License conditions and terms of use

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§ 1 General

(1) DataCater GmbH (hereinafter referred to as DATACATER) offers the software DataCater (hereinafter referred to as Software) as an on-premise solution for download (hereinafter referred to as *DataCater Self-Managed*) or as a Software-as-a-Service solution via a cloud (hereinafter referred to as *DataCater Cloud*). The software enables its users to automate the data transfer between data sources and data sinks, as well as to prepare, enrich and transform data during the transfer. For this purpose, so-called data pipelines between the data sources and data sinks can be created, managed and executed by the user by means of the software.

(2) By concluding an agreement with DATACATER or clicking a "Sign Up" button, the user accepts these terms and conditions as binding.

§ 2 Provision of the software as DataCater Cloud

(1) Insofar as DATACATER offers the software to the user as DataCater Cloud, the software shall be made available to the user via the internet against payment for the duration of this contract.

(2) DATACATER shall set up DataCater Cloud on one of its servers, which is accessible to the user via the internet. An adaptation or extension of DataCater Cloud tailored to the specific needs of the user is not owed. However, it can be agreed for a fee.

(3) DATACATER will provide DataCaterCloud at the agreed router exit of the data centre where the server is located ("transition point"). DataCater Cloud will remain on DATACATER's server. DATACATER is entitled to redefine the transition point if this is necessary for smooth access to the services owed by it. The user's obligations to cooperate set out in these terms and conditions also apply to the redefined transition point.

§ 3 Provision of the software as DataCater Self-Managed

(1) Insofar as DATACATER offers DataCater Self-Managed for download to the user, DATACATER shall make DataCater Self-Managed available for download on its homepage or shall make it available on another medium to be agreed between the parties.

(2) DATACATER is not responsible for the installation of DataCater Self-Managed on the user's systems; this is the sole responsibility of the user.

§ 4 Access data

(1) The user shall be provided with the access data required to use the software (usernames and passwords as well as licence keys, if applicable). The access data may only be passed on to third parties by the user if this has been expressly permitted by DATACATER. Otherwise, they shall be kept safe and secret.

§ 5 Software update; Updates

(1) DATACATER may update and further develop the software at any time. In particular but not limited to DATACATER may adapt it due to a changed legal situation, technical developments, or to improve IT security. In doing so,

DATACATER shall give due consideration to the legitimate interests of the user and inform the user in good time of any necessary updates. In the event of a significant impairment of the legitimate interests of the user, the user shall have a special right of termination in accordance with these terms and conditions.

(2) DATACATER shall not owe any adaptation to the user's individual requirements or IT environment unless the parties have agreed otherwise.

§ 6   Rights of use

(1) DATACATER grants the user the non-exclusive, non-sublicensable, non-transferable right to use the software, limited in time to the duration of the contract, in accordance with these terms and conditions.

(2) The source code of the Software shall not be made available to the User and the User agrees neither to reverse engineer, disassemble, decompile, translate or do any unauthorized disclosures nor have this done, nor facilitate this, except to the extent permitted by applicable mandatory law.

(3) If this is necessary for use in accordance with the contract, the user is entitled to reproduce the software. In the case of DataCater Self-Managed provided for download, the installation on the user's computers shall in particular be deemed to be the reproduction required for use in accordance with the contract.

(4) Apart from that, users are not entitled to reproduce or transfer the software to third parties, unless otherwise provided by law.

(5) The user is not entitled to modify or edit the software. In the case of software which has been made available to the user for downloading, the user shall only be permitted to modify and process the software if the modification or processing is a remedy of a defect which is necessary for the contractual use of the software and with which DATACATER is in default.

§ 7   Support

(1) DATACATER provides a support service to the user for enquiries about functions of the software. The support service is provided via a contact option by e-mail. The support service is available to the user from Monday to Friday (with the exception of public holidays at DATACATER's registered office) between 09:00 and 17:00 Central European Time.

§ 8   Service Levels; Troubleshooting

(1) DATACATER guarantees an availability of the software of 99% per month.

(2) The Software is available if it has been provided or is achievable in the agreed period in accordance with the agreed percentage availability quota. The availability quota is calculated as follows:
(agreed availability time - unplanned downtime) . /. Agreed availability time

(3) The period during which DATACATER offers the owed Software to the user shall be 23 hours and 50 minutes on each of 7 days a week ("agreed availability time"). In this context, DATACATER may carry out maintenance work for 5 hours per month, which may lead to the unavailability of the main functions of the software.

(4) The period from the occurrence of the non-availability of the IT services within the agreed availability time until the termination of the non-availability is defined as unplanned downtime ("unplanned downtime"). In determining the availability or the availability quota, such downtimes shall not be taken into account

    (a) for which DATACATER is not responsible for, in particular but not limited for impairments resulting from failures and/or malfunctions of technical systems and/or network components beyond DATACATER's sphere of responsibility. This includes in particular but not limited to failures caused by improper use of software or hardware on the part of the user;

    (b) that are caused by maintenance work carried out at weekends and do not exceed a monthly downtime of 5 hours.

    (c) that are caused by maintenance work which is separately agreed with the user or by unforeseen maintenance work required and for which DATACATER is not responsible.

(5) During the term of the contract, DATACATER will divide software malfunctions, availability restrictions or availability failures into the following categories and remedy them accordingly:

- **Category 1 defects** (urgent priority): Defect that causes a failure of the entire software or essential functions thereof, so that use is completely, almost completely excluded.

- **Category 2 defects** (average priority): Other defects that impair the functions of the software. However, the software and its functions can be used.

(6) During support hours, DATACATER will respond to the user's report of a defect within the following response periods:

- In the event of a category 1 defect: Within 2 hours of receiving the notification

- In the event of a category 2 defect: within 16 hours of receipt of the notification

(7) The response period begins with DATACATER's receipt of the user's notification. DATACATER complies with said response periods if DATACATER informs the user of its initial assessment of the problem solution within the response period.

(8) DATACATER will eliminate the defect during the support times within the following elimination periods:

- In the event of a category 1 defect: within 24 hours of receipt of the notification

- In the event of a category 2 defect: within 4 days of receipt of the notification

(9) It is at DATACATER's dutiful discretion which means it uses to eliminate a defect. Should DATACATER determine that it cannot successfully rectify the defect within the specified period of time, it shall immediately inform the user of the additional time required to rectify the defect.

(10) In the event of category 1 defects, DATACATER will provide a work-around solution until the defect has been completely eliminated within the elimination period, if the faults cannot be eliminated within this period.

§ 9 Duties of the user

(1) Insofar as the software is made available to the user as DataCater Cloud, the user undertakes to establish and maintain the necessary remote data connection between the transition point defined by DATACATER and the user's IT systems in order to use the software and the associated service offerings.

(2) The contractual use of the software requires that the hardware and software used by the user, including work-stations, routers, data communication equipment, etc., meet the technical minimum requirements for the use of the software defined in the service description of the order. The configuration of the user's IT systems required for the use of the software is the responsibility of the user.

(3) The user is obliged to take precautionary measures to ensure that unauthorised third parties cannot access the software.

(4) The user undertakes not to use the software to publish content or to transmit messages that

- violate the rights of third parties, in particular copyrights
- in any other way violate applicable laws or constitute a criminal offence
- contain viruses or other computer programs that may damage software or hardware or impair the use of computers

§ 10   Remuneration; adjustment

(1) The user shall be obliged to pay the agreed usage fee plus the applicable value added tax for the provision of the software.

(2) The remuneration owed by the user is due 14 days after receipt of the invoice.

(3) DATACATER reserves the right to increase the user fees for the following extension period for the first time after 12 months at the end of the contractual relationships or their extension periods specified in these terms and conditions. DATACATER shall notify the user of this at least one month before the end of the current contractual relationship or the current contract extension period. In this case, the user may terminate the user relationship until the end of the current contractual relationship or the current contract extension period.

§ 11   Warranty

(1) DATACATER warrants the functional and operational readiness of the software and the related service offers in accordance with the specifications of the concluded order. Unless otherwise stipulated below, the statutory regulations on warranty shall apply.

(2) DATACATER shall be liable for defects in the software provided in return for payment in accordance with the warranty rules of tenancy law (§§ 536 ff. BGB), but with the provision that in contrary to § 536a para. 1 BGB, a liability for damages shall only exist in the event of fault in accordance with the provisions of these terms and conditions.

(3) A defect shall be deemed to exist if the software, when used in accordance with the contract, does not perform as described in the performance specification in the order and if this has a significant effect on the suitability for the contractually agreed use.

(4) Warranty claims of the user do not exist

- in the case of only insignificant deviation from the agreed quality or in the case of only insignificant impair-ment of the usability of the software
- in the event of incorrect operation by the user

- in the event of the use of hardware, software, or other equipment which is not suitable for the use of the Software

- if the user fails to notify DATACATER of a defect without delay and DATACATER has been unable to remedy the situation as a result of the failure to notify the user of the defect without delay and/or

- if the user is aware of the defect at the time of the conclusion of the contract and has not reserved his rights

(5) Insofar as a defect has been notified by the user and the user's warranty claims are not excluded, DATACATER shall be obliged to remedy the defect within a reasonable period of time - by means of measures of its own choice - in accordance with the troubleshooting procedure regulated herein. The user shall give DATACATER reasonable time and opportunity to remedy the defect. DATACATER's employees and agents shall be granted free access to the user's systems for this purpose, insofar as this is necessary.

(6) In the event of impossibility or failure to remedy the defect, culpable or unreasonable delay or serious and final refusal by DATACATER to remedy the defect or other unreasonableness of remedying the defect for the user, the user shall in particular be entitled to reduce the remuneration owed in accordance with the extent of the impairment (reduction). The user shall not be entitled to assert a claim for reduction by independently deducting the amount of the reduction from the fee to be paid on an ongoing basis; the user's claim under the law of enrichment to reclaim the overpaid portion of the fee shall remain unaffected thereby.

(7) Insofar as the services offered in connection with the use of the software product are pure services (e.g. support services), DATACATER shall be liable for defects in these services in accordance with the rules of service contract law (§§ 611 ff. BGB).

§ 12 Liability; indemnification

(1) DATACATER shall be liable without limitation:

- in the event of malice, intent, or gross negligence

- within the framework of a guarantee expressly undertaken by DATACATER

- for damages arising from injury to life, limb, or health

- for the breach of a material contractual obligation, the fulfilment of which is a prerequisite for the proper performance of this contract and on the observance of which the parties may regularly rely and trust ("cardinal obligation"), but limited to the damage reasonably to be expected at the time of the conclusion of the contract

- in accordance with the provisions of the Product Liability Act

(2) Any further liability of DATACATER is excluded.

(3) The above liability rules apply accordingly to the conduct of and claims against employees, legal representatives, and vicarious agents of DATACATER.

(4) The user shall indemnify DATACATER against all claims by third parties on account of use of the software in breach of the law and/or the contract and shall also bear the reasonable costs of a legal defence for DATACATER. This shall not apply if DATACATER is responsible for the use of the software in breach of the law and/or the contract.

§ 13 Data protection

(1) Should personal data be collected in the course of the performance of the contract, in particular, but not exclusively, in the use of the software product, both the user and DATACATER shall ensure that data protection provisions are observed in the process.

(2) If necessary, the parties have concluded a contract processing agreement in accordance with the requirements of Art. 28 GDPR. In this context, all employees - in particular employees and persons in charge who have access to personal data - are obliged to comply with the requirements of Art. 28 (3) (c) in conjunction with Art. 32 (4) of the GDPR.

§ 14 Contract period; termination

(1) The contractual relationship concluded for 12 months shall be automatically extended by a further 12 months, unless the contractual relationship is terminated by one of the parties at the end of the respective contractual term with a notice period of 4 weeks.

(2) The contractual relationship concluded for 6 months shall be automatically extended by a further 6 months, unless the contractual relationship is terminated by one of the parties at the end of the respective contractual term with a notice period of 2 weeks.

(3) The contractual relationship concluded for one month is automatically extended by another month, unless the contractual relationship is terminated by one of the parties at the respective end of the contractual term with a notice period of 3 calendar days.

(4) The right of both parties to extraordinary termination for good cause remains unaffected. Good cause shall be deemed to exist in particular if one of the parties intentionally or negligently breaches a material obligation under this contract and it is therefore no longer reasonable for the terminating party to adhere to the contract.

(5) DATACATER shall be entitled to extraordinary termination in particular in the event of repeated or considerable default in payment by the user.

(6) The termination of the contract must be in text form.

§ 15 Deactivation and deletion of the software

(1) If the software is made available to the user as DataCater Cloud, DataCater Cloud will be deactivated after the time of the end of the contract and any pipelines deposited will be deactivated.

(2) If the software is made available to the user as DataCater Self-Managed, the user is obliged after the time of the end of the contract to immediately stop using DataCater Self-Managed and to immediately uninstall and delete DataCater Self-Managed as well as all programme copies (including any backup copies).

§ 16 Final provisions

(1) Amendments and supplements to the relevant contract, including this clause, must be made in writing, unless otherwise stipulated.

(2) The parties may only transfer the contract and rights and obligations arising from the contract to a third party with the prior written consent of the other party.

(3) The validity of the general terms and conditions of the users are expressly excluded.

(4) All legal relationships arising from the contract between DATACATER and the user shall be governed exclusively by the law of the Federal Republic of Germany, to the exclusion of its conflict-of-law provisions and the United Nations Convention on Contracts for the International Sale of Goods of 11.4.1980 (UN Sales Convention).

(5) The exclusive place of jurisdiction for all disputes arising from or in connection with the contract is the registered office of DATACATER. DATACATER shall remain entitled to take legal action at the general place of jurisdiction of the user.