### General Terms and Conditions of Elara Digital GmbH

### for the use of the Elara software

**Preamble**

Elara Digital GmbH (hereinafter referred to as the "Provider") provides customers with the "Elara" software it has developed from its servers via the Internet for use via remote data access. Furthermore, the provider provides the customer with storage space on its servers.

1. **Subject matter of the contract**

(1) The subject matter of this contract is the provision of access to the software in the latest version for the term of the contract, together with the granting of the rights required for its contractual use and the provision of storage space to the agreed extent by the provider.

(2) This offer by the Provider is aimed exclusively at entrepreneurs within the meaning of Section 14 of the German Civil Code (BGB). Accordingly, an entrepreneur is a natural or legal person or a partnership with a legal capacity that acts in the exercise of its commercial or independent professional activity when concluding a legal transaction.

1. **Conclusion of contract, prices, scope of services**

(1) The provider concludes contracts with customers exclusively outside of electronic business transactions and with the inclusion of these general terms and conditions.

(2) These General Terms and Conditions shall be handed over to the customer together with the rest of the contract text.

(3) The prices shown on the order form shall apply.

(4) The provider shall provide the customer with the software to the agreed extent for retrieval at the transfer point. The transfer point is the router output of the provider's data centre. By concluding the contract, the customer acquires the right to use the software by the contract within the agreed period.

(5) The Provider shall provide the Customer with storage space on its servers for data storage and to use the software up to the contractually agreed scope. The provider shall ensure that the data can be retrieved within the scope of using the software.

1. **Changes to the GTC and prices**

(1) The Provider is entitled to amend these General Terms and Conditions and the prices by the following provisions. The right to amend the General Terms and Conditions shall only apply insofar as this does not result in a change to the provider's main performance obligations that is detrimental to the customer.

(2) Amendments to the General Terms and Conditions

(a) The customer shall be notified of any changes to these General Terms and Conditions in text form, whereby the changes shall be highlighted about the previously valid General Terms and Conditions.

(b) The customer may object to such an amendment to the General Terms and Conditions. To do so, he must declare his objection to the provider in text form and within six weeks of receipt of the notification of the amendment to the General Terms and Conditions (hereinafter "amendments"). The deadline is only met if the provider receives the objection within the deadline. If the customer does not object in due form and time, the amendments shall be deemed approved, and the amended General Terms and Conditions shall become part of the contract; the provider shall make express reference to this and the form and deadline for the objection in the notification of the amendment.

(c) If the customer objects to the changes in due form and time, the contract shall continue unchanged. In this case, however, the provider has the right to terminate the contract with a notice period of six weeks from receipt of the objection to the customer if it is economically or technically impossible or unreasonable for the provider to adhere to the unchanged contract.

(3) Price adjustment

(a) The provider is entitled to increase the recurring remuneration to be paid by the customer within the framework of continuing obligations by up to 3% per calendar year since the conclusion of the contract or since the last remuneration adjustment (the later date shall apply) using a declaration in text form to the customer with effect for the future, but at the earliest after the expiry of a period of 12 months since the beginning of the respective continuing obligation. The customer must receive the declaration no later than three months before the date the increase takes effect. A cumulative increase in the fee for several calendar years without a fee adjustment may not exceed 12%.

(b) If the provider makes such a price adjustment, the customer is entitled to terminate the relevant continuing obligation with two months' notice before the increase in remuneration comes into effect.

1. **Term and Termination**

(1) The contract shall enter into force on the day of provision specified in the order form and is concluded indefinitely. Either party may terminate the contract at any time during the first year with three months' notice. After that, six months before the end of the contract period.

(2) The right of both parties to extraordinary termination for good cause remains unaffected. Good cause shall be deemed to exist in particular if one party intentionally or negligently breaches a material obligation under this contract. Therefore, it is no longer reasonable for the terminating party to adhere to the contract. Accordingly, the provider is entitled to terminate the contract, particularly in case of repeated or significant default in payment by the customer.

1. **Granting of rights**

(1) The customer receives the non-exclusive, non-transferable, and non-sublicensable right to use the software via browser access, limited to the contract term.

(2) If the customer violates the above provisions, all rights of use granted under this contract shall immediately become ineffective and automatically revert to the provider. In this case, the customer must immediately and completely cease using the software.

1. **Availability**

(1) The provider guarantees an availability of the software of 99.00% on a monthly average unless the parties have agreed otherwise. However, this does not constitute a corresponding guarantee.

(2) The software shall be deemed available if it is ready at the transfer point and is free of significant defects, as well as during the agreed maintenance windows.

(3) To maintain the quality and security of the software, maintenance windows (shutdown periods) of a maximum total of 8 hours per month have been agreed upon, during which the software is scheduled to be unavailable. During these maintenance windows, the software is considered available despite the shutdown. The maintenance windows are only scheduled for the period between 9 p.m. and 5 a.m. The planned maintenance windows shall be announced by e-mail to the e-mail address provided by the customer at least five days before the planned shutdown.

(4) The measurement period for availability is the calendar month. Availability is calculated according to the following formula:

Availability [%] = MinActual / ( MinMeas - MinMain) \* 100

This refers to the measurement period:

MinActual = the number of minutes of actual availability of the software

MinMeas = the number of minutes of the measurement period

MinMain = the number of minutes of shutdown times during the agreed maintenance windows

(5) The customer is obliged to notify the provider immediately and as precisely as possible of any functional failures, disruptions or impairments to the availability of the online services. If the customer fails to do so, § 536c BGB shall apply accordingly.

(6) Under no circumstances shall the Provider be liable for disruptions to availability caused by the Customer, the telecommunications service provider, the Customer's access provider or mobile phone provider or other third parties attributable to the Customer.

1. **Support services**

The Provider shall provide support from Monday to Friday, except public holidays, at the Provider's registered office from 9 a.m. to 4 p.m. on the telephone number +493028044800, which the Customer can use to report faults and for questions regarding the use of the software that cannot be answered based on the documentation. Telephone support may only be used by the Customer's key users who have been notified to the Provider by name.

1. **Further obligations of the provider, warranty**

(1) About the granting of the use of the software and the provision of storage space, the warranty provisions of rental law shall apply.

(2) The customer must notify the provider immediately of any defects.

(3) The warranty for only insignificant reductions in the suitability of the service is excluded. Strict liability for initial defects by § 536a para. 1, Alt. 1 BGB is excluded.

1. **Obligations of the customer**

(1) The customer undertakes to ensure that the software and storage space are used exclusively by the customer or by employees authorized by the customer. The customer further undertakes to inform all employees authorized by him for use of the terms of use and rules of conduct.

(2) The customer is fully responsible for all content stored in the storage space. Before saving content, the customer must ensure that this content does not violate legal regulations, common decency or the rights of third parties (e.g. trademark, name, copyright and data protection law, youth protection regulations). In particular, the customer undertakes to obtain the necessary consent of the parties involved, for example, the photographers or persons depicted or named, before saving texts, images or videos.

(3) The customer undertakes not to store on the provider's servers any material that is harmful or harmful to minors, in particular content that glorifies violence, pornography or other immoral content or content that promotes or glorifies hatred, violence or racial discrimination.

(4) The customer undertakes to refrain from doing anything that could lead to an excessive load on the software or jeopardize the integrity, stability or availability of the provider's IT systems.

(5) The Customer shall indemnify the Provider against all claims asserted by third parties against the Provider due to an infringement of their rights by the Customer or its employees. The customer shall assume all reasonable costs incurred by the provider due to an infringement of third party rights, including the reasonable costs incurred for legal defense. Further rights and any claims for damages of the provider remain unaffected. The above obligations shall not apply if the customer or the respective employee is not responsible for the infringement.

(6) The Customer warrants that it has obtained the consent of the data subject to process personal data insofar as the applicable legal provisions require this. The Customer shall indemnify the Provider by the above provision against claims by third parties (including any fines) resulting from any breaches of this provision.

1. **Liability**

The provider is liable without limitation for damages to the customer caused by the intentional or grossly negligent behaviour of the provider, as well as for damages due to injury to life, body and health and for damages under the Product Liability Act by the statutory provisions. This also applies to damages caused by vicarious agents or legal representatives of the provider. Insofar as the provider is not liable based on an assumed guarantee, liability for claims for damages is otherwise limited as follows: The provider shall only be liable for damages caused by simple negligence insofar as these are based on the breach of material contractual obligations (cardinal obligations). Cardinal obligations are those contractual obligations whose fulfillment is essential for the proper execution of the contract and on whose compliance the customer could rely. The provider's liability for simple negligence by this provision is limited to the typically foreseeable damage. This limitation of liability also applies in favor of the provider's vicarious agents and legal representatives.

1. **Naming as a reference customer**

The customer grants the provider the right to name the customer as a reference customer on the provider's website during the contract term, provided that this does not include personal data. This consent can be revoked at any time with effect in the future.

1. **Other**

(1) Offsetting against the provider is only permitted with undisputed or legally established claims. Counterclaims from the same contractual relationship are excluded from this prohibition.

(2) Amendments and additions to the contract must be made in writing. This also applies to the amendment or revocation of this clause.

(3) The customer's general terms and conditions shall not apply.

(4) This contract shall be governed exclusively by German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 (UN Sales Convention).

(5) The place of performance and exclusive place of jurisdiction is the supplier's registered office, provided that the customer is a merchant or a legal entity under public law.

**Status:** September 2023