Terms and Conditions for MODEL-SIMULATOR

These Terms and Conditions apply to the use by Customer of the ETAS MODEL-SIMULATOR on the basis of software as a service (SaaS) provided by ETAS, Inc. (hereinafter: "**Provider**", Customer and Provider hereinafter referred to as "**Parties**").

1 Definitions

1.1. "**Account**" means the authorization to access controlled-access Applications of Provider.

1.2. "**Application**" means the ETAS Model Simulator provided by Provider under a Contract.

1.3. "**Availability**" has the meaning as provided in Annex 1.

1.4. "**Basic Access**" has the meaning provided in the Documentation.

1.5. "**Contract**" means the document, including a statement of work or a quotation, specifying the Application to be provided hereunder that is executed and entered into by and between Customer and Provider, including any addenda, exhibits, and schedules thereto.

1.6. "**Customer Data**" means any and all electronic data and information uploaded, submitted, posted, transferred, transmitted, or otherwise provided or made available by or on behalf of Customer via by or through the Applications or processed by or on behalf of Customer using the Applications. For the avoidance of doubt, Customer Data includes all Personal Information.

1.7. "**Documentation**" means Provider's operator and administrator instructions, manuals, guides, and all other instructional and support materials relating to the Applications. For the avoidance of doubt, Documentation does not include Customer Data.

1.8. "**Downtime**" has the meaning as provided in Annex 1.

1.9. "**Maintenance Work**" has the meaning as provided in Annex 1.

1.10. "**Malicious Code**" means any virus, malware, spyware, "time bomb," "Trojan horse," "back door," "worm," or other device or code designed or intended to disrupt, disable, harm, or otherwise impair the normal and authorized operation of, or provide unauthorized access to, any computer system, hardware, firmware, software, network, or device.

1.11. "**Personal Information**" means information that Customer provides or for which Customer provides access to Company, or information which Company creates or obtains on behalf of Customer, in accordance with these Terms and Conditions that: (i) directly or indirectly identifies an individual (including, for example, names, signatures, addresses, telephone numbers, email addresses, and other unique identifiers); or (ii) can be used to authenticate an individual. Customer's business contact information is not by itself Personal Information.

1.12. "**Reference Simulation Hour**" means the time-based unit of the Application usage time, whereby the reference is defined as the use of a worker node instance as defined in the quotation for a usage time of one hour. The use of the simulation function contained in the Application consumes the agreed quota of Reference Simulation Hours.

1.13. "**Service Description**" means the description of the technical functionalities of the Application as provided in the Contract and Documentation.

1.14. "**Service Level Agreement**" or "**SLA**" means the agreement setting forth the quality levels and characteristics of the Applications in terms of Availability and Maintenance Work as provided in Annex 1. The SLA is an integral part of the Contract.

1.15. **"Usage Data"** means any automatically transmitted machine data (sensor or other machine data) or automatically generated system data (e.g. log files, information on utilization or Availability of the Applications).

2 Scope of Applications

2.1 Provider provides the Applications to Customer solely on the basis of and in accordance with the terms and conditions set forth in the Contract, including the terms and conditions set forth in these Terms and Conditions and any exhibits or appendices referred herein, which are hereby incorporated into and made part of these Terms and Conditions.

2.2 Any proposal for additional or different terms or any attempt by either Party to revise any of the terms of these Terms and Conditions, whether in a purchase order, quotation, acknowledgement form, invoice, correspondence, or otherwise, will be deemed a material modification of these Terms and Conditions, and is hereby rejected unless both Parties expressly agree to such change by signed writing. In the event of any conflict between the terms and provisions of these Terms and Conditions, and those of the Contract, the terms of these Terms and Conditions shall govern unless otherwise expressly stated in the Contract.

2.3 Any legally relevant statements or notices (such as setting of time limits, notification of defects, declaration of rescission or price reduction) must be confirmed in writing to be binding.

3 Exclusion

The implementation of an interface integration with Customer's existing system landscape is outside the scope of these Terms and Conditions and requires a separate written agreement between the Parties.

4 Provision of Application and Infrastructure

4.1 On the date and time set forth in the Contract, Provider shall make available the Application for use in accordance with the provisions of the Contract, including these Terms and Conditions, and the Documentation, on server infrastructure provided by Provider or its subcontractors ("**Server**"). Provider has the right, in its sole discretion, to have the services performed by third parties (including affiliates of Provider) as subcontractors.

4.2 The use of the Application requires the creation of a simulation model with the ETAS software COSYM (Version COSYM 2.3 Hotfix 2), which must be licensed separately. The simulation model must also be brought into a suitable structure, which is described in the Documentation. Customer is responsible for the correctness of the simulation model and must confirm such correctness of the simulation model in the ETAS software COSYM before the simulation model is used with the Application.

4.3 The Application includes a function for generating reports, see Section 5.6. To change the report configurations described in Section 5.6., Customer requires a PC-based software "ETAS EATB", version 4.1.0 or higher, which must be licensed separately.

4.4 Access to the Application by Customer shall be browser-based via the Internet.

4.5 For the use of the Application, Provider will provide the registration link to an administrator designated by Customer. Only this administrator is entitled to apply for user accounts via the Support in Section 6.

4.6 If an Account is required to obtain access to and to use the Application, Provider shall make this Account available to Customer after Customer agrees to these Terms and Conditions. Multi-factor authentication via mobile phone is required to use the Account. The Account and the access credentials are not transferable. Customer is liable for all actions performed under Customer's Account and any loss or damage arising from such actions.

4.7   It is Customer's responsibility to keep passwords, Account credentials, and Accounts secure. Customer shall notify Provider immediately if any unauthorized use, or suspected unauthorized use, of Customer's Account occurs or if any other breach of security occurs. Provider is not liable for any loss or damage arising from Customer's failure to comply with these requirements.

4.8   Provider shall make storage space available on the Server to the extent required for use of the Application. Further details on the scope of services can be found in the Quotation. The size of this storage space is defined in the Contract. Customer is solely responsible for compliance with the storage limitations. For this purpose, suitable deletion functions are made available via the Application. Provider will inform Customer (administrator) by e-mail as soon as the storage space actually used approaches the contractually agreed storage space limit. The information will only be provided during the business hours defined in Section 6. In the event Customer exceeds the agreed storage space, the additional storage space will be charged to Customer. The costs for the additional storage space are defined by the Contract. Customer Data shall be stored and be regularly backed-up by Provider throughout the duration of the contractual relationship. Customer shall be solely responsible for compliance with retention periods required of Customer under applicable laws, including tax laws.

4.9   Provider shall provide Customer with a contingent of Reference Simulation Hours as defined in the Contract. The use of the simulation function is only possible for Customer if there is a sufficient contingent of Reference Simulation Hours available. If the quota of Reference Simulation Hours is used up, further simulations are not possible for Customer. In the event that simulations are carried out by Customer and the quota is used up during the simulation period, the simulations are aborted by the Application and the simulation results generated up to that point are saved. Provider will inform Customer (administrator) by e-mail as soon as the Reference Simulation Hours are almost exhausted. This information will only be provided during the business hours defined in Section 6.

5   **Availability of the Applications and of access to Customer Data**

5.1   The Availability of the Application is described in the SLA.

5.2   No period of Applications unavailability or inoperability will be included in calculating Availability to the extent such unavailability or inoperability is due to any of the following: (i) planned Maintenance Work (e.g. for updates and upgrades), or (ii) other planned interruptions in operations, or (iii) unplanned Maintenance Work for good cause or for other reasons for which Provider is not responsible, such as malfunctions in the field of the provision, operation and support of Customer's communications connection (communications sections outside Provider's data center), in particular due to a failure in Customer's Internet connection, then for the purposes of calculating Availability, the Applications shall be deemed to have been available during these times, or (iv) Customer's misuse of the Applications, or (v) Customer's failure to meet minimum hardware or software requirements set forth in the Service Description.

5.3   The Availability of the Application is provided in Annex 1. Provider is not responsible for any loss or damages arising from Downtime, including but not limited to the loss of data of simulations already started in connection with the Downtime. Provider is not liable for the recovery of data lost due to the Downtime. The Downtime includes but is not limited to the following cases:

        (1) Failure of a software service (e.g. simulation service, data service and reporting service)
        (2) Failure due to unavailable cloud infrastructure
        (3) Error in case of overflow of the so-called network share storage of the cloud infrastructure

5.4   Customer shall be solely responsible for compliance with the system requirements identified in the Documentation. The provisions of Section **Fehler! Verweisquelle konnte nicht gefunden**

Version June 2021

werden. shall apply accordingly to changes to the system requirements and to changes to the technical system of Provider.

5.5 Provider is only responsible for the proper functioning of Provider's systems up to the Internet hubs of Provider's data center.

5.6 The Application includes a function for generating reports. The configuration of these reports stored in the Application cannot be changed directly by Customer. If an adaptation of the report configuration is necessary, Customer can create configuration files with the ETAS Software EATB Version 4.1.0., which must be licensed separately, and transfer them to the support center of Provider by e-mail via the administrator of Customer. The support center of Provider will inform Customer (administrator) when the implementation of the configuration files is done. Further details are defined in Annex 1. Customer is responsible for the correctness of the new configuration files.

6 Support

6.1 Provider shall provide first level support ("**FLS**") for Customer via e-mail as first point of contact ("**FPoC**") for all errors arising in the context of Customer's use of the Application(s). The support availability is set forth in the SLA. In connection with the FLS, for each error, an error ticket may be created by Provider and be designated to a corresponding error category in accordance with the SLA. Support is provided during Provider's normal business hours which Customer can find on the ETAS website in the Internet under Service and Support at https://www.etas.com/de/support/support_hotlines.php. Within the scope of support, a ticket is created and classified by Provider for each incident report. Customer will provide Provider with all information necessary for troubleshooting.

6.2 In case of a reported error, Provider may advise Customer of the error status at regular intervals until such time as the solution is implemented and the error is cured. If, however, Provider's assessment of the error ticket shows that the cause of the error arose from Customer's failure to comply with its obligations and responsibilities under Section 13 below or any other circumstances beyond Provider's control, then Customer shall be responsible for resolving the problem. In no event shall Provider be liable for any Customer caused error(s), and, Customer is not released from its payment obligations under these Terms and Conditions or the Contract, and such obligations are not suspended during the time Customer's usage of the Application is restricted due to such error.

6.3 Provider will release and implement Application updates in accordance with the provisions of the SLA.

7 Other services by Provider

A separate agreement in writing is required for Provider to provide additional services, in particular for support and integration (for Customer systems and/or for plant / technical units) and consulting services. Provider has no obligation to perform such services, unless and until the applicable agreement is executed.

8   Rights of use and scope of use

8.1   Subject to Customer's compliance with the terms and conditions set forth in the Contract, these Terms and Conditions, and the Documentation, Provider hereby grants to Customer a limited, non-exclusive, revocable, personal, non-sub-licensable and non-transferable license to use the Application internally for the project(s) or purposes set forth in the Contract ("**Purpose**") for the term set forth in the Contract. Customer is permitted to store and print the documentation provided by Provider, provided Customer (i) does not modify or delete any existing copyright notices, (ii) uses such documentation(s) and copies thereof only for the Purpose of the Contract, and (iii) reproduces only such number of copies which are necessary for such Purpose. To the extent agreed to in writing between the Parties, Customer may also permit contractors to access the Application, to the extent such access is necessary and related to the Purpose of the Contract.   Customer shall be responsible and liable for anyone it grants access to the Applications.

8.2   To the extent required, any free and open source software components ("**FOSS**") including the applicable FOSS license conditions used in Provider's Application will be described in the Service Description or in the Application itself.

8.3   Provider shall make the Application available as SaaS (Software as an Application) per remote access. Customer is not permitted (a) to use the Software (i) as its own permanent storage, or (ii) have the right in a data center environment; or (b) make the Applications available itself.

8.4   This Section 8 applies to any new versions, updates, upgrades, modifications or extensions of the Application made available to Customer by Provider or any other changes made by Provider to the Application, even if such new versions, updates modifications or extensions were ordered by Customer and paid for separately.

8.5   Unless expressly provided herein, nothing in these Terms and Conditions shall be construed as granting by implication, estoppel, equity or otherwise, any further licenses or rights to the Application. In particular, except as expressly permitted under these Terms and Conditions, Customer has no right or license to:

a.) allow third-parties to use the Application and/or the Account,

b.) make the Application and/or the Account available to third parties,

c.) copy, reproduce or duplicate the Application and/or the documentation,

d.) to provide it for use for a limited period of time, in particular not to lease it or loan it, or

e.) to modify, create derivative works of, sell, offer to sell, publicly display or publicly perform the Application.

8.6   Customer shall ensure that its employees, agent or any other representatives comply with the provisions of these Terms and Conditions.

8.7   If Customer breaches the provisions of Section 8, Provider may, after giving Customer advance written notice, suspend Customer's access to the Application. The suspension shall be removed as soon as the reason for the suspension ceases to exist. If Customer continues to violate the provisions of Section 8 or does so repeatedly despite a warning in writing from Provider, Provider may terminate the Contract for cause without notice, unless Customer was not responsible for such breach. Provider's right to claim damages shall remain unaffected.

9   Intellectual property

9.1   Except for Customer Data, all right, title, and interest to all intellectual property with respect to the Application, including which may be or become protectable by patent, copyright, trademark, trade secret, or similar laws, shall remain exclusively with Provider. Customer shall not use Provider's copyrights, trademarks, trade names, or other intellectual property in any way, unless otherwise expressly provided in these Terms and Conditions. Provider may terminate Customer's access to the Application and/or remove any content Customer provides if Provider has any reason to believe that Customer's actions using the Application, including any content uploaded by Customer, infringe the copyright, trademark, or other intellectual property rights of Provider or any other party.

9.2   Customer shall not and shall not allow any third-party to alter, decompile, disassemble, copy, modify, or reverse engineer the Application, or attempt to create a substitute or similar technology through use of or access to the Application. Any alterations made to or suggested for the Application by Customer shall be the exclusive property of Provider, together with all rights therein.

9.3   If Customer or any of its employees or contractors sends or transmits any communications or materials to Provider by mail, email, telephone, or otherwise, suggesting or recommending changes to the Applications, or the Documentation, including new features or functionality relating thereto, or any comments, questions, suggestions, or the like (collectively, "**Feedback**"), Provider is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Customer hereby assigns to Provider on Customer's behalf, and on behalf of its employees, contractors, and/or agents, all right, title, and interest in, and Provider is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property contained in the Feedback, for any purpose whatsoever, although Provider is not required to use any Feedback.

10   Customer Data

10.1   Customer warrants that

   a.) Customer and/or its licensors hold all rights to Customer Data required for the use rights to the Applications granted under these Terms and Conditions and to grant the rights to Customer Data as set forth in Section 10.2 below; and

   b.) Customer Data does not violate these Terms and Conditions or any applicable laws and does not infringe the intellectual property of a third party.

10.2   Customer hereby grants to Provider the right to use Customer Data, for the purpose of providing the Application, in particular the right to reproduce such Customer Data for this purpose (e.g. for data back-up), to modify it and to provide such Customer Data for the purpose of accessing it.

10.3   Customer shall regularly back up Customer Data. Each data back-up by Customer shall be performed so that the recovery of Customer Data is possible at all times.

10.4   Provider is entitled to immediately suspend Customer's use of and access to the Application and the storage space if there is reasonable belief that the stored Customer Data is unlawful and/or infringes third party rights. For example, Provider has the right to suspend Customer use of and access to the Applications if a court, other authorities and/or any third party notifies Provider of Customer's unlawful or potential unlawful use of the Applications, or of an infringement of third party rights. Provider shall notify Customer of the suspension, stating the reason for such suspension. The suspension shall be removed as soon as practicable after the reasons for the suspension are no longer present.

Version June 2021

11   Error Claims

11.1   Following an error notification by Customer, Application errors may be cured by Provider within the response times specified in the SLA. The same shall apply with regard to other disruptions of the Application(s)` usability for which Provider is responsible. Any potential damage claims based on defective performance shall be governed by this Section 11.

11.2   THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE," AND PROVIDER MAKES NO WARRANTIES, EXPRESS, IMPLIED, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, OR STATUTORY, AS TO THE SERVICES, OR ANY MATTER WHATSOEVER. PROVIDER DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE AND NON-INFRINGEMENT.

11.3   TO THE EXTENT APPLICABLE, FREE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OF ANY KIND AND PROVIDER MAKES NO WARRANTIES, EXPRESS, IMPLIED, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, OR STATUTORY, AS TO THE FREE SERVICES. PROVIDER DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE AND NON-INFRINGEMENT. ADDITIONALLY, PROVIDER DOES NOT WARRANT THAT THE FREE SERVICES WILL MEET ANY CUSTOMER REQUIREMENTS OR THAT THE FREE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ANY ERRORS WILL BE CORRECTED. PROVIDER DOES NOT WARRANT THAT THE USE OF FREE SERVICES WILL NOT BE IMPAIRED BY DOWNTIME, MAINTENANCE WORK, FURTHER DEVELOPMENTS, UPDATES AND UPGRADES OR MALFUNCTIONS.

12   Payment, Price Change

12.1   Unless specified otherwise in the Contract, terms of payment are net thirty (30) days from the date of an invoice, with no discount allowed for early payment. Provider reserves the right to cancel access to the Application and any services that have not been paid for in full and Provider reserves the right to alter or suspend credit terms or require C.O.D. or advance payment whenever Provider, in its sole discretion, has reasonable doubt as to Customer's credit worthiness or the ability of Customer to pay in a timely manner. If Customer becomes delinquent in payment, Provider will have the right to, in addition to all other available rights and remedies, cancel any or all Customer orders, withhold further deliveries, and declare all unpaid amounts for goods and/or services previously delivered immediately due and payable. Amounts past due will be subject to an interest charge of 1.5% per month or the maximum rate allowed by law, whichever is less. Customer shall pay all costs and expenses incurred by Provider as a result of non-payment or delinquent payment by Customer, including without limitation collection costs, interest, and reasonable attorneys' fees.

12.2   Customer shall pay the fees for the Applications as set forth in the Contract which shall consist of the following components.

   a.) Basic Access, which will be invoiced upon execution of the Contract for an initial 12 month period. If the initial Contract period is longer than 12 months, the Basic Access for the periods following expiration of the initial period will be invoiced in advance for further 12 month periods, unless otherwise agreed in the Contract;

   b.) Reference Simulation Hours, which are used from the allocation of Reference Simulation Hours and will be invoiced at the end of every calendar month;

   c.) Costs for the additional storage space according to Section 4.6, which will be invoiced at the end of every calendar month.

12.3   The simulation hours used by Customer will be subtracted as full hours from the allocation of

Reference Simulation Hours. Each simulation hour that is started is rounded up to a full hour when scheduling the simulation. For the performance of the simulation, it is necessary to boot and to shut down dynamically. This process takes 27 minutes (infrastructure time), time which will be taken into account, i.e., invoiced to Customer as Reference Simulation Hours.

Example 1: 10 simulation hours will be started. Each of them takes 30 minutes. This means that 10 Reference Simulation Hours will be used. Calculation method: 30 minutes simulation time + 27 minutes infrastructure time = 57 minutes, rounded up to 1 hour. 10 simulations of one hour are 10 Reference Simulation Hours.

Example 2: 10 simulation hours will be started. Each of them takes 50 minutes. This means that 20 Reference Simulation Hours will be used. Calculation method: 50 minutes simulation time + 27 minutes infrastructure time = 77 minutes, rounded up to 2 hours. 10 simulations of two hours each are 20 Reference Simulation Hours.

12.4 After the expiration of the term the Contract, Provider may, in is sole discretion increase the fees for the Applications by giving three months' prior written notice, however such increase may not exceed Provider's general list fees for comparable services valid at the time of such notification. Customer may terminate the Contract within a period of six weeks after receipt of a fee increase notice by Provider, effective on the date of the price increase, provided that the increase exceeds 10% of the last applicable prices.

12.5 Any services not covered by price agreed in the Contract will be quoted and performed by Provider on a time and materials basis.

12.6 If not otherwise specified in the Contract, all prices are in US dollar, plus any tax in the applicable jurisdiction, at the applicable amount levied in in accordance with applicable laws.

13 Duties and obligations of Customer

13.1 Customer shall perform all actions reasonably required for Customer to fulfill the intent of the Contract. In particular, Customer shall:

a.) change all passwords provided by Provider into passwords known only to Customer;

b.) keep usage and access authorizations assigned to Customer secret, to protect usage and access authorizations against access by third parties and not disclose usage and access authorization to unauthorized users, using commercially reasonable administrative, technical and physical safeguards;

c.) notify Provider without undue delay in case of any suspicion that unauthorized persons might have obtained knowledge of access data and/or passwords;

d.) create the system requirements described in the Service Description;

e.) comply with the restrictions/obligations with regard to the rights of use under Section 7 and to prosecute any violations of these obligations effectively and with the objective of preventing future violations;

f.) comply with all applicable laws and regulations with respect to its activities under these Terms and Conditions.

g.) provide the necessary notice and obtain the necessary consent from affected persons to the extent personal data are collected, processed or used within the Application and no statutory or other permission applies;

h.) check data and information for viruses and other malware prior to sending data and information to Provider and to implement anti-virus programs in accordance with best industry practices; and

i.) notify Provider of any breach of its obligations by email immediately (no later than within the following working day) after obtaining knowledge thereof.

Version June 2021

13.2.   Customer shall not:

   a.) access to non-public areas of the Application or to the technical systems on which the Application is based;

   b.) utilize robots, spiders, scrapers or other similar data collection or extraction tools, to utilize programs, algorithms or methods to search, access, acquire, copy, or monitor the Application outside of the documented API endpoints;

   c.) access, store, distribute, or transmit to or through the Applications any Malicious Code, or any material that: (i) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing, or offensive; (ii) facilitates illegal activity; (iii) depicts sexually explicit images; (iv) promotes unlawful violence; (v) is discriminatory based on race, gender, color, religious belief, sexual orientation, disability, or any other illegal activity; or (vi) causes damage or injury to any person or property;

   d.) decrypt, decompile, disassemble, reconstruct or to otherwise attempt to discover the source code, any software or proprietary algorithms used, except as permitted under mandatory applicable laws;

   e.) test, scan, or examine the vulnerability of the Application, or

   f.) intentionally utilize devices, software or routines which have a disruptive effect on the Application, functions or usability of the Application or willfully destroy other data, systems or communications, generate excessive load, or harmfully interfere, fraudulently intercept or capture.

Version June 2021

14   Data protection, data privacy

14.1   The Parties shall comply with all applicable state and federal data protection laws and regulations, and ensure their employees and agents comply with such laws and regulation.

14.2   If Customer processes Personal Information, then Customer represents and warrants that it is authorized to do so in accordance with applicable laws and regulations, in particular in accordance with data protection regulations, and in the event of any breach of this representation and warranty, Customer shall indemnify Provider from and against third party claims. To the extent that the data to be processed by Provider qualifies as personal data, such processing by Provider constitutes commissioned data processing. Provider shall comply with the statutory requirements of commissioned data processing and with the instructions of Customer (e.g. to comply with obligations to delete and block). Details are governed by Provider's data processing agreement.

14.3   Provider shall only collect and use Personal Information of Customer to the extent required to execute this Contract. Customer consents to the collection and use of such data to this extent.

14.4   The obligations pursuant to Sections 14.1 to 14.3 shall continue to exist as long as Provider has access to such Customer Data, such obligation does not end with termination of the Contract.

15   Changes of the Application and the Terms and Conditions

15.1   Provider reserves the right to modify Applications provided free of charge, to make new Applications available free of charge or on a fee basis, and to discontinue the provision of free Applications at any time in its sole discretion.

15.2   These Terms and Conditions and the SLA may change from time to time in Provider's sole discretion. Provider shall notify Customer of any such change by email no later than 30 calendar days prior to the planned effective date of such changes insofar as the changes concern a material restriction in the usability or functionality of the Applications or any material change to these Terms and Conditions, the SLA or the Contract. If Customer does not object within thirty (30) days of receipt of such notification and continues to use the Application after expiration of such thirty (30) day period, then the changes shall be deemed accepted by Customer. In the event of an objection by Customer, the contractual relationship shall be continued subject to the conditions applying herein, and Provider may terminate the Contract subject to a one (1) month' notice to Customer. Customer shall be advised of its right to object and of the consequences in the change notification.

16   Confidentiality

In the course of performing under the Contract, either Party, its Affiliates (as defined below), or their agents (where applicable, collectively referred to as the "**Disclosing Party**") (may provide Confidential Information to the other party (a "**Recipient**"). For purposes of these Terms and Conditions, "**Confidential Information**" means all nonpublic information that is disclosed during the course of performance under the Contract by the Disclosing Party, directly or indirectly, in writing, orally or by inspection of premises or tangible objects to the Recipient that is: (a) marked confidential or proprietary, or (b) given the nature of the information or the circumstances surrounding its disclosure, reasonably should be deemed confidential. Confidential Information includes, but is not limited to documents, drawings, models, apparatus, sketches, designs, schedules, product plans, marketing plans, technical procedures, manufacturing processes, software, prototypes, samples, methodologies, formulations, trade secrets, patent applications, know-how, experimental results, specifications and other business information. The term "Affiliate", as used herein, means an entity that directly or indirectly controls, is controlled by or is under common control with a Party to the Contract; and as used in this Section "control", "controls" or "controlled" means: (a) fifty-one percent (51%) or more ownership or beneficial interest of income or capital of such entity; (b) ownership of at least fifty-one percent (51%) of the voting power or voting equity; or (c) the ability to otherwise direct or share management policies of such entity.

16.1   The Recipient will use Confidential Information only in connection with its performance under the Contract and these Terms and Conditions. Recipient shall use the same degree of care to avoid disclosure or use of the Disclosing Party's Confidential Information as it uses for its own confidential, proprietary, and trade secret information, but in no case may Recipient use less than a reasonable degree of care. Recipient agrees to limit disclosure of Confidential Information to employees and employees of Affiliates having a specific need to know such Confidential Information in furtherance of its performance under the Contract. Recipient will not disclose or permit access to Confidential Information to contract workers, consultants or contractors of Recipient or its Affiliates unless such persons are bound by obligations of confidentiality comparable to these Terms and Conditions. Recipient shall not, without Disclosing Party's prior written consent, reverse engineer, disassemble, or decompile any prototypes, software, or other objects that embody the Disclosing Party's Confidential Information to obtain access to Disclosing Party's trade secrets and, to the extent such consent is granted, Recipient shall receive and hold such Confidential Information subject to the terms of this Section 16. Recipient shall provide written notice to Disclosing Party without undue delay of any misuse or misappropriation of Confidential Information, which may come to the attention of Recipient. The Recipient shall cooperate with and aid the Disclosing Party in mitigating and preventing the unauthorized use and disclosure and any furtherance thereof.

16.2   The Recipient is not obligated under Section 16.2 to hold in confidence any Confidential Information that (a) is generally known, or readily ascertainable by proper means, by the public other than through a breach of the Contract by the Recipient; (b) was known by or in the possession the Recipient or its Affiliate at the time of disclosure as shown by the Recipient's and/or its Affiliates´ files and records prior to the time of disclosure, unless such knowledge or possession was obtained a result of any improper act or omission of Recipient or its Affiliate; (c) is rightly received by the Recipient from a third party not subject to any nondisclosure obligations with respect to the Confidential Information; or (d) is independently developed by an employee, agent, or consultant of Recipient without reference to the Confidential Information.

Version June 2021

16.3   If Recipient is requested, ordered, or required by a regulatory agency or any other government authority or a court to disclose any Confidential Information, Recipient shall promptly notify Disclosing Party of such request, order, or requirement so that Disclosing Party may have the opportunity to contest the disclosure, including seeking a protective order, or waive Recipient's compliance with these Terms and Conditions. If Recipient is (in the opinion of its counsel) compelled to disclose any Confidential Information, or else be liable for contempt or other penalty or be subject to claims from a third party, Recipient may disclose such Confidential Information without liability under the Contract.

16.4   The Confidential Information provided by the Disclosing Party shall not be copied or reproduced without the Disclosing Party's prior written permission, except for such copies as may reasonably be required for its performance under obligations under these Terms and Conditions. Disclosing Party may serve written request on Recipient for return or destruction of its Confidential Information at any time up to six (6) months after the termination or expiry of the Contract and Recipient shall, within thirty (30) days of such request or termination, return to the Disclosing Party (or its designees) or certify as destroyed all Confidential Information, in whatever form, including written or electronically recorded information and all copies thereof (other than copies retained in automatic back-up and archive systems), provided however that Recipient shall be entitled to retain one copy of the Confidential Information with its legal counsel or other appropriate corporate representative to evidence the exchange of information hereunder and in connection with legal or statutory requirements. All such retained copies shall remain subject to the use and disclosure restrictions in these Terms and Conditions.

17   Liability

17.1.   PROVIDER SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF DATA OR ANY OTHER CONTENT, LOST PROFITS, BUSINESS INTERRUPTION, OR ANY OTHER LOSSES), ARISING OUT OF ANY USE OF THE SERVICE(S) OR ANY PERFORMANCE OF THE CONTRACT (INCLUDING, WITHOUT LIMITATION, USE, INABILITY TO USE, OR THE RESULTS OF USE OF THE SERVICE(S), OR SECURITY BREACHES RELATED TO THE SERVICE(S)).

17.2   PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO TTHE CONTRACT WILL NOT EXCEED THE LESSER OF (i) THE AMOUNT PAID BY CUSTOMER HEREUNDER IN THE TWELVE (12) MONTHS PRECEDING A CLAIM or (ii) 100,000 US DOLLAR. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY.

18   Term, Termination

18.1   Unless otherwise stated in the Contract, the term of the license rights to the Application shall be one (1) year from the effective date of these Terms and Conditions. The term set forth herein shall automatically renew on an annual basis unless notice of termination is provided by either Party as set forth in these Terms and Conditions.

18.2   Unless otherwise agreed, the Contract may be terminated by either Party at any time by giving one (1) month's written notice. Termination of the Contract automatically results in a termination of the Account and all user IDs provided to Customer.

18.3.   Each Party may terminate the Contract for cause immediately upon written notice to the other Party. Cause is deemed to exist if one Party materially breaches its obligations under the Contract, including these SaaS Terms and Conditions, and in particular if:

a.) the other Party ceases to conduct business,

b.) the other Party becomes insolvent,

c.) the other Party makes a general assignment for the benefit of creditors,

d.) a receiver is appointed for the other Party's business or assets, or

e.) the other Party becomes subject of voluntary or involuntary bankruptcy proceedings.

18.3 Further, Provider may terminate for cause without notice if Customer is in default of payment required under Section 12 for two successive months or if, in a period covering more than two months, Customer is in default of payment in an amount equal to two months prior to notification of termination. In the event of termination by Provider for cause, Provider can immediately claim lump-sum damages amounting to 50% of the residual monthly basic charges due up to expiry of the regular term of the Contract. Termination under this Section 18.4 by Provider is not an exclusive remedy and all other remedies will be available to Provider in equity and in law.

18.4 Upon termination of the Contract all authorizations and registrations of Customer under the Contract shall simultaneously and automatically terminate.

19 Obligations upon and after termination of the Contract

19.1 Provider shall delete Customer Data from all Provider systems thirty (30) days after termination of the Contract, unless prohibited by applicable laws. It is Customer sole responsibility to export and save Customer Data before termination of the Contract or expiry of the aforementioned thirty (30) day period. On request of Customer and for a fee to be agreed separately, Provider will provide reasonable support to Customer for the export of Customer Data.

19.2 In the event of termination of the Contract, Provider shall provide reasonable transition support to Customer, on request and for a reasonable fee, to support transition to another service provider. The Parties shall negotiate in good faith regarding the terms and conditions related to transitioning support.

20 Export Control

20.1 Access to Application provided by Provider is subject to local and international export and re-export control laws and sanctions regulations. Customer agrees to comply with all applicable export and re-export control laws and sanctions regulations, of the Federal Republic of Germany, the European Union, the United States of America and the United Nation or any other applicable jurisdiction.

20.2 Customer acknowledges that the Application may be accessed from any geographic location. Customer shall not - directly or indirectly − provide access to Application to any destination, entity, or person prohibited or sanctioned by the laws and regulations of the Federal Republic of Germany, the European Union, the United States of America, the United Nations or any other applicable jurisdiction..

20.3 Customer shall not use the Application and data, resulting from Application, directly or indirectly, for nuclear, chemical or biological weapons proliferation, development of missile technology or any other military purpose.

20.4 Customer shall indemnify, to the fullest extent permitted by law, Provider, its affiliates, and their respective officers, directors, employees and agents from and against any and all fines, penalties or other cost arising from or in connection with Customer's violation of any applicable export and re-export control law, sanction or regulation.

20.5 This Export Compliance clause shall survive termination or cancellation of the contractual relationship between Provider and Customer.

21 Miscellaneous

21.1 Notices delivered to Provider by Customer (e.g. setting of time limits, notification of defects, termination or price reduction) must be made in writing in order to be effective. The same applies to waiving this written form requirement.

21.2 If any provision of these Terms and Conditions is deemed invalid by a court of competent jurisdiction, the invalidity of such provision will not affect the validity of the remaining provisions of these Terms and Conditions, which will remain in full force and effect.

21.3 The Contract is an agreement between the Parties, and confers no rights upon either of the Parties' employees, agents, contractors or customers, or upon any other person or entity.

21.4 Customer may not assign or transfer, by merger, operation of law, or otherwise, the Contract or any right or duty hereunder to a third party without Provider's prior written consent. Any purported assignment in violation of this Section is null and void. These Terms and Conditions may not be modified or amended except in a writing signed by a duly authorized representative of each Party that expressly states the sections of these Terms and Conditions to be modified; no other act, usage, or custom will be deemed to amend or modify these Terms and Conditions. Each Party hereby waives any right it may have to claim that these Terms and Conditions were subsequently modified other than in accordance with this Section.

21.5 Except with regard to any obligation to pay money, neither Party will be held responsible for any delay or failure in performance caused by fire; flood; embargo; strike; labor dispute; delay or failure of any subcontract; telecommunications failure or delay; act of sabotage; riot; epidemic; pandemic; delay of carrier or supplier; voluntary or mandatory compliance with any governmental act, regulation, or request; act of God or by public enemy; or any act or omission or other cause beyond that Party's reasonable control. If any of these events does occur, the time to perform an affected obligation will be extended by the length of time the event continues.

Version June 2021

21.6 The Contract and all disputes between the Parties arising out of or related thereto shall be governed by the laws of the State of Michigan except for its choice of law rules; the United Nations Convention on the International Sale of Goods shall not apply. Provider and Customer acknowledge that the Contract evidences a transaction involving interstate commerce. Provider and Customer shall first endeavor to resolve through good faith negotiations any dispute arising under or related to the Contract or with respect to the Applications. If a dispute cannot be resolved through good faith negotiations within a reasonable time, either Party may request non-binding mediation by a mediator approved by both Parties. If mediation fails to resolve the dispute within thirty (30) days after the first mediation session, then, upon notice by either Party to the other, any and all disputes, controversies, differences, or claims arising out of or relating to the Contract (including the formation, existence, validity, interpretation (including of this Arbitration clause), breach or termination thereof) or the Applications shall be resolved exclusively through binding arbitration, except that either Party shall have the right, at its option, to seek injunctive relief, under seal to maintain confidentiality to the extent permitted by law, (i) in either the Michigan Circuit Court for the County of Oakland or the United States Court for the Eastern District of Michigan, or (ii) pursuant to the American Arbitration Association Optional Rules for Emergency Measures of Protection. A request by a Party to a court of competent jurisdiction for such interim measures shall not be deemed incompatible with, or a waiver of, this agreement to arbitrate. The Parties agree that any ruling by the arbitration tribunal on interim measures shall be deemed to be a final award for purposes of enforcement. The arbitration proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the AAA including application of the Optional Rules for Emergency Measures of Protection as amended from time to time, except as modified by this clause or by mutual agreement of the Parties, and shall be governed by the United States Federal Arbitration Act. Within 14 days after the commencement of arbitration, each party shall select one person to act as arbitrator and the two selected shall select a third arbitrator within 10 days of their appointment. If the arbitrators selected by the Parties are unable or fail to agree upon the third arbitrator, the third arbitrator shall be selected by the AAA. The arbitration shall be conducted in Detroit, Michigan, and the language of the arbitration shall be English. The arbitrators' award shall be final and binding. The arbitrators shall issue a written opinion setting forth the basis for the arbitrators' decision. The written opinion may be issued separately from the award by the arbitrators where necessary to preserve confidentiality, in the arbitrators' discretion. Each Party shall bear its own fees and costs, and each Party shall bear one half the cost of the arbitration hearing fees, and the cost of the arbitrator, unless the arbitrators find the claims to have been frivolous or harassing, which may include an award of legal fees and costs. Either Party may apply to have the arbitration award confirmed and a court judgment entered upon it. Venue for confirmation of or any challenge to the Arbitration Award shall be in either the Michigan Circuit Court for the County of Oakland or the United States Court for the Eastern District of Michigan and shall be done under seal to maintain confidentiality to the maximum extent permitted by law. The arbitrators shall have no authority to award punitive damages or any other damages excluded herein, to the maximum extent permitted by law. Except as may be required by law, neither a Party, its counsel, nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both Parties.

Annex 1: Service Level Agreement

This Service Level Agreement governs the provision on service levels, Availability, Maintenance Work, the availability of support, Incident Management and service reviews and reporting of ETAS MODEL-SIMULATOR ("**Application**"). Capitalized terms used but not defined in this SLA shall have the meanings set out in the Terms and Conditions.

1. **Definitions**

    1.1. "**Availability**" means that Customer can execute and use the essential functions of the Application at the Handover Point as defined in the Contract.

    1.2. "**Downtime**" means the total number of hours in which the essential functions of the Application as defined in the Contract are not available for use by Customer during the Service Time.

    1.3. "**Handover Point**" are the internet hubs of Provider's data center.

    1.4. "**Incident**" means any reproducible failure of the Application to operate in all material respects in accordance with the Documentation, such as Downtimes, errors or a reduction of quality.

    1.5. "**Incident Management**" means the processing of Incidents.

    1.6. "**Incident Priority**" means the severity of the Incident.

    1.7. "**Response Time**" means the period of time to start working on a reported Incident by Customer.

    1.8. "**Maintenance Work**" means all maintenance activities required to keep the Application running, to eliminate errors in the Application, to backup data and/or activities required to enhance, enlarge or renew functionalities to ensure that the Application can be used in accordance with the Contract.

    1.9. "**SLA**" means this Service Level Agreement.

    1.10. "**System Runtime**" means the time in which the system must be ready for operation.

    1.11. "**Service Time**" means the time in which ETAS provides a service for the maintenance work.

2. **General Provisions**

    2.1. This SLA sets forth the Availability of the Application and supporting services.

    2.2. This SLA applies solely to the Applications made available to Customer under the terms of the Contract. This SLA will not apply to any (i) evaluation, free or trial versions of the Application; or (ii) integration or test systems having unreleased functions or functionality.

    2.3. This SLA is only valid in conjunction with the Applications identified in the Contract and shall not take effect until Customer and Provider have executed the Contract.

    2.4. All obligations of Provider in this SLA only apply to the Application as made available to Customer at the Handover Point and used in accordance with the Documentation. Provider is not responsible for data transmission from the Handover Point to Customer and/or in the area of Customer's IT system.

3. **Threshold Values**

    3.1. Provider shall provide the Application in accordance with the Availability agreed in Section 4.1, only if Customer complies with the following upper Limits of the Threshold Values.

Threshold Value	Limit

Version June 2021

Maximum size of one trip	1,5 GB
Maximum size of one campaign	30 GB
Number of users	A (max 10)
Number of active simulation runs	B (max 1000)
Simulation time	C
Number of logging channels	D
Sampling rate	E (currently fixed to 5 ms)
Max. size of simulation output (A x B x C x D x 8 Byte /E < Limit)	120 GB
Permanent Storage	1 Petabyte
Maximum size of a report	150 MB

3.2. If Customer is using the Application above any Threshold Value, a lower Availability up to a total Downtime of the Application may occur, for which Provider is not responsible.

4. Availability

4.1. The System Runtime is 24 hours/ 7 days per week. Provider shall provide the Application at the Handover Point during the Service Time with the Availability as specified below:

System Runtime	24/7
Service Time	Mo-Fri 09:00 – 17:00 CET/CEST, with the exception of public holidays in Baden-Württemberg
Agreed Availability	95.00 %
Availability of ticket system	24/7

4.2. Provider is not required to make the Application available for use outside of the Service Time and during scheduled Maintenance Work according to Section 6. If the Application is available outside the Service Time and in case of scheduled Maintenance Work according to Section 6, the use of the Application is at risk of Customer. Customer accepts that outside of the Service Time and in case of scheduled Maintenance Work the use of the Application might be limited regarding functionalities or performance and/or that the Application shall be switched off or

Version June 2021

restarted without notice. If the Application is made available outside of the Service Time and in case of scheduled Maintenance Work and there is a reduction in the functions or functionality of the Application or a reduction of the Availability, Customer shall have no claim for breach of warranty or be entitled to any compensation.

4.3. The Availability of the Application is calculated according to the following formula as the percentage proportion of time in the course of a calendar month during the Service Time.

$$\text{Availability in percent} = \frac{\text{Service Time (hour/min)} - \text{Downtime (hour/min)}}{\text{Service Time (hour/min)}} \; x \; 100$$

This results in a maximum downtime of 8 hours and 41 minutes in a month:

$$95 \; \% = \frac{176 \; \text{horus} - 8,4 \; \text{hours}}{176 \; \text{hours}} \; x \; 100$$

4.4. When calculating the Availability, Downtimes for which Provider is not responsible, are considered as available times. These Downtimes include the following:

a) Downtimes due to scheduled or unscheduled Maintenance Work as defined Section 6;

b) Downtimes due to Maintenance Work agreed with Customer in advance;

c) Downtimes due to operational disruptions caused by a force majeure event or other unavoidable events beyond Provider's control, which could not be averted with reasonable effort, which could not have been foreseen even when exercising with due care, and which make Provider's obligations under this SLA considerably more difficult or completely or partially impossible, such as strikes, lockouts, exceptional weather conditions, pandemic, epidemic, power outages, operational or traffic disruptions and transport obstructions and which discharge Provider from its obligations under this SLA for the duration of such an event;

d) Downtimes due to virus or hacker attacks, unless Provider has not taken reasonable protective measures;

e) Downtimes due to interruptions caused by Customer;

f) Downtimes due to software errors in Customer's applications or due to errors in the system and system-related software caused by Customer's applications or data; and

g) Downtimes due to interruptions of third parties for which Provider is not responsible.

4.5. Customer shall report any impairment on the Availability of the Application to Provider in accordance with Section 5.

5. Incident Management

5.1. Incident Management shall comprise all the activities between Customer and Provider associated with the notification and management of Incidents until resolution.

5.2. Incident Priority

a) All Incidents within the Application shall be assigned an Incident Priority which shall determine the target Response Time.

Incident Priority	Description	Response Time
1 Critical	There is an Incident Priority 1 if the use of the Application or major parts of the Application is completely unavailable or severely restricted for	≤ 1 hour within the Support business hours

	instance due to malfunctions, false work results or response times.		
2 Major	There is an Incident Priority 2 if, although the use of the Application is not unavailable or severely restricted, for instance due to malfunctions, false work results or response times, the use is subject to restriction(s) which is (are) material.	≤ 1 (one) business day	
3 Minor	There is an Incident Priority 3 if the use of the Application is not directly and/or significantly/considerably impaired, such as an instance that basic settings which are unfavourably defined or without "nice-to-have" functions.	≤ 2 (two) business days	
4 Non-Incident	There is an Incident Priority 4 if there is no limitation of the use of the Application functionalities; e.g. minor flaws, questions or requests for improvement by Customer.	≤ 3 (three) business days	

b) Provider shall, in its sole discretion, prioritize Incidents taking into account the definitions included in the table above.

5.3. Process

a) Customer shall immediately notify Provider of all Incidents.

b) All Incidents must be communicated to Provider via eMail. In case of an Incident Priority 1, Customer shall also contact the service hotline of first-level-support.

c) Customer shall ensure that when the Incident is reported, the Incident reporting must include the following required information:

   (1) Description of the Incident;

   (2) Functionality of the Application affected;

   (3) Environment affected;

   (4) Gateways affected;

   (5) Date and time when the Incident occurred;

   (6) Incident Priority;

   (7) The action(s) which Customer has already taken to remedy the Incident and any results from the action to remedy the Incident taken by Customer.

d) Once Customer provides all required information, the resolution process shall start and the first feedback after receipt of the Incident report shall be given according to the Response Time in relation to the Incident Priority according to Section 5.2.

e) Provider shall notify Customer upon Incident closure.

f) Incident processing shall be performed during the business days and operating times.

g) Provider may provide Customer with an interface for creating Incident tickets in Provider's ticketing system. Provider reserves the right to amend the ticketing system in its sole discretion due to a change in requirements. Provider shall give Customer at least three months' advance notice of a change to the ticketing system and/or a change to the interfaces. Any use of the ticketing system by third parties, in particular by end customers or suppliers of Customer, is prohibited. The ticket language for all tickets is English.

6. Maintenance Work

6.1. Provider has the right to interrupt the provision of the Application for Maintenance Work.

6.2. Provider shall plan Maintenance Work to minimize interruption of the use of the Application, so that the effect on the use of the Application by Customer is minimized.

6.3. Customer must be given 7 calendar days advance notice of Maintenance Work.

6.4. Provider is also permitted to conduct unscheduled Maintenance Work on the Application for important reasons, e. g. if the Application operation is jeopardized. This includes but is not limited to emergency changes, e. g. the implementation of security patches, which are necessary for securing and maintaining operations and require immediate implementation. Customer must be notified hereof without undue delay and the unscheduled Maintenance Work must be carried out in such a way as to minimize malfunctions in operational processes as far as possible.

6.5. All times are based on the Central European Time (CET) or Central European Summer Time (CEST) valid in Germany.

7. Service Level Reviews and Reporting

7.1. The service levels agreed in this SLA shall be subject to a regular review. The aim of this review is to discuss any possible deviations and, if applicable, to specify appropriate measures. The persons participating in the review shall be determined by the respective party.

7.2. Provider shall provide Customer with the following values in a monthly report:

   a) Availability of the Application;

   b) Maintenance Work conducted;

   c) Number of Incidents broken down by Incident Priority;

7.3. Provider shall send the report to Customer in electronic form by email.

7.4. The monthly report does not cover evaluation, free and/or try-out versions of the Application, integration or test systems. Such reports are not incorporated in the service level review.

8. Miscellaneous

The provisions of the Contract shall remain in full force and effect.

Version June 2021