General terms and conditions of promio.net GmbH

for

"promio.connect"

promio.net GmbH, Rheinpromenade 11, 40789 Monheim am Rhein, (hereinafter referred to as "**provider**") offers companies (hereinafter referred to as "**customer**") the temporary use of a software application with different individual applications for the ECRM via a telecommunications connection for a fee.

1. Scope; General regulations

1.1 These General Terms and Conditions of Business "Application Service Providing" (ASP) of the provider for the temporary use of software applications (hereinafter "GTC promio.connect") contain, together with the order (hereinafter referred to as "order"), the conditions for the services offered by the provider to

- Use of the software application(s) listed in the order (hereinafter also referred to as "application" in the plural) for access via a telecommunications connection and

- providing storage space for data generated by the Customer through use of the Application and/or data required for the use of the Application (hereinafter referred to as "Application Data");

as well as related services of the provider.

1.2 Insofar as the provisions of the order contradict the provisions of these promio.connect GTC, the provisions of the order take precedence over the provisions of these promio.connect GTC.

1.3 The GTC promio.connect apply exclusively. Conflicting, additional or deviating conditions of the customer from these GTC promio.connect do not become part of the contract, unless something else was expressly agreed between the customer and the provider. The GTC promio.connect also apply if the provider carries out a service without reservation in the knowledge of conflicting or deviating conditions of the customer.

1.4 The GTC promio.connect only apply if the customer is an entrepreneur (§ 14 BGB), a legal entity under public law or a special fund under public law.

2. Subject of the contract

The subject of these GTC promio.connect is the provision of the application agreed in the order for the use of its functionalities, the technical enabling of the use of the application, the granting or mediation of simple rights of use to the application and the provision of storage space for the application data to the agreed extent the provider against payment of the agreed fee.

3. Deployment of the Application

3.1 From the point in time agreed in the order, the provider shall keep the application agreed

in the order in the current version on a central data processing system or several data processing systems (hereinafter also referred to as "server") for use in accordance with the regulations in the order and these GTC promio.connect ready. A physical transfer of the application to the customer does not take place. The application is put into operation independently by the customer on the end devices of his choice.

3.2 The range of functions of the application results from the service description of the application according to the order. Agreements on access, system and functional requirements on the part of the customer are made in the order.

3.3 The provider sends the customer the number of user names and user passwords agreed in the order. User names and passwords are to be changed immediately by the customer to names and passwords known only to him and protected against unauthorized access by third parties.

3.4 The provider is entitled but not obliged to continuously develop the application. The further development of the application can lead to an extension and/or change of the application with the result that new functionalities are available, existing functionalities in the process and/or the user guidance are optimized or the data management is adapted to the state of the art. An obligation to change, adapt or further develop the application only exists if such a change, adaptation or further development is necessary to maintain the application according to the state of the art.

3.5 From the point in time agreed in the order, the provider shall have sufficient storage space available on the server for the application data.

3.6 The application and the application data are regularly backed up on the server, at least every calendar day. The customer is responsible for compliance with commercial and tax law retention periods.

3.7 The transfer point for the application and the application data is the server's router output. The provider is not responsible for the quality of the necessary hardware and software on the part of the customer or for the telecommunications connection between the customer and the provider up to the handover point.

4. Technical availability of the application; Access to the application data

4.1 The provider owes the subsequently agreed availability of the application and the application data at the transfer point. The parties understand availability to mean the technical usability of the application and the application data at the transfer point for use by the customer.

4.2 The availability of the application is 99% on an annual average for web services and 95% on an annual average for SMTP services.

4.3 Available use (availability within the meaning of Section 4.2 is deemed given) also includes the periods during

4.3.1 Disturbances in or due to the condition of parts of the technical infrastructure required for the execution of the application that are not to be provided by the provider or its vicarious agents;

4.3.2 an insignificant reduction in suitability for contractual use;

4.3.3 Maintenance work according to Section 4.4.

4.4 In coordination with the customer, the provider can interrupt the provision of services for a defined period of time in order to carry out necessary maintenance work. Maintenance work will not exceed five hours per quarter. The customer will not unreasonably refuse to consent to the maintenance work being carried out. Maintenance work can take place on working days as well as on Sundays and public holidays in the time window from midnight to midnight.

5. User manual, training and other services of the provider

5.1 The provider provides the customer with an electronic, printable user manual (promio.connect Wiki) written in German once at the beginning of the contract for the online application.

5.2 If the application is updated in accordance with the contract, the user manual will be adjusted accordingly.

5.3 The customer is entitled to download, save and print out the user manual and to reproduce it in a reasonable number for the purposes of the contract with the provider while maintaining existing property rights notices. In all other respects, the usage restrictions for the documentation agreed under Section 7 apply accordingly.

5.4 Further services of the provider, in particular training courses on the application, are agreed in the order. If remuneration is not expressly agreed in the order, such further services will be provided against reimbursement of the proven expenses at the provider's prices generally applicable at the time of the order.

6. Storage space for application data; exemption

6.1 The provider's performance obligations with regard to the storage space (see Section 3.5 and Section 3.6) are limited to providing the storage space for contractual use by the customer and backing up the application data. The provider undertakes to take appropriate, state-of-the-art precautions against data loss and to prevent unauthorized access by third parties to the customer's data. For this purpose, the provider carries out backups at least daily (Section 3.6). In addition, the provider has no safekeeping or custody obligations.

6.2 The customer undertakes to only store such data and content on the storage space provided, the provision, publication and use of which in the application or on the provider's server does not violate applicable law, official requirements or the rights of third parties. The customer indemnifies the provider on first request from all claims asserted by third parties against the provider due to a breach by the customer of sentence 1. In the cases of sentence 2, the customer will also reimburse the provider for the costs of appropriate legal action.

6.3 The customer also undertakes to check external data and information for viruses or other harmful components before uploading them to the provider's server and to use state-of-the-art measures (e.g. virus protection programs) for this purpose.

6.4 The customer is not entitled to allow third parties to use the storage space provided by the provider for a fee or free of charge.

7. Rights to Use the Application; penalty

7.1 The provider grants the customer a simple, non-transferrable and non-sublicensable right

to use the application for the duration of the contract in accordance with the regulations in the order and additionally in this Section 7.

7.2 The application is not transferred to the customer. The customer may only use the application for his own business activities by his own staff and may only make the application accessible to third parties to the extent that the contractual use of the application requires access to be opened. The customer is not permitted to open access beyond the contractual use, in particular by selling, giving away, lending, renting, public reproduction or sublicensing the application.

7.3 If the provider makes new versions, updates, upgrades or other new deliveries with regard to the application during the term, the above rights also apply to these

7.4 If the customer violates one of the regulations in clauses 7.1 to 7.3 for reasons for which he is responsible, the provider can, after informing the customer in advance, block the customer's access to the application and/or the application data if the violation can be proven to have been remedied by this can be.

7.5 For each case in which the customer culpably enables the use of the application by unauthorized third parties, the customer must pay an appropriate contractual penalty, the amount of which is determined by the provider at its reasonable discretion and is reviewed by the competent court in the event of a dispute. The contractual penalty applies again for each month of the violation. With the assertion or payment of the contractual penalty, the assertion of a claim for injunctive relief or a claim for damages against the customer that goes beyond the contractual penalty is not excluded by the provider. A forfeited and paid contractual penalty will be fully offset against such damages. Further rights of the provider remain unaffected.

8. Customer's duties to cooperate and provide information

8.1 The customer has informed himself about the essential functional features of the application and bears the risk as to whether these correspond to his wishes and needs; The customer has consulted the provider's employees or expert third parties on questions of doubt.

8.2 Setting up a functional hardware and software environment for the application is the sole responsibility of the customer.

8.3 The customer shall thoroughly test the application for defects and usability in the existing hardware and software configuration before it is put into productive use. This also applies to applications that the customer receives under the warranty.

8.4 The customer observes the instructions given by the provider for the installation and operation of the application; the customer will be informed at regular intervals about the latest information (e.g. on software updates, operation, security aspects) via the information pages displayed within the applications and will take these into account during operation.

8.5 The customer provides all cooperation actions required for the execution of the contract without being asked and at his own expense. Insofar as the provider has further performance obligations beyond the provision of the application, the customer shall cooperate in this to the required extent free of charge by providing employees, work rooms, hardware and software, data and telecommunications facilities, for example.

8.6 The customer is particularly obliged

8.5.1 take the necessary precautions to prevent unauthorized use of the Application. In particular, he will ensure by means of suitable protective measures (e.g. password strength, passwords on his computers, burglary protection) and regular checking of available usage logs and, if necessary, blocking of existing access (e.g. after a change of employee) that no unauthorized third party can access the application. The customer will inform the provider immediately if there is a suspicion that the access data and/or passwords may have become known to unauthorized persons;

8.5.2 to create and maintain the access, system and functional requirements for the use of the application agreed in the order;

8.5.3 as far as reasonable, to create and maintain other access, system and functional requirements required for productive use of the application by the customer;

8.5.4 to ensure that the users authorized to use the application on the part of the customer are sufficiently familiar with the operation of the application. In particular, the customer will train the users in how to use the application, to the extent necessary;

8.5.5 to ensure that (e.g. when transmitting third-party information to the contractual server) all third-party rights to material used by him are observed;

8.5.6 to obtain the necessary consent of the person concerned in accordance with the data protection regulations, insofar as he collects, processes or uses personal data when using the application and no legal permission applies;

8.5.7 to check the data and information for viruses before sending them to the provider and to use state-of-the-art virus protection programs;

8.5.8 as far as technically possible and reasonable to only send user data in encrypted form;

8.5.9 to oblige authorized users to comply with the provisions of the contract concluded with the provider regarding the use of the software that apply to them;

8.5.10 not to make any changes in the application that result in the application no longer functioning.

9. Material defects and defects of title; Liability for initial defects and rights of third parties; other performance disruptions

9.1 The customer must immediately notify the provider of any defects in the application.

9.2 The parties will inform each other immediately in writing if claims are asserted against them that are related to the application.

9.3 The provider is only liable for defects in the application that already existed at the time the contract was concluded if the provider is responsible for these defects.

9.4 Termination of the contract in accordance with Section 543 Paragraph 2 No. 1 BGB due to non-granting of contractual use is only permissible if the provider has been given sufficient time to remedy the defect and this has failed. A failure to remedy the defect can only be assumed if this is impossible, if the provider seriously and finally refuses it or if it is unreasonably delayed or if it is unreasonable for the customer for other reasons.

9.5 The customer cannot reduce the current rental payment in the event of defects in the application. Any existing right of the customer to reclaim rents paid subject to reservation remains unaffected.

9.6 Termination due to an insignificant hindrance to contractual use is excluded.

9.7 The provider is not liable for any infringement of the rights of third parties by the customer if and to the extent that this infringement results from exceeding the rights of use granted under the contract. In this case, the customer releases the provider from all third-party claims upon first request. In the cases of sentence 2, the customer will also reimburse the provider for the costs of appropriate legal action.

9.8 The customer can only claim damages in accordance with clause 14.

10. Customer's rights and obligations after contract termination

10.1 If and to the extent that the contract is terminated (e.g. by (partial) termination), the customer is entitled to export the application data stored on the server. The customer is obliged to carry out data exports according to sentence 1 before the expiry of 30 days after the end of the contract. If it is unreasonable for the customer to carry out the data export within the period according to sentence 2, the provider shall grant a reasonable extension of the period upon written request. After expiry of the period according to sentence 2 and a possible extension of the period according to sentence 3, the provider is entitled - subject to legal storage obligations applicable to the provider - to delete the application data on the server so that data export is no longer possible.

10.2 After termination of the contract, the customer shall, insofar as use is not required for the data exports permitted under Section 10.1, terminate the use of the application and, if necessary, return any backup copies made immediately or destroy them at the provider's option.

11. Customer Backup

11.1 The customer takes appropriate precautions in the event that the application does not work properly in whole or in part (e.g. daily data backup on the customer's end devices, fault diagnosis, regular checking of the data processing results). In particular, immediately before any installation and/or other intervention by the provider or by third parties commissioned by the provider, he will carry out a complete data backup of all system and application data in his system. The data backups are to be kept in such a way that the backed up data can be restored at any time.

11.2 Unless the customer expressly points this out in advance, the provider may assume that all of the customer's data that the provider or third parties commissioned by the provider may come into contact with (e.g. in the context of troubleshooting and troubleshooting) is secure.

11.3 The provider is not liable for the loss of data insofar as the damage is due to the fact that the customer, contrary to his obligation under Section 11.1, failed to carry out data backups and thereby ensure that lost data can be restored with reasonable effort. For the rest, Section 14 applies.

12. Compensation and Payment

12.1 The remuneration to be paid by the customer for the services owed by the provider under the contract results from the order.

12.2 Statutory sales tax is not included in the price and is shown separately on the invoice at

the statutory rate applicable on the day of invoicing.

12.3 The obligation to pay the remuneration begins from the time agreed in the order for the provision of the agreed services.

12.4 Unless otherwise agreed in the order, the following applies to the payment of remuneration:

12.4.1 The usage-based fee for using the Application will be billed monthly in arrears.

12.4.2 Services of the Provider with a flat-rate fee (e.g. for training) are to be paid for in advance if the Provider requests this.

12.4.3 In the case of remuneration based on expenditure, this will be invoiced after the service has been performed.

12.5 Remunerations according to Section 12.4 are due for payment without deduction within 14 days of the invoice date, unless otherwise agreed. The date of receipt by the provider is decisive for the date of payment.

12.6 In the event of default in payment, the customer must pay interest on arrears at a rate of nine percentage points above the respective base interest rate p.a. Furthermore, the provider can charge the customer a flat rate of 40 euros. The provider reserves the right to claim higher interest and/or further damage. The lump sum according to sentence 2 will be offset against any damages owed, insofar as the damage is based on the costs of legal action. Any claims for overdue interest, in particular against merchants according to § 353 HGB, remain unaffected.

12.7 The customer is entitled to carry out or provide outstanding deliveries or services only against advance payment or security if the provider becomes aware of circumstances after conclusion of the contract which are likely to significantly reduce the customer's creditworthiness and which make the payment of the outstanding claims impossible of the provider against the customer from the present contractual relationship is endangered.

13. Term and Termination

13.1 The contractual relationship begins when the contract is concluded and is concluded for an indefinite period of time, unless otherwise expressly stipulated in the order. The services are provided from the time agreed in the order.

13.2 Unless otherwise agreed in the order, the contractual relationship can be terminated by either party in writing with a notice period of three months to the end of a calendar year.

13.3 The contract can also be terminated by either party without notice for good cause with immediate effect. An important reason that entitles the provider to terminate the contract is, in particular, if the customer violates the provider's rights of use by using the application beyond what is permitted under the contract and the violation does not occur even after a warning from the provider canceled within a reasonable period of time.

13.4 Irrespective of the provision in Section 13.3, the Provider may terminate the contract without prior written warning if the Customer is in arrears with payment of the remuneration or a significant part of the remuneration for two consecutive months or in a period that extended for more than two months, is in arrears with the payment of an amount equal to the remuneration for two months. In this case, the provider can also demand a lump-sum compensation amounting to a quarter of the remaining monthly basic fee until the end of the

regular contract period. The customer is free to prove minor damage.

13.5 The termination must be in writing.

14. General Liability of Provider

14.1 The provider is liable - for whatever legal reason - for damages or reimbursement of wasted expenses in accordance with the following provisions under Section 14.1.1 and Section 14.1.2:

14.1.1 In the event of intent or gross negligence, the provider is liable without limitation. In the case of simple negligence, the provider is only liable for damages resulting from the breach of a material contractual obligation (obligation, the fulfillment of which is essential for the proper execution of the contract and on the observance of which the customer regularly relies and may rely); in this case, however, the liability of the provider is limited to compensation for the foreseeable damage that is typical for the contract.

14.1.2 The liability exclusions and limitations of liability resulting from Section 14.1.1 do not apply if the provider fraudulently concealed a defect or has assumed a guarantee for the quality of the item or has assured a property of the item, for damages resulting from injury to life, of the body or health, as well as in the case of liability under the Product Liability Act.

14.2 Insofar as the liability of the provider is excluded or limited, this also applies to the personal liability of the legal representatives and vicarious agents of the provider.

15. Confidentiality and Privacy

15.1 Unless a separate non-disclosure agreement has been concluded between the provider and the customer, the following provisions of this Section 15 shall apply to non-disclosure.

15.2 The provider and the customer undertake to treat as confidential all knowledge of confidential information and trade secrets ("trade secrets") of the other party obtained in the context of the contract initiation and execution and to use them only for the purpose of executing the contract. The company secrets of the provider also include the services provided under the contract. The obligation of secrecy applies five years after termination of the contract.

15.3 The customer will only make contractual objects accessible to employees and other third parties if this is necessary to exercise the authorizations of use and use granted to him. He will instruct all persons to whom he grants access to the contractual objects about the rights of the provider to the respective contractual objects and the obligation to maintain secrecy and oblige these persons in writing to maintain secrecy and use the information only to the extent specified in this Section 15, insofar as the The persons concerned are not obligated to secrecy at least to the above extent for other legal reasons.

15.4 The above obligations do not apply to trade secrets that

15.4.1 was already obvious or known to the other party at the time it was transmitted by the other party;

15.4.2 became known after it was transmitted by the contracting party through no fault of the other contracting party;

15.4.3 has been made accessible to the other party by a third party after it has been

transmitted by the other party in a manner that is not unlawful and without restriction in terms of confidentiality or exploitation;

15.4.4 which have been developed independently by one contracting party without using the trade secrets of the other contracting party;

15.4.5 which must be published in accordance with the law, an official order or a court decision - provided that the party making the publication informs the other contractual party of this immediately and supports it in defending itself against such orders or decisions; or

15.4.6 insofar as the contracting party is permitted to use or pass on trade secrets on the basis of mandatory statutory provisions or on the basis of this contract.

15.5 The Provider shall comply with the rules of data protection, in particular if the Provider is granted access to the Customer's operation or to hardware and software. The provider ensures that its vicarious agents also comply with these provisions. If the customer cannot prevent the provider from accessing his personal data, the parties will conclude an order processing contract in accordance with Art. 28 GDPR.

16. Delays in Performance; Force majeure

16.1 The provider will notify the customer of any delays in performance immediately after the customer becomes aware of them.

16.2 Delays in performance due to force majeure, e.g. B. Strike or lockout in third-party companies or in the provider's company (in the latter case, however, only if the industrial action is lawful), official orders, legal prohibitions, general telecommunications disruptions or other circumstances through which we are not responsible ("force majeure") or circumstances within our sphere of influence of the customer, e.g. B. non-timely provision of cooperation, delays by third parties attributable to the customer, etc., entitle the provider to postpone the provision of the services concerned for the duration of the hindrance plus a reasonable start-up time. If the force majeure lasts longer than three months, both parties are released from their obligation to perform. The further (legal) claims or rights of the provider, in particular from default of acceptance by the customer, remain unaffected.

17. Choice of Law and Venue

17.1 The relationships between the provider and the customer are exclusively subject to the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods dated April 11, 1980 (CISG) does not apply.

17.2 If the customer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the place of jurisdiction for any disputes arising from the contract is the registered office of the provider in Düsseldorf, Germany. The provider is also entitled to bring an action at the customer's registered office and at any other permissible place of jurisdiction.

18. Final Provisions; subcontractor

18.1 The provider is entitled to use third parties (e.g. freelance software programmers, other software providers) as subcontractors.

18.2 The place of performance for the performance obligations is Düsseldorf, Germany.

18.3 Should a provision of these GTC promio.connect be or become invalid, contain an inadmissible deadline or a gap, the legal validity of the remaining provisions shall remain unaffected. Insofar as the ineffectiveness does not result from a breach of §§ 305 et seq. BGB (applicability of general terms and conditions), an effective provision shall be deemed to have been agreed in place of the ineffective provision which comes as close as possible to the economic intention of the parties. The same applies in the event of a gap. In the event of an inadmissible deadline, the legally permissible extent shall apply in this case.

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