General terms and conditions (software development)

1. Validity of the conditions

These General Terms and Conditions shall apply to all present and future contracts between ClassiX Software GmbH or classix software-engineering UG (haftungsbeschränkt) (hereinafter referred to as "ClassiX ") and the customer, unless a separate contractual document contains provisions to the contrary between the parties. ClassiX shall not recognise any deviating, conflicting or supplementary General Terms and Conditions of the customer, unless ClassiX has expressly agreed to their validity in writing. These General Terms and Conditions shall only apply to companies as defined in § 14 of the German Civil Code (BGB).

2. Conclusion of contract

A contract shall only come into existence when both parties sign a written contract or when the customer signs an order confirmation transmitted by ClassiX.

3. Subject matter of the contract

a. Insofar as ClassiX provides the customer with services in the field of software development and/or adaptation, the subject of the contract shall be the software development and/or adaptation including electronic user instructions (hereinafter jointly referred to as "contractual software"), as stated in the order confirmation and to be carried out by ClassiX in cooperation with the customer.

b. If ClassiX standard software products are used to fulfil the order, the customer shall acquire the number of standard software licenses specified in the order confirmation at the prices stated therein. Content, design and restrictions of the right of use granted with the respective licence are set out in the ClassiX standard licence conditions, which are handed over with the order confirmation.

c. Without express written agreement, ClassiX shall not be obliged to make available the source code on which the executable program is based, including the associated development documentation.

4. Software development

a. ClassiX analyzes, evaluates and documents the customer's needs and, within the framework of an *activity and time schedule,* drafts a detailed plan for the creation of the contractual software in cooperation with the customer. Depending on the scope, the creation of the contractual software can be carried out in separate work phases, so-called "*sprints*".

b. The Contract Software shall be completed and handed over to the Customer by the completion date finally agreed between the parties within the framework of a written schedule.

c. The customer shall continuously advise and support ClassiX with regard to the determination of the information essential for the target state of the contract software. If the customer does not, not in time or not completely fulfil his obligations to cooperate despite being requested to do so by ClassiX, the execution deadlines affected by the delay and agreed in the *activities and schedule shall be* postponed accordingly, if and to the extent that they cannot be met due to the delay.

d. If ClassiX recognizes during the planning phase that the intended software configuration must be modified with regard to the facts, requirements and program properties that have been worked out in the meantime, it shall immediately inform the customer of this and submit alternative proposals. The same duty of notification shall apply if the customer realises that ClassiX's specifications or requirements are faulty, incomplete, ambiguous or objectively unsuitable for execution. The customer shall decide without delay on any changes that may be made to the development and content of the contractual software to be created on the basis of such information.

e. At the express written request of the customer, the parties to the contract shall jointly draw up a performance specification with regard to the programming services requested by the customer within the scope of the respective individual order. Such a specification shall contain all information necessary for ClassiX, including a schedule for the performance of the services. It shall be signed by the contracting parties with a legally binding signature and date.

5. Rights of use

a. Unless otherwise expressly agreed in writing between the parties, the customer shall be granted the simple, non-exclusive and non-transferable right to use the contractual software created and/or adapted by ClassiX for his own operations. This right shall not include the right to edit the software.

b. The customer will not remove copyright notices on data carriers and documents.

c. Insofar as ClassiX supplies the customer with contractual software from another manufacturer or open source software (hereinafter jointly referred to as "Third Party Components"), the respective licence conditions for the Third Party Components (hereinafter referred to as "Third Party Licence Conditions"), which are enclosed with the object of supply or can be downloaded from the ClassiX website, shall apply additionally to the Third Party Components. The Third Party Licence Terms may change. In case of contradictions between the provisions of this clause 5. and the provisions of the Third Party Licence Conditions, the provisions of the Third Party Licence Conditions shall prevail - exclusively with regard to the Third Party Components.

6. Amendments to the contract

a. The customer shall be entitled to agree with ClassiX on reasonable changes to the order that deviate from the feature list until acceptance. ClassiX reserves the right to adjust the remuneration agreed for the respective software project in case of agreed changes to the scope of services. The agreed deadlines shall be extended in favour of ClassiX if the agreed change causes delays which cannot be otherwise intercepted.

b. The changes to be made and the associated adjustments to deadlines shall be recorded in an amendment protocol, which shall become part of the contract.

7. Obligation of the customer to cooperate

a. The customer is obligated, within the scope of what is reasonable, to provide appropriate cooperation in the creation and/or adaptation of the software. The obligation to cooperate includes in particular the provision of the necessary information of an information technology (IT) and project-organisational nature (including hardware and operating systems, standard software used, organisational plans) and, if applicable, the hardware on which the software is to be used later.

b. At ClassiX's request, the customer shall allow ClassiX access to the software via telecommunication. The customer shall establish the necessary connections after consultation with ClassiX.

c. The customer shall name a competent employee to ClassiX, who can provide the information required for the execution of the contract and can make or arrange for decisions to be made.

d. The customer shall inform ClassiX of any malfunctions immediately after they become known, in a comprehensible and detailed manner. Reporting of errors is only possible by the person responsible for the system, his deputy and the key users.

e. The customer is obliged to observe the user documentation in its entirety.

f. The customer shall support ClassiX in error investigation and error correction (maintenance of the software according to Section 18**.**) within the scope of what is reasonable. This includes in particular to submit written defect reports to ClassiX on request and to provide other data and protocols suitable for analysing an error.

g. The customer shall allow ClassiX's maintenance personnel - insofar as this is necessary to provide the maintenance service (in accordance with Section 18.) - access to the data processing units on which the contractual software is installed. He shall also keep the technical equipment necessary for the performance of the maintenance work, such as power supply, telephone connection and data transmission lines, ready for operation and shall make these available to a reasonable extent free of charge.

h. If the customer does not provide the cooperation services offered or does not cooperate to the required extent, he shall bear ClassiX's additional expenses in accordance with the rates of remuneration set out in ClassiX's current price list. In this case ClassiX shall also be entitled to suspend services and deliveries until the cooperation services have been provided. If the customer fails to provide the required cooperation services within a reasonable period set by ClassiX, or fails to provide them to the required extent, ClassiX shall be entitled to terminate the contract by extraordinary notice. Further rights shall remain unaffected

8. Acceptance

If the parties expressly agree in writing to an acceptance, the following applies:

a. If the contractual software to be supplied by ClassiX has the contractual quality, acceptance shall be carried out by the customer. The declaration of acceptance must be in writing (acceptance protocol). The acceptance protocol shall be drawn up by ClassiX after successful completion of the acceptance test and countersigned by the customer.

b. Individual services of ClassiX may be subject to partial acceptance (in case of the provision of the service in service phases, "Sprints", 4a.). If the customer has declared an unconditional partial acceptance for a corresponding service, the customer may not base a refusal of the overall acceptance on defects in the correspondingly accepted partial service which were already recognisable to the customer at the time of the partial acceptance and were not objected to.

c. ClassiX shall notify the customer of the readiness for acceptance of the respective service or partial service and make it available to the customer in a test environment for acceptance and for the performance of the acceptance test. The customer and ClassiX shall carry

out an acceptance test without delay, but at the latest within a period of 14 days from receipt of the notification.

d. Any defects detected in the service or partial service to be accepted are to be differentiated according to the following defect classes:
Failure class 1: The failure leads to the fact that the system as a whole or the part of the system to be accepted cannot be used.
Failure class 2: The failure causes considerable restrictions in the use of important functions, which cannot be circumvented for a reasonable period of time by means of suitable measures.
Defect class 3: All other defects.

e. The customer is entitled to refuse acceptance only because of defects in defect classes 1 and 2.
Defects of defect class 3 do not prevent the performance from being accepted, but must be remedied under the warranty. They will be recorded as defects in the written acceptance declaration.

f. If acceptance fails, ClassiX shall immediately remedy the defects hindering acceptance and make the services available again for acceptance.

g. If the customer does not declare acceptance without delay, ClassiX may set him in writing a period of one week to make this declaration. Acceptance shall be deemed to have taken place if the customer does not specify the reasons for refusing acceptance in writing within this period.

h. As long as ClassiX has not received the customer's written confirmation of acceptance, the customer is not entitled to use the software.

i. If the customer nevertheless uses the software in productive use before the confirmation of acceptance is issued, this shall be deemed to be acceptance.

9. Remuneration

a. In order to fully compensate ClassiX for the services to be rendered in the work phases, ClassiX shall receive remuneration for its work according to the hourly rates graded according to the qualifications of the employees employed and specified in the activity and deadline schedule.

b. All invoices are due for payment without deductions on the date agreed in the respective contract or in the respective order confirmation. All prices quoted are net prices and do not include the statutory value added tax. In the event that no term of payment has been agreed, the invoices are due for payment without any deductions immediately upon receipt of the invoice.

c. The amount of remuneration for ClassiX's maintenance services shall be based on the current ClassiX price list, which shall be notified to the customer with the confirmation of order (section 2.).

10. Partial delivery, force majeure

a. ClassiX shall be entitled, to a reasonable extent for the customer, to make partial deliveries, which shall be deemed partial performance.

b. In the event of force majeure or other exceptional circumstances unforeseeable by ClassiX, beyond its control and not its fault, which prevent ClassiX from delivering the goods on the agreed date or within the agreed period, the delivery date shall be postponed or the delivery period shall be extended by the duration of the disruption of services caused by these circumstances.

11. Warranty for defects

a. A defect to be remedied under a contract concluded with ClassiX shall be deemed to exist if the contractual software does not have the functionality described in the documentation. "Documentation" means the information available for the licensed ClassiX software at www.appswarehouse.de (user documentation) and www.instantview.org (technical documentation) at the time of purchase.

b. In the event of a defect for which ClassiX is responsible, ClassiX shall be entitled at its own discretion to provide subsequent performance by remedying the defect or by supplying defect-free software as a replacement.

c. Material defects reported to ClassiX by the customer during the term of this contract shall be remedied by ClassiX within the scope of error correction as per clause 18.

d. If the software delivered by ClassiX is from another manufacturer than ClassiX, ClassiX is only obliged to deliver patches and bug fixes of the manufacturer. Such patches or bug fixes can only be delivered by ClassiX if they are provided by the other manufacturer.

e. Upon request, the customer shall support ClassiX to the best of his ability in determining and eliminating the respective defect.

f. If the supplementary performance fails, in particular because the defect is not remedied despite several attempts to remedy it, the customer shall be entitled to choose to either reverse the affected service or reduce the price of this service. In the case of only minor defects, however, the customer shall not be entitled to withdraw from the contract.

g. The limitation period is one year from receipt of the contract software.

h. The warranty does not extend to such defects in the contract software that are caused by the customer changing the software or having it changed by third parties.

12. Liability

a. ClassiX shall not be liable for slightly negligent breach of minor contractual obligations. In the case of a slightly negligent breach of an essential contractual obligation, ClassiX's liability shall be limited to foreseeable damage typical for the type of goods or services concerned. Essential contractual obligations shall be understood to mean those obligations whose fulfilment is essential for the proper execution of the contract and on whose compliance the contracting party may regularly rely.

b. The limitations of liability do not affect claims of the customer arising from product liability. Furthermore, the limitations of liability shall not apply to physical injury and damage to health attributable to ClassiX, or in the event of loss of life, or in the event that damage is due to the absence of a guaranteed quality or other non-fulfilment of a guarantee.

c. The aforementioned limitations of liability shall apply to all claims for damages irrespective of their legal basis, in particular also to liability due to pre-contractual, collateral and non-contractual claims.

d. The liability for loss of data is limited to the typical restoration effort that would have been required if backup copies had been made regularly and in accordance with the risk.

e. ClassiX shall not be liable for damages caused by the fact that the customer or third parties carry out processing or changes to the AppsWarehouse modules. This shall not apply if the customer can prove that the damage was not caused by the editing or modification carried out by him.

f. Insofar as ClassiX's liability is excluded or limited, this shall also apply to its employees, workers and other vicarious agents.

13. Exemption

The customer shall grant ClassiX the necessary copyright rights of use for all computer programs and databases which he provides to ClassiX for the purpose of realising the programming commissioned by him, including the simple right to edit and redesign. The customer shall indemnify ClassiX against all claims asserted by third parties due to the processing or redesign of the computer programs and databases mentioned in this clause 13.

14. Retention of title

ClassiX shall retain title to the delivered goods until full payment of all claims arising from the contract and existing at the time of delivery. The customer is obliged to store the goods owned by ClassiX with commercial care and to insure them adequately.

15. Secrecy, data protection

a. ClassiX and the customer undertake to keep all information about the contractual partner obtained in the course of the cooperation strictly confidential for an unlimited period. This applies not only to the operational organisational procedures but especially to all information that is designated as confidential or is clearly recognisable as business and trade secrets.

b. Excluded from the obligation of secrecy is information which is already in the possession of the other party to the contract at the time when it is made available by one party to the contract, is in the public domain or has been lawfully acquired by third parties. The Contracting Party invoking such an exception shall bear the burden of proof for the existence of this exception.

c. ClassiX and the customer undertake to comply with the statutory provisions on data protection, in particular the Telemedia Act and the Federal Data Protection Act.

16. Set-off, right of retention

a. The customer is only entitled to offsetting if the counterclaims have been legally established or are undisputed.

b. The customer may only assert a right of retention on the basis of undisputed or legally established claims based on the same contractual relationship.

17. Performance by third parties

ClassiX shall be entitled to employ sufficiently qualified third parties to fulfil its tasks and obligations.

18. Maintenance of the contract software

If the parties kagree on a care or maintenance of the contractual software (conclusion of contract number 2.), the care of the transferred contractual software is based on the following provision (unless a separate written care agreement has been concluded with the customer).

a. ClassiX shall remedy defects notified to it by the customer within a reasonable period of time at ClassiX's place of business within its general service hours (Monday to Friday from 8:00 to 17:00). Public holidays in Hamburg and the Federal Republic of Germany are excluded from the general service hours.

b. For assistance by telephone, the "Hotline" is available under the telephone number 040-5305429-50, for reports by e-mail, the address support@classix.de is available during the service hours mentioned.

c. A defect to be remedied within the scope of this contract shall be deemed to exist if the contract software does not have the functionality described in the documentation. "Documentation" means the information available for the licensed ClassiX software at www.instantview.org at the time of purchase. A defect shall (in particular) not exist if
- a disruption was caused by improper handling of the contract software by the customer;
- the cause of a malfunction is not in the contractual software, but is caused by other causes that are not within the sphere of ClassiX (e.g. system crash or similar).

d. The contracting parties shall notify each other by mutual agreement of any defects that occur by analogy with regulation 8.d. 8.d. [Acceptance] as operation-preventing (category A), operation-impeding (category B) or other defects (category C). If the contracting parties do not reach an immediate agreement, ClassiX shall decide on the classification at its reasonable discretion. The agreed reaction time shall be one hour for defects preventing operation, 6 hours for defects preventing operation and 24 hours for other defects. Within the reaction time, ClassiX shall initiate fault analysis and correction.
The aforementioned times run from receipt of the error message according to clause 8d.

e. ClassiX shall carry out the defect removal remotely (i.e. by remote maintenance). On-site rectification of defects is not owed within the scope of the flat-rate remuneration pursuant to clause 9; the customer may, however, demand on-site rectification of defects against separate remuneration.

f. The manner of remedy of defects shall be at the reasonable discretion of ClassiX. Elimination of defects shall also be deemed to be if ClassiX shows the customer reasonable possibilities to avoid the effects of the defect.

g. If ClassiX offers the customer new program parts to avoid or eliminate defects, the customer shall take over these and install them on his hardware according to ClassiX's installation instructions. New program parts" shall mean in particular patches (i.e. the delivery of software to correct errors in the contractual software, which may also contain minor functional extensions) and updates in accordance with Section 20.

h. Furthermore, the elimination of a defect can also take the form of instructions to the customer. The customer must follow such instructions.

i. If it turns out that a defect reported by the customer in terms of c. does not actually exist or cannot be attributed to the contractual software, ClassiX shall be entitled to charge separately for the time and effort involved in the analysis and other processing according to the rates shown in the current ClassiX price list.

j. The prerequisite for ClassiX's obligation to provide services for software maintenance within the scope of a lump sum payment is that the customer has
- at the place specified by the Contracting Parties
- in the specified software and hardware environment.
- If the specifications assumed by the contracting parties are changed, these changes are to be notified to ClassiX in writing. If the change in specifications results in additional work for ClassiX, this shall be charged separately according to the rates of remuneration shown in the current ClassiX price list.

k. The care owed by ClassiX according to section 18. does not include in particular the following services:
- Services of ClassiX on site at the customer;
- Services performed at the customer's request outside the general service hours of ClassiX as mentioned in clause 18a;
- Services on the contract software that become necessary due to improper handling and/or breaches of obligations on the part of the customer, for example, failure to observe the operating instructions contained in the user documentation;
- Services to the contractual software that become necessary due to force majeure or other circumstances beyond the control of ClassiX;
- Services for the contractual software, which are necessary in connection with the installation of an update and versions provided to the customer, instruction and training with regard to these program versions;
- Adaptation of the Contract Software to modified and/or new installations, devices or operating systems of the Customer;
- the following services related to the data to be maintained by the customer: Data cleansing, data cleanup, data restoration;
- Adjustments to the contractual software which go beyond the adjustments supplied by ClassiX in accordance with Section 20

within the scope of the updates and which result, for example, from changed or new usage requirements of the customer.
- Services which are not part of the scope of services of ClassiX described in section 2.

l. Additional services not covered by the software maintenance according to Item 2. shall be performed by ClassiX at the customer's request only against separate remuneration and after completion of a corresponding written order. Invoicing by ClassiX shall be based on the rates of remuneration shown in ClassiX's current price list.

19. Termination of contract

a. The contract concluded between ClassiX and the customer with regard to software development and/or adaptation (Section 3.a.) shall end with the fulfilment of the contractual obligations.

b. The care contract begins on the date stated in the order confirmation (point 2.).

c. The maintenance contract has a term of 12 months. It shall be extended by 12 months in each case if it is not terminated in writing by one of the contracting parties with a notice period of 3 months to the end of each contractual year.

d. The possibility of terminating the contracts without notice for good cause remains unaffected.

e. Any termination must be in writing to be effective.

20. Delivery of program updates

a. ClassiX shall provide the customer with the latest program version (update) of the contractual software. Updates shall be installed by ClassiX on the customer's server via remote maintenance or made available electronically. An "update" shall be understood to mean the bundling of several corrections of defects and/or malfunctions as well as minor functional improvements and/or adjustments of the contractual software in a single delivery. At the customer's request, updates can also be installed on site at the customer's premises for a separate fee in accordance with the rates of remuneration shown in ClassiX's current price list.

b. The delivery of "upgrades", i.e. new versions of the contract software according to section 2, is excluded from the scope of delivery. New versions of the contract software must be purchased by the customer with a separate contract and paid for separately.

21. Conciliation clause

In the event of a dispute arising from the cooperation, ClassiX and the customer undertake to conduct arbitration in accordance with the arbitration rules of the Hamburg Arbitration Board for IT disputes in the version valid at the time of initiation of arbitration proceedings prior to the conduct of any contentious proceedings (lawsuit). The arbitration procedure is intended to settle the dispute in whole or in part, provisionally or finally.

22. Other provisions

a. Place of performance is the place of business of ClassiX.

b. The law of the Federal Republic of Germany shall apply to these terms and conditions and the contract to the exclusion of the UN Sales Convention.

c. In relation to merchants, legal entities under public law and special funds under public law, Hamburg is agreed as the exclusive place of jurisdiction.