



STANDARD SERVICE TERMS AND TERMS OF USE

of
CELUM CLOUD SERVICES GMBH
PASSAUSTRASSE 26
A-4030 LINZ
AUSTRIA

and its affiliates

(hereinafter referred to in the aggregate as “**CELUM**”)

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1. PREAMBLE

These Standard Service Terms and Terms of Use (hereinafter "STTUs") shall govern the contractual relationship between CELUM and the CUSTOMER in connection with CELUM's provision of its "SaaS" platform for use via the Internet as well as the SaaS services provided in connection with this (such as customising, maintenance & support, and hosting). They constitute an integral part of the individual range of services for the CUSTOMER.

2. CONTRACT DEFINITIONS

(1) "CUSTOMER" means the natural person or legal entity who, based on a contractual agreement, lawfully obtains one or more services via CELUM's SaaS Platform.

(2) "Software as a Service" or "SaaS" for short is a software distribution model by which the seller or service provider provides the software to the CUSTOMER via a network, typically the Internet, and assumes software hosting or software maintenance itself.

(3) "SaaS Platform" or "Platform" of the provider means the server of the provider or a third-party server used by the provider to facilitate access to and use of IT services, so-called "Software as a Service" services, and related information.

(4) "SaaS Services" or simply "Service" in the context of this Agreement shall mean a pre-defined SaaS Service in the realm of IT provided via the SaaS Platform. The concrete Service is defined by a corresponding statement of work. The statement of work specifies individual service packages which are characterised by various scopes of service within the offered Service.

3. GENERAL PROVISIONS

These STTUs, as amended from time to time, shall apply to all current and future SaaS Services or other services of CELUM.

In the event of conflicting provisions, written individual contracts between CELUM and the CUSTOMER shall take precedence over these STTUs. CELUM reserves the right to amend these STTUs at any time.

Contractual terms of the CUSTOMER deviating herefrom, in particular general terms and conditions of business (GTCs) and terms of purchase of the CUSTOMER, shall not become part of the Parties' Agreement even if CELUM does not expressly object to them. Other terms and conditions of the CUSTOMER shall thus only apply if CELUM expressly acknowledges them in writing and in advance and if they are made part of CELUM's offer to the CUSTOMER.

4. SCOPE OF SUPPLY AND SERVICES

4.1 Services of CELUM

The following Services shall be provided by CELUM for the duration of CELUM's engagement:

- a) Provision and use of the CELUM Platform – "Software as a Service (SaaS)"
- b) Supervision and proactive site monitoring 24x7x365
- c) Data protection (backup) and disaster recovery
- d) Security and data protection
- e) SSL configuration

Re. a) Provision and use of the CELUM Platform – Software as a Service (SaaS)

The CELUM Platform is being provided to the CUSTOMER for its remote use through a web browser via the Internet – Software as a Service (SaaS).

CELUM provides maintenance and update services for the CELUM Platform in order to ensure correct and constant functionality of the CELUM Platform as well as availability of the software and data. This delivery service includes, in particular:

- allocation of adequate storage capacity to each CUSTOMER;
- an adequate connection of the server-side software to the Internet, in particular in terms of speeds, bandwidth scalability and security – server-side exclusively within CELUM's sphere of responsibility;
- availability and physical hosting of the Platform.

Re. b) Supervision and proactive site monitoring

CELUM shall provide proactive site monitoring on a 24x7x365 basis, consisting of:

- monitoring the availability of the CELUM Platform and hosted data twenty-four (24) hours a day, seven (7) days a week and three hundred and sixty-five (365) days a year;
- automatic "health checks" to verify proper functioning;
- automatic e-mail messages from CELUM Support in the event of errors and faults;
- monitoring of the performance of the software and the Platform;
- backup and recovery management;
- storage space management;
- implementation of security rules and controls on software and Platform security.

Re. c) Data protection (backup) and disaster recovery

CELUM uses a system for data backup and continuity of operations of the CELUM Platform, ensuring that the information processed is backed up in such a way that the Service and the data can be restored at any time in accordance with the Service Levels. CELUM guarantees the integrity of the backed-up data and regularly performs necessary backup and recovery tests. CELUM's disaster recovery backup includes the preparation for and resolution of interruptions or incidents, whether they are hardware-, software- or network-related, power failures, or interruptions or incidents due to fires, floods or human error. In the event of an emergency, the database and the binary data from the application can be restored from a backup which is updated daily.

It is understood that the disaster recovery backup provided by CELUM is neither a long-term backup nor a continuous data protection system ("CDP"). Accordingly, assets/work deleted by a user – even accidentally – will not be restored. In the event of a server crash between two backups, the user's work done during the crash will likewise not be recoverable.

CELUM points out that for long-term backups or continuous data protection ("CDP"), an additional advanced backup strategy will be required, which is to be agreed separately between CELUM and the CUSTOMER and which will give rise to corresponding additional costs.

Accordingly, in connection with the disaster recovery backups, CELUM shall ensure and warrants:

- that it shall have physical and logical contingency plans that can be provided to the CUSTOMER upon request;
- that it shall review these contingency plans annually and adapt them to the latest technical changes and make the corresponding revisions available to the CUSTOMER.

Re. d) Security and data protection

CELUM shall implement the necessary technical and organisational measures to ensure the security of its Platform and the CUSTOMER's data, in particular with regard to availability, data integrity, protection against threats and confidentiality.

CELUM warrants the following in relation to its monitoring of the CUSTOMER DATA and the security of the CELUM Platform:

- CELUM shall store all CUSTOMER DATA on a secure computer in a secure physical data centre. Each data centre shall comply with ISO 27001 requirements.
- CELUM shall only use security technologies meeting the current industry standard for firewalls in order to prevent unauthorised access to CELUM's computers.
- To protect data integrity during data transmission, CELUM shall allow the use of the TLS standard.
- CELUM shall continuously monitor CELUM's software and equipment for proper functioning and adequate performance (24 hours a day, 7 days a week).

The following security standards will be applied:

- CELUM and the cloud service partner shall be ISO 27001 certified.
- CELUM shall ensure data recovery using the previous day's backup.
- The system shall support encryption of all CUSTOMER DATA to be transmitted.
- The system shall support role-based authentication and authorisation.
- The system shall support encryption of all connections between the CUSTOMER's computer and the CELUM application server through the use of Secure Sockets Layer (SSL).
- CELUM shall ensure that traffic to the CUSTOMER's network is kept to a minimum to ensure the smooth functioning of the software. All non-essential ports and services shall be blocked by CELUM's network firewall rules.
- Unless otherwise agreed with the CUSTOMER, CELUM shall ensure through its firewall rules that no connections to the CUSTOMER's network can be established by CELUM.
- CELUM shall ensure that system patches and updates are implemented on the servers; the update logs may be made available to the CUSTOMER upon request.
- CELUM shall ensure that all security encryption keys used for the CUSTOMER's database are protected against disclosure and misuse and that knowledge of them is restricted to an absolute minimum.
- Without limiting CELUM's duties of confidentiality described herein, CELUM shall be responsible for implementing and maintaining an information security programme as follows: (i) ensuring the security and confidentiality of the CUSTOMER's Confidential Information; (ii) protection against anticipated threats or hazards to the security or integrity of the CUSTOMER's Confidential Information; (iii) protection against unauthorised access to or use of the CUSTOMER's Confidential Information; (iv) ensuring appropriate handling of the CUSTOMER's Confidential Information;
- The CUSTOMER shall have the right to review CELUM's information security programme prior to commencement of the Services and from time to time during the term of this Agreement. After provision of the Services, the CUSTOMER may periodically, upon prior notice and at its own expense, conduct on-site audits of CELUM's information security programme, including a penetration test, or have such audits conducted by third parties. Instead of an on-site audit, the CUSTOMER may request a written audit of the information security programme on the basis of an audit questionnaire to be provided by the CUSTOMER. CELUM shall respond to this questionnaire within forty-five (45) days of receiving it. If the CUSTOMER identifies any deficiencies in CELUM's information security programme, the CUSTOMER shall bring these to

CELUM's attention. Substantiated deficiencies must be corrected within sixty (60) days of notification.

- CELUM shall implement all necessary security measures to maintain the security of the CUSTOMER's Confidential Information (including, but not limited to, the CUSTOMER DATA) designated as such by the CUSTOMER, including information security programme reviews.

Re. e) SSL configuration

CELUM shall be responsible for the installation and configuration of an SSL certificate on the application server. For this purpose, the latest technology (Letsencrypt) is used to ensure automatic renewal of the certificates. However, certificates of CUSTOMERS are not supported. This ensures secure and encrypted communication between the CUSTOMER and the server. If the CUSTOMER uses a domain that does not belong to CELUM, the CUSTOMER must define the necessary DNS entries before use and inform CELUM thereof.

4.2 Hosting services by external provider

The hosting services are provided by the provider listed below, who acts as a subcontractor to CELUM:

Name and address of subcontractor:

Microsoft Ireland Operations Ltd, One Microsoft Place (Microsoft)
South County Business Park,
Leopardstown,
Dublin 18,
D18 P52
Ireland

Hosting services/function:

Hosting of the CELUM Platform

Place of data processing

The hosting services are provided in a Member State of the European Union and are therefore subject to the EU level of data protection.

4.3 SERVICES PROVIDED BY THIRD PARTIES

Activities/actions performed by third parties engaged by the CUSTOMER or performed by the CUSTOMER itself are the responsibility of such parties. CELUM assumes no responsibility or liability for these.

5. PRICES, FEES AND INDEXATION

5.1 PRICES AND INDEXATION

All prices agreed with the CUSTOMER are stated in the respective agreed currency, exclusive of VAT.

The agreed prices shall be reviewed regularly and adjusted in accordance with increases in the current consumer price index published by Statistik Austria. All prices shall be multiplied by the percentage increase in the consumer price index, although fluctuations of the index figure of plus/minus 1.5% shall be disregarded.

The CUSTOMER shall not be entitled to withhold payments due to incomplete overall delivery by CELUM, warranty or guarantee claims against CELUM or claims for defects.

5.2 FEES AND TRAVEL EXPENSES

Travel time shall be considered working time and shall be charged in accordance with the applicable daily rates. Any travel expenses incurred within the scope of the commissioned Services shall be credited on presentation of receipts. Travel costs shall be charged in accordance with the official kilometre allowances.

6. DELIVERY DATES

Agreed dates of performance can only be adhered to if the CUSTOMER provides all necessary work and documents in full, in particular the statement of work accepted by it, by the date specified by CELUM and complies with its obligation to cooperate to the requisite extent. CELUM shall not be responsible for delays in delivery and increased costs caused by incorrect, incomplete or subsequently changed details and information or documents provided by the CUSTOMER, and such cannot lead to a default on the part of CELUM. Any resulting additional costs shall be borne by the CUSTOMER.

CELUM is also entitled to make partial deliveries.

The CUSTOMER has neither the right to resile from the contract nor to claim damages for an overrun of a delivery date which has been promised but not contractually agreed.

7. RIGHTS OF USE

7.1 Terms of use for the CELUM SaaS Platform

As a software developer, CELUM owns the copyrights and trade mark rights to the CELUM SaaS Solution and the Services provided and the existing components in connection therewith. Furthermore, the method of delivery and means of delivering the CELUM SaaS Solution Platform are under the exclusive control, management and supervision of CELUM and constitute its sole and exclusive property.

Unless otherwise agreed, CELUM hereby grants to the CUSTOMER and its authorised representatives or third parties acting on behalf of the CUSTOMER a world-wide, non-exclusive, non-sublicensable and non-transferable right to use the CELUM Platform or services as software as a Service (SaaS) on the terms and conditions set forth herein. No physical transfer of the software shall take place.

Absent any separate agreements to the contrary, no further rights are hereby transferred to the Customer. Accordingly, the Customer is not entitled to make the SaaS Services or Platform available for use to third parties other than those referenced above in the agreed manner. The sub-letting of the SaaS Services or Platform and the transfer of the licence to third parties is expressly prohibited. Accordingly, both the gratuitous transfer and the resale or further sale for payment of information and services obtained via the SaaS Platform as well as the documents provided by CELUM, in particular the documentation and manuals for the SaaS Solution, are prohibited. With regard to any breach of the provisions in this section, CELUM reserves all rights and claims, in particular the right to assert claims for damages.

Third-party software, in particular open-source software, which is required for the agreed scope of functionalities and which is used together with the CELUM Platform and the SaaS Services, shall be governed by the terms of use or licence terms of the respective third-party providers.



7.2 Use of the CELUM SaaS Platform by affiliated companies and third parties

Affiliated companies of the CUSTOMER may only use the CELUM SaaS Platform and agreed Services within the scope of the terms of use set out in sec. 7.1 if, from a commercial and legal perspective, the CUSTOMER owns more than 50% of the shares in the affiliated company in question (so-called "affiliates"). Beyond the foregoing, no further rights are hereby granted to such affiliates. Should the CUSTOMER no longer hold the majority of shares (more than 50%) in an affiliate, the affiliate in question shall lose its right to use the CELUM Platform and the respective Services. Furthermore, the CUSTOMER shall inform CELUM of this fact. In connection with this, the CUSTOMER shall be liable for the conduct of its (former) affiliate as if it were its own conduct.

Third parties acting on behalf of the CUSTOMER may use the CELUM SaaS Platform and its Services exclusively in accordance with the terms of use set out in section 7.1 and in connection with joint projects.

7.3 CELUM's monitoring of the rights of use

CELUM is entitled to carry out online checks with regard to contractually compliant use of the CELUM SaaS Platform and Services agreed in this context by the CUSTOMER, such data being automatically generated via the Internet. Any deviations from contractually compliant use shall be reported to the CUSTOMER, who shall be granted the corresponding rights of use and invoiced for the extension thereof.

8. AVAILABILITY, UPDATES & SUPPORT – SERVICE LEVEL AGREEMENT (SLA)

8.1 Availability of the CELUM SaaS Platform

The guaranteed availability of the CELUM Platform is 99.5%. Availability is determined on a monthly basis, using the following formula:

$$x = ((n-y)/n) * 100$$

x..... availability in percent

n..... total number of hours in the month in question

y..... number of hours in the month in question during which the CELUM Platform was not available.

The unavailability of the CELUM SaaS Platform, the Services or the websites shall be the responsibility of CELUM if the unavailability of the CELUM SaaS Platform or the Service or Services is related to the infrastructure being managed by CELUM. CELUM shall undertake all commercially reasonable efforts to minimise the impact and duration of any outage, interruption or impairment of the CELUM SaaS Platform in accordance with the agreed availability.

CELUM's failure to comply with the specified uptime shall not be deemed a breach of this SLA if such failure is directly or indirectly due to the following:

- Non-production instances/versions (test, pre-production, development, ...)
- Scheduled maintenance intervals
 - Fixed maintenance window every 2nd and 4th Saturday of the month: from 11 pm to 4 am on Sunday (CET).



- This also includes non-exported assets (e.g. storage blob)
- Planned downtimes, of which notification will be given at least 5 working days in advance via <https://community.celum.com/>
- Versions or variants of the CELUM software with changes that have not been approved in writing by CELUM.
- Unsupported or no longer supported versions of the CELUM software
- Third-party products
- The CUSTOMER prevents or delays the performance of maintenance work by CELUM on the CELUM SaaS Platform or Services
- CELUM acts on instructions from the CUSTOMER, its partner or users
- Outages due to force majeure
- Illegal activities by third parties (viruses or remote attacks on the network).

8.2 Service credits

If the percentage availability of the CELUM SaaS Platform falls below 99.5% in any month, the CUSTOMER shall be entitled to a Service credit of the agreed monthly Service fee in line with the table below:

AVAILABILITY/MONTH	SERVICE CREDITS
< 99.5%	10%
< 99%	20%
< 98% and below	30%

The unavailability of the CELUM SaaS Platform and Services to be provided by CELUM must be related to the infrastructure which is managed by CELUM. Unavailability of the CELUM SaaS Platform and Services to be provided by CELUM due to the cases listed in sec. 8.1 shall **not** entitle the CUSTOMER to claim a Service credit.

In total, all Service credits are capped at a maximum of 10% of the agreed annual Service fee. Service credits can only be used by the CUSTOMER when renewing or purchasing additional CELUM SaaS Services. The CUSTOMER must notify CELUM of this in writing.

Service credits do not entitle the CUSTOMER to any refund, reduction of agreed fees or payments by CELUM.

8.3 UPDATES AND SUPPORT SERVICES

CELUM shall perform up to four (4) updates per year for the CUSTOMER.

These updates shall be performed on:

- CELUM core components: App, search, conversion and storage servers
- CELUM extensions: Exporter, importer, toolkit

Updates to SaaS core components are performed by CELUM automatically and unannounced.

Updates shall not include:

- Updates to third-party software and CELUM modules used in third-party software
- Customer configurations: Metadata, GUI customisations
- Integrations: SSO, AD, VPN
- Changes to the product that have not been approved in writing by CELUM, regardless of whether such changes were made by a certified partner of CELUM or not.

Work in respect of project management, testing of third-party integrations shall be carried out after commissioning by the CUSTOMER and charged in line with agreed daily rates.

The CUSTOMER may obtain information on the current status of updates, releases and support services of CELUM in the Customer Support portal.

<https://community.celum.com/kb/pages/viewpage.action?spaceKey=CS&title=CELUM+Releases%2C+Support+Status+and+End-of-Life+information>

CELUM shall use all commercially reasonable efforts to correct any significant error or fault. For this purpose, CELUM shall make a reasonable proposal for a solution (workaround solution or appropriate remediation of fault).

CELUM shall solely provide the following support services to the CUSTOMER:

- Resolution of errors or incidents affecting (the respective current version of) the CELUM SaaS Platform, in line with the error classes listed below.
- Implementation of updates – as described above – to CELUM core components and CELUM extensions.

A support request must be reported by named key users of the CUSTOMER exclusively via <https://service.celum.com>.

Support requests by the CUSTOMER that have been reported in a compliant fashion will be categorised by CELUM either as a support service according to the error classes listed below or as a consulting service. For consulting services, valid daily rates of CELUM apply and such services must be ordered separately by the CUSTOMER.

Categorisation of error classes

Category error class	Description of the error or incident
1 – Critical	Total failure of the CELUM SaaS Platform; no access to the CELUM Platform is possible or access is blocked. No workaround available.
2 – High	Partial failure of the CELUM Platform. Unavailability of one or more core services (upload, download, search, conversion). No workaround available.
3 – Low	The error/incident is of a minor nature and does not fall under any of the foregoing error classes.

SERVICE LEVEL AGREEMENTS (SLA)

	Basic SLA	Premium SLA
Business hours	Monday to Friday from 8 am to 6 pm	24h x 7 days per week

Response times	Critical – 4h during business hours	Critical – 2h during business hours, 4h outside business hours
	High – within 3 working days	High – within 2h on the next working day
	Low – within 4 working days	Low – within 2 working days
Information to Customer	none	Critical – 2 information updates/day High – 1 information update/day Low – 1 information update within 3 working days
Resolution time	Critical – 6 h after validation of the error/incident	Critical – 4h after validation of the error/incident
	High – 48 h after validation of the error/incident	High – 24 h after validation of the error/incident
	Low – lower priority processing, as soon as possible	Low – lower priority processing, as soon as possible

CELUM shall agree with the CUSTOMER on the appropriate category of SLA (Basic or Premium) in its quotation.

9. CONFIDENTIALITY AND SECRECY

9.1 Confidentiality

The Parties acknowledge that each Party may come into contact with or receive communications or data from the other Party which are confidential and must not be disclosed to third parties.

Each Party agrees to maintain strict confidentiality, not copy, reproduce, sell, transfer or otherwise dispose of, disclose to or transfer to any third party any Confidential Information, except to the employees, agents or subcontractors of a Party who have a need to know the Confidential Information in accordance with this Agreement or for purposes external to this Agreement. No breach of confidentiality is committed by disclosing the Confidential Information to recipients, including but not limited to courts and governmental authorities, if and to the extent that such disclosure is necessary to enforce the rights and obligations arising under or in connection with this Agreement or if the disclosing Party is required by law to disclose it. The Parties agree to inform their respective employees, agents and subcontractors of their obligations to keep such information confidential and shall impose an obligation on them to comply with those obligations.

CELUM is authorised to refer to the CUSTOMER including the CUSTOMER's logo on its website and in presentation materials of CELUM. After successful completion of a CUSTOMER project, a success story may be published by CELUM after approval by the CUSTOMER.

9.2 Cooperation to avoid disclosure of Confidential Information

Each Party shall use its best efforts to assist the other Party in identifying and preventing unauthorised use or disclosure of the Confidential Information. Without limiting the validity of the foregoing, if either

Party learns or has reason to believe that any person who has had access to the Confidential Information has violated or intends to violate this Agreement, each Party shall promptly notify the other, and each Party shall cooperate with the other in seeking a court-ordered injunction or similar relief to prevent further interference or violations.

9.3 Customer Data and confidentiality

All data and information, or any derivative thereof, provided to CELUM pursuant to this Agreement by or on behalf of the CUSTOMER (the "CUSTOMER DATA") shall be and remain the sole and exclusive property of the CUSTOMER. The CUSTOMER DATA shall be treated by CELUM as Confidential Information. For the purposes of this Agreement, CELUM is granted the right to use the CUSTOMER DATA to the extent necessary for performance of this Agreement, which shall include the right to store, record, transmit, retain and display the CUSTOMER DATA. Notwithstanding any provision to the contrary set forth herein, CELUM shall not disclose the CUSTOMER DATA unless:

- (a) a written instruction or authorisation is given by the CUSTOMER to CELUM; or
- (b) disclosure is required by law, in which case
 - CELUM shall promptly notify the CUSTOMER in writing and provide documentation of the legal basis for the disclosure; and
 - CELUM shall use commercially reasonable efforts to limit the nature and scope of the required disclosure and minimise the quantity of data that must be disclosed, while complying with the law.

CELUM shall promptly notify the CUSTOMER in writing should any incident involve the unauthorised access, use, disclosure, modification, storage, destruction or loss of CUSTOMER DATA which is in the possession, custody or control of CELUM (or in the possession, custody or control of a subcontractor of CELUM).

Upon request, or upon termination of this Agreement, CELUM shall perform a data export of the CUSTOMER DATA for a separately agreed fee.

9.4 Remedies in the event of a breach of confidentiality

Both Parties undertake that they shall

- indemnify and hold harmless the other Party against damages, expenses and costs (including reasonable lawyers' fees) in connection with all claims and actions brought by third parties arising out of any infringement of copyrights, patents and other intellectual property rights;
- promptly notify the other Party of any such claim or action and assist it in defending and enforcing its rights and provide it with all necessary information.

It is the sole responsibility of the Party with liability therefore to

- acquire the right to use the work product produced, materials supplied, products etc., and in this way enable them to be used lawfully;
- replace the unlawful work product, materials, products etc. by others which do not infringe on such rights;
- demand the return of the unlawful work product, materials, products etc. and reimburse the other Party for the (*pro rata*) fees or royalties.

CELUM shall not be liable for

- unanticipated types of use or unauthorised combinations with third-party products or services/applications;
- modifications of products or services/applications by the CUSTOMER or unauthorised third parties.

Both Parties acknowledge that a breach of confidentiality may result in irreparable harm, the losses from which may not be financially recoverable. Accordingly, the other Party or supplier shall be entitled to seek and obtain, in addition to any other relief to which they may be entitled, a court-ordered injunction against any breach or threatened breach of confidentiality.

10. LIABILITY AND WARRANTY

10.1 Liability

The methods used by CELUM in connection with the Platform/software and the SaaS Services correspond to the generally recognised state of the art. However, in the case of programming services and the provision of SaaS Services, the occurrence of program errors cannot be completely ruled out. Thus, CELUM does not assume any liability for the freedom of the Platform/software from errors, provided that it is basically capable of being used within the scope of what has been contractually agreed. Furthermore, CELUM accepts no liability for results that fail to meet expectations, not least because the quality of such results is heavily dependent on the quality of the previous findings made in cooperation with the CUSTOMER or the information/data provided by the CUSTOMER itself.

Furthermore, CELUM shall not be liable for temporary server outages or transmission incidents, data loss or incorrect functioning of individual programs, especially where this is caused by a misconfiguration on the part of the CUSTOMER. CELUM shall be liable for losses caused by hosting services of Microsoft only to the extent that Microsoft is also liable to CELUM.

In all further and other respects, CELUM shall be liable for intentional acts and gross negligence in accordance with the provisions of applicable law. With respect to slight negligence, liability is limited to the annual amount of orders issued. Compensation for consequential harm caused by a defect – in particular lost profits, loss of interest or expected savings, costs of business interruption, data loss or claims from third parties – is hereby expressly excluded.

10.2 Warranty

Defects rendering the contractual SaaS Service unusable shall only entitle the CUSTOMER to abate the fee or to exercise extraordinary termination if all of the following conditions are met:

- a) The defect falls within CELUM's sphere of responsibility.
- b) The defect has been notified to CELUM in writing or electronically by e-mail within 14 days from the date on which the defect came to the CUSTOMER's attention, whereby the defect must be stated and described in detail.
- c) The defect has not been remediated or a workaround for the defect provided by CELUM within 14 days from the date on which the defect came to the CUSTOMER's attention in such a way that the SaaS Service continues, in principle, to be useable within the scope of what was contractually agreed.
- d) CELUM undertakes to remediate defects as quickly as possible. In contrast, the counterparty is obliged to grant CELUM such access as is necessary to enable it to remediate defect and allow investigations and measures necessary in order to remediate the defect. Where it is impossible or impracticable to remediate the defect as a result of the breach by the counterparty of its duty of cooperation, CELUM shall be released from its obligation to remediate the defect.

CELUM shall provide a warranty for Microsoft hosting services only to the extent that Microsoft also provides a warranty to CELUM.

Furthermore, CELUM does not provide any warranty for defects, outages or damages which are the consequence of improper use of the CELUM Platform or SaaS Services by the CUSTOMER, including

organisational resources and data carriers (where these are prescribed) or components of the operating system, the interface or the parameters which have been improperly modified by the CUSTOMER.

Furthermore, CELUM does not warrant or assume any liability for programs which have been subsequently modified by the CUSTOMER's programmers or by third parties.

11. TERM AND TERMINATION

The term of the Agreement and the ordinary termination options of the Agreement concluded between CELUM and the CUSTOMER are governed by the terms and conditions of the respective offer as contracted.

In addition, the Agreement may be terminated without notice for the following good cause:

- by both Parties if insolvency proceedings are opened over the assets of one of the Parties;
- by the CUSTOMER, if CELUM causes the availability of the CELUM Platform to drop to less than 90% for three months in any twelve (12)-month period;
- by either Party if the other Party infringes any patent, copyright, Confidential Information or proprietary or contractual rights of the other Party in connection with the Services provided under this Agreement;
- by CELUM if the CUSTOMER is in default of payment for more than 3 months;
- if either Party is in serious breach of its obligations and/or warranties under this Agreement and the breach is not capable of being cured, or if the breaching Party fails to take remedial action within thirty (30) calendar days of notice of breach being served by the aggrieved Party, together with a notice of termination without notice.

12. OTHER PROVISIONS

12.1 Subcontractors

CELUM is entitled to subcontract or transfer any of the rights or obligations set forth in this Agreement without the CUSTOMER's prior consent. To this end, CELUM shall conclude a separate agreement with the subcontractor. If CELUM uses the services of a subcontractor for providing certain Services, CELUM shall continue to be liable for performance of the obligations set out in this Agreement. CELUM shall be solely liable for payment to the subcontractor and for the conduct and services of that subcontractor in accordance with the established provisions governing liability. The subcontractor shall comply with the provisions set forth in this Agreement as if it were a signatory hereto. Notwithstanding the foregoing, CELUM's liability for the subcontractor shall in no circumstances exceed the liability of the subcontractor to CELUM.

12.2 Non-exclusivity

There is no exclusivity with respect to CELUM's Services. Accordingly, CELUM shall not be prevented from offering Services to natural persons or legal entities operating within the CUSTOMER's territory.

12.3 Taxes and duties

Each Party is responsible for its own duties, costs and taxes.

12.4 Applicable law

This Agreement shall be governed by Austrian law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods. Both Parties agree that exclusive jurisdiction shall be vested in the courts of the city of Linz.

12.5 No waiver of claims

In the event that either Party notifies the other that it has failed to comply with certain provisions of this Agreement, this shall not affect the ability of that Party to enforce said provision. Similarly, if one Party decides not to enforce certain provisions that have been breached, this shall not affect that Party's ability to enforce other breaches in the future.

12.6 Challenge for mistake

The Parties hereby waive any right to challenge or seek adjustment of this Agreement on any grounds whatsoever, including mistake.

12.7 Notices

All notices, requests and other communications to CELUM under this Agreement must be in writing (including e-mail or registered mail) and shall be sent to:

CELUM Cloud Services GmbH
Passaustrasse 26
4030 Linz
AUSTRIA
E-mail: office@celum.com

12.8 Written form

In order to be valid, amendments or addenda to contractual terms and conditions must be made in writing. The same shall apply to any derogation from this Agreement.