

# General Terms and Conditions (GTC) of AGILITA AG for Services

## 1. General provisions

### 1.1 Scope of application

These General Terms and Conditions («GTC») shall apply to all contractual relationships (collectively, «Service Agreements» and individually, «Service Agreement») in which AGILITA AG («AGILITA») provides services to third parties (particularly legal entities under private law, legal entities under public law or special funds under public law; «Clients») that do not relate to the provision and maintenance of standard software and/or the provision of access to Cloud Services («Services»).

Services include but are not limited to the implementation, installation, parameterization, configuration, adaptation and development of software («Software to be Implemented») as well as the instruction, introduction and training of the Software to be Implemented.

Upon conclusion of a Service Agreement, these GTC shall form an integral part thereof, to the exclusion of any other provisions not expressly set forth in writing. Oral agreements are not valid.

In the event of any discrepancies between the Service Agreement and these GTC, the provisions of the Service Agreement shall prevail.

### 1.2 Distinction

For performances other than Services provided by AGILITA, such as e.g. the provision and maintenance of standard software developed by AGILITA and/or the provision of access to cloud services, the provisions of the corresponding Software Licence Agreement and/or AGILITA's other terms and conditions shall apply.

If Services are provided in connection with the provision and maintenance of standard software and/or the provision of access to cloud services, these GTC shall apply to the corresponding Services.

### 1.3 The client's general terms and conditions

Any general terms and conditions of the Client that deviate from and/or supplement these GTC (including but not limited to terms and conditions of purchase) are expressly objected to and shall not apply.

Deviating and/or supplementary general terms and conditions of the Client shall not become an integral part of the contract even if AGILITA executes an order of the Client without objecting to the general terms and conditions of the Client referred to in the order. By placing its order, the Client confirms that it accepts these GTC as the only valid ones.

### 1.4 Basis of the service agreement

Service Agreements shall be concluded upon receipt of the confirmation from AGILITA that it will perform the Services («Order Confirmation») or upon the signing of a corresponding contractual document by all contractual parties. The Client's declaration of acceptance of an offer from AGILITA shall only result in the conclusion of a Service Agreement if the offer specifies an acceptance period and AGILITA receives the Client's declaration of acceptance within this acceptance period. Offers from AGILITA that do not specify an acceptance period are nonbinding.

### 1.5 Orders of the client

If, in addition to the Service Agreement (Order Confirmation or contract document), the Client needs to generate its own separate order for its internal processing, it shall formulate the text of the order in such a way that it complies with these GTC and the provisions of the respective Service Agreement.

If the Client sends its own order to AGILITA after the conclusion of the Service Agreement, any deviating terms in such order shall only become an integral part of the Service Agreement if AGILITA expressly confirms them in writing.

## 2. Obligations and services of AGILITA

The obligations and Services of AGILITA as well as the scope and requirements for the Services are fully and conclusively governed and specified in the Service Agreement.

## 3. Provision of services

### 3.1 Project managers and consultants

AGILITA will decide which project managers and which consultants to deploy for the fulfilment and execution of the respective Service Agreement («Project») and reserves the right to replace any project manager and any consultant at any time. The Client's consent is not required for this purpose.

### 3.2 Calling in third parties

AGILITA shall be entitled to have all or part of the Services agreed in the respective Service Agreement performed by a third party. The Client's consent is not required for this purpose.

### 3.3 Place for provision of the services

The Services can be provided at AGILITA's discretion either in the business offices of AGILITA, at the Client's place of business or remotely. Even where Services are provided at the Client's premises, the Client shall not be authorized to issue any instructions to the consultants appointed by AGILITA. The appointed consultants do not become integrated into the Client's business operations. The Client can issue instructions in compliance with the relevant contractual and statutory provisions exclusively to the project manager appointed by AGILITA, but not directly to individual AGILITA consultants.

### 3.4 Minutes

AGILITA may document any discussions detailing and/or amending contractual provisions, especially the subject matter of the Service Agreement. The Client must check the minutes of the discussions as soon as possible and inform AGILITA of any necessary amendments or additions in writing. In the absence of such written notification, the content of the relevant protocols shall be deemed accepted by the Client.

### 3.5 Items provided under a precontractual arrangement

All works and goods provided by AGILITA to the Client before the conclusion of a Service Agreement (e.g. proposals, test programs, designs) are property of AGILITA or, if these originate from a contractual partner of AGILITA, of the respective contractual partner (cf. Section 8 of these GTC). They may not be copied or made accessible to third parties. If no Service Agreement is concluded, they must be returned or deleted and may not be used.

In all other respects, the provisions of these GTC, in particular the exclusions and limitations of liability pursuant to Section 8 of these GTC, apply to all precontractual obligations.

### 3.6 Additional services

If the Client requests an expanded scope of Services beyond the respective Service Agreement, these additional Services and the remuneration payable by the Client shall be agreed jointly in an addendum to the Agreement (cf. Section 6 of these GTC).

If AGILITA provides additional Services beyond the scope of the Service Agreements with the Client's consent without concluding such an addendum, the provisions and conditions of the Service Agreement or, in the absence of such a provision, the AGILITA list price in effect at the time the additional Service is provided, shall apply to the additional Services.

### 3.7 Acceptance

The Client must accept Contract Works without delay subject to the provisions in this Section 3.7. To this end an acceptance protocol can be created for signature by the Client. AGILITA can require a written acceptance statement from the Client for all Contract Works that are amenable to acceptance.

If a Service Agreement specifies several Contract Works that the Client can use individually, those several contract works will be subject to separate acceptance.

If a Service Agreement specifies subsets of the Contract Works, AGILITA is entitled to request the acceptance of such subsets of the Contract Works. Subsequent acceptance procedures will address only the correct functioning of the new subsets and whether the subsets accepted earlier correctly interact with the new subsets.

If the Service Agreement includes the creation of a design, for example for the implementation of standard software or the creation of modifications or add-ons to standard software, AGILITA can require that the design be subject to separate acceptance.

The Client must inspect the Contract Works (and the subsets) immediately after delivery and either notify AGILITA immediately in writing that the Contract Works are accepted or give a precise description of the defects found. If the Client does not give notice of acceptance or of defects immediately, the Contract Works will be deemed accepted. The same shall apply if the Client notifies only minor defects within the period. In every case, the Client is deemed to have accepted any Contract Works and subsets of the Contract Works it uses, in whole or any in part, in live operation. Section 11 of these GTC shall apply to the warranty for defects.

If acceptance is postponed or refused due to significant defects, the Client shall be obligated to inspect the Contract Works immediately after notification of elimination of the defect. In all other respects, Section 3.7 para. 5 of these GTC shall apply.

#### 4. The client's duty to collaborate

The Client is obligated to perform and/or fulfil in a timely manner all necessary cooperation and ancillary duties for the provision of the Services in accordance with the Service Agreement so that AGILITA can properly perform the Service Agreement.

The Client must provide the operating environment («IT systems») necessary for the provision of Services, in accordance with AGILITA's guidance where given.

Free of charge, the Client must provide all collaboration that AGILITA requires in connection with performance of the Service Agreement, including, for example, human resources, IT systems, data, and telecommunications facilities. The Client must grant AGILITA direct and remote access to the software (in particular to the software to be Implemented) and the IT systems. The Client must answer questions and inspect results. The Client warrants that any materials provided by it for AGILITA to perform its contractual duties are free of defects in title that would preclude AGILITA from performing those duties.

The Client must nominate in writing a competent employee as contact for AGILITA, with an address and email address at which the contact can be reached at all time. The contact must be in a position to make necessary decisions for the Client or ensure that they are made without delay. The Client's contact must maintain effective cooperation with AGILITA's contact. The Client's employees whose activity is required must be freed from other activities to the appropriate extent.

Before commencing live operation with any provided Services, the Client must test the Services provided by AGILITA in fulfilment of the Service Agreement thoroughly for freedom of defects and for suitability in the situation. This also applies to Services it receives in connection with subsequent performance according to Section 11.2.2 and Section 11.3.1 of these GTC.

The Client must take appropriate precautions against the possibility that the Services may have or cause faults; such precautions include, for example, data backups, error diagnosis, and regular results monitoring. Except where otherwise expressly indicated in writing in individual cases, consultants deployed by AGILITA are always entitled to act on the assumption that all data with which they come into contact is backed up by the Client.

The Client undertakes to provide all further collaborative goods, works, and Services needed for the performance of the Service Agreement. Additional provisions, if any, are contained in the Service Agreement.

Performance by the Client of its general collaborative duties is a primary contractual duty and necessary precondition for the correct performance by AGILITA of its Services.

The Client bears all consequences and costs resulting from breach of its duties and indemnifies AGILITA from all claims by third parties arising from such infringement.

#### 5. Period during which services will be provided

Dates and deadlines for the provision of Services are approximate and nonbinding except where the Client and AGILITA have expressly agreed in writing that they are binding.

If AGILITA has to wait for collaboration or information from the Client or is otherwise hindered in the performance of the Service Agreement due to extraordinary circumstances in accordance with Section 13 of these GTC, times of delivery of goods and provision of Services are extended by a period equaling the duration of the hindrance plus a reasonable startup period after the end of the hindrance.

If the scope of performance of the Service Agreement is subsequently amended and/or extended, delivery and performance periods shall be extended appropriately without further notice.

#### 6. Change Request procedure

During the term of a project, the Client's contact person (cf. Section 4 para. 4 of these GTC) and the project manager appointed by AGILITA can request changes (in particular to the agreed Services, methods and deadlines) at all time in writing.

If the Client makes a change request, AGILITA shall inform the Client whether the change is possible and what impact the change would have on the Service Agreement with particular reference to the timeline and remuneration. The Client shall then inform AGILITA in writing within the time limit set by AGILITA whether it wishes to maintain its proposed amendment to these terms and conditions. If the change request is maintained, the additional Services and the remuneration to be paid by the Client shall be agreed in writing in an addendum to the Agreement («Change Request»).

If the review of a change request itself requires substantial work, AGILITA shall be entitled to invoice the expense incurred by such review separately at the terms of the Service Agreement or, in the absence of such a provision, at AGILITA's list price in effect at the time of the review.

If AGILITA submits a Change Request, the Client shall notify AGILITA within the time limit set by AGILITA whether it agrees to the change or not. Upon approval by the Client, the additional service shall be deemed to have been ordered and shall be subject to remuneration.

Until there is agreement about the change (in particular if there is no notification pursuant to Section 6 para. 2 or para. 3 of these GTC), work will continue in accordance with the existing Service Agreement. Alternatively, the Client can require that all or part of the work be suspended or permanently ended in accordance with and subject to Section 10.2 of these GTC.

In the event of interruption, remuneration shall be owed and due per day and per AGILITA employee in the project whose work is suspended in the amount of the daily rate agreed in the Service Agreement or, in the absence of such an agreement, the AGILITA list price valid at the time of the interruption.

#### 7. Remuneration, invoicing, due date and taxes

##### 7.1 Remuneration

For the provision of the contractually agreed Services, the Client shall pay the remuneration specified in the Service Agreement. Insofar as no remuneration is agreed in the Service Agreement for the provision of the Services, the Client shall pay AGILITA as remuneration the AGILITA list price valid at the time of the provision of the Services.

##### 7.2 Outlays and expenses

The Client is obligated to reimburse AGILITA for outlays and expenses (including but not limited to costs, expenses and disbursement) incurred in connection with the provision of the contractually agreed Services. Unless otherwise provided in the Service Agreement, the Client shall reimburse or compensate AGILITA for the actual outlays and expenses. Travel time of AGILITA employees shall be considered working time and shall be remunerated in accordance with the terms and conditions agreed in the Service Agreement (e.g. daily and hourly rates).

### 7.3 Invoicing

AGILITA is entitled to submit invoices for subsets (Teilleistungen) of the Services.

Unless otherwise provided in the Service Agreement and subject to Section 7.3 para. 3 of these GTC, the contractually agreed remuneration shall be invoiced on a monthly basis for the Services rendered and the costs incurred.

AGILITA is entitled to require full or part payment in advance if there is no prior business relationship with the Client, if delivery is to be made outside Switzerland, or if the Client's registered office is outside Switzerland, or if there are any grounds to doubt that the Client will render payment punctually.

If remuneration on a time basis (Vergütung nach Aufwand) has been agreed, the time and activities invoiced shall be deemed to have been irrevocably accepted unless the Client requests in writing within 14 days to be provided with a detailed list of the Services.

If the Client has requested AGILITA to send a list of Services or if a list of Services has already been part of or attached to the invoice, the time and activities included in the list of Services shall be deemed to be irrevocable accepted unless and insofar as the time and activities is objected to by the Client within 14 days of delivery of the list of Services.

### 7.4 Payment terms and due date

Unless otherwise provided in the Service Agreement, AGILITA's invoices shall be due for payment within 14 days of the invoice date without deduction (including without deduction of discounts (Skonto), expenses (Spesen), taxes, duties etc.) and to the exclusion of setoff rights (Verrechnung). The last day of this payment deadline and any payment deadline included in the Service Agreement shall be a specific due date within the meaning of Art. 102 para. 2 of the Swiss Code of Obligations. Therefore, on the due date, AGILITA may demand default interest in the amount of the applicable statutory default interest rate.

### 7.5 Indexing

AGILITA may amend the remuneration for Services subject to two (2) months' notice with effect from 01.01. of the following calendar year by means of a written declaration of adjustment to the Client in accordance with the following principles:

- (1) AGILITA may only change the remuneration to the extent that the index pursuant to Section 7.5(2) hereinafter has changed («**Range of Changes**»). If this is the first compensation adjustment, the Range of Changes shall be based on the change in the index between the index level published at the time of conclusion of the respective Service Agreement and the last published index level at the time of the adjustment declaration. If a compensation adjustment has already been made previously, the Range of Changes shall be defined by the index development between the last published index level at the time of the last previous adjustment declaration and the last published index level at the time of the new adjustment declaration.
- (2) The Range of Changes shall be determined on the basis of the Swiss Nominal Wage Index (SLI) of the Federal Statistical Office («**FSO**») for the salaries of the sector «Provision of Information Technology and Other Information Services» (NOGA Wage Index Division JC 62+63). In the event that this index is no longer published, the index published by the FSO shall be used to determine the Range of Changes that best reflects the changes in average monthly earnings in the aforementioned industry.
- (3) If the Client fails to terminate the Service Agreement at the end of the relevant calendar year within two weeks of receipt of the adjustment declaration, the new remuneration shall be deemed to have been contractually agreed.

### 7.6 Taxes

All prices are subject to statutory sales tax / VAT.

## 8. Rights to work products

All rights (including but not limited to all industrial property rights) to the Services and to the results of the Services made by AGILITA in the course of performing the Service Agreement, including but not limited to works protected by copyright (particularly computer software, documents, records, manuals etc.) and to inventions created or achieved by AGILITA and/or third parties engaged by AGILITA in the course of performing the Service Agreement or on occasion («**Contract Works**») shall be

exclusively entitled to and held by AGILITA or are hereby assigned by the Client in full and free of charge to AGILITA, even to the extent such Contract Works have arisen as a result of instructions or the cooperation of the Client.

Unless otherwise agreed in writing, the Client is granted a nonexclusive, nontransferable right to use the Contract Works upon full payment of the remuneration owed under the Service Agreement, insofar as this is necessary for the use of the Software to be Implemented. The Client may only use these Contract Works and the knowledge provided by AGILITA for the purpose agreed in the Service Agreement and/or Software License Agreement within its own company in which the Services were provided (but not in parent or sister companies) and may not disclose or publish them to third parties without the written consent of AGILITA.

Before accepting them, the Client may use the Services only to the extent necessary for test purposes. The Client is permitted to create necessary backup copies of the Services. Backup copies must be marked as backup copies and bear the same copyright and authorship notice as the original.

Unless otherwise agreed in writing, the acquisition of the rights necessary for lawful use of the Software to be Implemented (including but not limited to licensing rights) shall be the exclusive responsibility of the Client and shall be at the Client's sole responsibility.

## 9. Use of knowhow

AGILITA shall be entitled to use, free of charge, ideas, concepts, procedures and knowhow, which AGILITA has acquired in the performance of Service Agreements alone or in collaboration with third parties or with the Client, in the performance of other work for itself or for third parties, irrespective of whether the rights thereto have passed to the Client under the Service Agreement.

## 10. Term and termination

### 10.1 Term

Unless otherwise agreed in the relevant Service Agreement, every Service Agreement shall become into force upon signature by all parties and shall remain in force until the Services agreed upon in the Service Agreement have been provided in full.

### 10.2 Termination

Either party may terminate the Service Agreement at any time without notice, subject to full indemnification of the other party. In the event of termination, the Client shall also pay for the work already performed by AGILITA.

The right to terminate for just cause remain unaffected. Just cause for termination includes, without limitation, when the Client fails to perform a major contractual obligation within thirty days of written warning from AGILITA, notably, for example, when the Client is more than thirty days in default of a payment due and payable under the Service Agreement.

Upon termination of the Service Agreement, the parties shall irretrievably return all Confidential Information (as defined in Section 14 of these GTC) to the party that disclosed it, or at the disclosing party's request, destroy the Confidential Information of disclosing party and certify that it has complied with these obligations.

## 11. Defects of quality and defects in title, other faults

### 11.1 General matters

In respect of any Contract Works subject to the statutory liability for quality and title defects, AGILITA warrants, subject to this Section 11, that the Contract Work has the expressly agreed qualities and that no third-party rights are infringed by the Client's right of use pursuant to Section 8 para. 2 of these GTC. Where no qualities have been agreed, AGILITA warrants that the Contract Work is suitable for the use envisioned in the Service Agreement or, in the absence of an envisioned use, for ordinary use, and that it has the qualities that are usual and that a Client can expect from Contract Works of its kind. AGILITA shall provide no warranties and/or representations with regard to Contract Works (including but not limited to software) that originate from a third party.

### 11.2 Defects of quality

#### 11.2.1 duty to inspect and report defects of quality

The Client shall be obliged to inspect the Contract Works for material defects immediately after delivery and to immediately notify AGILITA in writing and in a substantiated manner concerning any material defect found. In the written notice of defects (Mängelrüge), the defects of

quality must be described in detail and comprehensibly for AGILITA, and all information useful for rectifying the defects must be provided.

Defects of quality that are not detectable upon proper investigation («Hidden Quality Defects») shall be notified to AGILITA by the Client in writing and in a substantiated manner immediately after their discovery.

If the Client fails to inspect the Contract Works, fails to inspect it in a timely manner and/or fails to inspect it properly, any defects of quality that would have been apparent upon proper inspection shall be deemed to have been approved by the Client. In this case, the Client shall not have any rights as to defects of quality.

If the Client fails to inspect the Contract Works, fails to inspect it in a timely manner and/or fails to inspect it properly, any defects of quality that would have been apparent upon proper inspection shall be deemed to have been approved by the Client.

#### 11.2.2 Warranty Rights (Mängelrechte) regarding Defects of Quality

In the event of a defect of quality, the Client shall initially only have the right of cure (Nacherfüllung) within a reasonable period of at least 30 days. Within the scope of cure, AGILITA shall be entitled, at its discretion, to remedy the defect of quality either by providing a new, defect free status of the Contract Works or by eliminating the defects of quality (remedy) (Nachbesserung). The cure of a defect of quality may, at AGILITA's discretion, also consist of AGILITA indicating reasonable options to avoid the effects of the defect of quality (in particular to circumvent or suppress the quality defect). The Client must accept a new version of the Contract Works that is functionally compliant unless it would be unreasonable to require the Client to do so.

If AGILITA is unable to remedy a defect of quality within a reasonable period to be set by the Client, or if the remedy or new delivery is deemed as definitively failed for other reasons, the Client may, at its discretion, either withdraw from the Service Agreement or reduce the remuneration. In the event of a continuing obligation (Dauerschuldverhältnis), the right of withdrawal shall be replaced by the right to give extraordinary notice of termination of the Service Agreement. AGILITA shall be free to determine the number of attempts at cure during the reasonable period for remedy or new delivery. A failure of the rectification or of the new delivery can only be assumed if AGILITA seriously and definitively refuses such actions, is unreasonably delayed or if other special circumstances exist by which further waiting is unreasonable for the Client.

AGILITA shall provide compensation for damages subject to the limits set out in Section 12 of these GTC.

Other remedies for defects of quality are excluded. AGILITA shall be released from its warranty obligation to the extent that a defect of quality of the Contract Works is attributable to circumstances for which AGILITA is not responsible. This includes but is not limited to defects of quality attributable to the delivery of the Contract Works to an environment operated or offered by a third party (e.g. SAP cloud services).

#### 11.2.3 Limitation Period and Forfeiture

The Client's claims arising from a breach of the warranty specified in Section 11.2 of these GTC shall become time-barred (verjährt) and forfeit (verwirkt) 12 months from the date of acceptance of the respective Contract Work pursuant to Section 3.7 of these GTC.

### 11.3 Defects in Title (Rechtsmängel)

#### 11.3.1 Rights as to Defects

In the event of a defect in title, the Client shall initially only have the right of cure (Nacherfüllung) within a reasonable period of at least 30 days. To discharge its liability for defects in title, AGILITA will remedy defects in title either by procuring for the Client the legally incontestable right under license to use the delivered Contract Works pursuant to Section 8 para. 2 of these GTC or, at AGILITA's discretion, providing equivalent replacement or altered Contract Works. The Client must accept a new version of the Contract Works that is functionally compliant unless it would be unreasonable to require the Client to do so.

If AGILITA is unable to remedy a defect in title within a reasonable period to be set by the Client, or if the remedy or new delivery is deemed as definitively failed for other reasons, the Client may, at its discretion, either withdraw from the Service Agreement or reduce the remuneration. In the event of a continuing obligation (Dauerschuldverhältnis), the right of withdrawal shall be replaced by the right to give extraordinary notice of termination of the Service Agreement. AGILITA shall be free to determine the number of attempts at cure during the reasonable period for remedy or new delivery. A failure of the remedy or of the new delivery can only be assumed if AGILITA seriously and definitively refuses such

actions, is unreasonably delayed or if other special circumstances exist by which further waiting is unreasonable for the Client.

AGILITA shall provide compensation for damages subject to the limits set out in Section 12 of these GTC.

Other remedies for defects in title are excluded.

#### 11.3.2 Prerequisites for Rights as to Defects

The Client's rights set out in Section 11.3.1 of these GTC shall only exist if (cumulatively):

- the Client promptly informs AGILITA in writing of any infringement of intellectual property rights (Schutzrechtsverletzungen) asserted against it;
- the Client supports AGILITA to an appropriate extent in the defence of the asserted claims;
- the Client allows AGILITA to modify or replace the delivery or service;
- the Client authorizes AGILITA to conduct the defense (including the conclusion of settlements), and reserves the right to AGILITA to take all defensive measures, including out of court settlements;
- the infringement of the intellectual property right is not based on an instruction from the Client; and
- the infringement of intellectual property rights was not caused by the fact that the Client changed AGILITA's Contract Works on its own initiative or used them in a manner that was not compliant with the Service Agreement.

#### 11.3.3 Infringement of Intellectual Property Rights by the Client

Insofar as the Client itself is responsible for the infringement of intellectual property rights, claims against AGILITA are excluded.

#### 11.3.4 Limitation Period and Forfeiture

The Client's claims arising from a breach of the warranty specified in Section 11.3 of these GTC shall become time-barred (verjährt) and forfeit (verwirkt) 10 years from the date of acceptance of the respective Contract Work pursuant to Section 3.7 of these GTC.

### 11.4 Other Faults

If AGILITA fails to properly perform any of its duties herein that are not within the ambit of defect liability, or is otherwise in breach, the Client must give notice of the failure or breach to AGILITA in writing and fix a limited additional time period of at least thirty days during which AGILITA has the opportunity to properly perform its duty or otherwise remedy the situation. AGILITA shall pay compensation for damages subject to the limits set out in Section 12 of these GTC.

### 11.5 Absence of a Defect / Default

If AGILITA provides defect identification or elimination works or Services without being under obligation to do so, AGILITA is entitled to remuneration under Section 7.1 of these GTC. This applies in particular to any notified defect and other fault that is not reproducible or not imputable to AGILITA, that is caused by using the Software to be Implemented improperly or inappropriately, by incorrect installation of the Software to be Implemented by the Client, by a third party mandated by the Client, by using the Software to be Implemented in other than an agreed system environment or by improper intervention by the Client or by a third party mandated by the Client in the Services of AGILITA (e.g. for the purpose of eliminating defects). AGILITA is entitled to remuneration for additional works or services it does to eliminate any defect or other faults that arise out of the Client's failure to properly discharge its duty to collaborate, inappropriate operation of the Software to be Implemented, or failure to take the AGILITA services that AGILITA recommends.

### 11.6 Duty to Cooperate in the Identification of Defects

The Client shall support AGILITA free of charge in identifying and handling defects to the necessary extent, in particular, provide the data, information and files necessary for rectifying defects, as well as, in the event of a defect of quality of the Software to be Implemented, take the necessary measures on its part so that AGILITA can access the Software to be Implemented and its respective system environment by means of remote access, if required.



## 12. Liability

AGILITA is liable to the Client for damages incurred in connection with these GTC and the associated Service Agreements only in the event of AGILITA's intent or gross negligence, irrespective of the legal grounds.

Liability for indirect or consequential damages (such as lost profits, unrealized savings, additional expenses of the Client, loss of use, loss of operating and loss of production, data loss and costs of data recovery or data retrieval, third party claims) is hereby excluded to the extent permitted by law.

Liability for associates within the meaning of Article 101 of the Swiss Code of Obligations shall be excluded in full for all damage.

AGILITA's liability for damages shall in any event be limited to the remuneration agreed and received in accordance with the Service Agreement. In the case of Service with a term of more than one year, the remuneration owed and received for one contractual year shall constitute the liability limit.

## 13. Force Majeure

AGILITA shall not be liable for damages arising from delays, impediments or inability to perform, the cause of which is beyond its reasonable control («**Extraordinary Circumstances**»). Extraordinary Circumstances may include, for example: significant operational disruptions, strikes, lock-outs, accidents, labour conflicts, governmental, natural events, extraordinary increases in wage or material costs, late deliveries or late performance of third parties, and other circumstances for which AGILITA is not responsible. Section 5 para. 2 of these GTC shall apply to the effects on periods and deadlines. Any additional expenses incurred by AGILITA as a result of Extraordinary Circumstances shall be reimbursed by the Client.

## 14. Confidentiality

AGILITA and the Client undertake and shall ensure that they and their employees treat all information obtained prior to and in connection with the performance or processing of the Service Agreement, which AGILITA or the Client protects against unrestricted disclosure to third parties, or that, based on the circumstances of disclosure or its content, is to be regarded as confidential (in particular, the content of the Service Agreements, Software to be Implemented, documentation, programs and data), as confidential for an unlimited period («**Confidential Information**») and shall use such Confidential Information only to perform the Service Agreement. Section 9 of these GTC remains reserved.

Confidential Information shall not be reproduced in any form except as required to accomplish the intent of the respective Service Agreement or processing the Service Agreement. Any reproduction of any Confidential Information of the other party (if permitted) shall remain the property of the other party and shall contain any and all confidential or proprietary notices or legends which appear on the original.

With respect to the Confidential Information of the other party, each party: (a) shall take all reasonable steps to keep all Confidential Information strictly confidential; (b) shall not disclose or reveal any Confidential Information to any person other than its representatives who need to know this Confidential Information to fulfil that party's contractual obligations or to processing the Service Agreement.

The duty of confidentiality excludes information (i) which must be disclosed pursuant to statutory obligations, (ii) which is necessary to safeguard rights under the Service Agreement and/or these GTC, (iii) which is publicly available, (iv) which was already publicly known at the time of disclosure to the other party, (v) which becomes publicly known after disclosure to the other party through no fault of the other party.

## 15. Data Protection

Parties undertake to comply with the relevant provisions of the applicable law of data protection.

Insofar as AGILITA's access to personal data processed by the Client is not necessary for the performance of the Service Agreement, the Client shall secure such data in a way that AGILITA does not receive access to such data.

In the event that AGILITA receives access to the Client's personal data, AGILITA shall collect, process and use such data in compliance with the provisions of data protection law and only for contractually agreed purposes.

## 16. Non-Solicitation

The Client is obligated not to actively solicit AGILITA's employees involved in the performance of the Service Agreement either for itself or for third parties. Solicitation shall also be deemed to have occurred if the Client makes use of services by employees of AGILITA outside the Service Agreement during the term thereof, or if the Client hires an employee of AGILITA during the term of the Service Agreement or for a period of three years after termination of the Service Agreement.

## 17. Miscellaneous Provisions

### 17.1 Written Form

Amendments and additions to the Service Agreement, as well as all legally relevant declarations (including but not limited to notices of termination, reminders and notices to set time limits) shall only be valid if recorded in writing. The PDF of a signed document shall also be deemed to meet the written form requirement.

### 17.2 Amendment of these GTC

AGILITA has the right to amend these GTC at any time. AGILITA shall be responsible to give notice of these amendments in advance and in an appropriate manner. If the Client does not assert a written objection within 30 days of notification, the amendments shall be deemed to have been accepted.

### 17.3 Severability Clause

Should any provision of the Service Agreement and/or these GTC be or become void, invalid or unenforceable in whole or in part, this shall not affect the validity and enforceability of the remaining provisions of the Service Agreement and these GTC. The void, invalid or unenforceable provision shall be replaced by a provision that comes as close as possible to the economic purpose originally intended. The same shall apply to any gaps in the Service Agreement and/or these GTC.

### 17.4 Transfer

The transfer of the Service Agreement or individual parts thereof is only permitted with the consent of AGILITA. A change in the Client's or AGILITA's ownership structure (among other things, mergers, company sales) shall not constitute grounds for termination and shall therefore not release the Client from the obligation to perform the Service Agreement.

### 17.5 Prohibition on Offsetting

The Client is not entitled to offset invoiced amounts of AGILITA against its own claims.

### 17.6 Applicable Law and Place of Jurisdiction

The Service Agreement and these GTC, as well as claims (claims in contract, in tort and otherwise) arising out of or in connection with the Service Agreement and/or these GTC, shall in all respects be governed by Swiss substantive law, to the exclusion of conflict of laws principles, particularly to the exclusion of the applicability of the United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention, CISG).

Any and all disputes or claims arising out of or in connection with the Service Agreement and/or these GTC shall be exclusively reserved to the ordinary courts of Wallisellen, Switzerland.