

General Terms and Conditions of Data Virtuality GmbH for the Provision of “Data Virtuality Pipes”

These shall be the General Terms and Conditions (hereinafter referred to as “**GTC**”) of Data Virtuality GmbH, Katharinenstr. 15, 04109 Leipzig, Germany, represented by their managing director Dr Mykola Golovin, registered in the commercial register of the local court [*Amtsgericht*] of Leipzig with the registration number HRB 28168 (hereinafter referred to as “**Data Virtuality**”) for the provision of the software “Data Virtuality Pipes”. These GTC shall be accessible and available for download here: <http://datavirtuality.com/terms-and-conditions/>.

Any deviating terms and conditions of the customer, that are not expressly accepted by Data Virtuality, shall not become a part of the contract, even if Data Virtuality does not expressly object to them.

The software "Data Virtuality Pipes" is aimed exclusively at entrepreneurs within the meaning of §14 BGB. With the conclusion of the contract, the customer assures that he is an entrepreneur within the meaning of §14 BGB (German Civil Code).

§ 1 Subject Matter and Term of the Contract

(1) If the customer is interested in the contract software, he will receive a written offer from Data Virtuality. By receiving the offer signed and unchanged by the customer, a contract for the rental provision of the contractual software as Software-as-a-service between the customer and Data Virtuality is concluded.

(2) In the case that a contract has been agreed upon, Data Virtuality shall provide to the customer the license to use the software specified in the Quotation including the application documentation (jointly referred to as “**Contractual Items**”) at the conditions indicated in the Quotation and shall provide it to the customer for the purpose of using it in accordance with the contract as specified in the Quotation. Data Virtuality shall provide the Contractual Items to the customer on data storage devices and ready for installation or via download. The source code of the software shall not be leased together with the software.

(3) The application documentation that is applicable at the time of the provision of the Contractual Items in accordance with section 1 and that was made available to the customer before the conclusion of the contract shall be authoritative for the condition of the software provided by Data Virtuality. Data Virtuality shall not owe to the customer any additional condition of the software.

(4) Any possible guarantees granted by Data Virtuality before the conclusion of the contract shall only be valid when submitted in writing.

(5) The lease relationship shall commence at the date specified in the Quotation or – if such a date has not been indicated in the Quotation – upon the conclusion of the contract and shall have a term of one year, unless set out otherwise in the Quotation. In each case, the lease relationship shall be extended by one more year (subsequent term) unless one party terminates it as of the respective end date of the contract, whereby a notice period of three months shall be observed. The right of each party to terminate for cause a contract that was concluded on the basis of this contract shall remain unaffected. Each notice of termination shall only be valid when made in writing.

(6) During the lease relationship, Data Virtuality shall also perform the maintenance services and take care of the software for the customer, without a separate fee being charged for these services.

§ 2 Lease Fee

(1) The customer shall pay to Data Virtuality the annual lease fee specified in the Quotation. The lease payments shall cover the remuneration for the provision and use of the software as well as for caring for and maintaining the software. The lease payments shall be due annually in advance.

(2) All prices indicated in the Quotation shall be understood as net amounts plus the statutory VAT.

§ 3 Rights of Use to the Contractual Items

(1) Data Virtuality shall grant to the customer a non-exclusive right of use to the Contractual Software that shall be limited in terms of time to the duration of the lease relationship; however, the right shall be limited in terms of the application area to the destination country, in which the Contractual Items are intended to

be used and

which is agreed upon between the parties. In the case that such a country has not been expressly agreed upon, the right of use shall be exclusively granted regarding the country in which the customer has their registered seat. This right of use shall apply exclusively to the data sources indicated in the Quotation.

(2) The customer shall be permitted to use the software solely for the purpose of performing their internal business operations and these of such companies as are affiliated with it within the meaning of § 15 AktG.

(3) In the case that Data Virtuality provides to the customer – within the scope of subsequent improvements or the care for and maintenance of the software – amendments or a new version of the Contractual Items that replace the previously provided Contractual, these shall be subject to the regulations of this contract.

(4) Any reproduction or alteration to the application documentation shall not be permitted.

(5) The customer shall be entitled to use the software outside of the granted rights of use only with the prior written consent of Data Virtuality. In the case that other data sources are connected, Data Virtuality shall be permitted to invoice the amount accruing for the extended usage in accordance with the prices indicated in the Quotation.

§ 4 Provision of Contractual Items

(1) Data Virtuality shall provide the customer with the contract software in the most current version, ready to use, on router exit of the data processing center in which the server with the contract software is located (hereinafter referred to as the "Delivery Point"). The contract software, which is required for the use of the the required computing power and the required memory and data processing space are provided by Data Virtuality or by a service provider commissioned by Data Virtuality. Data Virtuality does not owe the creation and maintenance of the data connection between the IT-systems of the customer and the Delivery Point.

(2) Data Virtuality shall set up a landing page for the customer via which the contractual software can be reached by the customer.

(3) Data Virtuality is aware that the customer is reliant upon the reliable availability of the contract software. The availability of the contract software at any time is therefore the highest goal of Data Virtuality. However, Data Virtuality cannot guarantee continuous availability. Data Virtuality draws the partner's attention to the fact that in particular such restrictions or impairments of the services provided may arise which may occur outside the scope of Data Virtuality. This includes in particular actions of third parties that do not act on behalf of Data Virtuality, technical conditions of the internet that Data Virtuality cannot influence, internet and net-related downtimes and force majeure. Also the hardware, software and technical infrastructure used by the Customer may influence the availability of the Contract Software. Insofar as such circumstances influence the accessibility or functionality of the Contract Software, this shall have no effect on the contractual compliance of the services rendered.

(4) Data Virtuality is entitled to interrupt access to the contract software if this is necessary with regard to the security or integrity of the Data Virtuality servers or the servers of a service provider commissioned by Data Virtuality or for carrying out maintenance work on the contract software.

§ 5 Transfer of the contractual Items to third Parties

(1) Without the permission of Data Virtuality, the customer shall not be permitted to transfer the software to third parties, i.e. to provide it to them, and in particular to lease it to them.

(2) The non-independent use of the software within the scope of the intended use in accordance with these GTC by the employees of the customer or other third parties that are subject to the customer's authority to give directions shall be permitted.

§ 6 Obligation of the Customer to notify and to exercise Care

(1) The customer shall be obliged to notify Data Virtuality immediately of software defects. In doing so, the customer shall take into account the information of Data Virtuality regarding the analysis of problems to the extent that this is reasonable for the customer and shall forward to Data Virtuality all information that is available to the customer and required for removing the defect.

(2) The customer shall take suitable precautions in order to protect the software from unauthorised access by third parties. The customer shall make their employees and the other persons, who are entitled

to the

non-independent use in accordance with § 5, section 2 of these GTC, aware of the fact that the creation of copies or the provision of login credentials or the documentation outside of the scope provided for in the contract shall not be permitted.

(3) The customer shall take appropriate measures for the case that the software does not work properly in whole or in part (in particular by creating data backups on a daily basis, failure diagnosis, and reviewing the results of the data processing on a regular basis). Provided that the customer does not expressly make an advance statement to the contrary, Data Virtuality shall be permitted to assume that all data of the customer that they might come in contact with is backed up accordingly.

(6) Data Virtuality shall be entitled to examine whether the Contractual Items are used in accordance with the regulations of this contract. In particular, Data Virtuality is entitled to check which connectors and connections the customer uses in the software.

§ 7 Rights of the customer in Cases of Defects

(1) Data Virtuality shall warrant in accordance with the statutory provisions regarding leases that the Contractual Items have the agreed conditions and that no conflicts with third party rights will arise if the Contractual Items are used by the customer within the scope of the contract. The warranty of the freedom of the Contractual Items of third party rights shall, however, only apply to the countries of destination agreed upon between the parties in which the Contractual Items shall be used. Without an express agreement, the warranty shall exclusively apply to the country in which the customer has their place of business.

(2) A defect of the software shall particularly exist if (a) the software does not provide the functionalities determined in the product/service description of the software when used in accordance with the contract or (b) if it is unsuitable for the assumed usage. A defect of the software shall particularly not exist if (a) the aforementioned requirements are met and this does only insignificantly affect the use of the software or the failure was caused by inappropriate handling of the software. A defect of the application documentation shall exist if a competent user, who has basic knowledge regarding the usage of the software, is unable to understand how to use individual functions with the help of the documentation or to solve problems occurring while applying reasonable effort.

(3) In cases of defects of quality, Data Virtuality shall initially comply with their warranty obligation by means of a supplementary performance. For that purpose, Data Virtuality shall, at their choice, provide to the customer a new software version that is free of defects or shall remove the defect; the fact that Data Virtuality shows the customer adequate options to avoid the effects of the defect, shall also be deemed to be a removal of the defect. Also in cases of defects of title, Data Virtuality shall initially comply with their warranty obligation by means of a supplementary performance. For that purpose, Data Virtuality shall, at their choice, provide to the customer a legally unobjectionable option to use the Contractual Items or the replaced or altered equivalent Contractual Items. In other respects, the statutory provisions regarding leases shall apply.

(4) Data Virtuality shall bear the costs of the supplementary performance. If it becomes apparent that no defect of the software existed, the customer shall reimburse Data Virtuality for the expenses caused by the works performed to the extent that during the examination process regarding the defect, the customer has not applied the necessary care and due diligence. Furthermore, the additional expenses on the part of Data Virtuality caused by the fact that the customer has not duly complied with their obligations in accordance with § 6 shall also be reimbursed.

(5) In the case that third parties assert claims that impede the customer from exercising the rights of use granted to them under the contract, the customer shall inform Data Virtuality in writing immediately and comprehensively. The customer shall authorise Data Virtuality to make judicial and extra-judicial complaints about third parties on their own. In the case that an action is brought against the customer, they shall coordinate with Data Virtuality on that and shall perform procedural measures, in particular acknowledgements and compromise agreements only with the consent of Data Virtuality. Data Virtuality shall be obliged to defend the claims on their own account and to indemnify the customer against all costs and damages related to the defence of the claims, unless these claims are based on the behaviour of the customer in breach of their duty.

(6) A termination by the customer in accordance with § 543, subsection 2, sentence 1, no. 1 of BGB on the basis of not being granted the use in accordance with the contract shall only be permitted after Data Virtuality has been granted sufficient opportunity to remove the defects and this has failed. It shall only be assumed that the removal of the defects has failed if it is

impossible, if Data Virtuality definitely refuses to perform or unreasonably delays the removal, if there are justified doubts regarding the prospects for success or if the removal is unacceptable for the customer for other reasons.

§ 8 Consulting Services

(1) Data Virtuality shall regularly provide to the customer general advice for users as well as other special advice and information of other users regarding important issues and problems in connection with the software via email or at the webpages accessible here: www.datavirtuality.com.

(2) Data Virtuality shall perform brief consultations regarding best practices, application scenarios, and also application problems that are related to the software exclusively via E-Mail or the chat application within the contractual software. Such consulting services shall only be performed during the usual working hours (Monday to Friday from 9 am to 6 pm, the statutory bank holidays in the Free State of Saxony and the Federal Republic of Germany shall be excluded) and shall be limited to one consulting hour per customer per month. Any further consulting services shall only be performed against an appropriate separate remuneration and at reasonable and customary market conditions.

(3) Data Virtuality shall owe adjustments and changes to the software as well as the creation of interfaces with third-party software only to the extent that these are necessary for maintaining or repairing the software or for securing its use intended according to the contract. In other respects, Data Virtuality shall only be obliged to perform adjustments or changes if this is expressly agreed upon; the customer shall remunerate the respective service separately at reasonable and customary market conditions.

§ 9 Limitations of Liability

(1) Data Virtuality shall in each case be liable without limitation and within the scope of the statutory provisions for damages

(a) arising from injury to life, body or health, that are attributable to an intentional or grossly negligent infringement of obligations or to another intentional or grossly negligent conduct of Data Virtuality or one of their statutory representatives or performing agents [*Erfüllungsgehilfen*];

(b) based on the initial or subsequent absence of a warranted characteristic or in the case of the non-compliance with a guarantee;

(c) that are attributable to an intentional or grossly negligent infringement of obligations or to another intentional or grossly negligent conduct of by Data Virtuality or one of their statutory representatives or performing agents.

(2) Data Virtuality shall be liable – while the compensation for damages shall be limited to foreseeable damages that are typical for the contract – for damages that are attributable to a slightly negligent infringement of cardinal obligations by Data Virtuality or one of their statutory representatives or performing agents. Cardinal obligations shall be obligations that enable the due performance of this contract in the first place and the compliance with which the customer may rely upon.

(3) Data Virtuality shall be liable for other cases of slightly negligent conduct, whereby this liability shall be limited to a sum amounting to half an annual lease for each case of damage.

(4) The liability of Data Virtuality without fault in accordance with § 536 a, subsection 1, 1st alternative of the German Civil Code for defects that do already exist at the time of the conclusion of the contract shall be excluded.

(5) If losses of data were caused by simple negligence, Data Virtuality shall be liable only for the damage that would have accrued also in the case of due and regular data backups made by the customer correspondent to the importance of the data; this limitation shall not apply if the data backup was impeded or impossible due to reasons attributable to Data Virtuality.

(6) The aforementioned provisions shall apply with the necessary modifications also to the liability of Data Virtuality regarding the reimbursement of wasted expenditure.

(7) The liability in accordance with the German Product Liability Law [*Produkthaftungsgesetz, ProdHaftG*] – insofar as applicable – shall remain unaffected.

§ 10 Contract Termination

Upon termination of the contractual relationship, the customer's access to the contractual software shall be blocked. Further use of the contract software is then no longer possible. The customer undertakes to delete the application documentation and any copies made completely and permanently.

§ 11 Confidentiality

(1) Both parties shall undertake to treat as confidential all information regarding the business, business concepts, business relationships, and business ideas of the disclosing party as well as those of their customers, which they received from the respective other party, the legal successors or an affiliated company of the respective other party, and all records connected therewith or handed over to the respective other party or that they gained knowledge of in each case. Such information to be treated as confidential shall include in particular information concerning the know-how in the fields of data integration, data federation, data warehousing, the technical implementation of the software, and the automated construction of a data warehouse.

(2) Marketing and sales records that have been prepared by both parties, possibly in collaboration, and that are intended to be brought to the attention of potential customers and cooperation partners and that are explicitly marked as such, shall be explicitly exempted from the information to be treated as confidential in accordance with item (1).

(3) Both parties shall undertake to make the information received from the respective other party under this contract available only to those employees that require them for purposes of this agreement and shall undertake to impose also on these employees an obligation to maintain confidentiality regarding all information in accordance with this agreement. Both parties shall take all necessary measures in order to avoid the forwarding of received information to unauthorised persons.

(4) The respective recipient of information shall be entitled to forward confidential information to their legal and economic advisors only in the case that these advisors have also signed a confidentiality declaration corresponding to this agreement or are obliged to maintain confidentiality pursuant to their rules of professional conduct.

(5) The obligation to maintain confidentiality and to not use the received information shall not apply to information that

(a) has provably been known to the respective recipient of information before the disclosure,

(b) has provably been known to the public or in the public domain before the disclosure, or

(c) has become known to the public or entered into the public domain after the disclosure without the contribution or fault of the party receiving the information, or

(d) that is disclosed or made available to the recipient of information at any time by an authorised third party or that are explicitly exempt from the provisions of this agreement by mutual consent between the parties and in writing.

(6) The obligation to maintain confidentiality shall not apply if and when the respective recipient of the information is obliged to disclose the confidential information due to statutory provisions. In this case, the recipient of the information shall inform the respective other party promptly about the disclosure of the confidential information. The recipient of the information shall make efforts to an appropriate extent to receive a confirmation that the third party to whom the confidential information needs to be disclosed will treat the information as confidential.

§ 12 Data Protection

(1) In the performance of the contract, Data Virtuality shall comply with the regulations of the German Federal Data Protection Law [*Bundesdatenschutzgesetz, BDSG*]. Data Virtuality shall ensure that their performing agents also comply with these regulations, and Data Virtuality shall, in particular, impose on them before the commencement of their activities the obligation to maintain confidentiality, if necessary also through an agreement concerning order data processing [*Auftragsdatenverarbeitungsvereinbarung*] in accordance with § 11 of the German Federal Data Protection Law (BDSG). Data Virtuality shall store and use personal data of the customer and the customer's customers only in accordance with the German Federal Data Protection Law and for safeguarding legitimate interests within the scope of the purpose of this contractual relationship. Apart from this, Data Virtuality shall not intend any processing or use of personal data, neither themselves or on behalf of the customer.

(2) Data Virtuality shall hereby make the customer explicitly aware of their statutory obligation to observe the provisions of the data protection law when using the Contractual Items (to the extent that it is applicable). Data Virtuality shall provide the customer by means of this contract only software for data analysis and processing purposes. Data Virtuality shall have, in particular, no influence on the fact to which extent and in which way the customer uses the software. The customer shall examine

whether the specific use of the software by the customer is possibly applicable in accordance with the provisions of the data protection law. Data Virtuality shall not be liable for any use of the software provided that is possibly not permitted under the data protection law.

§ 13 Free Trial Period

(1) If Data Virtuality grants to the customer a free trial period regarding the Contractual Items, Data Virtuality shall grant to the customer the rights of use described in § 3 of these GTC for a period of 14 days from the conclusion of the contract. The parties intend to conclude after the expiration of the free trial period a contract regarding the lease and maintenance of the Contractual Items against remuneration with the contents of these GTC. In the case that after the expiration of the free trial period no such contract is concluded, the customer shall have no right to further use the Contractual Items.

(2) The provisions of these GTC shall apply with the necessary modifications to the free trial period while specifically taking into account the following modifications:

- a) during the free trial phase, no lease fee in accordance with § 2 shall accrue;
- b) the customer shall not be entitled to the services in accordance with § 8;
- c) deviating from § 9, subsections 2 and 3, Data Virtuality shall not be liable for damages that are attributable to slightly negligent conduct of or slightly negligent infringements of contractual obligations by Data Virtuality, their representatives or performing agents.

§ 14 Other Agreements

(1) The customer shall grant Data Virtuality the right to indicate them as reference customer on the websites operated by Data Virtuality and to use for that purpose, in particular, the customer's corporate name and logo.

(2) The exclusive place of jurisdiction for all disputes arising from and in connection with this contract shall be Leipzig. In the case that Data Virtuality brings an action, they shall also be permitted to select the seat of the customer as the place of jurisdiction. The right of both parties to seek interim legal protection before the courts that have jurisdiction in accordance with the statutory provisions shall remain unaffected.

(3) German law with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall apply exclusively.

(4) In addition to German, English is also available to the customer as the contract language.

(5) The parties shall coordinate with the respective other party all press releases and other statements regarding a cooperation in writing, before their publication and within one month after the request of one of the parties. In the case that the respective other party does not meet a deadline, the requesting party shall be permitted to publish the declaration without the other party's consent.

(6) The parties have not entered into any oral agreements.

(7) Should a provision of this contract be or become invalid, contain an inadmissible determination of a time limit or a regulatory gap, the legal validity of the other provisions shall remain unaffected thereof. Unless the invalidity results from an infringement of § 305 et seq. of the German Civil Code (inclusion of General Terms and Conditions), instead of the invalid provision, a valid provision shall be deemed to be agreed upon, which comes closest to the intentions of the parties in an economical respect. The same shall apply to the case of a regulatory gap. In the case an inadmissible time period has been determined, the legally permitted period shall apply.