

# General Terms and Conditions of IntuitiveLabs GmbH

## 1 Scope

(1) The applicability of these General Terms and Conditions of Contract presupposes that a contract is concluded between IntuitiveLabs GmbH (registered in the Commercial Register of the Potsdam Local Court under HRB 34115 P

(2), hereinafter referred to as "we") and the customer.

(3) Third parties who distribute our services to their contractual partners may base the contract with their respective contractual partner on their own contractual conditions, which may deviate from our general contractual conditions. The obligation of the third party to effectively include our special contractual terms and conditions for the licensing of software in the contract with its respective contractual partner shall remain unaffected.

## 2 Contractual basis

(1) The contracting parties are we and the customer. Third parties are neither authorized nor obligated by this contract. The contractual provisions shall also apply to legal successors of the respective contracting party.

(2) Our General Terms and Conditions of Contract are intended for inclusion in contracts that serve to sell our services to our customers. They do not apply to contracts for the procurement of services by us.

(3) Our offers and services are directed exclusively to entrepreneurs as well as legal entities under public law or special funds under public law. An entrepreneur is a natural or legal person or a partnership with legal capacity who, when concluding a legal transaction, acts in the exercise of his commercial or independent professional activity; a partnership with legal capacity is a partnership endowed with the capacity to acquire rights and incur liabilities.

(4) Contractual terms and conditions of the customer that deviate from our general or special contractual terms and conditions shall not become part or content of the contract, not even by our silence or by reference to letters of the customer with such contractual terms and conditions or by unconditional acceptance of an offer of the customer or unconditional performance of services by us. Deviating individual agreements shall have priority.

(5) The contracting parties agree that our special contractual terms and conditions for the licensing of standard software, for the online use of standard software for a limited period of time, for freeware and beta products and for the maintenance of standard software shall apply in their latest version.

(6) Our special contractual conditions (e.g. for software licensing and software maintenance) take precedence over our general contractual conditions in the event of contradictions and deviations. Individual agreements take precedence over contractual terms and conditions.

## 3 Conclusion of the contract

(1) Our offers for the conclusion of a contract are free and non-binding, unless our offer expressly states otherwise.

(2) Insofar as we offer our customers to conclude contracts with us in electronic business transactions via our website, the following shall apply in addition to para. 1:

1. The offers on our website are merely a non-binding invitation to the customer to submit offers for the conclusion of a contract.

2. If the customer clicks on the button labeled "Buy now" or on a button with a comparable text (e.g. "Order subject to payment"), he makes a binding offer to conclude the contract. The customer is bound to his order until the expiry of the seventh calendar day from the date of submission of his order.

3. We provide the customer with appropriate, effective and accessible technical means with the help of which the customer can recognize and correct input errors before submitting his order. Before submitting his order, the customer can view and change the order data.

4. After sending the order, the customer receives an automatic confirmation of receipt from us by e-mail, which reflects the content of the customer's order. This confirmation of receipt does not constitute a binding acceptance of the customer's order, but merely documents that his order has been received by us, unless the e-mail expressly declares acceptance of the customer's order in addition to the confirmation of receipt.

5. The contract is only concluded upon receipt of our declaration of acceptance by the customer. We declare acceptance by means of a notification sent by e-mail, by sending the license key or by sending the invoice. We are entitled to accept the customer's order until the end of the seventh calendar day after the customer has placed the order. Silence on our part in response to the customer's order shall not constitute acceptance.

## 4 Special right of withdrawal for software licensing

(1) If we conclude a contract with the customer for the licensing of software, we grant the customer a right to withdraw from the contract in accordance with the following provisions:

1. Only our end customers have the right to withdraw from the contract. In particular, it is not available to sales partners such as distributors or resellers.

2. The right to withdraw from the contract expires 30 calendar days after the conclusion of the contract for licensing the software.

3. Withdrawal shall be effected by declaration to us. The declaration must be in writing to be effective. The declaration does not have to contain a reason.

4. After exercising the right of withdrawal, we shall refund to the customer within thirty calendar days the remuneration paid by him (depending on the tax situation, less any taxes already paid by us), concurrently against uninstallation and deletion of the software and return of the right of use to us by the customer.

5. Neither of the contracting parties shall be obliged to surrender or compensate for the value of any benefits derived prior to the withdrawal.

(1) Legal rights of the customer to withdraw from the contract are neither excluded nor limited by the above provisions.

(2) Paragraphs 1 and 2 shall apply mutatis mutandis in the case of a temporary transfer of the Software in the form of a Software lease, with the proviso that the right to rescind shall be replaced by a right to terminate.

## 5 Our services

(1) We are obliged to provide the agreed services. The scope of our services is determined by the service description valid at the time of our offer and, in addition, by the respective applicable special contractual conditions, e.g. for licensing or maintenance of our software.

(2) Descriptions of services do not constitute guarantees or assurances of characteristics of our services.

(3) We enable the customer to inform himself about the nature of our software before concluding the contract. The customer is responsible for clarifying whether our software meets his requirements and expectations.

(4) We are entitled to provide partial services unless this is unreasonable for the customer.

(5) We are also entitled to use third parties to provide our services.

(6) Performance deadlines shall be extended by the period in which we are prevented from performing the service due to circumstances for which we are not responsible, and by a reasonable start-up period after the hindrance has ceased to exist. The same shall apply to the period in which the customer fails to cooperate.

## 6 Software licensing

(1) We shall provide the customer with our software for use to the agreed extent in return for the agreed remuneration without spatial restriction either (a) permanently on the basis of purchase law or (b) for a limited period on the basis of rental law, unless otherwise agreed.

(2) As part of our software, we provide the customer with the user documentation for our software exclusively in electronic form in English and in a format of our choice.

(3) The software is delivered by making it available for download via the Internet and sending the link to the

Download ("Download Link") and the license key to the customer.

(4) We provide the customer with our software exclusively in executable form (object code). The delivery of source code is not owed.

(5) Our software is legally protected. We grant the customer a non-exclusive and geographically unrestricted right to use the software to the contractually agreed extent in accordance with the contract with the customer and the special contractual conditions for the licensing of software. This right is either (a) in the case of the permanent transfer of software unlimited in time or (b) in the case of the temporary transfer of software limited to the agreed contractual period.

## 7 Remuneration and terms of payment

(1) The customer is obliged to pay the agreed remuneration. Subject to deviating provisions, the claim is due 30 days after invoicing in the case of purchase on account, and immediately in the case of all other payment methods.

(2) All prices are - as far as applicable - plus the respective applicable statutory value added tax. Any customs duties and similar charges for deliveries abroad shall be borne by the customer.

(3) We do not bear the costs of a money transaction by which the customer fulfills his obligation to pay the remuneration.

(4) A cash discount deduction is only permissible on the basis of a separate agreement, which must be in writing to be effective. Deviating individual agreements shall have priority.

(5) If the software is provided for a limited period of time in the form of software rental or for online use, we are entitled to adjust the prices for each extension period after the initial contract period has expired. We will inform the customer about such a price adjustment at least 28 days before the beginning of the respective extension period. If the customer does not agree to the price adjustment, the customer may terminate the contract by giving 14 days' notice to the end of the current contract term or such shorter ordinary notice period as may be granted in our relevant Special Terms and Conditions.

(6) The customer may - without contractual limitation in accordance with the statutory provisions - set off claims resulting from the contract and directed towards payment due to non-fulfillment of our delivery obligation or due to defects of the goods or services against our claim for payment of the remuneration. Claims other than those listed in sentence 1 may only be set off by the customer against claims of ours if they are undisputed or have been legally established.

(7) The customer shall only be entitled to exercise a right of retention insofar as its counterclaim is based on the same contractual relationship.

## 8 Cooperation services of the customer

(1) The contractual and, in particular, timely provision of our services presupposes the contractual and, in particular, timely provision of the cooperation services owed by the customer free of charge.

Insofar as the customer does not fulfill his cooperation services or does not fulfill them in accordance with the contract, our obligation to provide services shall lapse to the extent and for the period in which their provision depends on the customer's prior fulfillment of cooperation services. Our claim to remuneration shall remain unaffected. The customer shall bear all disadvantages and additional costs resulting from a breach of its duties and obligations, insofar as these result from the customer's failure to perform its cooperation services.

(1) It is the customer's responsibility to create the necessary system requirements for the use of our software at his own expense, in particular to provide the necessary hardware, third-party software and Internet connection.

(2) It is the customer's responsibility to claim defects in our services in writing in a traceable and detailed form, stating the information useful for identifying the defect, and in particular to state the work steps that led to the occurrence of the defect, its effects and the appearance of the defect.

(3) It is the customer's responsibility to download and install new program versions of the software to eliminate any defect after being informed by us, unless this is neither possible nor reasonable for the customer.

(4) Insofar as we do not undertake to take over the storage of data for the customer (e.g. for data backup or archiving for the customer), the customer itself shall be responsible for data backup in accordance with the state of the art, namely prior to the initial installation of our software, prior to the installation of new program versions of our software, in the event of indications of a malfunction which, upon reasonable assessment, may have been caused by our software, and at intervals appropriate to the application in such a way that the customer can restore the data with reasonable effort.

(5) It is the customer's responsibility to back up the installation files and associated license keys required for a new installation.

#### **9 Rights of the customer due to a defect of the software**

(1) The customer shall be entitled to its rights due to a defect in the software in accordance with the statutory provisions, unless otherwise agreed.

(2) In the event of a material defect in the software, we shall, at our option, which we shall make within a reasonable period of time, first be obliged and entitled to subsequent performance in the form of rectification (i.e. elimination of the defect) or replacement (i.e. provision of a new defect-free program version). The elimination of the defect may also consist of our showing the customer reasonable possibilities, in accordance with the contract, to avoid the effects of the defect.

(3) In the event of a defect of title in the software, we shall be entitled and obligated, at our option, which we shall make within a reasonable period of time, to remedy the defect first by providing a legally flawless opportunity to use the software or by providing replaced or modified software of equivalent value. The customer shall take over the new program version if the contractual scope of functions is maintained and the customer can reasonably be expected to accept the new version.

(4) If the supplementary performance has failed or if the reasonable deadline to be set by the customer for the supplementary performance has expired unsuccessfully or is dispensable according to the statutory provisions, the customer may withdraw from the contract or reasonably reduce the remuneration in accordance with the statutory provisions. In the case of an insignificant defect, however, there shall be no right of withdrawal.

(5) Our liability for compensation of damages and futile expenses is limited in accordance with § 11 and § 12.

(6) If, after notification of a material defect by the customer, we provide services to search for or rectify the defect without being obliged to do so, the customer shall be obliged to compensate us for any damage or expenses incurred as a result of the services to search for or rectify the defect, unless the customer did not breach any obligations when notifying us of the defect or is not responsible for his breach of obligation.

(7) In the case of a temporary transfer of the software in the form of software rental, the following shall apply additionally:

We shall provide and maintain the software in a condition suitable for use in accordance with the contract. The obligation to maintain the software during the term of the contract does not include adaptation to changed conditions of use and technical and functional developments, such as changes to the IT environment, in particular changes to the hardware or the operating system, adaptation to the functional scope of competing products or establishing compatibility with new data formats.

#### **10 Third party property rights**

The customer shall inform us immediately in writing if third parties assert property rights (e.g. copyrights or patent rights) to the software. He shall support us to a reasonable extent in defending against such claims.

#### **11 Liability**

(1) We are liable without contractual limitation according to the statutory provisions

a) for intent;

b) for damages based on the fact that we have fraudulently concealed a defect in the software or have assumed a guarantee for the quality of the software;

c) for damages resulting from injury to life, body or health, which are based on an intentional or negligent breach of duty by us or otherwise on intentional or negligent conduct of a legal representative or vicarious agent of us;

d) for damages resulting from an intentional or grossly negligent breach of duty by us or otherwise from intentional or grossly negligent conduct by a legal representative or vicarious agent of ours;

e) according to the product liability law.

(2) In cases other than those specified in paragraph 1, our liability shall be limited to compensation for the foreseeable damage typical of the contract, insofar as the damage is due to a negligent breach of material contractual obligations by us or by one of our legal representatives or vicarious agents.

Material contractual obligations are obligations the fulfillment of which is essential for the proper performance of the contract and compliance with which the customer regularly relies on and may rely on.

(3) In cases other than those specified in paragraphs 1 and 2, our liability for negligence is excluded.

(4) The objection of contributory negligence remains unaffected.

(5) The above provisions on our liability for damages shall apply to all contractual and non-contractual claims for damages against us, irrespective of their legal basis, and accordingly to our liability for reimbursement of futile expenses.

(6) In the case of a temporary transfer of the software in the form of software rental, the following shall apply additionally:

Strict liability for defects already existing at the time of conclusion of the contract is expressly excluded.

## **12 Limitation of claims of the customer due to defects of the software**

(1) Without contractual limitation according to the statutory provisions, the statute of limitations shall be

a) claims of the customer against us in the event of liability due to intent;

b) claims of the customer against us due to defects of the software, insofar as we have fraudulently concealed the defect or insofar as we have assumed a guarantee for the quality of the software;

c) claims of the customer against us due to defects of the software, if the defect consists in a right in rem of a third party, based on which the surrender of the software can be demanded;

d) Claims of the customer for compensation of damages

aa) from injury to life, limb or health, which are based on an intentional or negligent breach of duty by us or otherwise on intentional or negligent conduct of a legal representative or vicarious agent of ours;

bb) which are based on an intentional or grossly negligent breach of duty by us or otherwise on intentional or grossly negligent conduct by a legal representative or vicarious agent of ours;

cc) under the Product Liability Act.

(1) In cases other than those listed in paragraph 1, the limitation period for claims by the customer due to material defects in the software shall be one year from delivery of the software.

## **13 Data protection and data security**

(1) We process personal data in accordance with the statutory and contractual provisions. Our employees involved in data processing are obliged to maintain confidentiality and to comply with the data protection requirements under the General Data Protection Regulation (DSGVO). For further information, please refer to our data protection declaration (in the currently valid version at

<https://www.intuitivelabs.com/privacy> available).

(2) Insofar as we process personal data on behalf of the customer on the basis of a contractual obligation or insofar as we carry out the testing or maintenance of automated processes or data processing systems on behalf of the customer and access to personal data cannot be ruled out in the process, we shall not be obligated to provide our services until the necessary legal requirements have been met, e.g. in the form of a commissioned processing agreement that satisfies the applicable law.

## **14 Export control**

(1) All of our products are subject to export control regulations. Customer must comply with all applicable national and inter-national export and import control laws and regulations in the use and distribution of the Software, including the Documentation, and specifically may not export or re-export the Software without all required governmental approvals. Such laws include restrictions on destination, end user and end use.

(2) Customer further acknowledges that export, re-export, sale or transfer of the Software to any of the countries listed at the following Internet address, as well as activation of the Software in such countries, is prohibited in all cases:

<https://www.sanctionsmap.eu>

(3) If the customer knows or suspects that an unauthorized export by a third party could take place in accordance with the above provisions, the customer is prohibited from transferring the products to such third party. Furthermore, subject to our prior consent in individual cases, transfer to persons or institutions of which the customer knows or suspects that they are involved in the design, development or manufacture of nuclear technologies or nuclear, biological or chemical weapons is prohibited.

(4) Without liability to Customer and to the exclusion of any right to a refund of any payment already made, we may revoke or suspend the grant of a Software License without notice if we discover any installation or use of the Software in violation of this Section 14 or by any person or entity on any relevant national or international sanctions list.

## **15 General provisions**

(1) This contract shall be governed by the laws of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods.

(2) The place of jurisdiction for all disputes arising from or in connection with this contract between us and a customer who is a merchant, a legal entity under public law or a special fund under public law shall be our respective registered office. Mandatory statutory provisions on exclusive places of jurisdiction including Section 689 (2) of the German Code of Civil Procedure (ZPO) shall remain unaffected.

(3) Amendments and supplements to our contract with the customer must be made in writing to be effective. This also applies to the cancellation of this written form requirement. Deviating individual agreements shall have priority.

(4) Insofar as we have agreed or will agree in the future on written form with the customer for declarations, also in accordance with paragraph 3, the written form shall also be complied with by fax, e-mail or, in the case of the conclusion of contracts, by the exchange of declarations that comply with the written form. § However, Section 127 (2) and (3) BGB shall not apply in all other respects.

(5) Insofar as we have agreed or will agree in the future on written form with the customer for declarations, also in accordance with paragraph 3, the written form shall also be

(6) Insofar as the customer provides an e-mail address for the transmission of our contractual declaration prior to or upon conclusion of the contract, further legally relevant declarations by us to this e-mail address shall also be deemed to have been received by the customer to a person authorized to receive such declarations.

(7) The parties may publicly refer to the existence of their business relationship as security software provider and reference customer, but only in general reference lists and not in advertising measures specifically targeted at the other party.

(8) If provisions of the contract have not become part of the contract in whole or in part or are invalid, this shall not affect the validity of the remaining provisions of the contract. In place of the provision that has not become an integral part of the contract or is invalid, the parties shall agree on a provision that comes as close as possible to the purpose intended by the provision that has not become an integral part of the contract or is invalid. This shall also apply to the filling of any gaps in the contract.

# Terms and Conditions of IntuitiveLabs GmbH for the Online Use of IntuitiveLabs Cloud VoIP Monitor

## 1 Scope

(1) The Terms and Conditions set out below shall apply to the contracts of IntuitiveLabs GmbH (hereinafter referred to as “we”) with customers for the use of the Intuitivelabs Solutions.

(2) To the extent the Terms and Conditions for the use of IntuitiveLabs software set forth herein do not otherwise provide, our General Terms and Conditions as well as the Data Protection Agreement (Job Processing) IntuitiveLabs cloud-based Monitor shall have supplemental application. Upon request, we shall send these to the customer by e-mail or fax or make them available to the customer in the most recent version for downloading on our website.

(3) Secs. 4, 6, 8 (4) and (6), and 9 to 12 of our General Terms and Conditions shall not apply.

## 2 Our services

(1) Throughout the term of the contract, we shall provide services in connection with our provision of the “Licensed Software” for the customer’s use, as well as supplemental services (e. g. provision of remote probes) in line with sec. 3 to sec. 10.

(2) During the trial phase (sec. 17 (2)), our services are provided free of charge; following conversion to “software rental” (sec. 17 (3)), our services are provided for a fee.

## 3 Scope of our services

(1) Where, during the term of our contract, we make modifications to the Licensed Software and remote probes in order to perform contractual duties or based on a statutory or contract right (e. g. by providing new versions), the modified software shall be deemed to replace the Licensed Software, and the modified remote probes shall be deemed to replace the remote probes. The customer is not entitled to demand that we provide them with a previous software version.

(2) Our software, i. e. the Licensed Software and the remote probes (including user documentation) is subject to legal protection, including, in particular, copyright protection.

(3) The customer may only use our software within the scope of what is permitted under the contract and, unless otherwise agreed in the contract, within the scope of what is permitted by law.

## 4 User documentation

The user documentation constitutes part of the Licensed Software and the remote probes. We provide it to the customer solely in electronic form (in English) and in a format of our choice.

## 5 Provision of use

(1) The customer is authorized to use the Licensed Software, subject to the agreed availability thereof, on a geographically unlimited basis until this contract ends. On the basis of this contract, the customer is neither granted a copyright nor an exclusive right of use to the Licensed Software. The customer’s right to use the Licensed Software is non-transferable and may not be sublicensed. However, the customer is authorized to use the Licensed Software to perform services for third parties. During the trial period, the foregoing sentence shall apply with the proviso that the provision of the Services to third parties shall only serve the purpose of evaluating the Licensed Software.

(2) We shall provide the Licensed Software on a cloud service or server of one of our subcontractors for the customer’s use until this contract comes to an end, subject to the agreed levels of availability. The customer’s right to use the Licensed Software shall include the right to access the Licensed Software via a data connection in order to achieve the purpose of the parties’ contract, and to run the software and to operate it in order to enter, process, and extract data in line with this contract, to download the accompanying user documentation from the server for its use in line with these terms and conditions, and to duplicate the same to a reasonable extent (e. g. to print out such user documentation or to store it temporarily or permanently on a data medium, e.g. on the hard drive of the customer’s computer or other end device), where necessary in order to use the Licensed Software for the purposes envisaged under the contract. The customer is not granted access to the source code of the Licensed Software. The customer may neither process nor in any other way modify the Licensed Software. Sec. 5 (2) shall not apply with respect to remote probes.

(3) We shall furnish the customer with “remote probes” for downloading, as additional software products. We grant the customer a non-exclusive right of use to the respective remote probe, which right is unlimited in geographical scope and limited in temporal scope to the term of the contract, as follows

1. to install the remote probes on the computer/computers for which they are destined in line with the intended use thereof,
2. to load the remote probes into the working memory of the computer and to display and launch them,
3. to create backup copies to the necessary extent and to create backups of the respective data media/medium on which the remote probe(s) is (are) installed (image).

Remote probes may be installed on an unlimited number of computers throughout the world.

It is the customer’s responsibility to safeguard/backup the installation files necessary for reinstallation and the corresponding license key, if applicable.

The customer may only make changes to the remote probes within the meaning of sec. 69c no. 2 of the German Copyright Act ([German acronym:] UrhG) to the extent permitted by law. We must point out that even minor alterations may lead to substantial, unforeseeable disruptions in the operation of the software and other computer programs and may give rise to incorrect output of the data processing. The customer is prohibited from modifying or removing copyright notices on the remote probe or any data media we may provide. Under no circumstances is the customer granted any right of use beyond their statutory rights that would entitle them to edit, translate or modify the remote probes.

The customer is only authorized to decompile the remote probes within the meaning of sec. 69e of the German Copyright Act (UrhG) to the extent permitted by law. Prior to any decompilation, the customer shall request, in writing and setting a reasonable deadline, that we provide such information and documents as are necessary to secure interoperability. The customer shall only be entitled, within the limits of what is provided under sec. 69e UrhG, to proceed to decompile the remote probes where such deadline expires to no avail. Prior to engaging third parties (e. g. in line with sec. 69e (1) (1), sub-sec. (2) (2) UrhG), the customer shall procure for us a written undertaking by the third party in which that third party undertakes to us directly that it shall comply with these terms and conditions.

The customer shall only be entitled to disseminate the remote probes (including by contract-leasing) or to display them publicly (on a wired or wireless basis), including publishing them such that the remote probes are accessible to members of the public at locations and times of their choosing, to the extent expressly agreed with us or permitted by law.

## 6 Availability of Licensed Software

(1) The servers on which the Licensed Software is provided for the customer's use are operated on a 24 hour/day and 7 day/week (24/7) basis.

(2) We are running the Licensed Software on the Amazon Web Service (AWS) Cloud. The minimum availability thereof shall be governed by the "Amazon EC2 Service Level Agreement", subject to the provisions that Amazon Web Services, Inc. is deemed replaced by ourselves and the user is deemed replaced by the customer. The "Amazon EC2 Service Level Agreement" may be downloaded online at <https://aws.amazon.com/ec2/sla/>. We will also send this document to customers upon request, by email or fax.

(3) We may suspend availability on a temporary basis in order to perform maintenance on the Licensed Software (e. g. for updates (provision of new program versions)) or restrict availability for such purposes, in each case in line with the provisions set forth below:

1. To the extent that maintenance services are periodically recurring for us for technical reasons or can otherwise be scheduled by us as preventive maintenance, they will be provided at times when interruptions or restrictions typically have below- average adverse effects for the entire group of customers.

2. To the extent that maintenance services cannot be planned by us, we shall be entitled to provide maintenance services at times other than those specified in no. 1 if this is necessary to maintain the operation of the IT systems or to guarantee IT security. We endeavor to avoid unscheduled maintenance services by providing reasonably planned maintenance services.

3. We shall restore availability within a time that is reasonable with regards to handling the cause of the maintenance.

(4) The provisions set forth in subsection (3) shall remain unaffected by the provisions set forth in subsection (2).

(5) It shall be the customer's responsibility to inform us in a timely manner about actions planned by the customer or with the customer's knowledge, which may have an impact on the quality of the services to be provided, in particular which may lead to increased system utilization.

## 7 Access to Customer Portal

(1) Access via the web portal requires the inputting of credentials.

(2) The customer is responsible for ensuring (by undertaking appropriate technical and organizational measures within their scope of responsibility) that only authorized persons are given access to the credentials and for specifying the authorizations for further users. The customer shall ensure that credentials provided are not disclosed to unauthorized third parties or any improper use is made of them.

## 8 Provision of new versions

During the term of the contract, as a part of our standard release stream, we shall provide the customer with the most recent version of the Licensed Software and remote probes in each case for their use. The customer is responsible for the installing of new program versions of the remote probes.

## 9 Ongoing development

(1) We have an obligation to perform further development of the respective software (of the Licensed Software and the remote probes) to a reasonable extent and to provide new versions as part of our standard release stream.

(2) For purposes of our performance of further development work, we are authorized to modify, supplement and develop the Licensed Software and remote probes (including user interfaces and dialog screens, and user documentation) in our free discretion throughout the term of the contract, provided that the essential functional scope for the contractual use of the software in question remains substantially unaffected and the modifications are reasonable for the customer for a contractual and typical use of the software. This authorization to modify the software shall also include the authority to remove functionalities that are not important or are no longer important in connection with the customer's contractually compliant use of the software, to the extent reasonable to the customer. Following any notification of changes to the respective software, the customer is responsible for verifying that the changes are

reasonable for the customer for a contractual and typical use of the software. If this should not be the case, the customer must promptly inform us of this.

(3) Maintenance is at all times undertaken within our software's lifecycle and in line with our release strategy. If we plan to discontinue maintenance for our software, we will provide at least 12 calendar months' advance notice of the discontinuation date.

## 10 Support

(1) Throughout the term of our contract, we shall provide the customer with support services in response to technical inquiries regarding the respective software, i. e. regarding the current program version of the Licensed Software and the remote probes, on the basis of the law governing contracts for works and services (secs. 611 ff. of the German Civil Code ([German acronym:] BGB), to the extent agreed herein (hereinafter "Support").

(2) For this purpose, we operate a Support ticket system which is set up to respond to customer inquiries. Support is provided solely via that Support ticket system. The customer may open Support tickets either via the Licensed Software or on our website.

(3) Our Support services are available during our normal business hours CET, i. e. on all weekdays (e. g. calendar days with the exception of Saturdays and Sundays and with the exception of statutory public holidays in the German Federal State of Berlin and with the exception of December 24<sup>th</sup> and December 31<sup>st</sup> of any year) from 9:00 a.m. to 5:00 p.m. (CET or CEST). We are authorized to freely plan and coordinate the activities required to enable us to perform our Support services. Sec. 6 (3) shall apply *mutatis mutandis* to the availability of our Support ticket system.

(4) Our Support includes providing Support to customers on specific questions regarding functionalities, operation, and potential problems with the Licensed Software and remote probes (e. g. malfunctions of the software which may be caused by users) where the customer is not able to solve the issue by using the information in the error message, the user documentation or general IT knowledge.

(5) We do not have a duty to provide Support

a) if the customer does not use the means of communication specified by us in subsection (2) for communicating their inquiry or

b) if the customer does not furnish us with all information in a reasonably succinct and documented fashion and in the form we require in order to process the inquiry.

(6) The customer's rights and duties with respect to defects of the respective software shall remain unaffected by our Support. Processing of reports of errors of the respective software is not the subject matter of our Support where such work is covered by one of our warranty obligations.

(7) Provision of extended Support services (with availability outside the hours referred to above) or service levels (e. g. reaction and error elimination times) shall require a separate agreement of the parties.

## 11 Compensation

(1) During the trial phase (sec. 17 (2)), our services are performed free of charge. Following conversion to "software rental" (sec. 17 (3)), the customer shall be required to pay the agreed compensation.

(2) We shall invoice customers for our services for the respective contract period except where we have otherwise agreed. The compensation is payable in advance, except where we have otherwise agreed.

(3) The provisions in sec. 7 of our General Terms and Conditions shall apply in supplementation thereof.

## 12 Customer's duties of cooperation

(1) The customer shall maintain IT infrastructure (hardware and software) in place that is appropriate for the use of the software agreed under the contract and shall ensure that there is a suitable data connection to the server on which we provide the software for the customer's use. This constitutes a necessary prerequisite to the customer's contractual use of the software, including the remote probes.

(2) We provide the information on the technical minimum requirements online for downloading and will also provide them in another form upon request. We may modify the technical minimum requirements in our reasonable discretion and following timely prior notice on our website. The customer is responsible for informing themselves regarding the respective technical minimum requirements. The customer shall bear the costs necessary for procuring and maintaining the IT infrastructure needed to use the services or to avail themselves of telecommunication services or other service providers other than us. We are not responsible either for establishing or for maintaining data connections at any point beyond the delivery point of the server operated by a service provider under contract with us to the customer's data connection.

## 13 Customer's rights with respect to software defects

(1) The customer is entitled to assert rights for a defect of the respective software (i.e., the Licensed Software or the remote probes) in line with the provisions of applicable law, except where the parties have otherwise agreed.

(2) We shall provide and maintain the software in a condition suitable for contractual use. The obligation to maintain the software during the term of the contract does not include adaptation to changed operating conditions and technical and functional developments, such as changes to the IT environment, in particular changes to the hardware or the operating system, adaptation to the functional scope of competing products or creation of compatibility with new data formats.

(3) In the event of any substantive defect of the respective software, we shall be obliged and entitled, at our election, which we shall make within a reasonable time, initially to remediate (e. g. eliminate the defect) or to supply a replacement (i. e. provide a new version of the program which is free of defects). Elimination of defects may also consist of indicating to the customer contractual and reasonable options for avoiding the impacts of the defect.

(4) In the event of any legal defect with respect to the software, we shall be entitled and obliged, at our option, which we shall make within a reasonable time, initially to undertake supplemental performance by procuring a legally sound means of



using the respective software or by providing replacement software or modified software of equivalent value.

(5) Our liability for damages and our liability to pay compensation for unavailing expenditures is limited under sec. 15 and sec. 16 hereof.

(6) Where we perform services involving identifying or eliminating defects following the report of a substantive defect by the customer without being obliged to do so, the customer shall have a duty to compensate us for the losses or expenditures we incur as a result of our services in identifying or eliminating the defect, except where the obligor has not breached any of its obligations in reporting the defect or is not responsible for the breach of duty.

#### **14 Intellectual Property rights of third parties**

The customer shall notify us promptly in writing wherever third parties assert IP rights (e. g. copyright or patent rights) to the respective software. The customer shall support us to a reasonable extent in defending against such claims.

#### **15 Our liability during the trial phase**

During the trial phase (sec. 17 (2)), we shall only be liable in cases of intentional acts and gross negligence.

#### **16 Our liability following conversion to “software rental”**

Following conversion to “software rental” (sec. 17 (3)), section 11 of our General Terms and Conditions shall apply.

#### **17 Commencement and termination of contract**

(1) This contract shall enter into force at such time as it is concluded.

(2) The customer may test the software and remote probes free of charge during the trial phase. The contract shall end at such time as the customer switches to “software rental” in line with subsection (3) or upon expiration of the trial phase, without the need for any declaration by either party.

(3) During the trial phase, we are deemed to irrevocably offer to the customer that, by making a declaration to us, which the customer must provide via our administration module (e. g. “subscribe now” or equivalent), the customer may switch the contract to a paid contract for online use (switch to “software rental”).

(4) The paid contract for online use shall begin to run on the calendar date on which the customer provides their declaration (“subscribe now” or equivalent). When providing such declaration, the customer may select a contract term (e. g. one month or twelve months).

(5) Upon expiration of the agreed contract term, the paid contract for online use shall be automatically extended, without the need for any declaration by either of the parties, for a contract term equal to the previous contract term in each case except where one of the parties gives timely and formally proper notice of termination to the other party.

(6) The notice period for termination is one calendar day to the end of the respective contract term. To be valid, notice of termination must be given in writing. Compliance with the written form requirement by the customer is satisfied where the customer submits a corresponding declaration in the administration module (e.g., “cancel subscription” or equivalent).

(7) For purposes of our compliance with the written form requirement, an electronic message which we display to the customer via the Licensed Software, and which comports with the text form requirement shall be deemed sufficient. Our notice shall be deemed to have been received by a person authorized to receive it on behalf of the customer if it is stored within the software in such a way that it may be displayed to the customer within the Licensed Software.

(8) The right of extraordinary termination shall remain unaffected hereby. It requires the written form to be effective. Sub-section 7 shall apply *mutatis mutandis*.

(9) Upon expiration of the contract, the customer is no longer entitled to use the Licensed Software or the remote probes. Following termination, we are not obliged to store the customer’s configuration files.

## 16 DATA PROTECTION AGREEMENT (JOB PROCESSING) IntuitiveLabs Cloud VoIP Monitor between the Customer ("Client") and IntuitiveLabs GmbH ("IntuitiveLabs")

### 1. Object and duration of contract; legal framework

The Client instructs IntuitiveLabs with processing individual-related data for delivery of VoIP monitoring services. The duration of this agreement corresponds to the operation life. This data protection agreement shall be part of the contractual regimes of IntuitiveLabs Cloud VoIP Monitor.

### 2. Nature of data; parties concerned

IntuitiveLabs processes monitoring data of the Client. Such are personally identifiable data of the Client's applied devices and sensors including data of scope, duration and time of a call, data of device identification including IP address and device ID, data of Client accounts using the net-work as well as data of utilization of the IntuitiveLabs account.

The processing of monitoring data affects users of the devices and network components applied and created by the Client.

### 3. Rights and responsibilities of client

Assessing the legitimacy of data processing in accordance with article 6 section 1 of GDPR (General Data Protection Regulation) as well as safeguarding the rights of any party concerned in accordance with article 12 to 22 of GDPR shall be the responsibility of the Client.

### 4. Scope, type, purpose of data processing and directives

The following provisions are final directives regarding the monitoring transferred.

The monitoring data are processed by IntuitiveLabs solely for the purpose of performing, processing and supporting the monitoring service. This includes the technical provision of the probes, ensuring trouble-free operation, monitoring security risks and system stability, detecting possible problems of the Client's network instance and taking measures to avert the detected problems.

Processing of monitoring data for other purposes, especially the transfer to third parties for other purposes than the agreed purpose, is not allowed. Furthermore, mandated processing shall not include any provision of information to third parties or users of devices and network components applied by the Client. In particular cases, this shall require separate commission.

The IntuitiveLabs solution can fully anonymize the monitoring data and extract the data that can then no longer be attributed to a person or the Client and use it for the further development and improvement of its products. The use can decide to collect or save data in clear form.

Copies or duplicates of the monitoring data shall not be created

without prior knowledge of the Client. This does not include backup copies that are required for ensuring smoothly running operation (backup mechanisms and restoring mechanisms) or guaranteeing proper data processing or compliance with any legal archiving duties.

### 5. Technical and organisational protective measures

IntuitiveLabs shall guarantee a protection level for the parties concerned by data processing appropriate to the nature and extent of the risk for rights and liberties.

This shall include taking technical and organizational measures in accordance with article 32 GDPR to ensure the protection goals of confidentiality, integrity, availability and resilience of the systems and services as well as purpose limitation (prevention of misuse and transfer of monitoring data). The measures taken must be suitable and appropriate to contain risks to these protection goals in the long term and must correspond to the state of the art. The measures to be taken are described/documented.

The measures are subject to technical progress and developments. Alternative measures may be implemented if the protective level of the measures defined is not being undercut.

### 6. Specific responsibilities of IntuitiveLabs

IntuitiveLabs shall process the monitoring data in conformance with the Client's instructions unless IntuitiveLabs is bound by EU law or law of a member state to process data otherwise (for instance due to investigations by prosecution offices or state security); should this occasion arise, IntuitiveLabs shall inform the Client of these legal requirements before data procession unless the law in question prohibits such notification for important public reasons (article 28 section 3 sentence 2 letter a of GDPR).

All IntuitiveLabs employees responsible for order completion are subject to an obligation of confidentiality or obligation of silence. They were made familiar with the relevant rules concerning confidentiality, especially given the subject matter of this agreement.

IntuitiveLabs shall regularly check the rules laid down in this agreement, especially regarding implementation and – if necessary – amendment of protective measures in order to guarantee that data processing within their area of responsibility follows the requirements of the valid data protection legislation and assure protection of the entities concerned.

### 7. Violations of protection and reporting obligation

IntuitiveLabs is obliged to notify security breaches in their range of control and organisation affecting personal data provided by the Client promptly to the Client (article 4 point 12 GDPR). For this purpose, IntuitiveLabs shall notify the Client immediately of the respective event through the email address listed and stored in the contact data.

IntuitiveLabs – in consultation with the Client – shall take appropriate measures to safeguard monitoring data and also take provisional measures to mitigate possible negative effects.

The Client is responsible for reporting that is possibly resulting from article 33 section 1 and article 34 GDPR.

### 8. Deletion of data

The monitoring data shall be stored for a period of time in accordance with the customers contract and overwritten afterwards.

After termination of the IntuitiveLabs services, the monitoring data shall be deleted six days after the contractual end at the latest. A dispute between the parties regarding contractual services or unresolved claims may result in monitoring data being withheld for evidentiary purposes.

### 9. Rights of parties concerned

In so far as their means allow, IntuitiveLabs shall support the Client with their obligations to implement the rights of data subjects.

At the request of the Client, IntuitiveLabs shall delete the monitoring data involved in data processing. Furthermore, IntuitiveLabs may correct or delete data or restrict data processing (block) merely upon documented instruction by the

Client.

If a data subject contacts IntuitiveLabs directly regarding their rights (for instance information, correction or deletion of their data), IntuitiveLabs shall transmit this request to the Client without delay.

#### **10. Obligation to secrecy**

The parties commit to treating all information regarding protective measures of the other party and received within the contractual relationship confidentially as trade and business secrets. This obligation to secrecy shall continue even after the end of the contractual relationship.

Formal requirements; severability clause

(1) Amendments or supplements to this agreement shall be binding only if made in writing.

(2) If a determination of this agreement should be ineffective or become ineffective, this shall not affect the overall effectiveness of this agreement.

The contractual parties shall endeavor to replace the invalid or unenforceable provision by a valid and enforceable provision.