

Our General Terms and Conditions (AGB)

Since 01.09.2022 all transactions with customers of 3spin Learning GmbH & Co. KG are exclusively executed on the basis of these General Terms and Conditions (AGB).

The Terms and Conditions are based on BITKOM AGB, which are recommended by the German Association for Information Technology, Telecommunications and New Media (BITKOM) and have been approved by the German Federal Cartel Office. The relevant part and the version of the BITKOM AGB as well as any changes made are listed at the beginning of the respective section.

This document is a courtesy translation. The German version of these terms which can be found at <https://www.3spin-learning.com/agb> shall be the legally binding version.

We look forward to working with you!

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Conditions for the use of the 3spin Learning Platform as Software-as-a-Service (LPS)

Service description

3spin Learning is a platform for the creation, use and distribution of 360°, VR and AR training. The software is provided as software-as-a-service (SaaS). The full scope of services can be found in the documentation, which is available online in the Help Center (<https://helpcenter.3spin-learning.com>). The scope of services may be adjusted/restricted depending on the selected version according to the information on the provider's website or the following list.

Definitions

User: Every single person who uses the system at least once within a contract year is counted as a user. This includes learners, authors, trainers, and administrators. If multiple people share a VR/AR headset and use the same user account for it, they are still counted as single users.

Team: A team is a self-contained unit within the software that is shared by any number of users. A team shares library content (assets), training courses and units, and user data. Authors have access to all content in a team's library, but learners have access only to training content assigned to them. Administrators can manage all users on a team. There is one contact person per team for team administration and accounting. Teams are typically used per company or business unit.

Unit: A unit is a training scenario in the software.

Course: A course is a compilation of several units to map a more extensive learning content, which consists of several training scenarios.

Storage space: A certain amount of storage space is available for uploading your own content (assets), e.g. images, videos, sounds in training scenarios. The calculation of the used storage space is based on the actual consumption on the server including (automatically) performed conversions into necessary target formats.

Dedicated instance: A dedicated instance is an optional special form of deployment on a standalone, virtual server environment in which the software is run. This allows further configuration options in terms of data storage location and deviating update cycles of the software. However, the range of functions on dedicated instances may be limited, as not all services of the software are available in the standalone server environment.



Trial version

The trial version is used to test the software free of charge for a defined period of time (test period). It may not be used for productive purposes. If no separate agreement is made, the test period is 30 days. Upon request to the Provider, the Trial Period may be extended, but a decision to do so is solely at the Provider's discretion. At the end of the test period, access will be blocked and then the team will be irrevocably deleted, unless a contract for further use has been concluded in advance.

The functional scope of the trial version may be limited. A change of the scope of functions including a further restriction is possible at any time and at the free discretion of the provider.

Availability of the services provided in accordance with §3 Service Level Agreement, including the processing of fault reports and associated response times, is not owed for the test version.

Standard version

The standard version is recommended for productive use with simple requirements for availability and contact options. Unless an individual agreement has been made, use is restricted in terms of the maximum number of users and units according to the agreed usage level (tier).

Included functions:

- 360°, virtual reality and augmented reality content creation
- Clients for desktop PCs, virtual reality and augmented reality headsets
- Basic library of supplied objects
- 100 GB of storage space for uploading your own content (assets)

Agreed availability and service credits according to §3:

- < 99.00% availability per month: 10% service credit
- < 98.00% availability per month: 25% service credit
- < 95.00% availability per month: 50% service credit
- < 90.00% availability per month: 100% service credit

Fault reporting and response time according to §3:

- Fault report exclusively by e-mail or provided form (no telephone)
- Critical incident: Under 36 hours response time during normal business hours
- Significant disruption: Less than 48 hours response time during normal business hours

Premium version

The Premium version is recommended for productive use with increased requirements for availability and contact options. Unless an individual agreement has been made, use is restricted in terms of the maximum number of users and units according to the agreed usage level (tier).

Includes in addition to all the features of the standard version:



- Offline mode (perform training scenarios even without internet connection)
- Learn Together (learn together over the Internet with up to 10 users in the same training scenario)
- Spectator Mode (follow learning scenarios on an external computer)
- Helper (digital assistant guides learners through the learning scenario)
- Objectives (tracking of learning objectives)
- Variables (Conditional Actions)
- Premium library of included objects

Agreed availability and service credits according to §3:

- < 99.50% availability per month: 10% service credit
- < 99.00% availability per month: 25% service credit
- < 95.00% availability per month: 50% service credit
- < 90.00% availability per month: 100% service credit

Fault reporting and response time according to §3:

- Fault report exclusively by e-mail or provided form (no telephone)
- Critical incident: Under 24 hours response time during normal business hours
- Significant disruption: Less than 48 hours response time during normal business hours

Education Version

The Education Version is a separate version for state-approved educational institutions (schools, universities). Unless an individual agreement has been made, use is restricted in terms of the maximum number of users and units according to the agreed usage level (tier).

Included features: Like Premium version

Agreed availability and service credits according to §3: Like standard version

Fault reporting and response time according to §3: Like standard version

Enterprise version

The Enterprise Version is a version agreed individually with the customer to reflect the customer's specific requirements. Individual agreements can be made, for example, with regard to the scope of functions, availability and response times. Deviating agreements on licensing are also possible.

Transition SaaS Bitkom

The following terms and conditions correspond (apart from formatting and adaptation of document references) to the Bitkom contractual terms and conditions for the use of software over the Internet (Software as a Service) (SaaS Bitkom), version 3.0 with the following changes:

§§3 (availability, performance deficiencies), 7 (fault management) and 8 (point of contact) of the SaaS Bitkom have been replaced by §3 Service Level Agreement (SLA).

§4 Change of performance was supplemented.

§5.1 Inclusion of the order processing agreement below, insofar as no other order processing agreement exists between Customer and Provider.

§8.4 The written form requirement for a termination has been replaced by text form.

1 Services

- 1.1 The Provider shall provide the contractual services, in particular access to the software, in its area of availability (from the data center interface to the Internet). The scope of services, the nature, the intended use and the conditions of use of the services that are the subject matter of the contract are set out in the respective service description, supplemented by the operating instructions for the software.
- 1.2 Additional services, such as the development of customized solutions or necessary adjustments, require a separate contract.
- 1.3 The Provider may provide updated versions of the Software.
The Provider shall inform the Customer about updated versions and corresponding usage instructions electronically and make them available accordingly.

2 Scope of use

- 2.1 The contractual services may only be used by the customer and only for the purposes agreed in the contract. During the term of the contract, the customer may access the contractual services by means of telecommunications (via the Internet) and use the functionalities associated with the software in accordance with the contract by means of a browser or another suitable application (e.g., "app"). The customer shall not receive any rights beyond this, in particular to the software or the infrastructure services provided in the respective data center, if any. Any further use requires the prior written consent of the Provider.
- 2.2 In particular, the customer may not use the software beyond the agreed scope of use or have it used by third parties or make it accessible to third parties. In particular, the customer is not permitted to reproduce, sell or temporarily transfer, rent or lend software or parts thereof.

- 2.3 The Provider shall be entitled to take appropriate technical measures to protect against non-contractual use. The contractual use of the services may not be more than insignificantly impaired as a result.
- 2.4 In the event that a user exceeds the scope of use in violation of the contract or in the event of an unauthorized transfer of use, the customer shall, upon request, immediately provide the provider with all information available to him for asserting claims due to the use in violation of the contract, in particular the name and address of the user.
- 2.5 The provider may revoke the customer's access authorization and / or terminate the contract if the customer significantly exceeds the use permitted to him or violates regulations to protect against unauthorized use. In connection with this, the provider can interrupt or block access to the contractual services. The Provider shall generally set the Customer a reasonable grace period for remedial action beforehand. The sole revocation of the access authorization shall not be deemed to be a termination of the contract at the same time. The Provider may only maintain the revocation of the access authorization without termination for a reasonable period of time, not exceeding 3 months.
- 2.6 The Provider's claim to remuneration for use in excess of the agreed use shall remain unaffected.
- 2.7 The Customer shall be entitled to have the access authorization and the access possibility restored after it has proven that it has discontinued the use in breach of contract and has prevented any future use in breach of contract.

3 Service Level Agreement (SLA)

- 3.1 The Provider shall owe the agreed availability of the services provided and the response time to other fault reports on the basis of the service levels listed below and the service description.
- 3.2 The Provider shall owe availability and compliance with the response time exclusively for instances that have been made available to the Customer for productive use. He owes availability neither for non-productive or free test versions nor for integration or test systems with unreleased functions. Furthermore, he shall not owe availability and response time for functions that serve to preview future functions (preview/beta functions).
- 3.3 The provider is entitled to interrupt the provision of services for maintenance work. If possible, the Provider shall plan the maintenance work in such a way that the Customer's use is impaired as little as possible. The customer will be informed about planned maintenance work in advance by means of notification or display within the software or administration portal. The Provider shall also be entitled to perform unscheduled maintenance for good cause, e.g. in the event that operations are endangered. The Customer shall be notified of such unscheduled maintenance work without delay and it shall be carried out in such a way that disruptions to the operating process are kept to a minimum. The Provider shall not be obliged to make the Services available to the Customer for use during the performance of maintenance work. If the services are

available for use during planned maintenance work in the service provision period, use shall be at the customer's own risk. Customer acknowledges that use of the Services may be limited during scheduled maintenance and/or that the Services may be shut down or restarted without notice. If the Services are made available during maintenance and there is a reduction in functionality or availability, Customer shall not be entitled to any warranty, damages or service credits.

3.4 All obligations of the Provider regarding availability in this SLA shall only apply to the Provider's area of availability up to the handover point to the Internet. The Provider is not responsible for the data transmission from the Delivery Point to the Customer and/or in the area of the Customer's IT system.

3.5 Service availability is calculated using the following formula as a percentage of time over the course of a calendar year during the service provision period:

$$\text{Uptime in percent} = \frac{\text{Service availability time (hours)} - \text{Downtime (hours)}}{\text{Service availability time (h)}} \times 100$$

3.6 For purposes of calculating actual availability, downtime not attributable to the provider shall be considered available time. These harmless downtimes are:

- a. Downtime due to planned or unplanned maintenance.
- b. Downtime due to operational disruptions caused by an event of force majeure or other unavoidable events beyond the control of the Provider and which could not be averted with reasonable effort and could not have been foreseen even with careful application, which make the Provider's obligations under this SLA significantly more difficult or impossible in whole or in part, such as e.g. strikes, lockouts, extraordinary weather conditions, power failures, pandemics, operational or traffic disruptions and transport obstructions, and which release the Provider from its obligations under this SLA for the duration of such event.
- c. Downtime due to the unavailability of infrastructure or data centers if the services provided (e.g., due to data protection requirements) are explicitly dependent on this location in a non-geostable manner.
- d. Downtime due to a malfunction caused by the customer.
- e. Downtime due to an unauthorized action by a third party if it was facilitated due to Customer's failure to follow appropriate security procedures and standards (e.g., related to password confidentiality/complexity or device security).
- f. Downtime due to software errors in customer applications or due to errors triggered by customer applications or customer data.
- g. Downtime caused by third parties (persons not attributable to the Provider).

3.7 If the Provider is responsible for non-compliance with the agreed availability, the Customer may claim service credits in the amount of the scale listed in the service description.

- 3.8 Service credits refer to the actual payments made by the customer for the respective service and the month of non-compliance.
- 3.9 If billing is not done monthly, but according to a different time interval, the basis for the service credit is the fee for a month calculated on a pro-rata basis (e.g. 1/12 for annual payment).
- 3.10 If the service provided is not billed according to a time interval, but according to units of use ("pay-per-use", "credits", "flat rate", or similar), the basis for the service credit per month shall be one-twelfth of the payments actually made by the customer for the units of use of the respective service in the twelve months prior to the occurrence of the impairment of availability.
- 3.11 The customer shall notify the provider of any impairment of the availability of the services or other disruption immediately, but no later than within one month of the occurrence of the impairment/disruption. If the customer fails to do so, the entitlement to the service credit shall expire and the provider shall not be obliged to make any payment.
- 3.12 All notifications under this SLA must be made via the web form provided for this purpose, by e-mail to support@3spin.com or, if telephone support is included in the service description, during normal business hours by calling +49-6151-87 0101 87. The usual business hours are Monday-Friday from 09:00-17:00 (valid German time CET/CEST), excluding public holidays in Hesse and company vacations after prior notice. The report must be submitted in German or English. Each message will be provided with an identifier and confirmed to the customer.
- 3.13 Other disruptions in which the availability of services at the transfer point is given but the contractually agreed service is restricted (e.g., due to software errors) shall be assigned to one of the following disruption classes by the Provider at its own discretion:

Critical malfunction The malfunction is based on a defect in the contractual services that makes the use of the contractual services, in particular the software, impossible or allows it only with severe restrictions. The customer cannot reasonably circumvent this problem and therefore cannot complete tasks that cannot be postponed.

Major disruption

The disruption is based on a defect in the contractual services that restricts the customer's use of the contractual services, in particular the software, to a more than insignificant extent without a serious disruption.

Insignificant fault

Malfunction messages that do not fall into categories a) and b) are assigned to other messages.

Other message

Messages that do not contain a fault, e.g. suggestions for improvement.

- 3.14 In the event of reports of critical and significant malfunctions in accordance with the assigned malfunction class, the Provider shall initiate appropriate measures based on the circumstances communicated by the Customer in order to first localize the cause of the malfunction. The Provider shall provide the Customer with initial feedback within the response time of the

respective fault class. The provider will process insignificant malfunctions and other reports within the usual product development cycle.

- 3.15 If the processing of the notification requires access to the customer's data, e.g. in order to track problems that occur, the Provider shall obtain the customer's permission in advance. The provider does not have to process the message if the customer does not give permission and processing without access to the data would represent a disproportionately higher effort.
- 3.16 If the notified malfunction does not turn out to be a defect of the contractual services, in particular of the provided software, after initial analysis, the Provider shall notify the Customer thereof without undue delay. Otherwise, the Provider shall arrange for appropriate measures to be taken for further analysis and to rectify the notified fault.
- 3.17 The Provider shall immediately provide the Customer with measures available to it for circumventing or rectifying a fault in the contractual services, in particular in the software provided, such as instructions for action or corrections to the software provided. The Customer shall immediately adopt such measures for the circumvention or correction of faults and shall immediately report any remaining faults to the Provider again upon their use.
- 3.18 Critical faults are treated as downtime for the duration of the fault. The resulting impairment of availability may entitle the customer to a service credit in accordance with these contractual terms and conditions.
- 3.19 If the customer is entitled to damages or a reduction of the agreed remuneration due to non-compliance with the agreed availability and other contractual agreements or statutory regulations, credited service credits shall be offset against any claims for damages and reductions.
- 3.20 In the event of only an insignificant reduction in the suitability of the services for the contractual use, the customer shall have no claims due to defects. The strict liability of the provider due to defects that were already present at the time of the conclusion of the contract is excluded.

4 Performance change

- 4.1 The provider is entitled to adapt the agreed services to the respective tested and introduced state of the art. These adjustments include:
 - a. Changes to the supported devices if, for example, they have been discontinued or are no longer supported by the manufacturer or provided with firmware/operating system updates.
 - b. Changes to system requirements, e.g. required browser versions to the current state of the art or if these are no longer supported by the manufacturer in the standard support or to support new functions that are only supported by higher browser versions.
 - c. Legally required changes.
 - d. Changes to increase data protection/data security.

- e. Changes that have a minor influence on work processes at the customer. The influence shall be deemed minor if the work processes at the customer's premises do not cease to exist in comparison with the work processes that became known during the term of the contract, but these can be changed with reasonable cooperation by the customer and at the customer's expense and continue to exist.

The provider will inform the customer about the changes made.

- 4.2 In the event that the Provider wishes to make changes to the Service that have a significant impact on the Customer's workflow, the Provider shall inform the Customer in advance.

Significant impact on workflows is assumed if significant organizational or technical changes have to be made on the customer's side because functions/workflows are completely omitted or the use of previously used data is restricted.

The Provider shall inform the Customer of the planned change in text form with a lead time of two months, unless a shorter change with a correspondingly shorter lead time is necessary to protect data security or due to changes in the legal framework.

- 4.3 In the event of a change that has a significant impact on the customer's work processes, the customer has the right to object to an announced change. The objection must be made at least in text form. If the customer does not object to a duly announced change within a period of one month from provision of the change notification, the change shall become part of the contract. If the customer objects, the parties shall attempt to find a mutually agreeable solution.
- 4.4 The Customer is aware that in the event of an objection that is not subsequently settled by agreement between the contracting parties in terms of content, the Provider may not be able to provide certain services existing at the time of the planned implementation of the change beyond that time.
- 4.5 If, in response to an objection, the provider declares that, notwithstanding the (continuing) objection, the services will be changed in accordance with the announcement in such a way that there is still an effect, the customer shall have a right to terminate the affected services with effect from the implementation date (special termination right, if applicable as partial termination). There shall be no right of termination if the change is technically or legally necessary and the implementation of the change is not unreasonable for the customer. Until the end of an applicable phase-out period, the service shall be provided to the customer at no additional cost without the announced change.

5 Privacy

- 5.1 Insofar as the Provider can access personal data of the Customer or from the Customer's area, the Provider shall act exclusively as a processor and shall process and use such data only for the purpose of executing the contract. The Provider shall comply with the Customer's instructions for the handling of such data. The Customer shall bear any adverse consequences of such instructions for the performance of the contract. If the Customer has not concluded a separate

agreement with the Provider for the Provider's handling of the Customer's data in accordance with the requirements of data protection law or for data processing, the GDPR Data Processing Agreement for the Use of the 3spin Learning Platform (AVV) below shall apply.

- 5.2 The customer shall remain the responsible party both generally in the contractual relationship and in terms of data protection law. If the customer processes personal data (including collection and use) in connection with the contract, it warrants that it is entitled to do so in accordance with the applicable provisions, in particular those of data protection law, and shall indemnify the provider against third-party claims in the event of a breach.
- 5.3 The following shall apply to the relationship between the Provider and the Customer: vis-à-vis the data subject, the Customer shall bear responsibility for the processing (including collection and use) of personal data, except to the extent that the Provider is responsible for any claims by the data subject due to a breach of duty attributable to the Provider. The Customer shall responsibly examine, process and respond to any inquiries, applications and claims of the data subject. This shall also apply in the event of a claim against the Provider by the data subject. The Provider shall support the Customer within the scope of its duties.
- 5.4 The Provider warrants that Customer data will be stored exclusively in the territory of the Federal Republic of Germany, in a member state of the European Union or in another contracting state of the Agreement on the European Economic Area, unless otherwise agreed.

6 Obligations of the customer

- 6.1 The customer shall protect the access authorizations and identification and authentication information assigned to him or to the users from access by third parties and shall not disclose them to unauthorized persons.
- 6.2 The customer is obligated to indemnify the provider against all claims of third parties due to legal violations that are based on an illegal use of the subject matter of the service by the customer or are made with the customer's approval. If the customer recognizes or must recognize that such an infringement is imminent, there is an obligation to inform the provider immediately.
- 6.3 The customer has to use possibilities provided by the provider to secure his data in his original area of responsibility.

7 Use in breach of contract, damages

For each case in which a contractual service is used without authorization in the customer's area of responsibility, the customer shall pay damages in the amount of the remuneration that would have been incurred for the contractual use within the framework of the minimum contract period applicable to this service. The customer reserves the right to prove that the customer is not responsible for the

unauthorized use or that there is no damage or significantly less damage. The Provider shall remain entitled to claim further damages.

8 Contract term and termination

- 8.1 The contractually agreed services shall be provided upon provision of the access data or as of the date specified in the contract, initially for the duration of the term agreed in the contract. During this minimum term, premature ordinary termination is excluded on both sides.
- 8.2 The contract can be terminated with three months' notice, at the earliest at the end of the minimum term. If this is not done, the contract shall be extended by a further year in each case, unless it has been terminated with three months' notice to the end of the respective extension period.
- 8.3 The right of each contracting party to extraordinary termination for good cause shall remain unaffected.
- 8.4 Any notice of termination must be in text form to be effective. Section 8.4 of the General Terms and Conditions shall apply.
- 8.5 The customer shall back up its data files on its own responsibility in good time before termination of the contract (e.g. by download). Upon request, the Provider shall support the Customer in this regard; Section 4.4 of the General Terms and Conditions shall apply. After termination of the contract, the customer will generally no longer be able to access these databases for reasons of data protection.

9 Validity of the General contractual terms

The General contractual terms (AV) shall apply in addition.

Conditions for work and services (DL/WV)

1. The Provider shall provide individual services to the Customer in accordance with the terms and conditions agreed in the individual/framework contract and hereinafter.
2. For services provided by the Provider to the Customer to a certain extent, without a specific work being agreed as the result, the terms and conditions of the Services (DL) part shall apply.
3. For services where the customer is responsible for the project and results, the terms and conditions of the Services (DL) part shall apply.
4. The terms and conditions of the Services Part (DL) shall apply to services where the Provider provides work services to the Customer on a time and materials basis as instructed.
5. The terms and conditions of the Work Services Part (WV) shall apply to services for which the Provider, on its own responsibility, creates a specific work for the Customer at a specific time for a fixed remuneration.
6. The General contractual terms (AV) of the Provider shall apply in addition.

Services (DL)

Correspond (except for formatting and adaptation of document references) unchanged to the Bitkom Contract Terms for the Provision of Services (DL Bitkom), version 2.1

1 Subject of the contract

- 1.1 The Provider shall provide the service in accordance with the terms and conditions agreed in the contract and hereinafter in return for the contractually agreed remuneration. The responsibility for the project and its success shall be borne by the Customer. The Provider shall provide the service in accordance with the principles of proper professional practice.
- 1.2 The subject matter of the contract may consist of a one-time service, also to be provided in parts, or may be of a permanent nature.

2 Performance of the service

- 2.1 The place of performance shall be the registered office of the Provider, unless otherwise agreed.
- 2.2 The Provider shall provide the service through suitable employees. The customer has no claim to the provision of services by certain employees of the provider.



1. The provider shall determine the manner in which the service is provided, unless otherwise agreed.
2. The Customer is not authorized to issue instructions to the Provider's employees involved in the provision of services.
3. If the provider has to present the results of the service in writing, only the written presentation is authoritative.

3 Duty to cooperate

- 3.1 The Customer shall ensure that the contact person designated by it provides the Provider with the documents, information and data necessary for the provision of the Service in a complete, correct, timely manner and free of charge, unless owed by the Provider. In addition, the Customer shall ensure that they are kept up to date. The Provider may assume that these documents, information and data are complete and correct, except to the extent that it recognizes or must recognize that they are incomplete or incorrect.
- 3.2 For this purpose, the Customer shall observe the provision of services by the Provider.

4 Rights of use

- 4.1 Unless otherwise agreed, the Provider grants the Customer the non-exclusive and non-transferable right to use the service results, which the Provider has provided and handed over to the Customer within the scope of the contract, for its own internal purposes within the scope of the contractually stipulated purpose of use on a permanent basis.
- 4.2 For the rest, all rights remain with the provider.
- 4.3 The Provider may withdraw rights of use granted to the Customer if the Customer not inconsiderably violates restrictions on use or other regulations to protect against unauthorized use. The Provider shall set the Customer a grace period for remedial action beforehand. In the event of repetition and in the event of special circumstances which, after weighing the interests of both parties, justify immediate withdrawal, the Provider may also withdraw the rights without setting a deadline. The Customer shall confirm to the Provider in writing the cessation of use following a withdrawal of the rights of use. The Provider shall grant the Customer the rights of use again after the Customer has stated and assured in writing that there are no longer any violations of the Provider's rights as a result of its use and that previous violations and their consequences have been eliminated.

5 Runtime

- 5.1 If the contract is concluded for an indefinite period, it may be terminated with 3 months' notice to the end of a calendar year. This termination is possible for the first time at the end of the calendar year following the conclusion of the contract. Any agreed minimum term shall remain unaffected by this right of termination.



This shall not apply in each case if anything to the contrary has been agreed.

5.2 The right to extraordinary termination for good cause remains unaffected.

5.3 Declarations of termination are only effective in writing.

5.4 Withdrawal from the contract is excluded.

6 Remuneration

6.1 Unless otherwise agreed, the Provider may increase the remuneration at the earliest 12 months after conclusion of the contract if the increased remuneration corresponds to the current list price of the Provider. Further increases can take place at the earliest 12 months after a previous increase takes effect. An increase becomes effective 3 months after announcement.

The customer has the right to terminate the contract if the remuneration rates increase by more than five percent. The customer may terminate within one month from receipt of the announcement at the time such an increase becomes effective.

6.2 Agreed statements of effort shall be deemed approved unless the Customer objects in writing in detail within 21 days of receipt and the Provider has referred to the fictitious approval in the statement of effort.

6.3 Travel costs and expenses as well as other expenses shall be reimbursed according to the price list of the Provider, unless otherwise agreed.

Travel time is considered working time.

6.4 The Provider may demand compensation for its expenses to the extent that additional expenses are incurred due to the Customer's failure to properly fulfill its obligations (see Section 3).

10 Impaired performance

10.1 If the service is not provided in accordance with the contract and if the Provider is responsible for this (service disruption), the Provider shall be obligated to provide the service in accordance with the contract in whole or in part without additional costs for the Customer within a reasonable period of time, unless this is only possible with disproportionate effort. This obligation of the Provider shall only exist if the Customer notifies the Provider of the service disruption in writing and without delay, but no later than two weeks after becoming aware of it, unless otherwise agreed.

10.2 Section 6 of the General contractual terms (AV) shall apply to any claims for expenses and damages exceeding the above.

11 Validity of the General contractual terms

The General contractual terms (AV) shall apply in addition.

Work performance (WV)

Correspond (except for formatting and adaptation of document references) unchanged to the Bitkom Contract Terms for Contracts for Work and Services (WV Bitkom), Version 2.1

1 Subject matter of the contract and description of services

- 1.1 The Provider shall perform the Work in accordance with the terms and conditions agreed in the Contract and hereinafter in return for the remuneration agreed in the Contract.
- 1.2 The provider shall bear responsibility for success only insofar as
 - a) the relevant criteria for this were specifically and conclusively defined in the service description in terms of scope and effect when the contract was concluded and have become the subject of the contract (agreed performance criteria), and
 - b) the customer fulfills its duties to cooperate in a timely and proper manner; unless these have no effect on the performance of the service.
- 1.3 The service description shall be based on the Customer's technical and functional requirements communicated by the Customer. The performance description shall conclusively reflect the agreed performance criteria (Clause 1.2 a) and any test criteria to be applied for this purpose. Changes to the service description shall only be made in accordance with Clause 4. Any analysis, planning and consulting services for the service description shall only be provided by the Provider on the basis of a separate contract.
- 1.4 Unless already agreed in the service description, the contracting parties shall agree by a date agreed in the contract, otherwise no later than two weeks after signing of the contract, on the basis of the agreed performance criteria on the test means to be implemented for their verification, such as test cases (clauses 6.1 and 6.5 c). Insofar as the test means have not been agreed by two weeks after the date provided for this purpose, the Provider may for its part define suitable test means in a binding manner. The interests of the customer shall be taken into account appropriately.
- 1.5 Insofar as the Provider does not owe success under a contract for work and no other agreement has been made, the conditions of Part DL: Services (Contractual Conditions for Services) shall apply, unless otherwise agreed.

2 Cooperation of the contracting parties

- 2.1 The contact persons (clause 2.1 of the General contractual terms) shall immediately bring about the decisions connected with the execution of the contract and shall be available for information necessary for the execution of the contract.

The decisions of the contact persons shall be documented.



2.2 The place of performance shall be the registered office of the Provider, unless otherwise agreed.

3 Duty to cooperate

- 3.1 The Customer shall ensure that the documents, information and data necessary for the performance of the service are available to the Provider in a complete, correct, timely manner and free of charge, unless owed by the Provider. The Provider may assume that these documents, information and data are complete and correct, except to the extent that it recognizes or must recognize that they are incomplete or incorrect.
- 3.2 The customer shall hand over the test means defined in accordance with Clause 1.3 in a timely and proper manner. If the Customer is in default with the handover, the Provider shall be entitled to create or procure suitable test means at the Customer's expense.
- 3.3 The Customer shall report defects in particular in accordance with Section 2.4 of the General contractual terms (AV).

4 Procedure for performance changes

Both contracting parties may propose changes to the service description (clause 1.3) and service provision. The following procedure is agreed for this purpose:

- 4.1 The Provider shall review a proposed change from the Customer and notify the Customer whether or not extensive review of such proposed change is required.
- 4.2 If an extensive review of the change proposal is required, the Provider shall notify the Customer within a reasonable period of time of the time expected to be required for this and the remuneration. The customer shall issue or reject the review order within a reasonable period of time.
- 4.3 If an extensive review of the change proposal is not required or the commissioned review is completed, the provider shall provide the customer with either
- a) submit a written offer for the implementation of the changes (change offer). The change offer shall contain in particular the changes to the performance specification and their effects on the performance period, the planned dates, the test means and the remuneration;
 - or
 - b) notify that the proposed change is not feasible for the provider within the scope of the agreed services.
- 4.4 The customer shall either reject a change offer within the acceptance period (binding period) specified therein or accept it in writing or in another agreed form. The Customer shall notify the Provider of any rejection without undue delay.

- 4.5 The Provider and the Customer may agree that services affected by a proposed change shall be interrupted until the review is completed, or - insofar as a change offer is made - until the expiry of the binding period.
- 4.6 Until the change proposal is accepted, the work shall continue on the basis of the previous contractual agreements. The performance periods shall be extended by the number of calendar days on which the work was interrupted in connection with the change proposal or its review. The Provider may demand reasonable compensation for the duration of the interruption (Section 4.5), except to the extent that the Provider has otherwise deployed or maliciously failed to deploy its employees affected by the interruption.
- 4.7 The amendment procedure shall be documented in writing or in text form at the Provider's request, unless otherwise agreed. Any amendment to the contractual agreement, in particular to the service description, shall be agreed in text form.
- 4.8 Clauses 4.2 to 4.7 shall apply mutatis mutandis to the Provider's proposed changes.
- 4.9 Proposals for changes shall be addressed to the contact person (Clause 2.1) of the Contractual Partner.

5 Rights of use

- 5.1 The Provider grants the Customer the non-exclusive right to use the service results, which the Provider has provided and handed over to the Customer within the scope of the contract, for its own internal purposes within the scope of the contractually stipulated purpose of use on a permanent basis. A transfer of the rights of use to third parties shall only be permissible if the customer fully relinquishes its rights. The customer shall be obligated to impose the obligations and restrictions of use incumbent upon it on the third party. This shall apply in particular to the obligations pursuant to Section 5.4. Upon request of the Provider, the Customer shall confirm the relinquishment of its own use in writing.
- 5.2 For the rest, all rights remain with the provider.
- 5.3 The Customer shall notify the Provider immediately if it becomes aware that unauthorized access or use is imminent or has occurred in its area. The Provider shall be entitled to take appropriate technical measures to protect against non-contractual use. The use of the services in accordance with the contract may not be significantly impaired as a result.
- 5.4 The customer may not do anything that could promote unauthorized use. In particular, he may not attempt to decompile the programs unless he is entitled to do so pursuant to § 69d UrhG for interfaces to software not to be supplied by the Provider. Before decompiling, the Customer shall first request the necessary information from the Provider.
- 5.5 The Provider may revoke the Customer's right of use if the Customer not inconsiderably violates restrictions on use or other regulations to protect against unauthorized use. The Provider shall set the Customer a grace period for remedial action beforehand.
In the event of repetition and in the event of special circumstances that justify immediate

revocation after weighing the interests of both parties, the Provider may also issue the revocation without setting a deadline. The Customer shall confirm the cessation of use to the Provider in writing after the revocation. The Provider shall grant the Customer the right of use again after the Customer has stated and assured in writing that there are no longer any violations of the right of use and that previous violations and their consequences have been eliminated.

6 Acceptance

- 6.1 The Customer shall declare acceptance within a reasonable acceptance period set by the Provider. As a rule, a period of no more than 14 calendar days shall be deemed reasonable, unless another acceptance period has been agreed. The acceptance period shall be set in writing. During the acceptance period, the Customer may satisfy itself, if necessary by means of the test equipment (Clause 1.3), that the work performances are in accordance with the contract.
- 6.2 Unless otherwise agreed, a notified defect shall be assigned to one of the following categories:
- a) Category 1: The work performance is afflicted with a defect that makes its use impossible or allows it only with serious restrictions.
 - b) Category 2: The work performance has a defect that restricts use without a category 1 defect being present.
 - c) Category 3: The work performance has a defect that only insignificantly restricts its use.
- 6.3 The customer may refuse the declaration of acceptance only if a category 1 defect is notified at the same time or if several category 2 defects are notified which together have the same effect as a category 1 defect. The refusal of acceptance and the notice of defects must be in writing.
- The Provider shall remedy properly (Clause 3.3) reported defects with Category 1 effects within a reasonable period of time in such a way that there are no longer any Category 1 effects. As long as the inspection cannot be properly continued due to such a defect, its effects or its elimination, the acceptance period for the work performances affected thereby shall be extended appropriately. Claims due to defects after declaration of acceptance shall remain unaffected.
- 6.4 Partial acceptances already declared shall remain unaffected by subsequent acceptance tests for other services. The same applies to tests already performed, except insofar as these are affected by a defect or its elimination.
- 6.5 The work performances shall also be deemed to have been accepted - even without an express declaration and without a request for acceptance on the part of the supplier,
- a) if the customer uses the work performance for purposes other than testing (Clause 1.3), or
 - b) with payment, unless the customer has justifiably refused acceptance, or
 - c) if, when using the test means (items 1.3, 3.2), the tests can be carried out without defects occurring that prevent acceptance.

6.6 Unless otherwise agreed, definable partial services shall also be accepted individually in accordance with these provisions.

7 Claims of the customer for defects

- 7.1 The customer shall only have claims for defects if reported defects are reproducible or otherwise verifiable. This shall also apply to defects for which rights are reserved upon acceptance. Section 3.3 shall apply in particular to the notification of defects.
- 7.2 If the customer is entitled to claims for defects, he shall initially only have the right to subsequent performance within a reasonable period. The supplementary performance includes, at the supplier's option, either removal of the defect or new production.
- 7.3 If the subsequent performance fails or cannot be carried out for other reasons, the customer may, under the statutory conditions, reduce the remuneration, withdraw from the contract and/or - within the scope of Section 6 of the General contractual terms - claim damages or reimbursement of expenses. The Customer shall only be entitled to costly self-performance if a defect has not been remedied despite expiry of a reasonable period for subsequent performance and the cause for this lies in the sphere of the Provider.
- 7.4 If subsequent performance is delayed, clause 3.4 of the General Terms and Conditions shall apply to the Provider's compensation for damages and expenses. Clause 6 of the General Terms and Conditions shall apply to compensation for damages or expenses.
- 7.5 The customer shall exercise a right of choice to which it is entitled with regard to these defect claims within a reasonable period of time, as a rule within 14 calendar days after the possibility of the customer becoming aware of the right of choice.
- 7.6 Section 4 of the General contractual terms shall apply in addition to material defects, and Section 5 of the General contractual terms shall apply in addition to defects of title. § Section 641 (3) BGB remains unaffected.

8 Early termination

- 8.1 If a minimum term of the contract has been agreed, ordinary termination before the end of the minimum term is excluded. The same shall apply to an agreed fixed term of the contract. Ordinary termination shall also be excluded insofar as the specific contractual relationship results in a special interest of the parties in the completion of the work.
- 8.2 If the Customer validly declares an ordinary termination prior to acceptance, the Provider shall be entitled to demand the agreed remuneration; however, the Provider shall have to take into account that which it saves in expenses as a result of the termination of the contract or acquires or maliciously refrains from acquiring through the use of its labor elsewhere. It shall be presumed that the Supplier is entitled to 10 percent of the agreed remuneration for the part of the work not yet performed.

- 9 The right to terminate for cause remains unaffected. If the extraordinary termination or partial termination is not the fault of the Provider, the Customer shall pay for the services rendered up to the termination. In addition, the Customer shall pay 10 percent of the agreed remuneration for the part of the work not yet performed as lump-sum compensation for expenses and damages. The proof of a lower expenditure or damage by the customer or a higher expenditure or damage by the provider remains unaffected.

12 Validity of the General contractual terms

The General contractual terms (AV) shall apply in addition.

Sale of hardware (VH)

Correspond (apart from formatting and adaptation of document references) unchanged to the Bitkom Terms and Conditions for the Sale of Hardware (VH Bitkom), Version 3.0

1 Subject of the contract

- 1.1 The quality and scope of performance of the hardware, including durability, functionality and compatibility, as well as the approved environment of use shall be determined by the respective product description, supplemented by the operating instructions, unless otherwise agreed. Unless otherwise agreed or required by law, the safety of the Hardware shall be governed by the rules of technology tested on the market at the time of the passing of risk. Public statements can only be decisive for the owed quality insofar as they concern specific properties of the specifically agreed hardware.
- 1.2 The hardware is supplied including installation instructions. Operating instructions (user documentation or online help) shall only be supplied insofar as they are necessary for the intended use. The operating instructions and the installation instructions may be made available to the Customer electronically at the discretion of the Provider, unless this is unreasonable for the Customer. Further instructions and accessories shall only be supplied if this has been specifically agreed, for example in a parts list.
- 1.3 If the delivery of the hardware includes software that is absolutely necessary for its functionality, the customer shall only receive a right to use this software with this hardware. Other software is subject to separate regulations.
- 1.4 Unless otherwise agreed, the hardware shall be installed and put into operation by the Customer. All further services of the Provider rendered at the Customer's request (in particular preparation for use, installation and demonstration of successful installation, instruction, training and consulting) shall be remunerated on a time and material basis.

2 Price, transfer of risk

- 2.1 The prices are valid for three months from the conclusion of the contract. Thereafter, the supplier may pass on an increase in the list price by its upstream supplier to the customer accordingly no later than one week before delivery. The customer may withdraw from the contract until delivery, but at the latest within one month after notification of the price increase, if the price increase exceeds 5%.
- 2.2 The risk is transferred to the customer directly from the delivery warehouse. The customer transports the hardware entirely at his own expense and releases the supplier from any transport and handling costs.

3 Obligations of the customer



- 3.1 The customer shall establish the necessary operating and usage conditions (e.g. space, energy, climate) for the hardware. The necessary conditions result from the contract, as far as not regulated there, from the product description or operating instructions.
- 3.2 Within the scope of any necessary support, the Customer shall, in particular, grant the Provider free access to the place of installation of the Hardware, provide the necessary work equipment there to a reasonable extent and communicate relevant information (e.g. on conditions of use or changes to the Hardware).

4 Claims of the customer for defects

- 4.1 The Provider warrants that the Hardware shall comply with the agreements pursuant to 1.1 when used in accordance with the contract.

Section 5 of the General contractual terms shall apply additionally to defects of title.

Section 4 of the General contractual terms shall apply additionally to material defects in accordance with the following provisions (Sections 4.2 to 4.4). § Section 475a BGB remains unaffected.

- 4.2 The customer shall only have claims for defects if reported defects can be reproduced or otherwise proven by the customer. Section 2.4 of the General Terms and Conditions shall apply in particular to the notification of defects.

- 4.3 If the customer is entitled to claims for defects, he shall initially only have the right to subsequent performance within a reasonable period. Subsequent performance shall include, at the supplier's option, either rectification of the defect or new delivery. The interests of the customer shall be given due consideration in the choice. The customer shall make the hardware available to the provider for the purpose of subsequent performance. Ownership of parts replaced on the basis of subsequent performance shall pass to the provider; § 439 para. 6 BGB shall remain unaffected.

The Customer shall enable the Provider to install and remove the defect within the scope of subsequent performance, unless this is unreasonable for the Customer. The customer shall consult with the provider before taking its own measures to remedy the defect.

If the customer has a claim for reimbursement of expenses, this shall only exist to a reasonable extent, taking into account the value of the relevant performance in a defect-free condition and the significance of the defect.

- 4.4 If the supplementary performance fails or cannot be carried out for other reasons, the customer may reduce the remuneration, withdraw from the contract and/or - under the conditions of item 6 of the General contractual terms - claim damages or reimbursement of expenses under the statutory conditions. The customer shall exercise a right of choice to which it is entitled with

regard to these claims for defects within a reasonable period, as a rule within 14 calendar days after the possibility of the customer becoming aware of the right of choice.

- 4.5 If the customer withdraws from the contract, the provider shall take back the hardware and repay the remuneration paid by the customer less the usage options granted to the customer, at most the usual sales value of this hardware at the time of return. These usage options shall generally be calculated on the basis of declining-balance depreciation over a usage period of three years. Both contracting parties reserve the right to prove that a longer or shorter period of use is to be taken as a basis.

5 Validity of the General contractual terms

The General contractual terms (AV) shall apply in addition.

Reference agreement (REF)

1 Naming the customer

The Customer grants the Provider the right to name the Customer as a reference customer within the scope of its commercial activities, irrespective of the transmission, carrier and storage technologies, using its company logo.

2 Mention of project and services

The Customer grants the Provider the right, free of charge, unlimited in time, space and content, to describe the project as well as the Provider's services and to use this description, including any literal quotations contained therein, in whole or in part, also mentioning the Customer's name, using the Customer's logo and photos, videos or other materials created by the Customer or by the Provider, in publications for illustration and advertising purposes in film, print and electronic media.

3 Confidentiality, release and revocation

- 3.1 When naming references, the Provider shall ensure that confidentiality in accordance with Section 2 of the General contractual terms is not violated.
- 3.2 If the Customer has named a contact person in writing to the Provider for reference approval, the Provider shall have the reference approved by this contact person prior to publication.
- 3.3 This consent to the naming of references may be revoked for good cause; the legitimate interests of the provider will be taken into account.

4 Validity of the General contractual terms

The General contractual terms (AV) shall apply in addition.

General contractual terms (AV)

Correspond (except for formatting and adaptation of document references) unchanged to AV
BITKOM, version 3.0

1 Remuneration and billing, performance protection, deadlines

- 1.1 Unless otherwise agreed, remuneration shall be calculated on a time and material basis at the Provider's prices generally applicable at the time of conclusion of the contract. Remunerations are always net prices plus legally applicable value added tax.

The provider may invoice on a monthly basis. If services are reimbursed on a time and material basis, the provider shall document the nature and duration of the activities and submit this documentation with the invoice.

- 1.2 Unless otherwise agreed in the PV price list, all invoices shall be payable without deduction no later than 14 calendar days after receipt free paying agent.

- 1.3 The customer may only offset or withhold payments due to defects to the extent that it is actually entitled to payment claims due to material defects or defects in title of the performance. Due to other claims for defects, the customer may withhold payments only to a proportionate extent taking into account the defect. Clause 4.1 shall apply accordingly. The customer shall have no right of retention if its claim for defects is time-barred. Apart from that, the customer may only set off or exercise a right of retention against undisputed or legally established claims.

- 1.4 The Provider retains ownership and rights to be granted to the Services until the remuneration owed has been paid in full; justified retentions of defects in accordance with Clause 1.3. sentence 2 shall be taken into account. Furthermore, the Provider retains ownership until all its claims arising from the business relationship with the Customer have been satisfied.

The Provider shall be entitled to prohibit the Customer from further use of the Services for the duration of any default in payment by the Customer. The Provider may only assert this right for a reasonable period of time, generally for a maximum of 6 months. This does not constitute a withdrawal from the contract. § Section 449 (2) BGB remains unaffected.

If the customer or his purchaser returns the services, the acceptance of the services does not constitute a withdrawal by the provider, unless he has expressly declared the withdrawal. The same applies to the seizure of the reserved goods or rights to the reserved goods by the provider.

The customer may neither pledge nor assign by way of security items subject to retention of title or reservation of rights. The customer shall only be permitted to resell the goods in the ordinary course of business as a reseller on condition that the customer has effectively assigned to the supplier its claims against its customers in connection with the resale and the customer transfers

title to its customer subject to payment. By concluding this contract, the customer assigns its future claims against its customers in connection with such sales to the supplier by way of security, who hereby accepts this assignment.

If the value of the Provider's security interests exceeds the amount of the secured claims by more than 20%, the Provider shall release a corresponding portion of the security interests at the Customer's request.

- 1.5 In the event of a permissible transfer of rights of use to supplies and services, the customer shall be obliged to impose the contractually agreed restrictions on the recipient thereof.
- 1.6 If the customer does not settle a due claim in full or in part by the contractual payment date, the provider may revoke agreed payment terms for all claims. Furthermore, the Provider shall be entitled to perform further services only against advance payment or against security in the form of a performance bond issued by a credit institution or credit insurer licensed in the European Union. The advance payment shall cover the respective billing period or - in the case of one-off services - their remuneration.
- 1.7 In the event of the Customer's economic inability to fulfill its obligations to the Provider, the Provider may terminate existing exchange contracts with the Customer by rescission, continuing obligations by termination without notice, including in the event of an application for insolvency by the Customer. § 321 BGB and § 112 InsO remain unaffected. The Customer shall inform the Provider in writing at an early stage of any impending insolvency.
- 1.8 Fixed performance dates shall be agreed exclusively expressly in documented form. The agreement of a fixed performance date shall be subject to the proviso that the Provider receives the services of its respective upstream suppliers in due time and in accordance with the contract.

2 Cooperation, duties to cooperate, confidentiality

- 2.1 The customer and the provider shall each appoint a responsible contact person. Unless otherwise agreed, communication between the customer and the provider shall take place via these contact persons. The contact persons shall immediately bring about all decisions related to the execution of the contract. The decisions shall be documented in a binding manner.
- 2.2 The Customer shall be obligated to support the Provider to the extent necessary and to create in its sphere of operation all prerequisites required for the proper execution of the order. In particular, the Customer shall provide the necessary information and, if possible, enable remote access to the Customer's system. If remote access is not possible for security reasons or other reasons, the deadlines affected by this shall be extended appropriately; the contractual partners shall agree on an appropriate arrangement for further effects. The Customer shall also ensure that expert personnel are available to support the Provider.

Insofar as it is agreed in the contract that services can be performed on site at the Customer's premises, the Customer shall provide sufficient workplaces and work equipment free of charge at the Provider's request.

- 2.3 Unless otherwise agreed, the customer shall provide for proper data backup and failure precautions for data and components (such as hardware, software) that are appropriate to their type and importance.
- 2.4 The customer shall report defects immediately in writing in a comprehensible and detailed form, stating all information useful for the detection and analysis of the defect. In particular, the work steps that led to the occurrence of the defect, the manifestation and the effects of the defect shall be indicated. Unless otherwise agreed, the relevant forms and procedures of the Provider shall be used for this purpose.
- 2.5 The Customer shall support the Provider in the examination and assertion of claims against other parties involved in connection with the provision of services appropriately upon request. This shall apply in particular to recourse claims of the Provider against upstream suppliers.
- 2.6 The contracting parties shall be obliged to maintain secrecy with regard to business secrets and other information designated as confidential (e.g. in documents, records, data files) which become known in connection with the performance of the contract and not to use or disclose such information beyond the purpose of the contract without the written consent of the other contracting party.

The respective receiving contractual partner shall be obliged to take appropriate confidentiality measures for business secrets and for information designated as confidential. The contractual partners are not entitled to obtain business secrets of the other contractual partner by observing, examining, dismantling or testing the subject matter of the contract. The same shall apply to other information or objects obtained during the performance of the contract.

Business secrets and other information designated as confidential may only be disclosed to persons who are not involved in the conclusion, implementation or execution of the contract with the written consent of the other contracting party.

Unless otherwise agreed, the obligation to maintain secrecy for other information designated as confidential shall end five years after the respective information becomes known, but in the case of continuing obligations not before their termination. Business secrets shall be kept secret for an unlimited period of time.

The contractual partners shall also impose these obligations on their employees and any third parties engaged.

- 2.7 The contracting parties are aware that electronic and unencrypted communication (e.g. by e-mail) is subject to security risks. In this type of communication, they will therefore not assert any claims based on the lack of encryption, unless encryption has been agreed upon beforehand.

3 Disruptions in the provision of services

- 3.1 If a cause for which the Provider is not responsible, including strike or lockout, impairs compliance with deadlines ("disruption"), the deadlines shall be postponed by the duration of the disruption, if necessary including a reasonable restart phase. A contractual partner shall immediately inform the other contractual partner of the cause of a disruption occurring in its area and the duration of the postponement.
- 3.2 If the effort increases due to a malfunction, the Provider may also demand payment for the additional effort, unless the Customer is not responsible for the malfunction and its cause lies outside the Provider's sphere of responsibility.
- 3.3 If the customer can withdraw from the contract due to improper performance of the provider and / or claim damages instead of performance or claims such, the customer shall declare in writing at the request of the provider within a reasonable period of time whether he asserts these rights or continues to wish the performance of the service. In the event of a withdrawal, the Customer shall reimburse the Provider for the value of previously existing possibilities of use; the same shall apply to deteriorations due to intended use.

If the Provider is in default with the provision of the service, the Customer's compensation for damages and expenses due to the default shall be limited to 0.5% of the price for the part of the contractual service that cannot be used due to the default for each full week of the default. The liability for delay shall be limited to a maximum of 5% of the remuneration for all contractual services affected by the delay; in the case of continuing obligations, it shall be limited to the remuneration for the respective services affected for the full calendar year. In addition and with priority, a percentage of the remuneration agreed upon at the time of conclusion of the contract shall apply. This shall not apply if a delay is due to gross negligence or intent on the part of the Provider.

- 3.4 In the event of a delay in performance, the customer shall only have a right of withdrawal within the framework of the statutory provisions if the supplier is responsible for the delay. If the Customer justifiably claims damages or reimbursement of expenses in lieu of performance due to the delay, the Customer shall be entitled to demand 1% of the price for the part of the contractual performance that cannot be used due to the delay for each full week of the delay, but no more than a total of 10% of this price; in the case of continuing obligations, in relation to the remuneration for the respective services affected for the full calendar year. In addition and with priority, a percentage of the remuneration agreed upon conclusion of the contract shall apply.

4 Material defects and reimbursement of expenses

- 4.1 The provider warrants the contractually owed quality of the services. There shall be no claims for material defects for an only insignificant deviation of the Provider's services from the contractual quality.

Claims for defects shall also not exist in the event of excessive or improper use, natural wear and tear, failure of components of the system environment. The same shall apply in the event of software errors that cannot be reproduced or otherwise proven by the customer. This shall also apply in the event of damage due to special external influences which are not assumed under the contract. Claims due to defects shall also not exist in the event of subsequent modification or repair by the customer or third parties, unless this does not impede the analysis and elimination of a material defect.

Clause 6 shall apply additionally to claims for damages and reimbursement of expenses.

- 4.2 The limitation period for material defect claims is one year from the statutory commencement of the limitation period. The statutory periods for recourse according to § 478 BGB remain unaffected.

The same shall apply insofar as longer periods are prescribed by law in accordance with Section 438 (1) No. 2 or Section 634a (1) No. 2 of the German Civil Code (BGB), in the event of an intentional or grossly negligent breach of duty on the part of the Supplier, in the event of fraudulent concealment of a defect and in cases of injury to life, limb or health as well as for claims under the Product Liability Act.

The processing of a notice of material defect by the customer by the supplier only leads to the suspension of the statute of limitations, insofar as the legal requirements for this exist. This does not result in a new start of the limitation period.

Subsequent performance (new delivery or rectification of defects) can only affect the limitation period of the defect triggering the subsequent performance.

- 4.3 Claims under a right of recourse in respect of contracts for digital products pursuant to Section 327u of the German Civil Code (BGB) shall remain unaffected by Clauses 4.1 and 4.2.

If a customer asserts a possible claim against the customer, which may lead to a recourse claim, the customer shall immediately inform the provider about the asserted claim and the further information necessary and useful for its assessment. The Customer shall provide the Provider with the opportunity to satisfy the claim asserted by the Customer's customer, unless this is unreasonable for the Customer. The Customer and the Provider shall coordinate and cooperate with the aim of satisfying a justified claim of the Customer's customer as expensively and cost-effectively as possible.

- 4.4 The Provider may demand remuneration for its expenses to the extent that

- a) it acts on a report without there being a defect, unless the customer could not with reasonable effort have discovered that there was no defect, or
- b) a reported malfunction is not reproducible or otherwise provable by the customer as a defect, or

- c) additional expenses are incurred due to the Customer's failure to properly fulfill its obligations (see also Sections 2.2, 2.3, 2.4 and 5.2).

5 Legal defects

- 5.1 The Provider shall only be liable for infringements of third party rights by its performance insofar as the performance is used in accordance with the contract and in particular in the contractually agreed, otherwise in the intended environment of use without modification.

The Provider shall be liable for infringements of third party rights only within the European Union and the European Economic Area and at the place of contractual use of the service. Clause 4.1 sentence 1 shall apply accordingly.

- 5.2 If a third party asserts against the Customer that a service of the Provider infringes its rights, the Customer shall notify the Provider without delay. The Provider and, if applicable, its upstream suppliers shall be entitled, but not obligated, to defend the asserted claims at their own expense to the extent permissible.

The customer is not entitled to acknowledge claims of third parties before he has given the provider a reasonable opportunity to defend the rights of third parties in another way.

- 5.3 If the rights of third parties are infringed by a service of the Provider, the Provider shall, at its own discretion and at its own expense

- a) provide the customer with the right to use the service or
- b) make the performance non-infringing or
- c) take back the service with reimbursement of the payment made for it by the customer (less reasonable compensation for use) if the provider cannot achieve any other remedy with reasonable effort.

The interests of the customer are given due consideration.

- 5.4 Claims of the Customer due to defects of title shall become statute-barred in accordance with Clause 4.2. Clause 6 shall apply additionally to claims for damages and reimbursement of expenses of the Customer; Clause 4.3 shall apply accordingly to additional expenses of the Provider.

6 General liability of the provider

- 6.1 The provider is always liable to the customer
 - a) for damages caused by him as well as his legal representatives or vicarious agents intentionally or by gross negligence,
 - b) in accordance with the Product Liability Act and

- c) for damages resulting from injury to life, body or health for which the provider, its legal representatives or vicarious agents are responsible.

6.2 The Provider shall not be liable for slight negligence, except to the extent that it has breached a material contractual obligation, the fulfillment of which is a prerequisite for the proper performance of the contract or the breach of which jeopardizes the achievement of the purpose of the contract and on the observance of which the Customer may regularly rely.

This liability is limited to the contract-typical and foreseeable damage in the case of property damage and financial loss. This also applies to lost profits and missed savings. Liability for other remote consequential damages is excluded.

For a single case of damage, liability shall be limited to the contract value, in the case of ongoing remuneration to the amount of remuneration per contract year, but not less than € 50,000. Section 4.2 shall apply accordingly to the limitation period. The contracting parties may agree in writing on a more extensive liability upon conclusion of the contract, usually against a separate remuneration. Priority shall be given to an individually agreed liability sum. The liability according to clause 6.1 remains unaffected by this paragraph.

In addition and as a matter of priority, the liability of the Provider due to slight negligence arising from the respective contract and its execution for damages and reimbursement of expenses shall be limited in total to the percentage of the remuneration agreed in this contract at the time of conclusion of the contract, irrespective of the legal grounds. Liability pursuant to Section 6.1 b) shall remain unaffected by this paragraph.

- 6.3 The supplier shall only be liable for damages arising from a guarantee declaration if this was expressly assumed in the guarantee. In the event of slight negligence, this liability shall be subject to the limitations set forth in Section 6.2.
- 6.4 In case of necessary recovery of data or components (such as hardware, software), the Provider shall only be liable for the effort required for the recovery in case of proper data backup and failure precaution by the Customer. In the event of slight negligence on the part of the Provider, this liability shall only apply if the Customer has carried out a data backup and failure precaution appropriate to the type of data and components prior to the incident. This shall not apply if this has been agreed as a service of the Provider.
- 6.5 Clauses 6.1 to 6.4 shall apply accordingly to claims for reimbursement of expenses and other liability claims of the Customer against the Provider. Clauses 3.3 and 3.4 shall remain unaffected.

7 Privacy

The Customer shall conclude with the Provider agreements necessary under data protection law for the handling of personal data.



8 Other

- 8.1 The customer shall be responsible for observing any import and export regulations applicable to the deliveries or services, in particular those of the USA. In the case of cross-border deliveries or services, the customer shall bear any customs duties, fees and other charges incurred. The customer shall handle legal or official procedures in connection with cross-border deliveries or services on its own responsibility, unless otherwise expressly agreed.
- 8.2 German law shall apply. The application of the UN Convention on Contracts for the International Sale of Goods is excluded.
- 8.3 The Provider shall provide its services on the basis of its General Terms and Conditions (GTC). The customer's GTC shall not apply, even if the provider has not expressly objected to them.
- Acceptance of the services by the Customer shall be deemed to be acceptance of the Provider's GTC with waiver of the Customer's GTC.
- Other terms and conditions shall only be binding if the supplier has acknowledged them in writing; the supplier's GTC shall then apply in addition.
- 8.4 Amendments and supplements to this contract shall only be agreed in writing. Insofar as written form is agreed (e.g. for notices of termination, withdrawal), text form is not sufficient.
- 8.5 The place of jurisdiction vis-à-vis a merchant, a legal entity under public law or a special fund under public law shall be the registered office of the Provider. The Provider may also sue the Customer at the Customer's registered office.

GDPR Data Processing Agreement for the Use of the 3spin Learning Platform (AVV)

1 Subject matter, duration and specification of the data processing

The Agreement shall apply to the collection, processing and deletion (hereinafter: Processing) of all personal data (hereinafter: Data) that are the subject of the existing Service Agreement (hereinafter: Main Agreement) between the Parties or arise in the course of its implementation or become known to the Processor.

The subject and duration of the order as well as the type and purpose of the processing result from the main contract. In particular, the following data are part of the data processing:

Categories of persons concerned	Type of data	Nature and purpose of data processing
Client	<p>Contact information such as title, name, business email address, phone number, address, billing information, other digital addresses used to contact you, and other supplemental information filled out in help/contact forms</p> <p>Information about the company such as company name, legal form, general contact details, address, industry, company size.</p>	<p>Communicating about the Services and related other offers, providing the Service, billing, managing the account, responding to demo requests, sending marketing messages, personalizing the user experience and content displayed.</p>
Users of the platform (including administrators, authors and learners)	<p>Training content including related information and files uploaded for the use of the platform</p> <p>User's access and profile information, title, name, email address, password hash, role, optionally a profile photo, and other information displayed in the platform</p> <p>Device information such as operating system, browser type/settings, IP address, referring URLs, device identifiers, connection type</p> <p>Information about the visit and use of the platform and the interactions made on it, functions used,</p>	<p>Providing the service, determining usage for billing, managing the account, personalizing the usage experience and displayed content, preventing usage abuse, aggregated and anonymized use for machine learning, detecting trends and activity patterns to improve services</p>



search terms, time, place and duration of use

Learner	Information on the delivery of training courses and sessions including location, time, duration, repetitions, learning outcomes.	Provision of evaluations for learners and training managers
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Customer Service Request	Contact information, summary of the problem, sample data, screenshots, crash data, and other information that may be helpful in resolving a problem, if applicable.	Responding to customer service inquiries
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The term of this GCU is based on the term of the main contract, provided that the provisions of this Annex do not give rise to obligations going beyond this.

2 Scope and responsibility

- 2.1 The Contractor processes personal data on behalf of the Client. This includes activities that are specified in the main contract and in the service description. Within the scope of this main contract, the Customer shall be solely responsible for compliance with the statutory provisions of the data protection laws, in particular for the lawfulness of the transfer of data to the Contractor as well as for the lawfulness of the data processing ("Controller" within the meaning of Art. 4 No. 7 GDPR).
- 2.2 The instructions shall initially be determined by the main contract and the services described therein and may thereafter be amended, supplemented or replaced by individual instructions (individual instructions) by the Customer in writing or in an electronic format (text form) to the office designated by the Contractor. Instructions that are not provided for in the main contract shall be treated as a request for a change in performance. Verbal instructions shall be confirmed immediately in writing or in text form.

3 Duties of the contractor

- 3.1 The Contractor may only process data of data subjects within the scope of the order and the Client's instructions unless there is an exceptional case within the meaning of Article 28 (3) a) of the GDPR. The Contractor shall inform the Customer without undue delay if it is of the opinion that an instruction violates applicable laws. The Contractor may suspend the implementation of the instruction until it has been confirmed or amended by the Customer.
- 3.2 The Contractor shall design the internal organization in its area of responsibility in such a way that it meets the special requirements of data protection. It shall take technical and organizational measures for the adequate protection of the Customer's data that meet the requirements of the General Data Protection Regulation (Art. 32 GDPR). The Contractor shall take technical and organizational measures to ensure the confidentiality, integrity, availability and resilience of the systems and services in connection with the Processing on a permanent basis. The Client is aware of these technical and organizational measures and is responsible for ensuring that they provide an appropriate level of protection for the risks of the data to be processed. The Contractor reserves the right to change the security measures taken, but it must be ensured that the contractually agreed level of protection is not undercut.
- 3.3 To the extent agreed, the Contractor shall support the Client within the scope of its possibilities in fulfilling the requests and claims of data subjects pursuant to Chapter III of the GDPR and in complying with the obligations set forth in Art. 33 to 36 of the GDPR.
- 3.4 The Contractor warrants that the employees involved in the processing of the Client's data and other persons working for the Contractor are prohibited from processing the data outside the scope of the instruction. Furthermore, the Contractor warrants that the persons authorized to process the personal data have committed themselves to confidentiality or are subject to an appropriate statutory duty of confidentiality. The confidentiality/confidentiality obligation shall continue to exist after termination of the order.
- 3.5 The Contractor shall inform the Customer without undue delay if it becomes aware of any violations of the protection of personal data of the Customer. The Contractor shall take the necessary measures to secure the data and to mitigate any possible adverse consequences for the persons concerned and shall consult with the Client on this without delay.
- 3.6 The Contractor shall name to the Client the contact person for data protection issues arising within the scope of the main contract.
- 3.7 The Contractor warrants to comply with its obligations under Article 32(1)(d) of the GDPR to implement a procedure for the regular review of the effectiveness of the technical and organizational measures to ensure the security of the Processing.
- 3.8 The Contractor shall correct or delete the data that is the subject of the contract if the Client instructs it to do so and this is covered by the scope of the instructions. If a deletion in

compliance with data protection or a corresponding restriction of data processing is not possible, the Contractor shall undertake the destruction of data carriers and other materials in compliance with data protection on the basis of an individual order by the Customer or shall return these data carriers to the Customer, unless already agreed in the main contract.

In special cases to be determined by the client, storage or handover shall take place. Remuneration and protective measures for this are to be agreed separately, unless already agreed in the main contract.

- 3.9 After the end of the order, data must either be surrendered or deleted at the request of the customer. This does not apply to data that is located on backup/archive systems and that is used exclusively for recovery in the event of data loss/damage, as well as data that must be retained due to legal requirements.
- 3.10 In the event of a claim against the Client by a data subject with regard to any claims pursuant to Art. 82 of the GDPR, the Contractor undertakes to support the Client in defending the claim to the extent of its possibilities.

4 Obligations of the client

- 4.1 The Client shall inform the Contractor immediately and in full if it discovers errors or irregularities in the results of the order with regard to data protection regulations.
- 4.2 In the event of a claim against the Principal by a data subject with regard to any claims under Art. 82 of the GDPR, §3 (10) shall apply accordingly.
- 4.3 The Client shall name the Contractor the contact person for data protection issues arising within the scope of the main contract.

5 Requests from affected persons

- 5.1 If a data subject approaches the Contractor with requests for correction deletion or information, the Contractor shall refer the data subject to the Client, provided that an assignment to the Client is possible according to the data subject. The Contractor shall immediately forward the request of the data subject to the Customer. The Contractor shall support the Customer within the scope of its possibilities upon instruction to the extent agreed. The Contractor shall not be liable if the request of the data subject is not answered by the Customer, not answered correctly or not answered in due time.

6 Detection options

- 6.1 The Contractor shall prove to the Customer compliance with the obligations set forth in the GCU and the Main Contract by appropriate means.

6.2 If, in individual cases, inspections by the customer or an inspector commissioned by the customer are necessary, these shall be carried out during normal business hours without disrupting operations after notification and taking into account a reasonable lead time. The Contractor may make such inspections dependent on prior notification with a reasonable lead time and on the signing of a confidentiality agreement with regard to the data of other customers and the technical and organizational measures that have been set up. If the auditor commissioned by the Client is in a competitive relationship with the Contractor, the Contractor shall have a right of objection against the auditor.

The Contractor may charge for assistance in performing an inspection.

6.3 Should a data protection supervisory authority or any other sovereign supervisory authority of the Customer carry out an inspection, paragraph 2 shall apply accordingly in principle. It shall not be necessary to sign a confidentiality agreement if this supervisory authority is subject to professional or statutory confidentiality where a violation is punishable under the German Criminal Code.

7 Subcontractors (other processors)

7.1 The use of subcontractors as further processors is only permitted if the Client has given its prior consent.

7.2 The contractually agreed services or the partial services described below shall be performed using the following subcontractors:

Name and address	Description of the (partial) services	
Microsoft Germany GmbH Walter-Gropius-Strasse 5 80807 Munich	Provision of hosting infrastructure (including data centers, servers, databases, storage, backup systems, networks, other managed infrastructure services).	ISO27001 certification
Sendinblue GmbH Köpenicker Straße 126 10179 Berlin	Sending transactional emails	GDPR compliance and data center ISO27001 certified

The Customer agrees that the Contractor may involve further subcontractors or replace subcontractors. The Contractor shall inform the Customer prior to involving or replacing the subcontractors. The Customer may object to the change - within a reasonable period of time - for an important reason under data protection law - to the office designated by the Customer. If no objection is made within the time limit, the consent to the change shall be deemed given.

7.3 If the Contractor places orders with subcontractors, it shall be incumbent upon the Contractor to transfer its data protection obligations under this Agreement to the subcontractor.

8 Information obligations, written form clause, choice of law

8.1 If the Customer's data at the Contractor is endangered by attachment or seizure, by insolvency or composition proceedings or by other events or measures of third parties, the Contractor shall inform the Customer thereof without undue delay. The Contractor shall immediately inform all persons responsible in this context that the sovereignty and ownership of the data lies exclusively with the Client as the "responsible party " within the meaning of the General Data Protection Regulation.

8.2 Amendments and supplements to this Annex and all of its components - including any warranties of the Contractor - shall require a written agreement, which may also be in an electronic format (text form), and the express indication that it is an amendment or supplement to these Terms and Conditions. This shall also apply to the waiver of this formal requirement.

8.3 In the event of any contradictions, the provisions of these AVV on data protection shall take precedence over the provisions of the main contract. Should individual parts of these AVV be invalid, this shall not affect the validity of the remaining AVV.

8.4 German law applies.

9 Liability and compensation

9.1 The Client and the Contractor shall be liable vis-à-vis data subjects in accordance with the provision set out in Art. 82 of the GDPR unless a deviating liability provision on data protection and/or the order agreement has been expressly agreed in the main contract.