Software as a Service - Terms of Use - United States

These Terms of Use (hereinafter "**Terms of Use**") apply to the use of cloud-based software services (hereinafter "**Service**") offered by **Draeger, Inc.** (hereinafter "**Provider**") to the entity entering into a Digital Solutions Agreement for the use of a Service (hereinafter "**Customer**"). Provider and Customer are referred to individually as a "**Party**" and collectively as the "**Parties**".

The following documents and their contents form an integral part of the Terms of Use:

- The offer sheet (hereinafter "**Quote**"),
- Specification of the booked Service as set out on the product websites, and documents available under https://www.draeger.com/termsandconditions, (collectively hereinafter "**Specification of Services**"), and
- Service-specific Service Level Agreement in the respective current version (hereinafter "**Service-specific SLA**"), if any, available at https://www.draeger.com/termsandconditions.

The Terms of Use, the Quote, the Specification of Services, the Service-specific SLA and other conditions and contracts referred to in these Terms of Use form the "**Agreement**".

The person acting on behalf of the Customer declares: (i) they are authorized to validly enter into this Agreement with effect for the Customer; and (ii) they agree to be bound by the Agreement.

1. Subject of the Agreement

1.1. The subject of the Agreement is the use of the Service for a limited period of time as specified below.

1.2. The Provider provides the Customer with the Service as described in the respective current Specification of Services. The Customer can access the Service via a standard web browser or, if applicable, through other platforms as described in the Specification of Services.

1.3. Unless stipulated otherwise in the Service-specific SLA, the Provider will provide support in accordance with the provisions in Section 2.

1.4. If the Customer wishes to add additional quantities, modules and/or functions to the Service, these will be agreed for separate remuneration.

1.5. The Provider retains the right to adjust these Terms of Use with effect for the future at any time. This applies in particular in the event of a change in the legislative situation or if and insofar as this is necessary for reasons of IT security. The Customer's continued use of the Service after the effective date of any such changes shall constitute the Customer's agreement to be bound by the most current version of these Terms of Use, available at https://www.draeger.com/termsandconditions. In the event that the Customer does not agree to be bound by any proposed change hereto, the Customer shall have the right to terminate the Agreement by notifying the Provider; provided however that the Customer must notify the Provider no later than ninety (90) days after the effective date of any change. If the Customer does not terminate the Agreement within that ninety (90) day period, then the Customer is deemed to have accepted the changes.

2. Availability and Support

2.1. Unless stipulated otherwise in the Service-specific SLAs, the Provider will provide the Service with an availability of no less than 98% on an annual average (hereinafter "**Minimum Availability**").

2.2. The following will not be considered downtimes when determining whether the Minimum Availability has been achieved:

- downtimes due to factors not under the Provider's reasonable control, including, without limitation, acts of God, war, acts of terrorism, riots, governmental actions, or general network infrastructure failures,
- network or equipment failures at the Customer's site or between the Customer's site and the components used to provide the Service, and
- scheduled and emergency maintenance.

2.3. Technical support can be contacted by phone at 1-800-4DRAGER (1-800-437-2437). Option 2,2,3 and by e-mail at IT.SysSupport@draeger.com .

2.4. Unless stipulated otherwise in the Service-specific SLA, the scope of support comprises the following components:

- support of Customer in the event of problems using the Service,
- acceptance, classification, and, if required, forwarding fault reports to downstream support levels, and
- isolating the cause of malfunctions, fault diagnosis as well as undertaking services aimed at rectifying the fault within a reasonable period of time.

3. Changes to the scope of Service

3.1. The Provider is entitled to update the Service or change it in another form, provided that the change is reasonable for the Customer, taking into account the interests of the Provider. Reasonable modifications include, without limitation, modifications that do not affect the Service's essential scope of performance or are required for reasons of IT security or due to changes in the regulatory framework.

3.2. The Provider will give the Customer reasonable advance notice of upcoming modifications affecting essential scope of performance of the Service. If a modification in an individual case has a detrimental effect on the Customer's interests to such an extent that the Customer cannot be reasonably expected to adhere to the Agreement, the Customer will be entitled to terminate the Agreement upon written notice to Provider within thirty (30) days of Provider's notice to Customer of such upcoming modifications. Such termination shall be effective as of the end of the month during which termination notice has been received by the Provider.

3.3. If the Agreement is not terminated with due notice pursuant to Section 3.2., the changed scope of Service will become part of the Agreement.

3.4. If the Provider releases new functionalities that require instruction according to medical product law, and provides such instruction to the Customer, the Customer is responsible for reading and complying with such instruction prior to use.

4. Intellectual property and rights of use of data

4.1. Any and all intellectual property rights to the Service remain exclusively with the Provider. The Customer may use the Service only to the extent expressly granted in the

Agreement or, if applicable, by additional mandatory statutory provisions.

4.2. The Customer is granted a non-exclusive right to access the Service online and to use the Service in accordance with, and subject to, the Agreement and the Digital Solutions Agreement. This authorization is limited in time to the respective agreed period of use and in terms of content to what is necessary for the contractual use of the Service or as exempted under mandatory law.

4.3. No additional rights of use are granted. In particular, the Customer is not entitled to do any of the following in relation to the Service or components thereof:

- make them available to third parties,
- reproduce, sell, modify, alter, manipulate, repair or create derivative works of them,
- save to the limited extent permitted by law, reverse engineer, disassemble or decompile them, or use other methods to derive the source code of the software underlying the Service,
- utilize or exploit them in such a way that no charges are incurred or usage restrictions or quotas are exceeded,
- use them in connection with a fork or derivative work, or access them using automated means, unless stipulated in the Specification of Services,
- use them while circumventing the security mechanisms in place, or
- use them to carry out any activity which is harmful to third parties or otherwise illegal.

4.4. The Customer shall ensure that data contributed to the Service does not violate the Agreement, applicable law or any third-party intellectual property.

4.5. Throughout the term of the Agreement, the Customer will allow the Provider to use, free of charge, the non-personal data contributed by the Customer to the Service, where necessary for the provision and further development of the Service.

4.6. Where medical devices are concerned, a corresponding statutory data use obligation under Section 4.5. exists in the context of product vigilance. Data, where a personal connection can be removed by rendering them anonymous, may also be anonymized by the Provider and used for the purposes set forth above. The Customer warrants that it is authorized to grant these rights of use.

5. Remuneration

5.1. The applicable fee (hereinafter "**Service Fee**") will depend on the scope of the agreed Service as well as on the details specified in the associated Quote.

5.2. Unless stipulated otherwise in the relevant Quote, invoices will be issued annually in advance and the Service Fee will be payable within fourteen days of invoicing.

5.3. Prices are exclusive of applicable taxes and similar charges, including sales, use, consumption, withholding and value added taxes. Where applicable law requires the Customer to withhold any amount, the Customer will be responsible for paying withholding tax. The Service Fee will be deemed increased accordingly, with the effect that all fees agreed in these Terms of Use or in the respective Quote are net payment amounts.

6. Registration and Customer account

6.1. During the registration process, the Customer must provide complete and accurate information and keep it correct and up to date at all times. Information on the number and scope of use must be accurate. Any identification information received from the Provider in advance will be used accordingly in the registration process (e.g., for the scope of user authorizations).

6.2. The Customer must not disclose its user name, password and/or two-factor authentication or other login information to unauthorized persons and must take reasonable steps to keep such information secret.

6.3. The Customer is responsible for all activities taking place in its account. This applies irrespective of whether such activities are carried out by the Customer's employees or by a third party (including contractors or representatives). The Provider and its affiliated companies are not responsible for any unauthorized access to the Customer account. The Customer must contact the Provider without undue delay if the Customer becomes aware of any indications of possible unauthorized activities on its account or if account information is lost or stolen.

7. Cloud infrastructure

7.1. As regards its infrastructure components, the scope of use of the Service is based on the contractual arrangements between the Provider and its cloud provider. The Service is hosted on the Microsoft Azure infrastructure.

7.2. The procurement of such infrastructures and the associated service level inherently are subject to certain restrictions and conditions. In particular, the Customer's use of the cloud infrastructure is governed by the conditions agreed between the cloud provider and the Provider. The scope of services for the underlying IT infrastructure is set forth in the terms and conditions of the cloud provider. The relevant license terms and conditions and service levels are available at https://www.microsoft.com/en-us/licensing/product-licensing/products.

7.3. The Customer is responsible for all data backups. The Provider does not accept any responsibility for malfunctions or impairments of any kind caused by the Service's underlying cloud infrastructure, unless they are attributable to the Provider in the individual case.

8. Third-party rights and open source software

8.1. To the best of the Provider’s information, knowledge and belief, the Service is free from third-party rights that would prevent use of the Services in accordance with the Agreement.

8.2. Should third parties be entitled to and assert such rights against the Customer, the Provider will defend the Customer against the asserted third-party claims, provided the Customer (i) notifies the Provider without undue delay of any assertion of such third-party rights, in writing, (ii) issues all powers of attorney and authority to the Provider and/or gives the Provider sole control over the defense and settlement of the third-party claim and (iii) provides all cooperation and assistance reasonably requested by the Provider in the defense of the third-party claim. If the Customer discontinues its use of the Services in order to mitigate potential damage, it must notify the

third party that in so doing, the Customer does not acknowledge any alleged infringement. Without the Provider's consent, the Customer is not entitled to enter into any settlements for alleged infringements.

8.3. Section 8.2. shall apply accordingly in the Provider's favor where third parties assert claims against the Provider due to content contributed by the Customer.

8.4. Excluded from the indemnification obligations in Section 8.2 are claims to the extent arising from: (i) use of the Service or components thereof in violation of the Agreement, (ii) modification of the Service or components thereof and use of the Service or components thereof so modified, if such claim would not have arisen but for such modifications, (iii) use of the Service or components thereof in combination with hardware or software not specified in the applicable documentation or otherwise approved in writing by the Provider, if such claim would not have arisen but for such combination or (iv) use of the Service or components thereof after the Provider notifies Customer to discontinue use because of an infringement claim.

8.5. Where conflicting third-party rights in fact exist, the Provider will be entitled, at its option, (i) to acquire at its own expense additionally required rights of use, (ii) modify or replace the Service in such a way that it no longer infringes third-party rights, without thereby significantly impairing the scope of the Service, (iii) if (i) and (ii) are not commercially or operationally viable, to terminate the Service with immediate effect and to reimburse the Customer for the Service Fee for the contract term thereby foregone.

8.6. The Service includes free and open source software. The respective current open source license terms and conditions apply with priority to the open source elements. A list of all free and open source software used as well as the respective license terms conditions, notices and acknowledgments is available at https://www.draeger.com/opensource.

8.7. The Service may contain proprietary contents of third parties, which may be subject to their own license terms for end users and apply directly to the Customer. Such license terms are available at https://www.draeger.com/termsandconditions and take precedence over the Terms of Use in their scope of application.

9. Liability

9.1. References to liability in this Section 9 (Liability) include every kind of liability arising under or in connection with this Agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

9.2. Nothing in this Agreement limits or excludes any liability which cannot legally be limited or excluded, or for liability resulting from Provider’s intentional misconduct or fraud.

9.3. SUBJECT TO SECTION 9.2, THE PROVIDER'S TOTAL LIABILITY TO THE CUSTOMER WITH RESPECT TO ANY AND ALL CLAIMS, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND PRODUCT LIABILITY), STRICT LIABILITY OR OTHERWISE, ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT SHALL IN NO EVENT EXCEED THE SERVICE FEE ACTUALLY PAID BY THE CUSTOMER TO THE PROVIDER HEREUNDER.

9.4. SUBJECT TO SECTION 9.2, IN NO EVENT SHALL THE PROVIDER BE LIABLE FOR, AND THE CUSTOMER HEREBY WAIVES ITS RIGHT TO CLAIM, ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, AS WELL AS ANY DAMAGES RELATED TO LOSS OF BUSINESS, PROFITS, REVENUE, GOODS, OR FACILITIES DIRECTLY OR INDIRECTLY RELATING TO OR ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT, REGARDLESS OF (I) THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, (II) WHETHER SUCH DAMAGES WERE FORESEEABLE, OR (III) WHETHER THE CUSTOMER WAS NOTIFIED OF SUCH DAMAGES.

9.5. The above limitations of liability also apply in the event of claims for damages by the Customer against the employees, representatives or bodies of the Provider.

9.6. The Customer shall take all necessary and reasonable measures to prevent or limit any damages; in particular, the Customer shall ensure that programs and data are periodically secured as part of an adequate back-up protocol, unless this is contractually owed by the Provider. Accordingly, the Provider will be liable for data recovery under the aforementioned conditions only if the Customer has ensured that such data can be reconstructed with reasonable effort from other data material, and limited to a "data peak" not covered by the respective back-up.

9.7 Except as specifically provided in the Agreement or otherwise required by law, the Customer assumes sole responsibility for results obtained from the use of the Service by the Customer, and for conclusions drawn from such use. The Provider shall have no liability for any damage caused by errors or omissions in any data, information, instructions or scripts provided to the Provider by the Customer in connection with the Service, or any actions taken by the Provider at the Customer's direction; andExcept as otherwise provided herein, the Provider makes no warranty, representation or condition, and hereby disclaims all warranties, representations, conditions and other terms of any kind whatsoever, whether express or implied (by statute or common law or otherwise), oral or written, including, without limitation, any implied warranties of merchantability or fitness for any intended or particular purpose. Further, the Customer shall make no such condition, representation or warranty, written or oral, on the Provider’s behalf.

9.8 To the fullest extent permitted by applicable law, the Customer agrees to indemnify the Provider, its parent, subsidiaries and affiliates, and the shareholders, officers, directors, employees, and agents of any of them, from and against any and all claims, demands, judgments, costs, liabilities, expenses (including legal fees), and damages arising out of any claims arising from the Customer's breach of the Agreement.

10. Term and termination

10.1. The term of use for the Service is disclosed in the Quote. If no term of use is specified in the Quote, the term of use of the Service will be one year from the starting date stipulated in the Quote and will be renewed for a further year at a time, unless terminated by either

Party in writing with at least three months' notice prior to the end of the term.

10.2. The right to terminate for good cause will not be affected. Cause for such termination includes, for example, a material breach of an obligation under the Agreement. Notice of termination must be provided in writing.

10.3. In addition, the Provider may suspend access to the Service with immediate effect if the Provider has reasonable grounds to suspect that:

- the use might put the Service, the Provider and/or a third party at risk;
- the Customer's use of the Service may be unlawful;
- the Customer is insolvent or overindebted or is at risk of insolvency; or
- the Customer's contractual performance appears to be at risk due to its asset situation and the Customer fails to provide written confirmation of its performance capacity or to furnish adequate security without undue delay upon request.

10.4. If the Provider suspends the Customer's access to the Service or parts thereof for the reasons stipulated in Section 10.3, the Customer shall remain liable for all fees and charges incurred during such suspension. The Customer is not entitled to a credit note or refund in this case.

10.5. The rights to use of the Service will expire at the end of the term of the Agreement. The Customer will remain responsible for any fees and charges incurred or caused up to the date of termination. The Provider will not be obligated to continue storing any Customer data contained in backup snapshots or in the database after the Agreement has ended.

11. Confidentiality

11.1. The Parties undertake to treat all Confidential Information (as defined below) they become aware of during implementation of the Agreement as confidential and to use it only for the purposes of the Agreement. “Confidential Information,” as defined herein, means any and all information, documents, details and data designated as such or which, by their nature, upon reasonable assessment must be considered confidential.

11.2. The Parties undertake to grant access to the respective other Party's Confidential Information only to those employees who have been obligated to maintain confidentiality and who for the purpose of implementing the Agreement need to or may need to know such Confidential Information.

11.3. Adequate measures shall be implemented to protect the respective other Party's Confidential Information from unauthorized third-party access. Third parties as defined in this Section 11. do not include legal and tax advisers or auditors and other consultants of the respective Party. The Parties will grant access to Confidential Information only to such advisers who are subject to professional secrecy or on whom obligations corresponding to the non-disclosure obligations under the Agreement have been previously imposed.

11.4. This non-disclosure obligation does not include any Confidential Information that:

a) was demonstrably already known to the recipient upon conclusion of the Agreement or subsequently was obtained from a third-party without any breach of a non-disclosure agreement, statutory provisions or regulatory orders,

b) upon conclusion of the Agreement is in the public domain or enters it subsequently, unless this is due to a breach of the Agreement; or

c) must be disclosed due to statutory obligations or due to court or regulatory order. To the extent permitted under applicable law, the recipient required to disclose will notify the other Party in advance and provide it with the opportunity to proceed against the disclosure.

11.5. This non-disclosure obligation will survive for a period of five (5) years following the end of the term of the Agreement.

12. Data protection

It cannot be ruled out that in the context of performing the Service under the Agreement, the Provider will obtain access to personal data from the Customer's sphere of responsibility. In this regard the Parties agree to conclude all necessary data privacy agreements.

13. Force Majeure

13.1. Neither Party shall be liable for any delay or non-performance of any obligation (excluding payment obligations) under the Agreement if such delay or non-performance is caused directly or indirectly by any event beyond the reasonable control of the Party affected.

13.2. This applies in particular to strikes, epidemics, floods, accidents, earthquakes, hurricanes, riots, civil commotion, acts of terrorism, armed conflicts, blockades, embargoes or other events of force majeure (hereinafter ”**Force Majeure Event**”). The affected Party shall notify the other Party in writing (e-mail is sufficient) within ten (10) days of the occurrence of such Force Majeure Event.

13.3. If the fulfilment of a Party's obligations is delayed by more than one hundred and eighty (180) days from the date on which the other Party received the notice under this Section 13., the non-affected Party shall be entitled to immediate termination. The terminating Party shall not be liable for any damages resulting from the termination.

13.4. As soon as there is no longer a Force Majeure Event, the Parties shall resume performance of the Agreement without delay, unless notice of termination has been given in accordance with Section 13.3.

14. Final provisions

14.1. The Service may not be used in any country that, with regard to the object of the Service, is subject to embargo regulations of the USA, the UN or the EU. Likewise, the Service may not be used if the Customer's organization or its employees are included in any embargo lists of the USA, the UN or the EU.

14.2. The Parties shall comply with all applicable laws and regulations, including, but not limited to, any laws and regulations relating to the import, or export, of any Service or associated technical data.

14.3. The Customer's General Terms and Conditions do not apply. This also applies if these Terms of Use are not expressly objected to. No verbal or written collateral agreements to the Agreement exist.

14.4. The Customer may not assign the Agreement or any of its rights or obligations granted hereunder, without the prior written consent of the Provider, which shall not be unreasonably withheld or delayed. Any

attempt to transfer or assign the Agreement without such written consent will be null and void. The Provider may assign the Agreement to any of its affiliates or in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of the Provider's assets.

14.5. The Customer may assert set-off or retention rights only on the basis of counterclaims that have been established by final legal decision or acknowledged by the Provider.

14.6. If individual provisions of the Agreement are or become invalid as a whole or in part, this will not affect the validity of the remaining provisions. In such case, the Parties undertake to replace the invalid provision with a valid provision that comes as close as possible to the economic purpose of the invalid provision. The same applies in case of any unintentional gaps in the Agreement.

14.7. The Agreement is governed by the laws of the Commonwealth of Pennsylvania without giving effect to the principles of conflict of law rules thereof. Any action or proceeding relating to the Agreement must be brought in a federal or state court located in Pennsylvania and each Party irrevocably submits to the jurisdiction and venue of any such court in any such claim or dispute, except that either Party may seek injunctive relief in any court having jurisdiction to protect its confidential information or intellectual property.