

Terms and Conditions of Use of the online platform named WERKBLiQ**Last updated: 04/2022**

We, an affiliate of DMG MORI AKTIENGESELLSCHAFT, provide a virtual platform for the management of machines and systems named WERKBLiQ via the Internet, at the address www.WERKBLiQ.de. The Platform can be used to map machines and/or systems, collect, store, and display machine-related data (e.g., data on maintenance, service, replacement parts and wear parts, as well as operating data, including automatically collected data) for the respective machine/system and share these with third parties, connect providers of goods and services relating to these kinds of machines and/or systems, and initiate and conclude business transactions. In addition, you as a participant and further participants can communicate and cooperate with each other via the Platform. Furthermore, we process personal data on your behalf in order to provide these services.

"Platform" means the totality of central computers (servers), data, databases, computer programs, domain names, mobile applications, and websites that collectively make it possible to utilize the services offered at the address www.WERKBLiQ.de. Where "WERKBLiQ" is mentioned in isolation hereinafter, this means the foregoing definition of "Platform."

If you commissioned WERKBLiQ via our DMG MORI internal sales and distribution organization, the contract documents will be provided to you by the Area Sales Manager (ASM) or Digital Sales Manager (DSM), or will be transmitted by mail or electronically.

If you commissioned WERKBLiQ digitally via the online platform of ADAMOS GmbH, further details regarding the entry into the contract are given in Part (B) below. The use of WERKBLiQ is based on a subscription model and is based exclusively on these Terms and Conditions ("**Use Agreement**"). In the subscription model, WERKBLiQ is provided for a specific amount of time as part of a continuing obligation. For the agreed term, you have the right to use WERKBLiQ, and we are entitled to the agreed remuneration. The details are set down in the Terms and Conditions that follow.

Outline

(A)	General provisions	3
(B)	Entry into the Agreement; billing	4
(C)	Subscription model	6
(D)	WERKBLiQ	8
(E)	Subject matter of the Agreement	10
(F)	Entry, storage, release, and retrieval of data	12
(G)	Business and trade secrets	13
(H)	Rights to data	14
(I)	Unlawful use	16
(J)	Liability for Platform content	18
(K)	Special provisions for operators of machines and machine systems	19
(L)	Entry into contracts and agreements via the Platform	20
(M)	Open source terms	21
(N)	Data processing on another entity's behalf	22
(O)	Final provisions	31

List of Annexes relating to commissioned data processing

Annex (N) 1	Description of data/categories of data requiring special protection
Annex (N) 2	Description of data subjects/groups of data subjects
Annex (N) 3	Approved subcontractors

(A) General provisions

- (1) We shall enable you to use WERKBLiQ during the agreed span of time, i.e., for 12-month periods with a notice period for termination of three months, effective as of the end of any such period. We shall charge the commensurate remuneration owed by you in advance for the respective 12-month period (an annual recurring revenue model).
- (2) The subject of the goods and services provided with WERKBLiQ also includes the processing of personal data on your behalf and according to your instructions. Details regarding this are set down in Part (N).
- (3) Unless otherwise agreed, the use of WERKBLiQ is subject exclusively to these Terms and Conditions. To the extent that the user documentation specifies our scope of goods and services (e.g., in service level agreements) and these specifications conflict with individual provisions of these Terms and Conditions, the provisions in the user documentation take precedence over these Terms and Conditions. Other contractual terms and conditions will not become part of the content of the Agreement, even if we have not expressly objected thereto.
- (4) These Terms and Conditions apply to
 - any person or legal entity who or which, when entering into the Use Agreement, acts in exercise of his, her, or its trade, business or profession (entrepreneur);
 - legal entities under public law or public-law special funds.

(B) Entry into the Agreement; billing

- (1) To the extent that you have agreed the conditions of entering into the Use Agreement with the ASM or DSM responsible for you, entry into the Agreement typically takes place through an order confirmation to be sent by us.
- (2) If the Agreement on the use of WERKBLiQ is entered into electronically via the ADAMOS Store & Hub Online Platform (“**ADAMOS Platform**”), the sections set out below apply. The ADAMOS Platform is operated by ADAMOS GmbH, Landwehrstraße 55, 64293 Darmstadt, Germany (“**ADAMOS**”).
- (3) We have registered on the ADAMOS Platform as a provider. The relationship between us and ADAMOS is based on a separate contractual relationship known as a provider agreement. In our role as ADAMOS Platform provider and based on the provider agreement, we are entitled to offer and market products and services via the ADAMOS Platform.
- (4) You are a participant on the ADAMOS Platform and have, in this regard, set up a user account on the ADAMOS Platform in the course of registering. The relationship between you as a participant and ADAMOS is based solely on the separate contractual relationship between you and ADAMOS, with reference to the ADAMOS STORE & HUB General Platform Terms and Conditions (“**Platform Terms and Conditions**”).
- (5) You have set up a user account via the ADAMOS Platform. You will state your company information, value-added tax (VAT) ID number, billing details, and the name of the contact person in the user account. The details are geared toward the Platform Terms and Conditions. Furthermore, you will select the Software via the ADAMOS Platform. When using the subscription model, you will also specify the desired agreement term and the resulting amount of the remuneration (all of the information specified in Sec. (5) hereof, are hereinafter referred to simply as “**Agreement Information**”).
- (6) ADAMOS will send the Agreement Information you enter to us, thereby submitting a binding offer to enter into the Use Agreement. ADAMOS acts as a messenger when sending the Agreement Information and issuing the Agreement offer. You will receive separate notification about access to the offer, in compliance with the statutory obligations. We will review the Agreement Information and, if the outcome of the self-disclosure and identity check is positive, will confirm entry into the agreement by sending a separate order confirmation. Our transmission of the order confirmation constitutes acceptance on our part of the offer to enter into the Use Agreement. The order confirmation is likewise transmitted via the ADAMOS Platform. ADAMOS acts as a messenger in this regard as well.
- (7) In the course of issuing your offer, it is possible to access and read through these Terms and Conditions and to store them in a commonly used file format. We are also happy to

send you the Terms and Conditions separately at your request.

- (8) We and ADAMOS are obligated to comply with the applicable EU General Data Protection Regulation (Regulation (EU) No 2016/697 of the European Parliament and of the Council of April 27, 2016, hereinafter "**GDPR**"). When entering the Agreement Information, you will be provided with the ADAMOS Data Protection and Privacy Policy, which meets the requirements of the GDPR. This data protection and privacy policy can also be accessed at any time via the relevant tab of the ADAMOS Platform. Our own Data Protection and Privacy Policy is also stored on the ADAMOS Platform.
- (9) We have also entered into an agreement with ADAMOS on commissioned data processing, which meets the requirements of Article 28 GDPR.
- (10) ADAMOS will bill you for the services performed by us under the Use Agreement by way of a service commission for the purposes of value-added tax within the meaning of Sec. 3 (11) (a) of the German Value-Added Tax Act (UStG). However, payment must be remitted exclusively by you to us.

(C) Subscription model

**I.
Use**

- (1) We will provide you as a customer with the Software in exchange for payment of a fee (the “**Subscription Fee**”) for the duration of the Use Agreement, in accordance with the provisions here in Part (C). Invoicing will take place immediately after entry into the Agreement, with the bill being issued for the full remuneration owed for the base term, i.e., the first 12-month period. The resulting 12-month amount must be paid to the stated business account before the due date agreed when the Use Agreement is entered into.
- (2) Invoicing for further 12-month periods will take place subsequently at the start of the respective 12-month period. These invoices are payable in each case within 30 days of receipt of the commercial invoice, with payment being remitted to the business account indicated therein.
- (3) We are entitled to change the agreed fee for each new 12-month period at any time upon at least four months’ notice prior to the expiration of this 12-month period. Notice may be given in electronic, text, or written form. If you do not object, or do not object until after the termination deadline for the next possible termination date, the changed fee shall form part of the Agreement from the start of the upcoming 12-month period. However, if you object to the changed fee, this shall likewise be deemed to constitute ordinary termination of the Agreement on the use of WERKBLiQ. The Use Agreement thus terminates as of the end of the 12-month period in progress. The previously agreed fee applies until the end of the Agreement.

**II.
Term and termination**

- (1) The Use Agreement has a base term of 12 months. Test phases are not included in the base term. The right of ordinary termination is excluded during the base term. The term shall be extended by a further 12 months each time if the Use Agreement is not terminated with three months’ notice, effective as of the end of the base term or of the extended term, as the case may be. In the event that the term is automatically extended, the Use Agreement can be terminated by way of ordinary termination upon three months’ notice, effective as of the end of the respective term.
- (2) Notice of termination must be given in writing.
- (3) Nothing herein shall affect the right of both Parties to terminate the Agreement by way of extraordinary termination for good cause. Good cause is deemed to exist in particular

if

- insolvency proceedings concerning our or your assets are initiated, or a request for the initiation of such proceedings is denied for lack of sufficient assets, or if the Use Agreement is terminated by way of rescission or challenge or otherwise; or
- advances in technology render the performance of the subscription services impossible.

(D) WERKBLiQ

**I.
Registration**

- (1) Registration is required in order to use WERKBLiQ. Registration on the Platform takes place in two steps, namely first by entering and storing the participant and user information and second by entering the verification code sent in a confirmation e-mail. This concludes the registration process for the participant account.
- (2) You are responsible for ensuring that you meet the technical requirements to use the Platform (including performance, compatibility, and current hardware and software, including Internet browsers, compatibility with existing software; scope of performance of the Internet connection; fault-free data exchange (firewall settings, etc.). We will communicate the technical prerequisites to you upon request before the agreement is entered into.
- (3) During the registration process, you will create an initial user account that has comprehensive rights with regard to the participant account, including the right to create further users and assign them rights to use the participant account ("**Super User**"). "User" means a natural person who uses his or her username and password to log in to the Platform and use or maintain his or her participant account. Use of a single user account by multiple natural persons is ruled out.
- (4) The Super User is entitled to enter into an agreement to use the WERKBLiQ platform on your behalf and to disclose company information to the extent necessary in order to register. Upon request from us, you must demonstrate the Super User's authority to represent you.
- (5) We will check the information provided for plausibility during the registration process. Before activating the participant account, we may request additional information or documentation from you in order to check the information provided.
- (6) You must enter all company information that you are asked to enter completely and truthfully, and to keep it complete and up-to-date at all times. The provisions of Sec. 5 of the German Telemedia Act (TMG) (mandatory information to be provided by the service provider) also apply to your company's identity on the Platform.
- (7) You are required to ensure that the users of your participant account keep your access details for the Platform secret and that abuse by third parties is impossible. We will store your password in encrypted form and request it only during the login process.
- (8) You are also required to immediately deactivate the user accounts of employees who

have left or are leaving your company in order to prevent unauthorized access to the data in your participant account. You will continue to have access to the data entered by the user who has left your company. You agree to obtain the necessary declarations from third parties for use as necessary.

(E) Subject matter of the Agreement

- (1) We provide our participants with the WERKBLiQ platform for their use. The Platform can be used on the Web via a Web browser, at the address WERKBLiQ.de and – where available – via mobile applications ("**Apps**"), web applications, background applications, via integration into third-party websites, via interfaces ("**Interfaces**") or through locally installed software.
- (2) We are entitled to change the scope of functions of the Platform and, in particular, to add functions without prior notification. We are moreover entitled to restrict or remove individual functions with at least six weeks' prior notice.
- (3) The possibility of exporting individual data sets or all data from the WERKBLiQ platform, or of providing interfaces for data exports are not included. If we provide an interface for data exports nonetheless, this does not establish any rights on your part, even if the use thereof continues. We remain entitled to amend, restrict, or terminate the use of the interface without explanation and upon short notice.
- (4) The location of the server or servers on which the data and software of which the Platform consists and participants' data are stored (hosting location) is Europe (Netherlands). We are entitled to move the hosting location to another place within the EU. Before relocating the hosting location, we will notify you thereof in good time, in electronic, text, or written form.
- (5) We will take suitable measures to protect the Platform and data against unauthorized access. To encrypt the Platform data, we will always select the encryption technology that we believe is most effective and most secure, taking into account the state of the art, and that permits efficient use of the Platform. There is no entitlement to a certain type of encryption.
- (6) We accept no liability for the integrity of data (including participant data) that are transferred via the Internet or other computer or telecommunication networks that are not operated or controlled by us. Moreover, we do not warrant that third parties will not access these data in transit.
- (7) To safeguard participant data, we will periodically perform a backup (full backup) of the data stored on the Platform; this will be done at least once weekly. The backup interval for your data can be shortened at your request.
- (8) We are not liable for the loss of data entered after the last regularly scheduled backup

or for consequential damage and/or losses arising from the loss, provided that the stipulated backup interval was observed.

- (9) We are entitled to shut down or disconnect the server for maintenance work. Maintenance measures shall be performed for you in such a way that disturbance is minimized. Regular maintenance work or maintenance work that can be scheduled shall be performed at times with the lowest possible use and announced in advance if it will take a substantial amount of time.
- (10) The availability of the Platform is as stipulated in the separate service level agreement agreed with you. To the extent that the server breaks down due to technical or other issues that are beyond our control, such as force majeure, fault on the part of third parties, etc., these times are excluded from the calculation of availability.
- (11) We will provide you with video tutorials and further aids to introduce you to the use of the Platform. Training activities beyond that – including remote training (webinars, etc.) – must be booked and paid for separately.

(F) Entry, storage, release, and retrieval of data

- (1) On the WERKBLiQ platform, both automatically generated operating data (e.g., sensor data, status data, error codes, operating times) and manually generated data (e.g., machine master data, service logs, maintenance and repair reports, machine log, tool data, CAD programs) for machines can be stored (machine-related data).
- (2) You affirm that there are no third-party rights to the content that you store on the WERKBLiQ Platform or reproduce, distribute, and make accessible via the Platform, and/or that you are entitled to use the content. If you enter and/or store or maintain data on behalf of a third party or make data accessible to further third parties, it is your responsibility to obtain all of the necessary consents.
- (3) You are solely responsible for the extent (e.g., read, enter, edit, store, delete) to which you grant the users registered for that account access to the data in your participant account. You are required to check the visibility of any data that may be confidential to third parties and, if necessary, make changes in the relevant settings.
- (4) You are not permitted to reproduce or distribute data of any third party to which you receive access except with that third party's consent. In case of doubt, granting access does not signify consent. Automatic generation of a digital copy of these data in your participant account for cooperation purposes does not require consent.
- (5) You are permitted to use the Platform only for the intended purposes and in the intended scope to retrieve third-party data. Automated retrieval through scripts, circumvention of the search screens and parameters provided, search software, or comparable measures is not permitted. You are not permitted to use the data obtained through such retrieval in whole or in part to build a database of your own, irrespective of the form thereof. You are not permitted to use them to provide a commercial service of your own. Linking, integrating, or otherwise connecting the database or individual elements of the database with other databases or meta-databases is not permissible.

(G) Business and trade secrets

- (1) The Parties agree that the machine-related data stored and displayed on the Platform by the operator of the machine/system, or by third parties acting on that operator's behalf, constitute business or trade secrets. The further data (orders/order overview, invoices/invoice overview, contacts, etc.) are also business secrets. The Parties are obligated to keep these confidential. You will, in your own interest, notify the users associated with your participant account of this.
- (2) Entering machine-related data on the Platform is possible only with the consent of the operator of the system or equipment. The operator of the system or equipment is permitted to demand that data stored or made accessible without its consent be deleted or rendered inaccessible immediately.
- (3) In the event of infringement of third-party rights or to the extent that there is otherwise a legal obligation to do so, we are entitled to disclose confidential data from you to the necessary extent and/or to provide information about you and/or the data stored and/or used by you.

(H) Rights to data

- (1) We have invested in the conceptualization, planning, programming, maintenance, and service of the Platform, which serves for the systematic collection of data in relation to individual machines and machine systems and the mapping and display of such systems and data relating thereto. This investment is substantial in terms of its type and size. We are therefore deemed to be the creator of the database that is created and grows through the entry and maintenance of data on the Platform. To the extent that this gives rise to rights to a database (Sec. 87 et seqq. of the German Copyright Act (UrhG)), such rights accrue to us. Nothing herein shall affect any rights of individuals that may exist or arise in relation to certain data or data sets (e.g., copyright, design rights, rights of photographers) and/or rights of use thereof.
- (2) If and when you enter data in the relevant fields and sections of the Platform, or update or supplement these data during the term of use, these data become part of the database. No database rights or co-ownership is established thereby. Nor does any independent database right (partial database right) arise with regard to data that are entered in relation to a specific system or multiple systems over a longer period.
- (3) To ensure the functionality of the Platform without infringing the rights of the participants, we gain a non-exclusive right of use, unlimited in term and geographic scope, to reproduce, distribute, and make publicly accessible all non-personal data entered on the Platform by the participant, including texts, drawings, sketches, photos, photographs, and audio, video, or other media data. We are entitled to use these data for marketing purposes provided that your legitimate interests (e.g., confidentiality) are safeguarded.
- (4) We are entitled to copy, store, analyze, edit, and/or filter the non-personal data entered by you or on your behalf, to compare them with third-party data and analyze them in order to be able to provide you with suggestions for optimizing your operations. We are moreover entitled to combine, reorganize, filter, modify, analyze, and store them in an anonymized form with data of third parties entered on the Platform and to do so with the aim of obtaining therefrom relevant information with regard to the market for machines, machine parts, consumable goods, software, CAD files, and replacement parts as well as machine-related services.
- (5) To the extent that exclusive rights to texts, drawings, sketches, photos, photographs, or audio, video, or other media data exist or arise in the person of the individual user (e.g., service technician), you as the participant of the account in question must ensure through contractual agreements that you are granted comprehensive and exclusive rights of use from both a temporal and a geographic perspective and for all known uses with regard to the content in question in order to prevent any disputes arising with regard to the use of this content on the Platform. To the extent that any copyright has arisen, the user is

required to declare a waiver of the right to be named as the creator.

- (6) If the machine or system is owned by a third party (for security purposes), such as a lessor or financing creditor, the operator of the machine or system is obligated to obtain this party's consent to the collection, storage, or use of the machine-related data on the Platform as necessary.
- (7) If the machine or system is sold or otherwise transferred to a third party by way of individual or universal succession, the machine-related data shall, unless otherwise agreed, remain with the machine operator or other rights holder (e.g., service technician), as the case may be. If the rights holder consents to the transfer, we shall store a copy of the machine-related data to the successor's user account.
- (8) We are entitled to forward machine-related data, particularly operating data, to the producer of the machine in anonymized form. The owner of the machine can object to the disclosure of the data.
- (9) You are entitled to erase individual data sets in whole or in part in the normal course of business. The erasure of any totality of data, for example the historical data concerning a machine or the master data of all (or a plurality of) machines of an operator is not permissible, by contrast, unless there are objective reasons therefor (machine(s) is/are scrapped or similar).

(I) Unlawful use

(1) The following actions are prohibited when using the Platform:

- Infringements of industrial property rights:

Use of texts, terms, photos, images, drawings, or other content that is protected by law (e.g., by copyright or trademark law or the law of registered designs) without the consent of the rights holders.

- Violations of competition law; certain forms of sales and distribution:

carrying out or promoting or anti-competitive acts, including progressive canvassing (including chain, multi-level or pyramid schemes); performing, advertising, and promoting or aiding in structural sales and distribution measures (including multi-level marketing or multi-level network marketing); creating an unreasonable nuisance for other users (particularly through spam).

- Impermissible distribution of Platform content:

Distribution and public communication of content of our services or of other users (particularly outside the Platform).

- Functional disruption:

Any action that is likely to adversely affect the functionality of the infrastructure and of the Platform.

(2) If we become aware of possible infringements of rights or violations of obligations in conjunction with content that you have posted or distributed, for example through a complaint from third parties, we will grant you a hearing on this point and set a time limit that is reasonable in the individual case to remedy the matter or issue a statement of your position. In particularly urgent cases, this time limit may be as little as a few hours. Within this time limit, you can either delete/deactivate the content that is the subject of the complaint or explain why you believe no infringement has occurred. We will thereupon decide at our own discretion whether to delete or deactivate the content that is the subject of the complaint and any other infringing content of the same nature.

(3) We reserve the right to impose sanctions against you at our own discretion if there are clear indications that you are violating or have violated these Terms and Conditions and/or applicable law in your use of the Platform. When selecting the measures to take, we will factor into our decision the interest in the undisrupted and smooth functioning of the Platform, our own liability risks, and the legitimate interests of any claimants and you

(e.g., fault, significance of the violation of an obligation, risks, statement of the participant's position).

- (4) The sanctions we may impose on you at our discretion either alternatively or cumulatively are:
- Deletion of the content that is the subject of the complaint; in the case of marketplace offers or pool inquiries, alternatively deletion of the offer/inquiry.
 - Written warning issued to you with a demand to cease and desist the violation or refrain from engaging in it in the future.
 - Freezing or deactivating read or write authorizations pertaining to individual areas (e.g., machine overview, profile, offers) or your own content.
 - Provisionally freezing the participant account or access for one user.
 - Freezing on a final basis and/or termination, observing the requisite notice period or with immediate effect, of the contract concerning the use of WERKBLiQ.

We will notify you of the reason for the sanction and the duration thereof.

- (5) You are liable for the conduct of the users logged in via your account.
- (6) We reserve the right to charge a flat fee for time and effort for deleting content and for freezing and/or reactivating user or participant accounts to the extent that you are responsible for the violation unless you prove that no damage and/or loss was sustained or that the amount of the damage and/or loss sustained was substantially lower.

(J) Liability for Platform content

- (1) Your content that has been placed on the Platform is external content in relation to us within the meaning of Sec. 8 (1) of the German Telemedia Act (TMG). Accordingly, legal responsibility for this content rests with you, as you are the party that has placed the content in the database.
- (2) We are therefore not liable for the information provided by third parties on the Platform being accurate and/or complete; in particular, we are not liable for participant and contact data, machine-related data, posts on blogs or the **Knowledge Base**, or other content of Platform participants being up to date and/or accurate. We also cannot determine with absolute certainty whether a registered participant is in fact the person that participant claims to be. We therefore make no warranty for a participant's identity. We cannot check the identity of users that have been created by the respective participants of the Platform; any and all liability for the user's identity is ruled out.
- (3) If content of the participant infringes third-party rights, you are obligated to either, at your discretion, procure for us at your own expense, the right to use the content in question or design the content in question to be free of industrial property rights.
- (4) You shall indemnify us and hold us harmless from and against any and all claims – including claims for damages – that third parties assert against us due to an infringement of rights or violation of obligation by you within the scope of the use of the Platform unless you are not responsible for the violation of the obligation in question.
- (5) You shall moreover bear the costs that we incur due to an infringement of third-party rights in a reasonable amount, to wit, including the reasonable costs arising for legal defense, with this also including the costs of advice provided based on an hourly fee. Nothing herein shall affect any further rights or claims for damages on our part.

(K) Special provisions for operators of machines and machine systems

- (1) We shall grant the operator of machines and systems whose machine-related data are collected, stored, visualized, and shared via the Platform a non-exclusive, non-transferable right of use, not subject to sublicensing, with regard to the portion of the database relating to that operator, meaning the data stock that has been stored pertaining to that operator's participant account and is maintained by it. This applies irrespective of who has entered, updated, and/or supplemented the data (machine-related and participant and user data). The right of use is restricted to the term of the Use Agreement.
- (2) If the operator of machines and systems does not receive access to the machine-related data relating to it on the Platform (Sec. 1), we may, after a hearing has been granted, store a copy of the relevant data stock pertaining to the participant account of the operator of machines and systems unless legitimate interests on our part conflict with so doing.

(L) Entry into contracts and agreements via the Platform

- (1) Contracts and agreements between participants that are entered into via the Platform are subject exclusively to the provisions agreed between them.
- (2) We are not involved in these contracts and agreements between these participants in the role of broker, agent, intermediary, or supplier of goods or services. The suppliers or service providers are exclusively other companies of the DMG MORI Group. We do not act as representatives for the other parties to contracts and/or agreements with you and do not accept declarations on your behalf, nor do we assume responsibility for the proper and particularly the timely and complete fulfillment of the contracts and/or agreements. Claims arising from contracts and/or agreements must be asserted exclusively toward the respective other party to the contract or agreement.
- (3) Claims arising from failure to perform or from faulty performance must be asserted exclusively toward the other party to the contract or agreement. By way of clarification, we point out that nothing herein affects our claim to remuneration arising from this Use Agreement.

(M) Open source terms

- (1) The preparation and use of the Software have taken place and/or continue to take place partly using freely available software (“**Open Source Software**”) on the basis of the license agreements that apply to the Open Source Software (“**Open Source Provisions**”) between us and the relevant licensor. We permit the use of this Open Source Software without charging a licensing fee. The relevant Open Source Provisions for the Software are stored at <https://gtc.dmgmori.com>, where they can be viewed. The Open Source Software programs used in this regard are also listed in detail there. The use of the Open Source Software takes place on the basis of the Open Source Provisions and is not restricted by these Terms and Conditions to your detriment in any way whatsoever.
- (2) You declare your consent to the application of these Open Source Provisions and agree that, to the extent that the Open Source Provisions so require, we disclaim any and all liability for defects and other liability as well as any and all indemnification with regard to the use of the Open Source Software. At your request and to the extent necessary in accordance with the relevant Open Source Provisions, we will turn over a copy of the source code for the respective Open Source Software to you or provide it via suitable electronic means. To the extent that the provisions of these Terms and Conditions conflict with the Open Source Provisions, the Open Source Provisions take precedence over the provisions of these Terms and Conditions with regard to the Open Source Software.

(N) Data processing on another entity's behalf

I.

Definitions

- (1) As used hereinafter, the terms defined below have the meanings set down herein within the meaning of Part(N).
- (2) "**Data subject**" has the meaning set down in the definition of "Personal Data."
- (3) Pursuant to Article 4(7) GDPR, "**controller**" means the body which, alone or jointly with others, determines the purposes and means of the processing of personal data.
- (4) Pursuant to Article 4(8) GDPR, "**processor**" means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller.
- (5) Pursuant to Article 4(1) GDPR, "**personal data**" means any information relating to an identified or identifiable natural person ("**Data Subject**"); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.
- (6) "**Personal data requiring special protection**" means personal data pursuant to Article 9 GDPR revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership of data subjects, personal data pursuant to Article 10 GDPR relating to criminal convictions and offenses or related security measures, and genetic data pursuant to Article 4(13) GDPR, biometric data pursuant to Article 4(14) GDPR, data concerning health pursuant to Article 4(15) GDPR, and data concerning a natural person's sex life or sexual orientation.
- (7) Pursuant to Article 4(2) GDPR, "**processing**" means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.
- (8) Pursuant to Article 4(21) GDPR, "**supervisory authority**" means an independent public authority which is established by a Member State pursuant to Article 51 GDPR.
- (9) "**Main agreement**" means the Use Agreement existing between you and us regarding WERKBLiQ.
- (10) "**Client**" means you as the other party to the contract with us under the Use Agreement

or main agreement.

- (11) “**Contractor**” means us as the other party to the contract with you under the Use Agreement or main agreement.
- (12) “**Annex**” means Annex (N) 1, Annex(N) 2, and Annex (N) 3 to these Terms and Conditions. All three Annexes appear at the end of the text of the Terms and Conditions. The content of the Annexes is as follows:
- Annex (N) 1: Description of data/categories of data requiring special protection
 - Annex (N) 2: Description of data subjects/groups of data subjects
 - Annex (N) 3: Approved subcontractors

II.

General provisions

- (1) The Client wishes to commission the Contractor to perform the services mentioned in the Use Agreement. Part of the implementation of the Agreement is the processing of personal data. Article 28 GDPR in particular establishes certain requirements for such processing on behalf of another entity. To meet these requirements, the agreement set forth below is entered into; no separate remuneration for fulfillment hereof will be provided unless expressly agreed otherwise.
- (2) Nothing herein shall affect the permissibility of processing of personal data pursuant to the GDPR or the German Federal Data Protection Act (BDSG). This applies in particular to processing for internal administrative purposes (Recital 48 GDPR), based on legitimate interests (point (f) of Article 6(1) GDPR), for the performance of a contract (point (b) of Article 6(1) GDPR), for compliance with legal obligations (point (c) of Article 6(1) GDPR), or on the basis of individual consent (point (a) of Article 6(1) GDPR) or collective permission (Article 88 GDPR).

III.

Indication of the competent data protection supervisory authority

- (1) The competent supervisory authority for the Client is the authority in the German state where the Client has its registered office.
- (2) The competent supervisory authority for the Contractor is the North Rhine-Westphalia Commissioner for Data Protection and Freedom of Information (LDI NRW, Kavaller-

ierstraße 2-4, 40213 Düsseldorf, Tel.: 0211/38424-0, Fax: 0211/38424-999, e-mail: poststelle@ldi.nrw.de).

- (3) The Client and the Contractor and, where applicable, their representatives or agents shall work together with the supervisory authority upon request in the fulfillment of its tasks.

IV.

Subject matter of agreement

- (1) The Contractor performs for the Client services from the area of industrial software use on the basis of the main agreement entered into between the Parties. In the process, the Contractor will receive access to personal data and process these exclusively on the Client's behalf and according to the Client's instructions. The scope and purpose of the data processing by the Contractor arise from the main agreement (and the associated performance specifications). The Client is obligated to assess the reliability of the data processing.
- (2) The Parties are entering into the present agreement to set out further concrete details of their reciprocal rights and obligations under data protection and privacy law. In the event of any doubt, the provisions of the present agreement take precedence over those of the main agreement.
- (3) The provisions of this agreement apply to all activities that are associated with the main agreement and in whose case the Contractor and its employees or persons or entities commissioned by the Contractor come into contact with personal data that originate with the Client or were collected on the Client's behalf.
- (4) The term of this agreement is geared toward the term of the main agreement unless the provisions set forth hereinafter give rise to obligations or rights of termination beyond that.

V.

Right to issue instructions

- (1) The Contractor is permitted to collect, process, or use data only within the scope of the main agreement and in accordance with the Client's instructions; this applies in particular in relation to the transfer of personal data to a third country or an international organization. If the Contractor is obliged to engage in further processing by the laws of the European Union or of the Member States to which it is subject, it must notify the Client of

these legal requirements prior to the processing.

- (2) The Client's instructions are initially established by the provisions of this Part (N) and may be amended, supplemented, or replaced by the Client thereafter in written or text form through individual instructions. The Client is permitted to issue corresponding instructions at any time. This includes instructions with regard to rectification, erasure, and blocking of data. The persons authorized to issue instructions are typically the corporate bodies of the Client that are authorized to represent the Client. If there is any change in the designated persons or the designated persons are absent for a longer period, the successor or substitute must be designated to the Contractor in text form without delay.
- (3) All instructions issued must be documented by both the Client and the Contractor. Instructions that extend beyond the performance agreed in the main agreement shall be treated as requests for changes in service.
- (4) If the Contractor believes that any instructions from the Client violate provisions of data protection or privacy law, it must notify the Client thereof without delay. The Contractor is entitled to suspend the implementation of the instructions in question until such time as they are confirmed or amended by the Client. The Contractor is permitted to refuse to implement any instructions that are obviously unlawful.

VI.

Type of data processed; data subjects

- (1) Within the scope of implementing the main agreement, the Contractor shall receive access to the personal data specified in further detail in **Annex (N) 1**. These data also encompass the special categories of personal data listed in **Annex (N) 1** and designated as such.
- (2) The group of data subjects affected by the data processing is outlined in **Annex (N) 2**.

VII.

Contractor's safeguarding

- (1) The Contractor is obligated to observe the statutory provisions relating to data protection and not to disclose the information obtained from within the Client's sphere to third parties or expose it to access by such third parties. Documents and data must be safeguarded against unauthorized parties gaining knowledge thereof, taking into account the state of the art.
- (2) Within its area of responsibility, the Contractor shall arrange its internal organization within its business in such a way that it accommodates the particular requirements of data protection. It shall take all necessary technical and organizational measures to ad-

equately safeguard the Client's data pursuant to Article 32 GDPR ("TOMs"). The Contractor is happy to provide the Client with a summary of the TOMs upon request.

- (3) The following is appointed to serve as the Contractor's Data Protection Officer: the Group Data Protection Officer (responsibility@dmgmori.com). The Contractor shall publish the data protection officer's contact details on its website and communicate them to the supervisory authority. The Contractor shall provide suitable proof of this publication and communication at the Client's request.
- (4) Persons engaged in data processing by the Contractor are prohibited from collecting, processing, and/or using personal data without authorization. The Contractor shall impose a corresponding obligation (obligation of confidentiality, point (b) of Article 28(3) GDPR) on all persons entrusted by it with the processing and fulfillment of the processing of data on behalf of another entity pursuant to the provisions of this Part (N) (hereinafter "Employees") and shall ensure compliance with this obligation with the necessary care. These obligations must be worded in such a way that they remain in force even after the commissioned data processing ends, pursuant to the provisions of this Part (N) or of the employment relationship between the Employee and the Contractor. The obligations must be demonstrated to the Client in a suitable manner upon request.

VIII.

Processor's obligation to provide information

- (1) In the case of disruptions, suspicion of data protection violations or of violations of contractual obligations of the Contractor, or suspicion of security incidents or other irregularities in the processing of the personal data by the Contractor, persons employed by the Contractor within the scope of the order, or third parties, the Contractor shall notify the Client without delay in written or text form. The same applies to audits of the Contractor by the data protection supervisory authority. Each notification of a personal data breach must contain at least the following information:
 - a description of the nature of the personal data breach including, where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned; and
 - a description of the measures taken or proposed to be taken by the Contractor to address the personal data breach, including, where appropriate, measures to mitigate its possible adverse effects.
- (2) The Contractor shall take the measures necessary to safeguard the data and mitigate possible adverse effects on data subjects without delay, shall notify the Client thereof,

and shall request further instructions.

- (3) The Contractor is moreover obligated to provide the Client at any time with information to the extent that the Client's data are affected by a breach pursuant to the foregoing Sec. (1).
- (4) Should the Client's data that are in the Contractor's possession be jeopardized by attachment or seizure, by insolvency or composition proceedings, or by other events or measures on the part of third parties, the Contractor shall notify the Client thereof without delay provided that it is not prohibited from doing so by an order issued by a court or government agency. The Contractor shall, in this context, notify all of the appropriate bodies without delay that authority to make decisions regarding the data rests exclusively with the Client as the "controller" within the meaning of the GDPR.
- (5) The Contractor shall notify the Client without delay at the latter's request of any major changes in the TOMS.
- (6) Any change in the person of the company data protection officer must be communicated to the Client without delay.
- (7) The Contractor and, where applicable, its representative must maintain a record of all categories of processing activities performed on the Client's behalf; this record must contain all of the information pursuant to Article 30(2) GDPR. The record must be provided to the Client upon request.
- (8) The Contractor must participate to a reasonable extent in the Client's preparation of the record of procedures. It must communicate the information necessary in each case to the Client in a suitable manner.

IX.

Client's rights of monitoring

- (1) The Client shall satisfy itself, before the start of data processing and at regular intervals thereafter, at least annually, of the technical and organizational measures taken by the Contractor. To this end, it can do things like obtaining information from the Contractor, having existing attestations from experts, certifications, or internal audits presented to it, or reviewing the technical and organizational measures taken by the Contractor itself in person by prior arrangement with sufficient lead time during the usual business hours or having this done by an expert third party, provided that the latter does not compete with the Contractor. The Client shall perform checks only to the extent necessary and shall refrain from disrupting the Contractor's operational procedures disproportionately in the process.
- (2) The Contractor agrees to provide the Client, at the latter's oral or written request, within

a reasonable time limit with all information and evidence necessary to perform a check of the Contractor's technical and organizational measures.

- (3) The Client shall document the results of the check and communicate them to the Contractor. The Client must notify the Contractor without delay in the case of any errors or irregularities that the Client finds, particularly when reviewing order results. If, during the check, matters are identified and avoiding these in the future requires that changes be made in the sequence of procedures that has been ordered, the Client shall notify the Contractor of the necessary procedural changes without delay.
- (4) The Contractor shall provide the Client, at the latter's request, with a comprehensive and current data protection and security concept for the data processing on the Client's behalf and concerning persons with access authorizations.
- (5) Upon request, the Contractor shall prove to the Client that Employees have undertaken the obligation pursuant to Part VII (4).

X.

Use of subcontractors

- (1) The contractually agreed services or the sub-services described hereinafter will be performed with the involvement of the subcontractors mentioned in **Annex (N) 3**. The Contractor is, within the scope of its contractual obligations, authorized to establish further subcontracting relationships with subcontractors ("**Subcontracting**"), provided that it notifies the Client thereof in advance and the Client has consented to the commissioning of the subcontractor in writing in advance. The Contractor is obligated to select subcontractors carefully according to their suitability and reliability. When utilizing the services of subcontractors, the Contractor must impose obligations on them in keeping with the provisions of this Agreement and ensure in the process that the Client can exercise its rights arising out of this Agreement (particularly its rights of review and monitoring) directly toward the subcontractors. To the extent that subcontractors in a third country are to be included, the Contractor is required to ensure that an adequate level of data protection is guaranteed at the respective subcontractor's end (e.g., by entering into an agreement on the basis of the EU standard data protection clauses). Upon request, the Contractor shall demonstrate to the Client that the aforementioned agreements have been entered into with its subcontractors.
- (2) Subcontracting within the meaning of these provisions is not deemed to exist if the Contractor commissions third parties to perform services that should be viewed as purely ancillary services. These include, for example, mailing, transportation, and shipping services, cleaning services, telecommunications services that are not specifically related to services that the Contractor performs for the Client, and surveillance services. Maintenance and review services constitute Subcontracting for which consent is required to the

extent that these are performed for IT systems that are also used in conjunction with the performance of services for the Client.

XI.

Inquiries and rights of data subjects

- (1) The Contractor shall support the Client where possible with suitable technical and organizational measures in the fulfillment of the latter's obligations pursuant to Articles 12–22, 32, and 36 GDPR.
- (2) If a data subject asserts rights, for example to access to information, rectification, or erasure with regard to the data subject's data, directly toward the Contractor, the Contractor shall refrain from responding independently and shall instead refer the data subject to the Client without delay and await the latter's instructions.

XII.

Liability

- (1) Within its relationship with the Contractor, solely the Client is responsible toward data subjects for providing compensation for damage and/or losses that a data subject suffers due to data processing or use within the scope of the processing of data on another entity's behalf that is impermissible under data protection or privacy laws or is incorrect.
- (2) Each of the Parties is exempt from liability if it demonstrates that it is not responsible in any way for the circumstance that has caused the damage and/or losses suffered by a data subject.

XIII.

Right of extraordinary termination

- (1) The Client can terminate the main agreement in whole or in part with immediate effect if the Contractor fails to comply with its obligations arising from the provisions of this Part (N), violates provisions of the GDPR through intent or gross negligence, or cannot or does not wish to execute instructions from the Client.
- (2) In the case of ordinary violations – meaning those that are neither intentional nor grossly negligent – the Client shall set a reasonable time limit during which the Contractor can remedy the violation.

XIV.

Termination of the main agreement

- (1) The Contractor shall return to the Client after the termination of the main agreement, or at any time at the latter's request, any and all documents, data, and data storage media provided to it or – at the Client's request, provided that there is no obligation to store the

personal data under European Union law or the laws of the Federal Republic of Germany – shall delete or erase these.

- (2) The Client has the right to check to ensure that the data have been returned or erased in full and in compliance with the contract at the Contractor's end in a suitable manner.
- (3) The Client is obligated to treat the data of which it has become aware in conjunction with the main agreement as confidential, even beyond the end of the main agreement. The provisions of this Part (N) shall remain valid beyond the end of the main agreement as long as the Contractor possesses personal data that were transferred to it by the Client or that it has collected for the Client.

(O) Final provisions

- (1) You are not permitted to assign claims against us to third parties except with our prior written consent.
- (2) You are moreover not permitted to offset claims of your own against our claims unless the counterclaims are undisputed or have become final and legally binding.
- (3) Amendments and addenda to the Use Agreement of these Terms and Conditions must be set forth in writing. This also applies to the termination of these Terms and Conditions. Electronic documents in text form do not meet the written form requirement.
- (4) General terms and conditions of business with different content do not apply.
- (5) Please note that the Software may be subject to export and import restrictions. In particular, there may be obligations to obtain permission, or the Software may be subject to restrictions pertaining to its use and associated technologies in other countries. You agree to comply with all applicable export and import laws and regulations of the Federal Republic of Germany, the European Union, and the United States of America and all other relevant provisions. Our fulfillment of the contract is subject to the proviso that there are no obstacles to fulfillment based on national and international provisions of export and import law or any other statutory provisions that conflict therewith.
- (6) Serious events, including but not limited to force majeure, labor disputes, unrest, war or terrorist conflicts, that have unforeseeable consequences for the performance of services, will release us from our obligations of performance for the duration of the disruption and within the scope of the effects thereof, even if we should be in default. Automatic cancellation of the Use Agreement is not associated with this. Each of the Parties hereto agrees to notify the other of any such obstacle and to adjust its obligations in good faith to reflect the changed circumstances. Events of force majeure also include epidemics and pandemics.
- (7) You hereby declare that you are willing to be mentioned as a reference customer within the scope of our marketing activities. We will agree with you on the details of whether and, if so, how we mention you in this way on a case-by-case basis.
- (8) The Use Agreement and the Terms and Conditions are subject to German law as it applies among domestic parties.
- (9) The sole place of jurisdiction is Bielefeld.
- (10) Should individual provisions of these Terms and Conditions be invalid, this does not affect the validity of the remaining provisions. In this case, we will strive to replace the

invalid provision with a valid provision that most readily approximates the economic significance of the invalid provision.

WERKBLiQ

- Personal master data: last name, first name, date of birth
- Supplementary personal data: position, qualifications, career information
- Use data: username
- Contract master data: other party to contract, address
- Contract billing and payment data: IBAN, financial institution
- Communication data: phone number, e-mail address
- Data concerning inquiries and RFPs for goods or services: location, contact person, order description
- Contract and billing data concerning purchase or sale of goods or services: order data, order terms

WERKBLiQ

- Employees, executive staff, freelancers, subcontractors, and temporary workers of the Client
(examples: machine operator, service technician, production manager)
- Contact persons at service partners, suppliers, dealers, and manufacturers
(examples: external service technician, contact persons at suppliers)
- Customers, prospective customers, and further contacts of the Client
(examples: contacts from the company address book)

WERKBLiQ

- **Company: Atlassian. Pty Lt**
Address: 341 George Street; Sydney, NSW; 2000 Australia
Category: Development Operations, Service and Support
- **Company: BIWorx GmbH**
Address: Kirchstrasse 41; 82284 Grafrath; Deutschland
Category: Business Intelligence
- **Company: DMG MORI HEITEC Digital Kft.**
Address: Hauszmann A. u. 3/A.; H-1117 Budapest; Hungary
Category: Development, Operations and Support
- **Company: DomainFactory GmbH**
Address: Oskar-Messter-Str. 33; 85737 Ismaning; Deutschland
Category: Hosting Services
- **Company: Dynatrace GmbH**
Address: Konrad-Zuse-Platz 8; 81829 München; Deutschland
Category: Development and Operations
- **Company: Google Ireland Limited**
Address: Gordon House, Barrow Street
Category: Analytics, Location Mapping and Translations
- **Company: Hybrid Heroes GmbH**
Address: Akazienstraße 3A; 10823 Berlin; Deutschland
Category: Development
- **Company: JUNIQ IT-Services GmbH**
Address: Radlkoferstraße 2; D-81373; München
Category: Development and Operations
- **Company: Microsoft Corporation**
Address: One Microsoft Way; Redmond, WA 98052-6399 USA
Category: Cloud Services
- **Company: Microsoft Deutschland GmbH**
Address: Walter-Gropius-Straße 5; 80807 München; Deutschland
Category: Cloud Services

- **Company: Pingdom/ SolarWinds Software Europe Ltd**
Address: Alt-Moabit 73; 10555 Berlin; Deutschland
Category: Development and Operations
- **Company: Pipedrive OÜ**
Address: Mustamäe tee 3a; 10615 Tallinn; Estland
Category: Sales
- **Company: Refined**
Address: Nordenskiöldsgatan 24; 211 19 Malmö; Sweden
Category: Support and Service
- **Company: Slack Technologies Limited**
Address: One Park Place, Upper Hatch Street; Dublin 2; Irland
Category: Communication
- **Company: Telekom Deutschland GmbH**
Address: Landgrabenweg 151; 53227 Bonn
Category: Communication
- **Company: Testbirds GmbH**
Address: Radlkoferstraße 2, 81373 München
Category: Testing and Quality Assurance
- **Company: Unitymedia**
Address: Vodafone West GmbH; Aachener Str. 746-750; 50933 Köln
Category: Communication
- **Company: Userlane GmbH**
Address: Rosenheimer Straße 143C; 81671 München, Deutschland
Category: Support and Service
- **Company: QlikTech International AB/QlikTech GmbH**
Address: Niederkasseler Lohweg 175, 12. Etage, 40547 Düsseldorf
Category: Data Analysis and Reportings in Development
- **Company: Woodpecker.co sp. z o.o. (LTD)**
Address: 29D Krakowska STR; Zip code: 50-424; Wrocław, Poland
Category: Marketing