplements to the Software Use Agreement and to these GTC require Text Form (Section 14.1 GTC).

1.1.3. AGILITA renders its services in its own name and for its own account. No contractual relationship arises between the Customer and SAP in respect of the SAP Business Technology Platform («SAP BTP») used by AGILITA; SAP's terms do not apply to the Customer. SAP BTP is a resource used by AGILITA and accessible by the Customer only indirectly for the purposes of using the Software. The Customer receives neither its own instance nor its own subscription of the SAP BTP. Third-party software and services procured by the Customer itself — in particular the Customer's SAP backend systems connected to the Software — are subject exclusively to the terms of use and contractual terms of the relevant manufacturer; the Customer shall maintain the agreements and licenses required for this purpose directly and at its own cost, and AGILITA owes no services in this respect.

1.1.4. Other services of AGILITA, such as professional services, software installation, parameterization or adaptation of software, briefings or training, are not the subject matter of these GTC and require a separate agreement.

1.1.5 AGILITA does not conclude Software Use Agreements with consumers within the meaning of § 13 BGB, and these GTC do not apply to consumers.

1.2. Customer's General Terms and Conditions

Any general terms and conditions of the Customer which deviate from and/or supplement these terms (including purchasing conditions) are hereby expressly rejected. They shall not apply and shall not become part of the Software Use Agreement even where AGILITA performs an order of the Customer without objecting to the Customer's terms and conditions referred to in that order.

2. Services and Rights of Use

2.1. Subject Matter

2.1.1. Where AGILITA and the Customer have concluded a Software Use Agreement, AGILITA shall make available to the Customer for use, on its SAP BTP environment, the Software specified in the Software Use Agreement together with the associated online documentation in electronic form. Scope, modules and usage limits are set out in Annex 1 of the Software Use Agreement.

2.1.2. AGILITA operates the Software as a cloud-native application on an SAP BTP environment procured by it. The Software is operated in a multi-tenant shared environment. AGILITA shall ensure the logical separation of Customer data by way of appropriate technical and organizational measures. Access is granted through web interfaces (e.g. SAP Fiori) and the mobile application provided by AGILITA (the «Mobile App»). The Software is not supplied on data carriers.

2.2. Version and Changes

2.2.1. AGILITA shall make the Software available in the current version generally released by AGILITA from time to time.

2.2.2. AGILITA is entitled to further develop, update and modify the Software and the environment used for its operation, provided that the contractually owed functional scope is substantially preserved and the modification is reasonable for the Customer having regard to AGILITA's interests (§ 308 no. 4 BGB). The Customer has no claim to the retention of any particular version, any particular functional scope, any particular user interface or any particular technical operating environment. Where a change results in a material impairment of the contractually agreed functional scope, AGILITA shall inform the Customer at least thirty (30) days in advance in Text Form, and the Customer may in that case terminate the Software Use Agreement with effect from the date on which the change takes effect, by notice in Text Form given within thirty (30) days of AGILITA's notification. Changes made by SAP to the SAP BTP are outside AGILITA's sphere of influence; AGILITA is entitled to adapt the Software and its operation accordingly. Where SAP discontinues a service required for operation, or modifies such a service in

such a way that the rendering of services becomes technically or economically unreasonable for AGILITA, AGILITA is entitled to migrate the service to another suitable environment or to terminate the Software Use Agreement on three (3) months' notice.

2.2.3. Where a version is replaced by a new version, the right to use the replaced version expires upon its decommissioning by AGILITA.

2.3. Provision

2.3.1. AGILITA's performance obligation is deemed to have been discharged upon activation of access to the Software. Provision presupposes that the Customer has furnished the Customer Provisions in accordance with Section 5.5 of these GTC; delays resulting from their absence shall not be to AGILITA's detriment. Any date specified for provision is binding only where it has been expressly designated as binding in the Software Use Agreement.

2.3.2. The provision comprises neither installation, nor any further implementation support, nor any training of the Customer's employees by AGILITA. Such additional services are to be agreed separately between AGILITA and the Customer.

2.4. Right of Use

2.4.1. Against payment in full of the agreed Fees, AGILITA grants the Customer, for the term of the Software Use Agreement, a non-exclusive, non-transferable and non-sublicensable right to use and to access the Software specified in the Software Use Agreement and the documentation for its own internal business purposes in accordance with their intended use, and to install the Mobile App.

2.4.2. The content and scope of the intended use are governed by the Software Use Agreement and these GTC, in particular by the usage limits specified therein (notably the number of Named Users, location and systems). Use by or for affiliated companies (group companies) of the Customer is excluded.

2.5. Named Users and Additional Licensing

2.5.1. Use of the Software is permitted only to named natural persons on the Customer's side who have been notified to AGILITA in advance and who directly use functionalities of the Software («Named Users»). The number of Named Users is to be specified in the Software Use Agreement; in the absence of such specification, the right of use is deemed to have been granted for one (1) Named User. The right of use is person-related and not device-related: a Named User may use the Software via several end devices (web access and Mobile App). The sharing of a single access by several persons and the disclosure of access credentials are not permitted.

2.5.2. The Customer is obliged to notify AGILITA without undue delay in Text Form of any imminent or actual excess of the metric on which the Fees for use of the Software are based. In the event of an excess use, the Customer owes Fees for the entire period of the excess. In the absence of any other agreement, the Fees for excess use shall be determined in accordance with AGILITA's price list applicable at the relevant time. AGILITA is entitled to verify the actual number of Named Users on thirty (30) days' prior notice in Text Form, during normal business hours, not more than once in any twelve (12) month period unless a previous verification disclosed an excess, and in a manner which does not unreasonably disrupt the Customer's operations. AGILITA shall bear the costs of the verification unless it discloses an excess of more than five per cent (5%), in which case the Customer shall bear the reasonable costs. Information obtained in the course of a verification constitutes Confidential Information of the Customer within the meaning of Section 12, and any personal data processed in that connection shall be processed in accordance with the DPA.

2.6. Reproduction

The Customer receives no copy of the server-side Software and is not entitled to reproduce it. The Mobile App may be installed on the Named Users' end devices and reproduced to the extent necessary for that purpose; any further reproduction is not permitted. The Customer may make copies of the documentation for internal purposes to the extent necessary. AGILITA's copyright and proprietary rights notices may neither be altered nor removed. The rights of the Customer under §§ 69d and 69e UrhG remain unaffected.

2.7. Disclosure to Third Parties and Transfer

2.7.1. The Customer is not entitled to make the Software or parts thereof accessible to third parties on a permanent or temporary basis, to rent, lease, assign or otherwise transfer it to third parties, or to grant sublicences.

2.7.2. Where the Customer wishes the Software to be operated for its own purposes not by itself but by a third-party undertaking (e.g. a hosting provider or outsourcing undertaking, including affiliated companies of the Customer), this is permitted only with AGILITA's prior written consent, which shall not be

unreasonably withheld, having regard to AGILITA's legitimate interests.

2.8. Acceptable Use and Suspension

2.8.1. The Customer shall not use the Software unlawfully, in breach of third-party rights, or in a manner which impairs the integrity, security or availability of the environment operated by AGILITA or of other customers' use of it, and shall procure the same from its Named Users.

2.8.2. AGILITA may suspend access to the Software in whole or in part, with immediate effect and without prior notice where necessary, where there is a substantiated security threat, unlawful use, or a material breach of this Section; AGILITA shall notify the Customer without undue delay, limit the suspension to what is necessary, and restore access once the cause has been removed. During any suspension under this Section or under Section 3.3.2, the Customer retains read-only access for the purpose of exporting its Production Data.

3. Fees

3.1. Annual Usage Fee

For the provision of the Software specified in the Software Use Agreement and the granting of the rights of use for the intended use, the Customer shall pay AGILITA the agreed Fees. In the absence of any other agreement, the AGILITA's list price for the Software applicable at the time of conclusion of the Software Use Agreement governs The Fees cover all services of AGILITA, including the operation of the environment used; charges for third-party products procured by the Customer itself (Section 1.1.3) are borne by the Customer separately.

3.2. Increase in Fees

The annual Fees change for the first time twelve (12) months after the Software Use Agreement takes effect and thereafter on each anniversary, in each case in line with the change since the previous adjustment in the consumer price index for Germany (*Verbraucherpreisindex für Deutschland*) published by the Federal Statistical Office, subject to a maximum of 3.3% of the Fees applicable immediately before the relevant adjustment. AGILITA shall notify the Customer of the adjustment in Text Form at least sixty (60) days before it takes effect. Any further price adjustments require an agreement in accordance with Section 14.1.

3.3. Payment Terms and Invoicing

3.3.1. All prices are stated in euros and are exclusive of statutory value added tax and of any further taxes and levies. AGILITA's invoices are due for payment within 14 days of the invoice date without deduction (including without deduction of any early payment discount or expenses). Where the Customer is required by law to make a withholding tax deduction, the amount owed shall be increased such that AGILITA receives the undiminished invoice amount. The Customer may set off only such counterclaims as are undisputed or have been established by a final and binding judgment; a right of retention accrues to the Customer only in respect of counterclaims arising under the same contractual relationship.

3.3.2. The Customer shall be in default without a reminder where invoices are not paid within this payment period. Where the Customer is wholly or partly in default with payment of a due invoice, AGILITA may, at its option and following a prior electronic reminder and the fruitless expiry of a grace period of ten (10) calendar days: (a) suspend the provision of the Software until payment in full of the outstanding amount together with default statutory interest (§ 288(2) BGB) together with the flat charge under § 288(5) BGB, the Customer's payment obligation continuing during the suspension; or (b) terminate the Software Use Agreement for cause. Termination does not release the Customer from its obligation to settle all claims which have arisen up to the end of the Software Use Agreement.

3.3.3. The contractually agreed Fees are invoiced quarterly in advance.

4. Storage and Deletion upon Suspension and Termination

4.1. The Customer's production data are stored on the environment operated by AGILITA. In the event of a suspension, they remain stored for the duration of the suspension. Following termination of the Software Use Agreement, AGILITA shall make the Production Data available to the Customer for retrieval in a commonly used, machine-readable format for a transitional period of thirty (30) calendar days, which the Customer may extend once by notice in Text Form for such further period as the Customer considers appropriate, and thereafter for a retrieval period of at least thirty (30) calendar days, and shall support the switch to another provider in accordance with Section 4.4. Upon expiry of that period, the production data shall be irrevocably deleted unless

a statutory retention obligation applies. Log and telemetry data, and data received in the course of support, shall be retained in accordance with the DPA and deleted no later than ninety (90) days after the end of the Software Use Agreement.

4.2. In all cases in which the Customer's entitlement to use the Software expires, the Customer's access to the Software shall cease; the Customer shall discontinue use without undue delay, uninstall the Mobile App on all end devices, including the data cached locally thereon, and delete all copies of the documentation and of any software components provided by AGILITA (e.g. connectors, extensions, agents) held within its sphere of control, save where it is required by law to retain them for longer. In that case, the claim to return and deletion shall be extended by the duration of the statutory retention obligation. The Customer shall confirm completion of the return and deletion to AGILITA in writing.

4.3. The requirements of Regulation (EU) 2023/2854 (the Data Act) apply and are neither limited nor excluded by these GTC. This concerns, in particular, the switching, porting and support obligations upon termination.

4.4. Switching and data portability. In accordance with Regulation (EU) 2023/2854 (the Data Act): (a) the Customer may initiate the switching process by notice in Text Form, subject to a maximum notice period of two (2) months; (b) the transitional period is as set out in Section 4.1, save that where the switch is technically infeasible within that period AGILITA shall notify the Customer within fourteen (14) working days of the switching request and propose, with reasons, an alternative period not exceeding seven (7) months; (c) AGILITA shall provide the assistance, information and open interfaces required under arts. 23 to 25 of the Data Act; and (d) AGILITA shall impose no switching charges on the Customer. This Section prevails over any inconsistent provision of these GTC or of the Software Use Agreement.

5. Customer's Duty to Co-operate

5.1. Within the framework of the existing contractual relationship, the Customer shall provide AGILITA with all necessary information, such as details of the system environment and a detailed description of a defect, promptly and free of charge.

5.2. The Customer shall appoint a suitably qualified employee as central contact person for AGILITA, together with a qualified deputy.

5.3. The Customer shall examine patches, workarounds and new release levels for completeness and obvious defects without undue delay following their provision and shall notify AGILITA of any objections immediately.

5.4. The Customer shall report defects in the Software to AGILITA without undue delay via support, stating the information which is identifiable by the Customer with reasonable effort and is useful for the purposes of defect analysis.

5.5. The Customer shall provide, at its own cost, the prerequisites required on its side for use of the Software and shall maintain them throughout the entire term of the Software Use Agreement («Customer Provisions»). These include, in particular: (a) the required licenses and systems of the SAP backends connected to the Software; (b) the interfaces, connectivity, authorizations and technical users required for integration; (c) adequate network connectivity and suitable end devices maintained to appropriate security standards for use of the Mobile App; and (d) AGILITA's access to the Customer's systems to the extent required for the rendering of services, in particular for defect analysis by way of remote access. Where the Customer fails to furnish the Customer Provisions, or fails to do so in good time or properly, AGILITA is entitled to withhold the affected performance for the duration of the impediment; deadlines shall be extended accordingly and the resulting additional expenditure shall be remunerated in accordance with the price list applicable at the relevant time. Where a Customer Provision ceases permanently, AGILITA is entitled to terminate for cause.

6. Term and Termination

6.1. Commencement

The Software Use Agreement takes effect upon its execution by all parties and is concluded for an indefinite term.

6.2. Termination

6.2.1. The Software Use Agreement may be terminated by either party by notice in Text Form of two (2) to the end of the agreed minimum or its renewal term. In the absence of any agreement, the minimum term is twenty-four (24) months from commencement. Partial termination of the Software Use Agreement is not permitted.

6.2.2. The right of each party to terminate for good cause (*Kündigung aus wichtigem Grund*) remains unaffected by the foregoing provision (§ 314 BGB; for the lease element, § 543 BGB). Where the good cause consists in the breach of an obligation under the Software Use Agreement, termination is permissible only after the fruitless expiry of a period set for cure

or after an unsuccessful warning notice, unless the requirements of § 314(2) sentence 3 BGB are met.

6.2.3. Upon termination of the Software Use Agreement, all Confidential Information within the meaning of Section 12 of these GTC shall be returned to the respective disclosing party within thirty (30) days or, at that party's request, destroyed; the destruction shall be confirmed in writing. This does not apply to copies retained on account of statutory retention obligations or in the context of automated backup processes; the duty of confidentiality shall continue to apply to such copies until their deletion.

7. Customer's Remedies for Defects

7.1. Defects in Quality

7.1.1. AGILITA warrants that, during the term of the Software Use Agreement, the Software will substantially correspond to the functionality described in the Software Use Agreement and the documentation and will be free from defects which remove or materially reduce its value or its fitness for the use presupposed under the Software Use Agreement; failing which a defect in the Software subject to warranty exists (a «Defect in Quality»). AGILITA gives no warranty beyond this; statements made by AGILITA orally or in writing (e.g. in the documentation or in other materials) do not constitute warranted characteristics.

7.1.2. The Customer acknowledges that malfunctions of the Software cannot be entirely excluded even with the utmost care, and that uninterrupted functionality in particular cannot be guaranteed. Availability is governed exclusively by the SLA set out in the Software Use Agreement. Where the Software Use Agreement contains no SLA, AGILITA warrants a monthly availability of 99.0%, excluding maintenance windows notified in advance. Periods during which the Software is unusable or only usable to a limited extent by reason of malfunction of the Customer's SAP backend systems, its network connectivity or its end devices do not count as unavailability; disruptions of the operating environment used by AGILITA, by contrast, count as unavailability of the Software. The credits provided for in the SLA are the Customer's sole and exclusive remedies for any shortfall in availability, save for claims under Section 8 of these GTC.

7.1.3. The Software Use Agreement is a lease within the meaning of §§ 535 ff. BGB. Liability without fault for defects already present when the Software is made available (§ 536a(1) alt. 1 BGB) is excluded. AGILITA gives no warranty in respect of the Customer's SAP backend systems, other third-party services furnished by the Customer, the Customer's end devices or telecommunications connections outside its area of responsibility.

7.1.4. The Customer shall examine the Software without undue delay for completeness and any Defects in Quality following its initial provision and after each material change, and shall monitor it on an ongoing basis. Defects in Quality are to be notified to AGILITA in Text Form within ten (10) calendar days of discovery; the notice of defect shall describe the Defects in Quality in detail and in a manner comprehensible to AGILITA. Where the Customer fails to give notice, it is liable for the resulting damage and, to the extent provided by § 536c (2) BGB, is not entitled to assert the rights referred to there.

7.1.5. Where a Defect in Quality exists, AGILITA shall remedy it within a reasonable period, in performance of its obligation under § 535(1) sentence 2 BGB to maintain the Software in a condition fit for use in accordance with the Software Use Agreement. AGILITA shall remedy the Defect in Quality, at its option, by providing a defect-free version or by eliminating the Defect in Quality («Rectification»); the circumvention or suppression of the defect and reasonable instructions given to the Customer by telephone, in writing or electronically also constitute Rectification. The Customer is obliged to accept a new version provided by way of Rectification and to update the Mobile App accordingly, provided that the intended functional scope is preserved and this does not give rise to unreasonable adaptation and migration problems for the Customer.

7.1.6. Within the reasonable period, AGILITA is free to determine the number of attempts at Rectification. Where Rectification has failed, the Customer may terminate the Software Use Agreement for cause in accordance with § 543(2) sentence 1 no. 1 BGB; its right to reduce the Fees under § 536 BGB remains unaffected. Failure occurs only where AGILITA seriously and definitively refuses subsequent performance, unreasonably delays it, or where further waiting is unreasonable for the Customer for other particular reasons.

7.1.7. Where it emerges in the course of defect investigation that the Software had no Defect in Quality, AGILITA is entitled to invoice the Customer for the expenditure associated with the defect analysis and defect handling in accordance with AGILITA's price list for services applicable at the relevant time. This applies in particular where the reported defect is

attributable to unsuitable or improper operation or to one of the circumstances referred to in Section 7.2.2.

7.1.8. Claims of the Customer on account of defects become time-barred twelve (12) months after the beginning of the statutory limitation period. This does not apply to claims under Section 8.1 of these GTC, to liability for intent (§ 202(1) BGB), or to defects fraudulently concealed by AGILITA.

7.2. Exclusion of Warranty

7.2.1. Liability without fault for defects already present when the Software is made available (§ 536a(1) alt. 1 BGB) is excluded. The Customer's claims for damages and for reimbursement of futile expenditure are governed exclusively by Section 8 of these GTC. The Customer's statutory right to reduce the Fees under § 536 BGB remains unaffected.

7.2.2. AGILITA is released from warranty to the extent that a Defect in Quality is attributable to circumstances for which it is not responsible. These include, in particular, Defects in Quality attributable to the Customer's failure properly to furnish the Customer Provisions under Section 5.5, to faulty configurations, customizing, extensions or authorizations within the Customer's area of responsibility, to changes made to the connected third-party systems, or to improper interference with AGILITA's services by the Customer or a third party engaged by it.

7.3. Defects in Title

7.3.1. Where the intended use of the Software results in the infringement of copyright or other intellectual property rights of third parties, AGILITA shall, at its own cost and at its option, either procure for the Customer the right to continue the intended use or modify or replace the provision or service in a manner reasonable for the Customer such that the infringement no longer subsists. Where neither of these measures is possible for AGILITA on economically reasonable terms, AGILITA is entitled to terminate the Software Use Agreement for cause. Upon AGILITA's declaration of termination, the Customer's right to use the Software and the documentation expires. In that case, AGILITA shall refund to the Customer, on a pro rata basis, the Fees already paid in advance in respect of the period following the termination taking effect; any further claims of the Customer are excluded in accordance with Section 8 of these GTC.

7.3.2. In addition, AGILITA shall indemnify the Customer against undisputed claims of the relevant holders of the intellectual property rights, or claims established by a final and binding judgment. This obligation does not apply to the extent that the infringement of intellectual property rights is attributable to third-party products, services or systems procured by the Customer itself, or to the combination of the Software with such products, services or systems where that combination was neither specified nor recommended by AGILITA. The indemnity obligation is limited in amount to the liability caps provided for in Section 8 of these GTC and constitutes the Customer's exclusive remedy in the event of actual or alleged infringements of intellectual property rights.

7.3.3. AGILITA's obligations referred to in Sections 7.3.1 and 7.3.2 of these GTC apply only where the Customer informs AGILITA in Text Form without undue delay of the infringements of intellectual property rights asserted against it, leaves the sole conduct of the defense to AGILITA, including the conclusion of settlements and all out-of-court arrangements, supports AGILITA to a reasonable extent in defending the asserted claims, and does not refuse or impede the remedying of the defect in title. They do not apply to the extent that the infringement of intellectual property rights is based on an instruction of the Customer, the Customer has modified AGILITA's work results on its own authority or used them in a manner not in accordance with the Software Use Agreement, or the Customer is otherwise responsible for the infringement of intellectual property rights.

8. Liability for Damages

8.1. AGILITA is liable without limitation for damage caused intentionally or by gross negligence, for injury to life, body or health, under the German Product Liability Act (*Produkthaftungsgesetz*), and to the extent that AGILITA has assumed a guarantee or fraudulently concealed a defect. AGILITA is liable for its vicarious agents (*Erfüllungsgehilfen*) in accordance with § 278 BGB; those vicarious agents include SAP as operator of the SAP BTP used by AGILITA, the data center and infrastructure operators engaged by SAP, and AGILITA's other subcontractors.

8.2. In the case of slight negligence, AGILITA is liable only where a material contractual obligation has been breached. A material contractual obligation is an obligation the performance of which is essential to the proper performance of the Software Use Agreement, on the observance of which the Customer regularly relies and may rely, and the breach of which jeopardizes the achievement of the purpose of the Software Use Agreement. In that case

AGILITA's liability is limited to the damage which is foreseeable and typical for a contract of this kind.

8.3. Liability under Section 8.2 is limited, per contract year, to the Fees paid by the Customer under the Software Use Agreement in the twelve (12) months preceding the event giving rise to liability.

8.4. Any further liability of AGILITA is excluded. In particular, and subject always to Sections 8.1 and 8.2, AGILITA is not liable for indirect damage or consequential damage, including lost profits, savings not realized, additional expenditure of the Customer, loss of use, business interruption and production stoppages, and third-party claims.

8.5. The Customer remains responsible for backing up and retaining its data and for complying with the regulatory requirements applicable to it. AGILITA's liability for loss of data is limited to the expenditure which would have been necessary to restore the data had the Customer secured it properly and at regular intervals appropriate to the risk.

8.6. The above limitations and exclusions also apply in favor of AGILITA's legal representatives, employees and other vicarious agents (*Erfüllungsgehilfen*). Claims of the Customer for damages become time-barred twelve (12) months after the beginning of the statutory limitation period; this does not apply to claims under Section 8.1 or to liability for intent (§ 202(1) BGB).

9. Force Majeure

9.1. Neither party shall be in breach of its obligations, or liable under Section 8, in respect of a delay in, impediment to or prevention of performance the cause of which is reasonably beyond its control («Extraordinary Circumstances»); § 275 BGB and § 313 BGB remain unaffected. Extraordinary Circumstances may include, for example: strikes, accidents, measures taken by public authorities, sanctions and export controls, epidemics and pandemics, natural events, energy and network failures, cyber attacks (including DDoS and ransomware), failures or changes of cloud, platform or telecommunications providers (in particular the SAP BTP), delayed performance by third parties and other circumstances for which the party is not responsible. An event does not constitute an Extraordinary Circumstance to the extent that it results from the affected party's own failure to maintain the technical and organizational security measures which it owes under the Software Use Agreement and the DPA. Any deadlines and dates shall be extended by the duration of the Extraordinary Circumstances plus a reasonable start-up period. Where the Extraordinary Circumstances continue for more than sixty (60) days, either party may terminate the Software Use Agreement with immediate effect in Text Form, without any claims of the other party arising as a result. The Customer's payment obligation in respect of services already rendered remains in force, and a payment obligation which has already fallen due is neither suspended nor excused by Extraordinary Circumstances.

10. Intellectual Property Rights

10.1. All rights (including all intellectual property rights) in the Software, the modifications, updates and the associated documentation vest in AGILITA or its licensors. The Customer acquires in the Software only the non-exclusive rights of use agreed in the Software Use Agreement.

10.2. In particular, the Customer is not entitled to further develop, decompile or disassemble, or modify the Software or parts thereof (including error corrections), save to the extent permitted by §§ 69d and 69e UrhG; agreements which restrict the rights arising under those provisions are void (§ 69g(2) UrhG).

10.3. The Customer grants AGILITA, for the term of the Software Use Agreement, a non-exclusive, worldwide right to host, store, reproduce, transmit and display the Production Data and any other content uploaded by the Customer or its Named Users, to the extent necessary in order to provide the Software and to perform AGILITA's obligations under the Software Use Agreement. The Customer warrants that it holds the rights required to grant this right. All rights in the Production Data remain with the Customer.

11. Use of Know-How

AGILITA is entitled to use, free of charge, for itself or for third parties in the performance of other work, general ideas, concepts, procedures and know-how acquired by AGILITA in the performance of individual agreements, whether alone or in co-operation with third parties or with the Customer, and retained in intangible form in the memory of AGILITA's employees, irrespective of whether the rights therein have passed to the Customer under the Software Use Agreement. This does not extend to Confidential Information of the Customer within the meaning of Section 12, personal data, or Customer-specific data, trade secrets and intellectual property rights of the Customer; these may neither be disclosed nor used in a manner permitting conclusions to be drawn about the Customer.

12. Confidentiality

12.1. AGILITA and the Customer undertake, for themselves and their employees, to treat as confidential all information of the other party which is not generally accessible and of which they become aware in connection with the Software Use Agreement («Confidential Information»), not to make it accessible to third parties in whole or in part, and neither to publish it nor to use it for its own purposes in any form. The employees of AGILITA and of the Customer are entitled to use such information solely within the framework of performance of the Software Use Agreement between AGILITA and the Customer. Clause 11 of these GTC remains reserved. Information does not constitute Confidential Information where it (a) was generally known at the time of disclosure or becomes generally known without fault on the part of the receiving party, (b) was already lawfully known to the receiving party without any duty of confidentiality, (c) is disclosed to it by an authorised third party without any duty of confidentiality, or (d) was developed by it independently and without recourse to the Confidential Information. Disclosure is permitted to the extent required by mandatory statutory provisions or by an order of a public authority or court; the disclosing party shall inform the other party in advance to the extent legally permissible. Disclosure is further permitted to legal advisers, auditors, subcontractors and group companies which are subject to an equivalent duty of confidentiality and which require the information for the performance of the Software Use Agreement. The duty of confidentiality applies for the term of the Software Use Agreement and for five (5) years following its termination; in respect of trade secrets and the Software it applies without limitation in time. Each party shall take the secrecy measures appropriate in the circumstances within the meaning of § 2 no. 1(b) GeschGehG in respect of the other party's Confidential Information.

12.2. The Customer undertakes in particular to keep the Software and the associated documentation secret and neither to disclose nor to pass them on to third parties in whole or in part, unless expressly permitted to do so by written agreement with AGILITA.

13. Data Protection

13.1. The Customer is the controller within the meaning of art. 4(7) GDPR in respect of the personal data processed via the Software; AGILITA acts as processor within the meaning of art. 4(8) GDPR. The GDPR and the German Federal Data Protection Act (*Bundesdatenschutzgesetz*, «BDSG») apply. The processing covers the production data stored on AGILITA's environment, the log and telemetry data. SAP, as operator of the SAP BTP used, and the data center operators engaged by it are sub-processors of AGILITA. The details, in particular the subject matter, duration, nature and purpose of the processing, the categories of personal data and of data subjects, the technical and organizational measures including tenant separation, sub-processors, transfers of data abroad and notification obligations in the event of data security breaches, are governed by the data processing agreement to be concluded separately in accordance with art. 28(3) GDPR (the «DPA»), which forms an integral part of the Software Use Agreement as an annex.

13.2. AGILITA shall process the Customer's personal data exclusively in accordance with the Customer's documented instructions and in accordance with the DPA. The Customer grants AGILITA general written authorization within the meaning of art. 28(2) GDPR to engage sub-processors in accordance with the DPA; AGILITA shall notify the Customer in Text Form of any intended addition or replacement of a sub-processor at least thirty (30) days in advance, and the Customer may object on reasonable grounds relating to data protection. AGILITA shall procure from each sub-processor audit and information rights equivalent to those owed by AGILITA under the DPA and shall make the results available to the Customer. The Customer is responsible for the administration and security of the end devices on which the Mobile App is used (in particular access protection, encryption, mobile device management and remote wiping in the event of loss or where a Named User leaves).

13.3. AGILITA is entitled to use technical usage data and metadata in aggregated and anonymized form, permitting no conclusions to be drawn about the Customer or about data subjects, for the purposes of ensuring operation, defect analysis and the improvement and further development of its products.

13.4. AGILITA shall process and store the Production Data exclusively in data centers located in the European Economic Area, and shall not relocate them outside that area without at least sixty (60) days' prior notice to the Customer in Text Form. Where a public authority requests access to the Production Data, AGILITA shall, to the extent legally permitted, notify the Customer without undue delay, disclose only what it is legally obliged to disclose, and challenge requests which appear unlawful. AGILITA shall assist the Customer, at the Customer's reasonable request,

in meeting professional secrecy obligations to which the Customer is subject (in particular under § 203 StGB, including the requirements applicable to persons co-operating in the Customer's professional activity under §203(3) StGB) and the regulatory requirements applicable to it.

14. Final Provisions

14.1. Form and Right to Amend

14.1.1. Text Form

Amendments and supplements to the Software Use Agreement and to these GTC require text form within the meaning of § 126b BGB in order to be valid. Individually agreed terms take precedence over these GTC and are effective irrespective of form (§305b BGB). All other legally relevant declarations and notices in the course of performance of the Software Use Agreement (in particular notices of defect, the setting of deadlines, suspension and termination notices, and the designation of Named Users and contact persons) may likewise be made in text form, in particular by e-mail («Text Form»).

14.1.2. Reservation of the Right to Amend

AGILITA is entitled to amend these GTC with effect for the future, to the extent necessary in order to adapt them to changed statutory or regulatory requirements, to a change in the case law of the highest courts, to technical developments of the Software or to changes to the SAP BTP, and provided that the amendment does not unreasonably disadvantage the Customer. The main performance obligations and the Fees cannot be amended under this Section. AGILITA shall notify the Customer of the amendment in Text Form at least sixty (60) days before it takes effect. Where the Customer does not object in Text Form within thirty (30) days of receipt of the notification, the amendment shall be deemed approved; the Customer's attention shall be drawn separately to this consequence in the notification. In the event of a timely objection, the existing GTC shall continue to apply and each party may terminate the Software Use Agreement with effect from the end of the current billing year.

14.2. Severability

Should any provision of the Software Use Agreement or of these GTC be or become invalid or unenforceable, or should the provisions contain a gap, the validity of the remaining provisions is unaffected. In place of the invalid or unenforceable provision, and in order to fill any gap, the statutory provisions apply (§306(2) BGB). A validity-preserving reduction of an invalid provision does not take place.

14.3. Transfer

Transfer of the contractual relationship or of individual parts thereof by the Customer is permitted only with AGILITA's prior written consent. AGILITA is entitled to transfer the contractual relationship in whole or in part, without the Customer's consent, to an affiliated company or, in the context of a merger, demerger, transfer of assets or sale of the relevant business division, to a legal successor. AGILITA's receivables are freely assignable. A change in the ownership of the Customer or of AGILITA (including a merger or sale of the company) does not constitute grounds for termination and accordingly does not release either party from performance of the Software Use Agreement.

14.4. Governing Law and Place of Jurisdiction

14.4.1. The Software Use Agreement and these GTC, and any claims (contractual and non-contractual) arising out of or in connection with the Software Use Agreement and/or these GTC, are governed by the substantive laws of the Federal Republic of Germany, to the exclusion of its conflict-of-laws provisions and in particular to the exclusion of the application of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

14.4.2. All disputes or claims arising out of or in connection with the Software Use Agreement and/or these GTC shall be decided exclusively by the courts having jurisdiction at AGILITA's registered office in Berlin, provided that the Customer is a merchant, a legal person under public law or a special fund under public law within the meaning of § 38(1) of the German Code of Civil Procedure (*Zivilprozessordnung*). Exclusive statutory places of jurisdiction remain unaffected.