

## General Terms and License Agreement

### **nexxtsoft GmbH**

Neuer Höltigbaum 32  
22147 Hamburg

#### **Part A General Part and License Agreement**

##### **Part A.1: General Part**

#### **§ 1 Subject of this agreement**

These General Terms and Conditions of Business regulate the general terms that apply to all of nexxtsoft's agreements listed below. These terms have been consolidated in this general part in order to avoid repetition.

#### **§ 2 Parts of the agreement and definitions**

- 1) In the event of contradictions the following sequence shall apply:
  - a) The regulations of this part. These regulations also contain the license agreement in Section II.

- b) The individual agreements concluded by the Parties.
- c) The annexes to the individual agreements.
- d) nexxtsoft's further Terms and Conditions as structured as follows:
  - Part B Sale of software
  - Part C Software maintenance
  - Part D Frame agreement for small projects

The regulation of the various terms and conditions apply thematically for the different areas. If the terms and conditions should overlap each other, *lex specialis derogate legi generali* shall apply.

## 2) Collision Clause

If the customer uses his own General Terms and Conditions of Business, the agreement shall be concluded without an express agreement on the incorporation of the General Terms and Conditions of Business of both Parties. If the various Terms and Conditions of Business are consistent with each other, these terms shall be deemed to have been agreed upon. Contradicting Terms and Conditions shall be replaced with non-mandatory provisions of law. The same shall apply in the event that the customer's Terms and Conditions contain regulations that are not regulated in nexxtsoft's terms and conditions of business. If nexxtsoft's Terms and Conditions contain regulations that are not regulated in the customer's Terms and Conditions, nexxtsoft's Terms and Conditions shall be applicable.

## 3) Other software manufacturers

The software delivered by nexxtsoft is partially based on software that has been developed and delivered by other software manufacturers. If this should be the case, the license terms of the respective software manufacturer shall apply to the content of those software parts. Nexxtsoft shall make the the links to the license agreements of the other software manufacturers published in the internet available to the customer upon conclusion of this agreement. Nexxtsoft is obligated by these license agreements of other software manufacturers to inform the customer oft he applicability of these license agreements. The same applies in the event that the software provided to the customer partially contains non-proprietary open source software. In this case, the customer shall also be informed of the license terms.

## 4) Definitions

- a) Standard software is the respectively current version of the software at the time the agreement is concluded.
- b) Customized software: this term designates the change or the enhancement of the standard software through tested and verified procedures by nexxtsoft. Interfaces, APIs etc. are also encompassed. Only such changes and enhancements are permissible if they do not contradict the license terms in Part A.2.
- c) System environment constitutes the hardware and software required to operate the software. The system environment that is specified in the offer/order confirmation shall apply.
- d) Delivery: The software shall be provided by download. A link shall be made available to the customer through which the software will be able to be downloaded.
- e) Documentation denotes the customer's user manual.
- f) Maintenance is defined as the preservation of the existing functions (change of the operating system, customization of the existing interfaces to the existing software.)
- g) Software maintenance: the further development of the product from nexxtsoft's point of view as specified in Part C of the Terms and Conditions of Business.

## 5) Defect classes

Defects shall be classified as an operational hindrance, an operational interference, an operational limitation or other defect mutually by the Parties.

- a) An operational hindrance defect is given if the use of the serviced software is not possible, for example due to malfunctions, incorrect work results or erroneous response times.
- b) An operational interference defect is given if the use of the serviced program is

extremely limited and the malfunctions cannot be circumvented with reasonable organizational measures.

- c) An operational limitation defect is given if the use of the software is limited, yet the customer is able to compensate the defect through his own efforts. However, the operation of the software is so limited that it is not reasonable for the customer to work with the defect until a new release can be delivered.
  
- d) Minor other defects are insignificant defects that do not have a substantial influence on the usability of the software. Such defects shall be eliminated within the scope of the normal development of the software through a further release.

## § 3 Force majeure

### 1) Force Majeure

If nnextsoft is obstructed in the fulfillment of its obligations through unforeseeable extraordinary circumstances that cannot be averted with due diligence, for example

- interruption of operations,
- regulatory interferences,
- power supply problems,
- strikes or lock-outs,

The delivery period shall be extended for a reasonable time and for a maximum period of eight weeks if the delivery or service does not become an impossibility of performance. This shall apply in the event that such circumstances affect either nnextsoft or one of nnextsoft's suppliers.

### 2) Impossibility of performance

If it becomes impossible to deliver or provide the services due the circumstances specified above, nnextsoft shall be freed from the provision of performing the obligation.

## § 4 Remuneration

- 1) The amount of the remuneration shall be set forth in the individual agreement between the Parties. All payment terms such as payment by installment, rebates, cash discounts etc. shall also be set forth in the individual agreement. The same shall apply to travel expenses and expenditures.
- 2) All fees are net prices and are payable in addition to the respective valid VAT.
- 3) The right of retention may only be asserted for claims that are based on this contractual relationship.
- 4) Set off with claims that are not accepted as legally binding or that are not undisputed by nexxtsoft is not permissible.

## § 5 Retention of rights

- 1) The rights of use that are granted for an unlimited period of time are granted conditional to the complete and unconditional payment of nexxtsoft's respective claims for the delivery or development of software by the customer. The rights of use are granted for a limited period of time until this condition is met. Until this time, nexxtsoft has the right to revoke the grant of the rights by declaration of termination of the agreement.
- 2) In the event that nexxtsoft asserts its rights of retention, the customer's right to use the software shall expire, sic. the right to copy the software into the memory of a computer, unless nexxtsoft informs the customer otherwise. Furthermore, the customer must delete all program copies he has made and return or destroy any existing original data carriers in this case.
- 3) Any physically provided software falls under the retention of title until the complete payment of the claims arising out of respective agreement have been received. The customer must designate which claims he would like to settle with the respective payment. If he does not do so, the payments shall be used to settle the oldest debts of the customer.

## § 6 Liability

- 1) nexxtsoft shall not be held liable for damages due to the loss of data or for damages incurred because the customer cannot productively use the software if these damages were caused due to the fact that the customer has neglected to secure the software and any data processed with the software in reasonable periods of time using methods in accordance with the respective current and established state of technology.
- 2) The liability for damages or the assertion of claims for compensation of expenditures that are incurred due to a defect in a product delivered by nexxtsoft or a fault in a service provided by nexxtsoft shall be limited in the amount as individually agreed upon by the Parties. The claims shall become statute barred in 12 months after acceptance or delivery of the software by download or the provision of the service. In respect to damages to life, limb or health and/or damages caused by a breach of guarantee and/or damages caused willfully or gross negligently shall remain unaffected hereby. The same shall apply to the liability in accordance with the Product Liability Act of Germany.
- 3) The liability for negligently caused damages that are asserted due to the late delivery of standard software is limited in the amount of 15% of the value of the respective agreement if it is not unreasonable for the customer to arrange an equivalent covering purchase. In regards to damages that are incurred to life, limb or health or in the case that a guarantee is breached, the provisions of law shall remain unaffected. The same shall apply to the liability in accordance with the Product Liability Act of Germany.
- 4) The compatibility of the programs to the customer's existing hardware and software configuration shall only be warranted for the expressly system designated in the respective current performance description. nexxtsoft shall not be liable for the compatibility of the software to other hardware and software configurations of the customer that are altered by the customer after the agreement has been concluded. Furthermore, nexxtsoft shall not be held liable for the compatibility of systems that are possibly put into operation by other suppliers at the same time that nexxtsoft provides its services. Deviations are to be agreed upon separately. If the customer changes the system environment required for the proper functioning of the software and/or hardware, after installation or acceptance of the software without nexxtsoft's consent, the customer shall carry the burden of proof that the damages were not caused by the changes to the system environment. This same shall apply if the customer made the changes to the provided product itself.

## **§ 7 Non-Disclosure**

- 1) Both Parties mutually pledge that all information, documents and data that a  
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respective Party receives or gains knowledge of from the other Party, or comes to the attention of the receiving Party within the course of the cooperation and that is not expressly marked as “public“ or declared as such (confidential information), shall be treated as entrusted company secrets and shall not be given to third parties or exploited for the term of this agreement and two years thereafter. This shall apply as long as and insofar as this information, these documents and data were not known to the receiving Party before the obligation of non-disclosure was entered into or

- a) are publically known or become publically known without either Party being responsible for the information becoming publically known;
  - b) was passed on or provided lawfully to the receiving Party by a third party, who is not obligated by a non-disclosure agreement, or was given consent by the disclosing Party in writing to disclose the confidential information or
  - c) must be disclosed in accordance with provisions of law or administrative regulations or in accordance with an uncontestable court decision if the receiving Party informs the disclosing Party immediately of the obligation and limits the scope of the disclosure as far as possible.
- 2) Both Parties and any affiliated companies as defined by § 15 of the Stock Corporation Act of Germany are obligated and shall obligate its respective employees to treat all business secrets revealed in the course of the execution of this agreement confidentially and particularly shall not make any documents available to third parties.
  - 3) Upon request, both Parties shall irrevocably delete all confidential information or return the confidential information to the other Party at the end of the cooperation. If demanded, the deletion of the confidential information shall be confirmed in writing. The obligation of non-disclosure in accordance with this section and the obligations of data protection shall remain in force after this agreement is terminated or after complete execution of the agreement
  - 4) These stipulations are fully applicable to all assigned employees of nuxtsoft.
  - 5) Furthermore, nuxtsoft shall ensure that all persons that are engaged with the execution and fulfillment of the agreement observe the provisions of law regarding data protection. Nuxtsoft shall ensure that all persons that are assigned with the performance and fulfillment of the agreement observe the data protection regulations. The obligation of these persons to data secrecy in accordance with the data

protection laws shall be undertaken before the first performances are provided by the employees; the obligation of the employees shall be proven to the customer upon request. The same shall apply to employees of commissioned subcontractors.

## § 8 Non-Solicitation

- 1) The Parties and any affiliated companies, as defined by § 15 of the Stock Corporation Act of Germany, are obligated to mutual loyalty. Therefore, the employment, direct commission or other engagement of employees, including former employees of the other Party, is not permitted without the prior consent of the respective other Party for the term of this agreement and for a period of 12 months after the end of the cooperation. Furthermore, the breach of the regulations of unfair competitions regarding the solicitation of employees is forbidden.
- 2) If § 8 I of this agreement is breached, a contractual penalty in the amount of Euro 10.000,00 for each breach is to be paid to the injured Party. The right to assert further damages claims shall remain unaffected.

## § 9 General

- 1) If a stipulation of this agreement or a respective supplementary agreement is invalid or becomes invalid, the validity of the remaining stipulations shall remain unaffected.
- 2) All agreements which entail a change, a supplement or specification of these contractual terms, as well as any guarantees or arrangements, are to be set forth in writing. If they are declared by an agent or auxiliary personnel of nnextsoft, the declarations shall only be binding if nnextsoft's management has given its written consent thereto.
- 3) nnextsoft is permitted to use the project for internal project reports, for example information regarding implemented technologies or application fields. Case-studies or success stories may only be published on nnextsoft's website and in presentations with the customer's prior consent.
- 4) The Parties agree that the laws of Germany shall be applicable in regards to all legal relations arising out of this contractual relationship.
- 5) If the customer is a merchant as defined in the Commercial Code of Germany, a corporate body under public law or a special asset subject to public law, the place of jurisdiction for all disputes, which arise in the course of the execution of this contractual relationship, is nnextsoft's place of business.

## Part A.2: License Agreement

### 1. General regulations

#### § 1 Subject of the license agreement

- 1) The subject of this license agreement is the software in the version current at the time the agreement is concluded.
- 2) These license terms shall apply to all version of the contractual software, including full versions, upgrades and updates that are provided by nexxtsoft within the scope of the business relationship upon conclusion of a software maintenance agreement.
- 3) The customer does not have the right to change, to remove or to circumvent any intellectual property rights references from the software products including the documentation, particularly any copyright notices or trademarks as well as any serial numbers, license codes or protection mechanisms.

#### § 2 Limitation of the rights of use

- 1) Unless otherwise stipulated in these license terms, the customer does not have the right to change, to adapt, to translate, to port, to reverse engineer, to disassemble, to decompile or to ascertain the source code of the software product through other measures, unless these actions are expressly permitted in accordance with mandatory provisions of law (§ 69 e ff. Copyright Act of Germany).
- 2) The customer does not have the right to correct any defects in the program as long as nexxtsoft or any third parties authorized by nexxtsoft have offered to eliminate the defect at customary terms.
- 3) If, in addition to the information provided in the documentation, the customer requires further information which will enable the interoperability of the software products with independently developed computer programs, the customer shall request this additional information from nexxtsoft first. nexxtsoft retains the right to supply the customer with the necessary information.

#### § 3 Content and limitation of the granted rights of use

- 1) Within the scope of the respective individual agreement, the customer is granted the non-exclusive rights of use which will enable the intended implementation of the provided software products for his own use for the purposes of his business operations.
- 2) Own use for the purpose of his business operations means that the software products can be reproduced by the customer's employees or freelance collaborators to process the customer's data within the scope of the contractual agreement. It must be differentiated as follows:
  - a) Single seat license: The customer may permanently reproduce the designated software on a random number of computers of the same company which means the software may be stored on a hard drive or similar suitable device. The term "company" is not equivalent with the term "affiliated companies" as defined in § 15 of the Stock Corporation Act of Germany and thus the software may not be used by or transferred to a fellow affiliate/parent company within a multi-corporate enterprise. The single seat software may be loaded into the RAM of various computers up to the respectively agreed upon number of licenses simultaneously. Example: if 5 single seat licenses are bought or rented, the software may be permanently stored on a random number of computers but may only be used simultaneously on 5 computers.
  - b) Server license: If the customer is granted a server license in addition to the single seat licenses, the customer can permanently store the software on the agreed upon number of servers and load the software the same number of times in the RAM of the machine. The operation of a virtual server shall require a further license.
  - c) The use of the software within the scope of a remote desktop program or a program that will allow the use of the software without requiring the software to be loaded into the RAM of a computer is not permitted.

## **§ 4 Scope of the customer's rights of use**

- 1) The customer is irrevocably granted the contractually agreed upon rights of use to the contractually agreed upon software for an unlimited time
- 2) Until the time of the full and final payment the rights of use are granted for a limited period of time until the respective agreement has been terminated by one of the Parties. They shall expire at the moment the notice of termination comes into effect. Until this time nnextsoft reserves the right to grant the unlimited rights of use.

- 3) The customer has the right to grant fellow affiliates, to which the customer holds more than 50% of the company shares or voting rights, the rights of use of the software products, however, only if the fellow affiliate observes the limitations of these license terms and other obligations of the customer. A respective written declaration shall be obtained and provided to nexxtsoft before the sub license is granted by the customer. The use by the fellow affiliate shall ensue through the access to the customer's data bank; the simultaneous installation of the software products on several data banks of the customer and/or the fellow affiliate is not permissible. The customer shall carry the responsibility of the observance of the license agreement by the fellow affiliate.
  
- 4) The software products can be used in a network or loaded on any other hardware configuration simultaneously in the respective maximum number of agreed upon licenses in the memory of the computers of the customer and permanently stored in an arbitrary number of copies. If so requested, the customer can be granted additional licenses. The customer does not have the right to grant sublicenses to the software or to allow third parties to use the software, sic. to allow third parties to load the software in the memory of computers that are not owned or possessed by the customer. A third party is any legal independent entity that is not identical to the customer. Respective consent thereto can be declared by nexxtsoft.

## Part B: Sale of Standard Software

### § 1 Subject of the agreement

- 1) The customer shall acquire the standard software specified in the performance description from nnextsoft. The scope of delivery shall encompass the provision of the standard program in the object code as well as the delivery of a user manual in the form of an online-help function. The performance description of the software along with the system environment required to operate the software is also available in the online-help.
  
- 2) The performance description for the standard software that is valid upon delivery and which is provided to the customer with the offer is binding in regards to the characteristics and functionality of the software provided by nnextsoft. nnextsoft warrants that the specified functions and performance will be provided in the system environment that is set forth in the offer and is objectively customer at the time the software is transferred.

### § 2 Parts of the agreement and definitions

- 1) The definitions are set forth in Part A of the General Terms and Conditions.
  
- 2) Parts of the agreement are:
  - a) This agreement.
  - b) nnextsoft's General Terms and Conditions, Part A, General Part and License Agreement.
  
- 3) In the event of contradictions, the terms of this agreement shall precede the stipulations of Part A. The terms of Part A contain the general regulations which are not cited in this agreement in order to avoid any repetition.
  
- 4) Furthermore, the annexes to this agreement are a part thereof:
  - A 1: Performance description of the standard software
  - A 2: User Manual of the standard software.

## § 3 Delivery/Installation

The delivery of the software shall be carried out by making the software available for download to the customer.

## § 4 Sales price/Payment terms

- 1) The sales price is payable and due without any deduction upon delivery or provision of the software for download and receipt of the invoice.
- 2) All sales fees are payable in addition to the respectively valid statutory VAT.
- 3) Set off with claims that are not accepted as legally binding or that are not undisputed by nexxtsoft is not permissible.

## § 5 Delivery and time of performance/Force majeure

- 1) The software shall be delivered in the current version
- 2) For the observance of the deadlines for the delivery and the transfer of risk in the event that the goods are physically shipped the point in time on which nexxtsoft hands the software over to the carrier is decisive. Otherwise the point in time on which the software is made available in the internet and the customer is informed thereof is decisive. If the software is damaged or destroyed after the risk has been transferred, nexxtsoft shall deliver a replacement if in turn the customer compensates nexxtsoft for copy and shipping expenditures. If nexxtsoft is in default, nexxtsoft shall be liable for the damages incurred by the customer due to the default in the amount of 15 % unless the default was caused wilfully or by gross negligence, if a guarantee was breached or in the event that life, limb or health were damaged.
- 3) If the software is delivered on a data carrier, the risk of loss shall be transferred to the customer as soon as the data carrier has been transferred to a freight forwarder, railway or postal carrier or transferred to the customer or made available for collection. The time of performance is observed if the ordered goods are ready for delivery and the customer has been informed thereof, unless other agreed upon in

writing.

## **§ 6 Duty to inspection and objection**

The customer is obligated to inspect the delivered software in accordance with the performance description and the terms of the individual agreement immediately upon receipt thereof; nuxtsoft must be given notice of any defects discovered in the course thereof within a reasonable period of time. If the customer does not give notice of defects or if he gives notice of defects too late, the customer shall lose his warranty rights.

## **§ 7 Material defects and defect of title; other impairments of performance; statute of limitations**

- 1) nuxtsoft shall initially cure any material defects. nuxtsoft shall do so by either providing the customer with new software free of defects or eliminating the defect at nuxtsoft's choice; the provision of reasonable workarounds that avoid the consequences of the defect through the delivery of new software shall be considered to be a cure of the defect if the implementation thereof is reasonable for the customer.
- 2) If a third party asserts claims that bar the contractual use of the software, the customer shall immediately inform nuxtsoft thereof. He hereby authorizes nuxtsoft to carry on the dispute judicially or extra-judicially alone. nuxtsoft is obligated to ward off the claims at its own costs and to indemnify the customer from all costs and damages related to the defense against the claims insofar as these costs and damages have not be caused by the customer's breach of duty.
- 3) If the cure of the defects fails after a reasonable number of attempts and not within a reasonable period of time, the customer has the right to assert warranty claims.
- 4) The right to cancel the agreement because of an insignificant defect, which does not impair the functionality of the software substantially, is excluded. For damages claims or compensation claims for wasted expenditures due to a defect, the limitations stipulated in Part A of nuxtsoft's General Terms and Conditions shall apply.
- 5) The statute of limitation for all warranty claims is one year and shall begin upon delivery or provision of the software. The same statute of limitation shall apply to

other claims against nnextsoft regardless of the nature thereof. This shall not apply to damages claims that are asserted due to a defect of the software if the damages were caused willfully or gross negligently, in the event of fraudulent concealment, in the case of damages to life, limb or health as well as damages that are incurred due to a breach of guarantee. In these cases the legal statute of limitation shall apply. The same shall apply to claims based on the Product Liability Act of Germany.

## Part C: Maintenance of Standard Software

### § 1 Subject of the Agreement and Parts of the Agreement

- 1) The subject of this software maintenance agreement is the maintenance of the standard software provided by nexxtsoft, which may possibly have been customized. The software encompassed by this agreement is specified in Annex C 2 (in the following “maintenance programs”). If the customer would like other software components to be covered by the following contractual services, these must be explicitly specified in Annex C 1.
  
- 2) Parts of the agreement are:
  - a) This agreement.
  
  - b) The General Terms and Conditions of Business of nexxtsoft, Part A, General Terms and License Agreement.
  
  - ~~c) The terms of the order data processing in accordance and with respect with the German Data Protection Act (BDSG) Part E of the General Terms and Conditions of Business.~~
  
  - d) Definitions are set forth in § 2 IV of Part A of the General Terms and Conditions of Business of nexxtsoft.
  
- 3) In the event of contradictions, the terms of this agreement shall precede the stipulations of Part A. The terms of Part A contain the general regulations, which are not cited in this agreement in order to avoid any repetition.
  
- 4) Furthermore, the following annexes to this agreement apply:
  - C 1: Current performance description of the standard software and – if applicable – the customized software.
  - C 2: Schedule of the software that will be serviced (Software-License Transfer Form) and the system environment.

The annexes shall be updated as necessary.

## § 2 Maintenance Services

The following services shall be provided with this maintenance agreement for software:

### 1) Elimination of defects

#### a) Principles

nextsoft shall eliminate the reported defects in the software within the defined time periods. If the software is defective shall be determined in accordance with the contractual application of the software for the performances specified in the performance description. Definitions of the defects are set forth in Part A, § 2 IV of the Terms and Conditions. The service levels are specified in Annex A 4.

#### b) System environment

nextsoft warrants the provision of he contractually agreed upon functions in the agreed upon system environment.

The large number of possible combinations makes it impossible to assess uncertainties and risks. Therefore, the proper functioning of the software can only be warranted in the contractually agreed upon or previously tested system environment. It is imminent that the respective current guidelines provided by nextsoft (maintenance guidelines) in regards to the system environment are observed.

#### c) Workarounds

If nextsoft offers the customer a new program version or program parts in order to avoid or eliminate defects or in order to avoid the malfunction of other programs, the system or equipment, the customer is obligated to adopt and install these on his hardware in accordance with nextsoft's installation guidelines – if possible and as soon as reasonable for him to do so. Whether the adoption and

installation of the workaround is reasonable for the customer, depends on if the customer can use the software for the contractual purpose accordingly and if he will incur costs through the implementation of the workaround.

## 2) Provision of new software

- a) Services: nextsoft shall ensure that the serviced software conforms to the changing legal regulations or technical standards during the term of the agreement and the warranty period within a reasonable period of time. Furthermore, the serviced software shall be adjusted to accommodate the respective customary version of the required software environment (operating system and programs required for the contractual use.) The obligation shall not apply if and insofar as the alteration entails unreasonable efforts for nextsoft. In such an event the adjustments shall only be provided for a respective addition payment.
- b) Further customization services in regards to the use and the functions, which are dictated by the individual requirements of the customer, are not services that are owed in accordance with this stipulation unless set forth in Annex C 1.
- c) If the operation of the program changes, or new functions are added, the user manual of the program shall be updated. The user manual is provided in the form of an online help service. Within the scope of the user-group of the serviced program, the customer will have the opportunity to suggest possible new developments. nextsoft will earnestly review the customer's suggestions. However, the customer does not have the right to demand the realization/implementation of his suggestions.
- d) nextsoft may determine at its own discretion if the services are provided through the delivery of new software or by the provision of guidelines to the customer's personnel to affect program changes or changes to the program parameters. The customer can refuse the services if these do not offer the same compatibility and functionality as the program being replaced. The right of refusal shall also apply if the conversion to the offered version without defects will entail unreasonable costs for the customer that will be incurred directly due to the conversion.
- e) Maximal rights: The obligation to provide new software shall lapse if the provision thereof will require unreasonable efforts by nextsoft. The efforts will be considered to be unreasonable if the personnel costs required to provide the changes to the program are 10 % higher in the year the changes are to be provided than in the year in which the contract was concluded and if the personnel costs cannot be compensated through higher profits or through other cost reductions and if at least one year has passed since the provision of maintenance services has begun. In such an event, the changes shall only be provided for an additional appropriate payment.

- f) End of life: The software developed by nnextsoft has existed for several years. It is not possible to continue the development of and to provide maintenance services for all older versions of the software. nnextsoft only develops and provides maintenance services for programs (including the respective corresponding components) that are compatible with either the current or last previous release of these programs. nnextsoft shall terminate the service of a basic version of the software with at least 18 months notice.
- g) If the customer would like to use a version of the software, for which nnextsoft no longer provides standard maintenance services in the market, the maintenance of such software is no longer covered by the flat fee for maintenance service in accordance with § 2 II and § 2 III of this agreement; nnextsoft must be charged with such maintenance services in accordance with § 3 of this agreement.

### 3) Hotline

- a) nnextsoft shall provide short consultation services by telephone in the case of defects, application errors, malfunctions or other difficulties related to the operation of the serviced programs. Consultation services shall be provided from Monday to Thursday from 09:00-12:30 and 13:00-16:30 and on Friday from 08:30-12:30 and 13:00-14:30. The hotline services will not be provided on Saturdays, Sundays or on German public holidays (the German public holidays of the Federal State of Hamburg will apply.) Please note that the time zone of Berlin, Germany is applicable.
- b) Consultation in the sense of this stipulation is defined as any problem-relevant answer to the description of a customer's software technical problem related to the serviced programs.
- c) The clarification of contextual and organizational questions. Further, instructions regarding the functionalities of the software are not subject of the hotline services. Before consulting the hotline, the customer must attempt to solve the problem with a reasonable scope himself. He must thereby consult the user documentation and the help function of the software.

### **§ 3 Other Services (not included in the flat fee)**

- 1) nnextsoft shall provide the customer with further services that are related to the software but not included in the services specified in § 2 of this maintenance agreement upon request for a separate fee to be agreed upon separately. This shall apply particularly to

- The provision of maintenance services in accordance with § 2 of this agreement

for software that is not subject of this agreement;

- Travel expenses and expenditures for the on-site performances and services by nnextsoft at the customer's place of business;
- On-site performances and services by nnextsoft at the customer's place of business if these are not necessary in accordance with § 2 of this agreement;
- Performances and services related to software not encompassed by this agreement;
- All performances and services provided by nnextsoft upon request of the customer outside of nnextsoft's normal business hours;
- Performances and services that are necessary due to the improper handling of the serviced software and/or due to a breach of obligations by the customer, such as the non-observance of user guidelines, regardless whether the customer, the customer's vicarious agent or other person not authorized by nnextsoft carries out such actions;
- Performances and services which become necessary due to force majeure or other circumstances for which nnextsoft does not carry the responsibility;
- Performances and services that become necessary due to the installation of an update/upgrade/release provided to the customer; instructions and training regarding this software as well as freight and packaging;
- Performances and services that are needed due to the changed or new requirements of use of the customer;
- Customization services to the software for the customer's changed and/or new systems, equipment or operating systems.

- 2) nnextsoft is not obligated to provide services that are not subject of this agreement; this applies particularly to the services listed above. However, nnextsoft shall endeavor to support the customer with the scope of nnextsoft's operational capabilities insofar as the provision of these services is required for a reasonable economic use of the serviced software.

## § 4 Definitions and service level

The stipulations of Annex A 4 are applicable.

## § 5 Remuneration

- 1) The maintenance fees shall be determined in accordance with nnextsoft's last binding offer. They are payable for nnextsoft's services as specified in § 2 II and § 2 III of this agreement only.

- 2) The monthly maintenance fee is payable for one year in advance; the yearly sum is due at the beginning of a contractual year. The obligation of payment shall begin at the time that the customer can productively use the software specified in Annex C 2, thus, in the event that standard software is provided, upon delivery, and in the event that customized software is delivered, upon acceptance.
- 3) The fees are payable in addition to the respective applicable statutory VAT and shall be paid and received by nexxtsoft within 14 days of the date of the invoice without any deductions. After this time the customer will be in delay with payment and will be charged interest in the amount of 8 percentage points above the basic rate of interest. Monthly installments can be agreed upon but interest can be added.
- 4) nexxtsoft has the right to raise the agreed upon flat fee in a reasonable amount after giving written notice thereof if the costs for the provision of the contractual services are 10 % higher in the year in which the services are provided than in the year the agreement was concluded and if the increased costs cannot be compensated by higher profits or other cost savings and if at least one year has passed since the provision of maintenance services has begun. In such an event, the changes shall only be provided for an additional appropriate payment. Likewise, the customer has the right to request a reduction of the flat fee if the costs for the provision of the services have been diminished in the same proportion as specified above.
- 5) Additional services provided by nexxtsoft, that are not encompassed by the services specified in § 2 of this agreement, shall be remunerated by the customer in accordance to nexxtsoft's price list which is current at the time the customer commissions nexxtsoft with the services. The rates listed in the current price lists may be increased once a year in the maximum amount of 5 %. The corresponding invoices are due for payment and receipt by nexxtsoft within 14 days of the date of the invoice without any deductions.
- 6) Travel expenses and expenditures are to be remunerated separately if the customer has requested on-site services by nexxtsoft at the customer's place of business or in the case of services as defined in § 3 of this agreement.

## **§ 6 Duties to cooperate**

- 1) The customer shall support nexxtsoft in the fulfillment of the contractual obligations. Particularly, the customer will

- Designate a contact person during the term of this agreement in writing who has the necessary decision-making authority and power of attorney for the purpose of the execution of this agreement;
- nnextsoft has the right to request that the designated contact person can demonstrate that he has been trained in the use of the serviced software. Notifications of defects can only be effected by the contact person or, in his absence, by his substitute. Particularly, the contact person will
- In the event of the notification of defects, carefully observe the system environment and hardware environment and all symptoms, and report the defect – by using the forms provided by nnextsoft if applicable – while providing all information which could be needed to eliminate the defect, for example the number of affected users, description of the system and hardware environment, as well as the specification of any simultaneously loaded software from other manufacturers and documents;
- Provide nnextsoft with the occurring defects in reproducible form on a suitable data carrier;
- Support nnextsoft to the best of his abilities and possibilities in the search for the cause of the defects and encourage all his co-workers to cooperate with nnextsoft's employees if necessary;
- Allow nnextsoft's employees, who are charged with the provision of the software maintenance services, access to the computers on which the serviced programs are installed and/or loaded;
- Install all programs and/or program parts (patches, bugfixes) provided by nnextsoft in accordance with nnextsoft's instruction and always observe nnextsoft's recommendations regarding the search for and elimination of defects;
- Have all used or generated data related to the serviced programs available in machine-readable form as security backup in order to enable the recovery of lost data with reasonable effort.

2) The above specified duties to cooperate are main obligations of the customer. If the

customer breaches his duties to cooperate, nnextsoft is not obligated to perform its services. In the event of recurrent or serious breaches of contract, nnextsoft has the right to terminate the agreement with notice of one month. The contractual relationship will terminate at the end of the following month.

## **§ 7 Warranty for the maintenance of the software (§ 2 I)**

- 1) The services shall not be considered to be faulty if nnextsoft offers the customer a reasonable workaround in order to eliminate the defect. nnextsoft has the right to change the serviced software in order to remedy the defect if the performance and the use of the software by the customer are not affected and the change will not cause any costs for the customer.
- 2) If nnextsoft is not able to eliminate the defect within a reasonable period of time, the customer has the right to assert the warranty. There is no right to cancel the agreement or to assert damages claims if the functionality of the software is not substantially impaired.
- 3) The customer does not have the right to eliminate the defects himself and then request compensation for the thereby incurred expenditure as long as nnextsoft is prepared to remedy the defects and if further efforts to remedy the defects are reasonable for the customer.
- 4) Changes to the software or the system environment

If the customer or a third party commissioned by the customer has made changes to the contractual software after the installation and acceptance thereof, and nnextsoft has not given its prior consent thereto, nnextsoft is not obligated to eliminate the defect unless the customer can prove that the defect has not been caused by these alterations and that these changes have not impeded the identification and elimination of the defect.

If the customer requests the elimination of a defect due to a material defect or defect of title after the maintenance agreement has been terminated, the customer carries the burden of proof that the defect has been caused by a fault in the services provided by nnextsoft if the customer or a third party commissioned by the customer changed the program and/or the recommended system environment after the agreement was terminated.

- 5) Warranty claims become statute barred 12 months after the acceptance/delivery of the maintenance service. This shall not apply in the case that the defect has caused damages to life, limb or health and/or a guarantee is breached and/or the damages were caused willfully or gross negligently. Claims arising from the Product Liability Act of Germany shall remain unaffected thereby.
  
- 6) If the customer has not expressly declared acceptance within 10 days after the completion of the services, the declaration of acceptance shall be implied if nnextsoft as given the customer notice of the consequences of his actions and the customer has not contested the acceptance within 5 work days thereafter.
  
- 7) If it becomes apparent that the services provided by nnextsoft do not fall within the scope of the warranty, the customer shall carry the costs for the services including all accrued travel costs and expenditures. A compensation of the costs by the customer shall be calculated in accordance with nnextsoft's respective applicable hourly rates and travel expenses compensation schedule.

## **§ 8 Provision of new software, impossibility of performance**

§ 3 of Part A of nnextsoft's General Terms and Conditions of Business shall apply accordingly.

## **§ 9 Warranty for the provision of new software (§ 2 II)**

- 1) The customer is obligated to inspect the delivered software on the basis of the performance description and the specifications of the work order or individual agreement upon receipt thereof immediately. Any defects must be reported within a reasonable period of time after inspection. If the defect is not reported or reported too late, the customer shall lose his warranty rights.
  
- 2) Warranty claims become statute barred 12 months after the delivery of the maintenance service. This shall not apply in the case that the defect has caused damages to life, limb or health and/or a guarantee is breached and/or the damages were caused willfully or gross negligently. Claims arising from the Product Liability Act of Germany shall remain unaffected thereby.

- 3) If a provision of law is changed shortly before the maintenance service is to be delivered and if the availability of the affected function in the system is jeopardized, nnextsoft has the right to request a prolongation of the delivery period for this function.
- 4) Otherwise, § 7 I-III of this agreement apply accordingly.

## **§ 10 Term, termination**

- 1) This agreement shall come into force conditional to the signature of this agreement by both Parties before the software is installed. The agreement shall come into force on the day of installation in the case that the customer receives standard software. The date on the delivery note shall be decisive. If the customer has ordered the customization of the software, the date of acceptance shall be decisive. The initial term of the agreement is one year. The term of the agreement will be extended for one year respectively if the agreement is not terminated by one of the parties in writing with notice of three months before the end of a term
- 2) § 649 BGB is precluded.
- 3) In the event that the stipulation in sub clause 2 of this stipulation is invalid, the lump sum for the lost profits shall be calculated at a rate of 35% of the maintenance fee in accordance of § 5 of this agreement for the remaining term of the agreement from the time that the declaration of termination take effect, if nnextsoft can prove that at least 35% of the services were appropriated for the development of the software. The customer has the right to prove that nnextsoft's loss of profits will not be as high.
- 4) The customer's rights of use of the software shall remain unaffected by the termination of this maintenance agreement.
- 5) The right to declare the extraordinary termination of the agreement for good cause shall remain unaffected. If the customer terminates the agreement for good cause for which nnextsoft is responsible, the customer shall be reimbursed for the paid maintenance fees for the current contractual term proportionately.

## **§ 11 Rights of use**

- 1) The rights of use are granted in accordance with the license agreement (Part A, Section II of the General Terms and Conditions of Business)
  
- 2) The rights of use to the programs that are technically replaced by the programs provided with the scope of this agreement shall expire within 2 weeks after the customer has productively used the provided programs, at the latest in the calendar month after the delivery of the provided program to the customer. The customer has the right to make a copy of the respective program for archive and security purposes.

## Part D: Framework minor projects

### § 1 Parts of the agreement and collision clause

- 1) Parts of the agreement in the following sequence are:
  - a) Individual agreements for the respective order.
  - b) The stipulations of these terms and conditions – Part D – small projects and services.
  - c) The regulations of Part A of nexxtsoft's Terms and Conditions of Business.
  - d) The regulations for data protection regarding order data processing, Part E.
  
- 2) Definitions are set forth in § 2 IV of Part A.

### § 2 Subject of the agreement

- 1) This agreement is a frame agreement which regulates the general contractual terms between the Parties. The objective of this agreement is to minimize the administrative efforts in the course of the execution of minor projects by establishing formalities that shall apply to the ensuing orders. Therefore, the Parties are concluding an individual agreement which provides that the following stipulations of this agreement shall apply to follow-up projects even in the case that these projects do not refer expressly to this agreement. In the absence of such an individual agreement, the reference to this agreement must be made. Furthermore, the individual terms of this agreement, such as limitation of liability, shall not automatically apply to the follow-up orders.
- 2) Both Parties have been presented with the terms of this agreement, and both Parties have had the opportunity to stipulate the terms and to influence the wording thereof.

With this proviso, the Parties hereby agree to the following:

- 3) nexxtsoft shall provide services and work in the field of software development and consultation on the basis of this agreement. The framework agreement shall only be applicable to minor projects that do not have a scope larger than 30 eight-hour workdays.
- 4) On the basis of this agreement the customer shall commission nexxtsoft with orders. The minimal content of these orders is set forth in § 6 and/or § 9 of this agreement. These agreements shall be legally classified in accordance with the respective contractual relationship of the individual order.

## § 3 nnextsoft's employees

nnextsoft shall only deploy qualified and reliable personnel for the performance of its obligations. The selection and disposition of the employees and other vicarious agents (in the following "employees") deployed to perform the services and work is nnextsoft's responsibility. The performance, induction and training of the employees in regards to the respective assignment shall be accountably governed by nnextsoft. nnextsoft's employees are subject to nnextsoft's disciplinary decisional authority only, regardless of the place of performance by the employee.

## § 4 Duties to cooperate

The duties to cooperate agreed upon in the order are main obligations of the customer. nnextsoft will give the customer notice in a timely manner in writing or in text form if it becomes apparent that the customer is not providing the required duties to cooperate and thereby nnextsoft cannot provide its work or services as agreed upon. As long as the customer does not fulfill his obligations as agreed upon, nnextsoft shall not be in default and has the right to terminate the agreement after giving notice to no avail.

## § 5 Individual orders

- 1) The following stipulations in § 5 to § 8 are applicable to orders that will obligate nnextsoft to provide certain services and provide that nnextsoft will warrant the achievement of certain results.
- 2) The order shall stipulate the following terms:
  - a) scope and content of the performance,
  - b) place of performance,
  - c) the targeted term of the order,
  - d) allocation of project control rights and system responsibility,
  - e) the targeted date of completion,
  - f) individual terms regarding remuneration,
  - g) the scope of the documentation of the performance.
  - h) individual terms regarding the adoption or acceptance of the performance,
  - i) the required duties to cooperate of the customer.
- 3) The respective tasks can be changed during the execution of an order by the customer. However, changes must be agreed upon with nnextsoft separately in writing.

## § 6 Acceptance

acceptance shall be declared in accordance with the standards set forth in the order. It shall be recorded in writing. If the customer puts nnextsoft's work and services into operation without raising the objection that the performance is substantially defective, nnextsoft shall assume the implied acceptance. nnextsoft shall inform the customer expressly thereof in writing.

## § 7 Terms of payment

- 1) The fees shall be payable as follows:

The invoices shall be due and payable within 30 days upon receipt thereof. Nexxtsoft has the right to bill the customer at interims and will normally do so on a monthly basis.

- 2) All fees are payable in addition to the respective valid legal VAT.
- 3) Set off with claims that are not accepted as legally binding or that are not undisputed by nnextsoft is not permissible.

## § 8 Liability for damages and compensation for expenditures

The Parties have limited the liability for damages and the compensation of expenditures in an individual agreement. This agreement is in Part F of these Terms and Conditions of Business – individual limitation of liability.

## § 9 Warranty/Data protection

- 1) The functionality of the software as specified in the individual order in the therein defined system environment shall be warranted. Any subsequent changes in the system environment by the customer may cause an impairment of the functions, even if this system environment can be considered to be "normal". Due to the manifold combinations that are possible, no warranty is given for a "normal" system environment but only for the agreed upon system environment.

- 2) nexxtsoft shall initially cure any material defects. nexxtsoft shall do so by either providing the customer with new software free of defects or eliminating the defect at nexxtsoft's choice; the provision of reasonable workarounds that avoid the consequences of the defect through the delivery of new software shall be considered to be a cure of the defect if the implementation thereof is reasonable for the customer.
- 3) If the cure of the defects fails after a reasonable number of attempts and not within a reasonable period of time, the customer has the right to assert warranty claims. The right to cancel the agreement because of an insignificant defect, which does not impair the functionality of the software substantially, is excluded. The right to a substitute performance is foreclosed.
- 4) The statute of limitation for all warranty claims is one year and shall begin upon acceptance of the performance. This shall not apply damages claims that are asserted due to a defect of the software if the damages were caused willfully or gross negligently, in the event of fraudulent concealment, in the case of damages to life, limb or health as well as damages that are incurred due to a breach of guarantee. In these cases the legal statute of limitation shall apply. The same shall apply to claims based on the Product Liability Act of Germany. Claims for the compensation of expenditures shall become statute barred accordingly.

## **§ 10 Service agreements**

- 1) The following stipulations in § 10 to § 12 are applicable to orders that assign the project leadership, the change management and the system responsibility for the realization of the project to the customer and the Parties have agreed that nexxtsoft shall intermittently provide the customer with work performance. These regulations are also applicable for nexxtsoft's consultancy services.
- 2) The order shall stipulate the following terms in particular:
  - a) Scope and content of the performance,
  - b) place of performance,
  - c) the targeted term of the order,
  - d) individual terms regarding remuneration,
  - e) the scope of the documentation of the performance.
  - f) individual terms regarding the adoption or acceptance of the performance,
- 3) The respective tasks can be changed during the execution of an order by the customer. However, changes must be agreed upon with nexxtsoft separately in writing.
- 4) The customer has the right to govern the project and shall carry the system responsibility.

## § 11 Changes

- 1) Upon the customer's request, nnextsoft shall provide the customer's requested changes, enhancements and additions within the scope of his business and personnel capabilities. nnextsoft is not obligated to provide these changes without an express agreement thereto.
- 2) Agreed upon deadlines shall be delayed for the time needed to review and execute the requested changes

## § 12 Defect of performance

- 1) If there several defects of performance simultaneously, the customer has the right to assign the priorities for the elimination thereof.
- 2) nnextsoft shall inform the customer on the current status and accomplishments regarding the elimination of defects.
- 3) *Sofern sich ein Leistungsmangel nicht innerhalb eines angemessenen Zeitraums beheben lässt, wird nnextsoft innerhalb angemessener Zeiträume nach Wunsch des Kunden eine Behelfslösung bereitstellen. Die Bereitstellung einer Behelfslösung entbindet nnextsoft nicht von ihrer Verpflichtung zur Beseitigung des Leistungsmangels.* If a defect of performance cannot be eliminated within a reasonable period of time, nnextsoft shall provide a workaround upon the customer's request within the time period specified above. The provision of the workaround shall not discharge nnextsoft from its obligations to eliminate the defect.
- 4) For the analysis and/or elimination of a defect of performance which are not actually such or has been caused by circumstances for which the customer carries the responsibility, nnextsoft has the right to request the compensation of its efforts in accordance with its general price list valid at that time.

## § 13 Personnel

nnextsoft is solely responsible for the fulfillment of contractual, legal, administrative obligations and obligations arising out of any respective occupational insurance association for all personnel assigned to provide nnextsoft's services. nnextsoft shall indemnify the customer from all respective claims asserted against the customer. This shall include all wages and salaries as well as all other obligations of payment that arise out of the employment or service agreements, for example social security contributions. It is nnextsoft's sole duty to conclude agreements and impose

measures that regulate its relationship to the personnel assigned to provide its services.

## **Part F: individual limitation of liability**

In the context of Part D (Frame agreement for small projects) an individual limitation of liability can be defined.

Sample:

*Unless otherwise agreed the following shall apply:*

- *Agreement 1*
- *Agreement 2*
- *..*