

Software-as-a-Service-Agreement

1. Subject Matter of the Agreement

- 1.1 The subject matter of these General Terms and Conditions (hereinafter referred to as the “Agreement”) is the limited provision free of charge of the cloud-based AI operating system “warmwind OS” for the duration of the contractual relationship for the beta phase [LP1.1], which, as an AI-native operating system, enables the use of compatible applications and digital tools through integrated artificial intelligence (“Contract Software”) for non-productive testing and evaluation by the user as a natural or legal person (“Customer”) via the Internet, as well as the provision of “data center services” for a fee, consisting of (i) the provision and operation of a (virtual) server environment/instance, including the operational setup and provision of the Contract Software via the Internet (collectively, “Hosting”) and (ii) the provision of the computing power and system resources required for the execution of AI-supported processes by the Contract Software, such as processor/graphics processor power, RAM, storage and data processing capacities, and network resources (collectively, “Data Center Resources”). The scope of the data center resources provided is limited to the quota booked by the customer in accordance with Section 11.
- 1.2 The Agreement is concluded based on these terms and conditions, the applicable Terms of Use, and the data processing agreement (Auftragsverarbeitungsvertrag) between Warmwind AG, Löbstedter Straße 49a, 07749 Jena (“Warmwind”) and the Customer. Warmwind is the provider, author and developer of the Contract Software and the operator of the data center services.
- 1.3 Technical data, specifications and performance information, as well as documents, presentations, advertising materials or other representations regarding the Contract Software or Warmwind’s services, whether in writing, text, audio or visual form, orally or otherwise, which have not been expressly incorporated into this Agreement beyond the contractual components set out in Section 1.2, are not part of the Agreement and do not constitute any agreed quality characteristics or performance commitments.
- 1.4 These terms apply exclusively. Terms and conditions of the Customer or third parties do not apply, even if Warmwind does not expressly object to them in individual cases. Even if Warmwind refers to a letter that contains or refers to the Customer’s or a third party’s terms and conditions, this does not constitute consent to the validity of those terms.
- 1.5 The Terms of Use also apply to the relationship between Warmwind and the Customer’s employees or other third parties who use the Contract Software for the Customer (“Users”). The Customer must ensure that the Terms of Use, or the rights and obligations of the Customer arising from the Terms of Use, effectively apply to the Users.
- 1.6 Warmwind is entitled to amend or supplement the Terms of Use with effect for the future to the extent this is necessary for objectively justified reasons. Objectively justified reasons exist in particular if the changes are required

- a) due to further development or other adaptation of the Contract Software to changed legal or regulatory requirements or to court or administrative decisions,
- b) due to technical or security-related developments of the Contract Software,
- c) as a result of further development and improvement of the usability of the Contract Software, without unreasonably disadvantaging the Customer, or
- d) due to changes in industry and market standards or in the economic framework conditions.

1.7 Warmwind will inform the Customer of changes to the Terms of Use in text form at least 30 days before they take effect. The Customer has the right to object to the changes within 14 days after receipt of the notice of change. If no timely objection is made, the amended Terms of Use are deemed agreed. If the Customer objects in due time, Warmwind is entitled to terminate the Agreement with one month's notice to the end of a month. In that case, the Terms of Use applicable until termination becomes effective remain unchanged. Changes to the Terms of Use affecting essential main performance obligations require the Customer's express consent.

2. Services

- 2.1 During the beta phase, Warmwind will provide the Customer, against payment, with data center services ("Hosting") for the use of the Contract Software in accordance with Section 4 exclusively for non-productive tests and evaluations, and will grant the necessary rights of use in accordance with Section 5.
- 2.2 The Customer is entitled to use the Contract Software exclusively for testing and evaluation purposes within the beta phase. In this context, Warmwind does not owe suitability of the Contract Software for a particular purpose, a specific scope of functions, or a specific availability. The Contract Software is in a development stage and may contain errors or incomplete functions or may be temporarily unavailable.
- 2.3 The specific scope of functions of the Contract Software during the pilot phase may differ from the later market-ready version. Warmwind is entitled at any time, in accordance with Section 7, to adjust, expand or restrict the scope of functions.
- 2.4 Warmwind's services are generally limited to the services owed under this Agreement, unless the parties have agreed otherwise.
- 2.5 Warmwind is entitled to have services within the meaning of this Section 2 performed by third parties as subcontractors. The requirements under Art. 28 GDPR regarding the use of subcontractors remain unaffected. By means of the data processing agreement, the Customer grants Warmwind its general authorization pursuant to Art. 28(2) sentence 2 GDPR to use subcontractors. The provisions of the supplementary data processing agreement remain otherwise unaffected and regulate in detail the data protection obligations between the parties (Section 10).

3. Conclusion of Contract; Steps to Create a Paid Account

- 3.1 Use of the Contract Software requires the conclusion of a user agreement between Warmwind and the Customer. The paid user agreement is concluded by creating and registering a user account in accordance with the following provisions. Upon registration, a storage instance is provided for the Customer in a data center commissioned by Warmwind and the Contract Software is installed. There is no entitlement to the conclusion of a user agreement.
- 3.2 Account registration is permitted only for natural persons with unlimited legal capacity who pursue a commercial, business or fiscal activity that corresponds to the purpose of the platform.
- 3.3 The customer does not have the option of selecting individual services. Registering an account constitutes the submission of an offer to conclude a contract for the provision of data center services for the use of the contract software. During registration, the customer is guided through the process and asked to provide the necessary personal data and billing address, select a license model in accordance with Section 11, and choose a payment method. The customer completes the respective steps by clicking the "Continue" button. The customer has the option at any time to check and correct their entries and to repeat individual steps and processes using the corresponding buttons ("Back," "Continue"). Before submitting the registration, the customer has the opportunity to check and correct their details on an overview page. The customer can select the "Edit" button to make corrections. The process is completed by clicking on the "Place order" button.
- 3.4 By clicking "Order with obligation to pay", you submit a binding offer to conclude a contract for the provision of the hosting service. Immediately after submitting the offer, you will receive an email confirming the registration, which does not yet constitute acceptance of your contractual offer. A contract between the Customer and Warmwind is concluded as soon as Warmwind accepts the Customer's offer by separate email and/or grants or enables access to the Contract Software. The confirmation email and the contract text may arrive in the spam folder.
- 3.5 Warmwind does not store the contractual provisions.
- 3.6 The Customer is obliged to provide complete and truthful information during registration.

4. Provision of Hosting Services; Use of the Contract Software

- 4.1 Warmwind provides data center services for the customer and, for this purpose, provides the customer with a (virtual) server environment/instance for the use of the contract software in a data center carefully selected and deemed suitable by Warmwind (hosting, Section 1.1). The Contract Software is installed by Warmwind on the instance assigned and provided to the Customer and made available for use via the Internet in accordance with Section 4.2. The technical specifications

and configurations of the servers used by Warmwind and the instance assigned to the customer shall be determined by Warmwind at its reasonable discretion; they shall be based on the technical requirements necessary for the use of the Contract Software and its secure use by the customer.

4.2 Hosting enables the customer to use and access the latest version of the Contract Software via the Internet at the router output of the data center in which the instance is operated and on which the Contract Software is set up and ready for operation ("transfer point"). The customer's access to the contractual software is browser-based. Warmwind is not responsible for establishing and maintaining the data connection between the IT systems or end devices of the customer or its employees and the transfer point.

4.3 As part of its data center services, Warmwind provides the customer with the data center resources required for the execution of AI-supported processes (in particular computing power and system resources such as processor/graphics processor power, RAM, storage and data processing capacities, and network resources) within the scope of the quota booked by the customer in accordance with Section 11. The use of data center resources is limited to the booked quota. If the quota is exhausted, Warmwind is entitled to restrict, block, or otherwise limit the provision of data center resources for AI-supported processes.

4.4 Warmwind provides the hosting services with an overall availability of 99.5%. Availability is calculated based on the time attributable to the respective calendar month within the contract term (24/7 operation) minus the maintenance windows defined on a case-by-case basis during the beta phase. During the beta phase, to ensure functionality of the otherwise autonomously operating Contract Software, Warmwind is entitled to perform maintenance work on weekdays between 8:00 and 16:00. During maintenance work, the aforementioned services may be wholly or partially unavailable.

4.5 Downtimes caused by the following events do not reduce availability under Section 4.4:

- a) problems within the Customer's network or infrastructure or that of third parties commissioned by the Customer,
- b) outage/impairment of the Customer's network connection,
- c) outages/impairments caused by acts or omissions of the Customer or a third party not commissioned by Warmwind,
- d) use of the platform by the Customer not in accordance with the Agreement,
- e) actions by unauthorized third parties, to the extent the unauthorized third party's ability to act is attributable to the Customer (e.g., due to failure to observe reasonable security procedures),
- f) events of force majeure that cannot be compensated by reasonable measures of the operator.

- 4.6 Warmwind will also endeavor to ensure the highest possible availability of the Contract Software. Continuous uninterrupted availability is not owed. Restrictions or impairments in accessibility may result in particular from the development nature of the Contract Software during the pilot phase. In addition, restrictions or impairments may occur that are outside Warmwind's control, including in particular actions by third parties not acting on Warmwind's behalf, technical conditions of the internet beyond Warmwind's influence, internet- and network-related downtimes outside Warmwind's control, and force majeure. The hardware and software used by the Customer and its employees as well as the Customer's technical infrastructure may also affect accessibility.
- 4.7 Warmwind is entitled to interrupt the hosting services and/or access to the Contract Software (suspension) if this is necessary with regard to the security or integrity of Warmwind's servers or those of a commissioned service provider or the Customer's Instance, the security or integrity of the Customer's IT systems, for the performance of maintenance work, or if temporarily ordered by immediately enforceable or final administrative decisions or by provisionally enforceable or final court decisions.

5. License and Rights of Use

- 5.1 Warmwind is the exclusive holder of the rights to the Contract Software, is entitled to provide the Contract Software to the User via the internet, and is authorized to dispose of rights vis-à-vis the Customer.
- 5.2 The Customer is permitted to use the Contract Software as intended and in accordance with this Agreement during the term. This is a non-exclusive right of use in the Contract Software, limited in time to the performance of this Agreement and limited geographically to the country of the Customer's registered seat, non-transferable to third parties. No further transfer or granting of rights in the Contract Software is made. The granting of rights of use expressly does not extend to unknown types of use.
- 5.3 In particular, the Customer is not entitled to transfer the rights of use granted under Section 5.2 to affiliated companies within the meaning of Section 271 HGB, Sections 15 et seq. AktG, or the applicable corporate law provisions, to investment companies or subsidiaries, unless expressly agreed otherwise or Warmwind has expressly consented to such transfer. Affiliated companies, investment companies, or subsidiaries are third parties within the meaning of Section 5.2.
- 5.4 To the extent Warmwind uses "open source software" ("OSS", i.e. software that the rights holder makes available to any users with the right to modify and/or distribute) in connection with the Contract Software, the Contract Software is made available to the Customer deviating from Section 5.2 on the basis of the applicable OSS license terms of the respective licensor. Warmwind will inform the Customer which OSS is involved and under which terms it is provided to the Customer.

5.5 The above provisions apply accordingly to the provision of new versions, updates or upgrades, insofar as such provision is made in accordance with this Agreement.

5.6 All rights, in particular copyright, usage and exploitation rights, in documentation, manuals, online help, training materials, presentations, videos or other accompanying materials relating to the Contract Software provided by Warmwind (“Documentation”) are exclusively owned by Warmwind or its licensors. The Customer is granted a non-exclusive, non-transferable right, limited geographically to the country of the Customer’s seat and limited in time to the term, to use such Documentation exclusively for the intended use of the Contract Software. Reproduction, editing, translation, making available to the public, distribution or other use of the Documentation beyond the contractual purpose is permitted only with Warmwind’s prior express consent.

5.7 The parties grant each other the right to use the trademarks and identifiers of the other party (brands, logos, business identifiers such as company name and trade name, etc.) free of charge for the term of this Agreement for announcing the parties’ cooperation and as part of marketing measures for the Contract Software, regardless of type, scope or medium. In particular, Warmwind is entitled to use the Customer’s identifiers on Warmwind’s website and on social media to promote the Contract Software and the cooperation. The parties will inform each other about the type and scope of use and will take reasonable account of legitimate interests regarding the specific design.

6. Maintenance of the Contract Software

6.1 Warmwind will maintain the Contract Software during the term to the extent necessary for conducting the beta phase. Maintenance includes maintaining functional capability that allows the agreed test and evaluation purposes to be carried out, taking into account the development stage of the Contract Software.

6.2 Maintenance primarily includes remedying malfunctions occurring during the term, provided they were not caused by the Customer. Warmwind will fulfill maintenance by providing patches, updates and/or releases. These will, where possible and considering the Customer’s legitimate interests, be deployed and made available automatically outside usual usage times in accordance with Section 6.1. The Customer is aware, however, that during the pilot phase, maintenance work may be required more frequently, at short notice, and without prior announcement.

7. Further Development of the Contract Software

7.1 Warmwind is entitled during the pilot phase and the term to further develop the Contract Software with regard to quality, functionality, security, user-friendliness and modernity, to adapt it to changed requirements, modernize the layout and arrangement of the interface, and remedy functional impairments even outside warranty or maintenance (collectively “Further Development Services”). The

specific scope of Further Development Services is at Warmwind's free discretion. During the pilot phase, Further Development Services may affect fundamental functionalities and related use cases and may in the future restrict or render impossible such use cases in whole or in part. Further Development Services may form part of a patch, update and/or release and may also be provided to the Customer together with maintenance measures.

7.2 Under this Agreement, Warmwind is not obliged to further develop the Contract Software beyond Section 7.1 upon the Customer's request or to adapt it to the Customer's individual needs.

7.3 The scope of functions during the pilot phase is not finally defined and may vary due to further developments, changes or restructurings. The Customer acknowledges that functions may be added, changed, replaced or removed.

7.4 Warmwind will inform the Customer appropriately in text form about further developments.

8. Analysis and Remedy of Disruptions

8.1 The Customer is aware that the Contract Software is in continuous development during the beta phase, does not yet constitute a market-ready product and may therefore contain faulty, incomplete or temporarily unavailable functions. The aim of the beta phase is to identify sources of errors, performance and optimization potential, and improvement suggestions. The Contract Software may therefore, even when used as intended, be temporarily or permanently not fully available.

8.2 During the beta phase, Warmwind will analyze reported disruptions and other functional impairments of the Contract Software and the hosting services at its reasonable discretion and will endeavor to remedy them within available resources. The Customer has no claim to specific response or recovery times.

8.3 The Customer undertakes to report disruptions or functional impairments to Warmwind without undue delay after becoming aware of them and to provide all information relevant for error analysis.

9. Cooperation Obligations and Duties of the Customer

9.1 The Customer will perform all cooperation acts required on the Customer's side to enable provision of the hosting services and use of the Contract Software suitable for contractual use. In particular, the Customer is obliged to

- a) comply with, observe and take into account the restrictions, behavioral obligations and risk notices set out in the Terms of Use when using the Contract Software,
- b) effectively oblige Users commissioned or authorized by the Customer in an appropriate manner to comply with the applicable Terms of Use,

- c) keep all passwords and access credentials confidential, protect them against access by third parties and not pass them on to unauthorized Users. Such data must be protected by suitable and effective measures. The Customer will inform Warmwind without undue delay if there is suspicion that access data and/or passwords may have become known to unauthorized persons,
- d) use only hardware systems for use of the Contract Software that have an adequate level of security and hardware configuration appropriate for such use,
- e) promptly and continuously, upon provision of patches, updates and releases, review the Contract Software for a condition suitable for contractual use as well as for the presence of essential functions; Section 377 HGB remains unaffected,
- f) cooperate, to an appropriate extent and with mutual consideration, in reporting disruptions and errors as well as in remedying disruptions,
- g) comply with restrictions/obligations regarding rights of use under Section 5, take reasonable precautions to avoid and detect violations of such restrictions/obligations by Users, report violations to Warmwind without undue delay, and cooperate to the extent necessary in the assertion of civil-law or other claims by Warmwind,
- h) notify Warmwind without undue delay of defects, functional impairments or disruptions of Warmwind's services that become known or occur during the term; Section 377 HGB remains unaffected,
- i) maintain the IT systems and components used by the Customer in a condition that meets generally recognized and basic requirements for information and data security, in particular by conducting regular security checks, using current software and system updates, and otherwise taking appropriate technical and organizational measures to ensure confidentiality, availability and integrity of its systems insofar as this affects use of the Contract Software.

9.2 The Customer is obliged, at its own responsibility, to perform regular and appropriate data backups. The Customer acknowledges that the Contract Software is not archival software and is therefore not designed for permanent storage or audit-proof retention of data.

9.3 The Customer is aware that the Contract Software is in continuous development at the time of the beta phase (Section 2.2). The Customer shall take this development character into account and ensure that the Contract Software is used exclusively in an environment in which possible malfunctions or erroneous results cannot have significant adverse effects on persons, property, business processes, or legal obligations of the Customer, the User or other business partners.

9.4 The Customer is further aware that the Contract Software is an AI-based system that autonomously executes work processes based on learned patterns and statistical analyses. The results and actions generated by the Contract Software may be erroneous, incomplete, ambiguous or unsuitable for the intended purpose. The

Customer is obliged to subject all results and actions generated by the Contract Software to professional review and its own responsible assessment before use.

9.5 As soon as and to the extent Regulation (EU) 2024/1689 laying down harmonized rules on artificial intelligence (“AI Act”) applies to the Customer’s use of the Contract Software, the Customer is obliged to comply with its requirements at its own responsibility.

9.6 The Customer is not entitled to decipher, decompile, disassemble, reconstruct or otherwise attempt to discover the source code of the Contract Software, unless permitted under mandatory non-waivable provisions.

10. Data Protection and Data Security; AI Training

10.1 The parties will comply with the applicable data protection provisions and will oblige their employees used in connection with the contractual relationship and its performance to comply with data protection requirements.

10.2 To the extent the Customer collects, processes or uses personal data in connection with use of the Contract Software, the Customer is responsible for ensuring it is entitled to do so under applicable law, in particular data protection law.

10.3 The parties assume that Warmwind processes the personal data processed by the Customer in the course of using the Contract Software on behalf of the Customer as a processor pursuant to Art. 28 GDPR. Warmwind will collect, process, use or access personal data only within the framework of the agreement made and in accordance with the Customer’s instructions. The provisions of the data processing agreement apply, the applicability and incorporation of which into this Agreement is hereby agreed by the parties and was confirmed by the Customer upon conclusion of the Agreement.

10.4 No processing of personal data for training purposes in the sense of permanent model improvement takes place.

11. Remuneration; Payment Terms

11.1 The contractual software is provided to the customer by Warmwind free of charge during the beta phase.

11.2 The remuneration for the data center services provided in accordance with Sections 4.1 to 4.3 is based on the number of quotas selected by the customer as subscriptions in accordance with the following provisions.

11.3 One quota comprises 30 working hours. One working hour corresponds to one hour (1h = 60 min.). Working hours are the billing and quota basis for the use of data center resources to execute AI-supported processes within the Contract Software. The working hours can be used for different workspaces of a customer.

- 11.4 The minimum contract term for a quota is one billing period. A billing period is one calendar week (7 calendar days), beginning on the day the account is activated and a quota is booked. The contract term for the subscription is governed by Section 13.
- 11.5 The price for a quota is based on the prices valid at the time the contract is concluded, as specified when the account is registered and communicated in the subsequent immediate confirmation by email. Unless expressly stated otherwise, all prices are subject to the sales tax valid at the time of service provision.
- 11.6 Payment is due in advance at the beginning of each billing week and will be collected/charged as a recurring payment via the payment method selected during the ordering process. If the collection/charge fails or the customer defaults on payment, Warmwind is entitled to suspend the provision of data center services until full payment has been made. Further rights remain unaffected.
- 11.7 Use of the contract software is limited to the number of working hours available to the customer per billing period (Section 4.3). If the customer's available working hours for their account are not sufficient to perform AI-supported processes in the Contract Software, Warmwind may block or restrict the performance of further AI-supported processes until additional working hours are activated (next billing period or booking of additional quotas). The hours account maintained in the customer's account is decisive. The hourly account is determined and debited on the basis of the measurement and log data shown in the customer's account.
- 11.8 Unused working hours from one billing period are transferred once to the immediately following billing period. Any unused transferred working hours then expire without replacement at the end of the billing period. When debiting the hourly account, any transferred working hours are credited first, followed by the working hours of the current billing week. There is no entitlement to payment, reimbursement, or other compensation for unused working hours.
- 11.9 A prerequisite for the execution of AI-supported processes by the contract software is the booking of at least 4 (four) quotas per billing period. The fee is charged per account (customer). Billing is based on the quotas booked for the account.
- 11.10 The hours account (No. 11.7) can be viewed at any time in the customer's account. There, the customer can view, in particular, the working hours still available for the billing period, any transferred hours, and any upcoming expiry of working hours. Warmwind will inform the customer by means of a notification in the user account and/or by email as soon as (i) only 20% of the available working hours remain or (ii) the working hours have been used up.

13. Right of Withdrawal

13.1 As a consumer, you have a right of withdrawal. A consumer is any natural person who concludes a legal transaction for purposes that predominantly cannot be attributed to their commercial or self-employed professional activity.

14. Withdrawal Instructions

14.1 You have the right to withdraw from this Agreement within fourteen days without giving any reason. The withdrawal period is fourteen days from the day the Agreement is concluded.

14.2 To exercise your right of withdrawal, the Customer must inform us at:

Warmwind AG
Löbstedter Straße 49a
07749 Jena
Email: info@eva.space

by means of an unequivocal statement (e.g., a letter sent by post or an email) of your decision to withdraw from this Agreement. You may use the attached model withdrawal form, but it is not mandatory.

14.3 To meet the withdrawal deadline, it is sufficient for you to send the communication concerning the exercise of the right of withdrawal before the withdrawal period has expired.

Consequences of Withdrawal

14.4 If you withdraw from this Agreement, we shall reimburse all payments received from you, including delivery costs (except for additional costs arising from your choice of a different type of delivery than the least expensive standard delivery offered by us), without undue delay and at the latest within fourteen days from the day on which we receive notification of your withdrawal. For this reimbursement, we will use the same means of payment you used for the original transaction, unless expressly agreed otherwise with you; in no event will you be charged any fees for such reimbursement.

14.5 If you have requested that the services begin during the withdrawal period, you shall pay us an appropriate amount corresponding to the proportion of services already provided up to the time you inform us of the exercise of the right of withdrawal, compared to the total scope of services provided for in the Agreement.
End of the Withdrawal Instructions

15. Model Withdrawal Form

(If you want to withdraw from the Agreement, please complete this form and send it back.)

To:

Warmwind AG
Löbstedter Straße 49a
07749 Jena
info@eva.space

I/We () hereby withdraw from the Agreement concluded by me/us () for the purchase of the following goods () / the provision of the following service ()

Ordered on () / received on ()

Name of consumer(s)

Address of consumer(s)

Signature of consumer(s) (only if notified on paper)

Date

() Delete as applicable.*

16. Term, Termination

16.1 The Agreement has a term of one week. It is automatically extended by one week if neither party terminates the Agreement with one week's notice.

16.2 The Agreement may be ordinarily terminated by either party at any time with two weeks' notice to the end of a month. The Agreement also ends automatically if a new contract is concluded between the parties regarding use of the Contract Software, in particular a paid contract; the termination date is determined by the effective start date of the new contract.

16.3 The parties' right to extraordinary termination for good cause without observing a notice period remains unaffected. Good cause entitling Warmwind to terminate the contract without notice shall be deemed to exist in particular if

a) the customer repeatedly violates the provisions of this contract despite receiving a warning,

b) the customer misuses the contractual software for illegal purposes, or

c) the customer culpably infringes Warmwind's intellectual property rights.

16.4 A good cause within the meaning of Section 16.3 does not exist for the Customer if the Contract Software cannot be used, or can only be used to a limited extent, for the Customer's specific use case.

16.5 A subscription (Section 11.2) has a minimum contract term of one billing period. A subscription is automatically renewed for another billing period if the subscription is not terminated before the end of the billing period. The customer can terminate the subscription via their customer account. In all other respects, sections 13.3 and 13.4 apply accordingly.

17. Consequences of Termination

- 17.1 Upon termination of the Agreement, the Customer's ability to access the Contract Software ends. Further use of the Contract Software by the Customer is no longer possible.
- 17.2 Warmwind will delete the Customer's data from all Warmwind servers or the servers of a service provider commissioned by Warmwind no later than one month after termination, unless statutory retention periods conflict. The Customer is entitled at any time before expiry of this period to request deletion or the return of the data pursuant to Art. 28(3) sentence 2 lit. g) GDPR.
- 17.3 Warmwind agrees to cooperate, to a reasonable extent and on the basis of a separate agreement, in transferring the Customer's data into the Customer's systems or those of a third-party provider as part of migration services against payment of a separate market-standard fee. Details will be agreed in a separate migration agreement.

18. Warranty

- 18.1 For the hosting services, the Customer has the statutory warranty rights. Warmwind will provide the Customer's Instance in a condition suitable for contractual use and maintain this condition during the term. Section 536a BGB does not apply to defects existing at the time of contract conclusion.
- 18.2 The Customer is aware that during the beta phase, the Contract Software is not a market-ready product and is in continuous development. Its functionality, performance and compatibility may therefore be limited; it may contain errors, have incomplete functions or be temporarily unavailable.
- 18.3 During the beta phase, the Contract Software is provided exclusively for testing and evaluation purposes and otherwise "as is" and "as available". Warmwind assumes no warranty for error-free operation, completeness, compatibility, availability or suitability of the Contract Software for a particular purpose.
- 18.4 No warranty claims exist for the free provision of the Contract Software during the beta phase. Warmwind is liable for defects in quality and title only in cases of intent and gross negligence. This does not apply if Warmwind fraudulently concealed a defect and the Customer suffered damage as a result.
- 18.5 Warmwind does not provide any express or implied assurances or warranties regarding specific characteristics, performance, or success of use of the Contract Software.
- 18.6 To the extent Warmwind's performance depends on software products used by the Customer or the Customer's IT infrastructure, Warmwind does not warrant that such services can actually be performed.

19. Third-Party Rights

- 19.1 If a third party asserts claims based on intellectual property rights that prevent exercise of the contractually granted right of use of the Contract Software, the Customer must inform Warmwind without undue delay in writing and in full. If the Customer ceases use of the Contract Software for loss mitigation or other important reasons, it must inform the third party that cessation of use does not constitute an acknowledgement of the alleged infringement. The Customer will conduct legal disputes with the third party only in agreement with Warmwind or authorize Warmwind to conduct the dispute. This applies accordingly if a third party asserts claims against Warmwind that are attributable to acts of the Customer or its employees or service providers.
- 19.2 If there is an infringement of third-party rights attributable to Warmwind through the services to be provided under this Agreement, Warmwind may, at its expense and at its option, either acquire the necessary rights of use for the Customer or modify or re-perform the relevant service so that no third-party rights are infringed, while still complying with the contractual agreements. If Warmwind cannot grant the necessary rights or modify the contractual service accordingly, the Customer is entitled to extraordinary termination for good cause. Further claims for damages by the Customer remain unaffected; their assertion is governed by Section 17 of this Agreement.
- 19.3 If Warmwind infringes third-party rights, Warmwind will indemnify the Customer against resulting third-party claims upon proof and will bear the reasonable costs of legal defense for the Customer.

20. Liability

- 20.1 Warmwind is liable only for damages whose cause is based on a grossly negligent or intentional breach of duty, as well as for a negligent breach of essential contractual obligations ("cardinal obligations"). Cardinal obligations are those whose fulfillment enables proper performance of the Agreement in the first place and on whose compliance the contractual partner may and does rely, and/or obligations whose breach endangers achievement of the purpose of the Agreement. Liability for negligent breach of essential contractual obligations is excluded if statutory limitation of liability applies for individual service components (use of the Contract Software).
- 20.2 Liability for indirect damages is excluded.
- 20.3 The Customer expressly acknowledges that the Contract Software is in continuous development at the time of contract conclusion. Warmwind's liability for damages in connection with provision and use of the Contract Software during the pilot phase is therefore limited as follows:
- 20.4 Warmwind will apply due care and professional competence in providing the services assumed under this Agreement. Nevertheless, no express or implied

warranty is given for suitability of the Contract Software for a particular purpose. Use of the Contract Software by the Customer is at the Customer's sole responsibility.

- 20.5 Warmwind is not liable for damages attributable to acts, omissions or incorrect application of the Contract Software by the Customer or third parties. The Customer is responsible for proper use of the Contract Software and for taking appropriate security precautions in connection with its use.
- 20.6 Warmwind's liability for defects and breaches of duty of any kind in content created using the Contract Software or conclusions drawn therefrom is excluded. The Customer indemnifies Warmwind in this respect against liability for defective content vis-à-vis third parties.
- 20.7 The above liability limitations do not apply to damages arising from injury to life, body or health or where Warmwind has exceptionally assumed a guarantee, except where a statutory limitation of liability provides for liability only for intent and gross negligence. In addition, liability under mandatory product liability provisions remains unaffected.
- 20.8 The above liability rules apply accordingly to the conduct of, and claims against, Warmwind's employees, legal representatives and vicarious agents.
- 20.9 For all claims against Warmwind for damages or reimbursement of futile expenses under contractual or non-contractual liability, a limitation period of one year applies. The limitation period begins at the time specified in Section 199(1) BGB. It expires at the latest after five years from the time the claim arose. Sentences 1 to 3 of this Section do not apply to liability for intent or gross negligence, personal injury, or under the Product Liability Act.

21. Confidentiality, Protection of Know-How

- 21.1 The parties mutually undertake to keep confidential all confidential information (including trade secrets) that they obtain in connection with performance of this Agreement and the provision and implementation of the Contract Software (confidentiality obligation), and not to disclose, pass on or otherwise use such information in a manner not aligned with the contractual purpose. In particular, the Customer undertakes to treat as confidential all findings obtained during the pilot phase regarding the functioning, performance, integrability and any weaknesses of the Contract Software, including provided Documentation, service descriptions or other contractual documents, and not to pass them on to third parties or otherwise disclose or make them publicly accessible. This also applies to findings obtained through observation, analysis or tests, in particular regarding undocumented functions or internal processes of the AI system.
- 21.2 Confidential information within the meaning of Section 21.1 includes in particular information marked as confidential or whose confidentiality results from the circumstances, regardless of whether communicated in written, electronic, embodied or oral form. Confidential information includes, in addition to the information already described in Section 21.1, information about customers,

specific business relationships, internal business processes, economic key figures, business analyses, and comparable information not normally known to third parties and kept confidential from them, as well as derivations made therefrom.

21.3 The confidentiality obligation and the prohibition of use do not apply, or no longer apply, to information for which the receiving party can prove that

- a) the information was already known before disclosure or became known from a third party thereafter without violating a confidentiality agreement, statutory provisions or official orders,
- b) the information was generally accessible and known to the public,
- c) the information became known or generally accessible to the public after disclosure without involvement or fault of the receiving party,
- d) the information was developed by the receiving party without reference to the other party's confidential information,
- e) the party is obliged to disclose due to a legal provision or an administrative order. In this case, that party must - insofar as permissible - inform the other party in writing without undue delay in advance of the intended disclosure and take the legally permissible and necessary precautions to keep the scope of disclosure as small as possible,
- f) the party has been expressly authorized in writing in advance by the disclosing User to disclose.

21.4 The confidentiality obligation applies throughout the entire term of this Agreement and for a period of 10 years after its termination. The parties are obliged to maintain confidentiality until the information becomes generally known by other means or the parties waive confidentiality in writing.

21.5 The provisions of the German Whistleblower Protection Act (Hinweisgeberschutzgesetz), in particular Sections 5 and 6 HinSchG, remain unaffected.

22. Final Provisions

22.1 The language available for conclusion of the Agreement is exclusively German. Translations of these terms and conditions into other languages are for information purposes only. In the event of differences between language versions, the German text prevails.

22.2 The law of the Federal Republic of Germany applies, excluding the UN Convention on Contracts for the International Sale of Goods, if

- a) the Customer has its habitual residence in Germany, or

b) the Customer has its habitual residence in a state that is not a member of the European Union.

22.3 If you have your habitual residence in a member state of the European Union, German law also applies, while mandatory provisions of the state in which you have your habitual residence remain unaffected.

22.4 Amendments or supplements to this Agreement must be made in writing or text form to be effective. This also applies to any waiver of the writing requirement. System notifications or information from Warmwind relating to operation, provision or functionalities of the Contract Software may also be made available via the Contract Software.

22.5 Exclusive place of jurisdiction for all disputes arising from or in connection with this Agreement is Jena.

22.6 If any provision of this Agreement, or any provision subsequently included, is or becomes invalid or unenforceable in whole or in part, or if a gap becomes apparent, this does not affect the validity of the remaining provisions. It is the express will of the parties to maintain the validity of the remaining provisions in all circumstances and thus to exclude the application of Section 139 BGB in its entirety. In place of the invalid or unenforceable provision or to fill the gap, a valid or enforceable provision shall be deemed agreed with retroactive effect that comes as close as legally and economically possible to what the parties intended or would have intended in accordance with the meaning and purpose of this Agreement had they considered this point when concluding the Agreement or including the provision. If the invalidity is based on a specified measure of performance or time (deadline or date), the provision shall be deemed agreed with the legally permissible measure closest to the original. If such replacement is not possible, a provision or regulation shall be agreed in accordance with the preceding sentence.