

Clearview – Supply Terms and Conditions

These terms and conditions (as amended under clause 24.3) (“**Conditions**”) govern the supply of hardware, the supply of services and licensing of software by the Clearview group company referenced on the applicable Quote (“**Clearview**”) to the business/firm who buys such hardware, services and/or software (“**Customer**”). Note that Clearview does not supply to consumers (i.e. those purchasing outside the course of doing business). Any sales to consumers must be made through Clearview resellers. For details of Clearview resellers, please contact your sales contact.

These Conditions apply to the exclusion of any other terms that the Customer seeks to impose, or which are implied by trade, custom, practice or course of dealing.

Note particularly clause 14 (Limitation of Liability)

1. Basis of Contract

- 1.1. Clearview may from time to time provide the Customer with a Quote, which shall relate to specific Hardware, Services and/or Software (or a combination of these). This shall not be legally binding unless and until both parties have signed the same. The Quote shall be subject to these Conditions.
- 1.2. Once the Customer and Clearview have signed a Quote (or clicked “accept” button on the relevant Quote email where this option is available), it shall form a contract subject to the terms of the applicable Quote and these Conditions (“**Contract**”), and the Contract shall come into effect on the Start Date.
- 1.3. If there is an inconsistency between any of the provisions of the Contract, the provisions of the Quote shall take precedence over these Conditions.
- 1.4. Each party warrants that:
 - 1.4.1. it has full capacity to enter into and perform its obligations under the Contract; and
 - 1.4.2. the Contract is executed by a duly authorised representative of that party.
- 1.5. In consideration for the payment of the Charges, Clearview will provide the Hardware, Services and/or licence of Software (as appropriate) in accordance with the Contract, from the applicable Effective Date.
- 1.6. These Conditions shall also apply to all future business relations between Clearview and the Customer, even where they are not expressly agreed again.

2. Hardware

- 2.1. The terms of this clause 2 apply in respect of any Hardware to be supplied pursuant to the Contract.
- 2.2. In consideration for the payment of all applicable Charges, Clearview shall supply the Hardware to the Customer pursuant to the Contract.
- 2.3. Clearview warrants that the Hardware shall, on delivery, conform in all material respects with the Hardware Specification.
- 2.4. Clearview shall deliver the Hardware to the Delivery Location after the Hardware is ready. Hardware delivery dates are approximate only and time of delivery is not of the essence.
- 2.5. Delivery shall be completed on the Hardware’s arrival at the Delivery Location. The Customer is responsible for unloading, and any unloading that takes place shall be at the Customer’s risk, unless this is expressly included as part of any Services to be provided by Clearview pursuant to the Contract.
- 2.6. If the Customer fails to accept or take delivery of the Hardware (including failing to provide appropriate delivery instructions to Clearview), Clearview shall store the Hardware until the earlier of: (a) delivery takes place; and (b) Clearview resells or disposes of the Hardware in accordance with clause 2.9, and may at its option charge the Customer for all related costs and expenses (including insurance).
- 2.7. Clearview may deliver in instalments, which shall be invoiced and paid for separately. Any delay in delivery of or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 2.8. Risk in the Hardware shall pass to the Customer on completion of delivery at the Delivery Location.
- 2.9. Unless and until title has passed to the Customer pursuant to clause 2.10, where 10 Business Days have elapsed since Clearview attempted to re-deliver the Hardware to the Delivery Location and/or where Clearview has either notified the Customer to arrange another delivery following failure of the first and the Customer has not engaged with this correspondence then Clearview may resell or otherwise dispose of all of the Hardware or any part of them, and after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Hardware.
- 2.10. Title to the Hardware shall pass in accordance with the applicable provisions below:

Where the Contracting Location is outside of Germany

 - 2.10.1. Title to the Hardware shall not pass to the Customer until Clearview has received payment in full (in cleared funds) for all sums due to Clearview or any part of its Group for which payment is due, under any and all Contracts and any other agreements between the same).
 - 2.10.2. The Customer shall from delivery of Hardware until title has passed to the Customer under these Conditions:
 - 2.10.2.1. hold the Hardware on a fiduciary basis as Clearview’s bailee;
 - 2.10.2.2. store the Hardware separately from all other hardware;

- 2.10.2.3. ensure the Hardware is readily identifiable as Clearview's property and wherever possible shall ensure that a visible sign to that effect is attached to the Hardware;
 - 2.10.2.4. not remove, deface or obscure any identifying mark or packaging on or relating to the Hardware;
 - 2.10.2.5. maintain the Hardware in satisfactory condition and keep them insured against all risks as are prudent and as may be required by law (including loss, damage or destruction by fire, theft or accident for their full price) and the Customer shall ensure that Clearview's interest is noted on such insurance policy and shall, on demand by Clearview, supply copies of the relevant insurance policies or other insurance confirmation acceptable to Clearview and proof of premium payment to Clearview to confirm the insurance arrangements. If the Customer fails to effect or maintain any of the insurances required under the Contract, Clearview shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Customer; and
 - 2.10.2.6. give Clearview such information relating to the Hardware as Clearview requires,
- but the Customer may resell/use the Hardware in its ordinary course of business.
- 2.10.3. Where the Customer undergoes an Insolvency Event (or Clearview believes that the same is about to occur) before title to the Hardware passes to the Customer, if the Hardware has not been resold or irrevocably incorporated into another product or service, (without limiting any other right or remedy Clearview may have) Clearview may demand the Customer deliver up the Hardware and, if the Customer fails to do so promptly, enter any premises of the Customer (or a third party) where the Hardware is stored to recover it. The Customer shall ensure that Clearview shall have similar rights of entry with respect to any third party who takes possession of the Hardware prior to the passage of title from Clearview to the Customer.

Where the Contracting Location is Germany

- 2.10.4. Clearview reserves title to the Hardware sold until all Clearview's current and future claims arising from the Contract and an ongoing business relationship (**Secured Claims**) have been paid in full.
- 2.10.5. The Hardware subject to retention of title may neither be pledged to third parties nor assigned as security before full payment of the Secured Claims. The Customer must inform Clearview immediately in writing if an application is made to open insolvency proceedings or if third parties have access to the Hardware belonging to Clearview (e.g. seizures).
- 2.10.6. In the event of breach of contract by the Customer, in particular non-payment of the purchase price due, Clearview is entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the Hardware on the basis of the retention of title. The demand for return does not at the same time include the declaration of cancellation; Clearview is rather entitled to demand only the return of the Hardware and to reserve the right of cancellation. If the Customer does not pay the due purchase price, Clearview may only assert these rights if Clearview has previously set the Customer a reasonable deadline for payment without success or if such a deadline is dispensable according to the statutory provisions.
- 2.10.7. The Customer is authorised to resell and/or process the Hardware subject to the retention of title in the ordinary course of business until revoked by Clearview in accordance with clause 2.10.7.3 below. In this case, the following provisions shall apply:
 - 2.10.7.1. The retention of title shall extend to the full value of the products resulting from the processing, mixing or combining of Clearview's Hardware, whereby Clearview shall be deemed to be the manufacturer. If, in the event of processing, mixing or combining with Hardware of third parties, their right of ownership remains, Clearview acquires co-property in proportion to the invoice values of the processed, mixed or combined Hardware. In all other respects, the same applies to the resulting product as to the Hardware delivered under the retention of title.
 - 2.10.7.2. The Customer hereby assigns to Clearview as security the claims against third parties arising from the resale of the Hardware or the product in total or in the amount of any co-property share of Clearview in accordance with the above paragraph. Clearview accepts the assignment. The obligations of the Customer stated in clause 2.10.5 also apply with regard to the assigned claims.
 - 2.10.7.3. In addition to Clearview, the Customer remains authorised to assert the claim. Clearview undertakes not to assert the claim as long as the Customer fulfils its payment obligations to Clearview, there is no deficiency in its ability to pay and Clearview does not assert the retention of title by exercising a right in accordance with clause 2.10.6. If this is the case, however, Clearview can request that the Customer informs Clearview of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. In this case, Clearview is also entitled to revoke the Customer's authorisation to further sell and process the Hardware subject to the retention of title.

3. Clearview Software

- 3.1. The terms of this clause 3 apply where the Customer licences any Clearview Software from Clearview.
- 3.2. In consideration for the payment of all applicable Charges, Clearview hereby grants to the Customer a non-exclusive licence for the licence term set out on the Quote to use Clearview Software.
- 3.3. Use of Clearview Software shall be restricted to:
 - 3.3.1. the use of the same in conjunction with the Hardware;
 - 3.3.2. the Licence Type restrictions set out in the Quote for the same;
 - 3.3.3. the use restrictions set out in the Quote for the same;

- 3.3.4. object code form;
 - 3.3.5. the purpose described in the Quote;
 - 3.3.6. the normal business purposes of the Customer (and, where "Group use" is expressly permitted in the Quote, the normal business purposes of the Customer's Affiliates); and
 - 3.3.7. employees of the Customer (and, where "contractor use" is permitted in the Quote, third-party contractors using the same solely for the benefit of the Customer (and, where "Group use" is permitted in the Quote, for the benefit of the Customer's Affiliates)).
- 3.4. Save for when the Contracting Location is Germany or where stated to the contrary in the Quote, for the period of 30 days from delivery, Clearview warrants that Clearview Software will perform in accordance with the Software Specification/Documentation in all material respects but notwithstanding any other provision, Clearview specifically denies any implied or express term or representation that Clearview Software will:
- 3.4.1. be fit to operate in conjunction with any hardware items or software products other than with those that are identified in the Quote (or in the relevant documentation) as being compatible with Clearview Software; or
 - 3.4.2. operate uninterrupted or error-free.
- The Customer's sole remedy for breach of the warranty under this clause 3.4 shall be the correction of the Defect by Clearview within a reasonable time from notification by the Customer of the same.
- 3.5. Delivery of Clearview Software shall be deemed to occur as follows: (i) downloadable software (no activation key necessary): when Clearview provides the Customer with valid details or credentials necessary to download the Clearview Software; (ii) activation key is necessary: Clearview provides a valid activation key for any software requiring an activation key (which may include the supply by Clearview of a USB dongle); (iii) physical disk or drive containing the software: the disk or drive is delivered to the Customer at the Customer's premises.
- 3.6. Clearview shall provide to the Customer, from time to time, copies of the Documentation containing sufficient up-to-date information for the proper use and maintenance of Clearview Software. Such Documentation may be supplied in electronic form.
- 3.7. The Customer may make such further copies of the Documentation as are reasonably necessary for the use and maintenance of Clearview Software and for training the Customer Personnel in use of Clearview Software. The Customer shall ensure that all of Clearview's proprietary notices are reproduced in any such copy.
- 3.8. Any unauthorised modifications, use or improper installation of Clearview Software by the Customer (or on behalf of the Customer, other than by Clearview Personnel) shall render all Clearview's warranties and obligations under the Contract null and void. Clearview shall not be obliged to rectify any particular Defect if attempts to rectify such Defect other than normal recovery or diagnostic procedures have been made by the Customer Personnel or third parties without the permission of Clearview. This clause 3.8 shall not apply where the Contracting Location is Germany if the Customer can prove that its behaviour did not cause the defect.
- 3.9. The Customer shall: (i) ensure that the number of persons using Clearview Software does not exceed the number specified in the Quote and use reasonable endeavours to prevent any unauthorised use; (ii) notify Clearview as soon as it becomes aware of any unauthorised use of Clearview Software by any person; (iii) pay, for broadening the scope of the licences granted under this licence to cover the unauthorised use, an amount equal to the fees which Clearview would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced together with interest at the rate provided for under these Conditions, from such date to the date of payment.
- 3.10. Any Open-Source Software is provided "as is" and the Customer's use shall be subject to, and must comply with, the terms of the applicable End User Agreement.

4. Third Party Software

- 4.1. The terms of this clause 4 apply where the Customer orders Third-Party Software from Clearview.
- 4.2. The Customer acknowledges and agrees that:
 - 4.2.1. Clearview is a reseller/agent of the Provider of the Third-Party Software;
 - 4.2.2. Clearview is not licensing the Third-Party Software to the Customer;
 - 4.2.3. it shall be licensed to use the Third-Party Software only as specified in the applicable End User Agreement. For the avoidance of doubt, no licence is granted by Clearview.
- 4.3. The Customer shall comply with the terms of the applicable End User Agreement.

5. Services

- 5.1. The terms of:
 - 5.1.1. this clause 5 apply with respect to any Services supplied pursuant to the Contract (including Professional Services and Maintenance Services);
 - 5.1.2. clause 6 apply to Professional Services only; and
 - 5.1.3. clause 7 apply to Maintenance Services only.
- 5.2. During the applicable Service Term, in consideration for the payment of all applicable Charges, Clearview shall provide or procure the provision of the applicable Services to the Customer materially in accordance with the Services Specification.
- 5.3. Where Clearview is present at the Customer's premises, Clearview shall use reasonable endeavours to observe all reasonable health and safety and security requirements that apply at such premises and that have been communicated to it in advance of the provision of the Services, provided that it shall not be liable under the Contract if it is in breach of any of its obligations under the Contract:

- 5.3.1. as a result of such observation; or
- 5.3.2. observance of the same hinders or restricts Clearview's performance of its obligations under the Contract.
- 5.4. Clearview will use its reasonable endeavours to supply all relevant Services in accordance with any performance metrics set out in the Quote in respect of such Services.
- 5.5. Clearview shall use reasonable endeavours to meet any performance dates relating to the Services specified in the Quote/Services Specification, but any such dates are estimates only and time is not of the essence for the performance of the Services.
- 5.6. If performance of the Services is delayed at the request of the Customer, or because of any acts or omissions of the Customer, the parties may agree revised dates for performance. At its discretion, Clearview may apply a reasonable increase to the Charges as a result of such delay.
- 5.7. Clearview shall have the right to make any changes to the Services which:
 - 5.7.1. improve the nature or quality of Clearview Services;
 - 5.7.2. are necessary to comply with Applicable Law;
 - 5.7.3. result from a Sourcing Issue; or
 - 5.7.4. do not materially negatively affect the nature or quality of the Services,and Clearview shall notify the Customer in any such event. Such notification shall include any variations to the Charges which Clearview reasonably considers to be necessary in light thereof.
- 5.8. Clearview shall use its reasonable endeavours to comply with any applicable Service Levels from the date the Service Levels are stated to apply in the Quote. The consequences of a failure to achieve a Service Level shall be determined solely by the Quote.
 - 5.8.1. Where the Contracting Location is Germany, this clause 5.8 shall not affect any right granted to the Customer under paragraph 2.5 of Schedule 4.
- 5.9. The Customer assumes sole responsibility for results obtained from the use of the Services, and for conclusions drawn from such use.
- 5.10. Where there is a Default on the part of the Customer, Clearview (without limiting its other rights or remedies) may suspend performance (and is relieved from its performance obligations) until the Customer remedies the same. The Customer shall be liable for any costs incurred by Clearview.
- 5.11. Clearview may at any time, and at its sole option, replace any individual identified in the Quote or otherwise allocated to the performance of the Services with another qualified individual.

6. Professional Services

- 6.1. The terms of this clause 6 apply in respect of any Professional Services to be supplied pursuant to the Contract.
- 6.2. Where Clearview has agreed under the Contract to provide any Software Development Services or configuration, installation, design or training services (together "**Professional Services**"), in this clause 5 "**Output**" shall mean the deliverables resulting from the provision of such services (specifically, in the case of Software Development Services, being the Custom Software).
- 6.3. As may be needed for Clearview to perform the relevant Services, the Customer shall in a timely manner:
 - 6.3.1. provide all the Customer Content and Customer Materials (as appropriate);
 - 6.3.2. where necessary, prepare its premises, equipment and existing systems (or those of its third-party contractors); and
 - 6.3.3. facilitate such access to the Customer's premises, equipment and existing systems (or those of its third-party contractors).
- 6.4. Clearview shall:
 - 6.4.1. in respect of any configuration or installation Services:
 - 6.4.2. carry out the same at the Location (or, at Clearview's option where applicable, via remote access);
 - 6.4.3. subject the Output to its standard installation and acceptance tests, or such tests as are specified in the Quote; and
 - 6.4.4. in respect of any Software Development Services:
 - 6.4.5. carry out the same in accordance with the applicable Software Specification; and
 - 6.4.6. before delivering any Custom Software, carry out its standard tests to ensure that the Custom Software is in operable condition and is capable of meeting the requirements of the Software Specification, or such tests as are specified in the Quote (or otherwise agreed in writing between the parties).
- 6.5. The Customer shall be deemed to have accepted any Output if either: (i) the acceptance testing is certified by Clearview to be successful; (ii) the Customer fails to provide the data or results necessary for acceptance testing to be undertaken within the time limits specified in the Quote (in respect of which, time shall be of the essence); or (iii) the Customer commences operational use of the Output.
- 6.6. Where the Contracting Location is Germany, the following shall apply to the exclusion of clause 6.5:
 - 6.6.1. In the case of a Contract that is subject to §§ 631 et seq. BGB (German Civil Code), the Customer must declare acceptance of any Output immediately upon readiness for acceptance, but at the latest within the period specified in the Quote, calculated from receipt of the notice of completion by Clearview (**Acceptance Period**). If acceptance does not take place within the Acceptance Period, the Output is deemed to have been accepted without reservation and free of defects. Acceptance is also deemed to have been declared if (i) the Customer puts Clearview's services into operation or (ii) the

Customer, for reasons for which he is responsible, does not provide the data or results required for the performance of the acceptance test within the period specified in the Quote.

7. Maintenance Services

- 7.1. The terms of this clause 7 apply in respect of any Maintenance Services to be supplied pursuant to the Contract.
- 7.2. Clearview shall provide the Maintenance Services for the Supported Hardware and/or Supported Software at the Location to the Customer in accordance with the Maintenance Services Specification and for the period(s) set out in the Quote in respect of the Supported Hardware and/or Supported Software.
- 7.3. On the Customer informing Clearview of a Defect in the Supported Hardware and/or Supported Software:
 - 7.3.1. within Maintenance Support Hours, Clearview shall perform Included Corrective Maintenance of the same; and
 - 7.3.2. outside Maintenance Support Hours, Clearview shall perform Out of Hours Maintenance of the Supported Software. Charges for the same shall be calculated on a time and materials basis.
- 7.4. With respect to Excluded Maintenance:
 - 7.4.1. Clearview is not obliged to perform any Excluded Maintenance unless the Customer has agreed to pay for the same on a time and materials basis (unless another charging mechanism has been agreed in advance in writing); and
 - 7.4.2. where Clearview is performing or has performed the Maintenance Services in circumstances where it is subsequently established that the Defect was due to any of the Excluded Causes, Clearview may charge, and the Customer shall pay, the applicable additional Charges in respect of that work, calculated on a time and materials basis.

8. Customer Obligations

- 8.1. The Customer shall:
 - 8.1.1. provide all necessary co-operation reasonably required in relation to the Contract;
 - 8.1.2. comply with any and all obligations which are set out in the Quote, including in the applicable specification for the hardware/software/services which are stated to be performed by the Customer and any other obligations which are apparent or would be ordinarily expected to be complied with by the Customer in the ordinary course of receipt of similar hardware and/or services;
 - 8.1.3. promptly provide such assistance from the Customer Personnel or any decision, guidance, information or instruction as may be reasonably requested by Clearview from time to time;
 - 8.1.4. ensure that the terms of the Contract (including any specification) are complete and accurate;
 - 8.1.5. not to do or permit anything to be done that will or may damage the business, reputation, image and/or good will of Clearview;
 - 8.1.6. only use the Services for lawful purposes and shall not use the Services:
 - 8.1.6.1. in any way that breaches any Applicable Law;
 - 8.1.6.2. in any way that is unlawful or fraudulent, or has any unlawful or fraudulent purpose or effect;
 - 8.1.6.3. for the purpose of harming or attempting to harm minors in any way;
 - 8.1.6.4. to send, knowingly receive, upload, download, store, use or re-use any material which does not comply with the following content standards:
 - (a) content must: (i) be accurate (where it states facts); (ii) be genuinely held (where states opinions); and (iii) comply with Applicable Law; and
 - (b) content must not: (i) contain any material which is defamatory of any person, obscene, offensive, hateful, harmful, threatening, harassing or otherwise inflammatory; (ii) promote sexually explicit material; (iii) promote violence; (iv) promote discrimination based on race, sex, religion, nationality, disability, sexual orientation or age; (v) be used to impersonate any person, or to misrepresent identity of any person or their affiliation with any other person; (vi) infringe the copyright, database right or trade mark of any other person; (vii) give the impression that it emanates from Clearview, if this is not the case; or (viii) advocate, promote or assist any unlawful act;
 - 8.1.6.5. to transmit, or procure the sending of, any unsolicited or unauthorised advertising or promotional material or any other form of similar solicitation (spam);
 - 8.1.6.6. to knowingly store, distribute, transmit, send or upload any data or material that contains a Virus; and
 - 8.1.6.7. to (or attempt to) probe, scan, penetrate or test the vulnerability of any of Clearview's systems or networks or to breach any of Clearview's security or authentication measures, whether by passive or intrusive techniques, without Clearview's prior written consent;
 - 8.1.6.8. except as expressly licensed, not (and not permit any third party to) copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software, in whole or in part, or access all or any part of the Software in order to build any software, product or service which competes with the same.
 - 8.1.7. ensure that there are in place all necessary consents, licences and permissions required to permit Clearview to access and use all the Customer Content, Customer Materials and Customer Personal Data and any other items as may be appropriate in connection with each and every Contract; and

- 8.1.8. be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Clearview’s data centres (or, where appropriate, the third-party portal through which Clearview provides Services to the Customer).

9. Charges

- 9.1. The price for Hardware, Services and licences of the Software is the price set out in the Quote. Where no price is quoted, it shall be:
 - 9.1.1. the price set out in Clearview’s published price list as at the Start Date on the Quote; or
 - 9.1.2. where applicable in respect of Services, on a time and materials basis in accordance with the Standard Rates.
- 9.2. Except where expressly agreed in writing to the contrary, the Charges shall not include travel or accommodation expenses, which shall become payable upon production of mileage claims/appropriate receipts. At the Effective Date, the mileage rate is 55p per mile.
- 9.3. Pricing changes:
 - 9.3.1. On no less than 2 months’ written notice to the Customer prior to a Term Extension, Clearview may, (in addition to any other pricing change permitted pursuant to these Conditions) adjust the Charges by a percentage equal to the percentage increase in the Index since the prices were last set/revise, as appropriate.
 - 9.3.2. Clearview reserves the right to increase any of its Standard Rates from time to time upon giving the Customer 30 days written notice before applying the increase. Should the Customer object to such increase, the Customer may terminate the Contract or the affected part of the Contract within such notice period on written notice to Clearview.
 - 9.3.3. Where the Contracting Location is Germany:
 - 9.3.3.1. Clearview may only increase the Charges once per calendar year;
 - 9.3.3.2. Clearview shall reduce the charges if and to the extent that the Index decreases. The reduction shall correspond to the percentage reduction in the Index.
 - 9.3.4. If it is reasonably apparent that any of the pricing in the Quote is incorrect (“**Obvious Pricing Error**”), the Customer must notify Clearview of the same. When Clearview becomes aware of an Obvious Pricing Error, it shall promptly notify the Customer of the error together with the correct price (“**Correct Price**”). Following notification of the Correct Price, such price shall apply in place of the Obvious Pricing Error. If the Customer objects to the Correct Price, it may terminate the Contract on written notice to Clearview.
- 9.4. Where a failure of the Customer to comply with its obligations in the Contract (including those set out in these terms and conditions as well as the Quote) results in additional costs for Clearview and/or wasted time, Clearview may charge the Customer for the same on a time and materials basis. In order to calculate the same, Clearview’s Standard Rates shall apply unless other rates are specified in the Quote.
- 9.5. Unless otherwise specified to the contrary in the Quote, Clearview will invoice the Customer as described in the table below:

Hardware	On receipt of Quote, prior to despatch
Clearview Software	Annually in advance, on receipt of Quote, prior to licence commencement
Third-Party Software	Annually in advance
Professional Services	50% (estimated) in advance, remainder on completion
Support/Maintenance Services	Annually in advance

- 9.6. If Hardware/Software has not been delivered and/or Services are not performed as a result of the acts or omissions of the Customer, Clearview may invoice the same on the date upon which delivery/performance was attempted.
- 9.7. The Customer shall pay each invoice which is properly due and submitted to it by Clearview within 30 days of invoice date to a bank account nominated in writing by Clearview. Time for payment is of the essence. If Clearview has not received a payment which is validly due within such period, and without prejudice to any other rights and remedies it may have (but subject to any Applicable Law in force at the time which restrict or exclude the same), Clearview may charge interest on a daily basis on such due amounts at an annual rate equal to the Interest Rate over the then current Base Rate from time to time, commencing on the Due Date and continuing until fully paid, whether before or after judgment. Such interest shall accrue on a daily basis and be compounded quarterly.
- 9.8. In respect of any Professional Services ordered by the Customer, a minimum cancellation period of 90 days is required, otherwise the agreed fee will be charged in full.
 - 9.8.1. Where the Contracting Location is Germany, this clause 9.8 shall only apply to the extent permissible pursuant to §§ 631 et seq. BGB (German Civil Code). Where this clause 9.8 does not apply, the statutory provisions shall prevail.
- 9.9. All Charges stated or referred to in the Contract are exclusive of:
 - 9.9.1. value added tax or other sales taxes, which shall be added to Clearview’s invoice(s) at the appropriate rate; and
 - 9.9.2. all packing, insurance and transport costs, and any import or export duties or similar taxes, which shall be paid by the Customer (unless the same is expressly stated to be included within the price in the Quote).
- 9.10. Clearview may, without limiting its other rights or remedies, set off any amount owing to it by the Customer or any Affiliate against any amount payable by Clearview to the Customer.
- 9.11. Where Service Credits are stated to accrue, subject to (i) the Customer requesting the Service Credit within 40 Business Days of the service-affecting event(s) and (ii) the Service Credit Limit, Clearview shall automatically credit the Customer with the applicable Service Credits. Service Credits shall, at Clearview’s option, either:
 - 9.11.1. be shown as a deduction from the amount due from the Customer to Clearview in the next invoice then due to be issued under the Contract; or

- 9.11.2. be included on a credit note issued against a previous invoice and the amount for the Service Credits shall be repayable by Clearview as a debt within 10 Business Days of issue of the credit note.
- 9.12. The Service Credits shall be the exclusive financial remedy for the Customer for each service failure for which a Service Credit has been set, save that this does not exclude:
- 9.12.1. the Customer's entitlement to terminate the Contract (or a part thereof) for a Default by Clearview in accordance with these Conditions; or
- 9.12.2. liability for any failure to perform the relevant Services in accordance with the Service Levels that has arisen due to theft, gross negligence, fraud, fraudulent misrepresentation or wilful default.
- Where the Contracting Location is Germany, nothing in this clause 9.12 shall affect the Customer's rights under paragraph 2.5].
- 9.13. Where the Contracting Location is Germany, the following shall apply:
- 9.13.1. The Customer shall only be entitled to rights of set-off and retention to the extent that his claim has been legally established or is undisputed. In the event of defects, the Customer's counter-rights remain unaffected.
- 9.13.2. If the Customer falls into default with the fulfilment of an obligation, all possible further claims shall be due immediately.

10. Intellectual Property and Materials

- 10.1. Clearview warrants that it has, and will continue to have, all necessary rights in and to any and all Intellectual Property Rights that it purports to grant to the Customer pursuant to the Contract. The Customer warrants to Clearview that Clearview's possession and use in accordance with these Conditions of any materials (including third-party materials supplied by the Customer to Clearview) shall not cause Clearview to infringe the rights, including any Intellectual Property Rights, of any third party.
- 10.2. The Customer hereby grants to Clearview a non-exclusive, worldwide, royalty free, sub-licensable licence to use, modify, translate or otherwise exploit the Customer Content and Customer Materials to the extent reasonably necessary to comply with its obligations under the Contract and benefit from the rights granted by the Customer under the Contract.
- 10.3. The Customer warrants to Clearview that Clearview's possession and use in accordance with these Conditions of:
- 10.3.1. the Customer Content; and
- 10.3.2. the Customer Materials,
- shall not cause Clearview to infringe the rights, including any Intellectual Property Rights, of any third party.
- 10.4. The Customer acknowledges and agrees that:
- 10.4.1. unless and to the extent expressly stated to the contrary in respect of Custom Software in the Quote, Clearview and/or its licensors own all Intellectual Property Rights in the Services, Clearview Software and the Hardware; and
- 10.4.2. the applicable Provider and/or its licensors own all Intellectual Property Rights in the Third-Party Software.
- 10.5. Where it is expressly stated in the Quote that any Intellectual Property Rights in Custom Software vest in the Customer ("**Transferring Intellectual Property Rights**"), the Customer hereby grants to Clearview a non-exclusive, worldwide, royalty free, sub-licensable licence to use, modify, translate or otherwise exploit the transferring Intellectual Property Rights in any manner whatsoever.
- 10.6. Except as expressly stated herein, these Conditions do not grant the Customer any Intellectual Property Rights or any other rights or licences to, in or in respect of the Hardware, Services or Software.
- 10.7. Any materials provided in respect of the Services are licensed to the Customer solely for the purposes of the receipt of such Services, unless and to the extent that wider use is stated on the Quote.
- 10.8. Clearview acknowledges and agrees that the Customer and/or its licensors own all Intellectual Property Rights in the Customer Content. Except as expressly stated herein or as is necessary to perform Clearview's obligations under the Contract, these Conditions do not grant Clearview any Intellectual Property Rights or any other rights or licences to or in respect of any Customer Content.
- 10.9. Nothing in these Conditions shall be construed so as to prevent Clearview from using in the furtherance of its own business general know-how or expertise gained in its performance of the Contract, provided that any such use does not constitute or result in a disclosure of any Confidential Information in breach of clause 11 (Confidentiality) or infringement of any Intellectual Property Rights.

11. Confidentiality

- 11.1. Each party undertakes that it shall during the Contract and thereafter, keep confidential and not disclose to any person any Confidential Information concerning the business, affairs, Customers, clients or suppliers of the other party or of any member of the other party's Group, except as permitted by clause 11.2 below.
- 11.2. Each party may disclose the other party's Confidential Information:
- 11.2.1. to its Affiliates, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11; and
- 11.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority, provided that, to the extent where it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 11.2.2, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

- 11.3. No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.
- 11.4. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any unconnected third party.
- 11.5. Clearview may publicise its involvement with the Customer for its own marketing purposes, and any such publication shall not constitute an unlawful disclosure of Confidential Information for the purposes of this clause 11.

12. Data Protection Arrangements

- 12.1. The parties acknowledge that the factual arrangement between them dictates the classification of each party in respect of the Data Protection Legislation. However, the parties anticipate that the Customer shall act as a controller and Clearview shall act as a processor and in any such case:
 - 12.1.1. Clearview shall be a controller where it is collecting and using personal data in relation to the management of its Customer accounts; and
 - 12.1.2. Clearview shall be a processor where it is processing personal data in relation to the Data Processing Particulars in connection with performing its obligations under the Contract.
- 12.2. Clearview shall comply with, and shall procure that any Affiliates comply with, the provisions of the Data Protection Legislation in relation to all Customer Personal Data that is processed by it in connection with the Contract.
- 12.3. Clearview shall be permitted to appoint sub-contractors, and to disclose personal data to them for processing in accordance with the Contract, provided always that the sub-contractor's right to process the personal data terminates automatically on expiry or termination (for whatever reason) of the Contract for which the sub-contractor was engaged.

13. Data Processing Obligations

- 13.1. To the extent that Clearview is acting as a Processor for and on behalf of the Customer, it shall:
 - 13.1.1. only process the Customer Personal Data on the Customer's documented instructions except insofar as required to do so by Data Protection Legislation
 - 13.1.2. inform the Customer on becoming aware of:
 - 13.1.2.1. any legal requirement that requires Clearview to process Customer Personal Data otherwise than on the Customer's documented instructions, unless Applicable Laws prohibit such information on important grounds of public interest; or
 - 13.1.2.2. any instruction from the Customer in relation to the processing of personal data which, in Clearview's reasonable opinion, infringes Data Protection Legislation;
 - 13.1.3. taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk to the rights and freedoms of natural persons, and in particular the risks from accidental or unlawful destruction, loss, alteration, unauthorised disclosure or, or access to personal data, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to the risk;
 - 13.1.4. ensure that its employees, and any other persons with access to Customer Personal Data are made aware of their data protection and security obligations and are subject to binding obligations of confidentiality;
 - 13.1.5. not engage another person to process any Customer Personal Data (a "sub-processor") without the Customer's prior specific or general written authorisation, and in the case of a general written authorisation, inform the Customer of any intended changes concerning the addition or replacement of any sub-processor and allow the Customer reasonable opportunity to object to such change;
 - 13.1.6. ensure that any sub-processor is engaged on terms equivalent to those which Clearview itself is subject under this clause 13 (and any other confidentiality or similar obligations contained in the Contract), and provides sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of Data Protection Legislation;
 - 13.1.7. where a sub-processor fails to fulfil its data protection or confidentiality obligations, remain fully liable to the Customer for the performance of (or failure to perform) those obligations;
 - 13.1.8. if a data subject makes a request relating to the exercise of his or her legal rights in relation to personal data, at the Customer's reasonable cost, provide the Customer with any information and assistance reasonably required by the Customer in order to respond to the request;
 - 13.1.9. if it becomes aware of a personal data breach relation to any Customer Personal Data, notify the Customer immediately upon becoming aware of the breach and thereafter provide details of the nature of the personal data breach, and provide the Customer with such information and assistance as it requires in relation to the personal data breach;
 - 13.1.10. taking into account the nature of the processing and the information available to Clearview, at the Customer's cost, provide the Customer with such information and assistance as the Customer reasonably requires in order to carry out any privacy impact assessments, consult with a supervisory authority prior to processing, or meet any obligations under Data Protection legislation which derive from such activities;
 - 13.1.11. upon the termination of the Contract for any reason, after completing any processing of personal data on the Customer's behalf, or on the Customer's written request, delete or return all such personal data (and any copies of the same) unless Clearview is required to store such copies to comply with a requirement imposed by Applicable Laws, and where Clearview is required to delete personal data, to the extent that it is not practical to do so immediately, Clearview will do so as soon

as possible, and in the meantime shall ensure appropriate safeguards are put in place and the data is not retained for a longer period than is appropriate;

- 13.1.12. not transfer any of the Customer's personal data to a third country or international organisation without having the Customer's prior written consent to that transfer and either (i) the UK Government having decided that country or organisation ensures adequate protection under article 45; (ii) having other appropriate safeguards in place as set out in article 46; (iii) one or more of the derogations in article 49 applies; or the transfer is made in compliance with standard contractual clauses; and
- 13.1.13. subject to the Customer providing appropriate confidentiality undertakings, make available to the Customer all assistance and information necessary to demonstrate compliance with article 28, save that this shall not require Clearview to disclose or permit access to any of its (or any third party's) confidential or commercially sensitive information,
- 13.2. and the Customer shall ensure that it has all necessary appropriate consents and notices in place to enable the lawful transfer of the Customer Personal Data to Clearview and/or lawful collection of the Customer Personal Data by Clearview on behalf of the Customer for the duration and purposes of the Contract.
- 13.3. Where the Customer makes any such request under clause 13.1.1 to delete or return personal data prior to the termination of the Contract, and it serves to hinder or prevent Clearview's obligations thereunder, the Contract shall continue despite such reduced performance, and the Charges which have been paid or which will become payable shall not be affected thereby.

14. Exclusions and Limitation of Liability

- 14.1. Where the Contracting Location is Germany, please refer to Schedule 4 of these Conditions. This clause 14 shall not apply.
- 14.2. All representations, warranties or terms (whether written or oral, express or implied by statute, common law or otherwise) apart from those expressly set out in these Conditions are hereby excluded. In particular, but without prejudice to the generality of the foregoing, Clearview makes no representation or gives any warranty (whether express or implied, statutory and/or otherwise), and will have no liability, regarding the fitness of the Hardware, Services or Software for any purpose, whether or not such purpose is disclosed to Clearview.
- 14.3. In the defence or settlement of any claim, Clearview may procure the right for the Customer to continue using Clearview Software or Clearview Services, replace or modify Clearview Software or Clearview Services so that they become non-infringing or, if such remedies are not reasonably available, terminate the Contract on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer. In no event shall Clearview, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on: (a) a modification of Clearview Software or Clearview Services by anyone other than Clearview; (b) the Customer's use of Clearview Software or Clearview Services in a manner contrary to the instructions given to the Customer by Clearview; or (c) the Customer's use of Clearview Software or Clearview Services after notice of the alleged or actual infringement from Clearview or any appropriate authority. The foregoing states the Customer's sole and exclusive rights and remedies, and Clearview's (including its employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.
- 14.4. The following provisions set out the entire financial liability of either party (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the other in respect of:
 - 14.4.1. any breach of these Conditions howsoever arising; and
 - 14.4.2. any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) or breach of statutory duty arising under or in connection with the Contract.
- 14.5. Nothing in these Conditions shall limit or exclude Clearview's or the Customer's liability for:
 - 14.5.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or sub-contractors;
 - 14.5.2. fraud or fraudulent misrepresentation; and
 - 14.5.3. any other liability which cannot be limited or excluded by Applicable Law.
- 14.6. Subject to clause 14.5, Clearview's liability in respect of loss or damage under the Contract in any 12 month period shall not exceed a sum equal to the total Charges paid and payable to Clearview by the Customer under the Contract during the period of 12 months immediately prior to the event giving rise to the claim.
- 14.7. Subject to clause 14.5, in no event will Clearview be liable to the Customer (whether in contract, tort, negligence or otherwise):
 - 14.7.1. for the Third-Party Software beyond compliance with clauses 4.2 and 4.3;
 - 14.7.2. for any loss of revenue, use, anticipated savings, data, goodwill or opportunity or damage to reputation;
 - 14.7.3. for any indirect, special or consequential loss or damage;
 - 14.7.4. to the extent that any delay in performing or failure to perform Clearview's obligations is due to a failure by the Customer to perform its own obligations under the Contract or if delay results from a failure by the Customer to comply with reasonable requests by Clearview for instructions, information or action required by it to perform its obligations within a reasonable time; or
 - 14.7.5. for the consequences of any other acts or omissions of the Customer or the Customer Personnel.

15. Indemnification

- 15.1. The Customer hereby indemnifies Clearview from and against any and all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Clearview in connection with:
 - 15.1.1. Clearview's storage/handling of any Customer Personal Data in accordance with its obligations under the Contract;

- 15.1.2. any failure of the Customer to obtain appropriate licences and/or consents in accordance with its obligations under these Conditions or any subsequent revocation or non-renewal of any such licence and/or permit;
 - 15.1.3. any failure of the Customer to ensure its compliance with Applicable Law in accordance with its obligations under these Conditions;
 - 15.1.4. any use of the Hardware, Services or Software by the Customer other than as envisaged under the Contract; and
 - 15.1.5. the Customer's breach of any End User Agreement.
- 15.2. Clearview shall defend the Customer, its officers, directors and employees against any claim that Clearview Software or Clearview Services infringe any United Kingdom patent effective as of the Start Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts finally awarded against the Customer in judgment or settlement of such claims, provided that:
- 15.2.1. Clearview is given prompt notice of any such claim;
 - 15.2.2. the claim does not result from the Customer's failure to install an update or New Version of any Clearview Software as soon as is practicable following its release by Clearview;
 - 15.2.3. the Customer provides reasonable co-operation to Clearview in the defence and settlement of such claim (at Clearview's expense, provided such expenses are reasonable and can be evidenced to Clearview's satisfaction); and
 - 15.2.4. Clearview is given sole authority to defend or settle the claim.

16. Term and Termination

- 16.1. The Contract shall commence on the Start Date and continue for the Initial Term stated in the relevant Quote (or until delivery of the Hardware/Software and performance of Services has been completed) and each Term Extension (the "Term") unless terminated in accordance with its terms.
- 16.2. A Term Extension shall automatically apply unless and until notice is given by either party to the other not to extend, in which case the Contract shall expire at the end of the current Term. Such notice to be given not later than 30 days from the end of the Term.
- 16.3. Without prejudicing any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 16.3.1. the other party fails to pay any amount due under the Contract on the Due Date for payment and remains in default not less than 10 Business Days after being notified in writing to make such payment;
 - 16.3.2. the other party commits a material breach of any other term of the Contract which breach is irremediable or (if remediable) fails to remedy it within a period of 10 Business Days after being notified in writing to do so (this clause 16.3.2 only applies if Service Credits are not applicable); or
 - 16.3.3. the other party repeatedly breaches any of the terms of the Contract 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 under the Contract; or
 - 16.3.4. the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 16.4. Without prejudicing any other right or remedy available to it, Clearview may terminate the Contract should an Insolvency Event occur.
- 16.5. Without prejudicing any other right or remedy available to it, Clearview may terminate the Contract with immediate effect by giving written notice to the Customer if there is a change of control of the Customer (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 16.5.1. Where the Contracting Location is Germany the following shall apply to the exclusion of clause 16.5:
 - 16.5.1.1. Clearview is entitled to extraordinary termination for good cause within the sense of clause 16.3 if the Customer is subject to a significant change in its ownership or management relationships ('change of control').
- 16.6. Without prejudicing any right to terminate which Clearview may have, Clearview will be entitled to suspend any Services without notice if:
- 16.6.1. there is a Default on the part of the Customer; or
 - 16.6.2. any of the events set out in clauses 16.3, 16.4 or 16.6 occur in relation to the Customer.
- 16.7. Clearview may rely on the suspension to relieve it from the performance of any of its obligations in each case to the extent the suspension prevents or delays the performance by Clearview of any of its obligations and Clearview shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from any failure or delay by Clearview to perform any of its obligations as set out in this clause.
- 16.8. Where Clearview acquires the right to terminate or suspend Services under the Contract pursuant to this clause 16, such right shall extend to any other contracts concluded between the parties incorporating these Conditions, whether prior or subsequent to the Contract.

17. Consequences of Termination

- 17.1. On termination for any reason:
- 17.1.1. all rights granted to the Customer under the Contract shall cease;
 - 17.1.2. for the avoidance of doubt, all rights granted to the Customer under any End User Agreement shall continue in accordance with the terms of that agreement;

- 17.1.3. the Customer shall immediately pay any sums due to Clearview (including sums on a time and materials basis for any work in progress) without set off or deduction;
- 17.1.4. subject to Clearview's obligations with respect to any other Contract which remains in force, each party shall return and make no further use of any equipment, property, documentation and other items (and all copies of them) belonging to the other party; and
- 17.1.5. provided all sums due to Clearview's Group from the Customer's Group have been paid, Clearview shall make available to the Customer a copy of all Customer Content in a commonly-readable electronic format for a period of no more than 6 days following termination. After such period, Clearview may permanently delete all Customer Content residing on its systems.

18. Inspection

- 18.1. The Customer shall permit Clearview to inspect and have access to any premises (and to the computer equipment located there) at or on which Software is being kept or used, and have access to any records kept in connection with the licence of Software under clause 7, for the purposes of ensuring that the Customer is complying with the terms of this licence, provided that Clearview provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times. This right shall continue beyond termination/expiry to enable Clearview to verify that use of Software has ceased.

19. Assignment

- 19.1. The Customer may not assign, sub-contract, sub-license, charge or otherwise deal in any other manner with all or any of its rights or obligations under the Contract, nor provide any of the Services directly or indirectly to third parties, without the consent of Clearview, such consent not to be unreasonably withheld or delayed. The Customer shall not allow any of its rights under the Contract to become the subject of any charge, lien or encumbrance.
- 19.2. Clearview may freely assign, sub-contract, charge or otherwise deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Customer.
- 19.3. The Customer agrees that it shall co-operate and undertake all matters at Clearview's cost and expense that are necessary to novate or assign any Contract or any parts thereof to any third party when requested to do so by the Customer.

20. Force Majeure

- 20.1. Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control, including strikes; lock-outs or other industrial disputes (except with respect to that party's own employees); acts of God; war; riot; civil commotion; pandemic or epidemic; compliance with any law or governmental order, rule, regulation or direction; accident; fire, flood, or storm; in each case whether or not foreseeable ("**Force Majeure Event**").
- 20.2. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for 2 months, the party not affected may terminate the Contract by giving 10 Business Days' written notice to the other party.

21. Notices

- 21.1. Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
 - 21.1.1. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - 21.1.2. sent by email to the email addresses referenced in the Quote.
- 21.2. Any notice shall be deemed to have been received:
 - 21.2.1. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
 - 21.2.2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
 - 21.2.3. if sent by email, at the time of receipt of a transmission delivery receipt or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 21.2.3, business hours means 9.00 am to 5.00 pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 21.3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

22. Dispute Resolution

- 22.1. If a dispute arises out of or in connection with these Conditions or the performance, validity or enforceability of the Contract (a "**Dispute**") then the parties shall follow the procedure set out in this clause 22:
 - 22.1.1. either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (a "**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, the parties shall attempt in good faith to resolve the Dispute; and
 - 22.1.2. if the parties are for any reason unable to resolve the Dispute within 20 Business Days from service of the Dispute Notice, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve

notice in writing (an “**ADR Notice**”) to the other party to the Dispute, requesting mediation. A copy of the ADR Notice should be sent to CEDR Solve. The mediation will start not later than 10 Business Days after the date of the ADR Notice.

- 22.2. If the Dispute is not resolved within 1 month of the mediator’s appointment, then either party may commence court proceedings, but provided that nothing in this clause 22.2 shall prevent either party from either continuing with any means of alternative dispute resolution as may be agreed in writing from time to time, or seeking an injunction or other interim relief at any time if it reasonably believes such action is necessary to prevent irreparable damage.

23. Change Procedure

- 23.1. Where a party identifies a need to change the Contract, they may at any time request such a change.
- 23.2. The party proposing the change shall notify the other party in writing specifying in as much detail as is reasonably practicable the nature of the requested change.
- 23.3. Where the Customer has requested the change, Clearview shall, as soon as reasonably practicable, provide a written estimate to the Customer of:
- 23.3.1. the likely time required to implement the change;
 - 23.3.2. any necessary variations to the Charges arising from the change;
 - 23.3.3. any necessary variations to the resources of either party arising from the change; and
 - 23.3.4. any other impact of the change on the hardware/software/services provided under the Contract.

24. General

- 24.1. Entire agreement
- 24.1.1. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
 - 24.1.2. Neither party shall have any remedy in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Conditions. Neither party shall have any claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 24.2. Third party rights: A natural or legal person who is not a party to the Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms. This clause does not alter any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 24.2.1. Clause 24.2 shall not apply where the Contracting Location is Germany.
- 24.3. Variations: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by Clearview. Clearview may vary these Conditions from time to time on giving the Customer at least 30 days’ notice in writing. For the avoidance of doubt, Clearview hereby rejects any terms and conditions that the Customer and/or a third party may seek to impose, for example, in its order forms, terms and conditions of purchase or similar.
- 24.4. Waiver: A waiver of any right is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or Default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 24.5. Severance
- 24.5.1. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract.
 - 24.5.2. If any provision or part-provision of the Contract is deemed deleted under clause 24.5.1 above, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 24.6. No partnership or agency: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the parties, nor constitute any party the agent of the other party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 24.7. Governing law and jurisdiction: The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of Contracting Location. Each party irrevocably agrees that the courts of the Jurisdiction shall have non-exclusive jurisdiction to settle any such dispute or claim.

SCHEDULE 1 – DEFINITIONS AND INTERPRETATION**1. Interpretation**

In these Conditions: (i) **person** includes a natural person, corporate or unincorporated body; (ii) a reference to Clearview or Customer includes its personal representatives, successors and permitted assigns; (iii) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted and includes any subordinate legislation; (iv) any phrase introduced by the terms **including** or **include** shall be illustrative and shall not limit the sense of the preceding words; (v) a reference to **writing** or **written** includes emails but excludes faxes; (vi) the terms 'personal data', 'data subject', 'processor', 'controller', 'processing', 'personal data breach', 'pseudonymisation', 'special categories of data' and 'supervisory authority' have the meanings set out in Data Protection Law; and (vii) the following definitions apply:

"Affiliates"	each agent, employee, contractor or sub-contractor of a party or the party's Group.
"Acceptance Period"	as defined in clause 6.6.
"Applicable Law"	the laws of England and Wales, together with any other mandatory laws, regulations, regulatory policies, guidelines or industry codes which apply to the performance of each party's obligations under the Contract.
"Authorised Users"	those employees and independent contractors of the Customer who are entitled to use the Subscription Services under the Contract.
"Base Rate"	where the Contracting Location is: <ul style="list-style-type: none"> (i) the United Kingdom, the current base lending rate of Barclays PLC; (ii) Germany, the Basiszinssatz as set by Deutsche Bundesbank.
"Business Day"	a day other than a Saturday, Sunday or public holiday in England.
"Change Procedure"	the procedure detailed in clause 23.
"Change Request"	a request to change the terms of the Contract, as made in accordance with the Change Procedure.
"Charges"	the charges payable by the Customer to Clearview, as set out in the Quote.
"Clearview Personnel"	Clearview's employees, directors and agents, together with employees, directors and agents of any contractor undertaking activities on behalf of Clearview in relation to the performance of its obligations under the Contract.
"Clearview Software"	any Clearview Standard Software, the Custom Software and the Software Development Tools referred to in the Quote and all subsequent amendments and updates to, or new versions of, such software as may be licenced to the Customer under the Contract, excluding any Open-Source Software.
"Clearview Standard Software"	any software described as such in the Quote, which is licensed directly from Clearview to the Customer pursuant to clause 3 and is provided (or made available) to the Customer without modification, together with any incorporated Open-Source Software.
"Confidential Information"	information of commercial value, in whatever form or medium, disclosed by a party to the other party, including commercial or technical know-how, technology, information pertaining to business operations and strategies, information pertaining to clients, pricing and marketing information relating to the business of either party, information which is marked as confidential, or information which ought reasonably to be considered confidential in light of the nature of the information and/or circumstances of its disclosure, but excluding information that: <ul style="list-style-type: none"> (i) is or becomes publicly known other than through any act or omission of the receiving party; (ii) was in the other party's lawful possession before the disclosure; (iii) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or (iv) is independently developed by the receiving party, as shown by written evidence.
"Contract"	the contract (as defined in clause 1.2) between the Customer and Clearview relating to one or more of the following: (i) the supply of Hardware; (ii) the licensing of Clearview Software; (iii) the supply of Clearview Services; and/or (iv) the provision of Third-Party Software, and governed by these Conditions.
"Contracting Location"	the country of company registration of the Clearview group company entering into the Contract.
"Custom Software"	software programmes developed by Clearview or modified from any Clearview Standard Software by Clearview, in either case specifically for the Customer, as set out in the Quote, including any incorporated Open-Source Software.
"Customer Content"	any data, documents, text, drawings, diagrams, images or sounds (together with any database made up of any of these), embodied in any medium, that are provided to Clearview by or on behalf of the Customer, in order to perform its obligations pursuant to the Contract.
"Customer Materials"	any and all materials, other equipment (including cabling, network interfaces, power and power adapters) and software necessary for Clearview to perform its obligations pursuant to the Contract, save to the

	extent the same is expressed to be supplied by Clearview pursuant to the Contract.
“Customer Personal Data”	any personal data disclosed by the Customer to Clearview or collected by Clearview on the Customer’s instructions in connection with the Contract.
“Customer Personnel”	employees, directors and agents of the Customer, together with employees, directors and agents of any contractor undertaking activities on behalf of the Customer who are not Clearview Personnel.
“Delivery Location”	the relevant location identified in the Quote (where applicable).
“Data Processing Particulars”	the data processing particulars set out in Proposals and/or a Quote.
“Data Protection Legislation”	any law, statute, regulation, rule or other binding restriction regarding the protection of individuals with regards to the Processing of their Personal Data to which a party is subject, including the DPA and the GDPR (to the extent it remains applicable) and any code of practice or guidance published by the Information Commissioner’s Office from time to time.
“Default”	any act or omission of a party, or failure by a party to perform a relevant obligation under the Contract.
“Defect”	an error in the applicable software that causes it to fail to operate materially in accordance with its Software Specification/Documentation and which Clearview is able to replicate (and therefore evaluate/diagnose).
“Documentation”	any operating manuals, user instruction manuals/guides, technical literature and all other related materials in human-readable or machine-readable forms supplied by Clearview as specified in the Quote.
“DPA”	the Data Protection Act 2018.
“Due Date”	in respect of a payment under the Contract, the date on which such payment is due pursuant to these Conditions.
“Effective Date”	in respect of the provision of the Hardware and/or a particular Service or licence of Software, the effective date for the same specified in the Quote, or if none is specified, the effective date for the Contract, or if none is specified, the Start Date of the Contract.
“End User Agreement”	in respect of: <ul style="list-style-type: none"> (i) Third-Party Software, the end user agreement under which the Provider agrees to licence the Third-Party Software to the Customer, referred to in the Quote or required to be accepted by the Provider when downloading/using the Third-Party Software; and (ii) any Open-Source Software, the specific licence under which the relevant Open-Source Software is distributed, (as varied from time to time in accordance with the terms of such End User Agreement).
“Excluded Causes”	any of the following: <ul style="list-style-type: none"> (i) misuse, incorrect use of or damage from whatever cause (other than any act or omission by Clearview), including failure or fluctuation of electrical power; (ii) failure to maintain the necessary environmental conditions for use; (iii) use in combination with any equipment or software not provided/approved in writing by Clearview; (iv) use in combination with equipment or software which suffers a fault; (v) relocation or installation by the Customer or any Third-Party; (vi) any act or omission of a Third-Party; (vii) any breach of the Customer’s obligations under the Contract howsoever arising; (viii) any modification not authorised by Clearview; (ix) operator error; or (x) any other excluded causes set out in the Quote.
“Excluded Maintenance”	any Maintenance Services necessary as a result of any of the Excluded Causes.
“Force Majeure Event”	as defined in clause 20.1.
“Group”	each and every entity that directly or indirectly controls, is controlled by, or is under common control with a party, for so long as such control exists. In the case of companies and corporations, control means beneficial ownership of more than 50% of the voting stock, shares, interest or equity in an entity; in the case of any other legal entity, “control” and “controlled” shall exist through the ability to directly or indirectly control the management and/or business of the legal entity.
“GDPR”	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the Processing of Personal Data and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1, 4.5.2016, together with any implementation of the above into UK law. Any reference to “articles” are references to the GDPR.
“Hardware”	hardware purchased by the Customer pursuant to the Contract, as set out in the Quote.
“Hardware Specification”	the specification for the applicable Hardware, as set out (or referred to) in the Quote (including in any applicable statement of work).

“Hardware Usage Restrictions”	the usage restrictions for the Hardware, as set out in the applicable Hardware Specification.
“Included Corrective Maintenance”	maintenance services expressly described within the Services Specification, to be provided during the Maintenance Support Hours.
“Index”	<p>where the Contracting Location is:</p> <ul style="list-style-type: none">(i) the United Kingdom, the Consumer Prices Index for the UK, as determined by the Office for National Statistics;(ii) Germany, the IT services (DL-IT) of the German Federal Statistical Office, there in each case, as far as relevant, the individual indices DL-IT 01 (software and software licences), DL-IT 02 (IT consulting and support), DL-IT 03 (software development and programming) and DL-IB (IT consulting and support (incl. from management consulting), available at www.destatis.de; <p>or where the Index ceases to exist, any other relevant index as provided by the Contracting Location’s national statistics office.</p>
“Initial Term”	the period of time described as such in the Quote.
“Insolvency Event”	(a) the Customer 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 under section 123 of the Insolvency Act 1986 or is deemed either unable to pay its debts or as having no reasonable prospect of so doing within the meaning of section 268 of the Insolvency Act 1986 or (if a partnership) has any partner to whom any of the above applies; (b) the Customer starts negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for/enters into any arrangement with its creditors; (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for/in connection with the winding up of the Customer; (d) the Customer is the subject of a bankruptcy petition or order; (e) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other process is levied or enforced on or sued against, the whole or part of its assets which is not discharged within 14 days; (f) an application is made to court, or an order is made to appoint an administrator, or notice of intention to appoint an administrator is given or an administrator is appointed over the Customer; (g) a floating charge holder over the assets of the Customer becomes entitled to appoint or has appointed an administrative receiver; (h) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer; (i) any event analogous to those mentioned in (a)-(h) above in another jurisdiction.
“Intellectual Property Rights”	patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use and protect the confidentiality of confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
“Interest Rate”	<p>where the Contracting Location is:</p> <ul style="list-style-type: none">(i) the United Kingdom, 8%;(ii) Germany, 8%
“Jurisdiction”	<p>where the Contracting Location is:</p> <ul style="list-style-type: none">(i) the United Kingdom, England and Wales;(ii) Germany, Munich, Germany or the place of performance of the delivery obligation or at the Customer’s general place of jurisdiction.
“Location”	the location for performance of the applicable Services set out in the Quote (if any), or any other location agreed between the parties in writing from time to time.
“Maintenance Services”	those software and/or hardware maintenance services detailed in the Quote (if any).
“Maintenance Services Specification”	the description of the maintenance services set out in the Quote.
“Maintenance Support Hours”	the maintenance support hours specified in the Quote or if no hours are specified, 9.00am to 5.30pm GMT (or BST, as applicable), each Business Day.
“New Release”	a new release of all or any part of the Software suitable for use by the Customer in which previously identified faults have been remedied or to which any modification, enhancement, revision or update has been made, or to which a further function or functions have been added.
“New Version”	a new version of Software which provides additional or improved functionality or performance.
“Normal Business Hours”	9.00am to 5.30pm GMT (or BST, as applicable), each Business Day.

“Open-Source Software”	any software licensed under any form of open-source licence meeting the Open Source Initiative’s Open Source Definition (http://www.opensource.org/docs/definition.php) or any libraries or code licensed from time to time under the General Public Licence (as described by the Free Software Foundation and set out at http://www.gnu.org/licenses/gpl.html), or anything similar, included or used in, or in the development of, Clearview Software, or with which Clearview Software is compiled or to which it is linked.
“Order”	the Customer’s agreement to the terms of a Quote, which may include signing and returning a Quote or a communication from the Customer to Clearview agreeing to the terms of the Quote (within the period during which the terms of the Quote remain valid).
“Out of Hours Maintenance”	maintenance performed outside of the Maintenance Support Hours.
“Professional Services”	has the meaning given to it in clause 6.2.
“Provider”	the third-party provider of the applicable Third-Party Software as detailed in the Quote.
“Quote”	Clearview’s written quotation relating to one or more of the following: <ul style="list-style-type: none">(i) the supply of Hardware;(ii) the supply of Services;(iii) the licensing of Clearview Software; and/or the licensing of Third-Party Software.
“Secured Claims”	As defined in clause 2.10.4.
“Security Requirements”	the requirements regarding the security of the Personal Data, as set out in the Data Protection Legislation (including, in particular, the seventh data protection principle of the DPA and/or the measures set out in Article 32(1) of the GDPR (taking due account of the matters described in Article 32(2) of the GDPR) as applicable.
“Service Credits”	the sums attributable to a failure of the Support Service Level, as set out in the Quote or added by a change pursuant to clause 24.3.
“Service Credit Limit”	in respect of a Service to be provided by Clearview pursuant to the Contract, the limit on the accrual of Service Credits (if any), as set out in the Quote or added by a change pursuant to clause 24.3.
“Service Levels”	in respect of a Service to be provided by Clearview pursuant to the Contract, the service levels for the applicable Services (if any), as set out in the Quote or added by a change pursuant to clause 24.3.
“Services”	the services to be supplied by Clearview to the Customer under the Contract, as detailed in the Quote.
“Services Specification”	in respect of Services, the specification for the same as set out (or referred to) in the Quote (including in any applicable statement of work).
“Service Term”	the term for the provision of the applicable Services (or where different elements of the Services are to be provided for differing terms, the term for that element), as set out in the Quote.
“Software”	any Clearview Software and/or any Third-Party Software.
“Software Development Services”	those software development services detailed in the Quote, if any.
“Software Development Tools”	any tools and know-how developed, and methods invented, by Clearview in the course of or as a result of carrying out the Software Development Services, whether or not developed or invented specifically or used exclusively to carry out the Software Development Services.
“Software Specification”	the specification of the applicable Software, as detailed in the Quote.
“Sourcing Issue”	an inability on the part of Clearview to source particular materials or resources (including Clearview Personnel) on terms similar or identical to those available at the Effective Date (including due to exchange rate fluctuations, increases in taxes or duties) or a change in Applicable Law.
“Standard Rates”	Clearview’s standard rates for Clearview Services as made available by Clearview from time to time.
“Start Date”	as defined in clause 1.2.
“Subject Access Request”	an actual or purported subject access request or notice or complaint from (or on behalf of) a Data Subject exercising his rights under the Data Protection Legislation.
“Supported Hardware”	that hardware listed as supported hardware in the Quote.
“Supported Software”	those software programs listed as supported software in the Quote and all subsequent amendments and updates to and New Releases of such programmes made available to the Customer.
“Term”	the period described as such in clause 16.1.
“Term Extension”	each extension to the Term, as detailed in the Quote.
“Third-Party”	a person other than Clearview Personnel or the Customer.
“Third-Party Software”	the software to be provided by the applicable Provider pursuant to the applicable End User Agreement, as set out in the Quote.
“Virus”	any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

SCHEDULE 4 – GERMAN WARRANTIES AND LIABILITY

2. If anything in this Schedule contradicts with any other clause in these Conditions and the Contracting Location is Germany, this Schedule shall take precedence.
3. The following provisions shall apply with regard to the Customer's warranty claims („Gewährleistung“) and Clearview's liability („Haftung“).
 - 3.1. With regard to the Customer's claims for defects (warranty, „Gewährleistung“) when purchasing hardware, the following shall apply:
 - 3.1.1. In the event of material defects and defects of title (including incorrect and short delivery as well as improper assembly/installation or defective instructions) the statutory provisions shall apply to the Customer's rights, unless otherwise stipulated below. The statutory provisions on the sale of consumer Hardware (§§ 474 et seq. BGB, German Civil Code) and the rights of the Customer arising from separately issued guarantees, in particular on the part of the manufacturer, remain unaffected.
 - 3.1.2. The basis of Clearview's liability for defects is above all the agreement reached on condition (including accessories and instructions). All product descriptions and manufacturer's specifications which are subject of the individual contract or which were made public by Clearview at the time of conclusion of the contract shall be deemed to be an agreement on condition in this sense. Insofar as no such agreement exists, it is to be assessed in accordance with the statutory regulation whether a defect exists or not (§ 434 (3) BGB, German Civil Code).
 - 3.1.3. Clearview is generally not liable for defects that the Customer is aware of or is grossly negligent in not being aware of when the contract is concluded (§ 442 BGB, German Civil Code). Furthermore, the Customer's claims for defects presuppose that he has complied with his statutory duties of inspection and notification (§§ 377, 381 HGB, German Commercial Code). In the case of Hardware intended for installation or other further processing, an inspection must always be carried out immediately prior to processing. If a defect is discovered during delivery, inspection or at any later point in time, Clearview must be notified immediately in writing (e.g. e-mail). In any case, obvious defects must be reported in text form within 10 working days of delivery together with a detailed description thereof and defects not recognizable during the inspection within the same period from discovery. If the Customer fails to carry out the proper inspection and/or report defects, our liability for the defect not reported or not reported on time or not reported properly shall be excluded in accordance with the statutory provisions. In the case of Hardware intended for assembly, mounting or installation, this shall also apply if the defect only became apparent after the corresponding processing as a result of a breach of one of these obligations; in this case, the Customer shall in particular have no claims for reimbursement of corresponding costs ('removal and installation costs').
 - 3.1.4. If the delivered good is defective, Clearview can initially choose whether Clearview will provide subsequent fulfilment by remedying the defect (rectification) or by delivering a defect-free product (replacement delivery). If the type of subsequent fulfilment chosen by Clearview is unreasonable for the Customer in the individual case, the Customer can reject it. Clearview's right to refuse subsequent fulfilment under the legal requirements remains unaffected. Clearview is entitled to make the subsequent fulfilment owed dependent on the Customer paying the purchase price due. However, the Customer is entitled to retain a reasonable part of the purchase price in relation to the defect.
 - 3.1.5. The Customer must give Clearview the time and opportunity required for the subsequent fulfilment owed, in particular to hand over the rejected Hardware for inspection purposes. In the event of a replacement delivery, the Customer must return the defective item to Clearview at Clearview's request in accordance with the statutory provisions; however, the Customer has no right to return the good. The subsequent fulfilment includes neither the dismantling, removal or disassembly of the defective good nor the installation, mounting or installation of a defect-free good if we were not originally obliged to perform these services; claims of the purchaser for reimbursement of corresponding costs ("removal and installation costs") remain unaffected. Insofar as the parties have an agreement on conditions of the Hardware, objective requirements for the Hardware shall not be applied. In case of customized products for Customer a defect cannot be based on the fact that the product does not meet objective requirements (such as the usual condition).
 - 3.1.6. Clearview shall bear or reimburse the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labor and material costs as well as any removal and installation costs in accordance with the statutory provisions and these Conditions if a defect actually exists. Otherwise, Clearview may claim compensation from the Customer for the costs incurred as a result of the unjustified request to remedy the defect if the Customer knew or could have recognised that there was in fact no defect.
 - 3.1.7. If a reasonable deadline to be set by the Customer for subsequent fulfilment has expired unsuccessfully or is dispensable in accordance with the statutory provisions, the Customer may withdraw from the contract or reduce the price in accordance with the statutory provisions. In the case of an insignificant defect, however, there is no right of cancellation.
 - 3.1.8. Claims by the Customer for reimbursement of expenses pursuant to § 445a (1) BGB (German Civil Code) shall be excluded unless the last contract in the supply chain is a consumer Hardware purchase (§§ 478, 474 BGB,

German Civil Code) or a consumer contract for the provision of digital products (§§ 445c sentence 2, 327 (5), 327u BGB, German Civil Code).

- 3.1.9. Claims of the Customer for damages or compensation for futile expenses (§ 284 BGB, German Civil Code) shall, also in the event of a defect, only exist in accordance with paragraph 2.5 (Liability) and 2.6 (Statute of limitations).
- 3.2. With regard to the Customer's claims for defects (warranty, „Gewährleistung“) when purchasing Clearview software, the following shall apply:
- 3.2.1. The software provided by Clearview shall be substantially in accordance with the Software Specification / Description. Rights in case of defects shall be excluded in the case of minor or immaterial deviations from the agreed or assumed characteristics nor in the case of just slight impairment of use. Product descriptions shall not be deemed as guarantee unless separately agreed in writing. In respect of updates, upgrades and the delivery of new versions, Customer's rights in case of defects shall be limited to the new features of the update, upgrade or new version compared to the previous version release.
- 3.2.2. Clearview may refuse to remedy defects or deliver replacements, until the Customer has paid the agreed fees to Clearview, less an amount which corresponds to the economic value of the defect.
- 3.2.3. If Customer claims for rectification because of a defect, Clearview has the right to choose between rectification, replacement delivery or replacement of services. If the defect is not cured within a first time limit and Customer has set Clearview a reasonable second time limit without success or if a reasonable number of attempts to remedy, replacement deliveries or replacement services are unsuccessful, then Customer may, subject to the statutory prerequisites, at its option withdraw from the contract or reduce the price and claim damages or reimbursement of costs. The remedying of the defect may also take place through the delivery or installation of a new program version or a work-around. If the defect does not or not substantially impair the functionality, then Clearview is entitled, to the exclusion of further rights in case of defects, to remedy the defect by delivering a new version or an update as part of its version, update and upgrade planning.
- 3.2.4. To the extent that there are defects in title, Clearview is (a) entitled at its option to either (i) take legitimate measures to remove the third party rights, which impair the contractual use of the Clearview-Software, or (ii) remedy the enforcement of such claims, or (iii) change or replace the Clearview-Software in such a manner, that it no longer infringes the rights of third parties, provided and to the extent that this does not substantially impair the warranted functionality of the Clearview-Software
- 3.2.5. Defects must be notified in writing (e.g. e-mail) with a comprehensible description of the error symptoms, as far as possible evidenced by written recordings, hard copies or other documents demonstrating the defects. The notification of the defect should enable the reproduction of the error. Furthermore, the Customer's claims for defects presuppose that he has complied with his statutory duties of inspection and notification (§§ 377, 381 HGB, German Commercial Code).
- 3.2.6. There is no warranty claim for software copies not supplied by Clearview or not in compliance with the license regulations. The same will apply to software operated on a computer system not having the minimum hardware configuration and software installations in accordance with the Software Specification / Description. The same will also apply where a defect is due to an alteration, the improper use or repair of the product by the Customer or a third party without the consent of Clearview or where the products were not installed, configured, operated and maintained in compliance with the relevant applicable statutory requirements and guidelines.
- 3.2.7. If the defect is caused by the defective products of a supplier and the supplier does not act as an assistant in performance of Clearview, rather Clearview is merely passing on a third party product to the Customer, then the Customer's rights in case of defects shall at first hand be limited to the assignment of Clearview's rights in case of defects against its supplier. This shall not apply, when the defect is caused by improper handling of the supplier's product for which the Customer is responsible. If the Customer is unable to assert his rights in case of defects against the supplier out of court, Clearview's subsidiary liability for the Customer's rights in case of defects shall remain unaffected.
- 3.2.8. Paragraphs 2.1.8 and 2.1.9 shall apply accordingly.
- 3.3. With regard to the Customer's claims for defects (warranty, „Gewährleistung“) when using or contracting services (including Professional Services and Maintenance Services), the following shall apply:
- 3.3.1. Insofar as the services rendered by Clearview are services within the sense of §§ 631 et seq. BGB (German Civil Code), Clearview warrants that the services are free of material defects and defects of title upon transfer of risk.
- 3.3.2. Insofar as the services rendered by Clearview are services within the sense of §§ 631 et seq. BGB, clause 24.6 shall apply.
- 3.3.3. Paragraphs 2.2.1 to 2.2.8 inclusive shall apply accordingly.

- 3.4. The warranty claims ("Gewährleistung") set out in these Conditions shall apply in addition to Clearview's obligations set out in the Service Level Agreement (SLA). Insofar, clause 2.3 of the SLA shall not apply.
- 3.5. With regard to Clearview's liability ("Haftung"), the following shall apply:
- 3.5.1. Clearview is liable for damages - regardless of the legal grounds - in the event of wilful misconduct and gross negligence. In the event of slight negligence, Clearview is liable, unless statutory limitations of liability apply, only
- 3.5.1.1. for damages resulting from injury to life, body or health,
- 3.5.1.2. for damages arising from the breach of a material contractual obligation (obligation whose fulfilment is essential for the proper execution of the contract and on whose compliance the contractual partner regularly relies and may rely); in this case, however, Clearview's liability is limited to compensation for foreseeable, typically occurring damages.
- 3.5.2. The limitations of liability resulting from paragraph 2.5.1 also apply to third parties as well as to breaches of duty by persons (also in favour of the Customer) whose fault Clearview is responsible for according to statutory regulations. They do not apply if a defect has been fraudulently concealed or a guarantee for the quality of the Hardware has been assumed and for claims of the Customer under the German Product Liability Act.
- 3.5.3. Beyond this (2.5.1 and 2.5.2), any liability by Clearview shall be excluded.
- 3.6. With regard to limitation, the following shall apply:
- 3.6.1. Claims of the Customer arising from material defects and defects of title shall become time-barred after one year from delivery or, in the case of services within the sense of §§ 631 et seq. BGB, from date of acceptance.
- 3.6.2. Claims for damages by the Customer pursuant to paragraphs 2.5.1 and 2.5.1.1 and pursuant to the German Product Liability Act shall become time-barred in accordance with the statutory limitation periods.