

**General Terms of Contract  
of THE DIGITALE GmbH  
for the provision of services  
(as of: October 2019)**

## **1. Scope**

(1) Parties to the contract are exclusively THE DIGITALE GmbH (hereinafter also referred to as "THE DIGITALE") and the Customer. Changes in the organizational structure of THE DIGITALE do not affect the validity of concluded contracts. Third parties are neither authorized nor obligated by this contract, unless this is expressly agreed. The contract does not establish a power of representation for the other party. As far as THE DIGITALE uses subcontractors for the provision of its services, THE DIGITALE remains the sole contractual partner of the Customer. No contract is concluded between the Customer and the subcontractor. Only the contractual agreements between THE DIGITALE and the Customer apply.

(2) Offers and services of THE DIGITALE are exclusively directed to entrepreneurs as well as legal entities under public law or special funds under public law. An entrepreneur is a natural or legal person or a partnership with legal capacity who, when concluding a legal transaction, acts in the exercise of his commercial or independent professional activity; a partnership with legal capacity is a partnership that is endowed with the ability to acquire rights and incur liabilities.

(3) Contractual terms and conditions of the Customer that deviate from the contractual terms and conditions of THE DIGITALE do not become part or content of the contract, not even by silence of THE DIGITALE or reference to letters of the Customer with such contractual terms and conditions or by unconditional acceptance of an offer or unconditional performance of services by THE DIGITALE. Deviating individual agreements between the parties remain reserved.

## **2. Subject of the contract**

The subject of the contract is the provision of the agreed services to THE DIGITALE against the agreed remuneration. An employment relationship or a connection under company law is not established by the contract.

## **3. Services of THE DIGITALE**

(1) The content and scope of the services of THE DIGITALE are determined by the service description at the time of the conclusion of the contract. THE DIGITALE does not owe any further quality or performance. In particular, the Customer cannot derive such an obligation from other representations in public statements or advertising of THE DIGITALE, unless THE DIGITALE has expressly confirmed the exceeding quality.

(2) Any information on properties of the products/services, technical data, specifications and performance data or descriptions serve solely to describe the performance of the products/services. Performance descriptions do not constitute guarantees or warranties of characteristics of the services of THE DIGITALE.

(3) THE DIGITALE enables the Customer to inform himself about the essential functional features of the services of THE DIGITALE before submitting his declaration aimed at the conclusion of the contract. The Customer bears the risk whether these correspond to his wishes and needs. In case of doubt, the Customer must seek advice from THE

DIGITALE's employees or from competent third parties prior to the conclusion of the contract.

(4) Deadlines for the performance of services by THE DIGITALE are not fixed dates, unless this is expressly agreed. Performance deadlines are extended by the period in which THE DIGITALE is prevented from performing the service due to circumstances for which THE DIGITALE is not responsible, and by a reasonable start-up time after the impediment has ceased to exist.

(5) THE DIGITALE is entitled to provide partial services, unless the acceptance of a partial service is unreasonable for the Customer; this does not create an obligation for partial acceptance of work services.

(6) THE DIGITALE is entitled to use third parties (hereinafter also referred to as "subcontractors") for the provision of its services, unless otherwise provided by law or expressly agreed.

(7) THE DIGITALE and also any subcontractors engaged by it perform the agreed services in countries of the European Union or the European Economic Area or in any other country listed in the contract.

(8) If THE DIGITALE undertakes to provide services to the Customer against payment, the contract shall be governed in this respect by service contract law (§§ 611 et seq. BGB), unless otherwise agreed. Such services, which are governed by service contract law, are e.g. (i) consulting or support of the Customer, for example in the context of an analysis or in the creation of a strategy, a concept or in advertising campaigns; (ii) maintenance of a website; (iii) editorial services; (iv) services in connection with search engine marketing (SEM), in particular for search engine optimization (SEO).

(9) If THE DIGITALE undertakes to create a work for the Customer in return for payment as a work result and to permanently provide this to the Customer in return for payment, the contract is governed by the law on contracts for work and services (§§ 631 et seq. BGB). Such services which are governed by the law on contracts for work and services and therefore also require acceptance by the Customer are, for example, (i) the development of software or (ii) the creation of content, such as texts, design elements and graphics.

(10) If THE DIGITALE undertakes to permanently provide the Customer with content against payment, the contract is governed by the law of sale (§§ 433 ff. BGB). If THE DIGITALE undertakes to deliver movable goods to be manufactured or produced by THE DIGITALE against payment and to permanently transfer them, the applicable provisions are governed by the law of sales in accordance with § 651 BGB.

(11) If THE DIGITALE undertakes to provide the Customer with content for a limited period of time in return for payment, the contract is governed by the law on rental contracts (§§ 535 et seq. BGB).

(12) THE DIGITALE is entitled to deliver Content to the Customer on a data carrier of its choice (e.g. USB stick) (hereinafter: "Offline Distribution") or to make it available for download via the Internet (e.g. WWW or FTP) (hereinafter: "Online Distribution"). In case of Online Distribution, the delivery obligation is fulfilled as soon as the Content is available for download and THE DIGITALE has informed the Customer thereof. If THE DIGITALE maintains a Web Site for the Customer or if the Customer otherwise provides THE DIGITALE with the access data to the server on which the Content of the Web Site is stored, THE DIGITALE is also entitled to fulfill its obligation to deliver the Content by storing the Content on the server.

#### 4. Rights of use

(1) Insofar as THE DIGITALE is obligated to provide the Customer with rights to content and/or work results, the following provisions apply.

(2) The Customer receives from THE DIGITALE a spatially unlimited as well as non-exclusive, non-transferable and non-sublicensable right to use the content and/or the work results (e.g. individual software or website designs and interface programming), to the contractually agreed extent.

(3) If the Customer receives rights of use to Content from THE DIGITALE, the right of use includes the right to make the Content publicly available (§ 19a UrhG) and to reproduce it for this purpose (§ 16 UrhG). The Customer expressly receives neither a right to distribute Content (§ 17 UrhG) nor to reproduce it for this purpose (§ 16 UrhG), unless this is expressly agreed.

(4) Depending on the agreement, the Customer shall receive the right of use without time limitation or - only if expressly agreed - with time limitation.

1. temporary transfer: If THE DIGITALE transfers Content to the Customer on the basis of rental contract law, the Customer receives the right of use from THE DIGITALE only for the duration of the contract, unless the parties have agreed on a different license period.

2. temporally unlimited transfer: If THE DIGITALE transfers content to the Customer on the basis of the law of sale or the law of service contracts or the law of contracts for work and services, the Customer receives the right of use from THE DIGITALE without temporal limitation.

(4) All rights to the content and/or the work results remain with THE DIGITALE, unless otherwise provided by law or expressly agreed by contract.

(5) If THE DIGITALE undertakes to provide Content to the Customer and procures such Content from third parties, THE DIGITALE expressly reserves the right to agree to license terms that are or have been agreed upon in the relationship between the third party and THE DIGITALE also in the relationship between the Customer and THE DIGITALE. The same applies if THE DIGITALE provides the Customer with content that is made available under open content licenses.

(6) If, in deviation from paragraph 1, the parties agree that the Customer shall receive an exclusive right of use to individual software and to other work results, in particular website designs and interface programming, the following shall apply:

(1) With regard to development tools and open source components used for the creation of individual software, the customer shall only receive a simple right of use to the aforementioned extent, unless expressly agreed otherwise with explicit reference to development tools and/or open source components.

2. the customer shall receive the right to the individual software and other work results to the extent in particular

a) for reproduction (Section 16 UrhG, Section 69c No. 1 UrhG), e.g. installing, loading into the respective working memory, running and otherwise storing on one or more servers (server clusters) and on any number of devices (e.g. PCs or also laptops/notebooks or other mobile end devices (such as smartphones (such as iPhone), tablet PCs (such as iPad)) and

b) for distribution (Section 17 UrhG, Section 69c No. 3 UrhG) and for communication to the public, including

making available to the public (Section 15 (2) UrhG, Section 19a UrhG, Section 69c No. 4 UrhG), in particular by making the Software available for retrieval or by enabling access to the Software by way of application service providing or a software-as-a-service model, and

c) for processing and further development (Section 23 UrhG,

§ 39 UrhG, § 69c No. 2 UrhG itself or by third parties.

In the case of software, the right of use includes its use in development, test and production environments.

1. with regard to individual software THE DIGITALE is obliged to hand over the source code. THE DIGITALE is entitled to hand over the source code: (i) on a data carrier (e.g. USB stick) on which the source code of the Individual Software is stored, in which case the parties agree that the Customer shall become the owner of the removable data carrier upon delivery of the removable data carrier to the Customer, or (ii) by making it available for download on a server.

(2) With regard to development tools and open source components used for the creation of individual software, the customer shall only receive a simple right of use to the aforementioned extent, unless expressly agreed otherwise with explicit reference to development tools and/or open source components.

(7) If the parties agree that the Customer shall receive a right to use standard software, the following shall apply:

The customer receives a non-exclusive right of use in accordance with the licensing conditions of the respective licensor, unless the parties have expressly agreed on a more extensive provision.

(8) The above provisions shall apply mutatis mutandis to other rights such as ancillary copyrights under the Copyright Act or rights to databases (Sections 87a et seq. UrhG).

(9) The Customer receives the respective right only with the emergence and the full payment of the respective services. The consent of THE DIGITALE to use already before full payment requires text form to be effective and is revocable at any time until full payment.

#### 5. Retention of title

Physical objects delivered by THE DIGITALE for the fulfillment of a purchase or work contract remain the property of THE DIGITALE until full payment has been received.

#### 6. Prices ; Billing and payments

(1) THE DIGITALE provides its services against payment, unless otherwise expressly agreed. The Customer is obligated to pay the agreed remuneration to THE DIGITALE. If the amount of a remuneration is not expressly agreed upon, the remuneration is deemed to be agreed upon which THE DIGITALE also offers to third parties for comparable services ("list price").

(2) Unless otherwise stated, all prices are subject to the applicable statutory value added tax.

(3) If THE DIGITALE estimates a price, this price estimate is not a fixed or lump sum price and also not a maximum amount (cap), unless something different is expressly agreed.

(4) If THE DIGITALE agrees with the Customer on a remuneration according to time spent for a service, the remuneration is calculated on the basis of the time spent by the employees deployed in accordance with the

respective contract and the hourly rate agreed for the respective employee; THE DIGITALE proves the time spent by means of a list showing the respective employee, his activity, the day of performance and the time spent. THE DIGITALE is entitled to round up or down the time spent in accordance with § 315 BGB (German Civil Code) in units of 0.25 hours per calendar day according to commercial rounding rules in order to simplify the billing.

(5) Invoices shall be issued in euros.

(6) As far as THE DIGITALE provides services on the basis of service and rental contract law, THE DIGITALE is entitled to invoice on a calendar month basis and to issue invoices at the end of the calendar month to be invoiced or also within a reasonable period of time thereafter (e.g. 15 calendar days after the end of the calendar month to be invoiced).

(7) The customer shall be deemed to be in default as the debtor of a claim for payment at the latest if he does not make payment within 30 days of the due date and receipt of an invoice or equivalent payment schedule; this shall also apply if he has not been specifically informed of these consequences in the invoice or payment schedule. This shall also apply if the customer has not been specifically informed of these consequences in the invoice or payment schedule. If the date of receipt of the invoice or payment schedule is uncertain, the customer shall be in default no later than 30 days after the due date and receipt of the consideration. The customer shall not be in default as long as the performance is omitted due to a circumstance for which the customer is not responsible.

(8) THE DIGITALE is entitled to offset payments against the Customer's oldest debt first, despite any provisions of the Customer to the contrary.

(9) The Customer may - without contractual limitation according to the statutory provisions - set off as far as its claims are undisputed or legally established or ready for decision or are in a mutual relationship with the claims of THE DIGITALE or such mutual relationship continues, e.g. as far as the Customer has claims against THE DIGITALE due to defects. As far as this is not the case, the set-off by the Customer is excluded. The Customer is only entitled to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.

(10) Paid Media Services

1. For the provision of Paid Media Services to the customer, THE DIGITALE charges a fee of 15% (fifteen percent) of the media budget for media budgets up to 100,000 EUR. For media budgets exceeding 100,000 EUR, an individual agreement can be reached. The fee is invoiced together with the media services.

2. For the implementation of Campaigning measures, a project-specific, individual cost calculation for campaign planning, implementation, monitoring, and optimization will be created. Costs are calculated based on the agreed services and the expected workload for campaign management.

## 7. Price adjustment

(1) THE DIGITALE is entitled to change its prices at the end of each calendar year with a notice period of four calendar months in each case by declaration in text form (§ 126b BGB) to the Customer at its reasonable discretion up to the amount of the percentage that corresponds to the change in the average gross hourly earnings (excluding special payments) of full-time employees in the field of "Information and Communication" for Germany in the

version, published by the Federal Statistical Office at the time of receipt of the notice of change, compared with the corresponding average gross hourly earnings at the time the agreement was concluded and, in the case of a price adjustment that has already been made, the last price adjustment.

(2) When adjusting prices, THE DIGITALE is entitled to round the results thus calculated commercially to four decimal places.

(3) Should the publication of the average gross hourly earnings (excluding special payments) of full-time employees in the "Information and Communication" sector for Germany by the Federal Statistical Office not be continued during the term of the contract, the gross hourly earnings of the occupational group to which the employees of THE DIGITALE primarily belong shall be used as a basis.

(4) THE DIGITALE will notify the Customer of the price adjustment in writing (notice of change). The Customer is entitled to object to the price adjustment vis-à-vis THE DIGITALE within four weeks from receipt of the change notice. The objection must be in writing to be effective. The price adjustment made is binding for the Customer, if the Customer has not objected to it in due time and form, although THE DIGITALE has pointed out the legal consequence of the omission of the objection in text form (§ 126b BGB) in the change notice.

## 8. Acceptance

(1) Insofar as the contract is governed by the law on contracts for work and services, the Customer shall be obliged to accept the work produced in accordance with the contract, unless acceptance is excluded due to the nature of the work.

(2) Acceptance may not be refused due to insignificant defects.

(3) At the request of THE DIGITALE, the Customer is obligated to an explicit and written declaration of acceptance. Upon request of THE DIGITALE, the result of the acceptance must also be recorded in writing. Any reservations due to known defects are to be recorded in the protocol, as well as any objections of the Customer or THE DIGITALE or a possible refusal of acceptance. The declaration of acceptance does not require any form to be effective. It can also be declared tacitly.

(4) A work is also considered accepted if THE DIGITALE has set the Customer a reasonable deadline for acceptance after completion of the work and the Customer has not refused acceptance within this deadline, stating at least one defect.

(5) The parties hereby agree that the acceptance of the delivery of movable goods to be manufactured or produced by THE DIGITALE as well as the acceptance of installation services are subject to acceptance by the Customer. In this case, the acceptance has the following effect: If the Customer has accepted a service offered to him as performance, the burden of proof is on him if he does not want to accept the service as performance because it was a different service than the one owed or because it was incomplete.

## 9. Cooperation services of the customer

(1) The contractual, in particular timely performance of the services of THE DIGITALE requires the contractual, in particular timely performance of necessary cooperation services by the Customer. As far as the Customer does

not perform his cooperation services or does not perform them in accordance with the contract and it is therefore not possible or economically reasonable for THE DIGITALE to perform owed services, the obligation of THE DIGITALE to perform such services is cancelled to the extent and for the period of time in which their performance depends on the prior performance of the respective cooperation services of the Customer. The Customer shall bear any disadvantages and additional costs to the extent that these result from the Customer's failure to perform its cooperation services.

(2) The cooperation services include in particular the following services of the customer:

1. the Customer shall ensure that THE DIGITALE is provided with all required information in due time and that cooperation services and provisions are provided in due time, to the required extent and free of charge for THE DIGITALE.

2. the customer is responsible to the required extent for the timely provision of data to be processed and for its completeness and correctness as well as for checking the completeness and correctness of work results.

3. the Customer will claim defects of the services of THE DIGITALE in a comprehensible and detailed form in writing, stating the information useful for the detection of the defect, specifying in particular the work steps that led to the occurrence of the defect, its effects as well as the appearance of the defect.

4. as far as THE DIGITALE does not commit itself to take over the storage of data for data backup or data archiving for the Customer, the Customer itself is responsible for the data backup according to the state of the art, in application adequate intervals, so that the Customer can restore the data with reasonable effort.

(2) The customer shall in particular bear all costs,

1. incurred by him through the use of telecommunication services or other services of third parties that have not been commissioned by THE DIGITALE and

2. incurred by him through the procurement and maintenance of the IT infrastructure required for the use of the services of THE DIGITALE.

(3) If THE DIGITALE maintains a website for the Customer, it is the Customer's responsibility to ensure that the website and retrievable content do not violate the applicable legal provisions and the rights of third parties. In particular, it is the responsibility of the Customer to provide an imprint that complies with the requirements of telemedia law as well as to provide for a privacy policy that complies with data protection law and for the affixing of copyright and/or license notices as well as protection against the removal or deletion of such copyright and/or license notices. THE DIGITALE itself is neither entitled nor obliged to provide legal services.

#### **10. Rights of the customer in case of material defects**

(1) In the event of material defects, the customer shall be entitled to the statutory warranty rights unless otherwise agreed.

(2) In case of a material defect of goods or work performance, THE DIGITALE is obligated and entitled, at its option, which THE DIGITALE will make within a reasonable period of time, first to remedy the defect or to deliver a replacement. The rectification of the defect may also consist of THE DIGITALE showing the Customer reasonable possibilities to avoid the effects of the defect within a reasonable period of time.

(3) Claims of the Customer for compensation of damages or futile expenses shall be limited in accordance with Clause 12 and Clause 13.

#### **11. Customer's rights in the event of defects of title; infringement of third-party property rights**

(1) In case of defects of title of the services of THE DIGITALE, the Customer is entitled to the statutory rights of liability for defects, unless otherwise agreed.

(2) In case of a defect of title, THE DIGITALE is obligated and entitled, at its option, which THE DIGITALE will make within a reasonable period of time, first to remedy the defect or to deliver a replacement. For this purpose, THE DIGITALE may, at its option, which THE DIGITALE will make within a reasonable period of time, at its own expense, grant the Customer the necessary right (e.g. The DIGITALE may, at its own expense, grant the Customer the necessary right (e.g. copyright) to remedy the defect of title or modify its performance in such a way that it no longer infringes the right of the third party, but continues to comply with the contractual agreements; a modification of the performance in such a way that THE DIGITALE provides the Customer with a legally unobjectionable opportunity to use the provided performance or, at its option, a replaced or modified performance of equal value, provided that it continues to comply with the contractual agreements, is sufficient for this purpose.

(3) If a third party asserts claims that conflict with the exercise of the Customer's contractually granted right of use, the Customer will immediately notify THE DIGITALE in writing and in full. If the Customer discontinues the use to mitigate damages or for other important reasons, the Customer is obligated to point out to the third party that the discontinuation of use does not imply any acknowledgement of the alleged infringement of property rights. The Customer will conduct a legal dispute with the third party only in agreement with THE DIGITALE and authorizes THE DIGITALE by this contract to conduct the dispute with the third party judicially and extrajudicially on its own. If THE DIGITALE makes use of this authorization, which is at THE DIGITALE's discretion, the Customer may not acknowledge the claims of the third party without THE DIGITALE's consent; THE DIGITALE is obliged to defend the claims of the third party at its own expense.

(4) Claims of the Customer for compensation of damages or futile expenses shall be limited in accordance with Clause 12 and Clause 13.

#### **12. Liability**

(1) THE DIGITALE is liable without contractual limitation according to the legal regulations

1. for damages, as far as they are based on a breach of a warranty assumed by THE DIGITALE;

2. for intent;

3. for damages, as far as they are based on the fact that THE DIGITALE fraudulently concealed a defect;

4. for damages resulting from injury to life, body or health, which are based on an intentional or negligent breach of duty by THE DIGITALE or otherwise on intentional or negligent conduct of a legal representative or vicarious agent of THE DIGITALE;

5. for damages other than those listed under paragraph 1 clause 4, which are based on an intentional or grossly negligent breach of duty by THE DIGITALE or otherwise on intentional or grossly negligent conduct of a legal representative or vicarious agent of THE DIGITALE;

6. according to the Product Liability Act as well as according to the Basic Data Protection Regulation and the Federal Data Protection Act.

(2) In cases other than those listed in paragraph 1, the liability of THE DIGITALE is limited to the compensation of the contract-typical and foreseeable damage, as far as the damage is based on a negligent breach of essential obligations by THE DIGITALE or by a legal representative or vicarious agent of THE DIGITALE. Essential obligations are those obligations, the fulfillment of which enables the proper execution of the contract in the first place and the compliance with which the contractual partner regularly relies on and may rely on. Typical for the contract and foreseeable is a damage that THE DIGITALE foresaw at the conclusion of the contract as a possible consequence of the breach of duty or should have foreseen taking into account the circumstances that THE DIGITALE knew or should have known.

(3) In cases other than those listed in paragraphs 1 and 2, THE DIGITALE's liability for negligence is excluded.

(4) A strict liability of THE DIGITALE according to § 536a para. 1 var. 1 BGB (German Civil Code) due to defects already existing at the time of the conclusion of the contract is excluded.

(5) The objection of contributory negligence remains unaffected.

(6) The above provisions, with the exception of paragraph 4, shall apply mutatis mutandis to the liability of THE DIGITALE with regard to the reimbursement of futile expenses and to the liability based on tort claims.

### 13. Limitation

(1) As far as THE DIGITALE renders services on the basis of the law of sales (§§ 433 ff. BGB) or the law of contracts for work and services (§ 651 BGB), e.g. for the delivery of goods, the following provisions are time-barred without any contractual limitation according to the statutory provisions

1. claims of the customer against THE DIGITALE in case of liability due to intent;

2. claims of the Customer against THE DIGITALE due to defects of the goods, as far as THE DIGITALE has fraudulently concealed the defect or has given a guarantee for the quality of the goods;

3. claims of the Customer against THE DIGITALE due to defects of the goods, if the defect consists in a right in rem of a third party, on the basis of which surrender of the goods can be demanded;

4. claims of the customer for compensation of damages

a) which are based on an intentional or grossly negligent breach of duty by THE DIGITALE or otherwise on intentional or grossly negligent conduct of a legal representative or vicarious agent of THE DIGITALE;

b) from injury to life, body or health, which are based on an intentional or negligent breach of duty by THE DIGITALE or otherwise on intentional or negligent conduct of a legal representative or vicarious agent of THE DIGITALE;

5. claims under the Product Liability Act and under the General Data Protection Regulation and the Federal Data Protection Act.

In cases other than those listed in sentence 1, the limitation period for claims of the customer due to material defects of the goods shall be one year from delivery of the goods.

(2) As far as THE DIGITALE renders services on the basis of the law on contracts for work and services (§§ 631 ff. BGB) and the subject of the contract is a work, the success of which consists in the production, maintenance or modification of an object or in the provision of planning or monitoring services for this, para. 1 sentence 1 No. 1, 3, 4 and 5 apply, and claims of the Customer against THE DIGITALE due to defects of the work are also time-barred without contractual limitation according to the statutory provisions, as far as THE DIGITALE has fraudulently concealed the defect or has assumed a guarantee for the quality of the work. In cases other than those listed in sentence 1, the limitation period for claims of the Customer due to material defects of the Work is one year from acceptance.

### 14. Force majeure

(1) As far and as long as a case of force majeure exists, THE DIGITALE is not obligated to perform. Force majeure includes, but is not limited to, (i) a strike in the business of THE DIGITALE, (ii) a lockout in the business of THE DIGITALE, (iii) delays or failures in the supply of THE DIGITALE by suppliers caused by force majeure, (iv) power failures and interruptions or destruction of data-carrying lines outside the area of responsibility of THE DIGITALE, (v) official or court orders for which THE DIGITALE is not responsible, as well as (vi) attacks and attacks (e.g. by malware (such as viruses or DoS attacks) which THE DIGITALE is not responsible for e.g. by malicious software (such as viruses or DoS attacks)), which THE DIGITALE could not have averted even with reasonable care according to the circumstances of the case. Force majeure is not excluded already because THE DIGITALE is obliged to implement security measures.

(2) Each party will do everything in its power that is necessary and reasonable to mitigate the extent of the consequences caused by the force majeure. THE DIGITALE will notify the Customer within a reasonable period of time if a force majeure event occurs and when the service can be expected to resume. As soon as it is determined that the force majeure lasts longer than six (6) months, each party is entitled to terminate the contract extraordinarily for cause.

### 15. Reference naming

THE DIGITALE is entitled to name the Customer as a reference for the services that THE DIGITALE provides or has provided to the Customer on its website and in print and e-mail advertising to third parties.

### 16. Privacy

(1) Both parties shall fulfill their obligations under data protection law by operation of law. This applies in particular to the obligation of employees to maintain data secrecy.

(2) If the Customer commissions THE DIGITALE with the processing of personal data on its behalf, THE DIGITALE is not obligated to provide services until the Customer has created the necessary legal prerequisites, e.g. has concluded a commissioned processing agreement with THE DIGITALE that satisfies the applicable legal requirements. The conclusion of an order processing agreement is not a prerequisite for the conclusion or effectiveness of the contract by which THE DIGITALE undertakes to provide the Services.

### **17. Transfer of rights and obligations; transfer of contract**

(1) The transfer of rights and obligations under the Agreement shall only be permissible with the prior written consent of the other party, unless the transfer, which has been notified in writing, is to an affiliated company within the meaning of Sections 15 et seq. of the German Stock Corporation Act (AktG) at the relevant time when the transfer takes effect. The parties agree that the aforementioned consent may not be unreasonably withheld. The assignment of monetary claims shall require neither notification nor consent.

(2) Each party shall be entitled to transfer the contract to another company (acquiring company). The effectiveness of the transfer requires in particular,

1. that the acquiring company is an affiliated company of the transferring party within the meaning of Secs. 15 et seq. German Stock Corporation Act (AktG), and

2. that the acquiring company has its registered office within the Federal Republic of Germany at the time the contractual takeover becomes effective, and

3. that the transferring company has notified the other party of the following information: (i) the transfer and the date on which it is to take effect; (ii) the identity of the acquiring company (e.g. company name as well as company register and register number); (iii) the addressable postal address of the acquiring company to which declarations can be delivered.

(3) The transfer of the contract shall become effective at the earliest three months after the customer has received the notification pursuant to paragraph 2 no. 3 in the correct form.

(4) The other party shall be entitled to object to the transfer of the contract for good cause within a period of two months after receipt of the notification in due form. Such good cause shall be, for example, the inability of the acquiring company to provide the contractually agreed services. The objection must be in text form to be effective.

### **18. General provisions**

(1) The contract shall be governed by the laws of the Federal Republic of Germany, excluding recourse and further reference and excluding the UN Convention on Contracts for the International Sale of Goods.

(2) The place of jurisdiction for all disputes arising from or in connection with the contract between THE DIGITALE and customers who are merchants, legal entities under public law or special funds under public law is, at the option of THE DIGITALE, the respective registered office of the customer or the respective registered office of THE DIGITALE; for actions against THE DIGITALE, the respective registered office of THE DIGITALE is the exclusive place of jurisdiction for the aforementioned disputes. For all disputes arising from or in connection with the contract between THE DIGITALE and customers who are not merchants, legal entities under public law or special funds under public law and a) who also do not have a general place of jurisdiction in Germany or b) who transfer their domicile or habitual residence out of the Federal Republic of Germany after conclusion of the contract or c) whose domicile or habitual residence is not known at the time the action is filed, the respective registered office of THE DIGITALE is also the exclusive place of jurisdiction. Mandatory statutory provisions on exclusive places of jurisdiction including Section 689 (2) of

the German Code of Civil Procedure (ZPO) remain unaffected by sentence 1, sentence 2 and sentence 3.

(3) Unless otherwise specified, the contract includes all agreements made between the parties regarding the subject matter of the contract up to the conclusion of the contract. The rights and obligations of the parties are insofar exclusively defined in the contract and its annexes. Any previous oral or written agreements between the parties with regard to the subject matter of the contract shall be or become invalid upon conclusion of the contract.

(4) Amendments or supplements to the contract, including the waiver of this formal requirement, must be made in writing to be effective. Deviating individual contractual agreements shall have priority.

(5) The assurance of properties by THE DIGITALE as well as declarations of the Customer regarding reminders, setting of deadlines, contestation, reduction, exercise of withdrawal, termination or assertion of claims for damages must be in writing in order to be effective.

(6) Insofar as the parties have agreed in this contract or will agree in the future that a declaration requires the written form in order to be effective, the transmission by telecommunication via e-mail and, in the case of a contract, the exchange of declarations that comply with the written form shall be sufficient to comply with the written form. However, Section 127 (2) and (3) of the German Civil Code shall not apply in all other respects.

(7) If provisions of the contract are invalid or unenforceable in whole or in part, the remainder of the contract shall remain valid. Insofar as the provisions are invalid, the content of the contract shall be governed by the statutory provisions. The invalid provision shall be replaced by the legally permissible provision which comes closest to what was intended by the parties in terms of the origin, meaning and purpose of the invalid or unenforceable provision. This shall also apply to any loopholes.

(8) The Parties may translate the Agreement into other languages for information purposes, but only the original German version shall prevail.