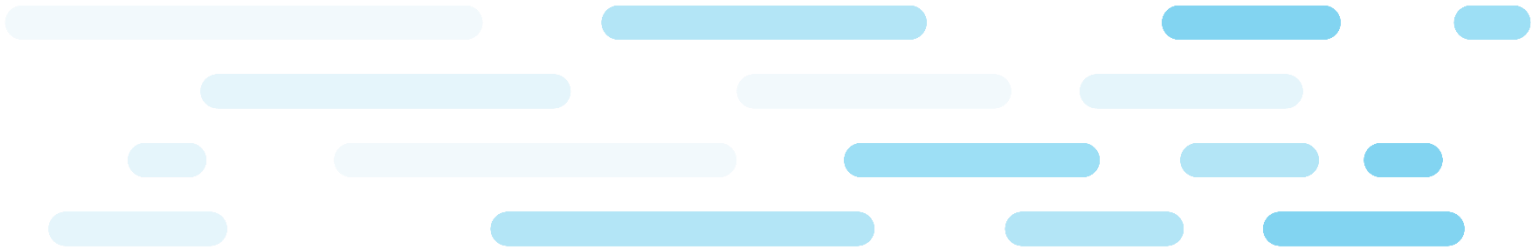


Luware Cloud Services Terms of Use

Version 4 | Valid from November 1st 2022



Luware Deutschland GmbH
Schlossstrasse 70
70176 Stuttgart

solutions@luware.com
+49 711 8998 9620
www.luware.com



BEFORE USING LUWARE'S ("**LUWARE**", "**OUR**", "**US**", "**WE**") HOSTING SERVICES PLEASE READ THESE CLOUD SERVICES TERMS OF USE ("**TERMS OF USE**") CAREFULLY. BY ACCEPTING THESE TERMS OF USE OR BY ACCESSING OR USING THE SERVICES, YOU ARE AGREEING TO THE TERMS AND CONDITIONS OF THESE TERMS OF USE.

IF YOU ARE USING ANY SERVICE AS AN EMPLOYEE, AGENT, OR CONTRACTOR OF A CORPORATION, PARTNERSHIP OR SIMILAR ENTITY, THEN YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO SIGN FOR AND BIND SUCH ENTITY IN ORDER TO ACCEPT THESE TERMS OF USE AS A BINDING LEGAL AGREEMENT.

YOU HEREBY ACKNOWLEDGE AND AGREE THAT IT IS YOUR SOLE RESPONSIBILITY TO COMPLY WITH ALL THE LEGAL REQUIREMENTS IN THE COUNTRIES IN WHICH YOU ARE USING THE SERVICES.

LUWARE AS WELL AS ITS AFFILIATES MAY EACH ISSUE OFFERS TO CUSTOMERS. WRITTEN INDIVIDUAL AGREEMENTS IN A LUWARE OFFER SHALL GOVERN OVER THE RESPECTIVE PROVISIONS OF THESE TERMS OF USE WITH RESPECT TO THE THEREIN INDICATED CLAUSE(S).

These Terms of Use, including any specific amendments thereto in an offer, are entered into between Luware Deutschland GmbH (Schlossstrasse 70, 70176 Stuttgart, Deutschland, HRB759372) and the entity placing an order for or accessing the Services ("**Customer**") (hereinafter together also referred to as "**Parties**" or individually as "**Party**").

The **Effective Date** of these Terms of Use is the date which is the earlier of (i) Customer's initial access to any Service; or (ii) the effective date indicated in writing between the Parties. These Terms of Use will govern Customer's initial Subscription Term as well as any subsequent future Subscription Terms.

Luware may modify these Terms of Use from time to time. Unless otherwise specified by Luware, changes become effective for Customer upon renewal of the then-current Subscription Term or entry into a new Service order after the updated version of these Terms of Use goes into effect. Luware will use reasonable efforts to notify Customer of the changes through communications via Customer's account, email or other means.

1 Definitions

"**Affiliate(s)**" means with respect to any entity, any other entity that directly or indirectly controls, is controlled by, or is under common control with such entity from time to time (but only for so long as such control exists); whereas "control" means the right to exercise, directly or indirectly, more than 50% of the voting rights attributable to the management of an entity and/or the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such entity.

"**Authorized User**" means any employee, consultant, contractor or agent of who is authorized by Customer to use the Services according to the selected Subscription.

"**Approved Third Party(ies)**" means a natural person or legal entity, public authority, agency or body, under the authority of the Customer or Luware, that is authorized to Process Personal Data according to these Terms of Use.

"**Confidential Information**" means all information disclosed by one Party ("**Disclosing Party**") to the other Party ("**Receiving Party**"), in whatever form, format or medium, that is designated as confidential, or which a reasonable person should understand to be confidential given the nature of the information and circumstances of disclosure. Confidential Information shall not include information that (i) was disclosed to a person who is subject to a professional duty of confidentiality, such as lawyers or accountants, to the extent that such disclosure is reasonable and necessary for the regular course of business; (ii) was publicly known and made generally available in the public

domain prior to the time of disclosure by the Disclosing Party or becomes publicly known and made generally available through no act or omission of the Receiving Party; (iii) was lawfully obtained by the Receiving Party from a third party without breach of such third party's obligations of confidentiality; (iv) was independently developed by the Receiving Party without reference to the Confidential Information of the Disclosing Party; or (v) is required to be disclosed by mandatory applicable law.

"Customer Content" means any information or data (including Customer Personal Data) of Customer and its Authorized Users, e.g. name, telephone, address, email address, user IDs, which Luware and, if applicable, its Affiliates, and their authorized subprocessors, may process for the purpose of providing the Services.

"Customer Personal Data" is any information of Customer or its Authorized Users, which is processed under these Terms of Use relating to an identified or identifiable natural person, whereas identifiable means any natural person who can be identified, directly or indirectly.

"Data Controller"; "Data Processor"; "Data Subject"; "Personal Data"; "Process/Processing" shall have the meaning given to them by the applicable Data Protection Laws.

"Data Breach" means an actual or suspected breach of data security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Customer's Personal Data transmitted, stored or otherwise Processed by Luware or one of its Approved Third Parties.

"Data Protection Law(s)" are all applicable laws and regulations regarding the protection of Personal Data including, in particular, the General Data Protection Regulation (GDPR) (EU) 2016/679 (<https://gdpr-info.eu/>).

"Documentation" means the [Luware Service Documentation](#), as updated from time to time, that is provided to Customer detailing the functionalities of the Services and including any requirements for Customer's environment.

"Fee(s)" means all charges payable by Customer for the Services.

"Initial Subscription Term" means Customer's first subscription term of 36 months (or as otherwise stated in a Luware Offer) for a chosen Service.

"Intellectual Property (IP)" means and includes, to the extent recognized under applicable law, rights in software, including in particular source code and all related documentation, patents, patent applications, copyrights, trademarks, service marks, trade names, internet domain names, e-mail address names, trade secrets, moral rights, database rights, customer lists, design rights, know-how, techniques, processes, methods, inventions (whether patentable or not), conceptions, discoveries, improvements, chip designs, mask works, proprietary information, technical information, specifications, and all other rights of authorship and intellectual and industrial property rights, and other equivalent or similar rights which may subsist anywhere in the world, whether registered or unregistered, including any form of application for any of the foregoing.

"Offer" means any service offering document provided by Luware to Customer referencing these Terms of Use and detailing the Services subscribed to, the corresponding Fees, the Subscription Term, if applicable, and any other relevant service terms.

"Privacy Policy" means, the [Luware Privacy Policy](#) as updated from time to time.

"Ready for Service" means the date on which Luware has conducted the necessary configurations in order for Customer to be able to use the Services.

"Reseller" means an authorized partner of Luware which is entitled to resell Luware's Services on behalf of Luware.

"Services" means Luware's cloud-based services as well as any thereto related Documentation, including any modifications, derivative works or updates of the foregoing, offered to Customer during a Subscription Term.

"Software" means any software used to provide the Services hereunder and includes in particular the source code, database elements and accompanying documentation (operating manuals, instructions for installation and administration, technical literature and other documentation on paper and/or in electronic form).

"Subscription" means the cloud-based hosting subscriptions for Services offered by Luware to Customers.

"Subscription Term" means the Initial Subscription Term as well as any subsequent renewal term of 12 months, unless otherwise agreed in an offer.

2 Services

2.1 The Services are offered by Luware pursuant to the Terms of Use and the applicable laws and regulations. The Documentation, the [Luware Cloud Service Description](#), the [Luware Data Processing Agreement](#) ("DPA") and the [Luware Privacy Policy](#), as amended from time to time, shall form an integral part of these Terms of Use.

2.2 Customer acknowledges and agrees that this is a service agreement and that Luware will not deliver any copies or licenses of the Software to Customer as part of the provision of the Services described herein. Subject to payment of all applicable fees, Customer shall be granted a limited, revocable, non-exclusive, non-assignable, worldwide right to access and use the Services according to the chosen Subscription during the Subscription Term in accordance with the terms and conditions of these Terms of Use.

2.3 Customer shall ensure that only Authorized Users access the Services and that these Authorized Users comply with the provisions of these Terms of Use.

2.4 The Services are designed to be available 24/7, subject to maintenance. Customer will be notified of scheduled maintenance.

2.5 Luware may update the Services from time to time. Any Updates to the Services are subject to these Terms of Use. Customer acknowledges that Luware may modify the Documentation from time to time at Luware's sole discretion and such modifications will supersede prior versions.

3 Customer Responsibilities and Restrictions

3.1 **Intellectual Property Rights.** Luware, or if applicable its third party licensors, shall own all right, title, and interest in, to and under the Software used to provide the Services and to the Services provided hereunder, including all Intellectual Property Rights throughout the world herein, and Customer, its Authorized Users and its Affiliates shall acquire no rights thereto whatsoever. For the avoidance of doubt, no professional services provided to Customer shall be considered as creating new Intellectual Property Rights for Customer and Luware reserves any and all such rights thereunder (if any).

3.2 **Restrictions.** Customer shall not, and shall not permit anyone to (i) copy or otherwise reproduce or provide the Services or Software to third parties other than its Authorized Users; (ii) modify, adapt, create derivative works of, reverse engineer, decompile, disassemble or otherwise interfere with or disrupt the Services or its components; (iii) attempt to derive the source code of the Software; (iv) access or use the Services in a manner that would violate Luware's or any third party's Intellectual Property Rights; (v) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose or otherwise commercially exploit or make the Software or Services available to any third party other than as permitted under these Terms of Use; (vi) store or transmit any content that infringes upon any third party's Intellectual Property Rights; or (viii) otherwise use the Services in violation of the applicable law.

3.3 **Payment of Subscription Fees.** Customer is responsible for the timely payment of the Subscription Fees in accordance with clause 5 of these Terms of Use.

3.4 **Compliance with Laws.** Customer shall ensure its compliance, as well as the compliance of its Authorized Users, with the applicable laws and regulations. The Services may not be used in any jurisdiction for unlawful, obscene, offensive or fraudulent content or activity, such as advocating or causing harm, interfering with or violating the integrity or security of a network or system, evading filters, sending unsolicited, abusive, or deceptive messages, viruses or harmful code, or violating third party rights. If there is a complaint or notice of violation, use may be suspended until resolved, and terminated if not resolved promptly. Customer shall hold Luware and all its Affiliates, directors and employees harmless from and against any claims that may arise out of Customer's violation of the applicable laws and regulations.

3.5 **No Unauthorized Users.** Customer may access the Services only to the extent authorized and shall ensure that only Authorized Users may access the Services. In any case, Customer is responsible for use of the Services by any user who accesses the Services with Customer's account credentials. Customer shall be responsible for maintaining the confidentiality of login information and credentials for accessing the Services and will notify Luware promptly of any loss, misuse, or unauthorized disclosure of such login information and/or credentials of which Customer becomes aware. Luware and its Affiliates will not be liable for any damage or loss that may result from Customer's breach of the foregoing obligations.

3.6 **Customer Environment.** Customer will provide the required consents and connectivity to access and use the Services, including any required Customer-specific URL addresses and associated certificates. The Documentation may have additional Customer responsibilities.

3.7 **No Reselling.** Customer may not resell direct access to the Services to a third party outside Customer's enterprise or combine the Services with Customer's value add to create a commercially available Customer branded solution for which Customer charges a fee.

4 Customer Content

4.1 **Rights in and Use of Customer Content.** Customer Content is Customer's Confidential Information. As between the Parties, Customer and its licensors retain all right, title and interest (including any and all Intellectual Property Rights) in and to the Customer Content and any modifications made thereto in the course of the operation of the Services. Subject to these Terms of Use, Customer hereby grants to Luware and its Approved Third Parties a non-exclusive, worldwide, royalty-free right to process the Customer Content solely to the extent necessary to provide the Services, and to perform all related obligations owed to Customer under these Terms of Use, or as may be required by the applicable law.

4.2 **Customer Content.** Customer is solely responsible for ensuring the correctness, accuracy and lawfulness of Customer Content and its appropriate protection and backup. Customer is responsible for obtaining all necessary rights and permissions to enable, and grants such rights and permissions to, Luware, and its Approved Third Parties to use, provide, store and process Customer Content in the Services. This includes Customer making the necessary disclosures and obtaining consent, if required, before providing individuals' information, including personal or other regulated information in such Customer Content. If any Customer Content could be subject to governmental regulation or may require security measures beyond those specified by Luware for an offering, Customer will not input, provide, or allow such Customer Content unless specifically permitted or unless Luware has otherwise first agreed in writing to implement additional security measures. Customer shall indemnify and hold Luware and all its Affiliates, directors and employees harmless from and against any claims that may arise out of or in connection with incorrect, inaccurate or unlawful Customer Content.

4.3 **Data Security.** The Parties will comply with the terms of the [Luware DPA](#) with respect to the provision and processing of Personal Data, including in particular Customer Personal Data, as defined in the DPA. Luware will use appropriate technical and organizational measures in the Services to protect the Customer Personal Data from unauthorized access, processing, loss, or disclosure. Luware measures are designed to provide a level of security appropriate to the risk of processing the Customer Personal Data within the Services. Customer understands that Luware and its Approved Third Parties will process Customer Content in accordance with applicable data protection laws, these Terms of Use, including the DPA, and the Privacy Notice.

4.4 **Usage Data.** Usage Data includes but is not limited to logs, and any data (other than Customer Content) relating to the operation, support, and/or Customer's use of the Services ("**Usage Data**"). Notwithstanding anything to the contrary in these Terms of Use, Luware may collect and use Usage Data to develop, improve, support, and operate its products and services.

5 Subscription and Payment

5.1 **Subscription.** Luware offers different Subscriptions to the offered Services. Customer is responsible to assess the suitability of the chosen Subscription for Customer's intended use and the Customer Content. By using the Services, Customer acknowledges that it meets Customer's requirements.

5.2 **Support.** Luware's support offering is defined in the [Luware Cloud Service Description](#) which forms an integral part of these Terms of Use. The chosen support level is defined in each individual Offer document by Luware or, as applicable, by one of its Resellers.

5.3 **Payment.** The Fees are set forth in the applicable Offer. Payment obligations are non-cancelable for the duration of a Subscription Term, regardless of utilization by the Customer and except as expressly permitted in these Terms of Use, fees paid are non-refundable. The Services are payable from the date where Luware is Ready for Service and thereafter at the beginning of each Subscription Term. Unless otherwise agreed in an Offer, all payment for Services is due and payable in full within 30 days from the invoice date.

5.4 **Late Payment.** Should Customer fail to pay any of the Fees due, then Luware shall notify Customer giving an extension period of 10 days after which Luware shall be entitled to suspend the provision of and access to the Services. Customer shall remain liable for the payment of the applicable Fees.

5.5 **Dispute.** Luware will not exercise its rights under clause 5.4 of these Terms of Use with respect to non-payment if Customer is disputing the applicable Fees reasonably and in good faith and is cooperating diligently to resolve the dispute. If the Parties are unable to resolve such a dispute within thirty (30) days, each Party will have the right to seek any remedies it may have under these Terms of Use irrespective of any terms that would limit remedies on account of a dispute. For the avoidance of doubt, any undisputed amounts must be paid in full.

5.6 **Purchase through a Reseller.** Customer may procure the Services through a Reseller pursuant to a separate agreement between Customer and the Reseller. If Customer procures the Services through a Reseller, then, instead of paying Luware, Customer will pay the applicable amounts to the Reseller, as agreed between Customer and the Reseller. Luware reserves the right to suspend or terminate the Services if Luware does not receive the corresponding payment from the Reseller. Customer's use of the Services procured through a Reseller shall be subject to these Terms of Use. Resellers are not authorized to make any promises or commitments on Luware's behalf, and Luware is not bound by any obligations other than as set forth in these Terms of Use.

5.7 **Excess Use.** Luware, or if applicable its Reseller, reserves the right to audit the numbers of Authorized Users that are using the Service provided that the audit is limited to the documents and records available to it or as provided by Customer. In the event that Customer's use of the Services is exceeding the amount subscribed to, then Luware will notify Customer and reserves the right to invoice any excess usage according to its then-current terms or, where applicable, the terms of its third party suppliers.

5.8 **Renewal.** Unless otherwise agreed in an Offer, after the Initial Subscription Term, the Subscription shall renew automatically every 12 months. Either Party may give prior written notice of non-renewal at least ninety (90) days' prior to the expiration of the current Subscription Term. Luware reserves the right to increase the Fees at the beginning of each Subscription Term. Any Fees for a renewed Subscription Term are due upon the date of renewal.

5.9 **Taxes.** All Fees payable are exclusive of any taxes and VAT. Each Party shall be responsible, as required by the applicable law, for identifying and paying all taxes, fees and charges that are imposed upon that Party or with respect to the transaction and payments under these Terms of Use.

6 Warranty

6.1 Luware warrants that during the term of these Terms of Use it will provide the Services hereunder in a professional manner consistent with good industry practice and that the Services will perform substantially in accordance with the Documentation and the Luware Cloud Service Description. Customer's exclusive remedy under this section shall be for Luware to use diligent efforts to correct the Services so the foregoing warranty is met. Provided that Luware is unable to correct the nonconformity, Customer's sole and exclusive remedy shall be terminating the remaining Subscription Term and receive a pro rata refund for any remaining prepaid fees applicable to that Service.

6.2 The warranty and the exclusive remedy set forth in clause 6.1 above are the exclusive warranty and remedy provided by Luware for the benefit of Customer. Except as expressly stated hereunder, prohibited by the applicable law, or to the extent any statutory rights apply that cannot be excluded, limited or waived, Luware and its Affiliates make no and exclude all other warranties, representations, conditions and other terms, written or oral, or express, implied, statutory, collateral or otherwise, including any implied warranties of merchantability, title, interoperability, data accuracy, or fitness for a particular purpose with respect to the Services, Software, support, or any components thereof. Without limiting the foregoing, Luware does not warrant that all errors can be corrected, or that operation of the Service shall be uninterrupted or error-free.

6.3 The warranty shall not apply if the error or non-conformity was caused by (i) Customer's breach of these Terms of Use including in particular any misuse or modification of the Services; (ii) components outside of Luware's control (e.g. by Microsoft Teams); (iii) configuration or support delivered by a Reseller or any other third party not appointed by Luware; or (iv) Customer failing to comply with the Documentation provided by Luware.

6.4 Non-Luware services are sold on a pass-through basis meaning that they are warranted by the provider thereof in accordance with the terms of such third party provider. Customer agrees that Customer will rely solely on warranties of such third party providers. Luware shall choose such third party services carefully and according to good industry practice.

7 Limitations of Liability

7.1 EACH PARTY'S AND ITS AFFILIATES' TOTAL AGGREGATE LIABILITY FOR DIRECT DAMAGES RESULTING FROM A FAILURE TO PERFORM ITS OBLIGATIONS HEREUNDER OVER THE TERM OF THESE TERMS OF USE, REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED ON CONTRACT, TORT, WARRANTY OR ANY OTHER LEGAL THEORY, SHALL BE LIMITED TO THE SUBSCRIPTION FEE ACTUALLY PAID FOR THE RESPECTIVE SUBSCRIPTION TERM DURING WHICH THE CLAIM OF LIABILITY AROSE. THIS LIMITATION APPLIES COLLECTIVELY TO EACH PARTY, ITS AFFILIATES, CONTRACTORS, SUBPROCESSORS, AND SUPPLIERS.

7.2 NEITHER PARTY OR IT'S AFFILIATES SHALL BE HELD LIABLE FOR ANY INDIRECT, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO DOWNTIME COST AND LOST PROFIT, REVENUE, BUSINESS, VALUE, CUSTOMERS, OPPORTUNITIES, ANTICIPATED SAVINGS, GOODWILL, REPUTATION, USE OR DATA). LUWARE SHALL NOT BE RESPONSIBLE FOR ANY DAMAGES ARISING IN CONNECTION WITH CUSTOMER'S INABILITY TO USE THE SERVICES. THIS LIMITATION APPLIES COLLECTIVELY TO EACH PARTY, ITS AFFILIATES, CONTRACTORS, SUBPROCESSORS, AND SUPPLIERS.

7.3 THE PARTY'S LIABILITY SHALL NOT BE EXCLUDED FOR AN ACTION BROUGHT FOR GROSS NEGLIGENCE, WILLFUL MISCONDUCT, FRAUD, OR IP CLAIMS.

8 Indemnification

8.1 **Indemnification by Luware.** If indemnification claims are asserted against Customer in connection with the Services provided under these Terms of Use based on an alleged violation of third party patents or copyrights ("Third Party IP Claim"), Luware shall defend, at its own cost and expense, and hold Customer harmless against all losses, damages and expenses (including reasonable lawyer's fees) finally awarded to such third party by a court or agreed to in a written settlement with Luware, to the extent arising from the claim, provided that Customer (i) has notified Luware in due course of the asserted claims; (ii) supplies information requested by Luware; (iii) allows Luware to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts; and (iv) does not consent to entry of any judgement or settlement without Luware's prior written consent. Failure by Customer to notify Luware of a claim under this clause will not relieve Luware of its obligations under this clause, however, Luware will not be liable for any litigation expenses that Customer incurred prior to the time when notice is given or for any damages and/or costs resulting from any material prejudice caused by the delay or failure to provide notice to Luware in accordance with this clause. Any indemnification obligation under this clause will not apply if Customer settles or makes any admission with respect to a claim without Luware's prior written consent.

8.2 Luware shall have no liability or obligation with respect to any Third Party IP Claim if such claim is caused, in whole or in part, by (i) Customer Content, items or services not provided by Luware and/or use of non-Luware products and services; (ii) any modification of the Services or Software by Customer, its Affiliates, its Authorized Users or any other third party appointed by it; (iii) the use of the Services or Software by Customer, its Affiliates or its Authorized Users other than in accordance with the Documentation and these Terms of Use; (iv) the combination, operation or use of the Services or Software with other data, hardware or software not provided by Luware; or (v) any violation of the applicable law by Customer, its Affiliates or its Authorized Users.

8.3 If Customer's use of the Services results, or is in Luware's opinion likely to result, in a Third Party IP Claim, then Luware may, at its own option and expense, either (i) procure a right of use in favor of Customer for the purposes of these Terms of Use; (ii) modify or replace affected Services appropriately and without unreasonable impact on Customer; or (iii) terminate the Subscription and refund Customer on a pro-rated basis any Fees already paid for the corresponding unused portion of the Subscription.

8.4 Clauses 8.1 to 8.3 of these Terms of Use state Luware's entire liability and Customer's exclusive remedy with respect to a Third Party IP Claim.

8.5 **Indemnification by Customer.** Customer will defend Luware and its Affiliates from any third party claim and will indemnify and hold harmless Luware and its Affiliates from and against any damages and costs awarded against Luware and its Affiliates, or agreed in settlement by Customer (including reasonable attorneys' fees) resulting from such claim, to the extent caused by: (i) Customer's or its Affiliate's unauthorized supply, disclosure, or processing of Customer Content and Customer Personal Data therein; or (ii) Customer's or its Affiliate's violation of laws applicable to Customer's or its Affiliate's business.

9 Confidentiality

9.1 The Receiving Party shall protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner as it protects its own Confidential Information of similar nature, and in any event, using no less than reasonable care.

9.2 Except as otherwise expressly permitted pursuant to these Terms of Use, the Receiving Party may use the Disclosing Party's Confidential Information solely to exercise its rights and perform its obligations under these Terms of Use, and will disclose such Confidential Information solely to those of its respective employees, representatives and agents who have a need to know such Confidential Information for such purposes and who are bound by obligations to maintain the confidentiality of such Confidential Information.

9.3 Each Party shall procure that appropriate contractually binding confidentiality undertakings have been entered into between itself and its employees, representatives, agents and other authorized third parties that are substantially equivalent to those set out in these Terms of Use. The confidentiality undertakings shall survive the termination of these Terms of Use.

9.4 If the Receiving Party is required by law or court order to disclose Confidential Information of the Disclosing Party, then the Receiving Party will, to the extent legally permitted, provide the Disclosing Party with advance notification and cooperate in any effort to obtain confidential treatment of the Confidential Information.

9.5 The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party, the Disclosing Party will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

9.6 The Confidential Information is disclosed "as is". No representations or warranties, express or implied, are made by either Party as to the accuracy, reliability, completeness or reasonableness of the Confidential Information.

10 Data Protection and Security Measures

10.1 The Information Security Whitepaper for Luware's Services shall form an integral part of these Terms of Use. They describe the security measures taken with regards to the applicable Service(s) in detail:

- (i) [Luware Nimbus Security Whitepaper](#)
- (ii) [Luware Recording Security Whitepaper](#)

10.2 Customer acknowledges and agrees that Luware requires to process Customer Personal Data in connection with the Services. Luware ensures integrity of Customer Personal Data in accordance with the applicable Data Protection Laws and [Luware's DPA](#) as amended from time to time. By providing Customer Personal Data, Customer agrees that Luware and its Approved Third Parties may process and store such Personal Data to the extent necessary to, and to the sole purpose of, providing the Services and, if applicable, in accordance with the written instructions given by Customer from time to time.

10.3 The Parties agree to abide to, and Customer shall ensure that its Authorized Users abide to, the applicable Data Protection Laws. Customer shall be the Data Controller with regards to the Customer Personal Data and Luware shall be the Data Processor in relation thereto.

10.4 If Customer includes, or authorizes others to include, Personal Data in the Customer Content, Customer represents that it is either the Data Controller or that it has, prior to using the Services or extending the benefit of the Services to any other Data Controller and/or Data Subject, been instructed by or obtained the consent of the relevant Data Controller(s) and/or Data Subjects. Customer shall, if applicable, procure, and be able to demonstrate that it has obtained, a valid consent from the Data Controller and/or the Data Subject and that the Data Subject has

been informed of its right to withdraw such consent before the processing of its Personal Data. Customer will not use the Services in conjunction with Personal Data to the extent that doing so would violate Data Protection Laws.

10.5 **Approved Third Parties.** Directly involved in the provision of the Services hereunder are Luware's Affiliates *Luware AG; Luware UK Limited, Luware Poland Sp. z o.o* (<https://luware.com/en/imprint/>); Verint Systems UK Limited, 241 Brooklands Road, Weybridge, Surrey KT13 0RH, United Kingdom, (reg. 02602824) and its Affiliates (if Verint products/services are ordered); Microsoft Azure. These providers shall be Approved Third Parties for the direct provision of Services hereunder.

10.6 **Privacy Policy.** The Luware Privacy Policy, as amended from time to time, sets out the way Luware handles third party processors and the handling of Personal Data and shall form an integral part of these Terms of Use.

11 Term and Termination

11.1 **Term and Termination.** These Terms of Use shall be effective as of the Effective Date and valid for the time during which Customer is using the Services. Unless otherwise agreed in an Offer, Customer subscribes to the Services for the duration of the Initial Subscription Term after which the subscription shall renew automatically according to the provisions of clause 5 of these Terms of Use. Subject to clause 11.2 and 11.3 of these Terms of Use, Customer shall not be entitled to terminate the Subscription during a Subscription Term and shall be liable for the timely payment of the Fees. Termination of these Terms of Use will not limit either Party's liability for obligations accrued as of or prior to such termination or for any breach of these Terms of Use.

11.2 **Termination for Cause.** Either Party may terminate these Terms of Use (including all related orders) by written notice to the other Party in the event that the other Party (i) ceases operation without a successor; (ii) seeks protection under any bankruptcy, receivership, trust deed, creditors' arrangement, composition or comparable proceeding, or if any such proceeding is instituted against that Party; (iii) or materially breaches these Terms of Use and does not cure such breach within thirty (30) days of such notice.

11.3 **Suspension.** Luware may suspend Customer's access to the Services if (i) Customer has not paid undisputed Fees; (ii) the Services are terminated by Customer in accordance with the terms of these Terms of Use; or (iii) Customer's or its Authorized Users breach of clause 3.2 of these Terms of Use. If the cause of the suspension can reasonably be remedied, Luware will provide notice of the actions Customer must take to reinstate the Services. If Customer fails to take such actions within a reasonable time, Luware may terminate the Services.

11.4 **Security Suspension.** Luware may suspend Customer's access to the Services if deemed necessary to prevent or address the introduction of malicious software, a security incident, or other harm to Customer, to Luware, or to Luware's other customers. Luware will notify Customer of any such suspension. Luware will use diligent efforts to attempt to limit, where commercially feasible, the suspension, and will immediately restore the availability of the same as soon as the issues leading to the suspension are resolved.

11.5 Upon termination or expiration of these Terms of Use for whatever reason, Luware will make Customer Content available for export for thirty (30) days from the effective date of termination or expiration of these Terms of Use ("**Export Period**"). For Customer Content that is retained by Luware and is exportable and provided that Customer has paid all applicable Fees, Customer may contact Luware via support@luware.com within the Export Period and have Customer Content exported by Luware, subject to the applicable professional services fees. After the expiration of the Export Period, Luware will delete available Customer Content except as necessary to comply with Luware's legal obligations, maintain accurate financial and other records, resolve disputes, and enforce these Terms of Use. Once deleted, Customer Content cannot be recovered.

12 Miscellaneous

12.1 **Entire Agreement.** These Terms of Use, together with any Offer, the [Luware Privacy Policy](#), the [Luware Data Processing Agreement](#), the [Luware Cloud Service Description](#) and any [Documentation](#), as amended from time to time, constitute the entire agreement and supersede any and all prior agreements or communications between the Parties regarding the subject matter hereof. In the event of a conflict between the separate parts of these Terms of Use, the order of precedence will be as follows: (1) any individual agreement between the Parties in an Offer by Luware; (2) the DPA; (3) the Luware Cloud Service Description; (4) these Terms of Use.

12.2 **Assignment.** Neither Party may assign any of its rights or obligations under these Terms of Use, without the prior written consent of the other Party (not to be unreasonably withheld). Either Party may however assign these Terms of Use to a successor of all or substantially all of the business of such Party whether by merger, acquisition, corporate reorganization, or sale of substantially all of its assets without the other Party's consent. These Terms of Use shall be binding upon and inure to the benefit of the Parties' successors. Assignment of Luware's rights to receive payments or assignment by Luware in conjunction with the sale of the portion of Luware's business that includes the Services shall not be restricted.

12.3 **Severability.** If individual clauses of these Terms of Use are either fully or partially unlawful, invalid, or for any other reason unenforceable, the validity of the remaining clauses of the Terms of Use shall not be affected. The Parties are obliged to cooperate in good faith to replace such invalid clauses with clauses which the Parties would have wanted at the time of conclusion of the Terms of Use and which come as close to the invalid clause as possible.

12.4 **Independence of the Parties.** Nothing in these Terms of Use shall be deemed an agency, partnership or any other corporate or fiduciary relationship between the Parties. Both Parties are independent and neither Party shall be responsible of the acts or omissions of the other Party or its personnel except as provided otherwise in these Terms of Use.

12.5 **Force Majeure.** Neither Party will be liable to the other for any delay or failure to perform any obligation under these Terms of Use if the delay or failure results from any cause beyond that Party's reasonable control, including but not limited to, acts of God, acts of government, acts of terror or civil unrest, internet failures, or acts undertaken by third parties not under the performing Party's control, including, without limitation, denial of service attacks ("**Force Majeure Event**"). In the event that a Force Majeure Event continues for a period of thirty (30) consecutive days, the other Party may terminate these Terms of Use on written notice to the non-performing Party. If Luware is the Party experiencing the Force Majeure Event and Customer terminates these Terms of Use, then Luware will provide Customer a refund of fees paid by Customer pro-rated as of the date the Force Majeure Event commenced.

12.6 **Export Compliance and Use Restrictions.** The Services or components of the Services may be subject to export control and economic sanctions laws, rules and regulations ("**Export Laws**"). Customer agrees to comply with all the Export Laws as they relate to access to and use of the Services by Customer and Authorized Users. Customer shall not access or use the Services if Customer is located in any jurisdiction in which the provision of the Services is prohibited by the applicable laws, including, without limitation, a country or territory that is subject to trade sanctions and Customer shall not provide access to the Services to any government, entity or individual located in any such jurisdiction. Customer represents, warrants and covenants that (i) Customer is not named on, or owned or controlled by any party named on any government's list of persons or entities prohibited from receiving exports, or transacting with any person; (ii) Customer is not a national of, located in, or a company registered in, any such jurisdiction; (iii) Customer shall not permit Authorized Users to access or use the Service in violation of any Export Laws; and (iv) no Customer Content created or submitted by Customer is subject to any restriction on disclosure, transfer, download, export or re-export under the Export Laws.

13 Governing Law and Jurisdiction

These Terms of Use shall be governed by and be construed in accordance with the laws of Germany under the explicit exclusion of the UN Convention on Contracts for the International Sale of Goods. Place of jurisdiction is Stuttgart subject to mandatory legal provisions