plus10 GmbH **("plus10")**
Company No. HRB 33360
Amtsgericht Augsburg
Registered office of the company:
Werner-von-Siemens-Straße 6,
D-86159 Augsburg GERMANY

plus10 SaaS Terms

Version: 1.1

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IMPORTANT – READ CAREFULLY: These terms of use ("**ToU**") plus10's Software (as defined in Sec. I) provided on software-as-a-service (the "**SaaS**") basis ("**SaaS Terms**") is a legal agreement between you (either an individual or a single entity – "**You**" or "**the User**") and plus10 GmbH, with its business seat in Augsburg, registered under HRB 33360, Amtsgericht Augsburg, Germany ("**plus10**").

ASSUMING YOU HAVE PURCHASED OR SUBSCRIBED TO THE HARDWARE PRODUCT, WHICH CONTAINS THE SOFTWARE, OR THE STANDALONE SOFTWARE LICENSE OR A SUBSCRIPTION TO THE SOFTWARE, FROM PLUS10 OR A PLUS10 AUTHORIZED PARTNER, CLICKING ON THE "I ACCEPT" BUTTON, DOWNLOADING, INSTALLING, ACCESSING OR USING PLUS10 SOFTWARE CONSTITUTES THAT YOU HAVE READ THIS AGREEMENT, THAT YOU UNDERSTAND IT AND ACCEPT IT, AND THAT YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IN ANY EVENT, PLUS10 DOES NOT REQUIRE THE DECLARATION OF ACCEPTANCE TO BE RECEIVED AT ITS PREMISES. PLUS10 IS WILLING TO THIS SOFTWARE AS A SERVICE TO YOU ONLY UPON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS CONTAINED IN THIS TERMS OF USE AS WELL AS OUR PRIVACY POLICY AVAILABLE AT THE TIME OF YOUR ORDER (COLLECTIVELY, THE "AGREEMENT"). IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN PLUS10 IS UNWILLING TO PROVIDE THE SOFTWARE TO YOU AS A SERVICE AND YOU SHOULD CLICK THE 'I DO NOT ACCEPT' BUTTON, CLOSE THE BROWSER WINDOW/TAB, IMMEDIATELY CEASE AND REFRAIN FROM ACCESSING OR USING THE SOFTWARE.

If this Agreement is translated into a language other than English and there is a conflict of terms between the English and the other language, the English version shall prevail. The User should keep a copy of this ToU for his records. The latest version of this ToU appears in its entirety on our plus10 website. plus10 reserves the right, in its sole free discretion, to make reasonable amendments to this Agreement from time to time provided that disputes arising hereunder will be resolved in accordance with the Terms of the Agreement in effect at the time the dispute arose. plus10 will inform the User after each amendment in due way and the User should review the published Agreement from time to time to become aware of changes. Material changes to these terms will be effective upon the User's first use of the Software with actual knowledge of such change. Any use of the Software by the User after the amended Agreement becomes effective constitutes the User's acceptance of the amended Agreement. If the User does not accept amendments made to this Agreement, then this Agreement will be immediately terminated pursuant to the Sec. 11.

I. **DEFINITIONS.**

1. "**AktG**" means German Stock Company Act (*Aktiengesetzbuch*)

2. "**Automatic Renewal**" means a feature that provides for the renewal of a license at the end of a license Term without the need for further notification.

3. "**BGB**" means German Civil Code (*Bürgerliches Gesetzbuch*)

4. "**Licensee**" means the Licensee, or the company, organization, or entity the Licensee represent as his authorized legal representative.

5. "**Data**" means electronic data recorded or manipulated by the Hard- and Software and stored as part of the plus10 product or plus10 service.

6. "**To Decompile**" means to reverse engineer, decompile, or disassemble the Software for the purpose of achieving interoperability with other computer programs according to section 69 e UrhG.

7. "**Device**" or "**Node**" means a single machine whether physical or virtual.

8. "**Documentation**" means written information (whether contained in user or technical manuals, training materials, specifications or otherwise) pertaining to the Software and made available by plus10 with the Software in any manner (including on USB, hard drive, or via online access).

9. "**Entrepreneur**" means any natural person, legal entity or partnership, having the legal capacity that is not engaged in personal or familial usage in ordering or receiving Software of plus10 while performing its commercial or independent professional or other work.

10. "**External User**" means any individual (not an organization) using the plus10 Software who is not: (i) one of the Licensee's full-time, part-time or temporary employees; or (ii) any temporary personnel or an independent contractor on assignment at the Licensee's place of business or work-site.

11. "**Fee**" means the subscription price or the license fee paid for Software to plus10.

12. "**plus10 Product**" means one of plus10's proprietary products including the related marketing materials, Documentation, ToUs, and other supplemental materials.

13. "**plus10 Service**" means services to be performed by plus10 staff.

14. "**PLC**" means Programmable Logic Controller installed in industrial machinery and registered in the plus10 Product.

15. "**Production Use**" means use of the SaaS, solely for internal production purposes in support of one Site.

16. "**Software**" means plus10 software and associated documentation that accompanies these ToU, which includes the associated media and plus10 internet-based services.

17. "**Site**" means the discrete geographic location where the Licensee first installs or uses the Software.

18. "**Term**" means the term of the license obtained by the Licensee for Production Use.

19. "**Time Clocks**" means any time clocks, copy-protection mechanisms, or other security devices embedded in the Software which may deactivate the Software after the expiration of any applicable subscription or license Term. Time Clocks may require an Internet connection and transfer transmission of Data captured to plus10.

20. "**Upgrades**" of the Software means any modifications, enhancements, revisions thereto. Classification of such modification as an Upgrade is at plus10's sole discretion.

21. "**UrhG**" means German Copyright Act (*Urhebergesetz*).

22. "**User**" or "**End User**" means any individual or entity logging in on a Node and using the Software that is not an External User.

23. "**Volume**" means the number of Users and/or number PLC allowed by the license obtained by the Licensee for Production Use.

24. "**Volume Checking**" means any code, copy-protection mechanisms, or other security mechanisms embedded in the Software which may deactivate the Software after the Volume is used up. Volume Checking may require an Internet connection and transfer transmission of Data captured to plus10.

II. TERMS OF USE SAAS

1. PROVISION OF SOFTWARE AS A SERVICE

plus10 will make the Software available to the User and use commercially reasonable efforts to make the online Software available as Service twenty-four (24) hours a day, seven (7) days a week, except for: (i) planned downtime (of which plus10 shall give advance electronic notice), and (ii) any unavailability caused by circumstances beyond plus10's reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving plus10's employees), Internet service provider failure or delay, hosting service provider failure or delay, Non-plus10 Application, User Generated Content or denial of service attack.

The Software is neither sold nor licensed.

The User has the right to access and use SaaS subject to the terms of this Agreement and the Documentation. The User grants plus10, its Affiliates according to section 15 AktG and applicable contractors a worldwide, limited-term license to host, copy, transmit and display his uploaded data information, and any Non-plus10 Applications and program code created by or for the User using a Service or for use by the User with the Services, as reasonably necessary for plus10 to provide the Services in accordance with this Agreement. Subject to the limited licenses granted herein, plus10 acquires no right, title or interest from the User or his licensors under this Agreement in or to any of the User's uploaded data information, Non-plus10 Application or such program code.

2. CLOUD STORAGE & SECURITY

plus10 will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of the Software and Data. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of the Software and/or Data by plus10 personnel except (i) to provide the subscribed services and prevent or address service or technical problems, (ii) as compelled by law, or (iii) as the Customer expressly permits in writing. Sec. 7 shall remain unaffected. plus10 and Customer will enter a Data Processing Agreement in accordance with Art. 28 EU-GDPR to ensure the security of processing if necessary.

3. NO LICENSING

The Software is provided as SaaS and no license is granted to Customer. In particular, the provision of SaaS does not include any exploitation rights, in particular but not limited any right of reproduction (section 16 UrhG), right of distribution (section 17 UrhG), right of exhibition (section 18 UrhG), right of recitation, performance, and presentation (section 19 UrhG), right of making works available to the public (section 19a UrhG), right of broadcasting (section 20 UrhG) or any right of adaptations and transformations (section 23 UrhG). plus10 confirms that the usage of Services provided under this Agreement does not require from the Customer reproduction of Software or undertaking any of the actions mentioned in the previous sentence.

4. RESERVED RIGHTS

The Customer acknowledges and agrees that the Software is a proprietary product of plus10 protected by copyright and other applicable intellectual property laws and treaty provisions. The Customer further acknowledges and agrees that the entire right, title, and interest in and to the Software including associated intellectual property rights, shall remain with plus10. plus10 retains all rights not expressly granted to the Customer in these SaaS with or without Customer's knowledge or consent.

THE SOFTWARE IS PROVIDED AS SOFTWARE-AS-A-SERVICE. THE SOFTWARE IS NEITHER SOLD NOR LICENSED.

5. PURCHASING CONDITIONS

5.1. **Subscription plan**: plus10 Software is provided on a subscription basis described in the Order Form for the SaaS and Implementation Services or any other order confirmation in accordance with this Agreement.

5.2. **Term**: Term of the License shall be twelve (12) months with Automatic Renewal by twelve (12) unless terminated within ninety (90) days to the end of the Term.

5.3. **Fee**: Depending on the agreed subscription plan Licensee has to pay to plus10 an annual subscription Fee as specified in the order confirmation. The annual subscription fee will be invoiced instantly after ordering.

5.4. **Volume**: Depending on the agreed subscription plan License is limited to Volume as specified in the order confirmation.

5.5. **Adjustment of Fees**: plus10 reserves the right to change the Fees or applicable charges and to institute new charges and Fees with effect after the next Renewal, upon thirty (30) days prior notice to Customer (which may be sent by email).

5.6. **Features**: Depending on the agreed subscription plan License is limited to the features specified in the order form under "Services".

5.7. **Support**: Depending on the agreed subscription plan plus10 provides certain service levels as specified under Exhibit D and as applicable at the time the subscription is ordered.

6. REGISTRATION AND ACTIVATION

The Customer acknowledges that registration and if necessary, activation of the bot within the Customer's Enterprise Messenger is required in order for the Customer and its users to utilize the full benefits of the Software. If the User is not registered, the User has no right to access the software and the limited warranty in this Agreement does not apply.

7. NO RENTAL OR COMMERCIAL HOSTING

The Software is provided as SaaS for the Customer and its Users only. The Customer may only rent, lease, lend, or provide commercial hosting services with the Software upon plus10's prior written consent.

8. DATA CAPTURE AND USE

The Customer agrees that plus10 may collect and utilize technical information gathered as part of the Software support services and SaaS provided to the Customer. Data captured in this form will only be used to improve plus10's Products and/or provide customized services to the Customer and will not be disclosed or disseminated to third parties except in an anonymized form.

9. BACKUP OF DATA

The setup of a functional hardware and software environment for use of the Software shall be solely in the Customer's responsibility. The same shall apply to regular data backup.

10. RESTRICTIONS ON CERTAIN SOFTWARE

Software identified as trial, demo, evaluation, and Beta versions may not be used for any purpose other than the Customer's testing or evaluation unless specified otherwise pursuant to a separate agreement signed by both the Customer and plus10.

11. TERMINATION

If the Customer breaches the terms and conditions of this Agreement, plus10 may terminate this Agreement without prejudicing any of its other rights. In such event the Customer must cease use of the Software with immediate effect. Sections 1, 4, 12, 13, 14, 15 and 18 specifically survive termination.

12. LIMITED WARRANTY

12.1. **State of the art**: Unless expressly agreed otherwise, the SaaS provided by plus10 shall be in line with the current state of the art technology and shall conform to all relevant product information and specifications provided by plus10, including those in the Documentation. plus10 does not warrant that the Software under the agreement will be fit for purposes beyond the fulfillment of plus10's obligations under the Agreement.

12.2. **Errors**: The Customer is advised that based on the current state of the art technology program errors cannot be excluded with complete certainty in spite of exercising greatest conscientious care and diligence. The Parties acknowledge that plus10 Products are inherently complex and may not be completely free of errors. The following errors are excluded from plus10's warranty: (i) insignificant defects, including but not limited to errors that can be easily corrected and will not show up as a performance defect and (ii) defects discovered in any plus10 Product that has been modified, altered, or enhanced by anyone other than plus10 itself.

12.3. **Rectification**: Defects in the Software shall be rectified by plus10 within a reasonable period after notification of the defect. The rectification of defects shall be effected, at Customer's choice, by way of repair or substitute the Software free of charge. The Customer's right to reduce the Fee for the time the defect persists remains unaffected. The Customer is only entitled to an extraordinary termination of the agreement due to the failure to grant use in accordance with the agreement if plus10 has been given sufficient opportunity to rectify the defect and such attempt has failed.

12.4. **Limitation**: If plus10 has provided the Customer with the SaaS against no payment whatsoever, defects in the Software shall be rectified by plus10 only in case they were resulting from gross negligent or intentional behavior of plus10, provided however rectification of a defect in the Software is not otherwise mandatory according to statutory law.

12.5. **Failure in rectification**: It shall be assumed that the repair or substitution of Software has failed only if plus10 has been given sufficient opportunity to affect a repair or substitution delivery without achieving the desired result or if the repair or substitute delivery was unjustifiably refused by plus10. If rectification of a defect in the form of repair or subsequent delivery is only possible for plus10 at unreasonable expenses, plus10 may refuse to rectify the defect and refer the Customer to his right terminate the Agreement.

12.6. **Source Code**: In no event shall the Customer be entitled to demand the source code for the Software in regard to any defects.

13. HIGH RISK ACTIVITIES

The Software is not fault tolerant and is not designed, manufactured, or intended for use or resale as control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the Software could lead directly to death, personal injury, or severe physical or environmental damage (the "**High Risk Activities**"). Accordingly, plus10 and its suppliers specifically disclaim any express or implied warranty of fitness for High Risk Activities.

14. LIMITATION OF LIABILITY

Notwithstanding the legal nature of the relevant claim, the following shall apply to the Customer's damage claims and claims for expenses incurred in vain ("*Ersatz vergeblicher Aufwendungen*"):

14.1. **Limitation of liability**: plus10 shall be liable for any of the Customer's damages resulting from gross negligent or intentional behavior of plus10, which are due to culpable injury to life, body, and health, which arise due to the assumption of a guarantee or according to the German Product Liability Act (*Produkthaftungsgesetz*). In all other cases plus10's liability for damages is limited to the infringement of material obligations of the agreement. Material obligations are only such obligations which fulfillments allow the proper execution of the agreement in the first place and where the Customer may rely on the compliance with these obligations. plus10's liability for the loss of data is limited to the typical expenditures required for the restoration thereof, which are normal and typical if security copies have been made. Reference is made to the Customer's obligation for regular data backups according to Sec. 10 of this Agreement.

14.2. **Foreseeable damages**: plus10's liability in case of negligent infringement of material obligations of the agreement by plus10 shall be limited to foreseeable damages which are typical for this type of contract.

14.3. **Exclusion**: A strict liability of plus10 for defects existing at the time of entering into this Agreement pursuant to sec. 536 a para. 1, alt. 1 BGB is hereby expressly excluded.

14.4. **Statute of limitations**: All claims against plus10 for damages shall be statute barred six (6)

months after delivery, in case the Customer is an enterprise, corporation, business or entrepreneur as defined under sec. 14 BGB. This shall not apply to any claims in tort.

14.5. **Further limitations**: If plus10 has provided the Customer with the SaaS against no payment whatsoever, plus10's liability is further limited by sec. 599 BGB to damages resulting from gross negligent or intentional behavior of plus10.

14.6. **Excluded liability**: plus10 has no liability for any loss, damage, or misappropriation of data information provided by the Customer under any circumstances or for any consequences related to changes, restrictions, suspensions, or termination of the SaaS or the Agreement or caused by Customer Generated Content.

14.7. **Representatives**: The foregoing limitations of liability also apply with regard to all plus10's representatives, including but not limited to its directors, legal representatives, employees, and other vicarious agents.

15. RESTRICTIONS IN USE

15.1. **Unauthorized access**: The Customer will use commercially reasonable efforts to prevent unauthorized access to or use of SaaS and Data, and notify plus10 promptly of any such unauthorized access or use and use SaaS and Data only in accordance with this Agreement, Documentation and applicable laws and government regulations.

15.2. **Restrictions in use**: The Customer will not (i) make any SaaS or Data available to, or use any SaaS or Data for the benefit of, anyone other than the Customer, unless expressly stated otherwise, (ii) sell, resell, license, sublicense, distribute, make available, rent or lease any SaaS or Data, or include any SaaS or Content in a service bureau or outsourcing offering, (iii) use a SaaS to capture and store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (iv) interfere with or disrupt the integrity or performance of any SaaS or third-party data contained therein, (v) attempt to gain unauthorized access to any SaaS or Data or its related systems or networks, (vi) permit direct or indirect access to or use of any SaaS or Data in a way that circumvents a contractual usage limit, or use any of plus10 SaaS to access or use any of plus10's intellectual property except as permitted under this Agreement, (vii) copy a SaaS or any part, feature, function or user interface thereof, (viii) copy Data except as permitted herein, (ix) frame or mirror any part of any SaaS or Data, other than framing on the User's own intranets or otherwise for the Customer's own internal business purposes, (x) access any SaaS or Data in order to build a competitive product or service or (xi) reverse engineer any SaaS (to the extent such restriction is permitted by law). Any use of the SaaS in breach of this Agreement, by the Customer that in plus10's judgment threatens the security, integrity or availability of plus10 SaaS, may result in plus10's immediate suspension of the SaaS , notwithstanding that plus10 will use commercially reasonable efforts to provide the User with notice and an opportunity to remedy such violation or threat prior to such suspension.

16. INTEGRATION OF 3RD PARTY ACCOUNTS

Third party accounts: Certain features of the SaaS allow Customer to integrate the service with third party services (the "**Third Party Accounts**") like e.g. MS Teams, etc. via Application Programming Interface (the "**API**") provided by such third party. By enabling those features, Customer grants to plus10 access to data

stored in Third Party Accounts provided via API and certain rights to use functions of Third Party Accounts provided via API to enable plus10 to identify relevant data to be stored within the SaaS or to be processed in order to provide the SaaS.

17. STATUTORY CONSUMER RIGHTS

Nothing in this Agreement is meant to contravene statutory rights that consumers may have pursuant to local law.

18. DISPUTE RESOLUTION AND GOVERNING LAW

18.1. **Dispute resolution:** Let's Try To Sort Things Out First. plus10 wants to address the Customer's concerns without needing a **formal** legal case. Before filing a claim against plus10, the Customer agrees to try to resolve the dispute informally by contacting support@plus10.de. plus10 will try to resolve the dispute informally by contacting the Customer via email. If a dispute is not resolved within 30 working days of submission, the Customer or plus10 may bring a formal proceeding.

18.2. **Applicable law, jurisdiction**: This Agreement has been drafted in accordance with the laws of Germany. Unless expressly prohibited by local law this Agreement shall be construed and interpreted on the basis of the laws of the Germany, notwithstanding any conflicts of law provisions. If the English legal meaning differs from the German legal meaning of this Agreement and its terms, the German legal meaning shall prevail. The use of the term "shall" generally indicates a definitive obligation (*müssen*) that admits of no discretion on the part of the Party instructed. The German courts in Munich shall have exclusive jurisdiction over any claim arising under the Agreement or warranties. The UN Convention on Contracts for the International Sale of Goods shall be explicitly excluded.

18.3. **Language**: If this Agreement is translated into a language other than English and there is a conflict of terms between the English and the other language, the English version shall prevail.

19. SEVERABILITY

The provisions of this Agreement shall be deemed to be separable and the invalidity of any provision hereof shall not affect the validity of the remainder of this Agreement.

20. QUESTIONS

Should the Licensee have any questions regarding this ToU, please contact the plus10 authorized partner serving the Licensee, or write to: plus10 GmbH, Werner-von-Siemens-Str. 6, 86159 Augsburg, Germany: support@plus10.de

21. CONFIDENTIALITY; PROPRIETARY RIGHTS

Each party (the "**Receiving Party**") understands that the other party (the "**Disclosing Party**") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "**Proprietary Information**" of the Disclosing Party). Proprietary Information of plus10 includes non-public information regarding features, functionality and performance of the SaaS.

Proprietary Information of Customer includes non-public data provided by Customer to plus10 to enable the provision of the SaaS (the "**Customer Data**"). The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the SaaS or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by law.

Customer shall own all right, title and interest in and to the Customer Data.

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EXHIBIT D

Support Terms for Standard Enterprise Support

plus10 will provide Technical Support to Customer via both telephone and electronic mail on weekdays during the hours of 9:00 a.m. to 12:00 p.m. (midday) and 1:00 p.m. to 5:00 p.m. (Central European Time Zone: UTC +2h), with the exclusion of Federal Holidays at Augsburg, Germany ("Support Hours").

Customer may initiate a helpdesk ticket during Support Hours by calling

+49 821 789864 99

or by emailing support@plus10.de

or through the support-form: https://plus10.de/support/