

These TGTC apply to (i) the provision of the Turbit App ("**Software**") by **Turbit Systems GmbH**, Forster Str. 8, 10999 Berlin ("**Turbit**") to the **customer** (as defined in the order form and hereinafter referred to as "**Customer**"; Customer and Turbit hereinafter also jointly referred to as "**Parties**" and individually as "**Party**"), (ii) the use of the Software by the Customer both in accordance with the order form ("**Order Form**") and the service description ("**Service Description**" attached as **Schedule 1**), (iii) and any related service or services described in the Service Description, as applicable to the Customer (the services to be provided by Turbit to the Customer hereinafter being referred to as "**Agreed Services**").

The provisions of these TGTC are incorporated into the agreement ("**Agreement**") between the Parties by reference to these TGTC in the Order Form. These TGTC exclusively apply. General terms and conditions referred to in any purchase order or other form used by the Customer shall be without force or effect, even if Turbit performs despite knowledge of these differing or contrary terms, unless expressly agreed otherwise by the Parties in writing.

### 1 SUBJECT MATTER OF THE AGREEMENT

- 1.1 The subject matter of the Agreement between the Parties is defined in the Order Form. The Order Form contains the name and the address of the Customer and the services the Customer chooses out of the Service Description and the pricing of the chosen services. It may as well contain other agreements between the Parties that then become part of this Agreement. The Parties may expand the scope of the Agreement Order by mutual execution of a new order form ("**New Order Form**"). To the extent any terms and conditions of this Agreement conflict with the terms of the Order Form, any New Order Form or any other document, the documents shall apply in the following order of precedence: (i) Order Form(s) with the latest date(s), (ii) this Agreement and, (iii) any other documents expressly incorporated herein by reference.
- 1.2 The Parties agree that changes to the subject matter can also be agreed between Turbit and Affiliates of the Customer ("**Customer Affiliate**"). Such changes shall be agreed between Turbit and the Customer Affiliate by way of a New Order Form. Affiliate means any entity controlling, controlled by, or under common control with, a Party. For the purposes of this definition "control" means: (i) ownership of at least 51% of the entity's capital; (ii) ownership of at least 51% of the voting rights within the entity; or (iii) the power to exercise decisive influence over the management of the entity ("**Affiliate**"). In this case, any reference to Customer as such or to a Party (referring to Customer) in this Agreement shall also be deemed to refer to the Customer Affiliate having entered into such agreement with Turbit, where relevant.
- 1.3 The Software is operated by Turbit as a Software-as-a-Service ("**SaaS**") solution ("**SaaS Solution**"). The Software shall be stored and running on servers in the data centre of Turbit or a third-party service supplier engaged by Turbit ("**Servers**"). Turbit grants to the Customer:
  - 1.3.1 access to the current version of the SaaS Solution at the router exit of the data centre in which the Servers are located ("**Transfer Point**") via a remote data connection, as well as
  - 1.3.2 storage space on the Servers to the extent this is defined in the Service Description.

The Customer and the users authorized to use the Software by the Customer ("**Authorized Users**") may use the SaaS Solution via the Customer portal accessible via the Internet at the addresses described in the Service Description and/or via the client software installed in the User's vehicle, e.g. a smartphone app ("**Client Software**").

## **2 SERVICE QUALITY AND AVAILABILITY**

- 2.1 The SaaS Solution shall comply with the Service Description and shall meet the service levels defined in the Service Level Agreement ("**SLA**") attached to this Agreement as **Schedule 2**, unless any non-conformance is caused by the Customer's breach of this Agreement, use of the SaaS Solution contrary to Turbit's instructions or modification or alteration of the SaaS Solution by any party other than Turbit.
- 2.2 The SLA especially defines the availability at the Transfer Point as well as the support services ("**Support Services**") to be provided by Turbit.
- 2.3 The Software, the computing power required for its use and the required storage and data processing space shall be provided by Turbit. The Customer shall be responsible for the devices used by the Customer to access the SaaS Solution or the installation of the Client Software ("**Devices**"), technical infrastructure, as well as establishing and maintaining the Internet connection between the Devices and the Transfer Point. Therefore, the SaaS Solution may only be available for use to a limited extent in case of a poor Internet connection or if the Devices or technical infrastructure used by the Customer negatively impacts the availability.
- 2.4 The SaaS Solution is provided by Turbit at the Transfer Point. Turbit does not owe the establishment and maintenance of the data connection between the Devices or technical infrastructure of the Customer and the Transfer Point. Turbit is not responsible for successfully forwarding of data from or to the Devices or the technical infrastructure of the Customer to the Transfer Point.

## **3 AUTHORIZED USERS**

- 3.1 The Parties shall comply with the enrolment process for Authorized Users to the SaaS Solution as defined in the Service Description.
- 3.2 Where the Customer wishes to grant access to the SaaS Solution to any third-party individual contractor or anyone who is not an employee or director of the Customer or a Customer Affiliate, Turbit's express prior written consent shall be required, and Turbit may:
  - 3.2.1 impose reasonable conditions on such consent including, without limitation, requiring the Customer to pay reasonable additional fees and/or requiring the third-party to enter into a direct agreement with Turbit; and
  - 3.2.2 withhold consent at its discretion, including where any third party is a competitor or an individual contractor is, or is employed by, a competitor.

Authorized Users include (without prior consent being required) the Customer's operating manager provided that it is not a competitor of Turbit.

- 3.3 The Customer shall ensure that each Authorized User keeps any password(s) for their use of the SaaS Solution secure and confidential, that such password(s) are changed no less frequently than once every ninety (90) days and that each Authorized User does not share their password(s) to allow any other individual or third party to access the SaaS Solution.
- 3.4 In the event that an Authorized User leaves the employment or engagement of the Customer or a Customer Affiliate or where the employment or engagement of an Authorized User is transferred such that the Customer or Customer Affiliate does not intend for them to have access to the SaaS Solution, the Customer shall:
  - 3.4.1 disable such individual's password(s) and shall not issue any new password(s) to such individual; and
  - 3.4.2 where, as specified in the Service Description, Turbit controls the enrolment or removal of Authorized Users for the SaaS Solution, immediately inform Turbit so that Turbit may disable such individual's password(s) (which Turbit shall do within a reasonable period of time).
- 3.5 Authorized Users include users with admin rights ("**Admin Users**"). These Admin Users refer to employees or independent contractors of the Customer or Customer Affiliates who are authorized by the Customer or Customer Affiliate to use the SaaS Solution to arrange, administer and manage the service delivery for all other Authorized Users. These Admin Users are entitled to order new services or add further Authorized Users that may incur additional fees (as specified the relevant Service Description and/or on the SaaS Solution itself) and the Customer agrees to be bound by the actions and orders performed by the Admin Users using the SaaS Solution and pay any additional fees arising as a result. The Parties shall comply with the enrolment process for Admin Users to the SaaS Solution as defined in the Service Description.
- 3.6 The Customer acknowledges that the SaaS Solution may provide functionality or features that enable Authorized Users to perform functions, order services or add further Authorized Users that may incur additional fees (as specified the relevant Service Description and/or on the SaaS Solution itself) and the Customer agrees to be bound by the actions and orders performed by the Authorized Users (or any person who obtains access to the SaaS Solution as a result of a breach of this Agreement) using the SaaS Solution and pay any additional fees arising as a result.
- 3.7 If the Customer wishes to purchase the right to increase the number of Authorized Users, the Customer shall notify Turbit in writing. Turbit shall evaluate such request for additional Authorized Users and respond to the Customer with approval or rejection of the request (such approval not to be unreasonably withheld).
- 3.8 For the avoidance of doubt, the Customer shall be responsible for all acts and omissions of Authorized Users as though they were its own acts or omissions under this Agreement.

## 4 RIGHTS OF USE; CLIENT SOFTWARE

- 4.1 The Customer acknowledges and agrees that Turbit and/or its licensors own all intellectual property rights in the SaaS Solution. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, any intellectual property rights in respect of the SaaS Solution, the Software, the Client Software or any related documentation.
- 4.2 Turbit and its licensors shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the SaaS Solution any enhancement requests provided by the Customer and any Authorized Users so long as the Customer is not identified in any way as the source of such feedback.
- 4.3 If and to the extent that the Software runs exclusively on the Servers, Turbit grants the Customer, for the term of the Agreement, the non-exclusive, non-transferable (except where Turbit provided its express prior written consent under **Section 3.2** above), right, limited in time to the term agreed in **Section 9**, to access and use as well as enable Authorized Users to access and use the SaaS Solution in accordance with this Agreement and solely for Customer's internal business purposes. Unless otherwise agreed between the Parties, it is not permitted to allow third parties to use the Software. Third parties shall also include companies affiliated with the customer unless they have entered into an Order Form under this Agreement.
- 4.4 The SaaS Solution may require the installation of Client Software to function. Client Software provided to the Customer as part of the SaaS Solution is provided under the end user license agreement included with such Client Software, provided that in either instance the Customer's or the Authorized Users' use of the Client Software shall be solely for the purpose of enabling the Customer to use and enjoy the benefit of the SaaS Solution as permitted under this Agreement.
- 4.5 The Client Software may periodically check for updates, which may become necessary to
- 4.5.1 prevent a security or intellectual property issue; or
  - 4.5.2 comply with a requirement of law or request from public authorities.
- 4.6 Turbit will inform the Customer about all available updates of the Client Software.
- 4.7 The Customer decides, if and when an update of the Client Software is installed. If the Customer does not install the updates or does not install them in a timely manner, the Customer will indemnify, defend and hold Turbit harmless from and against any and all claims, damages, fines, sanctions, losses, costs, expenses, and liabilities arising out of or in connection the failure or delay to install the update. If the Customer does not install the updates, the Client Software may
- 4.7.1 have security or issues relating to intellectual property rights;
  - 4.7.2 not comply with a requirement of law or requests from public authorities; or
  - 4.7.3 malfunction.

## 5 SUPPORT SERVICES

- 5.1 The Customer acknowledges that Turbit may from time to time carry out routine and emergency maintenance of the SaaS Solution. The Customer may be unable to access the SaaS Solution during any period in which routine or emergency maintenance is being carried out.
- 5.2 In case of an impairment of the SaaS Solution or if an error of the SaaS Solution ("**Fault**") occurs, Turbit shall use its reasonable endeavours to rectify such Fault in accordance with the SLA.
- 5.3 The Customer shall report such Fault without undue delay providing as detailed a description as possible of the respective Fault ("**Fault Message**") in line with the SLA.
- 5.4 Turbit endeavours to perform the Support Services in compliance with the SLA included in it. Turbit makes reasonable efforts to meet all Response Times as set forth in the SLA; but they shall be treated as approximate dates only. If Turbit fails to provide any of the Support Services materially in accordance with the SLA, it will perform an analysis to identify the cause of the failure and take the necessary remedial action to deliver a workaround and, where possible, then rectify or prevent the service level failure from recurring.
- 5.5 Turbit will carry out the Support Services, in its reasonable discretion, as remote or on-site support. Turbit shall comply with the Customer's reasonable policy on remote access as may be provided in writing to Turbit. If Turbit provides Support Services on-site, Turbit shall use reasonable endeavours to ensure that, while on the Customer's premises, all persons who enter such premises with the authority of Turbit for the purpose of, or in connection with, this Agreement or the provision of the Support Services, adhere to the Customer's reasonable security procedures and health and safety regulations, if and as notified to Turbit.

## 6 UPDATES

- 6.1 During the term, Turbit will make the newest version of the SaaS Solution, or any portion of its features and functions (including any modification, deprecation or upgrade) available to the Customer, provided such modification of the SaaS Solution can reasonably be expected to be acceptable for the Customer taking the Customer's interests into account. These modifications may, for example, become necessary over the term of the Agreement to ensure the SaaS Solution's compliance with applicable law, instructions from public authorities or evolved technical framework conditions. None of these changes will be intended to reduce the SaaS Solutions functionality.
- 6.2 Turbit will notify the Customer of any modification to the SaaS Solution prior to the date of such change, if such notification is reasonably possible given the urgency and/or quality of the modification. Any modification of the SaaS Solution will be subject to the terms of this Agreement, unless the Parties agree that terms other than those of this Agreement apply to the modification of the SaaS Solution.
- 6.3 If the Customer establishes that a change made by Turbit pursuant to this **Section 6** has a materially adverse effect on the Customer's use of the SaaS Solution in line with this Agreement, because key functionality is not available, the Customer may notify Turbit in writing, and Turbit may propose resolutions or work-arounds. If Turbit is unable to provide the Customer with a resolution or work-around reasonably satisfactory to the Customer, then

notwithstanding anything to the contrary, the Customer may terminate this Agreement upon written notice to Turbit.

6.4 Turbit may change, discontinue, or deprecate any APIs utilized for the SaaS Solution, if any, from time to time but will continue supporting the previous version of any API changed, discontinued, or deprecated for twelve (12) months after the change, discontinuation, or deprecation unless supporting the previous version:

6.4.1 would pose a security or intellectual property issue;

6.4.2 is economically or technically burdensome, provided the Customer is provided with a new or changed API; or

6.4.3 is rendered impossible or impractical as a result of a requirement of law or request from governmental entities.

## 7 CUSTOMER OBLIGATIONS

7.1 The Customer shall:

7.1.1 provide Turbit with all necessary:

7.1.1.1 cooperation in relation to this Agreement; and

7.1.1.2 access to such information, including any data transferred to Turbit by the Customer or for processing by the SaaS Solution (e.g. SCADA data, other sensor data, machine status logs, service and maintenance logs or reports, logs of the technical operation, data about machine type, it's components location and other machine configuration data, data about regulations of the machine operation (e.g. BlmschG restrictions or similar restrictions)), including any data input into the SaaS Solution by the Customer, Authorized Users or by another Software of the Customer or the Customer's Suppliers ("**Customer Data**"), as may be required by Turbit, in order to deliver the SaaS Solution;

7.1.2 ensure that the Authorized Users comply with any acceptable use policies specified in the Service Description for a SaaS Solution or included within the SaaS Solution or the Client Software;

7.1.3 promptly inform Turbit of any tax or other legal requirements in any jurisdiction that might prevent the Customer from paying any sum due under this Agreement (and where such a restriction exists, then the Customer shall be required to take all reasonable steps to ensure that Turbit receives the same net amounts by the due date for payment as if the restriction did not exist);

7.1.4 maintain sufficient licences to any software (from third parties or licensed by Turbit separately to this Agreement) operated by the Customer using or in conjunction with the SaaS Solution;

7.1.5 maintain adequate Internet connections, software and other technical solutions to access and use the SaaS Solution, as notified by Turbit from time to time;

- 7.1.6 provide such personnel assistance as may be reasonably requested by Turbit from time to time;
- 7.1.7 comply with all applicable laws and regulations with respect to its activities under this Agreement;
- 7.1.8 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, Turbit may adjust any timetable or delivery schedule set out in this Agreement as reasonably necessary and the Customer shall reimburse Turbit's Affiliates' and their respective sub-contractors' costs resulting from the delay;
- 7.1.9 before the Customer uses any updates to any third-party software, carry out testing of updates to any third-party software to its satisfaction, to ensure that such updates meet the Customer's own requirements without causing any issues with the Customer's or Authorized Users' use of the SaaS Solution; and
- 7.1.10 take appropriate back-ups of its Customer Data and to secure media with such regularity and in such a manner so as to ensure that it can restore it in the event of data loss or corruption from any cause.

## 7.2 The Customer shall not:

- 7.2.1 store, distribute or transmit a Virus. A Virus is anything or device (including any software, code, file or programme) which may
  - 7.2.1.1 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;
  - 7.2.1.2 prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or
  - 7.2.1.3 adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices, or any material, information or data through the SaaS Solution that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities; attempt to copy, duplicate, modify, create derivative works from or distribute all or any portion of the Software or the SaaS Solution except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties;
- 7.2.2 access all or any part of the SaaS Solution to build a product or service which competes with the SaaS Solution;
- 7.2.3 attempt to undertake any security testing of the SaaS Solution without the prior written consent of Turbit;
- 7.2.4 use the SaaS Solution to provide services to third parties (including the Customer's Affiliates);
- 7.2.5 transfer, temporarily or permanently, any of its rights under this Agreement; or

7.2.6 attempt to obtain, or assist third parties in obtaining, access to the SaaS Solution, other than as specifically agreed pursuant to this Agreement.

7.3 The Customer shall use its best endeavours to prevent any unauthorised access to, or use of, the SaaS Solution and shall notify Turbit promptly of any such unauthorised access or use.

## **8 FEES AND PAYMENT TERMS**

8.1 The Customer shall pay Turbit the fees and any other costs and expenses monthly in advance by SEPA direct debit, unless stipulated otherwise in the Order Form or any New Order Form, as applicable.

8.2 Payment is due within thirty (30) calendar days upon receipt of the respective invoice, unless otherwise agreed between the Parties.

8.3 All prices are exclusive of sales tax, VAT and any other applicable taxes or duties, which shall be payable by Customer.

8.4 If an amount payable under Agreement is not paid by the due date (other than where such amount is disputed in good faith), Turbit shall have the right to charge Customer:

8.4.1 interests at 9 percentage points above the German Central Bank's current base rate per annum on the outstanding balance from its due date until the date of actual payment; and

8.4.2 any administrative charges, costs and expenses (including legal or financial advisors' costs and expenses) caused by the delayed payment.

8.5 If amounts payable under this Agreement are not paid within four (4) weeks as of the due date, Turbit shall have the right to block the Customer's access to the SaaS Solution after a prior reminder with a reasonable deadline (not less than 15 days) and expiry of the deadline.

8.6 Turbit's claim to remuneration shall remain unaffected by the blocking of access. Access to the SaaS Solution shall be reactivated immediately once the amount payable under this Agreement was received. The right to block access shall also exist as a mitigating measure if Turbit has a right to extraordinary termination pursuant to **Section 9.2**.

8.7 Customer shall pay reasonable travel, accommodation and telecommunication expenses incurred by Turbit during the performance of its obligations under this Agreement. Travelling expenses, including tolls and the cost of accommodation, food, drink will be invoiced monthly in arrears.

8.8 Unless expressly agreed otherwise in writing, the SaaS Solution shall be compensated by the fees. However, if the Customer has reported a Fault to Turbit and if it turns out after an inspection that the Fault did not occur within the data network of Turbit or is not attributable to Turbit, Turbit may charge the Customer for the services rendered to detect the Fault at the hourly rates of Turbit applicable to such services, unless the Customer could not have detected that the Fault did not occur within the data network of Turbit or is not attributable to Turbit even if it had exercised due diligence. The burden of proof lies with the Customer. Section 254 BGB shall apply accordingly.

- 8.9 Parties are entitled to withhold any payment or make deductions from any payment due to counter claims, in case these claims for payment are undisputed or have been established by a court of law.
- 8.10 Turbit may adjust the prices as well as the rates for an agreed remuneration according to the general price development after the expiry of the Initial Term or any Renewal Term (both as defined in **Section 9**). If the fees are increased by more than 5%, the Customer shall have the right to terminate the Agreement at the end of the then current month.

## **9 TERM, TERMINATION AND SUSPENSION**

- 9.1 This Agreement commences on the day it is signed by both Parties and has a term of twelve (12) months if not stated differently in the Order Form ("**Initial Term**"). This first sentence of this **Section 9.1** applies accordingly if the Parties agree to amend the Agreement by adding Turbit Blue (which is described in Section 9 of **Schedule 1**) to the Agreed Services through a new Order Form. In this case, the twelve (12) months term defined in the first sentence of this **Section 9.1** shall commence anew for all Agreed Services on the day the new Order Form is signed, unless stated differently in the Order Form ("**New Term**"). Upon expiration of the Initial Term or the New Term, the term shall be renewed automatically for successive periods of twelve (12) months ("**Renewal Term**"), unless the Agreement is terminated by either Party with three (3) months prior written notice to expire at the end of the Initial Term or the Renewal Term, as applicable.
- 9.2 A Party's right to terminate the Agreement for good cause, remains unaffected. Without affecting any other right or remedy available to it, either Party may terminate this Agreement for good cause by giving written notice to the other Party if:
- 9.2.1 the other Party commits a material breach of any term of this Agreement or any Order which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;
- 9.2.2 in the case of Turbit, the Customer becomes a competitor;
- 9.2.3 in the case of Customer, the Turbine (with regard to which the Agreement has been concluded) is permanently decommissioned, in which case the termination can only be declared in relation to the respective Turbine and takes effect after the end of the contract month in which the decommissioning took place but in no case earlier than the end of the contract month in which the termination was declared;
- 9.2.4 in the case of Customer and with respect to Turbit Blue, the relevant contract between Customer and the insurance provider terminates, in which case the termination of Turbit Blue shall take effect on the same day on which the termination of the contract between Customer and the insurance provider takes effect or on the day after the termination of Turbit Blue is declared, whichever occurs later;
- 9.2.5 the other Party suffers an occurrence of any one or more of the following events:
- 9.2.5.1 the Party becomes unable to pay its debts, admits its inability to pay its debts or becomes insolvent;

9.2.5.2 a petition is presented, an order made or a resolution passed for the liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction), administration, bankruptcy or dissolution of the Party;

9.2.5.3 an administrative or other receiver, manager, trustee, liquidator, administrator or similar person or officer is appointed to the Party and/or over all or any part of the assets of the Party;

9.2.5.4 the Party enters into or proposes any composition or arrangement concerning its debts with its creditors (or any class of its creditors) generally; or

9.2.5.5 anything equivalent to any of the events or circumstances listed in **Sections 9.2.5.1 to 9.2.5.4** (inclusive) occurs in any applicable jurisdiction; or

9.2.6 there is a circumstance where any person or group of persons acting in concert gains direct or indirect ownership of, or power to vote in respect of, at least 50% of the voting stock, shares or interests of an entity of the other Party.

9.3 On termination of this Agreement for any reason:

9.3.1 subject to any express rights to retain equipment, property, materials and other items (and all copies of them), each Party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other Party (except Turbit may retain reasonable professional records of the Customer's and the Authorized Users' use of the SaaS Solution);

9.3.2 subject to any alternate provisions in the relevant Service Description regarding the Customer accessing the SaaS Solution to retrieve Customer Data after termination, Turbit may destroy or otherwise dispose of any of the Customer Data in its possession at any point thirty (30) days or more after termination of this Agreement;

9.3.3 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;

9.3.4 any provisions which are necessary for the interpretation or enforcement of this Agreement shall continue in force; and

9.3.5 all licenses granted under this Agreement shall immediately terminate and the Customer shall immediately cease all use of the SaaS Solution.

9.4 Turbit may suspend the Customer's right to access the SaaS Solution or use any portion or all of the SaaS Solution immediately upon notice to the Customer if Turbit determines that the Customer's or an Authorized User's use of or access to the SaaS Solution

9.4.1 poses a security risk to Turbit, the SaaS Solution or any third party;

9.4.2 adversely impacts availability or performance of the SaaS Solution, the Software or the systems or software of any other customer of Turbit;

9.4.3 subject Turbit or any third party to any liability; or

9.4.4 is fraudulent.

9.5 Turbit shall reinstate the suspended SaaS Solution once it has established the cause of the suspension has been remedied or ceased to exist.

## 10 CONTACT PERSON

10.1 Turbit names the following contact person: Michael Tegtmeier, m.tegtmeier@turbit.de

10.2 The Customer's contact person responsible for any queries in relation to the SaaS Solution is named in the Order Form.

## 11 INDEMNITIES

11.1 The Customer shall promptly notify Turbit in writing of any claim or action made or threatened against the Customer by any third party that the use of the SaaS Solution (or any part of the SaaS Solution), the Software or the Client Software by the Customer in accordance with the terms of this Agreement, infringes the intellectual property rights of that third party ("**IPR Claim**").

11.2 Turbit shall indemnify and defend Customer and hold it harmless against any award of compensation made by a court of competent jurisdiction following its determination that the use of the SaaS Solution under and in accordance with the Agreement infringes the intellectual property rights of any third party provided that the Customer shall not admit any liability or agree to any settlement or compromise of an IPR Claim without the prior written consent of Turbit.

11.3 Turbit has the right to control the defence of such claim and any related settlement negotiations subject to the requirement that Customer's written consent shall be required for any settlement that admits liability on Customer's behalf, and Customer does not make any admissions or do anything that prejudices Turbit's defence of such IPR Claim; the Customer takes all reasonable steps to mitigate any liabilities which are the subject of the IPR Claim; and at Turbit's request, cost and expense, give Turbit all reasonable assistance in connection with the conduct of the IPR Claim.

11.4 If an IPR Claim is made then Turbit may at its own expense, and in its sole discretion

11.4.1 obtain for the Customer the right to continue using the SaaS Solution in the manner permitted under this Agreement; or

11.4.2 modify or replace the infringing part of the SaaS Solution so as to avoid the infringement or alleged infringement, but in such a way that does not materially adversely affect the functionality of the SaaS Solution; or

11.4.3 terminate the Agreement and refund fees paid in advance by the Customer in respect of any period following such termination.

11.5 No indemnity shall apply to any IPR Claim which arises from any unauthorized changes, modifications, updates or enhancements made by the Customer and/or any misuse by the Customer. Turbit's liability in relation to an IPR Claim is subject to the limitation set out in [Section 13](#).

## 12 WARRANTY

Turbit warrants that the SaaS Solution will perform substantially in conformance with the Service Description throughout the term. Section 536a para. 2 and Section 536a para. 1 of the German Civil Code (BGB) are excluded to the extent they provide for strict liability. Otherwise, the statutory warranty provisions shall apply.

## 13 LIABILITY

13.1 Nothing in this Agreement will exclude or limit Turbit's liability for (i) injury to life, body or health resulting from negligence or wilful misconduct of Turbit; (ii) damages based on wilful misconduct or of gross negligence of Turbit; (iii) claims according to the German Product Liability Act ("*Produkthaftungsgesetz*"); or (iv) other mandatory law.

13.2 In case an obligation has been breached which is essential to fulfil this Agreement's purpose by Turbit ("*Kardinalpflicht*", meaning those obligations, which must be fulfilled to facilitate the implementation of the Agreement and those obligations upon which the parties regularly rely) by simple negligence of Turbit, the liability is limited to the damages typically foreseeable at the conclusion of the Agreement. This is the exclusive and sole liability in case of simple negligence, subject to [Section 13.1](#).

13.3 Subject to [Section 13.1](#), Turbit shall not be liable for (i) loss of anticipated savings; (ii) frustrated investments; (iii) loss of revenues or profits; (iv) loss of business opportunity; (v) loss of reputation and goodwill; and (vi) losses incurred by the Customer due to a failure, downtime or similar event (jointly "**Failure**") of or occurring at Assets Under Contract (as defined in Section 1.6 of [Schedule 1](#)). [Section 13.3 \(vi\)](#) applies in particular, if a third party, especially an insurance provider, refuses to reimburse the Customer for or otherwise over the losses incurred by the Customer due to the Failure; and this applies in particular if the insurance provider refuses such reimbursement or coverage because Turbit provides information relating to Events or Cases (as defined in Section 1.8 of [Schedule 1](#)) or other KPIs to the insurance provider under the service Turbit Blue (which is described in Section 9 of [Schedule 1](#)).

13.4 Subject to [Section 13.1](#), Turbit shall not be liable for any loss due to (i) issues caused by the Services not being used in accordance with this Agreement, the documentation and/or any instructions given by Turbit; (ii) issues caused by Customer's non-compliance with its obligations; (iii) issues caused by any product, service, action or omission not provided or undertaken by Turbit, in particular by non-included third party products and the infrastructure, hardware and network to be provided by Customer itself; or (iv) any loss due Customer's failure to properly store and back-up any of its Customer Data or other data.

13.5 Subject to [Section 13.1](#), no liability of Turbit shall exist without negligence or wilful misconduct, including for Faults already existing prior to the provision of the Software.

- 13.6 Subject to **Section 13.1**, that the damage, which may typically be expected to occur, when using the SaaS Solution is, in each case, limited
- 13.6.1 per incident of breach to fees paid by the Customer over the period of twelve (12) months prior to the incident or the equivalent to the fees payable for the period of twelve (12) months of service; and
  - 13.6.2 in any event limited in the aggregate to the total amount of fees paid by the Customer under this Agreement.
- 13.7 If Turbit's liability is excluded or limited pursuant to this Section, this also applies to the personal liability of Turbit's employees, staff, representatives or vicarious agents.
- 13.8 In all other respects, liability - on whatever legal grounds - is excluded.
- 13.9 If damage to the Customer results from the loss of Customer Data, Turbit shall not be liable for this, insofar as the damage would have been avoided by the Customer making a regular and complete backup of all relevant Customer Data.

#### **14 CUSTOMER DATA, RIGHTS IN OR TO DATA PROCESSED BY AND RESULTING FROM THE SAAS SOLUTION, DATA BACKUPS**

- 14.1 The Customer is solely responsible for all content used and data processed via the SaaS Solution as well as any legal positions required for this.
- 14.2 The Customer shall own all rights, title and interest in and to all of the Customer Data and shall at all times have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data and for ensuring that its use does not infringe the rights of any third parties (including intellectual property rights). In this context, the Customer undertakes to indemnify Turbit against any liability and any costs including possible and actual costs of legal proceedings, if a claim is made against Turbit by third parties, including employees of the Customer personally, as a result of alleged acts or omissions of the Customer. Turbit shall notify the Customer of the claim and, to the extent legally possible, give the Customer the opportunity to defend the asserted claim. At the same time, the Customer shall immediately provide Turbit with all information available to it regarding the facts that are the subject of the claim.
- 14.3 Turbit shall regularly back up the Customer Data. The Customer may, to the extent technically possible, excerpt this Customer Data at any time for backup purposes and is obliged to perform such backups at regular customary intervals. To the extent that the Customer cannot excerpt the Customer Data, Turbit shall provide the Customer with the Customer Data as a backup once a month.
- 14.4 The Customer hereby grants to Turbit on and subject to the terms and conditions of this Agreement a non-exclusive, transferable license to use the Customer Data for the purpose of providing the SaaS Solution and for any requirements ancillary to the provision of the SaaS Solution (including any service modelling and the generation of Anonymized Customer Data as defined in Section 14.5 below). If the Agreed Services include Turbit Blue (which is described in Section 9 of **Schedule 1**), the Customer also grants a respective license to Turbit for making the SaaS Solution or parts thereof, as well as information relating to Events and Cases (as

defined in Section 1.8 of **Schedule 1**) or other KPIs available to third parties, especially the Customer's insurance provider.

14.5 Turbit is free to use any Customer Data (especially SCADA data, other sensor data, machine status logs, service and maintenance logs or reports, logs of the technical operation, data about machine type, it's components location and other machine configuration data, data about regulations of the machine operation (e.g. wildlife restrictions or similar restrictions), drone footage or other visual data) provided it is anonymized, i.e. cannot be attributed to a specific Customer record ("**Anonymized Customer Data**") in connection with machine learning, data analytics or other techniques which aim to improve the SaaS Solution or other products of Turbit. In such case, Customer transfers and assigns all right, title and ownership, including intellectual property rights, in the Anonymized Customer Data to Turbit. Turbit hereby accepts this transfer and assignment. If and to the extent that the transfer and assignment of the title and ownership is not permitted or not possible under the applicable law, Customer grants to Turbit the worldwide, exclusive, transferable, perpetual, sub-licensable, irrevocable, unlimited and royalty free right to utilize the Anonymized Customer Data under all known methods of use. The usage rights to the Anonymized Customer Data include in particular the right – unrestricted with respect to territory, substance and time – to use and utilize the Anonymized Customer Data – in whole or in part, permanently or temporarily – for any (own or external) purposes in any and all manners; including but not limited to copy the Anonymized Customer Data using any medium and in any form through loading, displaying, running, transferring or saving for purposes of execution and the processing of the Anonymized Customer Data, as well as to distribute the Anonymized Customer Data and make it publicly available. This grant of rights further includes the right to change, translate, process or otherwise adapt, further develop and maintain the Anonymized Customer Data and to use and utilize the results created thereby in an equal manner. The granting of rights pursuant to this section relates to all known types of use and all types of use that are currently still unknown, whereby the statutorily non-assignable rights remain unaffected hereby. Turbit is authorized, without separate approval in each specific instance, to transfer the aforementioned rights to third parties, or to grant usage rights to third parties, in whole or in part, permanently or temporarily. Turbit accepts the grant of these rights. The Customer explicitly waives any rights which he may have in his capacity as author, in particular the right to determine a name and grant access to the Anonymized Customer Data. For the sake of clarity, even if the Data is not subject to any intellectual property rights, Turbit shall have exclusive rights to use and utilize such Anonymized Customer Data as set forth under this section in the relationship between the parties.

14.6 Between the Parties, Turbit shall hold all ownership rights, title and entitlement in the "**Turbit Data**" (meaning any data, such as quality data, raw material data, manufacturing information and machine data, sensor data, environment data, reclamation information, test data, which are processed or generated by, or stored in, the SaaS Solution; Turbit Data may include amongst others Customer Data and Anonymized Customer Data, data provided by Turbit or other parties, general Software usage data or data created or generated by the Software itself) other than the Customer Data. Customer is however free to use any such Turbit Data in so far this is undertaken as part of the legitimate use of the SaaS Solution in accordance with this Agreement.

14.7 If and in so far as any property, intellectual or other statutory rights exist in the concerned Turbit Data other than the Customer Data under any applicable law and such rights vest in or are otherwise owned or held by the Customer (or one of its Affiliates, employees, Affiliates' employees or other party it used in connection with this Agreement), the Customer hereby

assigns, and undertakes to ensure that the concerned Employees and relevant parties used by it assigns, to Turbit all ownership rights, title and entitlement in such data. If and in so far as such rights are not assignable under any applicable law, the assignment shall be deemed to be an exclusive, irrevocable, global, freely (without further consent of Customer or its employees or other users, whether authorized or unauthorized) transferable and sub-licensable, timely and otherwise unlimited right to use, modify and utilize the concerned data.

14.8 Subject to the provisions of this **Section 14**:

14.8.1 Turbit shall follow its procedures for handling Customer Data in accordance with the Service Description;

14.8.2 in the event of any loss or damage to Customer Data, Turbit shall use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data where such back-ups are made by Turbit; and

14.8.3 Turbit shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by the Customer, its Authorized Users, the Customer's Affiliates or any third party (except those third parties sub-contracted by Turbit to perform services related to Customer Data hosting and back-up, in which case Turbit's liability shall be subject to the limitations and exclusions set out in this Agreement, including those set out in this **Section 13**).

14.9 If and to the extent that the Customer Data includes personal data, which is processed by Turbit on behalf of the Customer, the Parties shall enter into a Data Processing Agreement as attached to this Agreement as **Schedule 3**.

## 15 CONFIDENTIALITY

15.1 During the performance of this Agreement, it may be necessary for either Party ("**Disclosing Party**") to disclose Confidential Information to the other Party ("**Receiving Party**"). Confidential Information means any and all technical, business or other information (including tangible and intangible information) disclosed in any manner or form including, but not limited to, business strategies, documents, methodologies, trade secrets, pricing, software programs, identification codes, authentication codes, passwords and all other security devices and features, details, data, which is marked as confidential or is to be considered as confidential because of its nature, and materials, relationships with third parties, information regarding customers and vendors, but not including information that the Receiving Party can establish by documents:

15.1.1 is or becomes generally available to the public (other than as a result of its disclosure by the Receiving Party in breach of this Agreement);

15.1.2 was available to the Receiving Party on a non-confidential basis prior to disclosure by the Disclosing Party;

15.1.3 was, is or becomes available to the Receiving Party on a non-confidential basis from a person who is not bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Receiving Party;

15.1.4 was lawfully in the Receiving Party's possession before the information was disclosed to it by the Disclosing Party; or

15.1.5 the Parties agree in writing is not confidential or may be disclosed.

15.2 Such Confidential Information will be provided subject to the following terms and conditions:

15.2.1 Unless otherwise provided herein, the Parties shall strictly keep confidential any and all Confidential Information provided by one Party to the other Party and use such Confidential Information only for the contractually agreed purposes and the Receiving Party of such Confidential Information shall not disclose it to a third party without the prior written consent of the Disclosing Party.

15.2.2 Each Party agrees to allow only those of its employees, who are entrusted with the performance of this Agreement, access to the Confidential Information. Both Parties agree, at the request of the other Party, to require their employees to sign an appropriate confidentiality declaration and to present this to the other party.

15.2.3 Each Party will use the same degree of care to protect Confidential Information of the other Party as it uses to protect its own Confidential Information, but no less than a reasonable degree of care.

15.2.4 Neither Party will make more copies of such Confidential Information than is necessary.

15.2.5 Confidential Information may be disclosed if and to the extent Confidential Information is required in order to comply with applicable law or as a result of an order by a public authority or a court. In such case, the Receiving Party must inform the Disclosing Party thereof without undue delay, if possible prior to the disclosure.

15.2.6 After the termination of this Agreement, the Receiving Party will return all records and embodiments of Confidential Information, including, but not limited to, documents, records, tapes and any other media as well as all copies thereof in its possession or under its control that contains Confidential Information of Disclosing Party, unless the Receiving Party is required to keep the Confidential Information according to statutory law or allowed in compliance with this Agreement.

15.3 The Parties' obligations under **Section 15** will continue for a minimum period of three (3) years following the termination or expiration of this Agreement.

## **16 MISCELLANEOUS**

### **16.1 Entire Agreement**

The Agreement, together with any documents referred to in it, constitutes the whole Agreement between the Parties relating to its subject matter and supersedes and extinguishes any prior drafts, agreements, representations and warranties of any nature, whether in writing or oral, relating to such subject matter.

### **16.2 Severability**

If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect: (i) the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or (ii) the legality, validity or enforceability in any other jurisdiction of that or any other provision of this Agreement. Whilst the Parties consider the provisions contained in this Agreement reasonable, having taken independent legal advice, if any one or more of the provisions are adjudged alone or together to be illegal, invalid or unenforceable, the Parties shall negotiate in good faith to modify any such provision(s) so that to the greatest extent possible they achieve the same effect as would have been achieved by the invalid or unenforceable provisions(s).

### **16.3 Variation**

Modifications, amendments or waivers of any of the provisions of this Agreement must be mutually agreed in writing (email not sufficient) and signed by an authorized representative of both parties and attached as amendments hereto in chronological order. This shall also apply to amendments of this written form requirement.

### **16.4 Subcontractors**

Turbit shall have the right to use subcontractors for the performance of this Agreement; however, Turbit shall remain responsible for the performance.

### **16.5 Assignment**

Neither Party shall assign or otherwise transfer this Agreement, whether in whole or in part, without the prior written consent of the other Party, which will not unreasonably be withheld. Turbit may further transfer or assign this Agreement without prior consent of the Customer to an Affiliate, or an entity that acquires all or substantially all of the business and/or assets of Turbit.

### **16.6 Governing Law and Jurisdiction**

This Agreement and any dispute or claim arising out of or in connection with it (including any non-contractual claims or disputes) shall be governed by and construed in accordance with the laws of Germany excluding its conflict laws and the United Nations Convention on Contracts for the International Sale of Goods. The Parties irrevocably submit to the exclusive jurisdiction of the local courts in Berlin, Germany.