General Terms and Conditions of Business and Use of roompad GmbH

1 Scope

1.1 The following terms and conditions govern the contractual relationship between roompad GmbH, Marientorgraben 3–5, 90402 Nuremberg (hereinafter referred to as "the Provider") and customers (hereinafter referred to as "the Lessee") on the basis of these General Terms and Conditions of Business and Use and the relationship between HP Financial Services GmbH, Nerostraße 41, 65189 Wiesbaden and customers on the basis of the financing terms stipulated by the former (hereinafter referred to as "HP Subscription Terms and Conditions") for the delivery transactions initiated via the Provider's website. The HP Subscription Terms and Conditions may be viewed and called up at [URL-HP-SUB-SCRITIONBEDINGUNGEN] and also form an integral part of the Provider's contractual relationship with customers.

1.2 The application of any divergent provisions is rejected. Divergent provisions shall also not apply if attached to requests for offers, orders, declarations of acceptance or other correspondence with the Provider, regardless of whether the Provider has expressly or implicitly rejected the application of such provisions or has maintained silence in this regard.

1.3 The application of deviating provisions must be set out in writing.

2 Object of the Agreement, conclusion of the Agreement

2.1 The object of the Agreement is the provision for a limited term and in return for payment of tablet hardware by HP Financial Services GmbH on the basis of the HP Subscription Terms and Conditions, and the provision for a limited term and in return for payment of the pre-installed roompad system software, and the provision for a limited term and in return for payment of the roompad software system platform (hereinafter referred to uniformly as the "software").

2.2 The roompad software system platform shall be provided remotely via the internet as a cloud-based software-as-a-service application (hereinafter referred to as the "roompad guest hospitality cloud" or "RGHC").

3 Conclusion of agreements

3.1 The presentation of goods and services on the Provider's website pages shall not represent an offer to conclude an agreement and shall generally only contain available goods and services. The Provider nevertheless reserves the right to check availability in individual cases upon receipt of an order.

3.2 The agreement shall be concluded upon a binding order from the customer and acceptance of that order by the Provider. The sending of a letter described as an "offer" by the Provider (non-binding offer) or a distribution partner shall not yet represent an offer in the legal sense but shall be an invitation to the customer (invitatio ad offerendum) to itself submit an offer in a legal sense to conclude an agreement (order). The agreement shall not be concluded until such time as the Provider subsequently accepts the order.

3.3 The Provider may accept the client's order expressly by means of a declaration of acceptance or implicitly by sending an invoice or commencing performance of the agreed contractual services.

ROOMPAD GUEST HOSPITALITY CLOUD (RGHC)

4 Service content of the RGHC

4.1 The object of the Agreement of the RGHC includes permission to access the environment remotely and the option for the Lessee to store date on servers operated on behalf of the Provider. The Lessee's internet connection shall not form part of the object of the Agreement.

4.2 The Provider shall make the latest version of the RGHC available for use as of the communicated date on a central data processing system (server) or on several data processing systems. This shall encompass the technical usability at the handover point pursuant to point 4.7 for use by the Lessee using appropriate access software via a telecommunications link. The Lessee shall not be provided with the software. The RGHC shall be provided solely for the purpose of organising, managing and designing the Lessee's content. The Provider gives no guarantee that the software is suitable for purposes intended by the Lessee other than those that have been contractually agreed.

4.3 The Provider guarantees that the RGHC is free of faults and in particular does not contain any viruses or similar malicious software that could make it unfit for purpose.

4.4 The Provider shall make integrated user help available to the Lessee within the RGHC. The Lessee shall accept this as documentation and the user manual. The Lessee may save and make copies of the documentation and user manual to the extent required for the contractual use of the software.

4.5 If and to the extent that the provision of a new version or a modification involves a significant change to the contractually agreed functionalities or restricts the usability of previously created data, the Provider shall inform the Lessee accordingly in text form no later than six weeks before such a change enters into force. Unless the Lessee rejects the change in writing within two weeks of receipt of notification, the change shall become part of the Agreement. Upon any announcement of changes, the Provider shall draw the Lessee's attention to the above notice period and to the legal consequences of this period lapsing without the option to reject such changes having been used.

4.6 From the agreed time of the service being operational, the Provider shall provide the contractually agreed storage space on the server for the data created by the Lessee through its use of the RGHC or the data required by the Lessee for use of the software (hereinafter referred to as "application data").

4.7 The Provider reserves the right to set up areas in the menu system, in the user interface or elsewhere in the display that can link to automated functions, applications and content from the Provider or third-party providers. The Provider shall ensure that the Lessee's legitimate interests are not adversely affected as a result.

5 Availability

In the absence of any agreement between the parties to the contrary, the Provider guarantees average annual availability of 98 %. Downtimes and any impairment of accessibility due to regular maintenance work, scheduled daily between 22:00 and 06:00, shall not count as periods of non-availability.

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6   Handover point

The risk shall pass to the Lessee upon the provision of the contractually agreed services by the Provider at the router output of the Provider's computer centre (handover point).

7   System requirements

7.1 The RGHC functions shall be accessed using software via a telecommunications link. The access software and creation of a telecommunications link shall not form part of the object of the Agreement. They shall be procured by the Lessee itself at its own risk.

7.2 In the absence of any information to the contrary, the Provider recommends using the RGHC with a state-of-the-art PC, internet browser and standard software, as well as a telecommunications link with a minimum transmission speed of 5 kB/s.

8   Rights of Use

8.1 The Lessee shall receive a simple and non-transferable right to use the RGHC limited to the term of the Agreement and on the Provider's server. The Lessee may only allow use for own commercial activity by users that are classed as its users under the terms agreed. Furthermore, the Lessee may not give third parties permission to use the RGHC.

8.2 The Lessee may not make changes to the RGHC. This shall not apply to changes needed to remedy errors if the Provider is late in taking such action, refuses to remedy the error or is unable to do so due to insolvency proceedings being opened against it.

8.3 Where the Provider provides new versions, updates, upgrades or other new deliveries of the RGHC during the term, the above rights shall also apply accordingly.

8.4 The granting of rights of use is subject to the condition precedent of fulfilment in full of any payment obligations due.

9   Other services of the Provider

At the Lessee's request, the Provider shall give the Lessee a copy of the application data for accessing at the end of the contractually agreed term.

10   Obligations and responsibility of the Lessee

10.1 The Lessee is obliged to keep the usage and access data made available to it or its assigned users secret, to protect such data from third parties, and to refrain from disclosing it to other users or third parties. The Lessee must take appropriate measures to prevent the usage and access data from being misused and to prevent unauthorised use of the RGHC.

10.2 The Lessee shall inform the Provider immediately in the event of any suspicion that the access data or passwords could have been made known to unauthorised persons or if it becomes aware that its telecommunications connection to the Provider's server has been used to access the Provider's system.

10.3 The Lessee shall ensure that its telecommunications link to the Provider's server cannot be used to call up data from the Provider's system or to transfer data to the Provider's system insofar as such acts are not in line with the contractually agreed use or could jeopardise the security and integrity of the Provider's system or the data stored in it, and shall in particular ensure that data and information are virus-checked before being sent to the Provider. The Lessee shall use anti-virus software for this purpose.

10.4 The Lessee shall ensure that the content transmitted using its telecommunication link to the Provider's service is free from third-party rights or that it holds the appropriate rights of use and exploitation.

10.5 The Lessee shall ensure that the functions made available by the Provider are not used for racist, discriminatory or pornographic purposes, in a way that jeopardises the protection of young people, for politically extreme purposes or in any other unlawful way or in a manner that breaches official rules or requirements and, in particular, that the RGHC is not used to create such data as application data.

10.6 The Lessee shall ensure that the personal data included in the application data is only processed in accordance with the provisions set out under point 13 .

10.7 The Lessee shall be required to report any faults in the RGHC to the Provider without delay.

10.8 The Lessee shall ensure that the application data created using the functions made available by the Provider is regularly backed up in accordance with its importance, in order to be able to restore such data in the event of a data loss.

10.9 The Lessee shall ensure, if and to the extent that the parties mutually agree to provide it with the technical means necessary, that it regularly backs up its application data stored on the Provider's server by means of a download.

10.10 The Lessee shall ensure that its allocated users, as arranged by it, undertake to adhere for their part to the obligations and responsibility set out under these provisions.

11   Database systems

If and insofar as during the term of the Agreement, particularly as a result of application data being compiled, a database, databases, a database system or database systems are created on the Provider's server as a result of the Lessee's permitted activities under this Agreement, all rights to such databases or database systems shall be held by the Lessee. The Lessee shall also remain the owner of the databases and/or database systems after the Agreement has ended. Once data backups have been enabled and after prior notification in text form, calling on the Lessee to download the data backup within three weeks, the Provider shall be entitled to delete the databases.

12   Blocking of access, Deletion

12.1 In the event of the Lessee breaching the rules set out in section 8.1 or for reasons for which the Lessee is responsible, the Provider may block the Lessee's access to the RGHC or application data after notifying the Lessee in writing in advance if it can be proven that the breach can be remedied in this way.

12.2 If the Lessee unlawfully breaches point 10.5, the Provider may delete the data or application data concerned.

13 Data security, data protection

13.1 The parties shall observe the applicable rules on data protection in each case, particularly those applicable in Germany, obliging its employees deployed in conjunction with this Agreement and its enforcement to adhere to data secrecy pursuant to Article 5 of the Federal Data Protection Act (BDSG) to the extent that they have not already entered into a general undertaking to this effect.

13.2 If compiling, processing or using personal data, the Lessee guarantees that it is authorised to do so pursuant to the applicable rules, particularly the rules on data protection, and shall hold the Provider harmless from any third-party claims in the event of the rules being breached. Insofar as the data to be processed takes the form of personal data, this shall constitute order data processing, and the Provider shall observe the statutory rules on order data processing and the Lessee's instructions (e.g. on compliance with deletion and blocking obligations). The instructions must be issued in written form in good time.

13.3 The Provider shall introduce the technical and organisational precautions and measures needed pursuant to the Annex to Article 9 BDSG. The Provider shall protect in particular the services and systems that it can access, as well as application data stored on the server by the Lessee or affecting the Lessee and any other data against unauthorised disclosure, storage, modification or other unauthorised access or attack, be it by technical measures, viruses or other malicious programmes or data, or by means of physical access, on the part of the staff of the Provider or third parties by whatsoever means. For this purpose, it shall take the appropriate and customary measures based on the state of the art, particularly with regard to virus protection and protection against similar malicious software, as well as other security measures including protection against physical break-ins.

13.4 In the absence of any agreement to the contrary, data may not be processed outside of the member states of the EU.

OTHER PROVISIONS

14 Remuneration

14.1 The remuneration shall be based on the HP Subscription Terms and Condition or derived from the Provider's non-binding offer forming the basis of the customer's order pursuant to point 3.2.

14.2 The agreed remuneration shall cover all of the agreed services on the basis of these General Terms and Conditions of Business and Use.

15 Rights of the Lessee in the event of faults

15.1 The Provider shall be obliged to rectify faults in the software provided, including with regard to the documentation.

15.2 The Provider may choose to rectify faults by correcting them free of charge or by supplying a replacement.

15.3 The Lessee may only terminate the Agreement pursuant to Article 543 para. 2, sentence 1, no. 1 of the German Civil Code (BGB) if the Provider has been given adequate opportunity to rectify the problem and has failed to do so. Failure to rectify the problem shall only be assumed if rectifying the problem is impossible, if the Provider refuses to do so or delays unreasonably, if there are justified doubts regarding the prospects of success or if it is unreasonable for the Lessee for other reasons.

15.4 The Lessee's rights in respect of faults shall be excluded if it itself modifies the leased item or arranges for modifications to be carried out without the Provider's consent, unless the Lessee proves that the modifications have no unreasonable effects for the Provider in terms of analysis and rectification of the faults. The Lessee's rights in respect of faults shall remain unaffected if the Lessee is entitled to carry out modifications, particularly in the context of exercising its right to remedy faults itself pursuant to Article 536a para. 2 BGB, and does so expertly and with proper documentation.

16 Limitations of liability

16.1 The Provider shall be liable in accordance with the statutory provisions without limitation for damages relating to death, injury or impaired health due to a deliberate or negligent breach or other form of deliberate or negligent conduct on the part of the Provider of one of its legal representatives or agents, due to the lack or loss of a warranted characteristic due to a deliberate or grossly negligent breach of obligations or due to other deliberate or grossly negligent conduct on the part of the Provider or one of its legal representatives or agents.

16.2 The Provider shall be liable, within limitations, for replacement of typical damages foreseeable at the time of contractual conclusion that have been caused by minor negligence of material contractual obligations by the Provider or one of its legal representatives or agents.

16.3 In other cases, the Provider shall be liable for ordinary negligence up to a limit of six times the monthly lease amount per claim.

16.4 The above provisions shall also apply accordingly to the Provider's liability in relation to the reimbursement of futile costs.

16.5 Liability in accordance with the German Product Liability Act shall remain unaffected.

17 Confidentiality

17.1 The contractual parties shall observe secrecy with regard to all confidential information of which they become aware in the context of the contractual relationship and/or shall only make use of such information with third parties, for whatsoever purpose, with the prior written consent of the other party. Confidential information shall be all information expressly deemed to be confidential by the party that provides it and all information, the confidential nature of which is clearly discernible from the circumstances in which it is made available. The Provider shall in particular treat the application data confidentially in the event that it acquires knowledge of such data.

17.2 The obligations under point 17.1 shall not apply to information or portions of information with regard to which the receiving

party can prove that such information was known to it or generally accessible prior to the date of receipt, was in the public domain or generally accessible prior to the date of receipt, or was generally known or accessible after the date of receipt without the party that received the information having been responsible for this disclosure.

18 Reference to other party for advertising purposes

The parties grant each other the right, in relation to the respective range of services of the parties, to refer to the other contractual party in the form of a reference for advertising purposes. For this purpose, the parties shall grant each other the right to use their company logo for the duration of the term of the Agreement.

19 Term of Agreement

19.1 The Agreement shall enter into force upon its signing by all parties and shall have a term of 36 months in the absence of any arrangement to the contrary. Neither party may terminate the Agreement during its term.

19.2 The right to termination for good reason shall remain unaffected.

19.3 The Agreement may only be terminated in writing.

20 Return

20.1 Upon the ending of the contractual relationship, the Lessee shall return the leased item to the Provider in good condition. The obligation to return shall also apply to the manuals and documentation provided. Any copies that have been made shall be destroyed.

20.2 In the absence of any provision to the contrary in the delivery note, the Provider shall bear the costs of dismantling, packaging and transporting the leased item.

20.3 The return shall otherwise be carried out in accordance with the HP Subscription Terms and Conditions.

21 Concluding provisions

21.1 The parties have not entered into any secondary agreements to this Agreement.

21.2 This Agreement, as well as any amendments or additions, must be set out in writing. Electronic form shall not be sufficient. This similarly applies to the requirement that the written form be used and any changes to this clause.

21.3 Should one of the provisions of this Agreement be or become ineffective or void, or in the event of a loophole, the validity of the remaining provisions shall not be affected. The ineffective or void provision or the loophole shall be replaced with a legally effective replacement provision that comes as close as possible to the economic purpose of the ineffective or void provision or of this Agreement as a whole.

21.4 Any disputes arising out of or in conjunction with this Agreement shall be subject to the law of the Federal Republic of Germany with the exclusion of the reference provisions of international private law. The sole place of jurisdiction shall be Nuremberg, Germany.