

IMPORTANT READ CAREFULLY. THIS CAMUNDA STARTER TERMS (THE "AGREEMENT") SETS OUT THE ENTIRE AGREEMENT WHICH GOVERNS THE RELATIONSHIP BETWEEN YOU ("CUSTOMER", "YOU", "YOUR") AND THE CAMUNDA ENTITY SET FORTH IN SECTION 18.1 ("CAMUNDA", "WE", "US", "OUR") (INDIVIDUALLY, A "PARTY" AND TOGETHER THE "PARTIES") AND THE RELATED TERMS AND CONDITIONS APPLICABLE TO CAMUNDA STARTER (THE "SOFTWARE"). IF YOU DO NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN YOU SHOULD NOT SELECT THE CHECKBOX MARKING YOUR ACCEPTANCE OF THESE TERMS, AT WHICH POINT YOU WILL NOT BE PERMITTED TO PURCHASE THE SOFTWARE SUBSCRIPTION. DO NOT SELECT THE CHECKBOX MARKING YOUR ACCEPTANCE OF THESE TERMS UNLESS (1) YOU ARE AUTHORIZED TO ACCEPT AND AGREE TO THE TERMS OF THIS AGREEMENT AND (2) YOU INTEND TO ENTER INTO AND TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU SELECT THE CHECKBOX MARKING YOUR ACCEPTANCE OF THIS AGREEMENT AND PROCEED TO PURCHASE A SOFTWARE SUBSCRIPTION, WE WILL ASSUME YOU HAVE THE RELEVANT POWER AND CAPACITY TO DO SO, AND THIS AGREEMENT WILL BE EFFECTIVE IMMEDIATELY.

Camunda reserves the right to change the terms and conditions of this Agreement by providing the modified terms and conditions, along with an effective date for modified terms, to an email address registered with the Account. Customer's acceptance of such modified terms shall be a condition of its continued use of the Account and the Software. Otherwise, Customer agrees that the Agreement between the Parties may only be modified by an addendum signed by the Parties.

# 1. Definitions

Definitions not otherwise defined in the Agreement or in the Documentation will have the meanings ascribed to them in this Section.

8x5 means that Support and Maintenance Services are available during Business Hours.

Affiliate means any entity which directly or indirectly controls, is controlled by, or is under common control with a party hereof, where "control" means holding of more than fifty percent (50%) of the issued stock or voting rights of an entity.

Alpha Version means a pre-release Version of the Software.

Automation Components means the components Zeebe, Operate, Tasklist, Identity and any other Automation Component as defined in the Documentation.

Availability Service Credit means the percentage of any Total Monthly Fees credited to Customer's invoice in accordance with Exhibit B.

Business Hour means one hour in the period between Monday to Friday 9am – 5pm (adjusting for daylight savings hours) in the Selected Time Zone.

Cluster means a deployment of Automation Components for the Software.

Components means collectively, the Automation Components and the Process Experience Components.

Core Components means the Automation Component Zeebe as the workflow engine providing Business Process Model and Notation execution capabilities as described in the Documentation.

Critical Errors means Errors that cause a total failure of the Core Components of the Software or make it impossible to use the Core Components of the Software in production. This includes continued Downtime of the Core Components relating to the Software.

Decision Instance ("DI") means the technical execution of a DMN decision model (e.g., a decision table) in the Camunda Decision Engine. Executions of single models as part of a composed decision model (e.g., in a DRD) will be counted separately. The count includes technical executions in both productive and non-productive environments, except for technical executions in Development Clusters. DI are part of the Usage Metrics.

Development Cluster is a Cluster provided for development purposes and non-production usage only, with Reserved CPU, Reserved GB RAM and Reserved GB Storage, and which allows for limited use of PI, DI, TU and GU according to the applicable Technical Limits & Fair Usage Policy as defined as part of the Price List.

Documentation means guidelines, instructions and recommended actions for the Software available at <https://docs.camunda.io>.

Downtime means the total number of minutes during a calendar month for a given Component during which that Component is unavailable, excluding any Excluded Downtime. A minute is considered to be unavailable for a given Component if all continuous attempts by Camunda's monitoring system to write to that Component within that minute fail. Partial minutes of unavailability will not be counted as Downtime.

Error means a problem which results from the Software materially failing to perform as set forth in the Documentation which can be classified in either a Critical Error or a Major Error.

Excluded Downtime means any minutes of Downtime resulting in whole or in part from any of the following:

1. Suspension of Customer's use of the Software in accordance with this Agreement;
2. Customer's use of the Software outside the Hosting Packages;
3. Customer's breach of this Agreement or unauthorized actions through Customer's Account;
4. Factors outside of Camunda's reasonable control, including but not limited to any Event of Force Majeure (as defined in this Agreement), Customer's systemic internet issues, Customer's inadequate bandwidth, and any other act or omission of any third party services, hardware or software provider;
5. Customer's failure to use Camunda-supported clients with acceptable configuration values as defined in the Documentation;
6. Failure by Customer to take any reasonable remedial action in relation to the Software as recommended by Camunda to prevent Downtime, or otherwise preventing Camunda from doing taking such remedial action;
7. Customer's negligence or wilful misconduct, which may include failure to follow agreed-upon procedures;
8. Any:
  - a. scheduled Maintenance Work that takes place upon at least five (5) days' notice;
  - b. ad hoc Maintenance Work carried out to avoid future unavailability, address high security risks or high risks for overall platform stability, and provide other critical Patches or
  - c. updates to Clusters initiated by Customer; or
9. Customer's failure to provide information required by Camunda to provision or run any Cluster.

Fees means the Monthly Base Fee, any Monthly Consumption Fee, fees for any Services and all fees for any upgrades to Usage Metrics or Hosting Packages.

General User ("GU") means any user who is part of the organization. In order to access any of the Camunda Web Applications (e.g. Modeler, Operate, Tasklist, Optimize), a user must be part of the organization on Camunda Starter plan. A separate metric is required for users to complete user tasks under the BPMN notation as part of a process model (See "Task User"). GU are part of the Usage Metrics.

Hosting Packages means the metrics that determine the Fees for a Subscription based on the amount of Reserved CPU Cores, Reserved GB RAM and Reserved GB Storage reserved by Customer.

Maintenance Work means the development and adaptation of the Software by Camunda in order to improve the Software and/or introduce new functions or eliminate Errors, which may lead to unavailability.

Major Errors means Errors that restrict the use of the Software and for which troubleshooting is urgently needed. This includes continued Downtime of all Components (excluding Core Components) relating to the Software.

Major Release means the publication of a new Version of the Software which increases the Version number by 1.0, as such new Version(s) are provided by Camunda at its discretion to its Customers generally. For example, Version 2.0 would be a Major Release compared to Version 1.0. Any such Major Release is provided by Camunda upon the terms and conditions as set forth in this Agreement. A Major Release generally contains features and bug fixes. A Major Release may contain incompatible API changes.

Malware means any computer code or other computer instructions, devices or techniques (including without limitation those known as Trojans or time bombs) that are intentionally designed to disrupt, disable, harm, infect, defraud, damage, or otherwise impede in any manner the operation of a network, computer program or computer system.

Minimum Term means the minimum period of time for which the Subscription is valid. The Minimum Term is one month, and the Subscription will commence on the Start Date.

Minor Release means the publication of a new Version of the Software which increases the Version number by 0.1, as such new Version(s) are provided by Camunda at its discretion to its customers generally. For example, Version 1.1 would be a Minor Release compared to Version 1.0. Any such Minor Release is provided by Camunda upon the terms and conditions as set forth in this Agreement. A Minor Release generally contains functions and bug fixes. Minor Releases may add backwards compatible functionalities.

Monthly Base Fee means the monthly base fee specified in the Price List.

Monthly Consumption Fee means any fees incurred by Customer for its use, in any calendar month, of Usage Metrics or Hosting Packages in excess of the monthly Usage Metrics or Hosting Packages included in the Monthly Base Fee, calculated in accordance with Section 3 and the Price List.

Monthly Uptime Percentage means, for any Component, the total number of minutes in a calendar month minus the number of minutes of Downtime in that month, divided by the total number of minutes in that month. Any Component within a Cluster which is provisioned and running for only part of a calendar month is deemed to be 100% available during the portion of the month in which that Cluster was not provisioned and running.

Named Support Contact means those Customer-designated employees who have the right to contact Camunda via the applicable reporting method and who act as the primary interface between Customer and Camunda technical support. The number of eligible Named Support Contacts is specified in the Price List. Customer will indicate to Camunda those individuals who will serve as Customer's Named Support Contacts, and Customer will provide to Camunda the name and email address of all Named Support Contacts. Camunda will have no obligation to address Support and Maintenance Services inquiries from anyone other than Customer's Named Support Contacts. By providing written notice and appropriate contact information, Customer may change each Named Support Contact once per year for no additional fee. Despite the foregoing limitation, Customer may, upon a material change for the Named Support Contact (for example, leaving Customer or being reassigned to an unaffiliated division) transfer Named Support Contacts by submitting a support ticket.

Patch Release means the publication of a new Version of the Software which increases the Version number by 0.0.1, as such new Version(s) are provided by Camunda at its discretion to its Customers generally. For example, Version 1.1.1 would be a Patch Release compared to Version 1.1. Any such Patch Release is provided by Camunda upon the same terms and conditions as set forth in this Agreement. In Patch Releases, the latest bug fixes are ported back. Patch Releases do not contain any new features.

Personal Data means any information that relates to an identified or identifiable living individual. Only if California Consumer Privacy Act of 2018, Cal. Civ. Code §§ 1798.100 et. seq (CCPA) is applicable, Personal Data includes personal information as defined in the CCPA.

Price List means the list set out at <https://camunda.com/pricing>.

Process Experience Components means the Components Modeler (Web), Connectors, Optimize, Console and any other Process Experience Component as defined in the Documentation.

Process Instance (“PI”) means the technical execution of a BPMN process definition in the Zeebe Engine, independent of current status (pending or completed). Additional process instances that are invoked via call activities are not counted separately. The count includes technical executions in both productive and non-productive environments, except for technical executions in Development Clusters. PI are part of the Usage Metrics.

Renewal Term means each successive one (1) month term after the Minimum Term.

Reserved CPU Cores means the number of CPU cores purchased by Customer.

Reserved GB RAM means the gigabytes of RAM purchased by Customer.

Reserved GB Storage means the gigabytes of storage purchased by Customer.

Response Time means the time from the receipt of an incident or Support Request notification to the provision of an initial response by Camunda.

Selected Time Zone means the time zone UTC +01:00 – Central European Standard Time (Berlin/Amsterdam/Paris/Madrid/Rome).

Service Data means any information processed or transmitted by or on behalf of Customer in the Software or in connection with performance of the Services during the Subscription. All Service Data processed under the terms of this Agreement will remain the property of Customer.

Services mean any Support and Maintenance Services which are provided with the Subscription, if applicable.

SLA means the service level agreement relating to Support and Maintenance Services as provided for in Section 5 of Exhibit A.

Software means the Camunda Starter software which is made available pursuant to this Agreement.

Stable means, in relation to a Cluster, that the Cluster uses a Version of the Software which is not an Alpha Version.

Start Date means the commencement date of the Subscription, which is the date on which Customer accepts this Agreement.

Subscription means Customer’s right, for a fixed period of time, to use the Software and receive Services, always subject to strict compliance with the terms of this Agreement.

Support and Maintenance Services means those services specified in Exhibit A.

Support Request means any question or request from Customer in the ticketing system that are designated as less critical, for example because Customer’s operations in the Software are minimally impacted, a workaround exists that minimises impact to Customer’s operations, or Customer wishes to register a request for a new or enhanced feature. A request is processed as Support Request provided that it concerns the functionality of the Software.

Task User (“TU”) means a distinct string that has been assigned to a user task in the Camunda history. Each string will be counted once, i.e. if the same user has been assigned to more than one task during the Subscription Term, this will be only counted once. The count includes technical executions in both productive and non-productive environments, except for technical executions in Development Clusters. TU are part of the Usage Metrics.

Subscription Term means the period of time for which the Subscription is valid.

Third Party means any legal or natural person who is not a Party to this Agreement and who is not an Affiliate of any of the Parties.

Total Monthly Fee means the amount equal to the Monthly Base Fee plus any Monthly Consumption Fee accrued in the relevant calendar month.

Usage Metrics the metrics that determines the fee for the Subscription, based on the amount of usage. The Usage Metrics are organized in tiers and cover PI, DI, TU and GU. The applicable Technical Limits & Fair Usage Policy is defined as part of the Price List.

Version means a Patch Release, Minor Release or Major Release of the Software.

## 2. Subject Matter

This Agreement sets forth the rights and obligations of the Parties with respect to the Subscription to the Software and the Services. For the avoidance of doubt, the Parties hereby expressly acknowledge and agree that if Customer issues any purchase orders or similar documents in connection with its purchase of the Subscription, it will do so only for its own internal, administrative purposes and not with the intent to provide any contractual terms.

## 3. Subscription

Customer agrees to pay a Monthly Consumption Fee for any Usage Metrics which it uses or Hosting Packages which it reserves in addition to those included in the Monthly Base Fee. Camunda will calculate the Monthly Consumption Fee at the end of each calendar month. The Monthly Consumption Fee for any excess Hosting Packages will be pro-rated based on the number of days in the relevant calendar month for which the Hosting Packages were reserved.

## 4. Registration, right to use the Software and Alpha Offerings

**4.1.** In order to access and use the Software and the Services, Customer must register for a Camunda Stater Terms (the "Account"). By creating the Account, Customer acknowledges that it is responsible for maintaining the security of this Account (including, but not limited to, login credentials and security keys) and for all activities that occur under this Account. The Customer will not misuse or share his login credentials and security keys, misrepresent Customer's identity or affiliation with an entity or impersonate any person or entity. Customer agrees to immediately notify Camunda of any unauthorized use of the Account, or any other breaches of security of which Customer becomes aware. Camunda will have no liability for any acts or omissions on Customer's or any Third Party's part, including any damages of any kind incurred as a result of such acts or omissions. Subject to Section 17.4, any notifications regarding the Software or the Services will be sent to the email address registered with this Account.

**4.2.** During the Subscription Term, and subject to Customer's compliance with this Agreement, Camunda grants Customer a limited, non-exclusive, non-transferable and non-sublicensable right to use the Software within the License Scope, the Usage Metrics and the Hosting Packages.

**4.3.** From time to time, Camunda may invite Customer to try alpha products or services ("**Alpha Offerings**") at no additional charge. Alpha Offerings will be clearly designated as alpha, limited release, developer preview, non-production, evaluation, or a similar description. Customer may accept or decline any such Alpha Offerings in its sole discretion and agrees that any Alpha Offerings are for evaluation purposes and not for production use, are not supported by any Services, and may be subject to additional terms. Camunda may discontinue Alpha Offerings at any time in its sole discretion and may or may not make them generally available. Clusters containing Alpha Offerings cannot be updated to newer Versions: accordingly, Customer will need to delete such Clusters and replace them with a new Cluster to receive subsequent Versions of the Software. Camunda will have no liability (including under any indemnities in this Agreement) for any harm or damage arising out of or in connection with a Alpha Offering, which is provided "as is", exclusive of any warranty whatsoever.

## 5. Restrictions

**5.1.** Customer shall not: (i) execute or attempt to execute any Malware in the Software or use or attempt to use the Software to transmit Malware; (ii) use the Software if Customer qualifies as a consumer under the applicable laws; (iii) use the Software to store or distribute any information, material or data that is harassing, threatening, infringing, libelous, unlawful, obscene, or which violates the rights of any third party; (iv) use the Software, including any Components within any Clusters, for any purpose other than as specifically authorized herein; (v) use the Software to compete against Camunda or to build a competitive product or service; (vi) use the Software for purposes of monitoring performance or functionality (for example via penetration testing) other than for the purposes of measuring Downtime, or for any other benchmarking or competitive purposes including, without limitation, for the purpose of designing and/or developing any competitive services; (vii) except as expressly permitted herein, provide access to the Software by making Customer's Account available to any third party; (viii) sell, resell, rent, lease, lend, offer, commercially exploit any time sharing arrangement, service bureau or any service based upon the Software; (ix) interfere with or disrupt the integrity, security or performance of the Software or Third Party data contained therein; (x) attempt to gain unauthorized access to the Software or any associated systems or networks; (xi) modify, make derivative works of, disassemble, decompile or reverse engineer the Software or any component thereof; or (xii) perform or attempt to perform any actions that would prevent use of the Software by Camunda's other licensees, users or customers.

**5.2.** If Camunda believes, in its sole discretion, that Customer has violated or attempted to violate this Agreement, or the use of the Software by Customer presents a material security risk, Camunda may suspend Customer's use of the Software until the violation or security risk has been corrected. Camunda will use reasonable efforts to provide Customer with advance written notice prior to implementing such suspension.

**5.3.** Customer will indemnify Camunda from and against all and any losses, liabilities, damages, demands, suits, causes of action, judgments, costs and expenses (including court costs and reasonable attorneys' fees up to any applicable statutory cap) arising out of or relating to claims brought against Camunda by Third Parties which (i) are based on a violation of this Agreement by Customer or (ii) relate to or arise from disputes involving Customer and relate to use of the Software to the extent such any losses, liabilities, damages are not caused by Camunda's breach of this Agreement.

## **6. Services**

**6.1.** During the Subscription Term, and subject to Customer's compliance with this Agreement, Camunda will provide Customer with Support and Maintenance Services for the Software according to Exhibit A. Support and Maintenance Services will be delivered to Customer through the Internet, and when applicable, depending on the purchased SLA, via telephone.

**6.2.** The Support and Maintenance Services are provided to Customer only according to the SLA.

**6.3.** Process Experience Components are under constant development. Since Customer solely accesses these Components without selecting a corresponding version, the current version of the Component is always used. Therefore, Section 2. "New Versions" of Exhibit A "Support and Maintenance Services" is not applicable for Process Experience Components.

## **7. Availability and Maintenance Work**

**7.1.** Camunda will use commercially reasonable efforts to ensure a Monthly Uptime Percentage for Components as set out in Exhibit B. Any Errors affecting Monthly Uptime Percentage must be reported to Camunda as soon as reasonably practicable via the agreed-upon reporting method.

**7.2.** Camunda will use reasonable efforts to provide advance notice of any Maintenance Work, and will use reasonable efforts to carry out any non-emergency Maintenance Work leading to an interruption of technical usability outside business hours. However, Camunda is entitled to carry out ad hoc Maintenance Work to avoid future unavailability, address high security risks or high risks for overall platform stability, and provide other critical Patches or hotfixes. Customer agrees that Camunda may access Customer's Clusters in order to carry out Maintenance Work.

## 8. Technical Requirements

Customer has and will retain sole responsibility for Customer's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems) networks and internet services, whether operated directly by Customer or through the use of Third Party services, required to access and use or receive the Software and the Services.

## 9. Intellectual Property Rights

Except for the limited rights expressly granted in Section 4.2 of this Agreement, nothing in this Agreement transfers from Camunda to Customer any intellectual property rights, and all right, title and interest in and to any components of the Software and Services will remain (as between the parties) solely with Camunda. "Camunda", the Camunda logos, and all other trademarks, service marks, graphics and logos used in connection with any use of the Software and Services are trademarks or registered trademarks of Camunda.

## 10. Term and Termination

**10.1.** After the Minimum Term, the Subscription will automatically renew for successive Renewal Terms unless terminated by either Party prior to the end of the then-current Subscription Term. Customer can terminate the Subscription directly via the Software. During the Subscription Term, this Agreement can only be terminated extraordinarily for good cause or as explicitly provided in this Agreement, in particular in Section 10.2.

**10.2.** Either Party may terminate this Agreement and the Subscription at any time (i) if the other Party materially breaches this Agreement (including if Customer fails to pay the Fees or has violated the use restrictions for the Software or any export regulations) and, if such breach is curable, it has not been cured within thirty (30) days after the non-breaching Party has sent written notice thereof; (ii) Camunda exercises its right to change the terms and conditions of this Agreement by providing modified terms, along with an effective date for such modified terms, and Customer does not accept such modified terms on or before the effective date; or (iii) subject to any applicable law, if the other Party is dissolved or liquidated or takes any corporate action for such purpose, becomes insolvent or is generally unable to pay its debts as they become due, becomes the subject of any voluntary or involuntary bankruptcy proceeding under any domestic or foreign bankruptcy or insolvency law, makes or seeks to make a general assignment for the benefit of its creditors, or applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property. Notwithstanding the above, Camunda may terminate this Agreement and the Subscription for non-payment by Customer of any Fees unless Customer pays such Fees in full within ten (10) days after receipt of Camunda's written notice of non-payment. The expiration or termination of this Agreement has no effect on the Subscription existing at the time of termination, which will remain in force until the end of the then-current Subscription Term, provided that if the termination is as a result of a material breach by Customer or Customer's refusal to accept modified terms and conditions on or before the effective date of such terms, Camunda may terminate the Subscription existing at the time of termination by written notice to Customer. The terms and conditions of this Agreement continue to apply to the Subscription which is in force on the termination date of this Agreement until such time as the Subscription terminates.

**10.3.** On expiration or termination of the Subscription for any reason and subject to any express provisions set out elsewhere in this Agreement:

1. Customer will cease usage of (and will no longer have rights to access or use) the Software, the Account and the Services;
2. all earned but unpaid and undisputed Fees and other sums payable by Customer to Camunda will immediately become due and payable; and
3. any Personal Data provided by Customer through the Software will be treated by Camunda in accordance with the relevant personal data protection policies and the data processing agreement introduced by Camunda and applicable

data protection law.

**10.4.** Any and all provisions that, by their content, are intended to apply beyond the performance, non-renewal or termination or expiration of this Agreement, including all associated definitions and all accrued rights to payment will survive any termination hereunder (whether or not so expressly stated).

## 11. Fees and payment

**11.1.** Customer will pay the Monthly Base Fee in advance and will pay any Monthly Consumption Fee monthly in arrears. Customer will make payments via credit card and agrees to pay (i) the Monthly Base Fee on the Start Date and on each following month thereof unless the Subscription is terminated in accordance with this Agreement and (ii) any Monthly Consumption Fee via direct debit on the date on which such amount is billed by Camunda to Customer's credit card (each applicable date, the "Payment Due Date"). Any amounts which are more than thirty (30) days overdue will bear a late payment fee of the lower of one-point five percent (1.5%) per month or the maximum rate allowed by law, accruing from and including the Payment Due Date to and excluding the date of actual payment. Any late payment fee accruing under this Section will be immediately due and payable by Customer. Customer shall pay all Fees in full without any set-off, recoupment, counterclaim, deduction, debit or withholding for any reason (other than any deduction or withholding of tax as may be required by applicable law).

**11.2.** The Monthly Base Fee and the fee for any additional Hosting Packages are based on the Subscription purchased and reservations made, and not on actual usage. The Monthly Consumption Fee for additional Usage Metrics is based on actual usage. In addition, payment obligations are non-cancelable, and except as otherwise expressly provided for in this Agreement, Fees paid are non-refundable.

**11.3.** All Fees are exclusive of any taxes, fees, and duties or other amounts, however designated, and including without limitation value added tax, sales tax and withholding taxes that are levied or based upon such charges, or upon this Agreement. Any applicable taxes including, but not limited to, withholding taxes, will be paid by Customer, or Customer will present an exemption certificate acceptable to the taxing authorities. Customer will not be liable for taxes imposed on Camunda based on Camunda's income.

**11.4.** Camunda reserves the right to change its Fees, the Software, the Services and the Subscription model available under this Agreement. Any changes to Fees or the Subscription model which Camunda makes will not apply to Customer with respect to any fully paid Subscription Term: any such changes will become effective as of the next Renewal Term, subject to a prior written notice by Camunda.

**11.5.** The Parties agree that Customer may pay Fees through a Third Party ("Paying Agent") provided that Customer specifies Customer as the "ship to" party and the Paying Agent as the "bill to" party in the sign-up process. Additionally, the Paying Agent and Customer will enter into a separate agreement setting forth the fees to be paid by Customer to the Paying Agent for the Subscription, as well as any other terms or conditions that apply between them. Customer acknowledges that Camunda will not be responsible for the obligations of any Paying Agent to Customer under such separate agreement, for the acts or omissions of the Paying Agent, or for any products or services furnished to Customer by the Paying Agent. Camunda agrees that, subject to receiving payment from the Paying Agent, it shall be responsible to Customer, pursuant to the terms and conditions of this Agreement, for the Subscription of the Software and the Services.

## 12. Data Protection and Telemetry Data

**12.1.** Both Parties will comply with the European data protection laws, including but not limited to the GDPR. Unless otherwise agreed to in writing, and except for limited information required when setting up user or administrator accounts (e.g. name, email address), neither Party shall or is required to provide any other Personal Data of their employees or customers that will be processed on behalf of the other Party which is or may be subject to regulation under national or international privacy rules and regulations. If Customer nevertheless transmits or shares or intends to transmit or share any other Personal Data of its employees or end customers, it shall notify Camunda in advance so that the Parties can sign a separate data processing agreement ("DPA"). The DPA to be entered into by

the Parties is available [here](#) and sets out the terms and conditions for the processing of Personal Data by Camunda on behalf of the Customer available here. In any event, Camunda will, taking into account the nature of the Personal Data and the risks involved in the processing of any such Personal Data, maintain reasonable and appropriate security measures, including technical and organizational safeguards designed to ensure the security and confidentiality of Personal Data.

**12.2.** For the purpose of this section Telemetry Data means all information and data of Customer collected in connection with Customer's access and use of the Software, including but not limited to information about browsers, implemented clients, and related pages accessed by users, API calls and the Version of the Software. It may contain Personal Data such as hashed IP addresses, email addresses and identifiers, including cookies, but is generally technical, aggregated or pseudonymized. Customer acknowledges that certain features used in connection with the Software are configured to collect and report Telemetry Data to Camunda to improve the user experience, to track usage of the Software, to ensure the security, stability and functionality of the Software and provide support to Customer, such as guidance that will help optimize usage. Camunda will use Telemetry Data subject to applicable law and Camunda's Privacy Policy, which is available [here](#). Customer hereby consents and grants Camunda a worldwide right to collect, host, copy, use, execute, transmit and display Telemetry Data, Customer applications and any Third Party products, as necessary to provide and improve the access to and use of the Software and the Services by the Customer. Camunda will not acquire any right, title or interest from Customer in or to any information processed or transmitted by or on behalf of Customer in the Software or in connection with performance of the Services during the Subscription or to Third Party products.

## 13. Confidentiality

**13.1.** "Confidential Information" means any information disclosed by either Party (the "Disclosing Party") to the other Party (the "Receiving Party") in any form or medium that the Disclosing Party considers confidential, whether or not marked, designated or otherwise identified as "confidential". Without limiting the foregoing each Party's product road maps, product development plans, pricing, business plans, customer lists, business and financial information shall be deemed to be such Party's Confidential Information. Confidential Information will not, however, include any information which (a) was publicly known or made generally available in the public domain prior to the time of disclosure by the Disclosing Party; (b) becomes publicly known and made generally available after disclosure by the Disclosing Party to the Receiving Party through no action or inaction of the Receiving Party and/or without breach of a confidentiality obligation; (c) is already in the possession or comes into the possession of the Receiving Party where such possession is not the result of a breach of confidentiality, in each case, as shown by the Receiving Party's files and records immediately prior to the time of disclosure; or (d) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information, as shown by documentation or other evidence in the Receiving Party's possession.

**13.2.** Except to the extent authorized in writing by the Disclosing Party (including in this Agreement), the Receiving Party shall hold in confidence and not use or disclose any Confidential Information of the Disclosing Party to any third party other than Affiliates, agents (including, without limitation, vicarious agents), contractors and partners (if any). Each Party agrees that it shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the other Party and to comply with the legal and contractual provisions on data protection when processing the Confidential Information. Without limiting the foregoing, each Party shall take at least those measures that it takes to protect its own confidential information and shall ensure that its employees who have access to Confidential Information of the other Party are subject to obligations of confidentiality and non-disclosure at least as stringent as those found herein. For the avoidance of doubt, the Receiving Party's obligations under this Section with respect to any Confidential Information that constitute trade secrets under any applicable law will continue until such time, if ever, as such Confidential Information ceases to qualify for trade secret protection under one or more such applicable laws other than as a result of any act or omission of the Receiving Party.

**13.3.** The Receiving Party or any of its representatives shall be permitted to disclose Confidential Information if and to the extent they are required to do so by applicable law. If the Receiving Party or any of its Affiliates or representatives is compelled by applicable law to disclose any Confidential Information then, to the extent permitted by applicable law, the Receiving Party shall: (i) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or

other remedy or waive its rights under this Section; and (ii) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure.

**13.4.** Because of the unique and proprietary nature of the Confidential Information, it is understood and agreed that the Disclosing Party's remedies at law for a breach by the Receiving Party of its obligations under this Section may be inadequate and that the Disclosing Party is entitled to seek equitable relief (including without limitation provisional and permanent injunctive relief and specific performance).

**13.5.** Upon expiration or termination of this Agreement for any reason, the Receiving Party will return or destroy all copies of all Confidential Information of the Disclosing Party in its possession or under its control upon request of the Disclosing Party, provided that the Receiving Party is not required to return or destroy any Confidential Information if and to the extent that (i) it is required to retain such Confidential Information by law, regulation or court order, or (ii) such Confidential Information is automatically retained as part of a computer back-up, recovery or similar archival or disaster recovery system in accordance with internal record-keeping policies. Any Confidential Information which is not returned or destroyed remains subject to the confidentiality obligations of this Agreement.

**13.6.** The Receiving Party is prohibited from obtaining Confidential Information by means of so-called Reverse Engineering. "Reverse Engineering" shall mean all actions, including observing, testing, examining and disassembling or reassembling with the purpose of obtaining Confidential Information. The Receiving Party shall refrain from exploiting or imitating Confidential Information outside the scope of its purpose in any manner whatsoever (in particular by means of Reverse Engineering) or having it exploited or imitated by third parties and, in particular, from applying for intellectual property rights – in particular trademarks, designs, patents or utility models – to the Confidential Information.

## **14. Representations and Warranties**

**14.1.** Each Party represents and warrants the following: (i) entering into and carrying out the terms and conditions of this Agreement will not violate any obligation binding upon it and (ii) it does and will comply with all applicable laws (including export control laws and regulations) in connection with its performance under this Agreement. Customer represents and warrants that the acceptance of this Agreement and the performance of its obligations hereunder have been duly authorized and this Agreement is validly and legally binding on it and enforceable in accordance with its terms.

**14.2.** Camunda warrants that (i) it will perform all applicable Services in a professional, workmanlike manner, consistent with generally accepted industry practice and (ii) the Software will function substantially in accordance with the applicable Documentation. In the event of a breach of the foregoing warranty, Camunda's sole obligation, and Customer's exclusive remedy, shall be for Camunda at its sole discretion to re-perform the applicable Services or correct any Error in the Software, as applicable. Camunda's obligations to correct any Error in the Software will not apply if: (i) Customer fails to update to new Versions of the Software made available to Customer which would address any breach of this warranty; (ii) the Software has been altered, except by or on behalf of Camunda; (iii) the Software has not been used or operated in accordance with this Agreement and/or the Documentation; or (iv) the Software is used on systems not meeting specifications identified by Camunda in the Documentation.

**14.3.** THE SERVICES REPRESENT AN AGREEMENT FOR SERVICES AND NOT FOR THE SUPPLY OF GOODS. EXCEPT AS SET FORTH IN SECTIONS 14.1 and 14.2, THE SOFTWARE AND THE SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, AND CAMUNDA MAKES NO ADDITIONAL WARRANTIES WHETHER EXPRESSED, IMPLIED OR STATUTORY REGARDING OR RELATING TO THE SERVICES, THE SOFTWARE OR ANY MATERIALS FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, CAMUNDA SPECIFICALLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT WITH RESPECT TO THE SERVICES, THE SOFTWARE AND ANY MATERIALS FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY CAMUNDA, ITS DISTRIBUTORS, AGENTS, CONTRACTORS OR EMPLOYEES INCREASES THE SCOPE OF THIS WARRANTY.

**14.4.** NOTWITHSTANDING ANY OTHER CLAUSE IN THIS AGREEMENT, DEVELOPMENT CLUSTERS ARE PROVIDED “AS IS” WITHOUT ANY WARRANTY AND CAMUNDA SHALL HAVE NO INDEMNIFICATION OBLIGATIONS NOR LIABILITY OF ANY TYPE WITH RESPECT TO DEVELOPMENT CLUSTERS. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, CAMUNDA SPECIFICALLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND AVAILABILITY WITH RESPECT TO DEVELOPMENT CLUSTERS. WITHOUT LIMITING THE FOREGOING, CAMUNDA DOES NOT REPRESENT OR WARRANT TO CUSTOMER THAT: (A) CUSTOMER’S USE OF DEVELOPMENT CLUSTERS WILL MEET CUSTOMER’S REQUIREMENTS, OR (B) CUSTOMER’S USE OF DEVELOPMENT CLUSTERS WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERRORS.

## **15. Intellectual Property Rights**

**15.1.** Customer shall at its sole expense indemnify, defend, and hold harmless Camunda and its Affiliates against any and all losses, liabilities, expenses (including reasonable legal fees up to any applicable statutory cap) suffered or incurred by Camunda or its Affiliates by reason of any claim, suit or proceeding (each a “Claim”) arising out of or in connection with (i) Customer’s Service Data or use of Service Data, including, without limitation, any assertion that Customer’s Service Data or the use thereof may infringe any copyright, trademark, or other intellectual property or other rights of any individual or entity, are a misappropriation of any individual or entity’s trade secret, or contain any libelous, defamatory, disparaging, pornographic, or obscene materials or use thereof caused death or bodily injury or damage to the real or tangible property of any third party, or violate the privacy rights of any individual or (ii) any breach of or failure by Customer to comply with this Agreement.

**15.2.** Camunda will: (i) notify Customer in writing of any Claim promptly after its receipt of the Claim, (ii) not acknowledge the alleged basis of the Claim, (iii) allow Customer to assume control of the defense and any settlement negotiations related to the claim and (iv) cooperate with Customer, at Customer’s expense, in the defense and any related settlement negotiations related to the Claim. If requested by Camunda to defend a Claim, Customer will not agree to any settlement without the prior written consent of Camunda.

## **16. LIMITATION OF LIABILITY**

**16.1.** EXCEPT FOR ANY LIABILITY IN CONNECTION WITH THE BREACH OF SECTION 13 (CONFIDENTIALITY), UNDER NO CIRCUMSTANCES SHALL EITHER PARTY OR THEIR RESPECTIVE AFFILIATES BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES.

**16.2.** UNDER NO CIRCUMSTANCES SHALL EITHER PARTY OR THEIR RESPECTIVE AFFILIATES BE LIABLE FOR ANY SPECIAL OR PUNITIVE DAMAGES, LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES (REGARDLESS OF WHETHER SUCH DAMAGES ARISE OUT OF CONTRACT, NEGLIGENCE OR OTHER LEGAL THEORIES, AND REGARDLESS OF WHETHER SUCH DAMAGES ARE CHARACTERIZED AS DIRECT, INDIRECT OR OTHERWISE) ARISING FROM OR RELATED TO THIS AGREEMENT. CAMUNDA WILL BE LIABLE FOR LOSS OF DATA ONLY TO THE EXTENT SUCH LOSS IS DIRECT AND WOULD HAVE OCCURRED EVEN IF CUSTOMER HAD MADE A BACKUP OF ALL THE RELEVANT DATA.

**16.3.** EXCEPT FOR ANY LIABILITY ARISING FROM A VIOLATION OF EITHER PARTY’S INTELLECTUAL PROPERTY RIGHTS UNDER THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY OR THEIR RESPECTIVE AFFILIATES’ TOTAL, CUMULATIVE LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNT EQUAL TO THE AMOUNT PAID BY CUSTOMER TO CAMUNDA UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO LIABILITY.

**16.4.** NOTHING IN THIS AGREEMENT SHALL EXCLUDE OR LIMIT EITHER PARTY’S LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE OF THAT PARTY, ITS OFFICERS, EMPLOYEES, CONTRACTORS OR AGENTS, FRAUD OR FRAUDULENT MISREPRESENTATION OR ANY OTHER WARRANTIES, CONDITIONS, OBLIGATIONS OR DUTIES WHICH ARE REQUIRED BY MANDATORY LAW EXCEPT TO THE EXTENT PERMISSIBLE UNDER SUCH MANDATORY LAW.

# 17. General Provisions

## 17.1. Export

The Software may be subject to export laws and regulations of the United States, the European Union, the United Kingdom, the Federal Republic of Germany and other jurisdictions. Both Parties represent and warrant that they or any of their Affiliates (i) is not a Prohibited Entity, or (ii) has not taken and will not take any action, directly or indirectly, that would result in a violation of Sanctions, or that would otherwise cause the other Party or its Affiliates to violate Sanctions.

For purposes of this section, "Sanctions" means to the extent applicable to the Parties, any and all economic or financial sanctions, sectoral sanctions, secondary sanctions, or trade embargoes administered or enforced from time to time by (i) the United States, including those administered by the U.S. Department of the Treasury's Office of Foreign Assets Control, the U.S. Department of State, or the U.S. Department of Commerce, or through any existing or future Executive Order; (ii) the United Nations Security Council; (iii) the European Union; (iv) the United Kingdom; (v) Singapore; or (vi) any other government authority with jurisdiction over the Parties. "Prohibited Entity" means (i) a person (an entity or an individual) on any list of targets designated pursuant to any Sanctions, (ii) a person, countries, or territories that are the target of any territorial or country-based Sanctions programs, or (iii) a person owned or controlled by any person covered by (i), or (ii).

## 17.2. Assignment

Camunda may assign this Agreement in the event of a merger, acquisition, change of control or sale of all or substantially all of its business or assets. Other than in these limited instances, however, neither Party may assign, transfer or sublicense any obligation or benefit under this Agreement without the written consent of the other Party, which consent by Camunda will not be unreasonably withheld in the event of the merger or sale of all or substantially all of the business or assets of Customer. Notwithstanding the foregoing, Camunda may assign or transfer this Agreement or parts of the rights and obligations of this Agreement solely to Camunda's parent company, Camunda Services GmbH, without the requirement of Customer's consent.

## 17.3. Sub-Contracting

Camunda may subcontract all or part of its obligations under this Agreement to any Third Party or Affiliate, agent (including, without limitation, to a vicarious agent) or contractor; provided, however, that Camunda shall remain responsible for the performance of such obligations and for compliance with the terms and conditions of this Agreement.

## 17.4. Notices

All notices under this Agreement will be delivered by email; if to Camunda at [customer-success@camunda.com](mailto:customer-success@camunda.com); if to Customer at any one of the email addresses provided to Camunda via the Account. Any notices which also require physical delivery will be in writing and will be personally delivered or sent by prepaid certified or registered mail to the address of the Party to whom notice is being provided or such other address as such Party last provided to the other by written notice. Any notices are deemed to have been given or made and to have been received on (i) the day of delivery if personally delivered, (ii) on the day of sending if sent via email before 5:00 p.m. on a business day in the jurisdiction of the recipient's registered address, and otherwise on the next business day, and (iii) on the third business day following postage if sent by prepaid certified or registered mail. A notice will not be deemed to have been sent via email if the sender receives an automated system notification that the email has failed to send or has failed to reach the recipient's inbox.

## 17.5. No Waiver

No failure or delay in exercising any right hereunder will operate as a waiver thereof, nor will any partial exercise of any right or power hereunder preclude further exercise.

## 17.6. Relationship between the Parties

The Parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties, nor does it authorize any Party to make or enter into any commitments for or on behalf of any other Party except as expressly provided for. Each Party confirms that it is acting on its own behalf and not for the benefit of any Third Party. Each Party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.

#### **17.7. Entire Agreement; Order of Precedence**

This Agreement constitutes the entire agreement between the Parties in relation to the subject matter hereof. It supersedes and extinguishes any prior understandings, agreements, warranties, undertakings, conditions or representations in this regard and both Parties hereby expressly acknowledge and agree that they have not relied upon any other understandings, agreements, warranties, undertakings, conditions or representations except those contained herein. The Parties acknowledge and agree that the contents of any purchase order or similar document provided by Customer (whether before or after the date of Customer's acceptance of this Agreement) are rejected and do not apply to the relationship between the parties. In the event of any conflict between the terms and conditions of any of the foregoing documents, the conflict will be resolved based on the following order of precedence: first, the DPA and CCPA Addendum, if applicable and as amended from time to time; and second, this Agreement, including all other exhibits and as amended from time to time.

#### **17.8. Force Majeure**

Except in relation to any duty to pay, neither Party hereto is liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including but not limited to fires, floods, earthquakes, pandemic or epidemic illness, civil unrest, terrorism, cyber attacks, strikes or protests (of its own or other employees), insurrection or riots, embargoes, requirements or regulations of any civil or military authority or Internet service provider, or failure or delay of a Third Party application (an "Event of Force Majeure"). Each of the Parties hereto agrees to give reasonable notice (to the extent any such notice is possible) to the other upon becoming aware of an such an Event of Force Majeure. Such notice will contain details of the circumstances giving rise to the Event of Force Majeure. If a default due to an Event of Force Majeure continues for more than thirty (30) days, then the Party not in default is entitled to terminate this Agreement. Neither Party has any liability to the other in respect of the termination of this Agreement as a result of an Event of Force Majeure, except in relation to any unpaid Fees.

#### **17.9. Publicity**

Either Party to this Agreement may publicize the existence of the business relationship established by this Agreement in connection with its products, promotions, or publications. Customer agrees to act as a reference customer for Camunda, and to participate in a case study as reasonably requested by Camunda. Customer grants to Camunda, during the Subscription Term, a limited, personal, non-exclusive, non-transferable license to use and distribute Customer's logo on Camunda's website. Despite the foregoing, neither Party may disclose the specific terms of this Agreement, except as required by applicable law.

#### **17.10. Human Rights**

Each party shall comply with internationally proclaimed human rights such as the Universal Declaration of Human Rights and shall not contribute to or be complicit in human rights abuses of any kind. Both parties shall seek to implement internationally recognized standards, including but not limited to the eight Conventions of the International Labour Organization (ILO), which regulate international labor standards. In particular, each party shall seek to provide for protection against discrimination, unequal treatment, harassment and ensure the provision of a safe workplace and minimum wage.

#### **17.11. Anti-Bribery**

Each Party will comply with all applicable anti-corruption laws, including the U.S. Foreign Corrupt Practices Act of 1977, the U.K. Bribery Act of 2010, the German Act to Combat Corruption of 2015 and similarly applicable anti-corruption and anti-bribery laws.

#### **17.12. Severability**

If any provision of this Agreement is or becomes illegal, unenforceable or invalid, this will not affect or impair the legality, enforceability or validity of the remaining provisions of this Agreement. The remaining terms and provisions of this Agreement will be applied so as to give effect to the original intent of the parties (as evidenced by the illegal, unenforceable or invalid provision) to the fullest extent possible.

## 18. Contracting Party, Governing Law and Venue

**18.1.** The Camunda entity entering into this Agreement, the law governing this Agreement and any non-contractual obligations, disputes or lawsuits arising out of or in connection with this Agreement, and the courts that have jurisdiction over any such dispute or lawsuit, depend on where Customer is domiciled, as set forth below. Each Party agrees to the applicable governing law below without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts below and irrevocably waive any objection and defense which either may have to the bringing or maintenance of any such claim. THE PARTIES KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THEY MAY HAVE TO TRIAL BY JURY IN ANY CLAIM UNDER OR IN CONNECTION WITH THIS AGREEMENT. Accordingly, any dispute, legal action or proceeding arising out of or relating to this Agreement must be brought in the applicable courts below, and each Party irrevocably waives all objections to any proceedings in such courts, whether on the grounds of venue or on the grounds that they have been brought in an inconvenient forum.

Customer domicile	Camunda entity entering into this Agreement	Governing law	Venue
The United States of America, Canada and Mexico	Camunda, Inc. 101 Montgomery Street, Suite 1400, San Francisco, CA 94104, USA	The laws of the State of Delaware and controlling United States federal law	Delaware, USA
Germany, Austria, Switzerland	Camunda Services GmbH Zossener Strasse 55-58, 10961 Berlin, Germany	German law, excluding both CISG and conflict of laws provisions	Berlin, Germany
United Kingdom and Commonwealth (except Canada and Singapore)	Camunda Ltd Moorcrofts LLP Thames House, Mere Park, Dedmere Road, Marlow, United Kingdom, SL7 1PB	England and Wales, excluding both CISG and conflict of laws provisions	London, England
APAC	Camunda Pte Ltd 16 Raffles Quay, #33-03 Hong Leong Building, Singapore 048581	England and Wales, excluding both CISG and conflict of laws provisions	Singapore
Any other country	Camunda Services GmbH Zossener Strasse 55-58, 10961 Berlin, Germany	England and Wales, excluding both CISG and conflict of laws provisions	London, England

### 18.2. Conflict Resolution

If a conflict arises between the Parties out of or in connection with this Agreement, the use of the Software or the provision of the Services, the Parties will first seek an amicable settlement and, if no resolution is reached, the Parties undertake to conduct mediation in accordance with the ICC Mediation Rules before resorting to a court of law. Any court action is permissible if a hearing date has taken place within the mediation framework or if more than sixty (60) days have elapsed since the mediation request by either Party.

# 19. Regional Terms

## 19.1. Regional Terms United States of America, Canada and Mexico

With respect to Customers domiciled in the United States of America, Canada and Mexico, the new Sections 17.13 and 17.14 are added to the Agreement under Section 17 (General Provisions) as follows:

### 17.13. High Risk Activities

The Software is not designed, manufactured or intended for use or resale as on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, air traffic control, or direct life support machines, in which the failure of the Software could lead directly to death, personal injury, or severe physical or environmental damage ("High Risk Activities"). Accordingly, Camunda specifically disclaims any express or implied warranty of fitness for High Risk Activities.

### 17.14. U.S. Government

The Software and the Documentation are "commercial items", as defined in 48 C.F.R. §2.101, consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.2702-4, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §§227.2702-1 through 227.2702-4, as applicable, the commercial computer software and commercial computer software documentation are (if applicable) being licensed to U.S. government end users (a) only as commercial items and (b) with only those rights that are granted to all other end users pursuant to the terms and conditions set forth in this Agreement and any applicable license agreement for the Software.

## 19.2. Regional Terms Germany, Austria and Switzerland

With respect to Customers domiciled in Germany, Austria or Switzerland:

1. The second sentence in Section 10.2 of this Agreement is replaced with the following: Notwithstanding the above, Camunda may terminate this Agreement and the Subscription for non-payment by Customer of any Fees, unless Customer pays such Fees in full within sixty (60) days after receipt of Camunda's written notice of non-payment.
2. The third sentence of Section 11.1 of this Agreement is replaced with the following: Any amounts which are more than thirty (30) days overdue will bear a default rate of interest of nine (9) percentage points above the basic rate of interest per year, accruing from and including the Payment Due Date to and excluding the date of actual payment.
3. Section 13.1 of this Agreement is replaced with the following section: 13.1 "Confidential Information" means any information disclosed by either Party (the "Disclosing Party") to the other Party (the "Receiving Party"), in any form or medium that the Disclosing Party considers confidential, whether or not marked, designated or otherwise identified as "confidential". Confidential Information shall be deemed to include in particular: Trade Secrets, products, manufacturing processes, know-how, inventions, business relations, business strategies, business plans, financial planning, personnel matters, digitally embodied information (data), any documents and information of the Disclosing Party which are subject to technical and organizational secrecy measures and which are marked as confidential or are to be considered confidential according to the nature of the information or the circumstances of the transmission. Without limiting the foregoing: (i) each Party's product road maps, product development plans, pricing, business plans, customer lists, business and financial information shall be deemed to be such Party's Confidential Information, and (ii) each of the source code to the Software and the Documentation shall be deemed to be Camunda's Confidential Information. Without prejudice to any rights it may have under the German Trade Secret Act (*Geschäftsgeheimnisgesetz*), the Disclosing Party shall have all property rights, rights of use and exploitation rights with respect to the Confidential Information, unless otherwise provided in this Agreement. The Receiving Party is aware that the Confidential Information described above has not previously been generally known or readily accessible, either in its entirety or in its details, and is therefore of commercial value and is protected by the Disclosing Party through appropriate confidentiality measures. If a Confidential Information under this Section does not meet the requirements of a Trade Secret within the meaning of the German Trade Secret Act, such information shall nevertheless be subject to the obligations of this Section on Confidential Information. Confidential

Information will not, however, include any information which (a) was publicly known or made generally available in the public domain prior to the time of disclosure by the Disclosing Party; (b) becomes publicly known and made generally available after disclosure by the Disclosing Party to the Receiving Party through no action or inaction of the Receiving Party and/or without breach of a confidentiality obligation; (c) is already in the possession or comes into the possession of the Receiving Party where such possession is not the result of a breach of confidentiality, in each case, as shown by the Receiving Party's files and records immediately prior to the time of disclosure; or (d) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information, as shown by document and other competent evidence in the Receiving Party's possession.

4. The following sentence is added at the end of Section 13.3 of this Agreement: The Receiving Party shall furthermore indicate in the course of disclosure that, if this is the case, Trade Secrets are concerned and shall ensure that the provisions of Sections 16 et seq. of the German Trade Secrets Act are applied.
5. Section 13.4 is deleted.
6. Section 13.6 is renumbered as Section 13.5. The last sentence of the so-renumbered Section 13.5 of this Agreement is replaced with the following: The Receiving Party shall refrain from exploiting or imitating Confidential Information outside the scope of its purpose in any manner whatsoever (in particular by means of Reverse Engineering) or having it exploited or imitated by third parties and, in particular, from applying for intellectual property rights – in particular trademarks, designs, patents or utility models (*Gebrauchsmuster*) – to the Confidential Information.
7. Section 14.1 of this Agreement is replaced with the following section, and Sections 14.2 and 14.3 of this Agreement are deleted in their entirety: 14.1 Each Party has ensured and will ensure the following: (i) entering into and carrying out the terms and conditions of this Agreement will not violate any obligation binding upon it and (ii) each Party will comply with all applicable laws in connection with its performance under this Agreement. Customer has ensured and will ensure that the acceptance of this Agreement and the performance of its obligations hereunder have been duly authorized and that the Agreement is validly and legally binding on such Party and enforceable in accordance with its terms.
8. Section 16 of this Agreement is replaced in its entirety with the following section: 16.1 Camunda will be liable without limitation for all losses caused by Camunda and by its legal representatives or vicarious agents in cases of intent or gross negligence, the absence of a guaranteed quality ("*garantierte Beschaffenheit*") and for mortal injury, bodily harm and damage to health, as well as in accordance with the provisions of the Product Liability Act ("*ProdHftG*"). 16.2 In cases involving a simple negligent breach ("*leichte Fahrlässigkeit*") of Primary obligations ("*Kardinalpflicht*"), Camunda's liability will be limited to replacement of the foreseeable damage typically occurring. Primary obligations are such basic duties which form the essence of the Agreement, which were decisive for the conclusion of the Agreement and on the performance of which the Parties may rely. Other than this, Camunda's liability for simple negligent breaches ("*leichte Fahrlässigkeit*") of accessory contractual obligations is excluded. Further liability – for whatever legal reason – on the part of Camunda and Camunda's vicarious agents is excluded. A strict liability of Camunda for defects due to pre-existing deficiencies in the Software is excluded. 16.3 If Customer's losses result from a loss of data, Camunda will only be liable for this to the extent that the damage that would have resulted even if Customer had made a backup of all the relevant data.
9. The last sentence of Section 17.2 of this Agreement is deleted.

**19.3.** Regional Terms United Kingdom and Commonwealth and any Country other than the United States of America, Canada, Mexico, Germany, Austria or Switzerland

With respect to Customers domiciled in the United Kingdom, the Commonwealth or in any other country than the United States of America, Canada, Mexico, Germany, Austria or Switzerland:

1. Section 10.2 of this Agreement is replaced with the following section: 10.2 Either Party may terminate this Agreement and the Subscription at any time, if (i) the other Party fails to pay any amount due and payable under the Agreement on the

due date for payment and such remains unpaid not less than 14 days after the date on which the non-paying Party receives written notice of such failure to pay, (ii) the other Party commits a material breach of any term of this Agreement (other than failure to pay any amounts due) and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so, (iii) the other Party repeatedly breaches any of the terms of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Agreement, (iv) Camunda exercises its right to change the terms and conditions of this Agreement by providing modified terms, along with an effective date for such modified terms, and Customer does not accept such modified terms on or before the effective date; (v) the other Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, (vi) subject to any applicable law (A) the other Party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other Party, (B) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other Party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other Party, (C) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other Party, (D) the holder of a qualifying floating charge over the assets of that other Party has become entitled to appoint or has appointed an administrative receiver, (E) the holder of a qualifying floating charge over the assets of that other Party has become entitled to appoint or has appointed an administrative receiver, (F) a person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party, or (G) a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days or (vii) subject to any applicable law, any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned under Section 10.2 (vi) above. The expiration or termination of this Agreement has no effect on the Subscription existing at the time of termination, which will remain in force until the end of the then-current Subscription Term, provided that if the termination is as a result of a material breach by Customer or Customer's refusal to accept modified terms and conditions on or before the effective date of such terms, Camunda may terminate the Subscription existing at the time of termination by written notice to Customer. The terms and conditions of this Agreement continue to apply to the Subscription that is in force on the termination date of Customer's acceptance of this Agreement until such time as the Subscription terminates.

2. the new Sections 17.13 and 17.14 are added to the Agreement under Section 17 (General Provisions) as follows: 17.13 Service of Process The Parties agree that in the event of a claim being commenced in relation to any non-contractual obligations, disputes or lawsuits arising out of or in connection with this Agreement, a claim form and any other documents relating to such a claim will be served at the respective Parties' registered address even if such address is outside of England and Wales. 17.14 Rights of Third Parties A person who is not a Party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Agreement.

## **Exhibit A “Support and Maintenance Services”**

Terms not defined in this Exhibit have the same meaning set forth in the Agreement.

### **1. Scope**

Subject to each of the other provisions of the Agreement, with the purchase of the Subscription, Camunda will provide the following Support and Maintenance Services during the applicable Subscription Term:

A. Support Customer Named Support Contacts with their questions concerning the use of the Software in the process of development and in the operation of process applications (including, for example, by providing help with definable problems of development or by explaining the functions and their use);

B. Make available new Versions of the Software as outlined below; and

C. Respond to Support Requests within the time periods set out for the SLA.

D. New Versions

Support and Maintenance Services are provided for all Versions of the Software that are supported (as specified in the Documentation) and in any event for a period of eighteen (18) months from the release date for any Minor Release of the Software. For further Support and Maintenance Services thereafter, Customer must update to a more recent Version of the Software if available. If a more recent Version is not available, Camunda will maintain Support and Maintenance Services on the then-current Version of the Software pursuant to this Agreement until a new Version is available. Alpha Versions of the Software are not supported. Camunda publishes new Versions of the Software from time to time via the Account: however, Clusters using an Alpha Version of the Software cannot be updated. Accordingly, Customer will need to delete Clusters using an Alpha Version and replace them with a Stable Cluster to receive a new Version. After Camunda provides a new Version, the Documentation will also be adapted accordingly and Camunda will notify the Named Support Contacts.

E. Customer's responsibilities

Customer acknowledges that its cooperation is essential to the proper performance of Support and Maintenance Services by Camunda. To enable Camunda to provide Support and Maintenance Services, Customer agrees to the following:

- a. If an Error occurs, a Named Support Contact will promptly inform Camunda via the agreed upon reporting method set out in the right-hand column of the table in section 5 below;
- b. The Error must be reproducible by Camunda without using a special, adapted or extended Version of the Software. If necessary, Customer agrees to assist Camunda in reproducing the Error, including for example via a unit test. Should such a reproduction be impossible, the Error will be described as precisely as possible;
- c. If an Error is reported, Customer will (A) provide Camunda with the information requested to eliminate the problem and support Camunda in eliminating the Error; and (B) inform Camunda of any modifications it has made to the Software operated by Customer (e.g., client libraries or Modeler) or any other issues of which Customer is aware; and
- d. Unless not commercially reasonable to do so, Customer will implement suggestions from Camunda on elimination of Errors.

e. Excluded services

Support and Maintenance Services under this Agreement do not include any of the following:

- f. support and maintenance services on Customer's premises;
- g. support and maintenance services for any Version of the Software modified by Customer;
- h. installation on Customer's hardware for the purpose of achieving initial operational readiness of the Software;
- i. development of software programs (e.g., add-on modules or components) that have other functions than those described in the applicable Documentation of the Software;

- j. programming services to integrate the Software with products of Customer or Third Parties;
- k. support of adaptations and extensions of the Software programmed by Customer;
- l. support and maintenance services for the integration of the Software into the data processing environment of Customer;
- m. introduction and training of Customer's employees in the use of the Software;
- n. recommendation of action for the optimal use of the Software;
- o. Error correction and Consulting Services in case of operational Errors that are based on non-compliance with the operating conditions for the Software contained in the applicable Version of the Documentation;
- p. support and maintenance services which become necessary due to Customer's failure to cooperate in accordance with paragraph 3 above; and
- q. any other services not specifically set forth herein, including, but not limited to, customization, programming, integration, recovery of data, support of Customer-specific adaptations or add-on programs and program components, support of modifications, installation, training, analysis or corrections of Errors caused by Customer's non-compliance with this Agreement or Documentation or unauthorized modifications.

**F. SLA**

Subject to each of the other provisions of the Agreement, with the purchase of the Subscription, Camunda will respond to Support Requests regarding Errors as defined in the table below. The timeframes in the table regarding response times set forth the time period in which Camunda will initially provide a qualified response to Customer, but do not represent resolution time frames.

<b>Severity Level</b>	<b>Service Availability Times</b>	<b>Response Times</b>	<b>Reporting Method</b>
1 (Critical Error)	8x5	8 Business Hours	Primary: ticketing system Secondary: normal hotline
2 (Major Error)	8x5	8 Business Hours	Primary: ticketing system Secondary: normal hotline
3 (Support Requests)	8x5	16 Business Hours	Ticketing system

## **Exhibit B “Availability Targets and Availability Service Credits”**

A. Camunda will use commercially reasonable efforts to ensure a Monthly Uptime Percentage of 99.5% for the Core Components of the Software within each Stable Cluster and 95.0% for any other Component within each Stable Cluster (the “Availability Targets”). Availability Targets do not apply to Components within a Development Cluster, to Components within a Cluster which uses an Alpha Version or Alpha Offering of the Software, or to Components within Clusters which use a Version of the Software for which Support and Maintenance Services is no longer supported (as specified in Section 2 of Exhibit A). If the Monthly Uptime Percentage for the Core Components of the Software within a Stable Cluster fall below the Availability Targets in any calendar month, Camunda will, subject to Customer's compliance with the Agreement, provide the following Availability Service Credit, calculated as a percentage of the Total Monthly Fee

Monthly Uptime Percentage	Availability Service Credit
Less than 99.5% but equal to or greater than 99.3%	1.5%
Less than 99.3% but equal to or greater than 99.0%	3%
Less than 99.0%	4.5%

- a. Customer will not be eligible to receive any Availability Service Credits if, on the date that an Availability Service Credit is requested, any Fees then due and payable by Customer are outstanding. To receive an Availability Service Credit, Customer must submit a claim by logging a support ticket. To be eligible, the credit request must be received by Camunda within five (5) calendar days after the last day of the month in which the Software does not meet the Availability Target within any Cluster, and must include all information reasonably necessary for Camunda to verify the claim, including:
- the words “Availability Service Credit Request” in the subject line;
  - the Cluster ID if any Cluster for which the Availability Service Credit is requested;
  - a description of the applicable client(s) (as specified in the Documentation), the version of each such client, and the configurations for each such client; and
  - a description of the events resulting in Downtime, including the time and duration of the Downtime and Customer requests logs that document the failed write attempts.
- b. Camunda will evaluate Customer requests and determine in good faith whether an Availability Service Credit is owed based on its system logs, monitoring reports, configuration records, and other available information. If Camunda confirms that the Monthly Uptime Percentage applicable to the month of such request did not meet the Availability Target, then Camunda will issue the Availability Service Credit to Customer within one billing cycle following the month in which Customer’s request is confirmed. Customer’s failure to provide the request and other information as required above will disqualify Customer from receiving an Availability Service Credit. Availability Service Credits are not refundable in cash and can only be used as a credit against future billing charges. Camunda will apply any Availability Service Credits against Customer’s next billing charge. Availability Service Credits are exclusive of any applicable taxes charged to Customer or collected by Camunda. Availability Service Credits are Customer’s sole and exclusive remedy for any unavailability of any Components within Clusters. Availability Service Credits expire without refund twelve (12) months from issuance.