

Terms and Conditions – Particify Enterprise On-Premise

Between Particify GmbH, Seltersweg 28, 35390 Gießen (hereinafter referred to as "Provider") and the Customer (Provider and Customer individually or collectively hereinafter also referred to as "Party" or "Parties") of **Particify Enterprise On-Premise**, the following General Terms and Conditions shall apply.

§ 1 Subject Matter of the Contract; Definitions; Governing Language Clause

(1) The subject matter of this Contract is the temporary provision of the "Particify" software and associated services (hereinafter defined in more detail) by the Provider to the Customer for use on the Customer's own servers against payment.

(2) The terms used in this Contract are defined as follows:

- a) Contract: The entirety of the Offer, these General Terms and Conditions, and all other attachments to the Offer.
- b) Offer: The Offer determines the essential components of the Contract and makes additional individual arrangements. The regulations agreed upon in the Offer take precedence over these General Terms and Conditions.
- c) Software Specification: The software specification, available at particify.de/en/software-specification, defines the application area, functional scope and the technical requirements for using and deploying the software.
- d) Upgrade: An Upgrade refers to a more current version of the software product than the one made available for use at the beginning of the Contract.
- e) Cardinal Duty: A duty whose fulfillment enables the proper execution of this Contract, and on whose compliance the Parties regularly rely and are entitled to rely.

(3) In the event of any discrepancy or inconsistency between the German and English versions of this Agreement, the German version shall prevail. The German version shall be the authoritative and binding version for all legal purposes.

§ 2 Installation of Software; Acceptance

(1) The Provider installs the "Particify" software product on the Customer's servers for the duration of this Contract. The application area and functional scope of the software product, as well as the technical and organizational prerequisites for its use (e.g., the required bandwidth of the remote data connection), are defined in more detail in the Software Specifications. The Provider installs the software product on a server provided by the Customer. Customization of the software product tailored to the Customer's specific needs is performed to the extent described in the Offer.

Further customization or extension of the software product is not owed but can be agreed upon against payment.

(2) The software product is installed on the Customer's server via a secure connection. The installation time is individually coordinated between the Parties but must occur no later than six months after contract conclusion. Upon completion of the installation, the Provider notifies the Customer.

(3) The Provider reserves the right to make an Upgrade available, provided the change is reasonable for the Customer. The change must be notified to the Customer by the Provider at least two weeks before its implementation. The Customer has no claim to a newer version of the originally provided and agreed-upon software product.

(4) If the Provider has significant new features or Upgrades of the software product available, the Provider will offer these to the Customer, specifying the associated additional costs.

(5) The authentication procedures (e.g., Shibboleth or OIDC) are adapted to the Customer's needs. Access data must be stored securely and kept confidential.

§ 3 User Manual, Hotline

(1) The Provider shall provide the Customer with a user manual at participify.de/manual. In this manual, the respective functionality of the software product is explained in detail.

(2) If an update of the software product from the Provider's perspective necessitates an update of the user manual, the Provider will make a new user manual available, addressing the software product's innovations.

(3) Furthermore, the Provider provides a support hotline. The Provider supports and advises the Customer, particularly regarding technical questions about the software and application questions, via phone or other means of remote communication. A support contingent specified in the Offer is available for technical support. The support duration corresponds to the duration specified in the Offer.

(4) The hotline is available to the Customer from Monday to Friday (excluding statutory holidays at the Provider's seat) between 09:00 and 17:00. Within this time frame, the Provider will also respond to the Customer's email inquiries.

§ 4 Grant of Rights

(1) The Provider is the sole and exclusive owner of all rights to the software product provided.

(2) The Provider grants the Customer a non-exclusive, non-transferable (except as provided in § 16, Paragraph 3 of this Contract), and time-limited right to use the software product for its intended purpose and solely for internal processes, limited to the term of this Contract.

(3) The Source Code of the software product will not be made available to the Customer. The Customer agrees not to perform, cause, or enable Reverse Engineering, Disassembly, Decompilation, Translation, or unauthorized disclosure of the software product, except as permitted by applicable mandatory law.

(4) The Customer is not permitted to Replicate the software product, except as necessary for contractual use or for purposes of adequate Backup or Disaster Recovery, or as otherwise permitted by mandatory statutory provisions. Contractual replication includes loading into the memory on the Provider's server, but not the temporary Installation or Storage on the Customer's data carriers (e.g., hard drives). Documentation may be replicated solely for internal use.

(5) The Customer is not authorized to grant Usage Rights to the software product, user manual, or other accompanying materials to Third Parties, except for the provision of software product usage to third parties who do not receive independent usage rights and are subject to the Customer's instructions regarding software product usage.

(6) To the extent necessary for contractual use, the Customer will grant the Provider the right to Replicate the data stored by the Provider for the Customer and store such data in a Backup Data Center. If necessary to resolve disruptions, the Provider is permitted to make changes to the data structure and Data Format.

§ 5 Customer Cooperation Obligations

(1) The Customer undertakes to provide a server that meets the requirements specified in the Software Specification for the use of the software product and related services.

(2) The contractual use of the software product requires that the Customer's employed Hardware and Software (including workstations, routers, data communication means, etc.) meet the technical Minimum Requirements for software product usage (see Software Specifications). The Customer is responsible for configuring their IT system for software product usage; however, the Provider offers to support the Customer in this regard, subject to a separate agreement, for a fee.

(3) The Customer is responsible for maintaining the server, including the operating system, ensuring its operational readiness, regularly installing operating system security updates, and performing backups.

(4) The Customer must independently verify the feasibility of connecting to an authentication server.

(5) The Customer must enable the installation and maintenance of the software product, particularly by

allowing firewall openings for Provider access, enabling SSH access for the system to be maintained, providing test access, and enabling access for further systems to be connected. The Provider will provide the Customer with a detailed list after contract conclusion, containing all required access and connections, as well as other necessary information for commissioning.

(6) Otherwise, the provisions of §§ 7, 8 of this Contract apply.

§ 6 Compensation

(1) The Term and Compensation are specified in more detail in the Offer.

(2) The Due Date for any payments and Payment Terms are specified in more detail in the Offer.

§ 7 Warranty

(1) The Provider warrants the functional and operational readiness of the software product and related services in accordance with this Contract. Unless otherwise specified below, the statutory provisions on warranty shall apply.

(2) For defects in the software product provided against payment, the Provider shall be liable under the warranty rules of rental law (§§ 536 et seq. of the German Civil Code (BGB)), however, with the proviso that liability for damages exists only in case of fault in accordance with the provisions of § 8 of this Contract.

(3) A Defect exists if the software product, when used in accordance with the contract, does not provide the services specified in the Functional Description and this significantly affects its suitability for the contractually agreed-upon use.

(4) The Customer's Warranty Claims do not exist:

- a) In case of minor deviations from the agreed-upon quality or minor impairment of the software product's usability,
- b) For defects caused by non-compliance with the usage conditions specified for the software product (as defined in the Software Specifications),
- c) Due to the Customer's improper use,
- d) In the event of using hardware, software, or other equipment not suitable for using the software product (see Software Specifications, which specify the requirements),
- e) For defects in the server used by the Customer or defects caused by the Customer's server, to the extent the Provider did not intentionally or grossly negligently cause such defects,
- f) If the Customer fails to promptly notify a defect and the Provider cannot remedy the situation due to the Customer's failure to promptly notify the defect, or
- g) If the Customer was aware of the defect at the time of contract conclusion and did not reserve their rights.

(5) If a defect is reported by the Customer and the Customer's warranty claims are not excluded, the Provider shall Remedy the Defect within a reasonable period, at its discretion. The Customer shall provide the Provider with sufficient time and opportunity to remedy the defect. The Provider's employees and agents shall be granted unrestricted access to the Customer's systems to the extent necessary.

(6) In the event of Impossibility or Failure of Defect Remediation, Culpable or Unreasonable Delay, or Serious and Final Refusal of Defect Remediation by the Provider, or other Unreasonableness of Defect Remediation for the Customer, the Customer is entitled to Reduce the Remuneration (Mitigation) in proportion to the extent of the impairment. The Customer is not entitled to assert a mitigation claim by unilaterally deducting the mitigation amount from the ongoing remuneration; the Customer's restitution claim for the overpaid portion of the remuneration remains unaffected.

(7) Insofar as the services related to the software product usage are Pure Services (e.g., support services), the Provider shall be liable for defects in these services under the rules of service contract law (§§ 611 et seq. BGB).

§ 8 Liability; Indemnification

(1) The Parties shall be Unlimitedly Liable to each other:

- In cases of Wilful Intent, Gross Negligence, or Guarantee explicitly assumed by them,
- For Damages to Life, Body, or Health,
- For Breach of a Material Contractual Obligation (whose fulfillment is essential for the proper execution of this Agreement and on whose compliance the Parties regularly rely and are entitled to rely) ("Cardinal Duty"), limited to the reasonably foreseeable damage at the time of contract conclusion,
- Pursuant to the Product Liability Act.

(2) Otherwise, the Parties' Liability is Excluded.

(3) The aforementioned Liability Rules shall apply correspondingly to the behavior of and claims against the Parties' employees, legal representatives, and agents.

(4) The Provider warrants to the Customer that the Software does not infringe Third-Party Rights ("Intellectual Property Infringement"). The Provider shall Indemnify the Customer against all third-party claims due to Intellectual Property Infringement caused by the Provider in connection with the contractual use of the Software, upon first request, and also bear the reasonable costs of the Customer's legal defense. The Customer shall promptly inform the Provider of any third-party claims; the Customer is not authorized to actually or legally respond to such claims unless the Provider has previously given its written consent. The Indemnification Claim under this § 8 (4) shall lapse if the Customer fails to promptly inform the Provider of third-party claims, unless a case of unlimited liability under § 8 (1) exists.

(5) If the Customer is claimed against due to a Software Defect as defined in § 7 (3) sentence 2 of this Agreement, the provisions of paragraph 4 shall apply correspondingly; if indemnification is not possible in the external relationship, the obligation shall apply in the internal relationship.

§ 9 Communication

The Parties shall, if necessary or upon request of the other Party, designate a Contact Person. The Contact Persons shall be responsible for legally binding communication between the Parties.

§ 10 Force Majeure

(1) To the extent and for the duration that a Force Majeure event occurs, the Parties shall be temporarily released from their performance obligations.

(2) Force Majeure is an extraordinary, unforeseeable event caused by elemental natural forces or actions of third parties, which cannot be prevented or mitigated with economically reasonable means, even with the utmost care reasonably expected under the circumstances, and is not acceptable due to its frequency.

(3) The Parties may Terminate this Agreement if a Force Majeure event lasts longer than six months and a mutually agreeable contract adjustment cannot be achieved.

§ 11 Data Protection

(1) If, in the course of performing this Agreement, particularly but not exclusively, when using the Software Product, Personal Data is collected, the Parties shall ensure that data protection regulations are observed.

(2) Personal Data shall be collected and used only to the extent required for the performance of the Agreement. The processing of Personal Data shall be carried out in accordance with the Customer's instructions; if the Provider believes that any such instruction violates data protection regulations, it shall promptly notify the Customer. The Parties consent to the collection and use of such data to the extent collected.

(3) If necessary, the Parties shall conclude an Agreement on Commissioned Data Processing ("Data Processing Agreement") in accordance with the requirements of Art. 28 of the General Data Protection Regulation (GDPR). In this context, all employees, particularly those with access to Personal Data, shall be obligated to comply with the requirements of Art. 28 (3) lit. c in conjunction with Art. 32 (4) GDPR.

§ 12 Confidentiality Agreement

(1) The Parties are obligated to treat all Confidential Information, Business Secrets, and Operational Secrets obtained in the course of the contractual relationship as confidential, particularly not disclosing them to unauthorized third parties or exploiting them for purposes other than those contractually agreed upon. This confidentiality obligation does not restrict either Party from deploying personnel who had access to Confidential Information in other projects. The Customer's exchange of experience with and within the public sector remains unaffected, as does the fulfillment of statutory obligations.

(2) Confidential Information refers to information that a reasonable third party would consider worthy of protection or is marked as confidential; this may also include information disclosed during oral presentations or discussions. Confidential Information may only be used or exploited for the purpose of fulfilling the obligations under this Agreement. The confidentiality obligation does not apply to information that was already lawfully known to the Parties or becomes known outside of this Agreement without violating a confidentiality obligation.

§ 13 Term, Termination

(1) This contractual relationship shall come into effect with the last signature of the Parties on the respective Offer and shall have the term specified in the Offer. Thereafter, the term shall automatically extend, if specified in the Offer, by the term indicated in the Offer. Either Party may terminate this Agreement upon the respective end of the term with three months' notice. If no automatic extension is provided for in the Offer, the Agreement shall end upon expiration of the agreed-upon deployment period.

(2) The right of both Parties to Extraordinary Termination for good cause remains unaffected. A good cause exists, in particular, if one Party intentionally or negligently breaches a material obligation under this Agreement (e.g., in case of breach of Cardinal Duties, § 8 (1) of this Agreement) and, as a result, it becomes unreasonable for the terminating Party to maintain the Agreement.

(3) The Provider is, in particular, entitled to extraordinary termination in case of repeated or significant payment default by the Customer. The Provider is entitled to extraordinary termination of this Agreement if the Customer breaches an obligation under § 5 of this Agreement and the Provider has previously warned the Customer.

(4) Termination of this Agreement requires written form.

§ 14 Data and Software Release upon Contract Termination

(1) In the event of Contract Termination, the Provider shall, upon the Customer's request, provide the Customer with the data stored on the assigned storage space in a suitable digital format within 30 days of the request ("Release").

(2) The stored data shall be deleted 30 days after the Release, unless the Customer notifies the Provider within this period that the provided data is not readable or incomplete. Failure to notify shall be deemed consent to deletion. The Customer is solely responsible for complying with commercial and tax-related retention periods.

(3) Retention Rights and the statutory Lien under §§ 562, 578 BGB in favor of the Provider regarding the Customer's data are excluded.

(4) The Customer is obligated to remove the Software provided by the Provider from their data carriers upon Contract Termination.

(5) Any use of the Software Product after Contract Termination is inadmissible.

(6) If a Release is not requested within three months after Contract Termination, the data shall be

deleted.

§ 15 Reference Agreement and Use of the Domain and Trademark "Participify"

- (1) The Customer authorizes the Provider to mention it as a reference customer, including the use of its logo. This authorization may be revoked by the Customer in writing at any time.
- (2) The Provider authorizes the Customer to use the subdomain "participify" within the scope of this Agreement and limited to the term of this Agreement.
- (3) The Provider authorizes the Customer to use the Trademark "Participify" for creating informational materials such as flyers, brochures, and similar. This authorization may be revoked by the Provider in writing at any time.

§ 16 Final Provisions

- (1) If any provision of this Agreement or a provision later incorporated into this Agreement is or becomes entirely or partially invalid or unenforceable, or if a gap in this Agreement is discovered, the validity of the remaining provisions shall not be affected (Preservation). The Parties explicitly intend to maintain the validity of the remaining provisions under all circumstances, thereby entirely waiving § 139 BGB. In place of the invalid or unenforceable provision or to fill the gap, the effective and enforceable regulation that legally and economically comes closest to what the Parties intended or would have intended if they had considered this point when concluding this Agreement shall be deemed agreed upon with retroactive effect; if the invalidity of a provision is based on a specified measure of performance or time (deadline or term), the provision shall be deemed agreed upon with a measure closest to the original, legally permissible measure (Substitution Fiction). If substitution is not possible, a provision or regulation shall be established in accordance with the content of the preceding sentence (Substitution Obligation). If the invalidity or gap concerns a provision requiring notarization, the regulation or provision shall be agreed upon in notarized form.
- (2) Amendments and Supplements to this Agreement, including this § 16 (2), require written form, unless otherwise specified.
- (3) The Parties may only Assign this Agreement, as well as rights and obligations under this Agreement, to a third party with the prior written consent of the other Party. Such consent shall not be unreasonably withheld.
- (4) Oral or Written Collateral Agreements to this Agreement do not exist. The applicability of both the Provider's and the Customer's General Terms and Conditions is explicitly excluded.
- (5) The Exclusive Place of Jurisdiction for all disputes arising from or in connection with this Agreement is Gießen.
- (6) The Parties agree to the application of the laws of the Federal Republic of Germany, excluding its conflict of laws provisions and the United Nations Convention on Contracts for the International Sale of Goods (CISG), for all legal relationships arising from this Agreement.

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