neXenio GmbH | neXboard End User License Terms

October 2019

1. GENERAL | SCOPE

1.1 These neXboard End User License Terms ("**Terms**") apply to all contracts between neXenio GmbH, Charlottenstraße 59, 10117 Berlin, Germany ("**neXenio**") and its customers which are business owners (*Unternehmern*) within the meaning of section 14 of the German Civil Code ("**Customers**") to whom neXenio provides access to its Services.

1.2 These Terms shall govern each ordering document or any online, e-mail or in-app ordering process that references these Terms (each an "**Order**"). The terms of each Order shall incorporate these Terms and shall form a separate services contract with respect to the Services under that Order (a "**Services Contract**").

1.3 These Terms shall also apply as a framework agreement for future contracts with the same Customer without neXenio being required to refer to them in each individual case. These Terms shall be deemed to be confirmed by Customer at the latest when neXenio provides the Services.

1.4 These Terms apply to the exclusion of all others. Different, conflicting or supplementary standard terms of business of Customer shall only become part of the contract if and to the extent that neXenio has consented to their application in writing.

1.5 Individual agreements made in writing with Customer in specific cases (including ancillary agreements, supplementary agreements and amendments) shall take priority over these Terms.

1.6 Where these Terms mention the terms 'written', 'in writing', 'written form' or similar, this shall refer to 'in writing' in the sense of section 126 German Civil Code. The electronic exchange of copies of signed documents shall suffice in this regard whereas the exchange of simple e-mails shall not be sufficient.

1.7 References herein to the application of statutory provisions shall be for clarification purposes only. Consequently, statutory provisions shall apply even without such clarification provided that they are not directly amended by or expressly excluded in these Terms.

2. LICENSE GRANT

2.1 Subject to the terms and conditions of the Services Contract, neXenio grants to Customer, during the Initial Service Term and any Renewal Service Term, a non-exclusive, non-transferable, non-sublicensable worldwide right and license to use the neXboard software as software-as-a-service and to access and use neXenio's related websites, spaces, services and applications as designated in the Order (collectively the "**Services**") for internal business purposes only ("**License**"). The number of Licenses is stated in the Order. The Services are offered as prescribed by the neXenio documentation located at an URL further specified by neXenio or attached as an exhibit to the Order (as it may be updated from time to time, the "**Documentation**").

2.2 Customer may permit its employees, its Affiliates (and employees thereof) and its third party outsource service providers, consultants and contractors to use the Services (collectively "**Permitted Users**" and any individual using the Services a "**User**") provided that (A) the Customer has obtained a License for each such User; (B) Customer shall procure that such Users comply with these Terms and Customer shall remain responsible and liable towards neXenio for all acts and omissions of such Users; and (C) the Services are used solely for the benefit of Customer or any of Customer's Affiliates. "**Affiliate**" means any entity that directly or indirectly controls, is controlled by, or is under direct or indirect common control with Customer or neXenio respectively, or which is a wholly owned subsidiary of Customer or neXenio respectively, whereby 'control' means owning, directly or indirectly, at least fifty-one percent (51%) of the equity securities or equity interests of such entity.

3. LICENSE RESTRICTIONS

3.1 Customer shall not (and shall not permit any third party to) directly or indirectly: (A) sublicense, sell, resell, transfer, assign, distribute, share, lease, rent, make any external commercial use of, outsource, use on a timeshare or service bureau basis, or use in an application service provider or managed service provider environment, or otherwise generate income from the Services; (B) copy the Services onto any public or

distributed network; (C) decompile, reverse engineer or disassemble any portion of the Services, or otherwise attempt to discover any source code, object code or underlying structure, ideas, know-how or algorithms or other operational mechanisms of the Services, in each case, unless permitted by mandatory statutory law; (D) modify, adapt, translate or create derivative works based on all or any part of the Services (except to the extent expressly permitted by neXenio or authorized within the Services); (E) modify any proprietary rights notices that appear in the Services or components thereof; (F) use any Services in violation of any applicable laws and regulations (including any export laws, restrictions, national security controls and regulations) or outside of the license scope set forth in Clause 2; (G) configure the Services to collect (i) any data that is defined as sensitive personal data or 'special categories of data' within the meaning of the EU General Data Protection Regulation or any applicable national data protection law or regulation; (ii) passwords or other authentication credentials; (iii) any payment or other financial data, biometric data or genetic data; or (iv) any data relating to a person under the age of 16 years (collectively, "**Prohibited Data**"); or (H) use the Services to (i) store, download or transmit infringing, libelous, or otherwise unlawful or tortious material, or malicious code or malware; or (ii) engage in phishing, spamming, denial-of-service attacks or other fraudulent or criminal activity; (iii) interfere with or disrupt the integrity or performance of third party systems, or the services or data contained therein; (iv) attempt to gain unauthorized access to the Services or neXenio's systems or networks; or (v) perform, or engage any third party to perform, authenticated or unauthenticated penetration testing, vulnerability assessments or other security assessments.

3.2   Customer shall not export or re-export, directly or indirectly, any Services or technical data or any copy, portions or direct product thereof in breach of any applicable laws and regulations. In particular, Customer and its Affiliates shall comply with the sanctions imposed by the Federal Republic of Germany, the European Union, the United Nations and with the applicable federal laws of the United States of America, in each case, insofar as they do not result in a violation of or a conflict with section 7 of the German Foreign Trade and Payments Ordinance (*Außenwirtschaftsverordnung*) or a similar applicable anti-boycott statute. Customer shall, at its own expense, obtain all necessary customs, import, or other governmental authorizations and approvals.

3.3   The Services may only be used by Customer as prescribed in the Documentation.

3.4   Although neXenio has no obligation to monitor Customer's use of the Services, neXenio may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

4.   TRIAL USE

If Customer accesses the Services as part of a trial evaluation ("**Trial Use**"), the License is granted for the period enabled for the Services provided by neXenio. neXenio shall have the right to downgrade, limit or otherwise modify the Services provided for Trial Use at any time without notice, and no guarantee, indemnity, Maintenance or Support obligations of neXenio shall apply to Trial Use. neXenio has the right to immediately revoke and terminate any Trial Use at any time. Trial Use is not a guarantee of future product features and should not be relied upon in making any purchasing decisions.

5.   CUSTOMER'S RESPONSIBILITIES

5.1   Customer represents and warrants that Customer and its Permitted Users shall use the Services only in full compliance with all applicable laws and regulations.

5.2   Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems and networking (collectively "**Equipment**"). Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer's knowledge or consent.

5.3   Customer shall be solely responsible for the content of all visual, written or audible communications, files, documents, videos, recordings, and any other material ("**Content**") displayed, posted, uploaded, stored, exchanged or transmitted on or through the Services.

5.4   neXenio cannot control the information submitted by Customer or Users during their use of the Services and cannot guarantee the accuracy of any information submitted. neXenio may, without notice or liability, investigate any complaints or suspected violations of the Contract that come to its attention and may take any

action that it believes is appropriate, including, but not limited to, rejecting, refusing to post, or removing any Content, or other data, or restricting, suspending, or terminating Customer's or any User's access to the Services.

5.5 Customer shall notify neXenio promptly of any unauthorized use of any password or account or any other known or suspected breach of security or misuse of the Services.

6. MAINTENANCE AND SUPPORT

6.1 Subject to Customer's payment of the Service Fees set forth in the applicable Order, neXenio shall provide Maintenance and Support for the Services to the extent specified in the Order. "**Support**" is defined as neXenio's obligations to respond to support requests of Customer with regard to the Services by documenting and troubleshooting issues and providing technical and non-technical assistance. "**Maintenance**" or "**Maintain**" means neXenio's obligations with regard to the Services related to error resolution, bug fixes and the provision of updates and upgrades made generally commercially available by neXenio in its sole discretion.

6.2 Support is provided via e-mail through support@nexenio.com and via the intercom chat on the neXenio website from Monday to Friday 9:00 am to 5:00 pm (CET), excluding public holidays in the State of Berlin, Germany.

6.3 neXenio shall use reasonable efforts consistent with prevailing industry standards to Maintain the Services in a manner which minimizes errors and interruptions in the Services.

6.4 Customer may notify neXenio of any errors via support@nexenio.comand via the intercom chat on the neXenio website. neXenio shall begin correcting any errors within the following reaction times and undertakes to rectify the notified errors within the following restoration times subject to (A) Customer providing a detailed description of the error and its reproducibility, and (B) depending on the priority of the error to be reasonably determined by neXenio in its sole discretion:

Priority	Criteria	Reaction Time	Restoration Time
Urgent	Services interrupted. No User can use the core functions of the Services and no reasonable workaround exists.	12 hours	24 hours
High	Services significantly impaired. One or more Users cannot use certain of the core functions of the Services.	24 hours	48 hours
Medium	Services insignificantly impaired. A non-core function of the Services cannot be used properly. Only one or few Users affected.	48 hours	72 hours

6.5 The reaction time begins with receipt of the error notification by neXenio. The reaction time shall only run from Monday to Friday 9:00 am to 5:00 pm (CET), excluding public holidays in the State of Berlin, Germany, and shall be deemed to have been observed if neXenio initiates measures to rectify the notified error during the reaction time period.

6.6 If neXenio's analysis shows that an error notified by Customer has actually not occurred or is not attributable to the Services, neXenio may charge Customer for the costs demonstrably incurred by neXenio in connection with such analysis.

6.7 The fees for Maintenance and Support are included in the Service Fees.

7. AVAILABILITY OF THE SERVICES

7.1 Subject to Customer's payment of the Service Fees set forth in the applicable Order, neXenio shall make the Services available to Customer in accordance with this Clause 7.

7.2 neXenio shall use reasonable endeavors to ensure, that the Services are available to Customer over the internet, however no less than 99.5% per year (based on twenty-four (24) hours a day and seven (7) days a week) excluding any temporary unavailability for scheduled or for unscheduled Maintenance, either by neXenio or by third-party providers, or unavailability for causes beyond neXenio's reasonable control, including

but not limited to failures of third-party infrastructures. neXenio shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.

7.3 Customer is aware and acknowledges that Customer's access to the internet cannot be guaranteed and that neXenio shall never be liable for deficiencies in Customer's own internet connections or equipment.

8. PROFESSIONAL SERVICES

8.1 Subject to these Terms hereof (including payment of any applicable Service Fees set forth in the Order), neXenio shall provide additional professional services if so described in an Order ("**Professional Services**").

8.2 The Professional Services shall be rendered on a one-time fee or a time and materials basis. If the Professional Services purchased have been consumed, neXenio shall stop the Professional Services until additional Professional Services have been purchased.

8.3 Customer agrees to provide reasonable cooperation and information as necessary to permit neXenio to perform the Professional Services. With respect to neXenio's staff providing Professional Services to Customer no lease of personnel (*Arbeitnehmerüberlassung*) shall take place. Instructions to neXenio's staff must not be given by Customer's staff or representatives but only by neXenio's representatives. Issues arising with neXenio' staff which affect Customer and/or the Professional Services to be provided must be addressed by the relevant Customer's contact person to the relevant neXenio's contact person. neXenio's staff shall not be integrated into the operational organization of Customer. neXenio shall in its sole discretion decide how and where to utilize its resources (including neXenio's staff) and plan its performances under the Services Contract (and the related Order) in accordance with the contents and the agreed limits of the Professional Services.

8.4 When providing Professional Services, neXenio does not owe and shall not be liable for any specific outcome or result vis-à-vis Customer (section 611 German Civil Code).

8.5 Customer shall reimburse neXenio for travel and other expenses (at cost) incurred in connection with the Professional Services (if any).

8.6 Professional Services shall be performed on business days (a business day means Monday through Friday, excluding national holidays, during working hours, in the location where the Professional Services are provided).

8.7 The cooperation of the Parties hereunder, in particular with regard to Professional Services, builds upon mutual trust between neXenio and Customer. Therefore, during the Initial Service Term and any Renewal Service Term, and in each case for a period of twelve (12) months thereafter, without neXenio's prior written approval, Customer shall not solicit for employment or consultancy any of neXenio's employees who participated in the performance of Professional Services.

9. CONFIDENTIALITY | CUSTOMER DATA

9.1 Customer and neXenio understand that they have or may disclose to each other business, technical or financial information relating to their business (the "**Confidential Information**"). Confidential Information of neXenio includes but is not limited to non-public information regarding features, functionality and performance of the Services. Confidential Information of Customer includes non-public data provided by Customer to neXenio to enable the provision of the Services or during the use of the Services ("**Customer Data**").

9.2 Customer and neXenio shall take reasonable precautions to protect each other's Confidential Information, and not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Confidential Information. This shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that Customer or neXenio respectively can document (A) is or becomes generally available to the public; or (B) was in Customer's or neXenio's respective possession or known by them prior to receipt; or (C) was rightfully disclosed to Customer or neXenio respectively without restriction by a third party; or (D) was independently developed without use of any Confidential Information or (E) is required to be disclosed by law.

9.3 Customer shall own all right, title and interest in and to the Customer Data, as well as any data that is based on or derived from the Customer Data. neXenio shall have no liability for any Customer Data.

9.4 Notwithstanding anything to the contrary, neXenio shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning the Customer Data and data derived therefrom), and neXenio shall be free (during and after the term hereof) to (A) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other neXenio offerings; and (B) disclose such data solely in aggregate or other de-identified form in connection with its business.

10. PROPRIETARY RIGHTS | TRADE NAMES AND LOGOS | FEEDBACK

10.1 neXenio and its suppliers own and shall retain all proprietary rights, including all copyright, database rights, patent, trade secret, trademark and all other intellectual property rights and technical solutions, in and to the Services. Customer acknowledges that the rights granted under the Services Contract do not provide Customer with title to or ownership of the Services.

10.2 neXenio reserves the right to implement new versions and upgrades of the Services including, but not limited to, changes that effect modifications to the design, operational method, technical specifications, systems, and other functions, etc. of the Services, at any time without prior notice.

10.3 Customer agrees that neXenio may refer to Customer by its trade names and logos, and may briefly describe the Customer's business, in neXenio's marketing materials and website.

10.4 Customer may from time to time provide neXenio with suggestions for new features or functionalities of the Services. neXenio shall be free to determine whether or not to implement any such features or functionalities. Customer grants to neXenio, without charge, the fully paid-up, perpetual, sublicensable right to exploit such feedback for any purpose.

11. DATA PROTECTION

Customer and neXenio shall at all times comply with the requirements of any applicable privacy and data protection legislation. In particular, where reasonably required by Customer, neXenio shall enter into a written data processing agreement with Customer.

12. PAYMENT OF FEES

12.1 Customer shall pay neXenio the fees described in the Order for the Services and Professional Services in accordance with the terms therein (the "**Service Fees**").

12.2 If Customer's use of the Services exceeds the capacity set forth in the Order (the "**Service Capacity**") or otherwise requires the payment of additional fees per the terms of the Services Contract, Customer shall be billed for such usage and Customer agrees to pay the additional fees in the manner provided herein.

12.3 neXenio reserves the right to change the Service Fees for the following Renewal Service Term upon at least sixty (60) days prior to the end of the Initial Service Term or the end of the then current Renewal Service Term.

12.4 Unless otherwise specified, neXenio requires Customer to make all payments via credit card. neXenio shall provide a secure link to Customer where they can upload credit card information that shall be processed at time of billing. neXenio may offer Customer to make payments via bank wire using the payment details provided by neXenio. neXenio may also choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by neXenio fourteen (14) days after the mailing date of the invoice.

12.5 Following notice in textform under section 126b German Civil Code (simple email sufficient), neXenio shall be entitled to suspend Customer's access to the Services if payments are not received within fourteen thirty (14) days of the due date.

12.6 Where a monthly billing model is agreed upon, Customer's subscription shall automatically update at the beginning of every billing cycle to reflect the current number of Licenses present in Customer's neXenio account. Where a multiple-month billing model is agreed upon, once a month neXenio will calculate how many Licenses are present in Customer's account.

12.7 In the event Customer's neXenio account contains more Licenses than Customer had initially ordered for the then-current Initial Service Term or Renewal Service Term, Customer shall be charged for these Licenses for the remainder of the then-current term. In the event Customer removes Licenses which have been added to Customer's neXenio account after an initial order of fewer Licenses and Customer has already been charged for these removed Licenses, neXenio shall issue a corresponding credit which can be applied to the following Renewal Service Term.

12.8 In the event the amount of Licenses in Customer's neXenio account falls below the amount initially ordered for the then-current Initial Service Term or Renewal Service Term, Customer shall remain obliged to pay the full amount of the corresponding Service Fees for the Licenses initially ordered for the then-current term.

12.9 All Service Fees are exclusive of, and Customer shall pay, all taxes, duties, and assessments, however designated, which are levied or imposed upon such Service Fees, excluding only taxes based on neXenio net income.

13. TERM | TERMINATION

13.1 Subject to earlier termination as provided below, the Services Contract begins on the date specified in the Order ("**Effective Date**") and shall remain in effect for an initial term as specified in the Order ("**Initial Service Term**"). The Initial Service Term shall automatically and continuously renew for additional periods, each of which correspond with the Initial Service Term ("**Renewal Service Term**"), unless either party requests termination at least thirty (30) days prior to the end of then-current term.

13.2 Neither Customer nor neXenio shall be entitled to terminate the Services Contract for convenience with effect prior to the end of the Initial Service Term or any Renewal Service Term (*Ausschluss der ordentlichen Kündigung*). Customer's and neXenio's right to immediately terminate the Services Contract for good cause (*außerordentliche Kündigung aus wichtigem Grund*) shall remain unaffected. Such good cause shall in particular exist, (A) if a party commits a material breach of the Services Contract, and such breach has not been cured within thirty (30) days after receipt of written notice thereof; (B) Customer is in default of payment by more than forty-five (45) days; (C) Customer breaching the use restrictions under Clause 3; or (D) Customer ceases its due payments or suffers a significant deterioration in its asset situation.

13.3 After termination of the Services Contract or lapse of its Initial or Renewal Service Term and upon Customer's request, neXenio shall provide Customer with access to Customer's content (if any) in the possession of neXenio for a period of thirty (30) days, in then-current standard export format or another industry-standard format mutually agreed by Customer and neXenio, after which such Content will be deleted.

14. LIMITED WARRANTY

14.1 Customer has checked that the specification of the Services as described in the Documentation meets his needs and wishes. Customer is aware of the essential functionalities and features of the Services. The extent, nature and quality of the goods and services to be delivered by neXenio are determined by these Terms, the Order, and the Documentation. Any other information or requirements do only form part of the Services Contract if Customer and neXenio so agree in writing or if neXenio so confirms in writing. Product descriptions, illustrations, test programs, etc. represent mere service specifications but do not constitute guarantees (*Garantien*) or agreements on certain specifications (*Beschaffenheitsvereinbarungen*). In order to be valid, an agreement on a guarantee requires the written confirmation from a director of neXenio.

14.2 neXenio warrants (*gewährleistet*) that the Services will, in all material respects, conform to the functionality described in then-current Documentation for the applicable Services version. In case of a breach of this warranty neXenio shall be required to use commercially reasonable efforts to modify the Services to conform in all material respects to the Documentation, and if neXenio is unable to materially restore such functionality within thirty (30) days from the date of written notice of said breach, Customer shall be entitled to terminate the Services Contract upon written notice and receive a pro-rata refund of the unused Services Fees which have been paid in advance (if any) for unused access to the Services. Customer must notify neXenio in writing of any warranty breaches and Customer must have installed and configured the Services in accordance with the Documentation to be eligible for the foregoing remedy. neXenio is not liable for the existence of initial errors (*anfängliche Mängel*) under section 536a German Civil Code. Customer's claims for damages for a breach of this warranty are subject to the limitations set forth in Clause 16.

14.3 Under no circumstances shall Customer be entitled to obtain the source code of the Services.

15. INDEMNITY

15.1 Without prejudice to any other liability of Customer under contract or statutory law, Customer shall defend, indemnify and hold harmless, at its expense, neXenio and its Affiliates, its suppliers and resellers against any third party claim to the extent such claim arises from or is made in connection with Customer's breach of Clause 3 or otherwise from Customer's use of Services, and Customer shall pay all costs and damages finally awarded against neXenio by a court of competent jurisdiction as a result of any such claim.

15.2 In connection with any claim for indemnity under this Clause 15, neXenio must promptly provide Customer with notice of any claim that neXenio believes is within the scope of the obligation to indemnify, provided, however, that the failure to provide such notice shall not relieve Customer of its obligations under this Clause 15, except to the extent that such failure materially prejudices Customer's defense of such claim. neXenio may, at its own expense, assist in the defense if it so chooses, but Customer shall control the defense and all negotiations related to the settlement of any such claim. Any such settlement intended to bind neXenio shall not be final without neXenio's written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

15.3 neXenio agrees at its expense to defend Customer against (or, at neXenio's option, settle) any third-party claim to the extent such claim alleges that the Services infringe or misappropriate any patent, copyright, trademark or trade secret of a third party, and neXenio shall pay all costs and damages finally awarded against Customer by a court of competent jurisdiction as a result of any such claim. In the event that the use of the Services is, or in neXenio's sole opinion is likely to become, subject to such a claim, neXenio, at its option and expense, may (A) replace the applicable Services with functionally equivalent non-infringing technology; (B) obtain a license for Customer's continued use of the applicable Service; or (C) terminate the license and provide a pro-rata refund of the Service Fees that have been paid in advance for the applicable Services (beginning on the date of termination). The foregoing indemnity obligation of neXenio shall not apply: (i) if the Services are modified by Customer or its agent; (ii) if the Services are combined with other non-neXenio products, applications, or processes, but solely to the extent the alleged infringement is caused by such combination; or (iii) to any unauthorized use of the Services. The foregoing shall be Customer's sole remedy with respect to any claim of infringement of third party intellectual property rights.

16. LIMITATION OF LIABILITY

16.1 neXenio shall be unrestrictedly liable for (A) injury to life, body or health caused by neXenio, its legal representatives (*gesetzliche Vertreter*) or assistants in performance (*Erfüllungsgehilfen*); (B) damage caused intentionally (*vorsätzlich*) or with gross negligence (*grob fahrlässig*) by neXenio, its legal representatives or executive staff; (C) damage caused intentionally by neXenio's assistants in performance not mentioned in (B); (D) damage resulting from the absence of any guaranteed (*garantiert*) characteristics; and (E) claims under the German Product Liability Act (*Produkthaftungsgesetz*).

16.2 neXenio shall be liable for damage resulting from the breach of its primary obligations (*Kardinalpflichten*) hereunder by neXenio, its legal representatives, senior executives or assistants in performance. Primary obligations are such basic duties which form the essence of the Services Contract, which were decisive for the conclusion of the Services Contract and on the performance of which Customer may rely. If the breach of such primary obligation was caused (A) through simple negligence by neXenio, its legal representatives or executive staff; or (B) through simple or gross negligence by neXenio's assistants in performance not mentioned in (A), then neXenio's ensuing liability shall be limited to the amount which was foreseeable by neXenio at the time the respective Service was performed.

16.3 Subject always to Clauses 16.1 and 16.2, neXenio shall not be liable for damage resulting from the breach of non-primary obligations through (A) simple negligence of neXenio, its legal representatives or executive staff; or (B) simple or gross negligence of neXenio's assistants in performance not mentioned in (A).

16.4 neXenio shall not be liable for any loss, damage or harm suffered by Customer that is directly or indirectly caused by Customer's unauthorized use of the Services to process Prohibited Data.

16.5 neXenio shall be liable for loss of data only up to the amount of typical recovery costs which would have arisen had proper and regular data backup measures been taken.

16.6 Subject always to Clause 16.1, the total liability of neXenio arising out of or in connection with the Services Contract, whether in contract or tort or otherwise shall in no circumstances exceed a sum equal to 150 % of the total Service Fees paid (plus Service Fees payable) by Customer in the twelve (12) months immediately preceding the event which gave rise to the liability.

16.7 Any other liability of neXenio not covered by this Clause 16 is excluded on the merits.

17. SECURITY

17.1 Customer shall ensure that User identities, passwords, and equivalent obtained by Customer in conjunction with registration for the Services are stored and used in a secure manner and cannot be accessed and thereby used by third parties. Customer shall be liable for any unauthorized use of the Services.

17.2 Where it is suspected that any unauthorized person has become aware of a User identity and/or password, Customer shall immediately inform neXenio thereof and also change such User identity and/or password.

17.3 Customer shall be liable for losses or damage incurred by neXenio where Customer intentionally or negligently reveals a user identity/password to a third party or where a user identity and password otherwise become known to an unauthorized party, unless Customer notifies neXenio immediately upon suspicion that such has occurred.

17.4 neXenio shall adopt reasonable measures to ensure that the security of the Services meet relevant industry standards. neXenio's security measures are set forth in the neXenio Security Policy, which is available upon request.

18. NO SET-OFF | LIMITATION OF RIGHT OF RETENTION

Customer may only invoke a right to set-off and assert a right of retention to the extent that its claims have been (A) finally established by a court of law; (B) are uncontested; or (C) have been acknowledged by neXenio.

19. ASSIGNMENT | NOVATION

19.1 Customer may not assign (*übertragen*) the Services Contract without the prior written approval of neXenio and any purported assignment in breach of this Clause 18 shall be void. neXenio may at its discretion assign, transfer, subcontract or novate the Services Contract and/or any associated rights to assign the Services Contract in whole or in part.

19.2 Customer shall, at neXenio's request, promptly, and in any event within fifteen (15) days, enter into a novation agreement in such form as neXenio shall reasonably specify in order to enable neXenio to exercise its rights pursuant to this Clause 18.

20. SEVERANCE

Should any provision of the Services Contract including the Order and these Terms be or become ineffective or invalid in whole or in part, the effectiveness and validity of the other provisions shall not be affected. Such ineffective or invalid provision shall be replaced by a provision which comes as close as legally possible to what the Parties would have agreed, pursuant to the meaning and purpose of the original provision and of the Services Contract if they had recognized the ineffectiveness or invalidity of the original provision. If the ineffectiveness or invalidity of a provision is based on the determination of a certain level of performance or a certain time (deadline or fixed date), such ineffective or invalid level or time shall be replaced by the level or time which comes as close as legally possible to the original level or time. The foregoing shall also apply to any possible omission in the Services Contract including the Order and these Terms that was not intended by the Parties. It is the express intention of the Parties that this savings clause does not just have the effect of shifting the burden of proof but that section 139 German Civil Code is entirely dispensed with.

21. ENTIRE AGREEMENT | CHANGES

21.1 The Services Contract including the Order and these Terms represent the entire agreement between Customer and neXenio in respect of its subject matter and supersede and extinguish all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

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21.2 Valid amendments or supplements to these Terms must be made in writing. The same shall apply to any agreement to deviate from or cancel this requirement of written form.

21.3 neXenio may amend and/or update these Terms with future effect from time to time and as necessary for technical, economic or legal reasons. Any revision of these Terms shall be announced to Customer in text form (simple email shall suffice) no later than six (6) weeks before their proposed effective date. Customer may either approve or object to the revision before their proposed effective date. The revision shall be deemed approved by Customer, unless Customer objects to the revision before their proposed effective date. neXenio shall expressly inform Customer thereof in the respective announcement.

22. GOVERNING LAW | JURISDICTION

22.1 The Services Contract and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of the Federal Republic of Germany. The United Nations Convention on Services Contracts for the International Sale of Goods (CISG) shall not apply.

22.2 The parties agree that the courts of Berlin (Germany) shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with the Services Contract or its subject matter or formation.

23. MISCELLANEOUS

23.1 The person signing or otherwise accepting the Order and these Terms for Customer represents that it is duly authorized by all necessary and appropriate corporate action to enter the Services Contract on behalf of Customer.

23.2 neXenio shall be entitled to retain subcontractors, including third party software suppliers, for the performance of any of its obligations in accordance with the Services Contract.

23.3 Customer shall only be entitled to offset with claims vis-à-vis neXenio's claims or exercise a right of retention if the claims or the right of retention of Customer have been determined with legal effect or are not disputed by neXenio.

23.4 Customer shall not assign (*abtreten*) any of its rights or obligations under any Order and these Terms without the prior written consent of neXenio.

23.5 No agency, partnership, joint venture, or employment is created as a result of the Services Contract and Customer does not have any authority of any kind to bind neXenio in any respect whatsoever.

neXenio GmbH
District Court of Berlin Charlottenburg, Germany HRB 172016
October 2019