**Terms and conditions of use
of Hoval Aktiengesellschaft
for SaaS services of the HovalSupervisor cloud product**

Status 01.07.2023

1.   Scope of application

1.1.   These terms and conditions of use of Hoval Aktiengesellschaft, with its registered office in Vaduz, Liechtenstein, registered with the Commercial Register of Liechtenstein under number FL-0001.017.259-1 (hereinafter "Hoval") and its contractual partners – (hereinafter "clients") shall apply to all contracts for services of the HovalSupervisor cloud product as a software-as-a-service solution (hereinafter "T&Cs SaaS"). These terms and conditions of use shall also apply to all future business relations, even if they are not expressly agreed again. Hoval reserves the right to change the T&Cs SaaS to a reasonable extent.

1.2.   Hoval hereby objects to any deviating, conflicting or supplementary terms and conditions of purchase, terms and conditions of use or other general terms and conditions of the client. Terms and conditions of purchase, terms and conditions of use and other general terms and conditions of the client shall only apply if they have been expressly accepted by Hoval in writing. This shall apply even if reference is made to the client's own general terms and conditions in the context of an order or in other documents, and Hoval does not expressly object in this case.

1.3.   The client declares and assures that he/she/it is a-person appointed to sign / accept T & Cs i.e. A Director or other nominated person.

1.4. Insofar as the client obtains the services according to the articles of the Hoval price list, he/she/it is hereinafter referred to as "individual client"; insofar as he/she/it obtains additional services and these are described in individual contracts, e.g. he/she/it acts as contractor, energy supplier, plant supervisor or district/local heating supplier, he/she/it is hereinafter referred to as "professional client"; individual clients and professional clients are hereinafter also referred to jointly as "clients".

1.5.   The contract shall come into effect upon conclusion of an agreement, upon receipt of an order confirmation by Hoval or upon activation of the user account. Delivery deadlines are non-binding.

1.6.   The professional client undertakes to conclude a separate contractual agreement with its own clients for whose systems it provides support (hereinafter "end users"); this contractual agreement describes the relationship between the end user and the professional client, as well as the defined services. In this context, the professional client shall ensure that the respective end users are also bound by the requirements of the following provisions.

1.7.   Hoval's services include the provision of the HovalSupervisor cloud software solution for use as software-as-a-service. The client wishes to purchase a licence via the Internet for temporary use of the software. Accordingly, the following contract regulates the conditions for the acquisition of the licence and the scope of the permitted use.

2.   Software services

2.1. The subject matter of the contract is the provision of the HovalSupervisor cloud software by way of remote access via the Internet (software-as-a-service) against payment and for a limited period of time. There is no physical transfer of the software. (hereinafter referred to as the "subject of performance")

There is no entitlement to expect a quality of the contractual software solution that goes beyond the functionality defined in this way; special client requests are only binding if they are additionally agreed in writing.

2.2. HovalSupervisor cloud is a proprietary online portal developed by Hoval Aktiengesellschaft that is used to visualise, operate and store the system states of all connected system components.
Please refer to the current sales documents for the detailed functional scope of the HovalSupervisor cloud software. These are updated regularly as new technical updates or new technologies become available. Hoval reserves the right to adapt the functional scope of the software service at any time, and to inform the client thereof within a reasonable period of time, at the latest within 30 working days.

2.3. Hoval shall provide the client, upon payment, with access to the HovalSupervisor cloud online portal, with the possibilities of accessing the contractually agreed number of end user installations and of receiving notifications from the serviced installations by e-mail or other communication channels.

2.4. The client receives a client logon consisting of an e-mail address (user name) and password. The password can be changed or reset by the client at any time. A change of user name can be requested from Hoval for a one-off fee. The costs for changing the user name and other optional one-off services can be found in the Hoval price list.

2.5. Hoval grants the Customer a personal, non-exclusive, non-transferable right of usage for use of the Hoval Software during the contractual period.

2.6. The clients' right of use is limited to the number of installations specified in the contract. Insofar as end users of a professional client are to have access to the HovalSupervisor cloud software, this shall take place in accordance with the provisions in clause 7.

2.7. The establishment and maintenance of the data connection between the handover point defined under clause 7.2. and the IT systems of the client (or, in the case of professional clients, their end users) are not the subject of performance. The client bears sole responsibility for the functionality of his/her/its Internet access including the transmission paths as well as his/her/its computers (required hardware and software); in the case of professional clients, this also applies with regard to their end users.

2.8. The source code of the software is also not the subject of performance.

2.9. Furthermore, Hoval is not responsible for ensuring that end users grant effective access to their systems and enable the professional client accordingly. This is beyond the responsibility of Hoval and shall be regulated by the professional client in a separate service contract with the end user.

3. Contract execution, client data

3.1.   The scope of the services offered by Hoval results from the provision in clause 2 as well as clause 3.5 below.

3.2.   From the contract that is concluded, and for the term of this contract, Hoval acquires the following irrevocable rights:

   a.)   The rights to storage, duplication and other use of contact data provided by the individual client, professional client and their end users for the purpose of implementing this contract, in particular for the transmission to external service providers within the European Union, and the EFTA states used by Hoval in the implementation of this contract (including data centre) as well as

   b.)   The rights to store and use the content data transmitted by the individual client, professional client and his/her/its end user, in particular technical parameters of the heating plants, for the purpose of this contract, in particular to carry out the necessary backups during the term of the contract, as well as to improve the functions and services offered by the software and the systems themselves. This data can also be transferred to external service providers within the European Union, and EFTA states (including data centre) for the purpose of implementing this contract.

3.3.   In addition, Hoval is irrevocably granted, free of charge and with worldwide application, the following rights for both Hoval and its affiliates within the meaning of Article 3 (3) of Annex I to COMMISSION REGULATION (EU) No. 651/2014 of 17 June 2014 (General Block Exemption Regulation).

   a.)   Hoval is allowed to use data transmitted in connection with HovalSupervisor cloud software in pseudonymised form for machine learning and product improvements or enhancements.

   b.)   To the extent permitted by law, Hoval is entitled to store, use, transfer and/or exploit for any purpose beyond the purpose of the contract all information, excluding personal data, introduced, generated, exported and/or processed by the individual client, professional client and/or his/her/its end users in connection with the HovalSupervisor cloud software. These purposes include, but are not limited to, the improvement or expansion, production, commercialisation and distribution of Hoval products as well as, for example, statistical, analytical and internal purposes.

   The client warrants that it is entitled to grant the rights of use and exploitation provided for in clauses 3.2. and 3.3., and that it has not entered into any contracts that conflict with them.

3.4.   With the concluded contract and its execution, Hoval does not assume the position or tasks of a commercial agent with regard to the information of the client and presentation of his/her/its contents.

3.5.   Hoval endeavours to ensure a high availability of the subject of performance. Further details on availability are regulated in the Service Level Agreement (SLA) attached as Annex 1, which is an integral part of these terms and conditions of use.

3.6.   In the event of force majeure and unforeseen events for which Hoval is not responsible, and which necessitate the restriction or discontinuation of the services of the Hoval product, Hoval shall be released from its obligation to perform for the duration of the hindrance as well as a reasonable ramp-up period. Force majeure shall include fire, strike, lockout, failure of telecommunication systems, failure in the data centre of the infrastructure operator and other circumstances for which Hoval is not responsible and

which make the services of Hoval substantially more difficult or impossible, and this shall apply equally whether they have arisen at Hoval or at one of its vicarious agents.

3.7.   Hoval is entitled to have the services which it is responsible for providing under the contract performed by subcontractors/service providers.

4.   Remuneration and payment terms

4.1.   Hoval shall charge the annual fee for the agreed subjects of performance in accordance with the individual price agreement or the annual fee shown in the respectively valid Hoval price list. Unless agreed otherwise, the remuneration shall be invoiced for the first time at the beginning of the contract for the contract year, and for the following contract years always in advance. For optional one-off services, please refer to the individual price agreement or the current Hoval price list. Payment is due 30 days after the invoice date, unless contractually agreed otherwise.

The effective access to end-user installations by the professional client has no influence on the annual fixed rate.

4.2.   The amounts stated in the individual price agreement or in the current Hoval price list are calculated on the basis of the wage and infrastructure costs (e.g. collectively agreed wages, costs for cloud services, provision of servers, electricity/energy costs; transport costs) existing at the time the contract is concluded.

4.3.   Hoval shall be entitled to adjust the prices after the expiry of the original basic contract term and after the expiry of each further completed year of the contract. Price adjustments are made on specific key dates, therefore price adjustments are possible after the offer has been submitted.

4.4.   Hoval shall send the client price information about the price change in text form in good time, i.e. three months before it takes effect. The client is entitled to terminate the contract with a notice period of one month until the targeted date of entry into force of the new price agreement. The client's right of termination in accordance with clause 5.2 remains unaffected.

4.5.   If the client is in default of payment, Hoval shall be entitled to charge statutory default interest. Upon request, the client shall confirm receipt of the invoice and the date of receipt in writing.

4.6.   If the payment deadline has passed, Hoval can block access without prior notice until the claims have been paid in full and can also deactivate the notification function of serviced installations.

4.7.   All claims of Hoval shall become due immediately if the terms of payment are not complied with or if Hoval becomes aware of circumstances which are likely to reduce the creditworthiness of the client. In such cases, Hoval shall also be entitled to require advance payment or to demand appropriate security before performing any outstanding services.

5.   Duration of the contract, termination, withdrawal

5.1. Subject to individual contractual provisions, contracts are concluded for a fixed basic contractual period of one year; ordinary termination is excluded within this basic contractual period.

The right to extraordinary termination for good cause remains unaffected.

5.2. The term of the contract shall be extended for an indefinite period unless the contract is terminated before the end of the basic contractual period with three months' notice to the end of the basic contractual period. After having been extended for an indefinite period, the contract can be terminated by either party with three months' notice to the end of a calendar month.

5.3. Notice of termination shall be given in writing or via the approved digital channels (web forms), and shall be addressed to Hoval Aktiengesellschaft, 9490 Vaduz, Liechtenstein.

5.4. Hoval reserves the right to withdraw from concluded contracts until the services or deliveries owed by Hoval have been provided. In this case, the client shall only have the right to be reimbursed for services that he/she/it has already rendered; any further claims, in particular claims for damages, shall be excluded.

5.5. Extraordinary termination is only permissible if one of the two parties violates essential contractual obligations with gross negligence or intent, and does not cease this violation upon written request and after a reasonable deadline has been set. This is the case, for example, in the event of:

- Delay in payment by the client of more than three months, after a final deadline for performance has been set;
- Violation of secrecy and confidentiality rules by a party.

6. Responsibility of the client, blocking, exemption

6.1. The client shall not transmit or introduce into the HovalSupervisor cloud product system any content that is illegal under the laws of any country. If the client has a branch in a member state of the European Union, then he/she/it will observe the legal system there, and also the Swiss legal system.

6.2. The client undertakes in particular to respect and comply with the special legal regulations on tele and/or media services and the further legal regulations on data protection, copyright, trade secrets, trademark law, the law against unfair competition and related areas of law as well as the (basic) right to protection of the general personality, and not to disseminate any content or services that offend common decency or have dubious content in any other way. This applies in particular to the dissemination, linking to or provision of pornography, right-wing radicalism, incitement to violence or crime, discrimination, gambling or otherwise objectionable content.

6.3. All passwords assigned by Hoval shall be changed by the client without delay to passwords known only to the client. The contractual relationship concerning the user account and the access data is (with the exception of the provisions of clause 7.2) non-transferable (including renting, leasing, lending or sublicensing). The access data shall be kept secret and protected from access by third parties using suitable, effective measures. The client shall inform Hoval without delay if there is any suspicion that the access data may have become known to unauthorised persons. The client alone is responsible for the consequences of misuse of the access data; Hoval is not responsible. The client is liable for all actions taken under his/her/its user account.

6.4. The client is not authorised to use scrapers, robots, spiders or other similar data collection or extraction tools, programs, algorithms or methods to search, access, acquire, copy or monitor the HovalSupervisor cloud software. Furthermore, the client is not entitled to gain access to non-public areas of the HovalSupervisor cloud software or its underlying technical systems, to test, scan or investigate the vulnerability of the HovalSupervisor cloud software or to knowingly transmit client data or other content containing viruses or worms, Trojans or other contaminated harmful components, or otherwise interfere with the proper functioning of the HovalSupervisor cloud software.

6.5. Furthermore, the client is not entitled to edit, modify, reverse-engineer, decompile, disassemble or otherwise determine the source code of the HovalSupervisor cloud software or parts thereof, or to create derivative works from the HovalSupervisor cloud software. However, the mandatory, non-derogable provisions of Articles 5 and 6 of Directive 2009/24/EC (directive on the legal protection of computer programs) – as well as its national implementing provisions – remain unaffected. The client is also not allowed to commission third parties with the aforementioned measures.

6.6. In any event, Hoval reserves a right of review and a right of final decision on the client's obligations referred to in clauses 6.1 to 6.5. Hoval shall be entitled to prevent further use at any time after prior or simultaneous notification of the client if, in Hoval's justified assessment, such use contradicts the obligations in clauses 6.1 to 6.5.

6.7. Hoval can also block the client's entire application if isolation of the objectionable content is not possible, or only possible with disproportionate effort. The client retains the right to prove at a later date that his/her/its content is lawful or that he/she/it holds the rights required for the use and/or publication of the content.

Claims for damages by the client due to an exercise of the right to block and disconnect by Hoval are excluded.

6.8. The client warrants that he/she/it is the owner of the right to use the data and content transmitted by him/her/it within the framework of the subject of performance of the contract – also and in particular within the framework of this contract and via the Internet – and to transmit them to Hoval for the subject of performance of the contract.

6.9. This applies in particular to the required consent of the end users of professional clients, authors and other persons who hold rights to the data and content and, in the case of images of natural persons or works protected by copyright (including buildings) and special categories of personal data within the meaning of Art. 9 of the General Data Protection Regulation (GDPR), also to the required consent of these persons or authors.

6.10. The client shall indemnify Hoval against all claims of third parties, including costs, arising from alleged infringements of licence, property or other rights, on first demand. The client shall bear all possible liabilities, in particular as a result of claims by third parties – including copyright collecting agencies – and the associated costs, in particular also the reasonable costs of a legal defence.

6.11. In the event of a claim by a third party, Hoval's obligation to keep the data and content of the individual client, professional client and its end users available shall be suspended until the client has brought about a final clarification of the rights thereto. If the data and contents made available are objected to by legal or natural persons acting for the protection of competition or public bodies, the same shall apply in relation to Hoval.

6.12. Instead of blocking the relevant data and content, Hoval can also immediately remove the content from the server. If the client does not remove the respective content from the server upon first request, Hoval shall be entitled to terminate the respective contract without notice as well.

6.13. Detrimental effects and additional costs resulting from the breach of these contractual obligations shall be borne by the client.

7.   Right of use of the client and his/her/its authorised users and end users

7.1.   The software solution provided to the client in each case is legally protected. The copyright, patent rights, trademark rights and all other ancillary copyrights to the software as well as to other objects which Hoval makes accessible to the client within the scope of preparing and implementing the contract shall be exclusively vested in Hoval in the relationship between the contracting parties. Insofar as third parties are entitled to the rights, Hoval shall have corresponding exploitation rights.

7.2.   Hoval grants the client a non-exclusive, non-transferable and non-sublicensable right to use the agreed software solution and the associated user documentation of HovalSupervisor cloud within the agreed scope for the duration of the contract. The aforementioned right of use referred to in this clause 7.2 shall include

-      also the use by authorised users who are in a relationship of employment with or work on a freelance basis for the client and whose identities are notified to Hoval prior to use, at least in text form. The client warrants that each authorised user will comply with the rules for the proper use of the software solution in accordance with these terms and conditions of use.

-      in the case of professional clients, the right of use referred to in this clause 7.2 shall also include use by authorised end users who are in a contractual relationship with the professional client and whom the professional client creates and/or activates as users, insofar as the professional client guarantees to Hoval within the scope of its contractual agreements with the respective end user that

    •   the professional client will provide the respective end user with all documents necessary for the use of the HovalSupervisor cloud, in particular the user manual and instructions for the proper use of the HovalSupervisor cloud (these are available via the Hoval country website or on request from the Hoval branch office);

    •   the contractual agreements with the end user contain all material provisions of these terms and conditions of use and that each authorised end user complies with the regulations for the proper use of the software solution in accordance with these terms and conditions of use;

    •   the end user's right of use is dependent on the existence of the professional client's right of use in relation to Hoval;

    •   just as in the case of changes to the parameter settings directly on the plants themselves, the end user also has no (compensation) claims against Hoval in the case of parameter settings via the HovalSupervisor cloud, insofar as any damage incurred is attributable to improper parameter settings;

    •   The professional client shall indemnify Hoval against all claims of the end users plus costs, upon first request, insofar as he/she/it is responsible for the damage and the cause lies within his/her/its sphere of control/organisation. The professional client shall be liable, inter alia, if the professional client has breached a duty resulting from these T&Cs SaaS. The professional client

shall bear all possible liabilities, in particular as a result of claims by third parties and the associated costs, in particular also the reasonable costs of a legal defence.

The use takes place by accessing the software functionalities on Hoval's server architecture. The handover point for Hoval's services is the router output of the data centre used by Hoval. The client shall not be granted any further rights.

7.3. Use of the software beyond the use permitted under this contract is not permitted. The client is not entitled to arrange for the software to be used by third parties or to make it accessible to third parties; in particular, the client is not permitted to reproduce or sell the software, parts thereof or rights thereto. The client shall also pay the fees if a third party uses the software if and to the extent that the client is responsible for the use. Third parties in the aforementioned sense are not the authorised users and authorised end users described in clause 7.2.

7.4. In the event of serious violations of these obligations incumbent on the client, Hoval shall be entitled to block the client's access – in the case of professional clients also that of their connected end users – at the client's expense. Such blocking does not release the client from the obligation to pay the fee for the use of the software.

8.   Warranty

8.1. Unless otherwise stipulated below, Hoval's warranty shall be governed by the rules of rental law for the agreed quality of the subject of performance.

8.2. In the event of a defect, the client shall be entitled to rectification or replacement of the service, at the discretion of Hoval. If a defect subject to the warranty obligation cannot be rectified or if further attempts at rectification are unreasonable for the client, the client can terminate the contract instead of rectifying the defect, insofar as the defect does not merely represent an insignificant reduction in the suitability of the service.

8.3. For the software solution provided in each case, Hoval warrants that the software solution fulfils the main functions apparent from its program description. However, complete freedom from errors cannot be guaranteed in this respect due to the multitude of data, hardware and operating constellations occurring in practice, as well as operating errors. Data loss cannot be completely ruled out either. The client shall therefore back up his/her/its data at regular intervals. He/she/it shall keep the necessary documents for a possible reconstruction in case of data loss.

8.4. Only the description of the HovalSupervisor cloud provided by Hoval prior to the conclusion of the contract or agreed in a separate document shall be authoritative for the quality of the HovalSupervisor cloud. In the case of updates, the last available version of the description shall apply. This also applies in particular to the properties with regard to IT security. Any further quality is not owed and does not result in particular from public statements or advertising by Hoval's sales partners.

The information about the properties of the subject of performance, technical data and specifications in the concept or the performance descriptions and other documents relevant to the contract serve solely to describe the respective performance. They are not to be regarded as a guarantee (or warranted characteristic). A guarantee shall only be granted if it has been expressly designated as such in writing by Hoval before conclusion of the contract.

8.5. The client shall notify Hoval of any defects without delay.

8.6. The warranty obligation shall not apply if the client has not used the service provided by Hoval in accordance with its intended use.

8.7. The client shall only be entitled to a right of withdrawal and a claim for damages instead of performance due to a breach of obligations not related to performance – referred to as ancillary obligations – over and above the statutory provisions if he/she/it has previously warned Hoval in writing and Hoval has nevertheless failed to remedy the breach of obligation.

8.8. The warranty for merely insignificant reductions in the suitability of the service, for example in the case of an insignificant deviation from the agreed quality or only insignificant impairment of the usability of the HovalSupervisor cloud, is excluded. Liability regardless of fault for defects that already existed at the time of conclusion of the contract is excluded.

8.9. The application of the renting party's right of self-remedy is excluded.

8.10. In the event of impossibility or failure to remedy the defect, culpable or unreasonable delay or serious and final refusal by Hoval to remedy the defect or other unreasonable factors relating to the remedying the defect for the client, the client shall in particular be entitled to reduce the remuneration owed, in accordance with the extent of the impairment (reduction). The client shall not be entitled to assert a claim for reduction by independently deducting the amount of the reduction from the (ongoing) fee to be paid; the client's claim to reclaim the overpaid portion of the fee (based on unjust enrichment) shall remain unaffected.

9. Liability

9.1. Claims by the client for compensation for expenses or damages, irrespective of the legal grounds, are limited to damage caused by Hoval or one of its vicarious agents or contractors

a.) in the event of intent and gross negligence;

b.) in the event of injury to body, life or health;

c.) in the event of a breach of a material contractual obligation, the fulfilment of which is a prerequisite for the proper performance of the contract and on the observance of which the respective party regularly relies and may rely, but limited to the damage reasonably to be expected at the time of the conclusion of the contract;

d.) for claims arising from the Swiss Product Liability Act, but only in accordance with the provisions therein;

e.) due to fraudulent concealment of a defect or acceptance of a guarantee of quality;

f.) in the event of any other further-reaching mandatory statutory liability

9.2. The aforementioned limitations of liability also apply to the personal liability of our legal representatives, employees and staff, vicarious agents and assistants.

9.3. Liability for the functionality of the software provided by Hoval is limited to the amount of the agreed remuneration.

9.4.   Liability for indirect damage or loss of profit is excluded.

9.5.   Hoval shall only be liable for the loss of data in accordance with the above paragraphs if such loss could not have been avoided by reasonable data backup measures on the part of the individual client, professional client or his/her/its end users. If the data inventories of the individual client, professional client or his/her/its end users change, he/she/it shall also carry out a data backup in this respect. Furthermore, any liability of Hoval due to loss of data is subject to limitations up to the amount of the agreed remuneration or the remuneration charged by Hoval.

9.6.   The liability shall be determined in accordance with the statutory provisions, in which case it shall be limited in amount per case of damage – irrespective of the legal grounds – to the sum of the fees for targeted software services per calendar year multiplied by a factor of 2.5.

9.7.   Furthermore, Hoval does not guarantee the ability to send and/or receive information. Hoval is neither responsible nor liable for services provided and any resulting abuse and damage by third parties not contracted by Hoval. Hoval excludes any liability for security deficiencies of the Internet.

9.8.   All rights of the client to compensation shall be invalidated in the event of termination of the contract. Services rendered up to this point will be invoiced. Further claims are excluded.

10.   Statute of limitation

10.1. Insofar as claims for defects exist, they shall become statute-barred within twelve months of the performance of the service.

10.2. Claims for damages, insofar as they are not in connection with a defect, shall become statute-barred within one year from the end of the year in which the claim arose, and the client became aware of the circumstances giving rise to the claim, or should have become aware without gross negligence.

10.3. The provisions in clause 10.1 and clause 10.2 shall not apply insofar as the claims are based on an intentional or grossly negligent breach of duty by Hoval, in the event of injury to life, body or health, in the event of liability under the Swiss Product Liability Act or in the event of any other further-reaching mandatory statutory liability.

11.   Data protection

11.1. The rights and obligations of the parties under data protection law are regulated and specified below, in particular the allocation and fulfilment of tasks and obligations under applicable data protection law (in particular the GDPR) with regard to joint data processing via the online portal HovalSupervisor cloud.
The joint data processing is carried out in accordance with the terms and conditions of use and the privacy policy of the online portal HovalSupervisor cloud.

11.2. The following types of data are subject to processing: Client master data, system and service data, user, access and connection data. Hoval assumes the following responsibility with regard to the data processing within the platform provided by Hoval:

-       for the collection of the data;

-       for the storage of the data;

- for the amendment and erasure of the data, the restriction of its processing and its portability;

- for adequate security of data transmission and processing with regard to data processing within the platform provided by Hoval, the client assumes the following responsibility;

- for compliance with its statutory retention obligations existing in relation to the data;

- for compliance with nationally applicable data protection regulations and requirements;

- for the confidential handling of data and its appropriate processing;

- for the creation of a data protection-compliant contract with the end user.

11.3. Both parties shall be jointly responsible, notwithstanding the responsibilities assigned to each of them individually:

- for the lawfulness of the processing operations;

- for the fulfilment of information obligations in a precise, transparent, comprehensible and easily accessible form;

- for processing and responding to requests from data subjects;

- for ensuring that data processing is carried out in accordance with the requirements of applicable data protection legislation and the protection of the rights of the data subject;

- for ensuring that only authorised persons have access to the personal data and that all persons involved in data processing are obliged to maintain confidentiality with regard to the data;

- for mutual support in complying with the stipulations agreed in this contract as well as applicable statutory data protection provisions.

11.4. Each party may engage processors for the purposes of data processing and shall ensure that the necessary, legally valid contract data processing agreement is concluded.

11.5. If Hoval processes data in a third country (i.e. outside the European Union (EU) or the European Economic Area (EEA)) or does so in the context of using third-party services or disclosing or transferring data to third parties, this will only be done if it is done to fulfil our (pre-)contractual obligations, on the basis of your consent, due to a legal obligation or on the basis of our legitimate interests. Subject to legal or contractual permissions, we only process the data or have the data processed in a third country if the special requirements of Art. 44 et seq. GDPR are complied with, i.e. the processing is carried out, for example, on the basis of special guarantees, such as the officially recognised determination of a level of data protection corresponding to the EU (such as with regard to Switzerland) or compliance with officially recognised special contractual obligations (referred to as "standard contractual clauses").

11.6. The parties shall notify the other party without delay if a data protection supervisory authority contacts the respective other party in relation to this contract, cooperation and data processing. They shall – on the basis of common understanding – coordinate with each other before carrying out any requests issued by competent data protection

supervisory authorities or before issuing information in relation to this contract, cooperation or data processing to competent data protection supervisory authorities.

11.7. The parties are liable towards data subjects in accordance with statutory data protection regulations.

12. Confidentiality

12.1. The parties shall maintain confidentiality with regard to all information to be treated confidentially which has come to their knowledge within the framework of the contractual relationship or shall only use such information in relation to third parties – for whatever purpose – with the prior written consent of the other party in each case. Information to be treated as confidential includes information expressly designated as confidential by the party providing the information, and information the confidentiality of which arises from the circumstances of the disclosure. This applies in particular to all end-user data, the agreed settlements, pricing and discounts. In case of doubt, the circumstances shall be treated as confidential.

12.2. The obligations under clause 12.1 shall not apply to such information or parts thereof for which the receiving party proves that

a.) it/they was/were known to the receiving party or generally accessible to it before the date of receipt or become known to it after the date of receipt by a third party lawfully and without an obligation of confidentiality;

b.) it/they was/were known or generally available to the public before the date of receipt; or

c.) it/they became known or generally available to the public after the date of receipt without the party receiving the information being responsible for this.

12.3. Public declarations of cooperation by the parties shall only be made by prior mutual contract. The client is not entitled to act as a representative or trading partner of Hoval. The client is not entitled to use information about an intended or existing contractual cooperation for reference or marketing purposes, without Hoval's prior consent.

12.4. The obligations under clause 12.1 shall continue to exist for an indefinite period of time beyond the end of the contract and for as long as an exceptional circumstance under clause 12.2 is not proven.

13. Final provisions

13.1. Swiss law applies exclusively, to the exclusion of international contracts (e.g. CISG).

13.2. It is agreed that the Swiss courts have exclusive jurisdiction.

13.3. If certain provisions should become unenforceable in whole or in part, this will not affect the validity of the remaining provisions of this T&C SaaS. In place of the invalid provision, the contracting parties shall choose a provision that comes as close as possible in economic terms to the invalid provision. The same applies to any gaps in this T&Cs SaaS.

13.4. Amendments and supplements shall be made in writing; this applies in particular to the amendment of this requirement for the written form.

Annex 1 – Service Level Agreement (SLA)

1. Subject of regulation

1.1. The following provisions of this Service Level Agreement (SLA) specify the access to the software owed by Hoval in terms of time and technology, in the form of a performance description.

2. Technical availability

2.1. All non-time-based performance specifications in this Service Level Agreement refer to the quality of the HovalSupervisor cloud offered to the client for use at the handover point of the data network operated by Hoval. Impairments in the area of data transmission from this handover point to the client and/or in the area of the client's IT system itself shall not be taken into account.

2.2. Technical availability means the client's ability to use all main functions of the software. Periods of insignificant disruptions during which the main functions can continue to run are therefore not taken into account when calculating availability.

3. Time-based availability

3.1. The time-based availability indicates the percentage of the recorded time period for which the HovalSupervisor cloud is available at the handover point according to the following specifications:

Weekday	Period
Working day (Monday to Friday not including public holidays[1])	02:00 to 24:00 (CET) (Scheduled maintenance and data backups are carried out daily between 0:00 and 2:00. Operation is not possible during this time.)

3.2. Hoval is not obliged to make the application software available for use outside the periods ordered by the client. Hoval will close the application if the performance period booked by the client has expired.

3.3. Time-based availability is defined as follows for the aforementioned periods:

All working days	98%

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[1] Public holidays on working days: New Year's Day 01.01.; Epiphany 06.01.; Candlemas 02.02.; St Josef 19.03.; Good Friday varies; Easter Monday varies; Labour Day 01.05.; Ascension Day varies; Whit Monday varies; Corpus Christi varies; Assumption Day 15.08.; Birth of the Blessed Virgin Mary 08.09.; Austrian National Day 26.10.; All Saints' Day 01.11.; Immaculate Conception 08.12.; Christmas Day 25.12.; St Stephen's Day 26.12;

3.4. The actual time-based availability achieved is calculated on a working day basis. The provider's measuring instruments in the data centre are decisive for the proof of availability.

3.5. Downtimes not attributable to Hoval are considered available times when calculating the actual availabilities. These downtimes are therefore harmless, and do not give rise to claims on any legal basis whatsoever.

The following items represent examples of these non-attributable downtimes:

- maintenance or other services agreed with the client during which access to the application software is not possible;

- maintenance work that becomes necessary unexpectedly, if this work was not caused by a breach of Hoval's obligations to provide the services (force majeure, in particular unforeseeable hardware failures, strikes, natural events, etc.);

- Downtimes due to virus or hacker attacks, insofar as Hoval has taken the agreed protective measures or, in the absence of an agreement, the usual protective measures;

- Downtimes due to specifications of the client, due to unavailability of the client's equipment or due to other interruptions caused by the client (e.g. failure of the client to cooperate);

- Extensions of downtime caused by blocking of the console or remote access attributable to the client;

- Downtimes due to specifications from software manufacturers of third-party components;

- Downtimes for the installation of urgently needed security patches;

- Downtimes due to software errors in client applications or due to errors in system and system-related software triggered by client applications or data; or

- Downtimes caused by third parties (persons not attributable to Hoval).

4. Availability owed

4.1. Technical and time-based availability of the software are provided if it can be accessed during the relevant period of time pursuant to clauses 3.3 to 3.5.

4.2. The client assumes the obligation to report any impairment of availability to Hoval. Hoval shall endeavour to remedy the impairments without delay. There shall be no claim to restoration of the availability of the software insofar as the agreed availability is guaranteed.

5. Priorities

5.1. If Hoval's services do not correspond to the values specified under this Service Level Agreement, Hoval shall, in the event of impairment of both time-based and technical availability, first restore the time-based availability of the services, followed by the data throughput owed, next the response time behaviour, the packet delay, and finally the packet loss rate.

6. Fault reporting, restoration of services

6.1. The client can report non-compliance with the availability owed as a fault. The client shall only submit reports on faults to be dealt with in accordance with this SLA via the fault hotline notified to him/her/it by Hoval through the employees trained and authorised for this purpose. When reporting the fault, the client shall state which persons are available to Hoval as contact persons at the client for this fault, and how they can be reached by telephone. The contact persons shall be named in such a way that Hoval can always and directly contact one of the named contact persons during the duration of the disruption, at least during the client's business hours.

6.2. A fault to be remedied by Hoval shall not be deemed to exist in the event of impairment of data transmission outside the data network operated by Hoval, e.g. due to line failure or fault at other providers or telecommunication providers, or a use of the system capacities provided contrary to the contract, e.g. due to an excessive number of accesses by the client.

7. Remuneration

7.1. No separate remuneration will be charged for the provision of the services under this SLA. However, if the client has notified Hoval of a fault and if, after an inspection, it becomes apparent that the fault occurred due to a circumstance attributable to the client, Hoval can charge the client for the services rendered to identify the fault at the hourly rates applicable to such services in accordance with the Hoval price list, unless the client could not have recognised that the fault occurred due to a circumstance for which the client is responsible, even if it had exercised due diligence.