

## GENERAL TERMS AND CONDITIONS for osapiens Services

### 1. General

#### 1.1 Applicability

These General Terms and Conditions (hereinafter referred to as "**GTC**") apply to the provision and use of products and services offered by osapiens group companies to their business customers.

#### 1.2 Contracting Parties

The contracting parties are the osapiens group company mentioned in the Order Form (hereinafter referred to as "**osapiens**") and the "**Customer**" named in the Order Form ( osapiens and the Customer are jointly referred to as the "**Parties**").

#### 1.3 Contract Conclusion

The Contract between osapiens and the Customer comes into existence by signing the Order Form by both Parties within the period specified therein.

### 2. Definitions

The capitalised terms used in these GTC shall be understood to have the following meanings:

**"Affiliate"**: Any legal entity that directly or indirectly controls, is controlled by or is under common control by a Party. Control within the meaning of the previous sentence means the ownership of the majority of shares and voting rights. Every legal entity will be considered an Affiliate for as long as this shareholding is maintained.

**"Authorised User"**: Any person whom the Customer grants access to use the Cloud Service in accordance with the provisions of the Contract and who is an employee of the Customer, of an Affiliate of the Customer if and to the extent this Affiliate is explicitly listed in Appendix E of the Order Form or of a contractor of the Customer, which the Customer has commissioned specifically in connection with the use of the Cloud Service.

**"Cloud Service"**: Every subscription-based, hosted, supported and operated software solution that is provided by osapiens to the Customer within the scope of an Order Form as part of the Services.

**"Confidential Information"**:

- a) In connection with the Customer, (i) data about contracting partners (including, but not limited to, suppliers) of the Customer, (ii) personal data of employees, (iii) implementation plans and business requirements of the Customer, (iv) Customer Data, as well as (v) financial information of the Customer, and
- b) In connection with osapiens, (i) the Service including its user interfaces and non-Customer-specific content, the documentation, the Materials and the analyses pursuant to Sec. 11 (Analysis and Improvement of the Services) as well as (ii) personal data of employees of osapiens as well as (iii) information on the research and development conducted by osapiens, product offerings, prices and availability.
- c) Confidential Information of osapiens or of the Customer includes information (i) that the disclosing Party protects from unrestricted disclosure to others, (ii) that is designated as confidential by the disclosing Party or its representatives at the time of disclosure, or (iii) that, in view of the nature of the information and the circumstances of its disclosure, should reasonably be considered confidential. The provisions of the German Act on the Protection of Trade Secrets (GeschGehG) remain unaffected.

**"Contract"**: The Contract consists of the Order Form and the Appendices specified therein under exclusion of the Data Processing Agreement referenced in the Order Form which constitutes a separate contract. These GTC constitute a binding part of the Contract.

**"Customer Data"**: All content, data and information that Authorised Users of the Customer enter in the productive system of the Cloud Service within the scope of the contractual use of the Services as well as Customer-specific contents of reports that the Customer generates via the Cloud Service.

**"Materials"**: All materials, data, documentation and content provided or developed by osapiens (independently or with the contribution of the Customer) within the scope of the performance of the Contract and within the scope of the provision of support or Professional Services for the Customer. Customer Data and Confidential Information of the Customer are not part of the Materials.

**"Order Form"**: The order document for a Service that makes reference to these GTC.

**"Professional Services"**: Services performed by osapiens or by commissioned subcontractors for the Customer according to the Contract.

**"Services"**: Services means the products and services offered by osapiens to the Customer as specified in the Order Form and its Appendices including any Updates and Modifications as defined in Sec. 6.2 (Modifications and Updates).

**"Service Description"**: The description of the scope of services and functions of the respective Service, which is included as an Appendix to the Order Form.

**"Subscription Term"**: The term of a subscription for the use of the Cloud Service as specified in the respective Order Form, including all renewal terms.

**"Usage Metric"**: The measurement standards used to determine the allowed scope of use and to calculate the fees due for the Service as stated in the Order Form.

**"Notice Period"**: A lead time of two (2) consecutive calendar months between the Customer's submission of a Switching Request and the commencement of the Initial Transition Period as set out in Sec. 8.5.

**"Retrieval Period"**: The thirty (30) calendar day period following the end of the applicable Transition Period during which the Customer may retrieve Exportable Data as set out in Sec. 8.5.

**"Switching"**: The process by which the Customer changes from using one data processing service to another service of the same service type, or to on-premises ICT infrastructure, including through extracting, transforming and uploading data, as further set out in Sec. 8.5.

**"Switching Request"**: The Customer's written or text-form notice to osapiens exercising one of the switching options set out in Sec. 8.5.

**"Transition Period"**: The period during which osapiens completes a Switching following expiry of the Notice Period, as further described in Sec. 8.5.

### 3. Subject Matter

The subject matter of the Contract is the provision of the Services ordered by the Customer and agreed in the Order Form. The performance of tax and/or legal advisory services is in no case part of the Contract.

### 4. Scope of Services and Warranty

#### 4.1 Scope of Services

The specific scope of performance and functions of the Services are as stated in the Order Form including its Appendices. Any statements and explanations about the Services in advertising materials, company websites or other platforms or communication channels outside the aforementioned contractual documents are expressly not part of the Contract and do not constitute a description of Services, a guarantee or an assurance of a specific feature.

With regard to Services provided free of charge, osapiens expressly does not guarantee or warrant any specific functions or features. Such Services are expressly meant for evaluation purposes only, not for use in a productive system.

#### 4.2 Warranty

osapiens warrants that it will provide the Services in accordance with the contractual provisions, taking into account the provisions of these GTC concerning amendments and updates and with the degree of expertise and care that can reasonably be expected from a qualified and experienced service provider and that correspond to the nature and complexity of the Services.

Neither osapiens nor its subcontractors make any express or implied warranties or guarantees with respect to any features, including marketability, originality or suitability for a particular use or purpose, or results to be derived from the use or integration of any Services except for those expressly identified in the Contract including any Service Description referenced in the Order Form. The Customer agrees that when obtaining Services, he will not rely on the delivery of future functions, product roadmaps, public comments or advertising statements that are not expressly promised in the Contract.

The contractual scope of performance pursuant to Sec. 4.1 (Scope of Services) of these GTC shall not apply (i) if the Services are not used by the Customer in accordance with the provisions of the Contract, unless the Customer proves that the deviation would have occurred even if the Services had been used in accordance with the Contract, and (ii) if the deviation was caused by the Customer or a product/service not provided by osapiens.

The assertion of any statutory warranty claims is excluded after the expiry of one year from the start of the statutory limitation period. For the sake of clarity: This does not limit osapiens' warranty for the defect-free operation of the Cloud Service for the duration of the Subscription Term.

#### **4.3 Priority of supplementary Performance**

If, in the event of a defect of the provided Cloud Service, the Customer may demand supplementary performance under the Contract, the following shall apply: The Customer shall determine a reasonable deadline for the supplementary performance. Before the Customer can assert other rights under the Contract, including, but not limited to, the right to reduction or damages, osapiens shall be entitled to remedy the defect at its discretion and to a reasonable extent. osapiens will determine the type of supplementary performance at its own discretion. When determining the type and scope of the supplementary performance, osapiens will take the interests of the Customer into reasonable consideration.

#### **4.4 Service Levels**

osapiens warrants that it will uphold average availability of the respective Cloud Service subscribed to in accordance with the provisions of the respective Service Level Agreement ("SLA"), provided that such is included in the Order Form as an Appendix. In the event of breaches of the agreed SLA, the Customer shall only have claims in accordance with the provisions of the applicable SLA and these GTC.

### **5. Obligations of the Customer**

#### **5.1 Use for the Purpose of the Contract only**

The Customer shall use the Services provided by osapiens only to the contractually agreed extent, in accordance with the contractual provisions, for the contractually intended purpose and within the scope of the applicable legal provisions and refrain from all measures that could jeopardise or impair the functionality or security of the Cloud Service.

#### **5.2 Customer Data**

The Customer alone shall be responsible for the lawfulness Customer Data and for entering them in the Cloud Service. osapiens will only enter Customer Data in the Cloud Service on behalf of the Customer if this is expressly and separately stipulated in the Order Form. The Customer grants osapiens and its Affiliates and subcontractors a non-exclusive right to use and process Customer Data limited to the extent necessary for the provision of the Services and other purposes mentioned in these GTC. Further rights of use will be granted only if contractually expressly agreed. The Customer remains the responsible owner of the Customer Data.

#### **5.3 Access to Customer Data**

During the term of the Contract, the Customer may constantly access the Customer Data. If the Contract is terminated as of the end of the respective Subscription Term, the Customer will be given the opportunity to export the Customer Data in a common format.

#### **5.4 Security**

The Customer shall take technical and organisational measures and uphold these for the duration of the Contract in order to prevent unauthorised access to the provided Services. To this end, the Customer shall in particular comply with appropriate security standards for the use of the Service by its Authorised Users in accordance with the state of the art and keep any login data strictly confidential.

#### **5.5 Monitoring of Usage Metrics**

osapiens may monitor the Usage Metrics of the provided Services to the extent necessary to ensure compliance with the extent of use agreed in the Order Form.

The Customer undertakes to refrain from measures that could obstruct or prevent the monitoring of the Usage Metrics. This includes, but is not limited to, the circumvention of security mechanisms or the manipulation of data that are relevant for recording Usage Metrics. In the event of breaches of this obligation, osapiens shall have the right to termination for cause.

## 6. Rights and Obligations of osapiens

### 6.1 Provision and Support

osapiens will grant Authorised Users of the Customer access to the provided Cloud Service within the contractual scope and provide support to the extent agreed in the Order Form and its Appendices. osapiens will take appropriate technical and organisational measures and uphold these for the duration of the Contract in order to ensure the integrity, confidentiality and availability of the Customer Data.

### 6.2 Modifications and Updates

Being the provider of a multi-tenant software platform, osapiens may at its own discretion implement changes in order to adapt the Cloud Service to the state of the art or optimise them technically, especially to improve the user-friendliness (hereinafter collectively referred to as "**Update**") as well as changes to contents, provided that these are necessary to correct errors, to update or supplement information or for licensing reasons ("**Modifications**"). osapiens will inform the Customer of such Updates and Modifications via the release notes in the documentation of the Service.

Should the Customer find that an Update or Modification is not merely an improvement and leads to an impairment of the contractually agreed service that is not merely insignificant, the Customer shall inform osapiens of this. If the Service is materially limited due to an Update or a Modification, which osapiens is unable to resolve within a reasonable period, the Customer may, within 30 days of the expiry of this period, terminate the affected Cloud Service with immediate effect.

## 7. Right of Use and Restrictions

### 7.1 Right of Use

In accordance with the Order Form and the other contractual provisions, the Customer is granted a non-exclusive, non-transferable right, limited to the duration of the Subscription Term, to access the Cloud Service by means of a browser and an internet connection and to use them for its business purposes or the business purposes of its Affiliates. Any use for business purposes of third parties is permitted only if and to the extent that this is expressly provided for in the Order Form. In any case, the right of use will be granted only within the scope specified in the Order Form.

### 7.2 Authorised Users

The Customer shall designate Authorised Users and permit them to use the Cloud Service. The use is limited to the Usage Metrics stated in the Order Form. The login details for the Service refer to one Authorised User and shall not be used by more than one person. The Customer may change the designation of the Authorised User by transferring the login data to another person and ensuring that the former Authorised User no longer has access to the Cloud Service. The Customer shall be responsible for any breaches of the Contract that are caused by Authorised Users.

### 7.3 Interruption of the Service

osapiens may suspend or restrict the use of the Service if continued use could cause significant damage to the Service, its users or osapiens, its Affiliates or subcontractors. osapiens shall without delay inform the Customer of the suspension or restriction and limit it in terms of time and scope to the extent necessary in order to prevent and contain damage. With regard to the downtimes, the provisions in the SLA concerning availability apply.

### 7.4 Third-Party Web Services

The Service may contain integrations with web services or services provided by third parties or third-party web services or services may be used for the mobile access to the Service of osapiens. Access to web services and services recognizable to the Customer (e.g. Android Play Store or Apple App Store) as well as their availability and use are subject to the terms and conditions of the third parties providing them. Third-party web services and services are not part of the contractual relationship between osapiens and the Customer. Therefore, these GTC do not apply to them.

## 8. Term and Termination

### 8.1 Term

The term of the Contract between osapiens and the Customer shall be governed by the provisions in the Order Form.

### 8.2 Termination

A right to termination for convenience shall exist only insofar as this is expressly agreed in the Order Form. If one of the following conditions is met, each Party may terminate the Contract for cause:

- a) A material breach of the Contract by the other Party is given and cannot be remedied or has not been remedied within a reasonable period granted;
- b) The other Party is guilty of a material breach of the Contract, and for this reason the continuation of the contractual relationship is no longer reasonable. This is the case especially in the event of a material breach of Sec. 12 (Confidentiality);
- c) The other Party breaches an obligation incumbent upon it under Sec. 18 (Embargo, Export Restrictions);
- d) The other Party files for insolvency – this shall also apply if the opening of insolvency proceedings is rejected due to insufficient assets –, becomes insolvent or makes an assignment in favour of the creditors; or
- e) The right to termination for cause arises from a clause of the Contract and the conditions specified therein are met.

### 8.3 Refund of Payments

If the Contract is terminated prematurely, the following shall apply with regard to any payments already made by the Customer:

- a) If the Customer terminates the Contract for cause or with immediate effect due to Sec. 6.2 (Modifications and Updates), any fees paid in advance for the performance period after the end date of the Contract will be refunded. The obligation to pay further fees for a period after the end of the Contract does not apply.
- b) In the event of termination by osapiens for cause due to material violation of the Contract on the part of the Customer, any payments made in advance will not be refunded.

### 8.4 Effects of Termination

The Customer's right to use the provided Services and other Materials of osapiens shall end as of the end of the Contract, no matter what the reason for termination may be. Either Party shall without delay return any Confidential Information disclosed in the course of the cooperation to the respective disclosing Party or destroy such. Upon request, proof of the destruction shall be furnished. This does not apply to backup copies that are created by the system at regular intervals. A right of retention with regard to Confidential Information is excluded for both Parties.

### 8.5 Exit Management

Upon the Customer's request, submitted no later than on the effective date of termination, osapiens will assist the Customer in exporting the Customer Data and shall make such data available to the Customer in an appropriate format within 30 days of such request. Any support for the export provided after the end of the Contract will be subject to these GTC, which shall apply mutatis mutandis. Beyond the foregoing, osapiens will not be obligated to provide any further support after the end of the Contract unless expressly agreed otherwise between the Parties.

In addition to the foregoing, where the Customer exercises his right to switch to another data processing service provider pursuant to Regulation (EU) 2023/2854 (Data Act) the following provisions shall apply:

#### a) Switching Right

The Customer may, at any time during the Subscription Term, submit a Switching Request to osapiens based on one of the following grounds:

- i. switch to another data processing service of the same type of service;
- ii. switch to on-premises ICT infrastructure; or
- iii. request erasure of all exportable Customer Data.

If the Customer elects option (i) or (ii) above, the Contract terminates automatically upon completion of the Switching. If the Customer elects option (iii) above, the Contract terminates automatically upon expiry of the Notice Period. osapiens shall confirm such termination in text form.

#### b) Early Dissolvement Payment

Upon such termination, the Customer shall be obliged to make an "Early Dissolvement Payment" equal to the fees that would have been payable from the termination date until the end of the originally agreed Subscription Term, as set forth in the Order Form. This includes all minimum-commitment fees, as well as all upgrades purchased until the effective date of such termination that would have been due during this period. The Early Dissolvement Payment shall be payable and due in instalments in accordance with the payment schedule agreed upon by the Parties in the Order Form for the respective fees. Section 9.5 of the osapiens GTC shall remain applicable. The Customer acknowledges that in return for

the agreement of a minimum Subscription Term as set forth in the Order Form, osapiens has granted specific commercial conditions for the access to and use of the Cloud Service, which would not have been granted without such commitment to a minimum Subscription Term. For the avoidance of doubt, the Customer acknowledges and agrees that the Early Dissolvement Payment is a standard service termination fee and not related to any switching charges.

#### **c) Transition Period**

The Transition Period commences upon expiry of the Notice Period and shall not exceed thirty (30) calendar days, unless osapiens proposes and the Customer accepts a longer period not exceeding seven (7) calendar months where completion within thirty (30) days is technically infeasible, or the Customer elects to extend the then-current period once by written notice (all the "Transition Period").

During any Transition Period and in relation to the Switching, osapiens shall: (i) provide reasonable assistance to the Customer; (ii) maintain business continuity and continue delivering the contracted service functions; (iii) maintain the service availability and security agreed in the SLA and the Contract at the fees originally agreed; (iv) make available all exportable Customer Data upon request in a structured, commonly used, machine-readable format; and (v) keep the Contract fully in force throughout the Transition Period.

The Customer may retrieve exportable Customer Data until at the latest within 30 calendar days of the end of the applicable Transition Period. After such period lapses, osapiens may irreversibly erase all exportable Customer Data without further instruction of the Customer and will confirm such erasure upon request.

#### **d) Switching Right Limitations**

The foregoing Switching rights and obligations do not apply to any Cloud Service custom-built to accommodate the Customer's specific needs where the majority of its main features has been developed exclusively for the Customer and the service is not offered at broad commercial scale by osapiens, in accordance with Art. 31(1) of the Data Act.

They likewise do not apply to any part of the Cloud Service provided as a non-production environment for testing or evaluation purposes.

### **8.6 Continued Applicability**

The provisions of the following sections shall continue to apply even after the end of the Contract: Sec. 2 (Definitions), Sec. 8.3 a) (Refund of Payments), Sec. 8.5 (Exit Management), Sec. 8.6 (Continued Applicability), Sec. 10 (Rights to intellectual Property), Sec. 12 (Confidentiality), Sec. 13 (Third-Party Claims), Sec. 14 (Liability), Sec. 19 (Miscellaneous).

## **9. Fees and Mode of Payment**

### **9.1 Fees**

The amount of payable fees is stated in the Order Form. Unless expressly stated otherwise, all prices listed in the Order Form or in other contractual documents are net prices subject to the applicable VAT.

Unless the Parties have otherwise agreed in the Order Form, any payment of fees shall be governed by the following provisions of this Sec. 9.

### **9.2 Ongoing Fees**

The ongoing fees listed in the Order Form will be due and billed annually in advance from the start of the Subscription Term.

### **9.3 One-Time Fees and T&M-based Remuneration**

If one-time fees are incurred for services agreed in the Order Form (e.g. onboarding), these will be billed on a one-off basis at the start of the Subscription Term.

If the Parties agree on additional one-time services at a flat rate during the Subscription Term, the fees incurred for these shall be paid by the Customer in advance. osapiens will bill these to the Customer accordingly at the beginning of the performance of the services.

If the Parties expressly agree on remuneration for osapiens' services on a time and material (T&M) basis, osapiens will bill the services on a monthly basis after the services have been performed.

### **9.4 Billing and Mode of Payment**

The billing will take place electronically to the e-mail address specified by the Customer. Billed fees are due within 30 days of the date of the invoice. In the event of late payment, default interest of nine percentage points above the base rate of

the European Central Bank shall be due without prior reminder. The first payment for the services listed in the Order Form shall be due as of the start of the Initial Subscription Term after the invoice is issued and is independent of the conclusion of any onboarding services or other agreed services.

#### **9.5 Suspension of the Services in the Event of Non-Payment**

If the Customer has not paid fees due amounting to at least the lower of € 5,000 (net) or 10 percent of the annual subscription fees within the payment period even though the invoice has been issued and if payment is not made even after osapiens has sent a reminder granting a reasonable remedy period and expressly announcing a possible suspension of the Services, osapiens may restrict or suspend the Customer's access to the Services until full payment of the fees due and the default interest incurred. The access will be restored immediately upon receipt of the full payment.

#### **9.6 Amendment by the Customer**

Unless a material breach of obligations on the part of osapiens is on hand, the Customer may not withhold, reduce or offset owed fees during the Subscription Term. A reduction of the agreed Usage Metrics is only possible if osapiens expressly agrees to this and a new agreement is concluded.

### **10. Rights to intellectual Property**

#### **10.1 Property of osapiens**

osapiens and its Affiliates or licensors own all intellectual property rights to and in connection with the Service, including but not limited to the Cloud Service, Updates and Modifications, the Materials, the Professional Services, the design contributions, the related knowledge or processes as well as any works derived therefrom, including any customisations and changes made on the basis of information or other input received from the Customer. All rights not expressly granted to the Customer shall remain with osapiens and its licensors. Customer Data are excluded.

#### **10.2 Property of the Customer**

The Customer retains all rights to and with respect to the Customer Data. osapiens may use the data and materials provided by the Customer solely for the purpose of providing and supporting the Service and for other contractually agreed purposes.

#### **10.3 Non-Assertion of Rights**

On his own behalf and on behalf of his successors and assignees, the Customer undertakes not to assert any rights or claims to intellectual property rights in Services, Materials, or Professional Services against osapiens or its Affiliates or licensors or otherwise challenge their rights for the duration of the Contract and for one year after the end of the Contract. Moreover, the Customer expressly undertakes not to register any intellectual property rights, including, but not limited to, trademarks, copyrights, patents or other intellectual property rights relating to the products or Services of osapiens, either nationally or internationally, during the above-mentioned period.

### **11. Analysis and Improvement of the Services**

osapiens and the Affiliates of osapiens may use the Customer Data and information derived from the use of the Services and Professional Services by the Customer to create analyses as set forth below ("**Analyses**") and, based on the Analyses, further improve the Services, derive correlations from the data of the Customer and use the subsequently improved Service at their own discretion. Within the scope of the Analyses, information is used exclusively in anonymised form, i.e. it contains neither Customer Data nor personal data and is treated as Materials. The Customer Data will not be passed on to third parties, and the customer remains the owner of the Customer Data.

The Analyses may be used for the following purposes:

- a) Product improvement (including, but not limited to, product features and functionality, performance, workflows and user interfaces) and development of new osapiens products and services;
- b) improvement of the allocation of resources and support;
- c) internal demand planning;
- d) training and development of algorithms for machine learning and finding patterns and correlations for artificial intelligence purposes;
- e) verification of security and data integrity;
- f) identification of industry trends and developments, creation of indices and anonymous benchmarking.

## 12. Confidentiality

### 12.1 Use of Confidential Information

Each of the Parties shall treat Confidential Information of the other Party as strictly confidential. For this purpose, each of the Parties shall

- a) keep the Confidential Information of the other Party strictly secret and not disclose such to or share such with unauthorised third parties. The Customer shall not pass on or otherwise disclose the pricing of this Contract to third parties;
- b) only pass on the Confidential Information of the other Party to its own employees, Affiliates, Authorised Users or commissioned service providers if they need to know this information in order to achieve the purpose of the Contract and if the obligation to maintain confidentiality has been duly imposed on them;
- c) pass on the Confidential Information of the other Party to other third parties only if they are consultants who are already bound to secrecy by virtue of their profession or are subject to a confidentiality obligation that does not fall short of the protection afforded by this Contract;
- d) take appropriate measures that are at least equivalent to the standard that the receiving Party applies in its own matters, but at least with an appropriate standard of care, to protect the Confidential Information of the other Party against theft and unauthorised access;
- e) copy the Confidential Information of the other Party only to the extent necessary for the exercise of the rights and fulfilment of the obligations under the Contract.

Upon becoming aware of any actual or impending unauthorised use or unintended or unauthorised disclosure of or access to Confidential Information, the Parties shall without delay notify each other and take all reasonable measures to prevent or discontinue such unauthorised use, disclosure or access.

The confidentiality obligations pursuant to this section shall remain in force for a period of five years after the termination of the Contract.

### 12.2 Exceptions and Disclosure Obligations

The obligations from Sec. 12.1 (Use of Confidential Information) shall not apply to Confidential Information that demonstrably

- a) was generally accessible or known to the public prior to the disclosure to the receiving Party or becomes so later on without any breach of confidentiality obligations;
- b) was already in the possession of the receiving Party in a lawful manner and without any confidentiality obligation or breach of such an obligation prior to the disclosure;
- c) was developed independently by the receiving Party without using or referring to Confidential Information;
- d) was provided to or made accessible for the receiving Party by an authorised third party that, for its part, is demonstrably not subject to any confidentiality obligation with regard to this information;
- e) must be disclosed due to mandatory legal provisions or a decision of a competent court and/or authority.

In the case of Sec. 12.2 (e) (Exceptions and Disclosure Obligations), the Party addressed by the decision shall without delay inform the other Party of the decision, unless this is prohibited by law.

## 13. Third-Party Claims

### 13.1 Claims asserted against the Customer

The Customer shall without delay inform osapiens in case third parties assert claims against him due to the contractual use of the Services. At the request and expense of osapiens, the Customer shall also leave the legal defence against such claims to osapiens. The Customer shall assist osapiens to a reasonable extent in its legal defence.

If third-party property rights are infringed by the Service and its contractual use by the Customer, osapiens may, at its own discretion,

- a) obtain from the person authorised to dispose of the infringed property right a right of use in favour of the Customer, which is sufficient for the purposes of the contractual relationship, or
- b) customise or replace the Service in such a way that no third-party property rights are infringed, if and insofar as this does not significantly impair the contractually agreed functionality of the Service, or
- c) terminate the contractual relationship with the Customer with immediate effect if it is not reasonably possible to continue providing the Services without infringing third-party property rights.

Provided that the Customer complies with its obligations pursuant to sentences 1 to 3 of this Sec. 13.1 (Claims asserted against the Customer), osapiens shall indemnify the Customer against claims by third parties that are based on breaches of duty by osapiens and are asserted against the Customer due to its contractual use of the Cloud Service. In this context, osapiens shall only indemnify the Customer from obligations arising from agreements between Customer and a third party if osapiens has approved such agreement in advance.

### **13.2 Claims asserted against osapiens**

Should third parties assert claims against osapiens, its Affiliates or its subcontractors due to infringements caused by Customer or Customer Data, the Customer shall indemnify osapiens against such claims and, upon request, defend osapiens.

## **14. Liability**

### **14.1 Unlimited Liability**

Neither Party limits its liability for damage resulting from the following scenarios:

- a) Obligations of the Parties pursuant to Sec. 13 (Third-Party Claims);
- b) unauthorised use or disclosure of Confidential Information;
- c) breach of data protection and security obligations by one of the Parties, resulting in the unauthorised use or disclosure of personal data;
- d) gross negligence or wilful misconduct;
- e) any failure to pay agreed fees due under the Contract;
- f) injury to life, body, and health; or
- g) breach of applicable mandatory product liability legislation.

### **14.2 Liability Cap**

The maximum aggregate liability of either Party towards the other Party for all incidents (or a series of related incidents) occurring in any twelve-month period shall not exceed the annual fees paid for the relevant Service that directly caused or relates to the damage in the current Contract year. Each Contract year begins on the start date of the Subscription Term or one of its anniversaries. The limitation of liability in accordance with this Sec. 14.2 (Liability Cap) does not apply to the scenarios specified in Sec. 14.1 (Unlimited Liability).

### **14.3 Scope of Claims for Damages**

The liability of the Parties in any case exclusively covers reasonably foreseeable damage resulting directly from delay, non-performance, defects, unauthorised actions or other legal grounds and expressly excludes the liability for consequential and indirect damage, including, but not limited to, lost profit, business interruption, and impairment of goodwill. The liability for damage due to services provided free of charge is excluded in the case of slight negligence and restricted to intent and gross negligence.

### **14.4 Damage due to Breaches of the SLA**

Claims for damages due to a breach of the availability provisions in the SLA apply to the extent provisioned in the SLA. Any further claims for damages are expressly excluded, unless the breach of the SLA has taken place as a result of wilful or grossly negligent conduct. In this case, the provisions of Sec. 14.2 (Liability Cap) and 14.3 (Scope of Claims for Damages) shall apply.

## **15. Force Majeure**

Neither Party shall be liable for any delay or failure to perform (other than payment of amounts due) caused by events or circumstances beyond its reasonable control and that could not have been foreseen (*force majeure*). Such events may include natural disasters, wars, strikes, government measures or other unforeseeable events. The performance period shall be extended by the period corresponding to the duration of the hindrance to the performance.

Both Parties shall have the right to termination for cause if, due to *force majeure*, the other Party is unable to render its contractually owed performance for a period of two consecutive months.

## **16. Data Protection**

### **16.1 Roles**

The Customer Data processed in the context of the contractual Services may contain personal data. Unless expressly stated otherwise, osapiens processes this personal data on behalf of and in accordance with the instructions of the Customer. In these cases, osapiens is a processor within the meaning of Art. 28 GDPR, while the Customer remains the controller within the meaning of Art. 24 GDPR.

## 16.2 Personal Data

When processing personal data within the scope of their cooperation, both Parties undertake to comply with the applicable data protection laws, including, but not limited to, the European General Data Protection Regulation (GDPR).

The Customer shall ensure that all personal data included in the Customer Data are entered and maintained according to these data protection laws.

## 16.3 Reference to DPA

If osapiens processes personal data on behalf of the Customer, the Parties shall conclude a data processing agreement in accordance with Art. 28 para. 3 GDPR ("**DPA**"). The DPA is an Appendix to the Order Form and conclusively regulates the data processing relationship between the Parties.

## 17. Professional Services

osapiens will perform Professional Services only if this has been expressly agreed between the Parties. Unless otherwise agreed, the following shall apply:

- a) osapiens shall bill the actual expenses incurred for the Professional Services to the Customer on a monthly basis. These expenses include labour time, materials, travel costs and expenses as well as other costs required for the performance of the agreed services.
- b) osapiens reserves the right to determine its own hourly rates in accordance with industry practice and to bill its expenses on this basis. The determined hourly rates will be communicated to the Customer prior to the start of the respective billable services.

## 18. Embargo, Export Restrictions

**18.1** The Parties are mutually obliged to comply with all export control, embargo and sanctions laws and regulations that are applicable under German and/or European Union (EU) law and restrict, prohibit or prescribe a licensing requirement for the import, export, re-export or transfer of goods, software, technology or data and the provision of services, directly or indirectly, to certain countries, for certain end-uses or to certain end-users; this shall also apply with respect to applicable United States (US) and other national law to the extent that German or European legal provisions do not conflict therewith ("**Applicable Foreign Trade Law**").

**18.2** In the event that restrictions apply to the sale, supply, transfer, making available and/or export of the Cloud Service or Hosted Services or related services due to an embargo imposed by the EU, Germany, or the US, the legally binding conclusion of this contract is subject to the condition precedent that a prior authorization is granted by the competent authority or the competent authorities.

**18.3** Customer confirms, represents, and warrants that Customer is not subject to any sanctions, in particular, that Customer is not included in any list of persons, entities or bodies ("**PEB**") with which business is restricted or prohibited. Customer also confirms, represents, and warrants that Customer is neither directly nor indirectly majority-owned, held or controlled by any such PEB. Such lists of PEB include, but are not limited to, those issued by the EU or any of its Member States, the United Nations (UN) Security Council, and/or the US Government, whereas these confirmations shall extend to sanctions lists relating to economic sanctions measures taken by one or more states against another state and issued by any body other than the UN, the EU or the Federal Republic of Germany only if the UN, the EU or the Federal Republic of Germany have also adopted – albeit not identical – economic sanctions measures against that state ("**Applicable Sanctions List**"). Customer will inform osapiens immediately if Customer itself or one of the PEB holding or controlling the Customer is included in an Applicable Sanctions List. Notwithstanding the foregoing confirmations, representations and warranties, Customer agrees to promptly provide, upon request, all information and documentation that will enable osapiens to conduct a comprehensive sanctions list screening of Customer, including information on Customer's shareholders, beneficial owners and board of directors.

**18.4** Customer must not resale, supply, transfer or otherwise make available directly or indirectly any Cloud Service, Hosted Services or services obtained from osapiens to or for the benefit of any PEB that is subject to sanctions under

Applicable Foreign Trade Law or directly or indirectly majority-owned, held or controlled by a PEB that is subject to sanctions under Applicable Foreign Trade Law.

**18.5** If the Cloud Service obtained from osapiens are listed in lists of goods and technology, whose sale, supply, transfer, making available or export to a certain country or region is prohibited or subject to an authorization requirement under Applicable Foreign Trade Law ("**Embargoed Country or Region**"), Customer must not directly or indirectly (re-)sell, (re-)export or otherwise supply or transfer the goods obtained from osapiens to a PEB in the Embargoed Country or Region or for use in the Embargoed Country or Region, unless a (General) License has been granted by the competent authority. This applies in particular, but not exclusively, to the provision of the software to PEBs based in Russia, including subsidiaries or other group companies based in Russia, that are owned by, or solely or jointly controlled by, a PEB which is incorporated or constituted under the law of an EU Member State, a country member of the European Economic Area (EEA), Switzerland or a partner country as listed in Annex VIII of Regulation (EU) 833/2014, and the use of General License No. 42 of the Federal Office for Economics and Export Control (BAFA). The Customer must prove to osapiens the effective use of General License No. 42 before providing the software to PEB in Russia, without this requiring an inquiry or request by osapiens

## **19. Miscellaneous**

### **19.1 Entire Agreement**

The Order Form and the Appendices listed therein as an integral part of the Contract – including these GTC – constitute the complete and exclusive agreement between osapiens and the Customer in connection with the business relationship between the Parties with regard to the subject matter of the Contract. All previous assurances, discussions and documents have been incorporated in the Contract and are replaced by it. However, any confidentiality agreements that have been concluded shall continue to apply. Unless expressly agreed otherwise, the Contract can only be amended by mutual agreement and in writing. General terms and conditions of the Customer shall not apply. This shall apply even if the Customer refers to his own terms and conditions, e.g. in the context of orders or purchase orders, and osapiens does not expressly object to these or otherwise accepts the order.

### **19.2 Severability**

Should any provision of the Contract turn out to be invalid, ineffective or unenforceable, this shall not affect the validity, effectiveness and enforceability of the other provisions of the Contract. The Parties undertake to replace the invalid, ineffective or unenforceable provision with a legally permissible one that comes as close as possible to the purpose of the original provision.

### **19.3 Formal Requirements**

Signatures in any commonly accepted electronic form (including e-mail or dedicated signature solutions) will be considered original signatures.

Unless expressly agreed otherwise, all notifications must be made electronically and be sent to the address specified in the Order Form. Notifications from osapiens with respect to the operation, modification, update or support of the Service may be made in the form of an electronic notification to the authorised representative or administrator of the Customer as specified in the Order Form.

### **19.4 Amendments to the GTC**

osapiens reserves the right to amend or update these GTC at any time if this is necessary for legal, technical or operational reasons. Amendments to these GTC will be communicated to the Customer at least 60 days before they enter into force. The amended GTC shall become part of the Contract, provided that the Customer agrees to the amendments. If the Customer does not agree to the amendments within a period specified by osapiens, which shall be at least 30 days, the Contract will remain unchanged. In this case, osapiens shall be entitled to termination for cause of the Contract with 60 days' notice if, for technical or legal reasons, the continued contractual performance is impossible or cannot reasonably be expected without the amendments to the GTC.

In the notification concerning the GTC amendments, osapiens shall inform the Customer of the possibility of termination for cause.

### **19.5 Assignment**

Neither Party may assign or transfer the Contract (or his rights and obligations under the Contract) to any third party without the prior written consent of the other Party, with the exception that osapiens may assign the Contract to one of its Affiliates.

#### **19.6 Subcontracting**

osapiens may subcontract the contractually agreed services or parts thereof to third parties, provided that this does not impair the quality of the performance. osapiens shall remain liable to the Customer for breaches of the Contract caused by its subcontractors.

#### **19.7 Authorization, Legislative Framework**

Each Party hereby confirms that they are authorized to enter into this Contract. Moreover, each Party warrants the current and ongoing compliance with all laws and regulations applicable to them in connection with

- a) the operation of the business of osapiens, insofar as the Service is concerned, in the case of osapiens, and
- b) the Customer Data and the use of the Services by the Customer, in the case of the Customer.

The Contract is in force irrespective of any legal provisions applicable to the Customer or osapiens.

#### **19.8 Relationship of the Parties**

The Parties operate as contracting partners that are independent from each other. This Contract does not establish any partnership, franchise, joint venture, agency, trust or employment relationship between the Parties.

#### **19.9 Applicable Law and Place of Jurisdiction**

The Contract concluded between osapiens and the Customer and all claims related to its subject matter shall be governed exclusively by the laws of the Federal Republic of Germany, under exclusion of the provision of the UN Convention on Contracts for the International Sale of Goods (CISG) and under exclusion of private international law.

The courts of Mannheim, Germany, shall have exclusive jurisdiction over all disputes that arise from or in connection with the Contract or its validity.