§ 1 Subject Matter

The temporary transfer of software use options over public data networks for a fee and the accompanying option to analyze "customer" "data" through the "web server software" or "plug-ins" are covered under this contract.

These provisions include general regulations and licensing conditions for renting YOOCHOOSE GmbH (hereinafter "YOOCHOOSE")'s "web server software", each of which apply to the YOOCHOOSE contracts listed below. YOOCHOOSE's services and offerings are directed at corporate clients as defined by § 14 of the German Civil Code.

§ 2 Contract Components and Definitions

1) In the event of dispute, the following shall be in effect in the order listed here:

   a) the provisions of the order.
   b) any existing addendums of the order.
   c) these Terms and Conditions.

   Should it come to variations in relation to individual regulations, each specific determination shall be in effect in accordance with the principle of "lex specialis derogat legi generali".

2) Addendums: The following addendums are in effect:

   a) Addendum A1: "Availability" and "Maintenance Windows"
   b) Addendum SLA: Service Level and Error Response
   c) Addendum ADV: Order Data Processing Agreement

3) Defense Clause

   YOOCHOOSE's Terms and Conditions exclusively apply. If the "customer" also employs terms and conditions, the contract shall go into effect without any express agreement on the inclusion of these terms and conditions. Insofar as the various terms and conditions are identical in substance, they shall be considered mutually agreeable. The provisions of dispositive law supersede conflicting individual provisions. The same applies in the event that the "customer's" terms and conditions contain provisions not included within the scope of these terms and conditions. Should YOOCHOOSE's Terms and Conditions contain provisions not included in the "customer's" terms and conditions, then the existing terms and conditions shall apply. Any reference made by a form to other "customer" terms and conditions is hereby expressly excluded.

4) Definitions

   a) "Data" means data that the "customer" compiles using "web server software" and/or ascertains, stores, transports, changes, or deletes using YOOCHOOSE services and products loaned in accordance with this contract.
   b) "Third party" is anyone else to whom YOOCHOOSE did not loan the rights of use for the "web server software" or "plug-ins".
   c) "Documentation" means the operation manual for the "web server software". This is given to the "customer" in that the "customer" is granted access via public data networks by means of a normal browser and the use of a password. If operation of the "web server software" should change during the term of the contract, a modified version of the "web server software" shall be made available to the "customer".
   d) "Node" is the transfer point from the YOOCHOOSE data center to data networks that are not legally linked to YOOCHOOSE, particularly the Internet.
   e) "Customer" means the respective "web server software" user that may either cede use of the program to its staff or to its authorized coworkers.
   f) "Plug-in" is software that is integrated into the "customer's" web shop application and is improved or even made available through certain "web server software" functions. In this contract, the term "plug-in" is also used synonymously with the term "API".
   g) "Availability" means the availability of contractual services at the "node" scaled to the current availability per month, minus any mutually recognized interruptions, such as "maintenance windows".
   h) "Maintenance windows" are times at which the agreed-upon contractual services at the "node" are either not available to the customer or are restricted as a result of maintenance or repair work.
   i) "Web server software" is software that runs on the YOOCHOOSE web server, which the "customer" can use over public data networks using a conventional browser.

   j) Defect Classes

   Defect classes come into play if the "customer" has commissioned YOOCHOOSE to comply with certain error reaction times. The definition of defect classes can be found in the **SLA Addendum**.

§ 3 Software Leasing

1) For the term of this contract, YOOCHOOSE leases the "web server software" outlined in the contract to the "customer". YOOCHOOSE will always lease the most currently released version of the "web server software" to the "customer".

2) "Documentation" for the "web server software" is available online.

3) The "web server software" shall be transferred for the following contractual use: The "customer" may analyze its own or other files using the "web server software". With YOOCHOOSE's consent, he is entitled to sublet or further sublicense "web server software" rights to "third parties".

4) The function of the "web server software" can be found in the performance description. The "web server software" shall be accessible from any standard, state of the art browser.

5) For the term of the contract, the "web server software" shall be continuously updated and further developed.

6) If YOOCHOOSE provides new releases of the "web server software", thereby altering its operation, it shall make updated "documentation" available to the "customer"; section 2 applies in this case.

§ 4 Transfer of "Plug-Ins"

1) "Plug-ins" shall be transferred to the "customer" free of charge.

2) The "customer" is allowed the simple, temporary, and territorially unlimited right to permanently or temporarily copy "plug-ins" up to a number agreed upon by the parties.

3) The "customer" shall also receive the basic right to edit the "plug-ins". YOOCHOOSE must be notified of any modification to the source code of the "plug-ins", and where applicable, simple usage rights for editing that allow further use of the edited version of the "plug-ins" shall be granted free of charge.

4) The liability and warranty for "plug-ins" transferred free of charge are governed by statutory provisions.

§ 5 SLA, "Availability", Security Windows", and "Maintenance Windows"

1) If agreed upon, the provisions of the **SLA Addendum** apply for the SLA. The Service Level Agreement is a concretization for error response times.

2) The provisions of **Addendum A1** apply to the "availability", security, and "maintenance windows". The "availability" of the "web server software" depends on the values that are measured at the "node".

3) The "availability" of the leased "web server software" does not apply to maintenance downtime, or periods during which the data center where the "web server software" is stored cannot be reached via Internet due to technical or other problems outside of YOOCHOOSE's control (acts of nature, third party fault, etc.). If YOOCHOOSE is able to foresee that downtime for maintenance and repair of the "web server software" will last longer than three hours, YOOCHOOSE will inform the "customer" at least three days prior to commencement of the work. "Availability" always refers to monthly values, unless the parties specifically determine otherwise. Regardless of "availability", YOOCHOOSE services will not be available during time frames in which maintenance and repair work are set to be carried out.

§ 6 Data Transport

1) YOOCHOOSE shall endeavor to make the "customer's" contractually saved data and the "web server software" on the World Wide Web available over the Internet or other commissioned data networks in the agreed-upon time frame, taking into account the specified "maintenance windows" and "availability". Here, the term "available" means that the "customer" can load the "data" and the "web server software" into his computer's memory, and that he can access his own "data" that is being stored and processed in YOOCHOOSE's data center. YOOCHOOSE accepts no responsibility for the successful retrieval of "web server software" or "data" if the network operated by YOOCHOOSE is not exclusively used for transport from the "node" to the "customer's" computer, including transport to "third party" networks. If data transport is carried out over the Internet as agreed, YOOCHOOSE only has the performance-related obligation to supply a signal to the publicly retrievable Internet, but does not guarantee that the "customer" can retrieve the data at any time from the location of his choice. Due to the structure of the Internet and the fact that it neither selects nor effectively controls the operators and agents of the data networks, YOOCHOOSE cannot guarantee an omnipresent, ubiquitous accessibility to the "web server software" and the "data" being stored for the "customer" in the data center.

2) Through state of the art compliant bandwidth, YOOCHOOSE ensures connection to the Internet so that "customers" achieve the highest possible data transfer rate.

§ 7 "Customer" Responsibilities

1) The responsibilities of the "customer" stated in the web form sent to him are principle obligations. If the "customer" does not fulfill his contractual obligations, YOOCHOOSE is not required to provide services and with prior warning may declare immediate termination of the contract.

2) If there are disruptions during use of the "web server software", the "customer" shall immediately inform YOOCHOOSE of these disruptions. In all cases, notice of disruption by a "customer" must include the following information:

   - Customer name,
   - Service location (street, number, zip code, city),
   - Disruption description (sporadic or permanent),
   - Performance impairment (more precisely: "What can we say?").

3) For the duration of the contract, the "customer" must always designate an authorized party along with a proxy for the delivery of legal declarations. Similarly, for the duration of the contract, a technically competent contact person must always be designated, along with a proxy.

4) The "customer" agrees only to transmit "data" under the use and recognition of standards adopted according to the Internet Protocol HTTP. He may only use the standard interfaces recognized or prescribed by YOOCHOOSE. Variations require written permission.

5) The "customer" agrees to keep available login data providing access to the "web server software" away from unauthorized "third parties" and to secure it prior to access through unauthorized "third parties" so that the misuse of access data through "third parties" is not possible. Personal passwords must be changed at least once per year. "Third parties" who use the "customer's" Internet connection with knowledge and willingness are not authorized to change the password. If the "customer" violates this agreement, he is required to refrain from further infringement, to replace damages (including damages still arising) incurred by YOOCHOOSE, and to pay and release YOOCHOOSE from compensation claims and claims for the reimbursement of expenses by third parties, which were caused by the violation. This indemnity bond also includes an agreement to fully exempt YOOCHOOSE from legal defense costs (court costs, attorney fees, etc.). Other YOOCHOOSE claims, particularly those related to content blocking and termination, shall remain in effect.

§ 8 Temporary Blocking Clause

1) YOOCHOOSE reserves the right to temporarily interrupt the "web server software's" connection to the Internet if there is sufficient suspicion that the "customer" is saving or distributing illegal content using media provided by YOOCHOOSE.

2) The block will be lifted as soon as the suspicion is invalidated and/or a court or administrative decision pertaining to this can be presented.

§ 9 Payment

1) The payment amount depends on the order. Amounts shown are net amounts.

2) Provisional costs, such as costs incurred to connect the "customer" to the data networks (eg. Deutsche Telekom AG or other carriers) are not part of this contract.

3) Ongoing charges shall apply from the moment of accessibility for services offered.

4) YOOCHOOSE reserves the right to enforce the right of detention against the "customer" in the case of arrears from the same contract. The "customer" shall be issued an appropriate warning within the "web server software" if YOOCHOOSE restricts use of the "web server software" and makes it dependent on the payment of outstanding items. Alternatively in the case of arrears, the "customer" can also be notified of system shutdown by telephone and/or mail in the event that outstanding items are not paid.

5) YOOCHOOSE reserves the right to change the payment amount on the condition that it informs the "customer" in writing no later than six weeks before the change goes into effect. The "customer" is then entitled to an immediate right of termination, which shall take effect on the date of the price change. YOOCHOOSE must expressly state this in its communication. If the "customer" does not take advantage of this within four weeks of receiving the notice, then the change shall be regarded as approved.

6) The "customer" is also required to pay the user fee that arises through the authorized or unauthorized use of access by "third parties", unless he was not responsible for that usage. The "customer" must then prove that he was not responsible.

7) If the "customer" has opted for a minimum contract term of one year, the rent is to be paid one year in advance.

§ 10 Warranty

1) Provisions for retrieval (sic. the retrieval of the leased "web server software" and the "customer" "data" it contains) are based on service contract law. Therefore, a guarantee is not made that the "web server software" and the "data" will be available at any time from the "customer's" location, or from other places.

2) YOOCHOOSE makes no guarantee of the internal "availability", i.e. the retrieval of the "web server software" and "customer" "data" at the "node" of the data center, in accordance with the following provisions:

   a) The correction of defects through improvement or replacement at no charge takes place at YOOCHOOSE's discretion.
   b) In accordance with § 543 Section 2 Sentence 1 No. 1 of the German Civil Code, termination notice from a "customer" for failure to provide contractually stipulated use is only allowed if YOOCHOOSE was given a reasonable opportunity to remedy the defect, and this has failed. A failure to remedy defects only exists if rectification is not possible, if it is refused or unreasonably delayed by YOOCHOOSE, if there are reasonable doubts about the prospects of success, or if for any other reason it is unreasonable for the "customer".
   c) Provided that the requirements of § 69d of the Copyright Act are not met, the "customer" is not entitled to correct defects himself and to demand compensation for expenses incurred while doing so. Claims for reimbursement of expenses shall expire six months after termination of the lease at the latest.
   d) The "customer" is required to immediately report defects in the "web server software" to YOOCHOOSE (§ 536c of the German Civil Code). He will then heed YOOCHOOSE's advice for problem analysis within a reasonable context, and he will forward all available information necessary for the removal of the defect to YOOCHOOSE.
   e) Damage claims expire 12 months from the date on which the "customer" reported the existence of a defect, or from the date on which the "customer" (without gross negligence) would have become aware of the circumstances of the defect and reported it. This shall not apply in cases where the "customer" wants to assert damage claims because of the defect due to injury to life, limb, or health, or in cases in which the "customer" wants to make claims that the defect occurred as a result of gross negligence, intention, or breach of warranty.

3) These provisions do not apply to the "plug-ins".

§ 11 Liability

1) Damage claims expire 12 months from the date on which the "customer" reported the existence of a defect, or from the date on which the "customer" (without gross negligence) would have become aware of the circumstances of the defect and reported it. This shall not apply in cases where the "customer" wants to assert damage claims because of the defect due to injury to life, limb, or health, or in cases in which the "customer" wants to make claims that the defect occurred as a result of gross negligence, intention, or breach of warranty.

2) The scope of YOOCHOOSE's liability for damages caused by negligence is limited to the extent evident to YOOCHOOSE at the time of entering into the contract, which could also be reasonably calculated.

§ 12 Acts of Nature

1) Except where these circumstances occur in the area of YOOCHOOSE or its suppliers, if YOOCHOOSE is prevented from fulfilling its obligations due to the occurrence of unforeseeable, extraordinary circumstances which it can not avoid despite all reasonable attention, e.g. malfunctions, governmental interference, power supply problems, strike, or lockout, and if service is definitely not possible, then the deadline for delivery of the service shall be reasonably extended to a maximum period of eight weeks. If service remains unavailable after the aforementioned period due to the same, uninterrupted continuous act of nature, then it shall not be considered feasible.

2) If due to the above circumstances, delivery or service is not feasible for longer than 8 weeks, YOOCHOOSE is released from its obligations. The "customer's" right to terminate/withdraw from the contract if reasonable disadvantages occur remains unaffected.

§ 13 Grant of Rights for "Customer" Work

Limited to the duration and purposes of the contract, and for the purposes of backup, the "Customer" shall grant YOOCHOOSE the non-transferable, non-exclusive right to produce a sufficient number of backup copies of "customer" content (texts, images, "data", databases, etc.) subject to intellectual property rights (copyright, trademark law, etc.).

§ 14 License Terms for the "Web Server Software"

1) The object of these provisions is the current version of the "web server software" mentioned in each individual contract upon formation of the contract. These provisions apply to all versions of the "web server software", including full versions, releases, upgrades, and updates.

2) On the condition of full and derivative-free payment of the amount referred to in each agreement, the "customer" receives the right to be able to access the "web server software" over data networks. The right is known to be limited to the duration of the contract.

3) The "customer" is not authorized to modify, remove, or circumvent the "web server software" including the "documentation" and applicable property rights notices, especially copyrights or trademarks, as well as serial numbers, license codes, or security mechanisms.

4) Within the context of each individual contract, the "customer" shall be granted the non-exclusive right to use the "web server software" transferred to him to execute the application as intended, for his own use or for use in the context of his business.

5) "Third parties" may have access to the "web server software" for commercial use only with the express consent of YOOCHOOSE. Subletting the "web server software" is prohibited.

§ 15 Duration of Contract and Termination

1) The start date and duration of the contract, as well as the rules for normal termination can be found in the order.

2) The right of either party to terminate the contract without notice for an important reason remains unaffected. YOOCHOOSE considers important reasons to be cases in which:

   a) the "customer" defaults on payment of the agreed upon amount for two consecutive due dates, or the "customer" goes into default for a payment amounting to the amount due for two months during a period extending over more than two due dates;
   b) the "customer" is insolvent, or insolvency proceedings have been opened against his assets, or the opening of insolvency proceedings has been rejected due to lack of assets; however, following a request to open insolvency proceedings against the "customer's" assets, YOOCHOOSE may not terminate a contract due to a delay in payment that occurred prior to the opening of the proceedings, or due to deterioration of the "customer's" financial circumstances;
   c) the "customer" impinges upon essential contractual obligations, in particular the contractual obligation to observe the law when using the contractual services provided by YOOCHOOSE, and does not immediately correct this breach after receiving notice or warning about the blocking of content by YOOCHOOSE.

§ 16 Data Protection

1) The "customer" understands that YOOCHOOSE collects, processes, and uses necessary data on the basis of legal provisions.

2) YOOCHOOSE may collect, process, and use necessary personal data (inventory data) for contract management. This includes the "customer's" name, address, and telephone number. Also included are data necessary for the realization of the desired method of payment.

3) The "customer" shall at all times have the right to demand information about the scope and content of the data he personally stores.

4) If during the implementation of maintenance and inspection work, the possibility arises of YOOCHOOSE coming into contact with personal data belonging to the "customer's" coworkers or clients, or any other situation arises through which facts emerge in accordance with § 11 of the Federal Data Protection Act, Section 2 (amended in December 2011), then the provisions from **Addendum ADV** are in effect, the terms of which are relevant to the specific order, and if necessary or applicable, can be adjusted or supplemented.

§ 17 Non-Disclosure

1) The contractual relationship of the parties is based on mutual trust. For the duration of this contract and for two years afterward, each party agrees to treat all information, documents, and data brought to them by the other party and/or that becomes known through collaboration, which have been designated or declared "secret" ("confidential information") as a trusted trade secret, and not to pass it on to "third parties". This does not apply as long as and to the extent that such information, documents, and data:

   a) were already previously known by the parties, without a non-disclosure obligation, or
   b) are generally known or become generally known, without representation from one of the parties, or
   c) is legally shared and/or transferred to one of the parties by a third party, without a non-disclosure obligation, or is released in writing by the transferring company for disclosure, or
   d) must be disclosed by law, administrative regulations, or following an indisputable court decision, provided the disclosing party is made aware of this requirement without delay and the disclosure is limited to the greatest extent possible.

2) By request, both parties will permanently delete or return to the other party all confidential information upon termination of the collaboration. At the request of a party, the deletion must be confirmed in writing. The obligations for confidentiality and data protection covered in this section shall remain in place after the termination or full completion of this contract.

3) These provisions shall apply to the fullest extent for all YOOCHOOSE employees.

§ 18 Additional Services

If the "customer" also has an SLA with YOOCHOOSE for the provision of consulting and support services, then the provisions of this contract shall correspond to it.

§ 19 Miscellaneous

1) If a provision within these Terms and Conditions or the supplementary agreement to the contract is or becomes invalid, it shall not affect the validity of the remaining provisions.

2) All agreements that involve a modification, addition, or specification to a part of the contract, as well as special warranties and agreements shall be recorded in writing. If clarifications of the aforementioned type are provided by YOOCHOOSE representatives or auxiliary persons, then they are only binding if YOOCHOOSE management provides written consent.

3) The "customer" may not assign any rights and claims under this contract to a "third party" without prior written consent from YOOCHOOSE. YOOCHOOSE reserves the right to assign the contract as a whole or individual services to its affiliates as defined by § 15 of the Stock Corporation Act.

4) With regard to all legal relations arising from this contractual relationship, the parties agree to use the law of the Federal Republic of Germany.

5) If the "customer" is a merchant according to the German Commercial Code, a corporate body under public law, or a special fund under public law, then YOOCHOOSE's legal location shall serve as the place of jurisdiction for all disputes that may arise during the transaction of this contract. Regardless of this, YOOCHOOSE also reserves the right to file a suit before the court, for which the "customer's" location shall serve as the place of jurisdiction.