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| [\_\_\_\_] Parts in need of further processing or references in need of being checked [\_\_\_\_] Alternative clauses and comments by industry partners  [\_\_\_\_] Alternative clauses and comments by the research institution  (\_\_\_\_) Guidance for input fields, options, alternatives  SOFTWARE / IT RESEARCH AND DEVELOPMENT CONTRACT  entered into by and between  \_\_\_\_\_\_\_\_\_\_\_\_\_(university)  represented by \_\_\_\_\_\_\_\_\_\_\_(name)  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(address)  (hereinafter referred to as “University“)  and  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(name, company name)  a company established under \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (e.g. Austrian) law   \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (company register number), \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(competent court), having its registered office in \_\_\_\_\_\_\_\_\_\_ (place)  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(address)    (hereinafter referred to as “Principal”)  jointly referred to as “Parties“ or individually as “Party“  No gender preference is intended by the use of either the male or female forms in this document. Any references made shall refer equally to all genders. |
| 1. DEFINITIONS    1. Defects preventing acceptance: Non-conformant condition of the deliverable found or reproducible which prevents it being accepted in line with the Definition of Done.    2. Background: Results, including rights, acquired or created by the Parties prior to the entry into force of this contract [or outside of this contract (within the meaning of sideground)].    3. Business and trade secrets: Information, including University or research secrets, that meets all of the following criteria: (a) it is secret in the sense that it is not, in its entirety or in the exact configuration or composition of its components, generally known or readily accessible to persons belonging to the circles that normally handle this type of information; (b) it is of commercial or scientific value because it is secret; (c) it is the subject of measures, appropriate to the circumstances, taken by the person having legitimate control over the information to ensure secrecy[, and (d) it is identified as such by the party disclosing such information, e.g. by referring to it as "secret" or by an equivalent designation].    4. Change process: Process for changing the deliverable.    5. Definition of Done: List of criteria deemed necessary to consider the work on implementing a work item done (see Annex ./2.1).    6. Third parties: All legal or natural persons other than the Parties and their immediate staff, including, without limitation, employees.    7. Escalation: Forwarding an issue to the next higher level in the organisational hierarchy.    8. Termination event: Circumstances which entitle the Parties or one of the Parties to terminate the agreement without notice; this must be differentiated from termination with notice as set out in Clause ‎9.2    9. Components: Individual parts or the sum total of all parts of the deliverable to be handed over, except for the documentation as set out in Annex ./2.1    10. Deliverable: The work and services to be provided by the University under the contract, including, without limitation, the work and services set out in Annex ./2.1.    11. In writing or written form: Means “executed under hand” (simple signature without any additional execution formality). [In line with the dual-control principle applicable at the University, the minimum requirement is always having the signature of two University staff members authorised to sign.] The time of coming into legal effect shall be governed by the time of receipt / retrievability by the recipient.    12. Property rights: Intellectual and/or industrial property rights, including, without limitation, rights under copyright, patent, design or trademark law, in particular trademark rights.    13. Stream: Thematic grouping of the deliverable which impacts program structure.    14. Subcontractor: All contractors (in the broadest sense of the term) the University or a subcontractor of the University relies on to provide the deliverable, regardless of whether such contractors are suppliers, contractors for work and services, or service providers. This term therefore covers in particular all contractors in the “subcontractor chain”.    15. Expert audit: A dispute resolution procedure involving an expert, provided for to avoid court proceedings, as set out in Clause ‎10.5.    16. Effective date: The day the contract is signed by the Principal and the University.    17. Affiliated entity/entities: [Entities which, in line with the rules on the full consolidation of the annual financial statements of affiliated companies, must be included in the consolidated financial statements of a parent company pursuant to [section 244 Company Code (UGB)](http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Bundesnormen&Dokumentnummer=NOR40109006) which, being the ultimate parent company, is under the obligation to prepare the most comprehensive annual financial statements pursuant to [sections 244 to 267 UGB](http://www.ris.bka.gv.at/MarkierteDokumente.wxe?Abfrage=Bundesnormen&Kundmachungsorgan=&Index=&Titel=UGB&Gesetzesnummer=&VonArtikel=&BisArtikel=&VonParagraf=244&BisParagraf=267&VonAnlage=&BisAnlage=&Typ=&Kundmachungsnummer=&Unterzeichnungsdatum=&FassungVom=07.02.2013&NormabschnittnummerKombination=Und&ImRisSeit=Undefined&ResultPageSize=100&Suchworte=&WxeFunctionToken=fd0a55a0-a9a4-4209-96eb-c5d84bd9b27c), even if no such statements are prepared. The same applies mutatis mutandis if the ultimate parent company is domiciled abroad. Subsidiaries which, under [section 249 UGB](http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Bundesnormen&Dokumentnummer=NOR40114066), are not included in consolidation, are still deemed to be affiliated companies.] [The companies of the Principal’s group of companies as listed in Annex ./1.17.]    18. Contract: The present contractual arrangement between the Parties, including all annexes and documents and similar to which explicit reference is being made.    19. Work item: Smallest individually defined unit of work in the deliverable (see Annex ./2.1). |
| 1. SUBJECT MATTER    1. The Principal contracts the University to provide the deliverable as set forth in the statement of work (work items, factual restrictions and non-goals, documentation requirements, Definition of Done (acceptance criteria) including work, time and payment schedules) in Annex ./2.1.    2. Given the complexity of the deliverable and the agile process model being used, the Parties are aware that completion of the deliverable will be dependent to a large extent on the efforts made and the commitment and coordination demonstrated by all stakeholders – see also Clause ‎3 (Principles of contract performance). The purpose of using the agile approach is to specify in detail the deliverable, its implementation and quality, while at the same time keeping within budget.    3. [Please note that the Parties want the deliverable to be interpreted solely on the basis of the rules applying to (freelance) contracts of service (*(freier) Dienstvertrag*); the statutory regulations pertaining thereto shall apply supplementary and subsidiary to the contractual regulations, and mutatis mutandis as and when necessary.]    4. Unless explicitly otherwise agreed upon, in particular for open source and/or creative commons licences [and for research and teaching purposes], or otherwise following from statutory regulations, the University shall procure that the Principal’s legal title with regard to the deliverable is unlimited in time and unencumbered and that the Principal has the [exclusive] right of use [and all rights, including, without limitation, present and future property rights, including (processing) rights] for the deliverable, in particular the (source) code (in the broadest sense of the term) and that the code plus all development documentation [and all development tools as set out in Annex ./2.4] be handed over to the Principal.    5. Unless otherwise defined in the deliverable as set out in Annex ./2.1, each Party shall retain ownership of its rights and/or its background. When defining the deliverable, the Parties shall, to the best of their knowledge and belief, obtain information about the background needed for implementation and grant any rights in it as needed. Should it turn out that further background is needed for implementation, such definition shall be amended in good faith. [The University shall in any case grant the Principal non-exclusive rights – not subject to separate compensation and as in the deliverable – in the University’s background as needed to be able to exploit the deliverable / rights as set out in the licence agreement, Annex./2.5 ].    6. The procuring, and subsequent granting, of rights as described above shall be made concurrently with payment of the compensation as set out in Clause ‎5 (retention of title under copyright law). The granting of [exclusive / non-exclusive] rights [except for the components listed exhaustively in Annex ./2.4] by the University shall include, without limitation, the right – [unrestricted in terms of time, territory, and subject matter / unrestricted in terms of time and territory and restricted in terms of subject matter to the purposes and/or areas set out in Annex./2.1], [(sub)licensable and transferable, in whole or in part, to affiliated entities ] – to exploit, use for operating purposes, [process freely and waiving any protection of the work against changes] or introduce or possess for the above-mentioned purposes, the deliverable [in any form]. [The Principal shall be free to name the deliverable and the University shall – subject to unwaivable authorship protection – waive any corresponding rights remaining in the deliverable, including, without limitation the right of the author to be named / The Principal shall disclose authorship in the deliverable to third parties (naming the University staff members involved and the function they perform for the University)]. Likewise, the University shall enter into written agreements with its employees, subcontractors or similar that are involved, directly or indirectly, in providing the deliverable as are necessary to comply with the above obligation and to divulge such agreements to the Principal upon the latter’s request. [This shall, within the meaning of section 106 University Act (*Universitätsgesetz*, UG), not impact – with due consideration of the provisions of Clause ‎2.10 – the fact that any University staff member has the right to independently publish their own scientific or artistic works and that University staff who made a scientific or artistic contribution of their own to any such work shall be named as co-authors when the results of such research and development or appreciation of the arts are published.] The University confirms that it will provide the deliverable either by itself or with the help of subcontractors that have granted corresponding rights. The University [guarantees, subject to reimbursement of the cost incurred in any documented investigation in this context, / confirms, to the best of its knowledge and belief, but without any obligation to carry out any investigation in this context,] that it holds the corresponding rights or titles, ensuring, above all, that the deliverable will, neither in whole nor in part, directly or indirectly infringe third party property rights, i.e. that such rights do not exist or have been granted in full to the University by said third parties. [Should third parties assert claims for infringement of property rights against the Principal based on breach of any provisions of this contract by the University, the University shall hold the Principal harmless in such respect upon first demand, regardless of fault.]    7. [With respect to parts of the deliverable / With respect to the parts of the deliverable mentioned in Annex ./2.1, the relevant open source or creative commons or similar licences shall apply and the Principal shall comply with the same and shall indemnify and hold the University harmless in this respect] [Inasmuch as open source or creative commons or similar licences apply in connection with the deliverable, the University shall guarantee that the Principal shall not be subject to any restrictions of the rights granted under the contract, in particular that neither the Principal nor the University shall be subject to any obligations to publish, name authors or grant licences in respect of the deliverable.]    8. [Unless there is already an obligation pursuant to Annex ./2.1 to hand over components to the Principal as originally created, the University shall deposit, online and on an ongoing basis, all components in the form they were originally created (e.g. source code, XML representation, project data in a build environment), along with all associated technical and user documentations, into escrow with an entity to be commissioned as escrow agent by the University and the Principal. Details of the escrow, such as the depositing process and checks performed on the materials deposited, the granting of rights to the Principal upon release and the criteria for release, who bears which costs, etc., must be agreed upon in an agreement entered into between the University, the Principal and the escrow agent.]    9. [The University shall have the right to exploit its results free of charge and without restrictions for research and teaching purposes and shall, to such extent, receive a free-of-charge worldwide, irrevocable, non-exclusive, but non-transferable licence.]    10. [Furthermore, the Principal acknowledges that it is the task of the University and its staff members to publish, on an ongoing basis, information about the types, subject matters and results of their research and development activities. Accordingly, the University and/or its staff members have the right to independently publish information about the deliverable in the form of scientific publications in accordance with the provisions set out below. With due regard to the legitimate interest in scientific publications, this shall be taken into account when applying for the registration of property rights, to the effect that inventions can be claimed, and registrations of property rights applied for, in due time before any such scientific publication is made. The Parties shall refrain from anything that might be prejudicial to the patentability of any invention made within the scope of the deliverable and undertake towards one another to keep any such invention secret until an application for registering the relevant property right has been filed. The University shall inform the Principal of any intended publication. If the Principal fails to respond within a period of \_\_\_\_(e.g. 2 (two)) weeks from having received the notice concerning such intended publication, consent to such publication shall be deemed to have been granted once said period has expired. If the Principal raises justified objections stating well-founded reasons within such period, the Parties shall, without delay, jointly endeavour to arrive at a solution taking account of such objections (e.g. immediate application for registration of a property right, adapting the content of the publication, efforts to make students seek an embargo for their diploma or doctoral theses). Upon expiry of a period of \_\_\_\_ (e.g. 3 (three)) months from the Principal having received such information, the publication can be published in any case. For information on secrecy and non-disclosure in general, see Clause ‎4.    11. [Inasmuch as inventions eligible for property right protection are part of the deliverable, the University must, following notification of the Principal and a request by the Principal, claim such inventions as patents. In this context, any obligations for paying statutory compensation for such inventions to its staff members shall be incumbent upon the University. The Principal shall indemnify and hold the University harmless with respect to the payment of any such compensation to inventors. In such an event, both Parties undertake to refrain from anything that might be prejudicial to the patentability of any such invention. This includes, in particular, not disclosing information relating to such invention to third parties. The University shall offer the invention to the Principal. The Principal has the right to inform the University in writing – within six weeks from having received notification of the invention – whether or not the Principal intends to claim such invention. If the Principal does claim the invention, all rights in the invention shall be due to the Principal. In such an event, the Principal shall have the right to file an application for registering a property right in the Principal’s name, provided that the inventors are named. The cost of registering, maintaining and defending such property right shall thenceforth be borne by the Principal. Insofar as the Principal needs the University’s assistance in applying for the registration of property rights, the University shall give such assistance to the Principal. Any cost incurred by the University in the process shall be borne by the Principal. If the Principal fails to respond within six weeks of having been notified of an invention in connection with the deliverable, or if the Principal waives its right, the University can decide at its own discretion whether to claim the invention, to register property rights and then exploit such rights itself or to release such rights to the inventor.]    12. The Parties shall inform one another of any infringement of a property right that has come to their notice and/or is suspected and/or claimed to have occurred. [The University must warn the Principal if the University becomes aware that the deliverable (in whole or in part) infringes or might infringe third-party property rights.] Each Party undertakes to comprehensively inform the respective other Party in writing and without delay should it be held liable for an infringement of property rights in connection with the deliverable. In such an event, the Party held liable shall coordinate any further steps with the other Party. The other Party shall – to the extent that this is admissible – have the right[, but not the obligation,] to join or accede to the relevant proceedings. [The University shall in any case coordinate all procedural steps with the Principal and follow the Principal’s instructions; the Principal shall indemnify and hold the University harmless in respect of the consequences of such instructions.] Entering into a settlement agreement and discontinuing any such proceedings shall require the consent of the other Party if such actions might entail legal consequences for the other Party.    13. [Should third-party rights have actually been infringed in connection with the deliverable, which shall also be deemed to apply when an expert audit (see Clause ‎10.5) arrives at this conclusion, the University shall [as far as reasonable and technically feasible] implement, at its own expense, an alternative technology which is free of any third-party rights and shall indemnify and hold the Principal harmless in this respect. With respect to such alternative technology, the requirements set out in the contract shall apply mutatis mutandis.] |
| 1. PRINCIPLES OF CONTRACT PERFORMANCE    1. Given the complexity of the deliverable and the agile process model being used (for both see Annex ./2.1), the Parties undertake to collaborate in a spirit of partnership in such a way that the Parties shall, based on the principle of good faith, do everything needed to achieve the deliverable.    2. The deliverable must always be provided [in a professional manner, in accordance with applicable standards and technical best practice, with adequate care, and] in accordance with best research practice and in compliance with applicable legal requirements and the requirements commonly expected and/or set out specifically in Annex ./2.1. The reference date for this is [the time of contract performance] [the time the contract is entered into].    3. [The University shall, throughout the duration of contract, put into place adequate and effective quality assurance and quality management systems as defined in Annex ./2.1 to assure the quality of the deliverable.]    4. The Parties explicitly acknowledge that they are subject to the general statutory and contractual obligations in terms of owing one another loyalty, protection and information (cf. Clause ‎7). [Until Definition of Complete as set out in Annex ./2.1, the University must inform the Principal on an ongoing basis of any technological changes, potentials for improvement, and risks in connection with each work item as well as about changes in economic, legal and/or other circumstances which appear likely to impact the deliverable.]    5. [The University shall assure itself in good time whether there are factual or legal obstacles or concerns with respect to the deliverable. Where applicable, the University shall warn the Principal without delay and shall, in any case, provide advice and point out alternative courses of action to the Principal on an ongoing basis. The University shall notify the Principal of any – also other – concerns regarding the deliverable in writing and without delay, stating specific grounds for such concerns.]    6. As a matter of principle, the University shall, as far as possible, rely on its own staff members to achieve the deliverable, in particular with respect to key positions critical for the deliverable. The University shall ensure that all staff members deployed for this purpose have the skills and experience necessary or expedient to provide the specific service, with due regard to the high level of quality agreed upon, and to achieve the success as set out in the contract.    7. The University must procure third-party contributions from subcontractors in such a way that they are in conformity with this contract. [It is in any case not allowed to subcontract the deliverable in its entirety or key parts thereof.] The University represents that any subcontractors have been selected with proper care (and will be selected with proper care also if there should be changes in subcontractors) and that it has assured itself of the subcontractors’ ability to provide the respective part of the deliverable. As for the obligation to obtain the Principal’s approval to the use of subcontractors that process personal data within the context of the deliverable, see Clause ‎4. The University shall make a list of the subcontractors used to achieve the deliverable available to the Principal on an ongoing basis and keep such list up-to-date.    8. The University shall provide training relating to the deliverable to the Principal or the members of Principal’s staff [who are familiar with the area of the deliverable] in the minimum extent as set out in Annex 3.8 [ to ensure the target can be reached].    9. The University shall document the work and services it provides. Such documentation shall (given the agile approach) be provided [in accordance with applicable norms or industry standards / in line with best research practice] and – unless explicitly otherwise provided for – in [German / the language commonly used in this area of research] and be drawn up, handed over [and updated] on an ongoing basis. |
| 1. NON-DISCLOSURE AND NON-EXPLOITATION, DATA PROTECTION    1. The Parties undertake to keep all trade and business secrets they become aware of secret and use them only for the purposes of the collaboration under this contract and not to exploit them, or have them exploited, for their own use in any way or to grant non-involved parties access to them without the prior written consent of the other Party or tolerate such access being granted.    2. The Parties may pass on trade and business secrets of the other Party to employees of their organisation [and affiliated entities] [and/or research partners of the University] as well as to subcontractors, but only on a need-to-know basis with respect to achieving the deliverable. The Parties shall ensure that persons who may have access to such trade and business secrets be subjected, in writing, to non-disclosure and non-exploitation obligations corresponding at least to the ones set out in this contract and applicable also for the time after they leave the organisation or after the subcontracting or research relationship has ended.    3. Such non-disclosure and non-exploitation obligations shall not apply to information for which it is verifiably true that it  * was known to the recipient already before it was disclosed; * was already in the public domain when it was disclosed; * entered the public domain after it was disclosed without this being attributable to the recipient; * was, after it was disclosed, made accessible to the recipient by a third party in a legitimate manner and without any restrictions in terms of non-disclosure or non-exploitation being applicable; * was independently developed by the recipient; or * must be disclosed based on statutory provisions, court decisions or orders by a public authority; in such an event, the party obligated to disclose the information must notify the other party of such disclosure without delay, insofar as this is legally admissible.   1. The above-mentioned non-disclosure and non-exploitation provisions shall remain in force even after termination of the contract [for an unlimited period of time / for a period of five years] as long as the relevant information has not entered the public domain.   2. Inasmuch as the University and/or the Principal and/or other persons process personal data as processor (within the meaning of Article 28 of the General Data Protection Regulation, GDPR) within the context of the deliverable, the Parties shall ensure that processor agreements are entered into which meet at least the statutory requirements; this shall also apply to a chain of processors, if any. |
| 1. **COMPENSATION**    1. The compensation due to the University for the deliverable is set out in Annex ./5.1 subject to the payment schedule contained in Annex ./2.1    2. Work and/or services shall be invoiced without [exclusive of ] VAT. [If it turns out that the work and/or services provided by the University are, in whole or in part, subject to VAT after all, the University shall have the right to charge VAT ex post facto. The Principal agrees to pay VAT as charged ex post facto.]    3. [In particular with a view to the full-cost accounting approach used by the University, indexation as follows applies, taking effect once every calendar year as at 1 January. Indexation shall be based on the [consumer price index for 2015 / index of the binding average minimum salary under the collective bargaining agreement for employees in the automatic data processing and IT technology services industry (IT-KV) / indexation in accordance with the collective bargaining agreement for university employees (Uni-KV)]. Should any increase in average minimum salary not be published in due time before 1 January, payments will be adjusted and balanced with retroactive effect. Indexation calculations are always based on calendar years. If neither the specified index nor any index replacing it continue in existence, index-based compensation shall be calculated based on principles analogous to the ones last relevant for indexation.]    4. [The compensation as agreed upon shall be deemed to cover all expenses and costs of fully providing the deliverable, including, for instance, also ancillary work and services. The compensation as agreed upon shall – with the exception of travel expenses – be deemed all-in compensation, unless otherwise specified within the scope of the deliverable. No further costs or similar may be charged above and beyond such compensation. This shall apply, in particular, to ancillary costs, licence costs, costs of setting up the contract, disposal costs, etc. The compensation agreed upon shall include all small parts and/or spare parts, auxiliary materials and consumables as might be needed to provide the deliverable.]    5. Invoices shall be payable upon receipt in accordance with the payment schedule in Annex ./2.1 without deduction within [30/ 60] days. All payments without exception shall be made into an account with an Austrian bank to be specified by the University.    6. Where payments are not made in due time, even if the debtor is not at fault, interest in the amount determined by law as applicable between businesses shall be due on the outstanding amount from the date the payment deadline ends.    7. Where excess payments were made, the Principal may reclaim such payments under the rules on unjust enrichment. Any excess payments received shall be repaid by the University within [30 / 60] days from being requested to do so by the Principal in writing.    8. Payments and invoice verifications made, but also failure, during invoice verification, to reject an invoice or return an invoice to be reissued shall not be deemed equivalent to a declaration of intent and therefore do not have the effect of recognising or accepting a set of facts.    9. Insofar as claims (for damages) on the part of the Principal have been either explicitly recognised by an expert audit or by the University or ascertained by means of a court judgment having final legal effect, the Principal may set off such claims against compensation or other receivables due to the University; in all other cases, offsetting and/or withholding payments shall be excluded. |
| 1. **STRUCTURED STAKEHOLDER ORGANISATION**    1. The Parties have agreed on an agile process model for specifying (including specific quality requirements), implementing (including training, documentation plus quality assurance and quality management systems and acceptance testing) and checking the deliverable and the budgeting; see description of deliverable in Annex ./2.1. |
| 1. WARRANTY AND LIABILITY    1. If it becomes likely that the University will not (be able to) keep one or more contractually agreed deadlines, the University shall, within a reasonable period of time – of no more than 14 days – present a detailed action plan and schedule setting forth the actions the University is going to take to avoid the delay and its consequences or keep them to a minimum. In the event of a delay [attributable to the University’s fault / caused by the University], the Principal may  * insist on the deliverable being completed, setting a reasonable period of grace for such purpose; or * resort to substitute performance, either by itself or by third parties, setting a reasonable period of grace for such purpose; or * rescind the parts of the contract subject to default, setting a period of grace for such purpose.   Any further claims on the part of the Principal, including, without limitation, claims for damages, shall remain unaffected thereby.   * 1. Defects preventing acceptance (both with respect to Definition of Done and Definition of Complete): acceptance procedures, including the Principal’s duties to cooperate, are set out in the process model in Annex ./2.1. The University shall eliminate all defects preventing acceptance within a reasonable period of time, which should be as short as possible. Upon the Principal’s demand, the University shall, within a reasonable period of time, present an action plan and schedule setting forth the actions the University is going to take to ensure prompt elimination of the defect and keep any (further) delay to a minimum. If this action plan and schedule fails to meet the requirements of the deliverable, the Principal shall have the right to set a reasonable period of time for eliminating the defect. Where final elimination is not possible at short notice, the University may, within a reasonable period of time, propose adequate measures for a temporary solution. [The University shall bear the cost of temporary and final elimination.] Following the elimination of a defect, the University shall make the item available for acceptance testing (again). Should renewed acceptance testing not take place within [3/6 months] from the first demand for defect elimination, the Principal may rescind the contract [with respect to the parts subject to default].   2. [The Parties are aware of the risks of a research and development project succeeding and therefore exclude – unless explicitly otherwise provided for in the contract – any warranty and – except in cases of wilful intent – any liability for non-compliance with duties to provide information. / Within the meaning of this section of the contract, any non-conformity with the deliverable shall be deemed a defect if such non-conformity is present at the time of acceptance testing (or – should no acceptance testing take place for whatever reason – at the time of handover) or emerges thereafter. Non-conformities with the deliverable that are present before acceptance testing or going live shall be treated in line with the provisions on non-fulfilment or default. Irrespective of whether or not the statutory provisions apply, the University’s warranty that the deliverable will have the qualities contractually agreed and generally expected shall be based on and be analogous to the regulations of statutory warranty. The University shall be liable both for material defects and for defects in title. For rights of third parties, see Clause ‎2.10]. Unless explicitly agreed otherwise, the Principal shall not be subject to obligations or duties of inspection and notification of defects. Application of sections 377, 378 and 381 UGB shall be excluded by mutual consent; consequently, the Principal shall not be obligated to notify a defect in order to protect its claims under warranty. The warranty period shall be [six/ twelve] months from acceptance as set out in the Definition of Complete in Annex ./2.1. Where a defect comes to light within the warranty period, it shall be assumed, until proven otherwise, that such defect was present already at the time of handover (time of acceptance or full going live of the respective item). As of the date of acceptance of the successful elimination of a defect, the above-mentioned deadlines shall begin anew for the relevant parts of the delivery. Out-of-court notification of a defect shall extend, for another year, the respective deadlines for asserting, before a court, all claims relating to the notified defect. Under warranty, the Principal shall have the rights set out in section 932 of the Austrian Civil Code (ABGB).]   3. Without prejudice to any specific provisions in this contract, the Parties shall be entitled to compensation for the loss or damage caused to them by the other Party’s fault, as follows: * in the case of gross fault (wilful intent or gross negligence), compensation for loss or damage, including lost profit; * in the case of slight negligence, liability shall be [excluded / limited to 50% of the compensation for any and all loss or damage.]   1. These limitations of liability shall not apply to * personal injury * [cases where third-party property rights are infringed – see Clause ‎2.10] * the cost of substitute performance as described above.   1. In all other respects, the amount of damages, the limitation of claims and the burden of proof shall be governed by the statutory provisions. |
| 1. **FORCE MAJEURE AND OBSTRUCTION**    1. An event of force majeure shall be deemed to exist, for example, in the case of  * a military conflict taking place on, or directly affecting, the territory of the Republic of Austria, * revolution, insurrection, acts of terrorism or acts of sabotage by third parties, * diseases and epidemics, * strikes or lock-outs directly affecting the University, * floods, earthquakes, fire or natural disasters, and * similar events.   Neither the University nor the Principal shall be liable for non-fulfilment or delayed fulfilment of their respective obligations if (i) such non-fulfilment or delayed fulfilment was caused by an event of force majeure and such event actually delays or interrupts fulfilment, if (ii) the event of force majeure is not attributable to the Party affected by it and said Party could not have prevented its consequences even if applying adequate care, if (iii) it notified the other Party without delay and in writing of the nature and extent of the event of force majeure that led to its defaulting; and (iv) it made every reasonable effort possible to minimise the effects the event of force majeure has on its meeting its obligations under this contract and to resume fulfilling its obligations as quickly as possible. If the event of force majeure persists for a period of more than six months, either of the Parties may terminate this contract giving fourteen (14) days’ notice. The contract shall then end upon expiry of such notice period. Such termination shall be without prejudice to the rights and obligations set out in Clause ‎9.5.   * 1. An obstruction of contract performance shall be deemed to exist if and insofar as (i) one of the following grounds for obstruction applies, (ii) such obstruction actually delays or interrupts the delivery of work and services by the University, and if (iii) the obstruction is not attributable to the University. Grounds for obstruction shall be deemed to exist if * the Principal (or a third party from the Principal’s sphere) is in default as to contributing actions or deliveries which (i) the Principal (or the third party from the Principal’s sphere) is under an obligation to provide and (ii) which are a prerequisite for the University continuing to deliver work and services.   If an obstruction makes it [objectively] impossible for the University to meet its contractual obligations in whole or in part, the University shall be released, for as long as said obstruction persists, from meeting those of its obligations that are directly affected by said obstruction.   * 1. In any case, however, the University shall make all reasonable efforts to ensure contract performance is resumed in full; the University shall submit to the Principal, within a reasonable period of time, a first analysis of the obstruction as well as the actions likely to become necessary in this respect and to coordinate its efforts with the Principal. In cases of imminent danger where a decision by the Principal cannot be obtained at short notice, the University shall take adequate emergency actions without delay as required to prevent the obstruction from arising and to minimise loss and damage.   2. If the obstruction caused the University to have to provide extra work and services or to incur frustrated costs for precautionary measures, the University shall be entitled to remuneration above the agreed compensation, provided the following conditions are met: * the University complied with its duties of notification; and * the University submitted corresponding documentation of extra work and services or proof of costs for precautionary measures. |
| 1. **DURATION AND TERMINATION OF CONTRACT**    1. This contract shall enter into force upon being signed by both Parties and shall be concluded until the deliverable as set out in Annex ./2.1 has been provided in full.    2. Regardless of the fact that the deliverable constitutes a non-recurrent obligation, the contract – but only the contract as a whole – can be terminated with effect as at the end of any quarter, giving one month’s written notice by registered letter.    3. This shall not affect the Parties’ right to rescind the contract without notice for cause by registered letter.    4. The contractual relationship shall be dissolved upon receipt of the justified declaration of rescission of contract [or upon expiry of its term pursuant to Clause ‎9.1] or following notice of termination pursuant to Clause ‎9.2. Where rescinding the contract is not justified, the other Party shall be entitled not only to damages, but also to specific performance.    5. In any case, the termination of contract – for whatever reason – shall not affect the following regulations and/or mutual rights and obligations:  * the present section of the contract; * provisions on warranty, damages / liability * general obligations of loyalty, information and protection owed post-contractually; * non-disclosure and non-exploitation obligation; * provisions on property rights; * data protection; and * dispute resolution.   1. Termination of contract – for whatever reason – shall not be deemed “frustration of performance” within the meaning of section 1168 ABGB.   2. Unless the dissolution of contract is attributable to the Principal, the deliverable as delivered and paid for up to the point in time of termination of contract, for whatever reason, shall be due to the Principal, along with the contractually granted rights pertaining to it. Furthermore, the University shall, if the contract is terminated, provide support and assistance to the Principal and/or a third party appointed by the Principal, in particular for the purpose of a smooth and orderly transition of the deliverable (termination event):   The University shall – having been instructed to do so by way of a change process – take the actions described below as well as, quite generally, all actions within its sphere of influence that are needed to enable the Principal or a third party or third parties appointed by the Principal to (continue to) independently operate the deliverable or parts thereof. This shall include all necessary and/or expedient declarations and actions by the University. Subject to compensation as set out in Clause ‎5, the University shall, within no more than one month after having been requested to do so by the Principal, update any and all documentation relating to the deliverable which may not have been drawn up by that time, to reflect the latest technical, business and legal status and hand over such documentation to the Principal in an orderly fashion. Such documentation must be suitable to enable experts in the field (also including experts not working for the University) to fully understand and take over the deliverable and its respective status. This must be possible without requiring access to further information, in particular information that is accessible only to the University.   * 1. In the event of a dissolution of contract, the regulations set out herein with respect to the delivery of work and services shall – as far as necessary – continue to apply mutatis mutandis. |
| 1. **DISPUTE RESOLUTION**    1. In this context, escalation shall be understood as the delegation of a matter to a higher hierarchy level (escalation level). The Parties agree that escalation shall be used primarily to clarify ambiguous situations and to resolve disputes. Where this is not possible at the lower escalation level, the matter in question shall be escalated to the next level in accordance with fixed rules. Positions assumed and information disclosed during pertinent talks in this context shall (i) in no way prejudice the legal position of a Party (non-prejudicial effect) and (ii) be in no way construed in such a manner that a Party will, at any time or in any way, be prevented from initiating court proceedings or otherwise exercising rights due to it or resort to legal remedies.    2. Dispute resolution shall be based on a two-level model, the roles or bodies of the first and second levels being set out in Annex ./10.2. Wherever possible, the second level shall be constituted by the University’s or the Principal’s management.    3. Escalation level 1: The Parties shall first of all try to settle any and all disputes on the operating level. The relevant item on the agenda shall be explicitly designated as an escalation item. Disputes shall be jointly discussed orally, and relevant information shall be gathered and analysed. If the dispute cannot be resolved within two meetings where the dispute was on the agenda, but in any case within no longer than twenty-five (25) work days, any Party shall have the right to escalate the dispute to escalation level 2 by means of a written notice (escalation notice).    4. Escalation level 2: The level-2 body shall, within a month of receipt of the escalation notice, schedule one or two specific meetings to assess and discuss the dispute and try to arrive at a consensual resolution.    5. Expert audit: As soon as an escalation notice is being processed on level 2, each of the Parties shall have the right to demand and initiate an expert audit if the Parties are not agreed on a specific existing technical or commercial question. In such an event, the Party intending to initiate the expert audit must have first requested the other Party in writing, stating reasons and setting a reasonable deadline, to settle the dispute, or (if the dispute is about work or services to be provided by the other Party) to deliver the work or services in conformity with the contract. Once this deadline has expired, the Party having requested settlement of the dispute or delivery in conformity with the contract shall have the right to demand and initiate an expert audit. Said Party shall also have the right to suspend or cancel any expert audit already initiated. The expert audit functions as (out-of-court) expert evidence. Expert audits must be carried out by an independent expert (auditor) in a field that is as closely related as possible to the matter at issue. The auditor must be subjected to a comprehensive non-disclosure obligation. The auditor shall be appointed by the level-2 body, by general consensus if possible. If no consensus is reached, the following shall apply:  * The Principal shall have the right to submit a shortlist of three candidates from which the University may select an auditor within five (5) work days. If the University fails to do so, the auditor shall be appointed by the Principal. * If the Principal fails to submit the three-candidate shortlist within fifteen (15) work days from the date the lack of consensus was established, the University shall have the right to submit to the Principal a three-candidate shortlist as described above within fifteen (15) work days from which the Principal may select an auditor within five (5) work days. If the Principal fails to do so, the auditor shall be appointed by the University. * Section 586 Code of Civil Procedure (*ZPO*) in conjunction with sections 19 and 20 Court Jurisdiction Act (*JN*) shall apply to the rejection of auditors. A justified rejection of even only one of the auditor candidates in a shortlist shall require a new three-party shortlist to be submitted.   The expert audit comprises findings, an expert opinion, and (where the findings and the expert opinion require this) recommendations for actions to take (expert recommendations). The auditor’s expert recommendations must indicate specific actions intended to achieve (restore) the target status, and set reasonable deadlines for taking such actions. The auditor shall draw up the expert recommendations as promptly as possible, and make them available to the Parties at the same time, if possible.  The Parties shall contribute to and assist with the expert audits and provide as much support as possible to the auditor in fulfilling this task and supply to the auditor all materials, declarations and documentations and give the auditor access to suitable infrastructure and staff members as necessary for or conducive to the audit. The auditor may also consult further experts with respect to certain special areas of expertise. Both the auditor and such further experts shall be granted access and inspection rights in the largest possible extent.  Having heard the Parties, the auditor shall determine who shall bear the costs of the expert audit (cost of the auditor and of any further experts consulted by the auditor) subject to the rules of court cost reimbursement based on the prevailing party principle; in cases of doubt, the auditor shall determine that the costs have to be shared equally between the Parties. Where a Party aborts or cancels the expert audit, it must bear the full costs having been incurred up to that point in time. In all other respects, each Party shall bear its own cost arising in the context of audits.  Expert audits, whether started or completed, shall not prevent court proceedings to be initiated (no proceedings pending, not a matter decided with final legal effect). While court proceedings are pending, no expert audits shall take place in relation to the dispute in question; expert audits having already been started in the matter shall be discontinued; in such a case, cost reimbursement shall be governed based on who prevails in the court proceedings.   * 1. During the time dispute settlement is attempted at escalation level two or by way of an expert audit, limitation of all claims in this context shall be suspended.   2. Exclusive jurisdiction for decisions on any and all disputes arising out of or in connection with this contract (including the question of such contract having effectively come into existence and remaining in effect) shall lie with the court competent for [the Principal / the University] in terms of amount in dispute (jurisdiction of ordinary courts of law).   3. [Without prejudice to any dispute pending before a court or continuing with respect to the deliverable and/or the compensation or formal or informal attempts by the Parties to settle such dispute, the Parties must continue to fulfil their tasks and obligations under the contract.]   4. In any event, Austrian law shall apply excluding the conflict of laws rules and the UN Convention on Contracts for the International Sale of Goods. |
| 1. **MISCELLANEOUS PROVISIONS**    1. The Parties shall, to the largest extent permitted under law, waive their right to avoid the contract for mistake (including also a mistake in costing), [but not for reduction of the true value by more than half (*laesio enormis*)] or frustration of contract and other potential grounds for avoidance, present or future, and defects present upon conclusion of contract.    2. This contract and all related documents, in particular annexes, to which the contract refers or which are declared to be integral parts of the contract shall constitute the entire agreement between the Parties. [General terms and conditions of purchase, if any, and similar pre-worded contractual terms shall not apply. This rule applies also where such terms and conditions are mentioned subsequently on (change) offers, on invoices or wherever else.] There are no oral side agreements.    3. Non-exercise of rights and claims in a given case shall not prevent the Party from exercising such rights in other cases; non-exercise – even if repeated – shall in any case not be deemed to be tantamount to a waiver. |
| 1. **FINAL PROVISIONS**    1. Any transfer of rights and obligations under this contract to third parties shall require the prior written consent of the respective other Party.    2. This contract shall constitute the entire agreement between the Parties regarding the subject matter of the contract. There are no side agreements. Drafts, correspondence exchanged prior to signing, etc. cannot form the basis for interpreting this contract.    3. Any modification of or amendment to this contract shall have to be made in writing to have legal effect; this shall apply also to a waiver of the written form rule.    4. Should any provision of this contract be or become invalid, void, illegal or unenforceable, this shall not affect the validity of the remaining provisions of this contract. The invalid, void, illegal or unenforceable provision(s) shall be replaced by (an) alternative provision(s) which most closely correspond(s) to the original intent of the Parties to the extent that this is legally possible and whose economic effect best corresponds to the effect intended by the invalid, void, illegal or unenforceable provision(s).    5. 2 (two) counterparts of this contract shall be signed and each shall be deemed an original, with one being handed out to each of the Parties. |
| 1. CONTACT   Contact person at Principal:  Name:\_\_\_\_\_\_\_\_\_\_\_\_  Address:\_\_\_\_\_\_\_\_\_\_\_\_  E-mail:\_\_\_\_\_\_\_\_\_\_\_\_  Telephone:\_\_\_\_\_\_\_\_\_\_\_\_  Contact person at University:  Name:\_\_\_\_\_\_\_\_\_\_\_\_  Address:\_\_\_\_\_\_\_\_\_\_\_\_  E-mail:\_\_\_\_\_\_\_\_\_\_\_\_  Telephone:\_\_\_\_\_\_\_\_\_\_\_\_  Any change in contact persons shall be notified to the other Party without delay. Otherwise, any and all communications shall be deemed duly served in any case. |
| 1. SIGNATURES   The undersigned warrant that the Party for which they sign shall be bound by their signature alone, without any further action being required.  For the Principal  Date: \_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  [Name and function/position] [Signature]    For the University  Date: \_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  [Name and function/position] [Signature] |
| 1. ANNEXES   All annexes form an integral part of this contract:  Annex ./2.1.: [Work, payment and time schedule] [Offer dated \_\_\_\_\_\_\_\_\_\_\_\_\_(Date)]  Annex ./7.1.: Background list  Annex ./7.4.4.: Consent and waiver of project team members |

**Potential parts of Annex ./2.1 in connection with the agile process model:**

The sum total of all functional and technical requirements the deliverable has to meet forms what is called the **backlog**, which must be worked through and turned into a concrete solution. These requirements are implemented, one after another, **within two-to-four-week** [**intervals**](https://de.wikipedia.org/wiki/Zeitintervall) **which are called** [**sprints**](https://en.wikipedia.org/wiki/Scrum_(software_development)#Sprint). At the end of a sprint, a product increment or partial product is delivered (after the last sprint, the last increment of the overall product). The increment is delivered in such a condition that it can be presented to, and used by, the Principal. Once the cycle is completed, the requirements and processes are reviewed and further refined for the next sprint.

The product owner breaks down the contents of the backlog into so-called **work items** (in greatly simplified terms, a detailed to-do list is drawn up), which can manifest themselves in different formats. In terms of scope, granularity and description standards, one can distinguish between **epics**, **user stories**, and **tasks**:

|  |  |
| --- | --- |
| Type of work item | Description |
| User story | [User stories](https://en.wikipedia.org/wiki/User_story) constitute a technique to describe requirements from a user perspective, using everyday language. User stories are used to formulate the [product backlog](https://en.wikipedia.org/wiki/Scrum_(software_development)#Product_Backlog) list. A user story describes what features or characteristics the user wants a product to have and why |
| Epic | Large work package which is broken down into user stories for implementation |
| Task | Small work package without any direct functional effect, e.g. concept design work, roll-out activities, etc. |

During the term of the project, the backlog can be extended, with new requirements coming to light and being handled as **changes**, i.e. changes to the code. In consultation with the organisational group, it is also possible to eliminate non-priority work items from the backlog, which means these work items will not have to be implemented.

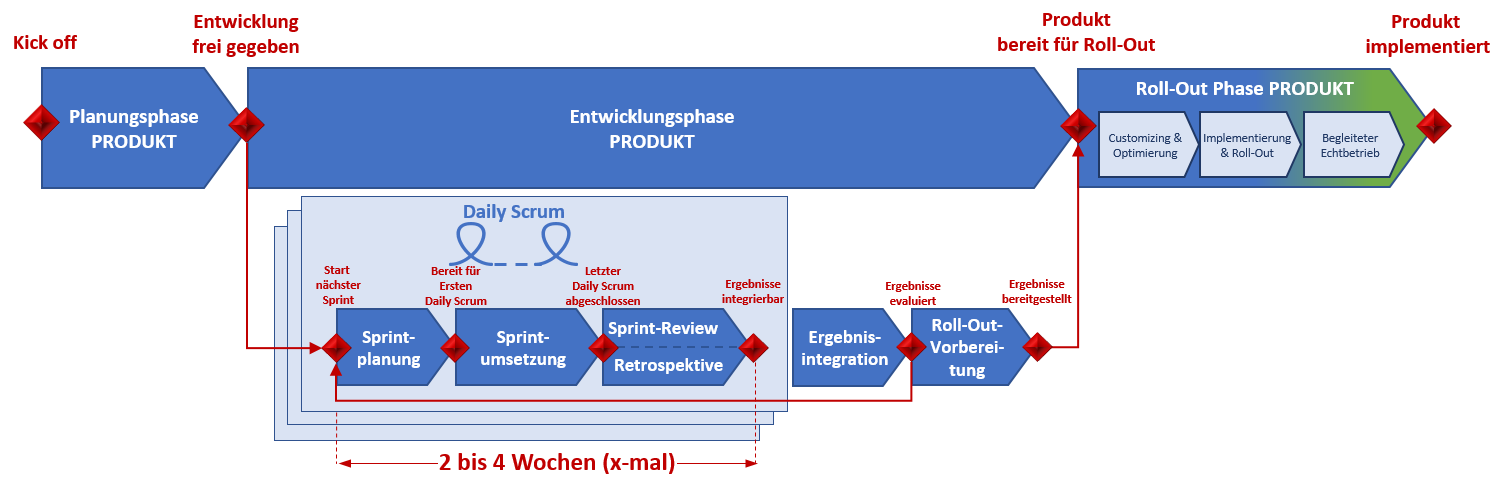
The work to be carried out is broken down into so-called work items by the product owner. Work items which have been designated, during prioritisation, to actually implement a **defined product increment** must meet the following criteria in order to progress from one phase to the next:

For a work item from the backlog to be released for implementation and be taken into a sprint for implementation, it must meet the **Definition of Ready**. If it does, it progresses from the planning phase to the implementation phase.

For a work item to be considered done from the perspective of the implementation team, it must meet the **Definition of Done**.

A work item that meets the **Definition of Complete** is complete from the perspective of the Principal, exits the roll-out phase and is taken live.

The figure below (labelled in German) illustrates and explains the entire development cycle:

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1. **Planning phase**

In the planning phase, the responsible product owners compile the backlog, which is then coordinated between the organisational and engineering groups in a kick-off meeting and made available for review and comments. Sprint planning is likewise part of this phase.

**(b) Development phase**

It is during the **development phase** that development work as such is carried out, which takes the form of sprints. Such work is carried out by the members of a product team. Each of these sprints again comprises sprint planning, sprint implementation and sprint review, followed by a sprint retrospective. During **sprint planning**, the product owner prepares a sprint backlog, in line with the sprint sequence. The sprint backlog lists the requirements from the backlog which are to be implemented in the upcoming sprint. In addition, the product manager defines test and review requirements designed to ensure ongoing monitoring of work results. The product owner also carries out any required preparatory work, identifies potential risks and prepares corresponding remedies. A major aspect of sprint planning is the refining of requirements; where necessary, this also involves requirements being added, reduced or reprioritised. Subsequent **sprint implementation** sees the requirements take shape (coding **and** testing). The quality of results depends to a large extent on the feedback from lessons learned in the ongoing development process. For this reason, the engineering group (product owner, developer team, software architect, if any, UX designer) regularly holds brief meetings to ensure everyone is on the same page. At such **daily scrum meetings**, the participants discuss the plans for the day, any key lessons learned and potential stumbling blocks, and coordinate their activities as needed.

At the end of the sprint, the sprint results are subjected to a **sprint review**, presided over by the product owners. At the sprint review, the development results are briefly presented, the degree to which the requirements have been met is discussed, short demos may be presented and tests conducted which were specifically prepared in this context, and adjustments are made to the backlog. Where it is found that requirements have not been met, improvement measures are initiated and implemented immediately; if this is not possible, such measures have to be included in the subsequent sprints, which may even lead to already planned work items in these sprints being postponed. The same holds for tests that do not yield a positive result; discussion of such tests is not part of the sprint review. However, given the reviews and consultations already in place during development, there should be very little need for such measures. All the work results produced in a sprint and found to be positive in tests or in sprint reviews get the **work done** status assigned to them. This status is crucial from the point of view of program controlling. It means that

* all the work relating to the given requirements – this is referred to as a ticket – has been completed with a positive result,
* these requirements are thus “done” 100% and can therefore be taken from the list of outstanding backlogs,
* the work results can be made available for further use.

Subsequently, the sprint is discussed from the point of view of the development team, together with the solution architect and the UX expert, at a **sprint retrospective** (lessons learned). The aim here is to learn lessons from past sprints and take them into account in planning the next sprints. The product owner should, together with the solution architect, identify the need for changes and improvements in architecture and UX concept early on and take this into account accordingly. The product owner transfers the results back into program planning, and time scheduling and budgeting will be reviewed as well.

Following the completion of parallel sprints within a sprint cycle, the product owner brings the results of the individual sprints together in what is called **result integration**, in line with the integration plan (which is part of the corresponding sprint plans). The integration result thus obtained will then be reviewed again by the product owner, in consultation with the solution architect, and, where possible, already at this point in time be made available for further use or combined with results of other sprint cycles. Here, too, the rules for reaching the work done status apply.

The sprint phase ends with **roll-out preparation** by the **product manager in consultation with** **the** **delivery manager**. This includes the product manager integrating all work results not having been reviewed so far and subjecting them to a result review. If any non-compliance is found, the product manager must initiate adequate improvement measures. If the review result is positive, the results will be made available for further use as planned (see description above). This is the point in time where the development documentation has to be completed. Roll-out preparation also includes the product manager planning and preparing for the subsequent roll-out phase. Where necessary, such preparation may consist of large-scale training measures, which are handled in line with the organisational roll-out procedure.

Following the last sprint and completion of roll-out preparation, the delivery manager, along with the program manager, will formally declare the sprint phase completed and initiate the roll-out phase.

**(c) Roll-out phase**

The roll-out phase comprises actual implementation in organisational (and where still necessary also technical) terms. During this stage, it is still possible to make individual adjustments, if necessary. This phase also includes planned training events and introduction to the product for a variety of users. A reinforced help desk will be set up to provide support during this introductory process (**assisted live operation**) in an effort to cushion common initial problems (“teething troubles”, operating errors, non-operation, etc). This type of support will be provided for no more than six weeks. The approach pursued in terms of training is “Train the Trainer”. A set of digitalised documentation materials explain the basic functions of the individual frontends, providing further user training support. An example might be video tutorials that could be accessed via a (training) platform.