SOFTWARE LICENSE AGREEMENT
Version 1.1 – 05/2021

This Software License Agreement is made as of the Effective Date between MOSTLY AI Solutions MP GmbH, a limited liability company incorporated under the laws of Austria, registered with the Commercial Court of Vienna under the registration number 466390v and having its corporate address at 1010 Vienna, Hegelgasse 21/3, Austria ("**MOSTLY AI**" or "**Provider**") and the Customer which has executed an Order Form which incorporates the terms and conditions of this Agreement. By executing an Order Form incorporating the terms of this Agreement, the Customer thereby expressly agrees to be bound by the terms hereof.

Background: MOSTLY AI is the developer of MOSTLY GENERATE and the proprietor of any exclusive Intellectual Property Rights therein. Customer wishes to run MOSTLY GENERATE in order to generate Synthetic Data for its business purposes. Customer intends to acquire, and Provider intends to grant a non-exclusive license to use MOSTLY GENERATE under the terms and conditions as set forth in this Agreement. For the purpose of maintaining as continuous and smooth operability of MOSTLY GENERATE as possible, the Customer furthermore requires certain maintenance and support services of the Provider and is willing to pay the fees in each case as set forth in this Agreement.

IN CONSIDERATION OF the provisions contained in this Agreement, the parties agree as follows:

1. DEFINITIONS AND CONSTRUCTION

1.1 **Definitions.** All terms not otherwise defined in this Agreement shall have the meaning ascribed to such terms in the Order Form.

"1st Level Support"	means the first level in a hierarchy of support groups, whereas (i) the responsibility of 1st Level Support is to register and classify received Incidents and to undertake an immediate effort to restore a Failure as quickly as possible and (ii) to transfer the Incident to 2nd Level Support groups if no ad-hoc solution can be achieved. 1st Level Support is solely responsible for any activities in context of the processing of Service Requests and/or keeping users informed about their Incidents' status at agreed intervals.
"2nd Level Support"	means the second level in a hierarchy of support groups, whereas the 2nd Level Support takes over Incidents which cannot be solved immediately with the means of 1st Level Support to restore a Failure as quickly as possible. If necessary, 2nd Level Support is responsible to request 3rd Level Support.
"3rd Level Support"	means the third level in a hierarchy of support groups, which is typically a hardware or software manufacturer, that is requested by 2nd Level Support if required for solving an Incident with the aim to restore a Failure as quickly as possible.
"Adaptive Maintenance Services"	means any and all Maintenance Services (other than Corrective Maintenance Services and Preventive Maintenance Services) which are necessary in order to provide Maintenance Releases that make the System usable in a changed System Environment, whereas any changes to the System Environment require the prior consent of the Provider (such consent not to be unreasonably withheld).
"Affiliate"	means, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, **"control"** of any entity or person means ownership of a majority of the voting power of the person. As far as MOSTLY AI is concerned, MOSTLY AI Inc., a corporation having its business address at 500 7th Ave 8th floor, New York, NY 10018, United States, shall in any case be qualified as its Affiliate.
"Agreement"	means this Software License Agreement, as amended from time to time, including, for the avoidance of doubt, all annexes, schedules and recitals to this agreement and the Order Form.
"Business Day"	means a day (other than a Saturday or Sunday) on which commercial banks and foreign exchange markets settle payments and are open for general business (including

dealings in foreign exchange and foreign currency deposits) in Vienna and the Customer's principal place of business.

"Business Partner"	means a person that requires access to the System in connection with Customer's (or its Subsidiaries) business operations, such as customers, distributors and/or suppliers of Customer or its Subsidiaries.
"Calendar Quarter"	means the three month period ending on March 31, June 30, September 30 and December 31 respectively of any given calendar year.
"**Change**"	means any modifications or amendments to the System Specifications or the System Environment Specifications.
"Change Fee"	means the consideration to be provided by the Customer after the successful implementation of a Change as set forth in the respective Request for Change. In absence of provisions about the calculation of the Change Fee in a Request for Change, the Change Fee shall be calculated on a time and material basis in accordance with the MOSTLY AI Rates.
"Change Releases"	means the provision of executable program code for the purposes of the implementation of a Change, delivered to the Customer Technical Contact Person in compiled and executable form and on a suitable medium, which allows the Customer to arrange the deployment.
"Configuration"	means adjustments and settings with respect to the Software made on the basis of predefined preferences and parameters of the Software.
"Corrective Maintenance Services"	means any and all Maintenance Services which are necessary in order to provide Maintenance Releases for the rectification of Defects that the Customer and/or Customers have noticed to the Provider in the form of a Support Request, excluding, for the avoidance of doubt, any Preventive Maintenance Services, Adaptive Maintenance Services or Perfective Maintenance Services.
"CRITICAL (Priority 1)"	means situations in which (i) the Incident is reasonably expected to result in extremely serious interruptions to a Production System and has affected, or could affect, the entire user community, and (ii) tasks that should be executed immediately cannot be executed because of a complete crash of a Production System or interruptions in main functions of a Production System, and (iii) data integrity is compromised and the support request requires immediate processing as the issue can result in financial losses.
"Customer Portal"	means the customer support portal provided by MOSTLY AI under https://mostlyai.freshdesk.com hosted by Freshworks GmbH , or any other customer portal provided by MOSTLY AI as a replacement thereto.
"Customized Components"	means (a) Customized Software and (b) Interfaces, and Documentation (if any), if and as far as they have been specifically developed upon the instruction of the Customer and/or its Subsidiaries (if any).
"Customized Software"	means any and all computer programs (other than Configurations), modules and related data which have been specifically developed for the Customer and/or its Subsidiaries (if any).
"Defect"	means any substantial and reproducible Failure with respect to a Production Environment.
"Deliverables"	means any and all products that have to be delivered (or have been delivered) by MOSTLY AI to the Customer and/or its Subsidiaries pursuant to the System Specifications.
"Documentation"	Means the descriptions in electronic format which accompany the Software when delivered to the Customer and/or its Subsidiaries plus any updates to those descriptions. The Documentation shall cover all activities and information that are inherent, necessary, commonly assumed or that are required or reasonably necessary for the proper performance and usage of the Service and shall reflect actual Good Industry Practice.
"Failure"	means, with respect to the System or a component thereof (as applicable), the loss of (or lack of) ability to operate in accordance with the System Specifications, or to deliver the required output pursuant to the System Specifications. A Failure is deemed as

having not been occurred, if the non-conformity of the System with the System Requirements results from (a) non-conformity of the System Environment with the System Environment Specifications (e.g., unauthorized changes in the IT architecture of the Customer) or (b) unauthorized changes to the source code of the Software.

"Generated Reports"	means the reports on the quality and privacy of Synthetic Data generated by the Software.
"Hotfix"	means a single, cumulative package that (i) includes one or more files that are used to address a problem in the Software, (ii) is not quality approved by MOSTLY AI and (iii) is named, marked, announced or otherwise described as *"Hotfix"*.
"IMPORTANT (Priority 2)"	means situations in which (i) the Incident is reasonably expected to cause interruptions in normal operations, but does, however, not prevent operation of a Production System and (ii) the error is attributed to malfunctioning or incorrect behavior of the System.
"Incident"	means an unplanned interruption or reduction in quality of the System.
"Intellectual Property Rights"	means (i) rights which arise by virtue of or in relation to copyright, databases, patents, rights to inventions and trademarks (registered or unregistered); (ii) rights which arise as a result of any applications which have been made to register any of these items; (iii) moral rights; (iv) rights in relation to confidential information (including trade secrets and knowhow); and (v) any other similar or equivalent rights in any country.
"Interfaces"	means any computer programs, modules and related data as set forth in the System Specifications, which are dedicated to connect the System with the System Environment for the purpose of passing information from the System to the System Environment (or *vice versa*).
"Maintenance Releases"	means the provision of Hotfixes, Patches, Updates, or other changes, corrections, amendments or additional features to the System, delivered to the Customer Technical Contact Person in a compiled and executable form and on a suitable medium, which allows the Customer to arrange the deployment.
"Maintenance Services"	are services which consist of modifications to the System or a component thereof after delivery in order to correct faults or prevent faults before they occur, improve performance or other attributes, or adapt to a changed environment. For the avoidance of doubt, the scope of this definition shall not include (i) any hardware maintenance services or (ii) any services which become necessary or desirable in order to procure interoperability of third party software with the Software or (ii) any activities which become necessary or desirable as a consequence of a change in the System Environment to which MOSTLY AI has not given its prior consent.
"MOSTLY AI Maintenance Services"	means with respect to the Standard Components of the System (but not with respect to Customized Components) Maintenance Services in the area of Corrective Maintenance Services and Preventive Maintenance Services and Adaptive Maintenance Services, but excluding any Perfective Maintenance Services.
"MINOR (Priority 3)"	means situations in which the Incident is reasonably expected to result in minimal or no interruptions to the quality of the Synthetic Data (no business impact), as well as (for the avoidance of doubt) any Incident which do not specifically fall in higher categories, i.e. CRITICAL (Priority 1) or IMPORTANT (Priority 2).
"Ongoing Change"	means a Change, whereas, with respect to the aforementioned change, a Request for Change has already been accepted by Provider and Customer, but deployment activities have not yet been completed.
"Order Form"	means the MOSTLY AI's form for placing orders hereunder entered into between the parties, which references this Agreement and identifies the quantity, tier, territory and other terms in connection with Customer's license to use the System in accordance with the terms hereof.
"Patch"	means a software package that (i) includes one or more files that are used to address a problem in the Software, (ii) is quality approved by MOSTLY AI and (iii) is named, marked, announced or otherwise described as *"Patch"*.

"Perfective Maintenance Services"	means any and all Maintenance Services (other than Corrective Maintenance Services, Preventive Maintenance Services and Adaptive Maintenance Services) which are necessary in order to provide Maintenance Releases that improve the performance, maintainability, or other attributes of the System.
"Personal Data"	shall have the meaning of personal data as defined in the GDPR (as defined in Section 16).
"Preventive Maintenance Services"	means any and all Maintenance Services other than Corrective Maintenance Services which are necessary in order to provide Maintenance Releases for the rectification of Defects that the Provider became aware of, excluding, for the avoidance of doubt, any Corrective Maintenance Services, Adaptive Maintenance Services or Perfective Maintenance Services.
"Production Environment"	means the subset of the IT infrastructure of the Customer and/or the Customers that Users access and use on an operational basis to execute their business processes and transactions.
"Production System"	means any parts of the System that are operational in a Production Environment.
"Release Plan"	means a non-committal and non-binding declaration of MOSTLY AI's intent to release Updates, and/or other new releases of the Standard Software in certain discontinuous intervals or at certain points of time, as published and amended by MOSTLY AI in its sole discretion.
"Request for Change"	means a binding offer of the Customer concerning the implementation of Changes to the System. A Request for Change is supposed to give details about the proposed Changes, the deadline for the delivery of the Change Release and (if the Request for Change is made by the Provider) the Change Fee.
"Resolution Time"	means the amount of time which elapses between the receipt of a Support Request by Provider and the restoration of the System to proper operational condition. Any period of time (i) which is not within the hours of the Support Availability or (ii) in which the Customer does not comply with the Cooperation Duties (as defined in Section 8.1) shall not count as Resolution Time.
"Response Time"	means the amount of time which elapses between the receipt of a Support Request by Provider and a response (a) in the form of a telephone call with the person specified in the Support Request or (b) an e-mail generated by the support system which states the Incident resolution has started. Any period of time (i) which is not within the hours of the Support Availability or (ii) in which the Customer does not comply with the Cooperation Duties shall not count as Response Time.
"Service Request"	means a request from a user of the System for information, or advice, or for a standard change or for access to the System or a component thereof, such as for example a request to reset a password, or to provide standard IT services for a new user.
"Software"	means Standard Software, Customized Software and Interfaces.
"Subsidiary"	means, in relation to any person, any entity controlled, directly or indirectly, by the person (but not any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person). For this purpose, **"control"** of any entity or person means ownership of a majority of the voting power of the person.
"Support Availability"	means, a timeframe running daily from 00:00 to 23:59.
"Support"	means MOSTLY AI's web-based and telephone technical support for the System as described in this Agreement (excluding, for the avoidance of doubt, any Maintenance Services).
"Support Request"	means the complete report of any Incident and request for Support in accordance with the procedure set out by Section 4.6 of this Agreement.
"Standard Components"	means (a) Standard Software and (b) Interfaces, and Documentation (if any), if and as far as they are ready-made and generally available for sale. For the avoidance of doubt, the definition shall exclude any Customized Components.

"Standard Software"	means the application software as set forth in the System Specifications, as far as it was developed by MOSTLY AI and is ready-made and generally available for sale. For the avoidance of doubt, the definition shall exclude any Customized Software.
"Synthetic Data"	means the production data generated by the Software
"System"	means the Software including Documentation (if any), Configuration and other agreed Deliverables pursuant to the System Specifications.
"System Environment Specifications"	means the MOSTLY AI requirements, as published and amended from time to time.
"Target Resolution Time"	means a period of ten Business Days with respect to CRITICAL (Priority 1) Incidents, a period of twenty Business Days with respect to IMPORTANT (Priority 2) Incidents, and a period until the next Maintenance Release with respect to MINOR (Priority 3 Incidents).
"Target Response Times"	means a period of two hours with respect to CRITICAL (Priority 1) Incidents, a period of eight hours with respect to IMPORTANT (Priority 2) Incidents, and a period of 16 hours with respect to MINOR (Priority 3 Incidents).
"Target Workaround Time"	means a period of three Business Days with respect to CRITICAL (Priority 1) Incidents, a period of ten Business Days with respect to IMPORTANT (Priority 2) Incidents, and a period until the next Maintenance Release with respect to MINOR (Priority 3 Incidents).
"Test Environment"	means the subset of the IT infrastructure of the Customer and/or the Customers dedicated to conduct tests of the Software, Change Releases and Maintenance Releases separated from any Production Environment.
"Training Environment"	means the subset of the IT infrastructure of the Customer and/or the Customers dedicated to training purposes and separated from any Production Environment.
"Update"	means a software package that shall replace an installed version of the Software (or parts thereof) with a newer version.
"User"	means a person who uses the System (or parts thereof) on a day-to-day basis.
"Workaround Time"	means the amount of time which elapses between the receipt of a Support Request by Provider and the provision of a solution, work around or action plan for resolution of the respective Incident. Any period of time (i) which is not within the hours of the Support Availability or (ii) in which the Customer does not comply with the Cooperation Duties shall not count as Workaround Time.
"Workplace"	means any and all workplaces, computers and clients where the System shall be used by Users.

1.2 **Construction**. Unless a contrary indication appears: (i) a reference to a time of day is a reference to Vienna time; (ii) references to "warranty" or "warranties" shall be understood as definitions of the preferences and the quality of the software and/or the services to be provided, but not as a guarantee (within the meaning of the general civil law concept); and (iii) references to "indemnify" and "indemnifying" any person against any circumstance shall include indemnifying and keeping him harmless, on an after tax basis, from all actions, claims and proceedings from time to time made against him and all losses, damages, payments, costs or expenses, but excluding lost profits, suffered made or incurred by him as a consequence of that circumstance.

1.3 **Language versions.** This Agreement is made in English language. For the avoidance of doubt, the English language version of this Agreement shall prevail over any translation of this Agreement.

1.4 **Scope of Agreement.** The Order Form and Data Processing Agreement (as defined below) identified in this Agreement are incorporated herein by reference and made a part hereof and defined terms of this Agreement have the same meaning if used therein. In case of any inconsistency between this Agreement (including the Order Form) and the Data Processing Agreement, the provisions of the Data Processing Agreement shall prevail over the provisions of this Agreement (including the Order Form). In case of any inconsistency between this Agreement (excluding the Data Processing Agreement) and the Order Form, the provisions of the Order Form shall prevail over the provisions of this Agreement (excluding the Data Processing Agreement).

2. LICENSE GRANT

2.1 **License.** Subject to Customer's compliance with all the terms and conditions of this Agreement, Provider grants to Customer a non-exclusive license to use the System at Agreed Sites within the Territory to run Customer's and Customer's Subsidiaries' business operations (including customer back-up and passive disaster recovery) and to provide internal training and testing for such business operations, unless terminated in accordance with Section 0~~11~~ herein.

2.2 **Restrictions.** Customer shall not: (i) use the System to provide services to third parties other than to Customer and Customer's Affiliates; (ii) lease, loan, resell, sublicense or otherwise distribute the System, other than distribution to Customer and Customer's Affiliates (subject to Section 0~~7~~); (iii) distribute or publish source code; or (iv) make any use of or perform any acts with respect to the System other than as expressly permitted in accordance with the terms of this Agreement.

2.3 **Use by Subsidiaries.** If and insofar this Agreement grants rights to Customer's Subsidiaries or confers any other form of benefit to Customer's Subsidiaries, such license grant (or other benefit) shall, with respect to the relevant Subsidiary, in any case (and without any need for a declaration of termination) cease automatically if and when the relevant Subsidiary ceases to be Subsidiary of Customer (e.g. because Customer sold its shareholding in Subsidiary and does hence not continue to control it); notwithstanding all other rights of Provider under this Agreement.

2.4 **Use by Business Partners.** Business Partners may use the Software only through screen access and solely in conjunction with Customer's use and may not use the Software to run any of Business Partners' business operations.

3. MAINTENANCE

3.1 **Maintenances services.** The Provider shall provide the MOSTLY AI Maintenance Services to the Customer; and provide Hotfixes, Patches, and Updates in certain discontinuous intervals and pursuant to the Release Plan to the Customer, in each case in the form of a Maintenance Release.

3.2 **Functionality of Updates.** It is understood that Updates aim to provide new or enhanced functions and features for the Software. Updates do, however, not necessarily have to provide all functions and features of earlier versions of the Software. Features and functions that are no longer provided by the Software in the version of the relevant Update, shall not constitute a Failure, Defect or failure to perform under this Agreement, if MOSTLY AI has informed Customer Technical Contact Person about the discontinued functions and features in a reasonable detailed form before the later of (i) the commencement of deployment activities with respect to the relevant Maintenance Release or (ii) the provision of the relevant Maintenance Release to Customer Technical Contact Person.

3.3 **Obligation to implement.** The Customer shall be obliged to implement Maintenance Releases without undue delay. If not explicitly provided otherwise in this Agreement or explicitly agreed otherwise by the parties, Customers right to use shall cease if (i) the System in use is older than one year and (ii) Maintenance Releases have been provided to the Customer within that period.

4. SUPPORT

4.1 **Support services.** Provider shall provide 3rd Level Support and provide helpdesks and make available sufficient personnel for diagnosing and troubleshooting Incidents reported in Support Requests in accordance with this Agreement. In this context, the parties envisage that in the ordinary course of business any processing of Personal Data by the System shall take place within the sphere of Customer and without any involvement of Provider as a data processor. The parties do however furthermore envisage that in certain exceptional situations (e.g. transfer of datasets for support purposes or in order to remedy a Defect) an involvement of Provider as data processor may be necessary.

4.2 **Processing of Support Requests.** After receiving each Support Request, Provider shall, in cooperation with the Customer, allocate the appropriate Incident Level to the Support Request and provide Customer with a recommended course of action which could include proceeding in good faith and with Customer's cooperation to attempt to resolve the Incident, or, recommending that Customer seeks additional professional services for the matter due to the fact that it is outside the scope of 3rd Level Support Services. Provider shall be entitled to change the Incident Level of each Incident during the processing of Support Requests if appropriate; in particular in (but not limited to) situations

whereas the Incident Level of an Incident is to be decreased as a result of Provider's support (e.g. providing of a workaround solution).

4.3 **Availability.** Provider shall use all reasonable endeavors to procure that the Customer Portal is online and accessible 24 hours per day and 365 days per year and that the Support is available during the Support Availability times; in each case, in accordance with the terms and conditions of this Agreement. The respective support is "available" for the purpose of this Agreement if the respective helpdesks are operational and accessible in accordance with this Agreement.

4.4 **SLA times.** As far as Incidents relating to a Production Environment are concerned, Provider shall procure that, with respect to each Support Request and having regard to the Incident Level of the respective Incident, Response Time is in accordance with Target Workaround Time, Workaround Time is in accordance with Target Workaround Time and Resolution Time is in accordance with Target Resolution Time.

4.5 **Incident support request procedure.** All Support Requests must be submitted via the Customer Portal. Provider is not obliged to respond to Support Requests submitted by e-mail. Customer is responsible for providing all reasonable information requested by Provider when submitting a Support Request. Without limiting the generality of the foregoing, Customer shall be obliged to provide the following information: (i) version number; (ii) hardware / VM information; (iii) detailed description of the Incident with screenshots of error messages and logfiles attached (wherever possible); (iv) quality reports and synthesized data examples; or the data structure in case not synthesized data is shared; (v) supposed cause of the Incident (as far as the cause is evident); (vi) impact and consequence of the Incident (single failure, complete failure); (vii) assumed Incident category (according to the classification provided on the Customer Portal); (viii) assumed Incident Level; and (ix) description of any measures already taken in order to analyze or resolve the Incident.

4.6 **Support limits.** Support is not appropriate in connection with and does not include (i) Customer's failure to incorporate any Update, Patch, Hotfix or other Maintenance Release, (ii) unauthorized modifications, configurations, customizations, additions or extensions to or of the System, (iii) feature enhancements or other circumstances where professional services will be more appropriate, (iv) situations where the Software is being used in combination with any other software that it is not intended to be operated or be used with, or (v) Incidents caused by Customer's or User's reckless or negligent use of the Software.

4.7 **Backups.** For the avoidance of doubt, Customer is solely responsible for backing up data of the Customer, and Provider has no responsibility hereunder for making any backups of the aforementioned data.

4.8 **Support language.** Provider offers Support only in English language. Provider may, from time to time, provide Support in other languages but does not guarantee it. Customer covenants that any persons to be contacted by Provider during the performance of the Support are fluent in English and that any information provided to the Provider for Support purposes, including (but not limited to) the information contained in Support Requests is in English language.

5. CHANGES

The Provider may (but does not have to) accept Requests for Change in its sole discretion. If accepted, Provider must implement the Change in accordance with the accepted Request for Change, and Customer must pay the Change Fee upon such implementation.

6. RIGHT OF USE

6.1 **Internal use only.** The System may only be used for business purposes of the Customer and its Subsidiaries. For the avoidance of doubt, the System may not be used to undertake computer centre or service bureau operations or application service provision or to provide managed services except in any case to Customer's Subsidiaries nor may it be used to provide commercial training in the use of the System.

6.2 **Territorial restriction.** The System may only be installed in the Territory. The Software may, however, not be installed in a country where that would involve a breach of any export or import regulations (Section 018). The System may only be installed at premises which are owned or controlled by Customer or its Subsidiaries (including, for the avoidance of doubt, any data processors thereof). Furthermore, the System may be installed in a Cloud Environment provided to Customer or its Subsidiaries by a cloud service provider.

6.3 **Restriction of scope for Synthetic Data.** The System may not be used in excess of the agreed License Tier.

6.4 **Copies made by Customer.** Persons exercising rights of use granted by this Agreement may create as many copies of the System (or parts thereof) as they need in order to exercise those rights of Use. For the avoidance of doubt, they may create back-up copies in accordance with good technological practice. When copies are made, the copyright and other Intellectual Property Rights notices that appear in the programs and on the media on which the System (or parts thereof) were originally delivered must be reproduced in full.

6.5 **No transfer of ownership.** Save as otherwise explicitly provided for in this Agreement, (i) nothing in this Agreement shall be construed as (a) transfer of an Intellectual Property Right or (b) granting any license or any other right of use of an Intellectual Property Right and (ii) any rights of use granted by this Agreement are not exclusive.

7. USE BY OTHERS

7.1 **Scope.** Customer may permit the following persons to use the System on the basis set out in this Section 0~~7~~: (i) any of its Subsidiaries; (ii) any person that is contracted to provide services to Customer (or its Subsidiaries) related to the System; and (iii) any person that requires access to the System in connection with the operation of Customer's (or its Subsidiaries) business.

7.2 **Service Providers.** The use of the System by a person falling within the description given in Section 7.1.(ii) must be restricted to use on behalf of Customer or Customer's Subsidiaries. It must not use the System to operate or manage its own business.

7.3 **Supply chain third parties.** The use of the System by a person falling within the description given in Section 7.1.(iii) must be restricted to use in connection with the operation of Customer's or its Subsidiaries' business. It must not use the System to operate or manage its own business.

7.4 **Compliance by others.** All persons using the System on the basis of this Section 0~~7~~ must comply with all the terms of this Agreement except those relating to payment of fees which are Customer's sole responsibility. Customer (in its capacity as contractual partner of Provider) is responsible for any non-compliance. Customer must therefore enforce the terms of this Agreement against persons using the System on the basis of this Section 0~~7~~ on its own costs and is legally liable to Provider for their behavior as if that behavior were Customer's own behavior. Furthermore, nobody must not be allowed access to the source or object code of the System (or any parts thereof).

7.5 **Effects of termination.** When a person has had a right to use the System on the basis of this Section 0~~7~~ but that right comes to an end (e.g. because a Subsidiary cease to be a Subsidiary), Customer must ensure that this person un-installs and destroys all copies of the System (or any parts thereof) that it has had in its possession or control. This must be done within thirty (30) days of its rights of use coming to an end. Customer must, at the request of Provider, certify that this has been done.

8. CUSTOMER'S DUTIES OF COOPERATION

8.1 Customer shall comply, and shall procure that all of its Subsidiaries comply, with the following duties of cooperation (the **"Cooperation Duties"**): They shall

   (a) ensure that all reasonable precautions are taken (i) to safeguard the System to prevent its misuse and (ii) to ensure that the System is (wherever applicable) only used in accordance with the Documentation or any other manuals provided by MOSTLY AI;

   (b) ensure that all reasonable precautions against the possibility of the System not functioning properly, such as running regular data back-ups, carrying out error diagnosis and monitoring results on a regular basis, are taken;

   (c) have an established and tested backup and recovery process in place;

   (d) have reasonable support agreements in place for their production systems' underlying network products and providers, server hardware, operating system, databases and other running applications;

   (e) ensure that Customer's Technical Contact Person, a system administrator of each relevant Subsidiary and other reasonable required specialists and expert staff are (i) available, on-demand, to help diagnose related problems in the relevant network, servers, operating systems, databases and other related applications; and (ii) fluent in English or German language;

(f) provide or make accessible any information or documentation related to the System Environment that may be reasonably requested by Provider, including any confidential information, information concerning interfaces and database dumps, to the extent necessary for Provider to perform its obligations under this Agreement;

(g) provide broadband remote access (for the avoidance of doubt: at their own costs) to any networks and environments where the System is running, when requested by Provider in order to perform its obligations under this Agreement;

(h) immediately and without undue delay inform if and when (i) the System Environment does not comply with the System Environment Specifications or (ii) other changes or modifications are made to the System Environment that may have an adverse effect on the System;

(i) procure that any and all Users are duly and regularly trained for making use of the System, in particular after the implementation of any Updates;

(j) procure that all timeframes and resources necessary for the performance of Provider's obligations shall be provided at the point of time and the amount and quality as agreed between the parties;

(k) procure that the System is not used in violation of applicable law, in particular (without limitation) not in violation of the GDPR; this means Customer shall use the System with recommended privacy parameters (rare category protection) and positively passed Privacy Tests for generated Synthetic Data;

(l) provide any other reasonable acts and services of cooperation to Provider to the extent necessary for Provider to perform its obligations under this Agreement.

9. AUDIT

9.1 **Right to audit.** Provider shall be permitted to audit at least once annually, the Usage of the System, which may include on-site and/or remote audit. To request an audit, Provider shall submit a detailed audit plan to Customer at least two weeks in advance of the proposed audit date. The audit plan shall describe the proposed scope, duration and start date of the audit. The audit shall be conducted during regular business hours and may not unreasonably interfere with Customer's business activities. Customer shall cooperate reasonably in the conduct of such audits. In the event that an audit reveals that (i) Customer underpaid license fees and/or other fees payable to Provider and/or (ii) that Customer has used the Software in excess of the License Quantity, Customer shall pay such underpaid fees and/or for such excess usage based on MOSTLY AI prices in effect at the time of the audit and shall execute an additional license agreements in accordance with the terms of this Agreement to affect the required licensing of any additional quantities or levels.

9.2 **Costs of audit.** Reasonable costs of Provider's audit shall be paid by Customer if the audit results indicate usage in excess of the Licensed Quantity. For the sake of clarity, in all other cases Provider shall bear the costs for the conduct of the audit. Provider reserves all rights with respect to both, Customer's underpayment of Annual Fees or other fees payable to Provider and usage in excess of the License Quantities.

10. FEES

10.1 **Annual Fee.** In consideration for the license granted hereunder and the Maintenance and Support Services, Customer shall pay the Annual Fee for a period equal to the term of this Agreement (as set forth in Section 0~~11~~ hereof) in accordance with the terms and conditions of this Agreement. The Annual Fee shall be calculated on a yearly basis in accordance with this Agreement and payable yearly in advance, if not provided otherwise in the Order Form. Provider will invoice these instalments on the beginning of the relevant calendar year, if not provided otherwise in the Order Form.

10.2 **Use Case Fees.** To the extent mutually agreed upon between the parties in the Order Form, the Customer shall pay in consideration for the license granted hereunder and the Maintenance and Support Services, Use Case Fees in accordance with the terms and conditions of this Agreement. The Use Case Fees shall be calculated based on the actual usage by the Customer on a quarterly basis in accordance with this Agreement and payable every quarter, if not provided otherwise in the Order Form. Provider will invoice these Use Case Fees upon the commencement of the relevant subsequent quarter, if not provided otherwise in the Order Form.

10.3 **Additional Fees (if any).** If Provider has provided Maintenance Services in response to a warranty claim or to a notification of an alleged Defect but it turns out that the subject matter of the claim was

neither a breach of warranty nor covered by the MOSTLY AI Maintenance Services, Provider is entitled to charge a fee on a time and material basis calculated in accordance with the MOSTLY AI Rates. Provider shall invoice such fees, as well as any Change Fees that fall due (if any), on the end of each Calendar Quarter.

10.4 **Invoices.** All invoices will be rendered in the Payment Currency to the Customer's Commercial Contact Person and reasonably detailed in a form to be mutually agreed upon and will, in any event, clearly identify all taxes, and charges.

10.5 **Payments.** Customer shall pay all duly invoiced amounts by credit transfer (at Customer's costs) to the bank account indicated on the respective invoice; in each case within the Payment Term.

10.6 **Interest.** Provider is entitled to charge interest if Customer does not pay within this period. The interest rate shall be a rate equal to eight per cent (8 %) per year above EURIBOR (3m). Interest shall be calculated from the date when the respective fee should have been paid until the date that they are actually paid.

10.7 **VAT.** All fees quoted are exclusive of Value Added Tax and any similar sales tax.

10.8 **Withholding tax.** If Customer is legally required to deduct withholding tax from any payment which is due, Customer must use its best efforts to reduce that tax to the lowest level possible. Provider will cooperate with Customer to that end. Customer must promptly provide Provider with evidence of receipt by the relevant tax authority of any sum that Customer has deducted as withholding tax. Provider shall give notice if it is unable to recover the full amount of the deduction from the Austrian tax authorities. In this circumstance, Customer shall make an additional payment to Provider so that the total amount received by Provider is the same as it would have been if Customer had not been required to deduct withholding tax. Any additional payment of this nature shall be received by Provider within thirty (30) days after notifying Customer that Provider was unable to make a full recovery.

10.9 **Currency.** All payments under this Agreement shall be made in the Payment Currency.

10.10 **Indexation.** By common agreement, the parties establish that any fees and rates payable under this Agreement shall be indexed and shall vary automatically by rights and without notification or prior warning. This indexation shall occur each year on the anniversary of the Effective Date (with effect for the next year) depending on the variation of the Harmonised Index of Consumer Prices, as published by the European Central Bank. The definition of the base index is established on the Effective Date. The revision index shall be the last index published on the anniversary date of the Agreement. If this index is not published any more, it shall be replaced by the succeeding index as published by the European Central Bank or another European statistics institution. If no succeeding index is published, the indexation shall be calculated in accordance with the prevailing deprecation of purchasing power in the Euro area, from time to time.

11. TERM

11.1 **Term.** This Agreement and the license granted hereunder shall become effective as of the Effective Date and shall continue to be in effect thereafter unless terminated upon the earliest to occur of the following:

(a) an ordinary termination becomes effective, whereas both parties may declare to terminate the Agreement by the end of each Calendar Quarter, applying a notice period of 12 months; always provided however that no declaration to ordinarily terminate the Agreement shall become effective during the Commitment Period (i.e. no declaration of ordinary termination may be made on a date earlier than 12 months before the end of the Commitment Period).

(b) immediately if:

(i) insolvency proceedings or similar proceedings are commenced with respect to the other party or are rejected for the lack of funding;

(ii) the other party is in material or persistent breach of the provisions of this Agreement and such breach has not, if capable of remedy, been remedied to the reasonable satisfaction of the first party within 14 Days of receipt of the written notice from first setting out in reasonable detail the alleged breach and requesting such remedy by the other party;

(iii) the other party is unable to pay its debts as they fall due;

(iv) the other party ceases or threatens to cease wholly or substantially to carry on its business, other than for the purpose of a solvent amalgamation or reconstruction with

the prior approval of the first party (such approval not to be unreasonably withheld or delayed);

(v) the other party is prevented or hindered from performing its obligations as a result from causes beyond its reasonable control.

11.2 **Effects of termination.** Upon any termination hereunder, Customer and its Subsidiaries shall immediately cease use of the System. Within thirty (30) days after any termination, Customer shall irretrievably destroy or upon Provider's request deliver to Provider all copies of the System (or components thereof) in every form, except to the extent it is legally required to keep it for a longer period in which case such return or destruction shall occur at the end of such period. Customer must certify to Provider in writing that it has satisfied its obligations under this Section 11.2. Customer agrees to certify in writing to Provider that it and each of its Subsidiaries has performed the foregoing. In the event of any termination hereunder, Customer shall not be entitled to any refund of any payments made by Customer. Termination shall not relieve Customer from its obligation to pay fees that remain unpaid.

12. INTELLECTUAL PROPERTY RIGHTS

12.1 **Reservation of rights.** The System, and all Intellectual Property Rights embodied in the foregoing, shall be the sole and exclusive property of MOSTLY AI or its licensors, subject to any rights expressly granted to Customer herein. Customer is not permitted to modify or otherwise make derivative works of the System. Any such unauthorized works developed by Customer, and any Intellectual Property Rights embodied therein, shall be the sole and exclusive property of MOSTLY AI.

12.2 **Protection of rights.** Customer shall not copy, translate, disassemble, or decompile, nor create or attempt to create the source code from the System (as it is provided) in any manner. Reverse engineering of the System (or parts thereof) is prohibited. Customer is permitted to back up data in accordance with good information technology practice and for this purpose to create the necessary backup copies of the System. Backup copies on transportable discs or other data media must be marked as backup copies and bear the same copyright and authorship notice as the original discs or other data media. Customer must not change or remove MOSTLY AI's copyright and authorship notices.

13. INDEMNIFICATION

13.1 **Defense against alleged third-party rights.** Provider shall defend Customer against claims brought against Customer in the Territory by any third party alleging that Customer's use of the System, in accordance with the terms and conditions of this Agreement, constitutes a direct infringement or misappropriation of a patent claim(s), copyright or trade secret rights, and Provider will pay damages finally awarded against Customer (or the amount of any settlement Provider enters into) with respect to such claims.

13.2 **Restrictions.** This obligation of Provider shall not apply if the alleged infringement or misappropriation results from use of the System in conjunction with any other software, failure to use an update provided by Provider if such infringement or misappropriation could have been avoided by use of the update, or unlicensed activities. This obligation of Provider also shall not apply if Customer fails to timely notify Provider in writing of any such claim. Provider expressly reserves the right to cease such defense of any claim(s) in the event the System is no longer alleged to infringe or misappropriation, or is held not to infringe or misappropriate, the third party's rights. Provider may settle any claim on a basis requiring Provider to substitute for the System alternative substantially equivalent non-infringing programs and supporting documentation. Customer shall not undertake any action in response to any infringement or misappropriation, or alleged infringement or misappropriation of the Software that is prejudicial to Provider's rights.

13.3 **Control by Provider.** Provider is permitted to control fully the defense and any settlement of any such claim as long as such settlement shall not include a financial obligation on Customer. In the event Customer declines Provider's proffered defense, or otherwise fails to give full control of the defense to Provider's designated counsel, then Customer waives Provider's obligations under this Section. Customer shall cooperate fully in the defense of such claim and may appear, at its own expense, through counsel reasonably acceptable to Provider.

13.4 **Exclusive remedy.** The provisions of this Section 0~~13~~ state the sole, exclusive, and entire liability of Provider to Customer, and is Customer's sole remedy, with respect to the infringement or misappropriation of third-party Intellectual Property Rights.

14. WARRANTIES

14.1 **Warranty.** Provider warrants that for six (6) months from, the earlier of, (i) the date of the delivery of the Software or (ii) the Effective Date, the System will be free of Defects. This warranty does not apply to Change Releases and Maintenance Releases. Except for the warranties expressly provided in this Agreement, the Provider hereby disclaims any and all warranties.

14.2 **Skill and care.** Provider warrants that it will perform any and all services to be performed under this Agreement with reasonable skill and care.

14.3 **Warranty restrictions.** Provider does not warrant that the System: (i) will operate uninterrupted; (ii) will be error-free; (iii) is designed to meet all local requirements; or (iv) is fit for the particular purposes of a person or entity.

14.4 **Warranty claims.** Customer must tell Provider within the six (6) month period referred to in Section 14.1 if Customer wants to make a warranty claim. As a first step, Provider is obliged to attempt to remedy the Defect. The remedy will take the form of eliminating the Defect, providing a Hotfix, Patch or other form of rectification or demonstrating how to avoid the effects of the Defect in a reasonable manner.

14.5 **Remedying defects.** If Provider fails to remedy the Defect within a reasonable period of time, the Provider is obliged to agree with the Customer on a written plan of action, including a date by which the Defect should be remedied. Both parties shall act reasonably in trying to agree on the plan. Customer has to comply with its Cooperation Duties. Customer is entitled to seek damages if Provider fails to remedy the Defect by the agreed date. All other rights are excluded.

14.6 **Synthetic Data – GDPR warranty.** Subject to the instructions contained in the user interface of the Software (as amended from time to time) and any warnings contained in the Generated Reports, the Provider warrants that the Synthetic Data generated by using the System as such will not qualify as personal data under the GDPR. Any third-party legal opinion provided to the Customer to that effect shall not be considered legal advice to the Customer but is rather provided for informational purposes only on a non-reliance basis.

14.7 **Customer's warranties.** Customer warrants to comply at all time with the Cooperation Duties and to pay the fees under this Agreement as they fall due. Customer shall indemnify Provider for any damages that arise or may arise as a result of any non-compliance with the Cooperation Duties. Customer furthermore warrants that, when the Software is used, the relevant User/entity has a sufficient legal basis to synthesize the Personal Data in full compliance with applicable law.

15. LIMITATION OF LIABILITY, INSURANCE

15.1 **Unlimited liability.** With respect to either party, nothing in this Agreement shall limit: (i) liability for death or personal injury caused by gross negligence; (ii) liability for any claim based on malicious damage or intentional fraud; (iii) liability based on product liability claims; or (iv) any other liability which cannot be excluded or limited by applicable law.

15.2 **Liability cap.** Regardless of the basis of liability (for example, contract, delict or statute) and ignoring claims covered by Section 15.1, (i) neither party shall be liable for any indirect, incidental, special, or consequential damages, including any damages for lost profits incurred by either party or any third party and (ii) Provider's aggregate liability will not in total exceed the lesser of (a) five times the Annual Fee or (b) the amount assured by the liability insurance of Provider.

15.3 **Insurance policy.** Provider shall as long as this Agreement is current maintain reasonable liability insurance coverage. Provider shall, at the request of Customer, produce copies of the policies for this insurance coverage.

16. PERSONAL DATA / PROCESSING AGREEMENT

16.1 The parties envisage that in the ordinary course of business any processing of Personal Data by the System shall take place within the sphere of Customer and without any involvement of Provider as a data processor. The parties do however envisage that in certain exceptional situations (e.g. transfer of datasets for support purposes or in order to remedy a Defect) an involvement of Provider as data processor may be necessary.

16.2 Against this background the parties hereby agree that they shall observe their respective obligations under the EU General Data Protection Regulation (**"GDPR"**). The processing of any Personal Data by Provider hereunder shall be in accordance with the Data Processing Agreement entered into between the parties ("**Data Processing Agreement**"),, which shall constitute an integral part of this Agreement.

17. IMPORT AND EXPORT CONTROL REGULATIONS

17.1 **Import or export regulations.** The System may be subject to import or export control regulations by various countries or jurisdictions. This regulation can apply to any re-export that might be proposed not just to the export which Provider makes when it initially delivers the System. This is the case even if the re-export is to a Subsidiary or to another person that may have a valid right of use. It is not just the physical shipping of data media which may count as export/import. The regulation may also apply to export/import by electronic means (including remote access). It is also possible for the import of the System into the country or jurisdiction of destination and/or its use there to be restricted or banned by that country or jurisdiction.

17.2 **Compliance.** Customer shall comply with (and shall procure that its Subsidiaries comply with) (i) all export and import control regulations each time the System is re-exported and (ii) all local laws relating to the use of the System. Customer shall indemnify Provider for any breach of this Section.

18. NOTICES

18.1 **General and technical communication.** All agreements, instructions, notices, requests, demands, claims, approvals, consents, determination and other communications, except for any communication related to the placement and the resolving of Support Request, (the **"Communications"**) hereunder shall be made in writing. Any technical Communication hereunder shall be deemed duly delivered if it is sent (i) by registered or certified mail, return receipt requested, postage prepaid, or (ii) expedited courier, or (iii) by email and in each case addressed to the Provider's Technical Contact Person or Customer's Technical Contact Person (as the case may be).

18.2 **Commercial communication.** Any commercial Communication, in particular any communication related to invoices, payments, declarations of termination or tax issues, hereunder shall be deemed duly delivered if it is sent (i) by registered or certified mail, return receipt requested, postage prepaid, or (ii) expedited courier, or (iii) by email and in each case addressed to the Provider's Commercial Contact Person or Customer's Commercial Contact Person (as the case may be).

18.3 **Change of contact persons.** Provider may change the identity and/or the contact data of Provider's Technical Contact Person and Provider's Commercial Contact Person by giving one month's prior notice to Customer's Commercial Contact Person with a copy to Customer's Technical Contact Person. Customer may change the identity and/or the contact data of Customer's Technical Contact Person and Customer's Commercial Contact Person by giving one month's prior notice to the Provider's Commercial Contact Person with a copy to the Provider's Technical Contact Person.

19. GOVERNING LAW; SETTLEMENT OF DISPUTES

This Agreement shall be governed by and construed in accordance with Austrian law, without giving effect to the United Nations Convention on Contracts for the International Sale of Goods 1980 and to conflict of law provisions or rules (of any jurisdiction) that would cause the application of the laws of any jurisdiction other than Austria. Any dispute arising out of or in relation to this Agreement shall be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna (Vienna Rules) by one or more arbitrators appointed in accordance with these Rules. All arbitral proceedings, written submissions and the award shall be in English.

20. MISCELLANEOUS

20.1 **Force majeure.** No delay, failure or default in performing any obligation under this Agreement (other than any payment obligations) shall amount to a breach of warranty, breach of contract or lead to any liability if it arises from causes beyond the reasonable control of the person whose performance is affected.

20.2 **Place of performance.** If not otherwise agreed between the parties, the place of performance shall be, and the transfer of risks shall take place at, the location of the corporate seat of the Provider.

20.3 **Charges and stamp duties.** Any charges and stamp duties that may be imposed by Austrian authorities shall be borne by Provider. Any charges and stamp tax duties that may be imposed by non-Austrian authorities shall be borne by Customer.

20.4 **Non-solicitation.** Neither party will solicit, persuade or recruit to employ any of the other party's employees or the other party's Affiliates employees during the period commencing on the Effective Date and ending one (1) year after the termination date of this Agreement. This Section does not apply to employees of either party who respond to recruitment offerings which are not specifically targeted at employees of the respective other party (or one of its Affiliates).

20.5 **Publicity.** Each party will (i) submit to the other all advertising, written sales promotions, press releases and other publicity matters relating to this Agreement in which the other party's name or mark is mentioned or language from which the connection of said name or mark may be inferred or implied and (ii) not publish or use such advertising, sales promotions, press releases or publicity matters without the other party's prior written consent. Each party shall furthermore not, without the other party's prior written consent, engage in publicity related to this Agreement, or make public use of any Identification in any circumstances related to this Agreement. "**Identification"** in this context means any semblance of any trade name, trademark, service mark, insignia, symbol, logo, or any other designation or drawing of the other party, its Affiliates or a Customer. Provider shall, however, be entitled without further consent of Customer to (i) publicly announce the conclusion of this Agreement and (ii) to give a broad overview of the scope of this Agreement and (iii) use the logo in respective material for reference list purpose.

20.6 **Escrow.** Provider shall be obliged to deposit the source code of the Software with an independent third party escrow agent (located in the European Union) at the expense of Customer and according to reasonable terms to be agreed in writing between the parties (the consent to such an agreement not to be unreasonably withheld).

20.7 **No partnership.** Nothing in this Agreement (or any of the arrangements contemplated by it) is or shall be deemed to constitute a partnership between the parties nor, except as may be expressly set out in it, constitute either party the agent of the other for any purpose. Unless the parties agree otherwise in writing, neither of them shall (i) enter into any contracts or commitments with third parties as agent for the other party; or (ii) describe itself as such an agent or in any way hold itself out as being such an agent.

20.8 **No third-party beneficiaries.** This Agreement shall not confer any rights or remedies upon any person other than the parties and their respective universal legal successors.

20.9 **Entire agreement; Amendments.** This Agreement constitutes the entire agreement among the parties and supersedes any prior understandings, agreements, or representations by or among the parties, written or oral, to the extent they are related in any way to the subject matter hereof. No amendment of any provision of this Agreement shall be valid unless the same shall be in written form and signed by all parties. This shall also apply to the form requirement imposed by the last sentence.

20.10 **Waivers.** Except as expressly provided for in this Agreement, no course of dealing and no delay in exercising, or omission to exercise, any right, power or remedy accruing to a party upon any breach by the other party of any of its representations, warranties or covenants arising under this Agreement shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence therein. No waiver by any party of any right, default, misrepresentation, or breach of representation, warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any other prior, contemporaneous or subsequent right, default, misrepresentation, or breach of representation, warranty or covenant hereunder or affect in any way any rights arising by virtue of any other such occurrence. Any such waiver shall be deemed effective only if contained in writing and signed by the party charged with such waiver. The failure by a party to exercise its right to terminate this Agreement in the event of any occurrence giving rise thereto shall not constitute a waiver of its rights in the event of any other occurrence giving rise to such right.

20.11 **Severability and blue-pencilling.** Any term or provision of this Agreement that is invalid, incomplete or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

20.12 **Further assurance and co-operation.** Each party shall promptly and in good faith do and perform or cause to be done and perform all such further acts and shall execute and deliver all such other agreements, certificates, instruments and documents as any other party may reasonably request in order to carry out the intentions and accomplish the purposes of this Agreement.

20.13 **No Challenge.** The parties agree not to challenge this Agreement on grounds of error, misrepresentation, dissent, or change or lapse of the basis of this Agreement.