



**UTIMACO IS GmbH**  
**Subscription Service Agreement**

This Subscription Service Agreement (“Agreement”) governs the Individual Contracts for Subscription and Professional Services concluded by and between

**UTIMACO IS GmbH** a company registered in the commercial register of the Local Court of Aachen with registered number HRB 18922 and whose registered office is at Germanusstraße 4, DE-52080 Aachen, Germany (“**Utimaco**”)

and

the entity identified as Customer in the Individual Contract (“**Customer**”),

Utimaco and Customer individually or collectively also referred to as Party“ or „Parties“.

For Customer procuring Subscription Services outside Utimaco’s TaaS Portal, the General Terms and Conditions for Utimaco’s Trust as a Service Portal (“TaaS Portal Terms”) shall apply in addition as the context requires, unless and insofar as this Agreement contains deviating provisions and unless the General Terms and Conditions directly relate to the TaaS Portal.

For specific Subscription Services, additional Subscription Service Terms will apply and will be set out in the Individual Contract. These Subscription Service Terms will also be available on Customer Account for download.

## 1. Definitions

“Authorized User” means a registered individual who is authorized by Customer or its end customers to have access to the Subscription Service, if applicable for a Subscription Service.

“Customer Data” means data, text, audio, images, software, and other content processed by Customer by means of the Subscription Service.

“Exit Assistance Services” means the services to be provided by Utimaco to Customer pursuant to this Agreement in order to facilitate the transfer of the Subscription Services to the Customer or another service supplier.

“Individual Contract/s” means an individual agreement between the Parties incorporating the terms and conditions of this Agreement that is formed by and in the order of an Utimaco quotation, a corresponding purchase order from Customer and a corresponding Utimaco order confirmation.

“Order Form” means the order form that Utimaco provides to Customer to purchase Subscription Services and/or Professional Services, if any.

“Professional Services” mean configuration, customization, installation, migration, consulting, Exit Assistance Services or other professional services that Utimaco may provide pursuant the applicable professional services description provided to Customer and subject to a respective Individual Contract.

“Service Description” means the relevant service description provided by Utimaco for each of its Subscription Services accessible in the TaaS Portal.

“Service Level Agreement” or “SLA” means Utimaco’s service level agreement for a specific Subscription Service set out or referred to in the Agreement and/or Subscription Service Terms.

“Subscription Service/s” means Utimaco’s trusted subscription services, whether or not procured via the Utimaco TaaS Portal, as a hosted IaaS or SaaS service as more specifically described in the relevant Individual Contracts.

“Subscription Service Terms” means additional Subscription Service terms that apply to specific Subscription Services.

„Software“ means the online software applications described in the Individual Contracts provided by Utimaco as part of the Subscription Services including but not limited to Client Application Software.

“Service Term” means the initial Service Term for any Subscription Service and any and all renewal Service Terms specified in the Individual Contract subject to termination of this Agreement as provided for herein. If a separate service start date is required or agreed for a specific Subscription Service, such service start date shall be deemed to be the start of the Service Term.

“TaaS Portal” means the Utimaco’s Trust as a Service Portal accessible at <https://portal.services.utimaco.com>.

## 2. Subject matter of the Agreement

(1) The subject matter of this Agreement is to set the legal framework for the provisioning of the Subscription Services and Professional Services by Utimaco to Customer on the basis of separate Individual Contracts.

(2) This Agreement shall govern and shall be deemed incorporated in its entirety in all Individual Contracts between Utimaco and Customer with respect to the Subscription Services and Professional Services.



(3) The following documents form additional integral parts of each Individual Contract, as applicable: the respective Order Form, the Subscription Service Terms, the Service Description, Utimaco's published technical data sheets, program guides, program terms and conditions, Utimaco Partner Portal and Utimaco Support Portal content applicable to this Agreement and the Individual Contracts, or any other mutually agreed document that is referenced in this Agreement.

(4) General terms and conditions of Customer or deviating terms on Customer's purchase order or in any other documentation are not to be regarded as content of the Individual Contracts, even if not expressly objected to by Utimaco, unless confirmed by both Parties in writing.

(5) Customer may access, download and print the contractual documents in effect at the time of concluding the Individual Contracts in the TaaS Portal, provided Customer procured the Subscription Services and Professional Services via the TaaS Portal or has otherwise access to the TaaS Portal. In all other cases, the contractual documents will be provided to Customer by Utimaco's sales representative or via its website.

### **3. Services of Utimaco; Software and Storage Space**

(1) Utimaco grants Customer the use of the Subscription Service based on the most current version of the Software for the agreed number of Authorized Users via the internet by means of access through a browser. The functional scope of the Subscription Services as well as the conditions of use are set forth in the Subscription Service Terms and/or in the respective Service Description.

(2) Utimaco warrants the functionality and availability of the Subscription Service during the Service Term and shall maintain it in a condition suitable for the agreed contractual use set out in Section 3 para. (1).

(3) Customer may increase or reduce the number of Authorized Users of the Subscription Service as required in accordance with the terms and conditions set forth in the Subscription Service Terms and/or in the respective Service Description. Utimaco shall transmit access data for the corresponding number of Authorized Users to Customer in electronic form without undue delay after conclusion of the Agreement.

(4) After conclusion of the contracted Service Term Utimaco shall provide Customer Service Description in electronic form. The Service Description can also be viewed at any time during the Service Term and can be downloaded in a common format.

(5) Utimaco reserves the right to change, update and further develop the Subscription Service and this Subscription Service Agreement upon prior reasonable notice to Customer. Utimaco may in particular, adapt the Subscription Service due to a changed legal situation, technical developments or to improve IT security. In doing so, Utimaco shall give due consideration to Customer's legitimate interests and inform Customer of any necessary updates in a timely manner before the changes take effect and in minimum six (6) weeks in advance but not exceeding eight (8) weeks. In the event of a significant impairment of Customer's legitimate interests, Customer shall have a special right of termination.

(6) Utimaco shall not adapt the Subscription Service to Customer's individual needs or IT environment, unless the parties have agreed otherwise in writing.

(7) Utimaco will provide support services in accordance with the then current Service Description. Utimaco shall perform Support services for the Subscription Service in accordance with Utimaco's then-current Service Description as part of the Subscription Services and at no additional cost.

(8) Depending on the Subscription Services, Utimaco may provide Customer with storage space for the purpose of using the Subscription Service for Customer Data on its servers. The details are set out in the Subscription Service Terms and/or the respective Services Description. In this case, Utimaco shall ensure the accessibility of Customer Data within the scope of the use of the Subscription Service. Customer may expand or reduce the storage space volume as required in accordance with the conditions specified in the Subscription Service Terms and/or the respective Services Description.

(9) Utimaco shall take reasonable measures to protect Customer Data. However, Utimaco shall not be subject to any custodial or safekeeping obligations with respect to Customer Data. Customer is responsible for sufficient backup of Customer Data.

(10) In the event of the termination, notification of termination or expiry of this Agreement Utimaco may, if it is commercially reasonable for Utimaco to do and upon Customer's request, provide Customer with a commercial proposal regarding the provision of Exit Assistance Services to assist Customer with the facilitation of orderly migration of the Services from Utimaco to Customer or another supplier.

### **4. Scope of use and rights**

(1) The Software forming part of the Subscription Service shall not be transferred to Customer unless otherwise specified for a Subscription Service.

(2) Customer shall receive non-sublicensable and non-transferable rights to use the Software during the Service Term by means of access via a browser in accordance with the contractual provisions for the most current version of the



Software specified in the Agreement. This includes inter alia any applicable Subscription Service-specific usage conditions as set out in the Subscription Service Terms.

(3) Customer may only use the Software within the scope of its own business activities by Authorized Users. Customer is not permitted to use the Software for any other purpose.

#### (4) Client Application Software

If provided for a specific Subscription Service, Utimaco shall provide to Customer a client application software ("Client Application Software") for the duration of the Service Term for retrieval via the Internet. The scope of application and the functional range of the Client Application Software as well as the technical and organizational requirements for its use (e.g. the required bandwidth of the remote data connection) are defined in more detail in the Subscription Service Terms and/or the respective Services Description.. Utimaco shall set up the Client Application Software on one of its servers which is accessible to Customer via the Internet. No customization or extension of the Client Application Software tailored to Customer's specific needs shall be made by Utimaco; however, such customization or extension may be agreed for a fee.

Utimaco is free to provide a more current version of the Client Application Software than the version provided for use at the start of the Service Term, provided that the change is reasonable for Customer. Utimaco must notify Customer of the change at least six weeks prior to its implementation. Customer shall have no claim to a newer version of the Client Application Software originally provided and agreed.

If Utimaco has significant new features or upgrades of the Client Application Software available, Utimaco shall offer these to Customer, notifying Customer of the additional costs involved.

Utimaco will provide the Client Application Software at the agreed router exit of the data center where the Server is located ("Handover Point"). The Client Application Software shall remain on Utimaco's server. Utimaco shall be entitled to redefine the Handover Point if this is necessary for a smooth access to the Subscription Services owed by it.

#### (5) Customer remains the owner of Customer Data.

(6) Customer hereby grants to Utimaco a non-exclusive, royalty-free right and license during the Service Term to process Customer Data as necessary for the purposes in connection with the operation of the Subscription Service and any additional services.

(7) Usage Data. All rights in and to all data collected by Utimaco in connection with the operation of the Subscription Services and Customer's use thereof ("Usage Data") shall remain with Utimaco. Usage Data may include, inter alia, when and how often Customer's Authorized Users use the Subscription Services and which features are used the most often. Usage Data does not include Customer Data. Utimaco will not disclose Usage Data to any third party in a manner that identifies Customer without Customer's consent other than: (i) disclosure to Utimaco's third party service providers who process by order of Utimaco and subject to reasonable confidentiality terms; or (ii) as may be required by law.

(8) Utimaco and its licensors own all right, title and interest (including without limitation all intellectual property rights) in and to the Subscription Services, the Software, Service Description, the TaaS Portal, technology, materials and information included in the Software or the Subscription Service and provided with the Subscription Service or invented, conceived, developed or acquired, by Utimaco or its licensors during the Service Term of this Agreement ("Utimaco Materials"). Customer is not required to provide any ideas, feedback or suggestions regarding the Subscription Services or any of Utimaco's products or services ("Feedback") to Utimaco. To the extent Customer does provide any Feedback to Utimaco, Customer agrees that Utimaco may use, reproduce, modify, distribute, make, have made, sell, offer for sale, import and otherwise exploit in any manner such Feedback on a perpetual, non-exclusive basis and without payment of any royalties or other consideration to Customer.

(9) Except as expressly stated in this Subscription Service Agreement, Utimaco does not grant Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Utimaco Materials.

Customer shall not apply for or register as trademarks or domain names any trademarks or domain names identical or confusingly similar to the Utimaco's or its licensors' trademarks or similar intellectual property rights anywhere in the world.

(10) Customer agrees not to, not to attempt to, nor allow any third party, to: (i) copy the Utimaco Materials, use the Utimaco Materials to (ii) decompile, reverse engineer, decrypt or disassemble the Utimaco Materials or otherwise attempt to reconstruct or discover any source code, underlying ideas, algorithms, file formats or programming interfaces of the Utimaco Materials, (iii) create derivative works based on the Utimaco Materials; (iv) modify, remove, or obscure any copyright, trademark, patent or other notices or legends that appear on the Utimaco Materials or during the use and operation thereof; (v) publicly disseminate performance information or analysis (including benchmarks) relating to the Utimaco Materials; (vi) utilize any software or technology designed to circumvent any access restrictions or copy protection used in connection with the Utimaco Materials; (vii) scrape, export, store, or otherwise retain any copies of raw data (except Customer Data) which Customer may access through Utimaco Materials; (viii) use the Utimaco Materials to develop a competitive product or service offering; (ix) use the Utimaco Materials in a manner which violates or infringes any laws, rules, regulations, intellectual property rights, privacy rights or other rights of a third party, or (x) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise



make the Utimaco Materials available to any third party. Customer may not use any automated means, including agents, robots, scripts, or spiders, to access or use the Utimaco Materials, except solely for use of the Subscription Services and Professional Services to the extent specifically enabled and authorized by Utimaco. If applicable, and where you have rights under statute, you will provide us with reasonably detailed information regarding any intended disassembly, decryption, or decompilation and the reasons for the action.

## 5. Support Services

(1) As part of the Subscription Services and at no additional cost, Utimaco will provide support services in accordance with the then current Service Description. Support includes the provision of subsequent versions of the Subscription Services of a comparable functionality and price point, provided that these do not require a change in the underlying technology.

(2) Support shall regularly be carried out in accordance with Utimaco's schedule maintenance windows, unless due to compelling reasons support must be carried out at a different time in which case Utimaco will provide prior notification if reasonably possible.

(3) Utimaco's support obligation does not extend to Customer-specific elements provided as part of a Professional Services engagement. For such elements, support can be agreed individually, if offered by Utimaco.

## 6. Service Level Agreement

(1) Utimaco will perform support services for the Subscription Services in accordance with Utimaco's then-current SLA which is set out in the Subscription Service Terms, the relevant Service Description or a separate SLA documentation, as applicable..

(2) The Service Level Agreement supplements Customer's warranty rights as set forth in this Agreement.

(3) Utimaco agrees to meet the offered service levels and response times for service-related incidents, provide appropriate notification to Customer for (scheduled) maintenance and to eliminate incidents, all as set forth in the SLA.

(4) Availability shall be deemed to be the Customer's ability to use all main functions of the Subscription Service. Support times shall be deemed times of availability. Times of insignificant malfunctions shall not be considered in the calculation of availability. Utimaco's measuring instruments shall be decisive for the proof of availability.

(5) Utimaco's obligation to comply with the SLA is contingent on Customer's compliance with its obligations under the Agreement including payment obligations, and the provision of all relevant incident and ticket information, up to date information on contact persons and contact information and reasonable availability of Customer representative(s) when resolving an incident.

(6) The SLA does not apply to service interruptions based on incidents such as (a) scheduled, emergency or Customer-requested service interruptions or maintenance windows and new installations, (b) installation of urgent security patches or other unexpectedly necessary measures if not caused by a breach of Utimaco's contractual obligations (e.g. force majeure, unforeseeable hardware failures etc.), (c) tickets opened by Customer for service monitoring purposes only or opened erroneously, (d) circuit releases required by Customer for testing, (e) acts or omissions of anyone other than Utimaco, including Customer; Customer's customers or any of their representatives; or third parties; (f) caused by use of Utimaco Subscription Services or Utimaco Materials in breach of the Individual Contract, including electrical consumption overage; (g) erroneous reports resulting from outages or errors of any Utimaco measurement system, (h) failure or malfunction of equipment, applications, software, services or systems not owned or controlled by Utimaco or its subcontractors or not covered by the Subscription Service, (i) overuse of the capacities provided, e.g. due to an excessive number of accesses by Customer, (j) Customer's unauthorized changes or repair of software or hardware, (k) through external influences (e.g., fire, water, lightning, current, burglary and the like including virus or hacker attacks insofar as Utimaco has taken the agreed or adequate protective measures etc.), (l) insignificant malfunctions whereby elimination of insignificant disruptions is at the discretion of Utimaco, and (m) test or POC environments.

(7) Notwithstanding the foregoing Utimaco is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and Customer acknowledges that the Subscription Services may be subject to limitations, delays, and other problems inherent in the use of such communications facilities.

## 7. Obligations of Customer

(1) Customer shall protect the access data provided by Utimaco against unauthorized access by third parties and keep it safe in accordance with the state of the art. Customer shall ensure that the data is only used to the extent contractually agreed. Utimaco shall be notified immediately of any unauthorized access.

(2) Customer shall comply with all applicable laws and regulations with respect to its activities under this Agreement in particular not process any data by means of the Subscription Services, the use of which violates applicable law, official orders, third-party rights or agreements with third parties.

(3) Customer shall check the data for viruses or other harmful components before storing them or using them in the Subscription Services and shall use state of the art measures (e.g. virus protection programs) for this purpose.



(4) Customer shall ensure that the Authorised Users use the Utimaco Materials in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement.

(5) Customer shall obtain and shall maintain all necessary licences, consents, and permissions necessary for Utimaco, its contractors and agents to perform their obligations under this Agreement, including without limitation the Subscription Services;

(6) Customer shall ensure that its network and systems comply with the relevant specifications provided by Utimaco from time to time.

(4) Customer shall have in place and be responsible for all equipment, infrastructure, network connection and documentation that is not included in the Subscription Service but that is necessary for Customer's use thereof. Customer shall ensure that the above complies with and is used in accordance with applicable law and regulations issued by public authorities, such as requirements concerning climate and electrical connection. Furthermore, Customer is responsible for the consumption of electrical power necessary in order to use the Subscription Service. Customer is responsible for ensuring that all equipment and infrastructure is adequately protected from intrusion or other unauthorised access/manipulation.

(5) Customer shall regularly perform appropriate data backups on its own responsibility.

(6) Customer shall provide, maintain and make available to Utimaco, at Customer's expense and in a timely manner, qualified Customer personnel who will be designated by Customer to consult with Utimaco on a regular basis in connection with the Services and provide Utimaco with documentation or other information necessary to perform the Services. Customer shall further provide any other additional resources as Utimaco may from time to time reasonably request in connection with Utimaco's performance of the Services. To the extent Customer does not provide any such resources in a timely manner (regardless of whether such failure is by Customer or by any third party vendor, Utimaco, licensor or contractor of Customer), Utimaco's may adjust any agreed timetable or delivery schedule as reasonably necessary.

## 8. Testing of Subscription Services

(1) If purchased by Customer as evidenced by the respective Individual Contract, Customer may use certain Subscription Services for the purpose of Customer's internal testing and evaluation in a non-production environment and not for general commercial use ("Purpose") and solely during the test period set out in the Subscription Service Terms or Individual Contract ("Test Period"). Testing ends automatically upon the expiration of the Test Period.

(2) Utimaco shall provide Customer with standard access to the Subscription Service and documentation solely for the Purpose which may include evaluating the functionality of the Service regarding performance, integration and connectivity to the Subscription Service. Standard access means that Utimaco shall provide connection to the Subscription Service so that Customer may access the Subscription Service via the internet or other means as determined by Utimaco, along with applicable support services, if and to the extent provided by Utimaco for testing as specified in the Service Description or the Individual Contracts. Load testing is not permitted unless authorized by Utimaco in the Subscription Service Terms or separately in writing.

(3) Utimaco grants a non-exclusive, non-transferable right, without the right to grant sublicences, to use the Subscription Services and any Utimaco Material provided during the Test Period.

(4) Subscription Services provided for testing are provided "as is" and with all faults. Utimaco makes no warranties or representations, neither express or implied, with respect to the testing of Subscription Services or Customer's use of the Subscription Services to the extent allowed and permissible by law.

## 9. Additional Services

(1) Customer may order additional Services for customizing the Subscription Services or any other Professional Services offered by Utimaco and selected by Customer in Utimaco's TaaS Portal or otherwise as per Utimaco's portfolio.

(2) The place of performance of services is at Utimaco's headquarters.

(3) Delivery periods and dates specified by Utimaco are always only approximate unless expressly fixed by Utimaco or agreed between the parties.

(4) Notwithstanding any rights that it may have as a result of Customer's delay, Utimaco may extend delivery periods or postpone dates for the delivery of products and services by the period of time during which Customer fails to fulfill its contractual obligations to Utimaco.

(5) Utimaco will determine the nature and manner in which the services are provided. Customer is not authorized to issue instructions to Utimaco employees involved in the provision of services.

(6) Unless otherwise agreed, Utimaco grants Customer a non-exclusive, non-transferable right without the right to grant sublicences, to use the results of the services for its own purposes within the scope of the intended use and during the Service Term specified in this Agreement. Utimaco will retain all other rights.





(7) Where Utimaco has failed to properly perform its services under the Agreement and this is due to fault on its part (default in performance), Utimaco must within a reasonable period of time, provide the service, in whole or in part, in accordance with the Agreement at no additional cost to Customer unless the expense involved would be unreasonable. Utimaco will only be obliged to do the above if Customer notifies Utimaco of the default in writing within two weeks of becoming aware of it.

(8) If, for the purposes of performing this Agreement, Customer uses, with Utimaco's consent, any work results that already existed and which were not created during or in connection with the work by Utimaco, Utimaco grants to Customer a non-exclusive right of use in respect of such work results as strictly necessary for the purpose of using the Professional Services in conformance with the Individual Contract and the respective Subscription Services.

## 10. Deliverables

(1) For the avoidance of doubt, Services under this Subscription Service Agreement do not include the provision of any deliverables specifically created for Customer ("Werkleistungen") unless otherwise agreed by the Parties in writing. Work services require acceptance. The subject-matter of acceptance will be the delivery of a deliverable that has the contractually agreed capabilities.

(2) Acceptance will be successful if, for example, the deliverable does not have any defects or only has minor defects or if all acceptance criteria agreed between the parties prior to acceptance are fulfilled. If Customer does not notify Utimaco in due time as to whether the deliverable is accepted or rejected, Utimaco may set it a reasonable deadline for notification. The deliverable will be deemed accepted when the deadline expires if Customer does neither notify Utimaco of its acceptance nor in writing as to which defects must be remedied.

(3) If Customer rejects the deliverable due to the existence of defects, it must provide Utimaco with a list of all defects preventing acceptance. After the expiry of a reasonable period of time, Utimaco will provide a version of the deliverable that is free from defects and amenable to acceptance. During Utimaco's subsequent testing of the deliverable, it will only test the reported defects insofar as their functionality can be the subject of an isolated test. After successful testing, Customer must give written notice of acceptance of the deliverable within seven (7) days.

(4) If acceptance has been unsuccessful on at least two occasions, Customer may assert its statutory rights, in particular it may rescind the Agreement and, if Utimaco has intentionally or negligently breached a contractual duty, may demand damages. In all other respects, the statutory provisions governing contracts for work and services will apply accordingly to an agreed acceptance procedure.

(5) If Customer terminates the Agreement in accordance with § 648 of the German Civil Code, Utimaco may, at its discretion, assert its right to payments due pursuant to § 648 sentence 2 of the German Civil Code or demand payment by Customer of a lump sum amounting to 40% of the payments due for the work not yet performed at the time of termination. Customer will be entitled to present evidence and prove that the payments due to which Utimaco is entitled pursuant to § 648 sentence 2 of the German Civil Code is lower.

## 11. Warranty

(1) With regard to the granting of the use of the Subscription Services and the provision of storage space, the warranty provisions of tenancy law (Sections 535 et seq. of the German Civil Code) shall apply.

(2) Customer shall notify Utimaco of any defects without undue delay.

(3) The warranty for only insignificant reductions in the suitability of the service is excluded.

(4) The strict liability according to § 536a para. 1 BGB for defects that already existed at the time of conclusion of the Agreement is excluded.

(5) All claims under this Subscription Service Agreement will become time-barred after 12 months. The limitation period starts upon creation of the claim, but not before such time when the party making the claim has become aware of the facts giving rise to the claim. This shall not affect the liability for intentional or grossly negligent breaches of duty, the liability for damage resulting from the violation of a person's life, body or health, and the liability under the Product Liability Act; in such cases, the statutory limitation period and the start of the limitation period as provided by law shall apply.

## 12. Liability

(1) The parties shall be liable without limitation in the event of intent, gross negligence and culpable injury to life, body or health.

(2) Notwithstanding the cases of unlimited liability pursuant to para. (1), the parties shall be liable to each other in the event of negligent breach of duty only in the event of a breach of material contractual obligations, i.e. obligations the fulfillment of which is a prerequisite for the proper performance of the Agreement or the breach of which jeopardizes the attainment of the purpose of the Agreement and compliance with which the other party may regularly rely on, but limited to the damage typical for the Agreement and foreseeable at the time of conclusion of the Agreement.



(3) The parties agree that the damage typical for the Agreement and foreseeable at the time of conclusion of the Agreement shall in no case exceed the total payment due to be paid for the respective Service Term of the Agreement.

(4) The above limitations of liability shall not apply to liability under the German Product Liability Act (Produkthaftungsgesetz) or to guarantees assumed in writing by one of the parties.

(5) In case of loss of data it is to be assumed that Customer regularly and in accordance with the expected hazards used back-up copies. Utimaco shall in be liable for recovery of data if Customer has ensured that the data may be reproduced with reasonable efforts from data files stored in machine readable form.

(6) This Section 12 shall also apply in favor of affiliates, employees, representatives and bodies of the Parties.

(7) All further liability is excluded.

### 13. Indemnification

(1) If a third party asserts any claims against Customer for infringement of its patents, copyrights or other intellectual property rights in connection with the contractually agreed use of the Subscription Services, Utimaco will, at its own expense, represent Customer in any legal dispute brought against Customer and will indemnify Customer with respect to any such claims within the limits of this Section 13. However, this will only apply if Customer immediately notifies Utimaco of the third-party claim and provides details of any legal disputes, and if Customer allows Utimaco to make all decisions regarding the further use of the products challenged by the third party and regarding a defense as well as regarding the conclusion of a settlement agreement, and if it informs Utimaco of such claims before claims for defects in title become time barred.

(2) If Utimaco believes a claim is likely, then Utimaco may, at its sole discretion, (a) obtain a license from the claimant that allows Customer to continue to use the Subscription Services, (b) modify or replace the Subscription Services so as to be non-infringing, or (c) if neither (a) nor (b) is available to Utimaco on commercially reasonable terms, terminate this Agreement upon written notice to Customer and refund any fees pre-paid by Customer hereunder associated with the time period for which the Subscription Services will not be provided.

(3) Utimaco shall have no obligation or liability with respect to any claim arising out of or relating to: (i) any modification or unauthorized use of the Subscription Services; (ii) any combination or use of the Subscription Services by Customer with any non-Utimaco software, technology or services; (iii) Customer Data or any other materials, information or data provided by Customer, or any use by Utimaco of the foregoing; or (iv) Utimaco's implementation of any feature or functionality requested by Customer where the claim would not have arisen but for such implementation.

(4) Customer warrants that the content and data stored on Utimaco's servers, as well as its use and provision by Utimaco, do not violate applicable law, official orders, third-party rights or agreements with third parties. Customer shall indemnify Utimaco upon first request against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) asserted by third parties on the basis of a violation of this clause.

(5) Customer shall further indemnify and hold harmless Utimaco upon first request against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with Customer's infringement of Section 4 (Scope of use and rights), Section 14 (Export and Institutional Control) and Section 17 (Confidentiality, Data Protection) of this Agreement.

### 14. Export and Institutional Control

(1) The Parties are mutually obliged to comply with all export control, embargo and sanctions laws and regulations that are applicable under German and EU law and restrict, prohibit or prescribe a licensing requirement for the import, export, re-export or transfer of goods, software, technology or data and the provision of services, directly or indirectly, to certain countries, for certain end-uses or to certain end-users; this shall also apply with respect to applicable US and other national law to the extent that German or European legal provisions do not conflict therewith ("Applicable Foreign Trade Law").

(2) The Software, the Subscription Services and any other services or portals associated with the Software and/or the Subscription Services may qualify as dual-use items under the EU Dual-Use-Regulation (Regulation (EU) 2021/821). Customer is aware that providing access to the Software and/or Subscription Services to a location outside the territory of the EU requires authorization under Article 3 (1) EU Dual-Use-Regulation. Customer is further aware that certain general licenses (e.g. EU 001 or AGG No. 16) may apply in connection with certain territories and that usage of the general licenses may require reporting to the competent authority. Customer is also aware that transactions under this agreement are subject to US export control laws, including the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR), to the extent that German or European legal provisions do not conflict therewith.

(3) In the event that restrictions apply to the sale, supply, transfer, making available and/or export of the Software or Subscription Services or associated services due to an embargo imposed by the EU, Germany, or the United States,



the legally binding conclusion of this Agreement is subject to the condition precedent that a prior authorization is granted by the competent authority or the competent authorities.

(4) The Parties shall mutually assist each other (“duty to cooperate”) in particular by providing all necessary information and documents in order to examine and comply with any legal restrictions under the Applicable Foreign Trade Law (e.g. with regard to obtaining authorizations/information from authorities or fulfilling notification duties).

(5) If Utimaco has any doubts as to whether restrictions under Applicable Foreign Trade Law are relevant, it may require that a legally conclusive statement be obtained from the competent authority. In this case, Utimaco shall be entitled to postpone the start of the Service Term until the legally conclusive statement has been provided or, if an authorization is required, until the authorization has been granted.

(6) Utimaco shall not be liable for delays caused by the fact that a required authorization or legally conclusive statement is granted late despite the application being made in due time. Utimaco is also not liable for delays that occur in connection with official measures. Any claims of Customer against Utimaco in the event of culpable breaches of duty shall remain unaffected.

(7) If it has been definitively established that the Agreement cannot be fulfilled due to restrictions under the Applicable Foreign Trade Law, in particular, due to non-issuance or revocation of the necessary authorizations by the competent authorities, either Party may withdraw from the Agreement in whole or in part by written declaration to the other contracting Party with immediate effect. The same applies if obstacles under the Applicable Foreign Trade Law arise in the period between the conclusion of the Agreement and the delivery of the Software and/or the start of the Service Term for the Subscription Services or when warranty rights are asserted - e.g. due to a change in the legal situation - and make the delivery provision of the Software and/or Subscription Services temporarily or permanently impossible, in particular, due to non-issuance or revocation of necessary authorizations by the competent authorities.

In the event of termination, the Parties shall be mutually obliged to return any services already received unless this is inadmissible under the Applicable Foreign Trade Law; beyond this Utimaco shall not be obliged to compensate any losses or damages.

(8) Customer confirms, represents, and warrants that customer is not subject to any sanctions, in particular, that customer is not included in any list of persons, entities or bodies (“PEB”) with which business is restricted or prohibited, nor is customer directly or indirectly majority-owned, held or controlled by any such PEB. Such lists include, but are not limited to, those issued by the EU or any of its Member States, the United Nations (UN) Security Council, and the US Government, provided that this confirmation shall extend to sanctions lists relating to economic sanctions measures taken by one or more states against another state and issued by anybody other than the UN, the EU or the Federal Republic of Germany only if the UN, the EU or the Federal Republic of Germany have also adopted – albeit not identical – economic sanctions measures against that state (“Applicable Sanctions List”). Customer will inform Utimaco immediately if customer itself or one of the PEB holding or controlling it is included in an Applicable Sanctions List. Notwithstanding the foregoing confirmations, representations and warranties, customer agrees to promptly provide, upon request, information and documentation that will enable Utimaco to conduct a comprehensive sanctions list screening of customer, including information on customer’s shareholders, beneficial owners and board of directors.

(9) Customer must not resell, supply, transfer or otherwise make available directly or indirectly any Software, Subscription Services or services obtained from Utimaco to or for the benefit of any PEB that is subject to sanctions under Applicable Foreign Trade Law or directly or indirectly majority-owned, held or controlled by a PEB that is subject to sanctions under Applicable Foreign Trade Law.

(10) If the Software or Subscription Services obtained from Utimaco are listed in lists of goods and technology, whose sale, supply, transfer, making available or export to a certain country or region is prohibited or subject to authorization under Applicable Foreign Trade Law (“Embargoed Country or Region”), Customer must not directly or indirectly (re-)sell, (re-)export or otherwise supply or transfer the goods obtained from Utimaco to a PEB in the Embargoed Country or Region or for use in the Embargoed Country or Region.

(11) If the Software, Subscription Services or services obtained from Utimaco are (re-)sold, (re-)exported or otherwise supplied, transferred or made available to third parties, Customer shall oblige these third parties to pass on the foregoing obligations with respect to sanctioned PEB and PEB in Embargoed Countries or Regions and to oblige the third party to also pass on this obligation to their customers.

(12) Customer represents and warrants that Customer has implemented robust policies and procedures to comply with Applicable Foreign Trade Law. Customer hereby agrees to screen all persons whom it will grant access to the Software or the Subscription Services, including customers, against Applicable Sanctions Lists and maintain records thereof for a period of five (5) years. Customer further agrees to complete, sign, and provide to Utimaco a copy of the intermediary certificate in the form provided by Utimaco (“Intermediary Certificate”) by January 31 of every calendar year. Customer agrees to inform Utimaco immediately in writing of any “red flags” involving a transaction that may violate Applicable Foreign Trade Law, including potential access to the Software or the Subscription Services by a sanctioned PEB, anyone in an Embargoed Country or Region, or for a prohibited end use.

(13) In the event of a violation of the foregoing obligations, including the obligation to pass on obligations, by Customer, Utimaco may terminate the Agreement with immediate effect by written notice to Customer; any damage claims by





customer against Utimaco arising out of or in connection with the termination of this Agreement pursuant to this clause shall be excluded. Furthermore, in the event of a violation of the foregoing obligations, including the obligation to pass on obligations, by customer, Customer shall indemnify Utimaco against all costs or other losses (in particular claims of third parties, fines, immaterial damages) resulting from the non-compliance of Customer with the foregoing obligations, including the obligation to pass on obligations, unless Customer proves that he is not responsible for the violation. The contractual penalty shall be offset against claims for damages.

(14) If Utimaco has justified doubts as to Customer's compliance with the foregoing obligations, including the obligation to pass on obligations, Utimaco may refuse delivery to Customer until these doubts have been resolved to Utimaco's satisfaction. Any claim by Customer against Utimaco based on delay or non-performance due to the resolution of such doubts are excluded, except in the event of intent and gross negligence on the part of Utimaco.

(15) Utimaco reserves the right to make the provision of Software and Subscription Services dependent on the receipt of a conclusive end-use certificate issued by Customer or any end-user, as applicable.

## 15. Terms of payment

(1) Customer shall pay such fees as are as set forth in the Individual Contract. This may include fixed Subscription Service fees, a set-up fee, fees for configuration or other additional services fees, or usage fees.

(2) Set-up fees, fees for configuration or other additional services fees are payable in advance. Fixed subscription services fees are payable annually in advance unless otherwise set forth in the Individual Contracts. Variable subscription or use fees are due and payable on a monthly basis in arrears unless otherwise set forth in the Individual Contracts.

(3) Subscription Service fees will be applied on a pro-rata basis for the first month in which the Subscription Services starts. Thereafter, invoices will turn to a payment cycle as per the preceding paragraphs.

(4) Any payments due to Utimaco under this Agreement not received by the date due will be subject to a late fee according to § 288 BGB.

(5) Fees payable shall be adjusted in the event of changes in the number of users or the storage space volume in accordance with the then current pricing conditions.

(6) Invoices shall be issued upon Customer request either on a yearly or monthly basis in advance. The invoice is due for payment within 15 working days after invoice date.

(7) Customer will be responsible for any withholding taxes, import duties, levies or customs duties incurred for transactions in connection with this Subscription Service Agreement. If Customer is under a statutory duty to deduct or withhold taxes from the amounts payable under this Subscription Service Agreement, the amount payable will be increased such that, after all necessary deductions and/or withholdings have been made, Utimaco receives an amount equal to the amount that it would have received without such deductions or withholdings.

(8) The following conditions apply to service credits, if and to the extent provided for the specific Subscription Services as per the SLA set forth in the Subscription Service Terms.

(a) Customer must apply for the service credit by giving Utimaco notice of its claim within thirty (30) calendar days of the end of the Service Term to which the credit applies;

(b) the service credit can only be applied as a credit to Customer's account, and cannot be redeemed for cash;

(c) the maximum service credit available for each Service in a Service Term will not exceed thirty per cent (30%) of the total recurring charges for that Service Term for that Subscription Service; and

(d) Service credits are not available if Customer has failed to pay charges for the Subscription Service when due and payable.

(9) If Utimaco's records reveal that Customer overused the Subscription Services contrary to what has been purchased by Customer, Utimaco may invoice such overuse and Customer's Subscription Fee may be increased to the next appropriate pricing tier as set out in the current price list.

(10) Price adjustment: Utimaco is entitled to adjust the prices to be paid on the basis of this Subscription Service Agreement at its reasonable discretion in accordance with § 315 BGB (German Civil Code) to the development of the total costs which are decisive for the price calculation. Customer shall be notified in writing of any price changes at least six weeks before they take effect. In this case, Customer has the right to terminate this Agreement without notice at the time the price adjustment takes effect. Customer shall be specifically informed of this in the notification of change. Otherwise § 315 BGB remains unaffected.

## 16. Term and termination, Suspension

(1) Each Individual Contract shall enter into force and be effective for the duration of the Service Term specified in the Individual Contract and shall be automatically renewed for successive Service Terms unless the Individual Contract is terminated as set out in this Section.



- (2) An Individual Contract may be terminated by either party with a notice period of 3 months prior to the end of a Service Term.
- (3) The right to terminate an Individual Contract without notice for good cause remains unaffected. In any case, the termination for good cause must be in writing.
- (4) Utimaco shall provide Customer with reasonable assistance in transferring or backing up the data at its own expense after termination of an Individual Contract.
- (5) Utimaco shall permanently delete all Customer data remaining on its servers 30 days at the latest after termination of the Individual Contract. There is no right of retention or lien on the data in favor of Utimaco.
- (6) Utimaco reserves the right to suspend Customer's or any Authorised User's right to access or use any Utimaco Materials immediately upon notice to Customer if Utimaco determines:
- Customer's or an Authorised User's use of the Software and Subscription Service and/or the TaaS Portal (i) poses a security risk to the Utimaco Materials or any third party intellectual property rights or Subscription Services, (ii) could adversely impact Utimaco Materials or the systems or Customer Data of any other Utimaco customer, (iii) could subject Utimaco, its affiliates, or any third party to liability, or (iv) could be fraudulent;
  - Customer is in material breach of any of its obligation under the Individual Contract, e.g. namely in the case of Customer being in default of its payment obligations after being reminded by Utimaco thereof;
  - Customer has ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of Customer's assets, or become the subject of any bankruptcy, reorganisation, liquidation, dissolution or similar proceeding.
- (7) If Utimaco suspends Customer's right to access or use all or parts of the Utimaco Materials, Customer remains responsible for all fees during the period of suspension.
- (8) On termination of an Individual Contract for any reason:
- all licences and accesses granted under the Individual Contract shall immediately terminate and Customer shall immediately cease all use of the Subscription Service and the Utimaco Materials; and
  - each Party shall return or destroy and make no further use of any Utimaco Materials or customer material and other items (and all copies of them) except as may be required by applicable law that is incapable of exclusion by agreement between the Parties and except to the extent expressly permitted under the Individual Contract.
- (9) All rights and obligations concerning outstanding payments, warranties, intellectual property protection, limitations of liability and remedies, audit, and confidentiality and any other rights and obligations that by their nature require surviving, will survive termination of the Individual Contract.

## 17. Confidentiality, Data Protection

- (1) Each party (the "receiving party") shall not use the other party's (the "disclosing party") Confidential Information (as defined in the TaaS Portal Terms) except as authorized under the TaaS Portal Terms, this Agreement or as otherwise authorized by the disclosing party. Each receiving party shall not disclose the disclosing party's Confidential Information to any third party except to those of its employees, affiliates and contractors that need to know such Confidential Information hereunder, provided that these are subject to a written agreement that includes binding use and disclosure restrictions that are as protective of Confidential Information as those set forth herein or are otherwise subject to certain confidentiality obligations. Each party will use all reasonable efforts to maintain the confidentiality of all Confidential Information of the other party in its possession or control.
- (2) The foregoing obligations will not restrict either party from disclosing Confidential Information of the other party: (i) by mandatory law or by virtue of a final or legally binding decision of an authority or court, (ii) on an as-needed and confidential basis to its legal or financial advisors, (iii) that is known or that party can show has become known other than by breach of this Subscription Service Agreement. In addition, each party may disclose the terms and conditions of this Agreement to current or prospective investors in or acquirers of such party.
- (3) The Parties shall comply with the applicable data protection provisions applicable to them in each case. The basis on which Utimaco will process Customer's personal data is set out in the TaaS Portal's privacy policy, as applicable, and in any separate data protection documentation as applicable for the relevant Subscription Services.
- (4) If and to the extent that Utimaco has access to personal data of Customer within the scope of the provision of the Subscription Services, Utimaco will process this personal data solely in accordance with the provisions set forth in the data processing agreement provided by Utimaco ("DPA") and in accordance with Customer's instructions as set forth therein.
- (5) The terms of the DPA shall be incorporated herein by reference without the need for signing. The same shall apply to any standard contractual clauses, as and to the extent required.



## 18. Trademark Use

(1) Neither Party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other Party except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

(2) Notwithstanding anything to the contrary contained in this Section, Customer hereby: (a) grants to Utimaco a non-exclusive, non-transferable, revocable license to display Customer's trademarks, logos and name and tradename in TaaS Portal and Utimaco Support Portal as well as in customer lists; and (b) permits Utimaco to use the same in the Utimaco's promotional materials in respect of the Subscription Services and to disclose the same to its existing and potential customers.

## 19. Final Provisions

(1) Assignment. Customer may not assign any of its rights or obligations under this Agreement without the prior written consent of Utimaco, such consent not to be unreasonably withheld. Any merger (by operation of law or otherwise), consolidation, reorganization or change in control of Customer, or any sale of all or substantially all of Customer's assets related to this Agreement or similar transaction, shall be deemed an attempted assignment of this Agreement for which such consent is required. Subject to the foregoing, this Agreement inures to the benefit of and shall be binding on the parties' successors and assigns. Utimaco is entitled to transfer this Agreement to another party without Customer's consent.

(2) Force Majeure. If performance becomes impossible or is delayed due to force majeure, Customer will have no right to performance and damages by Utimaco. Force majeure or other events that were not foreseeable at the time that the Agreement was concluded include, but are not limited to the following: to the extent that they arise from events outside Utimaco's sphere of responsibility, disruptions to operations of all kinds, difficulties in obtaining materials or energy supplies, shipping delays, internet or telecommunications failures, strikes, lawful lockouts, workforce shortages, shortages in energy or commodities, difficulties in obtaining the necessary governmental permits, governmental measures or failure by Utimacos to deliver, to deliver on time or to deliver in compliance with their contracts as well as disruptions arising in connection with epidemics or pandemics. Where such events make delivery of the products or services substantially more difficult or impossible and if the impediment is not just of a temporary nature, Utimaco will be entitled to rescind the Agreement.

In the event of a temporary impediment, the delivery dates and delivery periods for products and services will be extended or postponed for the duration of the impediment plus a reasonable start-up period thereafter. If as a result of the delay Customer cannot reasonably be expected to accept the products or services, it may rescind the Agreement by giving Utimaco written notice without delay.

(3) Should individual provisions of this Agreement be invalid or unenforceable, this shall not affect the validity of the remaining provisions. The parties shall replace such provisions by effective and feasible provisions which correspond as closely as possible to the meaning and economic purpose as well as the intention of the parties at the time of conclusion of the Agreement. The same shall apply in the event of a gap in the Agreement.

(4) There are no oral or written ancillary agreements to this Agreement. Amendments to this Agreement must be made in writing.

(5) The substantive law of the Federal Republic of Germany, excluding the conflict of laws provisions and the United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980 (UN Sales Convention) shall govern.

(6) The exclusive place of jurisdiction for all disputes arising from or in connection with this Agreement shall be Cologne, Germany. Utimaco will, however, always be permitted to file a lawsuit at the delivery location (place of performance). The preceding does not exclude any applicable statute provisions from taking precedence, particularly those relating to exclusive jurisdiction.

(7) Entire Agreement. This Agreement and all referenced attachments and documents constitute the complete, final and exclusive agreement between the parties with respect to the subject matter hereof and supersedes any and all prior or contemporaneous oral or written representations, understandings, agreements or communications between them concerning the subject matter hereof.

(8) No partnership or agency. Nothing in this Agreement is intended to or shall operate to create a partnership between the Parties, or authorize either Party to act as agent for the other, and neither Party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

(9) In case of bi-lingual contracts or where an English contract has been supplemented with a German translation, the German version shall be authoritative.