octoplant pro hub – SaaS General Terms

These SaaS General Terms apply to orders for the AUVESY-MDT Octoplant pro hub and thus to the General Terms and Conditions (T&Cs) already agreed between us ("AUVESY-MDT") and you ("contracting party") when ordering the standard version of the data management solution. These SaaS General Terms take precedence over the provisions of the T&Cs.

1.   Definitions

1.1   In this Agreement, except to the extent expressly provided otherwise:

"**Additional Services**" means any additional services, facilities, integrations, features and functionalities (either in relation to the Platform, Hosted Services, Support and Maintenance Services or otherwise) provided by AUVESY-MDT that are not set out in this Agreement;

"**Agreement**" means these SaaS General Terms together with the applicable signed Quotation, the T&Cs, and Service Level Agreement (SLA) comprise the "Agreement" between the Customer and AUVESY-MDT with regard to the provision of the Services;

"**AUVESY-MDT Data**" means anonymized metadata, analytics, insights, know-how and any other data and information, including but not limited to patterns, trends and correlations, derived or created from the Customer's use of the Platform and Hosted Services (including its use of the Customer Data and On-Premises Data), whether or not protected by Intellectual Property Rights;

"**BI Users**" shall have the meaning given in the Quotation;

"**Business Contact Information**" shall have the meaning given to it in Clause 13.3;

"**Charges**" means the amounts specified in the Quotation payable by the Customer to AUVESY-MDT for access to the Platform, Hosted Services and Support and Maintenance Services;

"**Confidential Information**" are defined as in the T&C;

"**Customer Data**" means all data, works and materials uploaded to or stored on the Platform by the Customer or generated from the Customer Data as a result of the use of the Platform and Hosted Services by the Customer (but excluding the On-premises Data and AUVESY-MDT Data);

"**Customer System**" means the information and communications technology system to be used by the Customer to receive the Services;

"**Data limit**" means the maximum disk storage space on the Hosted Services for Customer Data which the Customer can proactively upload. It is limited to 50 GBs per Instance ("Customer Data" excludes the On-premises Data and AUVESY-MDT Data automatically uploaded to the Hosted Services);

"**Data Protection Laws**" means all legislation and regulatory requirements in force from time to time relating to the use of Personal Data and the privacy of electronic communications, as may be applicable to the Services;

"**Force Majeure Event**" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, Virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, pandemic or epidemic, embargoes or any government or regulator decisions restricting trade, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"**Hosted Services**" means the hosting of the Platform by AUVESY-MDT, using the cloud hosting provider chosen by AUVESY-MDT from time to time;

"**Hosted Services Defect**" means a defect, error, bug or loss of functionality in the Platform, which can be reproduced, having a material adverse effect on the appearance, operation, functionality or performance of the Hosted Services, but excluding any defect, error or bug caused by or arising as a result of:

(a) any use of the Platform or Hosted Services contrary to the Documentation, whether by the Customer or by any person authorised or permitted by the Customer;

(b) a failure of the Customer to perform or observe any of its obligations in this Agreement; and/or

(c) an incompatibility between the Platform or Hosted Services and any other system, network, application, program, hardware or software not specified in the Documentation as compatible with the Hosted Services;

"**Intellectual Property Rights**" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, unfair competition rights, patents, utility models, semi-conductor topography rights and rights in designs);

"**On-Premises Data**" data imported to the Platform and Hosted Services from the Customer's on-premises data management solution;

"**Personal Data**" has the meaning given to it in the applicable Data Protection Laws, in particular in the EU General Data Protection Regulation (GDPR), whereas the definitions of the GDPR shall also apply to all other data protection terms in the Agreement, unless and to the extent expressly defined otherwise;

"**Platform**" means the platform, known as "octoplant Hub", utilising proprietary applications software developed by AUVESY-MDT (and its licensors) and which will be made available by AUVESY-MDT to the Customer as a service;

"**Price List**" means AUVESY-MDT's price list and rates attached to the Quotation and updated from time to time;

"**Protected Data"** shall have the meaning given to it in Clause 13.4;

"**Quotation**" means the quotation signed by the Customer and AUVESY-MDT setting out the Subscription Term, the Charging and invoicing arrangements in respect of the Services;

"**Services**" means any services that AUVESY-MDT provides to the Customer, or has an obligation to provide to the Customer, under this Agreement (including the Hosted Services and the Support and Maintenance Services), but excluding the Additional Services;

"**SLA**" means the support level agreement provided by AUVESY-MDT to the Customer on or prior to the Effective Date setting out details of the applicable Support and Maintenance Services;

"**Subscription Term**" has the meaning given to it in the Quotation;

"**Support and Maintenance Services**" means either: (i) "Standard"; (ii) "Premium"; or (iii) "Prio"; support as set out in the SLA and confirmed in the Quotation;

"**Support Hours**" means the hours during which AUVESY-MDT will provide the applicable Support and Maintenance Services as set out in the SLA;

"**T&C**" means the General Terms and Conditions of AUVESY-MDT for the subscription of the data management solution and additionally agreed upon assistance and additional support services in this context as published at AUVESY-MDT-mdt.com/de;

"**Update**" means bug fixes and improvements of existing features leading to a new release level within the respective version;

"**Upgrade**" means the introduction of new features in a new version with a higher version number;

"**Virus**" means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices;

"**Vulnerability**" means a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term **Vulnerabilities** shall be construed accordingly;

"**Working Day**" has the meaning set out in the Quotation; and

"**Working Hours**" has the meaning set out in the Quotation.

1.2   Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3   A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).

1.4   A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5   Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.6   Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7   A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.

1.8   A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.

1.9   References to "written" notice or "in writing" shall include email but not fax. This Clause 1.9 shall not apply to the service of notice in respect of any legal or regulatory proceedings.

1.10   References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.

1.11   References to "include", "including", "in particular", "for example" and any other similar expressions shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or terms preceding those terms.

1.12   If there is any conflict or ambiguity between the: (i) Quotation; and (ii) these SaaS General Terms, and (iii) the T&Cs, and (iv) any SLA, a document shall have priority over the other document(s) which are lower on the list.

2.   Term

2.1   This Agreement shall continue in force, subject to termination in accordance with Clause 17.

3.   Configuration

3.1   AUVESY-MDT shall make the Platform available to the Customer. The Customer is responsible for configuring and testing the Platform to ensure it operates with the Customer System.

3.2   AUVESY-MDT shall provide reasonable support and assistance to the Customer in respect of the initial upload of On-Premises Data. Notwithstanding the foregoing AUVESY-MDT shall be entitled to charge for any Additional Services requested by the Customer in relation to the uploading On-Premises Data or configuration of the Platform in accordance with its Price List, or as otherwise agreed by the parties in writing.

4.   BI User Subscriptions

4.1   Subject to the Customer paying the Charges in accordance with the Quotation, AUVESY-MDT hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sub-licences, to permit the BI Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business purposes.

4.2   In relation to BI Users:

(a)   the Customer undertakes that it will ensure that each BI User will keep secure and confidential any password and log-in details relating to their use of the Services and will not allow any other individual use their password and log-in details;

(b)   the Customer acknowledges that AUVESY-MDT or its designated auditor may audit the Platform in order to establish the number of BI Users and the Customer's compliance with the terms of this Agreement

(c)   if any of the audits reveal:

(i)   that any password has been provided to any individual who is not a BI User, then without prejudice to AUVESY-MDT's other rights, AUVESY-MDT shall promptly disable such passwords, and AUVESY-MDT shall not be obliged to issue any new passwords or log-in details to any such individual; or

(ii)   any material non-compliance by a BI User or the Customer (such as substantial payment default or the use of the Octoplant HUB or other AUVESY-MDT Services for purposes that are in breach of the Agreement or otherwise prohibited by law), then without prejudice to AUVESY-MDT's other rights, AUVESY-MDT may suspend access to the Services until such non-compliance is resolved to its satisfaction.

5.   Additional BI Users

5.1   The Customer may, during the Subscription Term, purchase additional BI User subscriptions in excess of the agreed number of BI Users set out in Quotation.

5.2   If the Customer wishes to add additional BI User subscriptions they may do so in the software interface. AUVESY-MDT shall grant access to the Services and the Documentation and activate the additional BI User automatically.

5.3   The Customer shall be invoiced for such additional BI Users in accordance with the Quotation, and such invoice shall be calculated with reference to "Volume Fee BI User" set out in the Price List.

6.   Provision of Services

6.1   AUVESY-MDT shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this Agreement.

6.2   Except to the extent expressly permitted in this Agreement or required by applicable law, the licence granted by AUVESY-MDT to the Customer to use the Platform and Documentation is subject to the following prohibitions. The Customer must not, nor allow or authorise any third party to:

(a)   attempt to copy, modify, enhance, alter, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Platform and/or Documentation (as applicable) in any form or media or by any means; or, except as provided in Section 69d of the German Copyright Act ("UrhG")

(b)   attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Platform, except as provided in Section 69e (1) Nos. 1 to 3 UrhG and within the scope of Section 69e (2) Nos. 1 to 3 UrhG; or

(c)   sub-license its right to access and use the Platform or Hosted Services; or

(d)   access or use the Platform or Hosted Services for any reason other than carrying out the Customer's internal business purposes; or

(e)   permit any unauthorised person to access or use the Platform or Hosted Services; or

(f)   use the Platform or Hosted Services to provide services to third parties; or

(g)   republish or redistribute any content or material from the Platform or Hosted Services; or

(h)   access all or any part of the Platform and Documentation in order to build a product or service which competes with the Platform and/or the Documentation; or

(i)   make any alteration to the Platform or Hosted Services, except as permitted by the Documentation; or

(j)   introduce or permit the introduction of any Virus or Vulnerability into AUVESY-MDT's network and information systems; or

(k)   conduct or request that any other person conduct any load testing or penetration testing on the Platform or Hosted Services without the prior written consent of AUVESY-MDT.

6.3   The Customer shall use all reasonable endeavours, including all reasonable security measures, to ensure that no unauthorised person may gain access to the Platform or Hosted Services and, in the event of any such unauthorised access or use, the Customer shall immediately notify AUVESY-MDT.

6.4   The Customer must not use the Platform in any way that causes, or may cause, damage to the Platform or impairment of the availability or accessibility of the Platform or the Hosted Services.

6.5   The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Platform that:

(a)   contains Personal Data that is not necessary for the typical use of the Octoplant Hub or the AUVESY-MDT Services;

(b)   is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

(c)   facilitates illegal activity;

(d)   depicts sexually explicit images;

(e)   promotes unlawful violence;

(f)   is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

(g)   is otherwise unlawful, illegal, fraudulent or causes damage or injury to any person or property.

6.6   For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Platform, either during or after the Subscription Term.

6.7   AUVESY-MDT reserves the right, without prejudice to its other rights to the Customer, to disable the Customer's access in the event that the Customer severely or repeatedly breaches the provisions of this Clause 6.

7.   Support and Maintenance Services

7.1   AUVESY-MDT shall, as part of the Services and in consideration of the Charges provide the Support and Maintenance Services to the Customer during the Subscription Term.

7.2   AUVESY-MDT shall provide the Support and Maintenance Services with reasonable skill and care in accordance with the applicable support level as set out in the SLA. The provision of the Support and Maintenance Services by AUVESY-MDT is conditional upon the Customer adhering to all reasonable requirements and instructions of AUVESY-MDT and compliance with any other obligations of the Customer pursuant to this Agreement.

7.3   The Support and Maintenance Services do not include the following:

(a)   save as may be specifically agreed in writing by AUVESY-MDT to the contrary, the provision of any Additional Services, including enhancements or modifications to existing Platform beyond Updates or Upgrades provided by AUVESY-MDT to all customers;

(b)   the correction of Hosted Services Defects due to or arising from any modifications made to the Platform by the Customer or any third party, unless AUVESY-MDT has specifically agreed in writing to include such modifications within the scope of the Support and Maintenance Services;

(c)   the correction of Hosted Services Defects due to or arising from accident, misuse, fault or negligence of the Customer, its employees, agents, contractors, third parties, operator error or by causes external to the Platform or Hosted Services, Force Majeure Event, or otherwise beyond AUVESY-MDT's reasonable control;

(d)   the use of the Platform other than as described in this Agreement or Documentation; and

7.4   The time spent by AUVESY-MDT's personnel in investigating defects, errors and loss of functionality, or in delivering the services as set out in the Clause 7.3 shall be charged to Customer on a time and materials basis in accordance with the then current Price List. AUVESY-MDT shall notify the Customer of this in writing prior to undertaking any work which AUVESY-MDT considers to be excluded from the scope of the Support and Maintenance Services (set out in Clause 7.3, above).

7.5   AUVESY-MDT shall use reasonable endeavours to maintain the availability of the Platform and the Hosted Services to the Customer at the gateway between the public internet and AUVESY-MDT's cloud hosting provider for the Hosted Services in accordance with the Platform availability provisions set out in Schedule, but does not guarantee 100% availability.

7.6   Without prejudice to Clause 7.5, AUVESY-MDT shall have no responsibility for downtime caused directly or indirectly by any of the following:

(a)   a Force Majeure Event;

(b)   a fault or failure of the internet or any public telecommunications network;

(c)   a fault or failure of the Customer's Systems or networks;

(d)   misuse by the Customer; or

(e)   scheduled maintenance carried out in accordance with this Agreement.

7.7   AUVESY-MDT may amend the Support and Maintenance Services in its sole and absolute discretion from time to time as long as the services remain at least at the same level. The Customer may purchase enhanced support services at any time in accordance with the then current Price List.

8.   Additional Services

8.1   The parties agree that from time to time AUVESY-MDT may (but is not obliged to) develop and offer to the Customer the Additional Services.

8.2   Any such Additional Services shall not form part of the existing offering and will be subject to separate agreement between the parties.

9.   Data and Storage

9.1   The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

9.2   The Customer warrants to AUVESY-MDT that the Customer Data will not: (a) contain any Personal Data that is not necessary for the typical use of the Octoplant Hub or the AUVESY-MDT Services; (b) infringe the Intellectual Property Rights or other legal rights of any person.

9.3   AUVESY-MDT does not actively monitor the content of the Customer Data, and gives no warranty or representation, and shall have no responsibility to the Customer or any other person as a result of decisions made using the Platform or Hosted Services or any reliance placed on any data accessible via the Platform.

9.4   The Customer hereby grants to AUVESY-MDT a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Data and On-premises Data to:

(a)   the extent reasonably required for the performance of AUVESY-MDT's obligations and the exercise of AUVESY-MDT's rights under this Agreement.

(b)   generate AUVESY-MDT Data and to use the associated know-how for its own commercial purposes, including but not limited to selling market insights, developing and improving of products, services, features and technologies, including the use of machine learning tools and human resources and the creation of trained model(s).

9.5   The Customer must systematically back-up all Customer Data and On-premises Data stored on the Hosted Services as is necessary to ensure the continuation of the Customer's business, and to protect against loss of such data. The Customer shall ensure that it extracts Customer Data and On-premises Data from the Services regularly and prior to the termination or expiry of this Agreement. Save as expressly stated in this Agreement and unless otherwise agreed between the parties, AUVESY-MDT shall not be obliged to provide the Customer with any assistance extracting, transferring or recovering Customer Data and On-premises Data whether during or after the Subscription Term.

9.6   If, at any time whilst using the Services, the Customer exceeds the Data Limit, AUVESY-MDT shall charge the Customer, and the Customer shall pay, the excess data storage fees set out in the Quotation.

10. Charges and Payments

10.1 AUVESY-MDT shall issue invoices for the Charges to the Customer during the Subscription Term in accordance with the Quotation and the Customer shall pay the Charges to AUVESY-MDT in accordance with payment terms stated in the Quotation.

10.2 If the Customer does not pay any amount properly due to AUVESY-MDT under this Agreement, AUVESY-MDT may charge the Customer interest on the overdue amount at the rate set out in the Quotation or the maximum amount permitted by applicable law (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month).

10.3 All Charges, amounts and fees stated or referred to in this Agreement:

(a) shall be payable in the currency set out in the Quotation;

(b) shall be paid without set-off, counterclaim, deduction or withholding of any kind, save as required by law; and

(c) are, unless otherwise expressly stated, non-cancellable and non-refundable.

10.4 If AUVESY-MDT has repeatedly not received due payment of an invoice by the due date, and without prejudice to any other rights and remedies of AUVESY-MDT, it may, disable the Customer's and BI Users' access to all or part of the Services and AUVESY-MDT shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid.

11. Ownership of Intellectual Property Rights

11.1 Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from AUVESY-MDT to the Customer.

11.2 The Customer acknowledges and agrees that AUVESY-MDT and/or its licensors own all Intellectual Property Rights in the Services and the Documentation, and any modifications, enhancements or alterations thereof. Except as expressly stated herein, this Agreement does not grant the Customer any rights to the Intellectual Property Rights in the Services or the Documentation.

11.3 The Customer shall not remove or delete any proprietary notices from the Platform, Hosted Services or any Documentation and shall ensure that the similar proprietary notices are retained at all times.

11.4 If AUVESY-MDT reasonably determines, or any third party alleges, that the use of the Services by the Customer in accordance with this Agreement infringes any person's Intellectual Property Rights, AUVESY-MDT may at its own cost and expense:

(a) replace or modify the Services in such a way that they no longer infringe the relevant Intellectual Property Rights; or

(b) procure for the Customer the right to use the Services in accordance with this Agreement.

If such remedies are not reasonably available, AUVESY-MDT may terminate this Agreement on five (5) Working Days' notice to the Customer subject to repayment of any Charges paid by the Customer to AUVESY-MDT in respect of Services that were to be provided after the termination of this Agreement, but without any additional liability or obligation to pay damages or other additional costs to the Customer.

11.5 In no event shall AUVESY-MDT, its employees, agents and sub-contractors be liable to the Customer to the extent that any alleged Intellectual Property Rights infringement is based on:

(a)   a modification of the Services or Documentation by anyone other than AUVESY-MDT; or

(b)   the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by AUVESY-MDT; or

(c)   the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from AUVESY-MDT or any appropriate authority.

12.   Confidential Information

12.1   Each party must:

(a)   keep Confidential Information strictly confidential;

(b)   not disclose Confidential Information to any person without the disclosing party's prior written consent; and

(c)   not obtain Confidential Information contained in any products or items, in particular in the Services, the Platform, the Hosted Services or any Documentation through observation, study, disassembly or testing (reverse engineering);

(d)   use the same degree of care to protect the confidentiality of the Confidential Information as the receiving party uses to protect its own Confidential Information.

12.2   Notwithstanding Clause 12.1, the receiving party may disclose Confidential Information to its officers, employees, professional advisers, insurers, agents, and subcontractors who have a need to access the Confidential Information for the performance of this Agreement and who are bound by a written agreement or professional obligation to protect the confidentiality of the Confidential Information.

12.3   This Clause 12 imposes no obligations upon the receiving party with respect to Confidential Information that:

(a)   is known to the receiving party before disclosure under this Agreement and is not subject to any other obligation of confidentiality;

(b)   is or becomes publicly known through no act or default of the receiving party; or

(c)   is obtained by the receiving party from a third party in circumstances where the receiving party has no reason to believe that there has been a breach of an obligation of confidentiality.

12.4   The restrictions in this Clause 12 do not apply to the extent that any Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of a party on any recognised stock exchange, provided the receiving party notifies the disclosing party promptly so that the disclosing party may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Agreement.

12.5   The provisions of this Clause 12 shall:

(a)   not prejudice AUVESY-MDT's rights pursuant to Clause 9.4(b); and

(b)   continue in force following the termination of this Agreement.

13.   Data Protection

13.1   The parties acknowledge and agree that AUVESY-MDT will not process Personal Data as part of the Services, and

both parties will use commercially reasonable efforts to monitor and restrict any Personal Data being uploaded or stored on the Platform or Hosted Services.

13.2   The parties acknowledge and agree that AUVESY-MDT shall be a data controller as in Article 4 (7) GDPR in respect of any Business Contact Information and shall use Business Contact Information for the purposes of administering the Services, in accordance with its Privacy Policy.

13.3   If AUVESY-MDT knowingly receives Personal Data (excluding business contact information such as name, telephone, address and email of Customer personnel for the purpose of entering into this Agreement ("**Business Contact Information**") from the Customer, AUVESY-MDT will promptly notify the Customer and return or destroy such Personal Data (as instructed by the Customer), and the Customer shall take steps to promptly rectify the situation to prevent reoccurrence.

13.4   Notwithstanding the foregoing, AUVESY-MDT shall maintain appropriate technical and organisational measures (including appropriate policies, effective security measures and regular management and review processes): (i) to prevent any unauthorised or unlawful access to any data it may handle or process under this Agreement (including business contact information, Customer Data and On-premises Data) ("**Protected Data**"); and (ii) guard against accidental loss or destruction of, or damage to, Protected Data.

14.   Acknowledgements

14.1   This Agreement shall not prevent AUVESY-MDT from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

14.2   All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement.

14.3   The Customer acknowledges that:

(a)   subject to the other provisions of this Agreement AUVESY-MDT gives no warranty or representation that the Platform or Hosted Services will be:

(i)   wholly free from defects, errors and bugs; and

(ii)   be entirely secure and free of Viruses and Vulnerabilities;

(b)   that the Platform and Hosted Services are designed to be compatible only with that software and those systems specified as compatible in the Documentation; and

15.   Warranties and Indemnity

15.1   AUVESY-MDT warrants to the Customer that:

(a)   AUVESY-MDT has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement;

(b)   AUVESY-MDT will comply with all applicable legal and regulatory requirements applying to the exercise of AUVESY-MDT's rights and the fulfilment of AUVESY-MDT's obligations under this Agreement;

(c)   the Platform and Hosted Services will conform in all material respects with the specification set out in the

Documentation;

(d)   it shall use reasonable endeavours to ensure that any Updates and Upgrades to the Platform will not introduce any material defects into the Platform;

(e)   it shall use reasonable endeavours to ensure that the Platform will be free from Viruses and Vulnerabilities; and

(f)   the Platform will incorporate security features reflecting the requirements of good industry practice.

15.2   The Customer shall:

(a)   provide AUVESY-MDT with all necessary:

(i)   co-operation in relation to this Agreement; and

(ii)   access to such information as may be required by AUVESY-MDT;

in order to provide the Services, including but not limited to access to Protected Data;

(b)   comply with all applicable laws and regulations with respect to its activities under this Agreement;

(c)   carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, AUVESY-MDT may adjust any agreed timetable or delivery schedule as reasonably necessary (without liability);

(d)   ensure that the BI Users use the Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any BI User's breach of this Agreement;

(e)   obtain and shall maintain all necessary licences, consents, and permissions necessary for AUVESY-MDT, its contractors and agents to perform their obligations under this Agreement;

(f)   ensure that its network and Customer Systems comply with the relevant specifications provided by AUVESY-MDT from time to time; and

(g)   be, to the extent permitted by applicable law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from the Customer Systems to AUVESY-MDT's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer Systems, network connections or telecommunications links or caused by the internet.

15.3   The Customer shall defend, indemnify and hold harmless AUVESY-MDT against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and all reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:

(a)   the Customer is given prompt notice of any such claim;

(b)   AUVESY-MDT provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and

(c)   the Customer shall not defend or settle the claim without the prior written consent of AUVESY-MDT, such consent not to be unreasonably withheld or delayed.

16. Limitations and Exclusions of Liability

16.1 AUVESY-MDT is liable without limitation for damages based on an intentional or grossly negligent breach of duty by AUVESY-MDT or a legal representative or vicarious agent of AUVESY-MDT for damages resulting from injury to life, body or health, according to the provisions of the Product Liability Act (*"Produkthaftungsgesetz"*) as well as to the extent AUVESY-MDT provided a warranty.

16.2 The total liability of AUVESY-MDT resulting from a slightly negligent breach of duty by AUVESY-MDT or from a slightly negligent breach of duty of a legal representative or vicarious agent of AUVESY-MDT under this Agreement shall not exceed the total Charges paid by the Customer to AUVESY-MDT under this Agreement in the twelve (12) month period preceding the date on which the claim arose.

16.3 Nothing in this Agreement excludes or limits the liability of the Customer for any breach, infringement or misappropriation of AUVESY-MDT's Intellectual Property Rights.

17. Termination

17.1 This Agreement shall continue for the Subscription Term (and any agreed renewal periods set out in the Quotation or otherwise agreed between the parties), unless earlier terminated in accordance with the provisions of this Agreement.

17.2 AUVESY-MDT may terminate this Agreement immediately by giving written notice of termination to the Customer if:

(a) the Customer fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than thirty (30) calendar days after being notified to make such payment; or

(b) the Customer is in breach of Clauses 6.5(a), 13.1, or 13.2; or

(c) AUVESY-MDT receives a substantiated and conclusive complaint or notification from any third party alleging that any documents or materials provided by the Customer or Customer Data uploaded to the Platform breach any third party's Intellectual Property Rights; or

17.3 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:

(a) the other party commits a material breach of any other term of this Agreement and (if such breach is remediable) fails to remedy that breach within thirty (30) calendar days of being notified to do so.

(b) the other party:

(i) is dissolved;

(ii) ceases to conduct all (or substantially all) of its business;

(iii) is or becomes unable to pay its debts as they fall due;

(iv) is or becomes insolvent or is declared insolvent; or

(v) convenes a meeting of, or makes or proposes to make any arrangement or composition with, its creditors;

(c) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;

(d) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement); or

18. Effects of Termination

18.1 Without prejudice to the parties' other legal rights, within thirty (30) days following the termination of this Agreement:

(a) for whatever reason, the Customer must pay to AUVESY-MDT any Charges in respect of Services provided to the Customer up to the date of termination of this Agreement; and

(b) in circumstances where the Agreement is terminated by the Customer pursuant to Clause 17.3(a), AUVESY-MDT shall refund to the Customer any Charges paid by the Customer to AUVESY-MDT in respect of Services that were to be provided to the Customer after the termination of this Agreement,

18.2 On termination of this Agreement for any reason:

(a) all licences granted under this Agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;

(b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;

(c) provided the Customer has paid all Charges outstanding at and resulting from termination (whether or not due at the date of termination), AUVESY-MDT shall for a period of 30 calendar days from the date of termination, allow the Customer to extract Customer Data [and On-premises Data] from the Hosted Services;

(d) regardless of whether the Customer has exercised its rights under Clause 18.2(c), AUVESY-MDT shall destroy or otherwise dispose of any Protected Data in its possession no later than sixty (60) days after the effective date of the termination of this Agreement; and

(e) except to the extent that this Agreement expressly provides otherwise, any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.

19. Force Majeure Event

19.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under this Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.

19.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under this Agreement, must:

(a) promptly notify the other; and

(b)   inform the other of the period for which it is estimated that such failure or delay will continue.

19.3   A party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

19.4   Without prejudice to Clause 17, if the Force Majeure Event endures for a continuous period of 30 (thirty) calendar days or more, AUVESY-MDT shall be entitled (but not obliged) to terminate this Agreement by giving written notice of termination to the Customer.

20.   Notices

20.1   Any notice from one party to the other party under this Agreement must be given by one of the following methods (using the relevant contact details set out in the Quotation):

(a)   delivered personally or sent by courier, in which case the notice shall be deemed to be received upon delivery; or

(b)   sent by recorded signed-for post, in which case the notice shall be deemed to be received two (2) Working Days following posting; or

(c)   sent via email to email address set out in the Quotation (if any).

provided that, if the stated time of deemed receipt is not within Working Hours, then the time of deemed receipt shall be when Working Hours next begin after the stated time.

20.2   The contact details set out in the Quotation may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 20.

21.   General

21.1   **Waiver:** No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

21.2   **Severance:** If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement. If any provision or part-provision of this Agreement is deemed deleted under this clause the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

21.3   **Variation:** AUVESY-MDT may elect to vary the Agreement (including the Charges) by giving the Customer not less than thirty (30) days' written notice. In the event that the Customer deems and variation to this Agreement to have a material adverse effect on the Customer or the Services and in the event of a Charges increase, the Customer may terminate this Agreement on 14 days written notice to AUVESY-MDT. The terms in force prior to the variation shall continue to apply during the 14 day notice period.

21.4   **Assignment and Sub-Contracting:** The Customer shall not, without the prior written consent of AUVESY-MDT, assign, transfer, novate, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement. AUVESY-MDT may at any time assign, transfer, novate, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

21.5   **No transfer, no sublicense, no benefit of third parties: :**

(a)   The rights provided under this Agreement are granted to the Customer only and shall not be considered granted to any subsidiary or holding company of the Customer.

(b)   This Agreement is made for the benefit of the parties and is not intended to benefit any third party or be enforceable by any third party (other than the parties to this agreement and, where applicable, their successors and permitted assigns).

21.6   **Agreement:** This Agreement shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and supersedes and extinguishes all previous agreements, arrangements, promises, assurances, warranties, representations and understandings between the parties, whether written or oral, in respect of that subject matter. Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

21.7   **No Partnership:** Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

21.8   **Counterparts:** This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

21.9   **Governing Law:** German law shall apply exclusively to all contractual and non-contractual claims to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods. The conflict of laws provisions shall not apply.

21.10   **Jurisdiction:** The exclusive place of jurisdiction for all disputes arising from and in connection with the contract is the place of the registered seat of AUVESY-MDT provided that the contracting party is a merchant, a legal entity under public law or a special fund under public law.