

## GENERAL TERMS AND CONDITIONS

NYMEA Software

Version 1.1

December 2020



nymea

### Commercial License for OEM and VAR

#### NYMEA Commercial License for Original Equipment Manufacturers (OEMs) and Value Added Resellers (VARs):

nymea GmbH provides its NYMEA software and NYMEA libraries (together referred to as NYMEA) under a dual license model designed to meet the development and distribution needs of both commercial distributors (such as OEMs and VARs) and open source projects.

#### For OEMs, VARs and Other Distributors of Commercial Applications:

OEMs, VARs and other distributors that combine and distribute commercially licensed software with NYMEA and do not wish to distribute the source code for the commercially licensed software under version 3 of the GNU General Public License (the "GPL") must enter into a commercial license agreement with nymea GmbH.

#### For Open Source Projects and Other Developers of Open Source Applications:

For developers of Free Open Source Software (FOSS) applications under the GPL that want to combine and distribute those FOSS applications with NYMEA licensed under the GPL version 3 is the best option.

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Comm. Register: FN446282y

## SECTION I GENERAL PROVISIONS

### 1. GENERAL

- 1.1 nymea GmbH (FN446282y), Gutheil-Schoder-Gasse 10, High Tech Campus Vienna, 1100 Wien, Austria, provides NYMEA under a dual license model designed to meet the development and distribution needs of both commercial distributors (such as OEMs and VARs) and open source projects. Original Equipment Manufacturers (OEMs) and Value Added Resellers (VARs) and other distributors (hereinafter together referred to as "Customers" or "Licensees") that combine and distribute commercially licensed software with NYMEA and do not wish to distribute the source code for the commercially licensed software under version 3 of the GNU General Public License (the "GPL") must enter into a commercial license agreement with nymea GmbH on the basis of the General Terms and Conditions as set forth herein.
- 1.2 This General Terms and Conditions ("GTC") allow OEMs, VARs and other distributors to commercially use NYMEA, and apply to all deliveries and services, contractual relationships, orders and offers as well as business transactions of nymea GmbH ("nymea GmbH" or the "Company") in connection with NYMEA with or towards a Customer, unless otherwise agreed in writing. In the case of permanent business relations, the GTC of nymea GmbH also apply without express reference.
- 1.3 The GTC (including all the listed Appendices) also form an integral part of the order form, which can be accessed at <https://www.nymea.io/legal/ORDER.pdf>, which is agreed separately in writing between the Customer and nymea GmbH (the "Order"). The Order specifies the scope of services applicable in each individual case between the Customer and nymea GmbH. nymea GmbH will provide the services and deliveries according to these GTC and the Order. The GTC and the Order, including any documents referenced therein, together form the contract (the "Contract"). In case of any contradictions between the Order and the GTC, the conditions of the Order shall always prevail.
- 1.4 nymea GmbH reserves the right to amend or supplement the GTC at any time. The amended GTC shall not apply to current contracts unless the parties agree in writing to apply the new GTC to existing contractual relationships. Any contract renewals are subject to the GTC in the version valid at the time of extension.
- 1.5 General terms and conditions or other conditions of the Customer shall not become part of the Contract without explicit agreement in the Order. This applies in particular to any pre-printed or otherwise referenced conditions of the Customer on the Order or any order forms of the Customer.
- 1.6 The version of the GTC valid at the time of the mutual acceptance of the Order or, if applicable, of conclusion

of the Contract shall be decisive in each case. nymea GmbH only concludes contracts subject to these GTC.

### 2. DEFINITIONS

For the purpose of this GTC and any Appendices that may be attached hereto, the following terms, when used with a capital initial letter, shall have the respective meanings as set forth below:

"**NYMEA**" means licensed software and or libraries.

"**NYMEA:EDGE**" (also referred to as "**Licensed Software**") means the complete licensed software (including NYMEA softwarestack, applications and libraries) that runs directly on the Customer's End User devices, as described in Appendix A.

"**Confidential Information**" means any information disclosed in any form (including, but not limited to, disclosure made in writing, orally, in digital form or in the form of specifications, software (including source codes), samples, designs, models, by demonstrations or otherwise, the execution and terms and conditions of this GTC) by one party to the other party.

"**End User**" means the final end user of a Licensed Application.

"**Order**" means a document executed by the Customer, in which the requested deliveries and services of nymea GmbH are specified (see the non-binding model of an Order as Appendix B to this GTC) and which initiates the order process in accordance with this GTC;

"**Effective Order**" means the Order in its final version accepted and signed by both Parties, which incorporates this GTC and includes any attachments and any documents expressly referred to in it (e.g. SOW, technical documentation).

"**SOW**" means "Scope of Work", a document prepared by nymea GmbH in consultation with the Customer on the basis of an Order referring to this GTC and containing a list of deliveries and services to be provided and rendered by nymea GmbH and a functional and technical description of NYMEA and other required characteristics of the individual NYMEA Plug-in for a Customer, which consists of, among other things, the time schedule and milestones.

"**Object Code**" means machine-executable software code in binary format, typically the result of processing source code with an assembler or compiler.

"**Source Code**" means software in human-readable, high-level language form, which when compiled or assembled, becomes the executable Object Code of a software program. All references to Source Code in this GTC shall include both human readable (listing) and machine readable (source files) forms and all tools and documentation needed to build such software, as well

as program documentation, including flow charts, programmer's comments and design specifications for such software.

**"Licensed Application"** means an IOT application manufactured by Licensee or a third party on behalf of Licensee, incorporating, containing or using the Licensed Software in whole or in part.

**"Licensed Software"** (is also used for reference to NYMEA) means encoding/decoding software in Object Code form or where applicable Source Code form (see Appendix A for details), implementing NYMEA developed and owned solely by nymea GmbH, which shall be made available to the Licensee.

**"Open Source Software"** means any software or any libraries licensed under any form of open-source license meeting the Open Source Initiative's Open Source Definition or code licensed from time to time under the GPL (as set out at [www.gnu.org](http://www.gnu.org)), or any similar license, included or used in, or in the development of, the Services or the Software, or with which the Services or the Software is compiled or to which it is linked.

**"GPL"** means the GNU General Public License, which is a free, copyleft license used primarily for software. The GNU GPL allows users to change and share all versions of a program. GPL is provided through the Free Software Foundation, version 3 of the GNU GPL (GPLv3) was published on June 29, 2007. Hereinafter, GPL shall always refer to v3, unless specified otherwise.

**"LGPL"** means the GNU Lesser General Public License, which is a free, copyleft license used primarily for software libraries. The main difference between the GPL and the LGPL is that the latter allows the work to be linked with or used by a non-(L)GPLed program, regardless of whether it is free software or proprietary software. The non-(L)GPLed program can then be distributed under any terms if it is not a derivative work. GNU LGPL (LGPLv3) was published on June 29, 2007. Hereinafter, LGPL shall always mean v3, unless specified otherwise.

**"NYMEA:CLOUD"** means a set of centralized and decentralized backend-services for user- and device data exchange, user and device management, collaborative interaction with third party platforms and other services needed to fulfill the scope of utilizing connected devices for value generation.

**"NYMEA:EDGE Plug-In"** means a generic software module based on NYMEA:EDGE, developed by nymea GmbH individually for the Customer, which is dynamically attached to the NYMEA gateway process and typically, but not necessarily uses the NYMEA libraries.

**"NYMEA:UX"** means software libraries and app templates that are licensed to the Customer to develop custom interfaces including an app for the End Users to use the Licensed Application.

**"App"** means the client for the End Users in order to be able to comfortably use the Licensed Application, and the NYMEA:UX based user interface that is developed by nymea GmbH and tailored to the End Users' needs upon Customer's instructions. This may but not necessarily refer to the publicly available reference app namely "NYMEA:APP".

**"NYMEA:APP"** means the publicly available reference app in order to enable end users to comfortably use NYMEA:APP, which is licensed under the GPLv3, but available under a dual license model.

**"Manufacturer"** means any third party, not depending whether an affiliated company of the Licensee or not, that embeds the Licensed Software in the Licensed Application upon instruction by and on behalf of the Licensee.

**"Intellectual Property"** means all rights, privileges and priorities provided under the applicable law relating to intellectual property, including all (1) patents, patent applications, proprietary inventions, discoveries, processes, formulae, designs, methods, techniques, procedures, concepts, developments, technology, new and useful improvements thereof and proprietary know-how relating thereto, whether or not reduced to practice or patented or eligible for patent protection; (2) copyrights and copyrightable works, including computer applications, programs, software, databases and related items; (3) trademarks, service marks, trade names, logos, domain names; and (4) trade secrets, business secrets and other confidential information; and (5) all registrations, applications, and recordings for, and amendments, modifications, improvements, extensions, and continuations to any of the foregoing.

**"CPU"** means "Central Processing Unit" and is the functional unit (i.e., the "computing part") of the device that interprets and executes instructions for a specific instruction set; it is made up of one or multiple cores, including the control unit and the ALU.

### 3. SUBJECT MATTER

- 3.1 The subject matter of the GTC is the operation and provision of NYMEA, which is intended to form an infrastructure capable of processing information from both the real and virtual worlds by means of smart services and facilitate the uniform exchange of data and information between the products or applications of the Customer and the devices of the End-users as

well as facilitate the ability of the Customers' product and applications to respond to such information.

- 3.2 Depending on the scope of the Order, the following deliveries and services may be the subject matter (hereinafter collectively, „**Services**“):
  - 3.2.1 Provision, installation and configuration of NYMEA:EDGE.
  - 3.2.2 Provision of NYMEA:CLOUD module for remote access to NYMEA:EDGE.
  - 3.2.3 Provision of NYMEA:CLOUD module for push notification to NYMEA:UX.
  - 3.2.4 Provision of NYMEA:CLOUD module for interconnection to 3rd Party Cloud Services (IFTTT, Alexa, Google Assistant ...)
  - 3.2.5 Development and provision of a NYMEA:EDGE Plug-In for a Licensed Application.
  - 3.2.6 Development, configuration and white labelling of a NYMEA:UX based user interface to control the Licensed Application by an End-User.
  - 3.2.7 Provision of user and device management in the NYMEA:CLOUD.
  - 3.2.8 Provision of maintenance, technical and security upgrades and related services for NYMEA:UX based user interface.
  - 3.2.9 Publishing of the NYMEA:UX based user interface in Google Play Store and Apple Appstore.
- 3.3 The scope of deliveries and services according to item 3.2. is described in the following provisions of the GTC and individually in each SOW.

## SECTION II IT-SERVICES OF NYMEA

### 4. IMPLEMENTATION OF NYMEA:EDGE

- 4.1 The Licensee is free either to implement the Licensed Software, which is provided to the Licensee as copy, in the Licensed Application itself or to engage nymea GmbH with those activities.
- 4.2 If the Licensee engages a Manufacturer, he shall announce the company name, address, ID number (e.g. company register number) and contact person of the Manufacturer to nymea GmbH within 5 business days after engagement. In spite of an engagement of a Manufacturer the Licensee shall remain liable for the performance of the obligations under this GTC and shall require the Manufacturer to enter into and agree to provision no less onerous than those contained in this GTC.
- 4.3 If any Licensed Applications are made for Licensee by a Manufacturer, such Manufacturer shall only deliver such Licensed Applications to Licensee and no other person or entity.
- 4.4 The Licensee shall indemnify and hold nymea GmbH harmless for any damage, loss or any other expenses or disadvantage resulting from any failure of the Licensee

or the Manufacturer to comply with these provisions Article 4.1. and 4.3.

- 4.5 nymea GmbH shall develop a plug-in for the Licensed Application (the NYMEA:EDGE Plug-In) upon specific instructions by the Licensee, which are provided to nymea GmbH together with signing of the Order and are then attached as technical specification of the NYMEA:EDGE Plug-In to the SOW. nymea GmbH will support the Licensee in preparing the specifications by means of a concrete order. However, it is not nymea GmbH's duty to verify the correctness and suitability of the Customer's specifications. The Licensee shall be entitled to develop such plug-in for NYMEA:EDGE on its own for its own business purposes in a Licensed Application upon acquiring a respective license for development.

### 5. NYMEA:UX DEVELOPMENT

- 5.1 nymea GmbH shall create a User Interface based on NYMEA:UX, further referred as "App", on concrete order and upon specific instructions of the Customer. For this purpose, nymea GmbH has created the SOW, which inter alia describes the technical and functional specification finally. This SOW shall be provided to the Customer for release within two weeks and must then be objected or becomes otherwise integral part of the Final Offer and binding for the Contractor. The risk for any incompleteness or other difficulties in the technical implementation that result from the SOW is therefore borne by the Customer.
- 5.2 Apps shall be built by a Git repository hosted on the nymea GmbH Gitlab server. A new app built be triggered by a merge on the Master branch. If the Customer has obtained the right to develop on the basis of NYMEA:UX, Customer will acquire the required rights to push to this Git repository. With the Store build in test program the App will be distributed to the tester and the Customer will be required to distribute the App to public after the appropriate tests.
- 5.3 Licensee shall be entitled to arrange the distribution of the App with the following operators: Apple AppStore, Google Play Store, and any other app store independently from nymea GmbH. nymea GmbH shall be obliged to assist the Licensee with such distribution and shall provide him with any documents and material that are required for such distribution immediately upon request. In order to allow nymea GmbH to assist Customer with the distribution, Customer must grant nymea GmbH developers access with appropriate rights to access the store platform. For the avoidance of doubt, app store content like description, images, screenshots shall not be provided by nymea GmbH. nymea GmbH ensures that all guidelines of Google Play Store and Apple Appstore referring to technical requirements and performance of apps for the development of the App are adhered to. If an app store would reject the certification of the App due to a lack in the development and adherence to the development requirements of the respective appstore, nymea GmbH shall on its own costs modify the App or process so that

it does not longer contradict with the app store's requirements, and is certified for distribution by this certain online store in due time.

- 5.4 Changes to Customer's internal or integrated external APIs must be announced in a timely manner so it will not affect agreed timelines in the SOW during the development phase, if the particular API has been already integrated additional fees for the API change will be charged. If the device is already in production, changes will be done by an order, only with a sufficient documentation to be able to fulfill the API change, and with a provided test environment.
- 5.5 If the Licensed Application is rejected and not approved or certified for distribution in an appstore for issues related to the type of content of, and sales model in the Application, or any other criterion inherent in the Licensed Application, nymea GmbH shall only modify the App upon Customer's explicit request and against separate payment.
- 5.6 For the avoidance of doubt, it is stated that it is the sole risk of the Customer whether the App can be sold over an app store or a specific app store. In no event shall nymea GmbH be liable for any costs, damages or other financial impact that results from the rejection of the App.
- 5.7 For the event, that Customer further develops the App on its own, a developer account must be created by the Customer, which will be in the name and to the account of the Customer.

## SECTION III SERVICES BY NYMEA:CLOUD

### 6. NYMEA:CLOUD SERVICES

- 6.1 nymea GmbH has developed a platform that makes the following services available to the Customer:
  - i. push notification support for the End Users that downloaded the App,
  - ii. maintenance services, including regular Update-Service,
  - iii. provision of the remote connection with NYMEA:EDGE, in order to access it from everywhere,
  - iv. provision of access to third party Cloud services through an OAuth2 REST service. The technical specification of NYMEA:CLOUD is part of the specification in the SOW or is made available to the Customer in another way.
- 6.2 The NYMEA:CLOUD is operated and maintained by and on the servers of AWS Cloud. nymea GmbH shall make NYMEA:CLOUD available to the Customer and its End Users for use to the extent ordered against payment of the fees specified in the Order and for the duration agreed therein. nymea GmbH processes End User's personal data in NYMEA:CLOUD upon the Customer's Order. nymea GmbH, therefore, assumes the role of the data processor and processes the End User's personal data in accordance with Customer's instructions, and the Data Processing Agreement,

which is enclosed as Appendix E to the GTC and forms integral part of these GTC by reference.

- 6.3 In the course of the Update-Service nymea GmbH makes generally available to its Customer's End Users corrections or highly severity bug fixes for the App without additional charge as service that is rendered on behalf of Customer to the End Users.
- 6.4 The push notification support includes the sending of push messages to End Users to inform them about important circumstances. Such circumstances can be any technical information, specifically requested information from the End Users, and ads or other commercial information requested by the Customer. Irrespective of the content of such push messages, nymea GmbH shall support the sending of the push messages only on behalf of the Customer and not in its own name. Hence, this service does not create any contractual or other direct relationship to the End user; the Customer, therefore, remains fully responsible towards the End User. The push notification support requires services and features by third parties such as Google. nymea GmbH shall not be liable for the unavailability or any delays and suspensions of push messages that is caused by such third party features and services.
- 6.5 The Customer is not entitled to receive, use or check the machine or source code or development documentation for the NYMEA:CLOUD.

## 7. USER AND DEVICE MANAGEMENT

- 7.1 The End User shall create a user account in NYMEA:CLOUD, and then shall be enabled to register its devices before enrolling into the platform of NYMEA:CLOUD. nymea GmbH shall manage the registration of the users and the devices on behalf of the Customer, which involves the processing of personal data of the End Users. Hence, nymea GmbH acts as data processor for the Customer, why the NYMEA Data Processing Agreement, which can be accessed at <https://www.nymea.io/legal/DPA.pdf>, shall become an integral part of these GTC by reference. The NYMEA Data Processing Agreement describes the respective roles of the parties with regard to the processing of and control over personal data (as defined in the Data Processing Agreement) that nymea GmbH generates from the End Users during the registration process, unless otherwise specified by the Customer in the Order. nymea GmbH assumes the role of the data processor and processes the End User's personal data in accordance with its instructions pursuant to the provisions of the GTC, the Data Processing Agreement and the Customer's Order.
- 7.2 nymea GmbH is not entitled to block access to NYMEA:CLOUD for one End-User, however, nymea GmbH informs Customer in case of suspecting an End User of misusing the NYMEA:CLOUD Account, and requests the intervention against such actions. Customer shall indemnify and hold harmless nymea

GmbH from any damage or disadvantage that result from such End User's actions.

## SECTION IV SUPPORT

### 8. IT-SUPPORT SERVICES

8.1 Upon request nymea GmbH shall perform support services regarding the Licensed Application in a professional manner in material accordance with industry standards and in accordance with the applicable service levels, which are defined in the Support and Service Level Agreement of nymea GmbH, which is attached to this GTC as Appendix C. Such Support and Service Level Agreement includes the rendering of any IT-services including any specific support services including customization and parameterization work, and appropriate advice services with the optimization and development of the Licensed Application against payment. nymea GmbH has no obligation to provide any support and/or maintenance services to Customers' End Users.

Third level support meaning

- (i) resolving unknown problems for the first time in which no documentation exists for the problem,
- (ii) resolving problems associated with an identified bug that is not yet published;
- (iii) fixing or generating workarounds for hardware and software bugs and troubleshooting bugs that were not diagnosed or resolved during second level support, is part of the Support and Service Level Agreement.

First or Second Level Support shall not be part of the IT support services and must be ordered separately against additional charge.

8.2 Support is provided exclusively by e-mail. The regular support services are provided on weekdays Monday to Friday from 9.00 a.m. in the morning until 5.00 p.m. in the afternoon after the respective time of the country where the nymea GmbH contact person is based. Excluded from this are the public holidays applicable in the respective country. Enquiries received outside these support hours shall be deemed to have been received during the next working day. nymea GmbH reserves the right to limit the scope of services of the standard online support if NYMEA is used via a free and limited test access.

8.3 The support and reaction time are explicitly provided for in the Support and Service Level Agreement. The regular support pursuant to Article 8.2 does not apply to any errors whereby the Customer application is substantially inoperable, and/or an instance with a high impact to multiple End Users of the Licensed Application and provided that a mutually agreed upon workaround has not been implemented in such a way that the issue has been mitigated.

## SECTION V OBLIGATIONS OF CUSTOMER AND PROJECT ASSUMPTIONS

### 9. OBLIGATIONS OF CUSTOMER

9.1 The Customer shall be responsible for timely provision of and access to office accommodations, facilities, equipment, assistance, cooperation, complete and accurate information and data from Customer's officers, agents, and employees as well as for licensing of third-party software required for the use of the NYMEA Software (collectively, "Cooperation") what is essential to the performance of any nymea GmbH's services as set forth in this GTC and the SOW. nymea GmbH will not be responsible for any deficiency in performing services if such deficiency results from Customer's failure to provide full Cooperation.

9.2 nymea GmbH's ability to perform the services depends upon fulfillment of the following obligations of the Customer:

9.2.1 The Customer shall at its own costs

- i. maintain all hardware and/or operating system which is basis for the Licensed Application.
- ii. maintain all hardware and/or operating system for a suitable test environment in required amounts.
- iii. obtain licenses under separate contract for any necessary software and hardware programs before the commencement of Services.
- iv. maintain annual technical support for NYMEA under separate contract throughout the term of the Services.
- v. provide nymea GmbH with full access to relevant functional, technical and business resources with adequate skills and knowledge to support the performance of Services.
- vi. provide any notices, and obtain any consents, required for nymea GmbH to perform Services.
- vii. limit nymea GmbH's access to any production environments or shared development environments to the extent necessary for nymea GmbH to perform Services.
- viii. be responsible, if while performing Services nymea GmbH requires access to other vendor's products that are part of the Customer's system, for acquiring all such products and the appropriate license rights necessary for nymea GmbH to access such products on behalf the Customer.
- ix. provide documentation about internal product APIs but also about external service and device APIs, documentation about all operating systems and hardware.

9.3 If nymea GmbH's costs of providing Services is increased because of a failure of the Customer to meet the obligations listed above in Article 9.2.1., because of a failure to provide Cooperation, or because of any other circumstances outside of nymea GmbH's control, then the Customer shall pay nymea GmbH for such increased costs. Such increased costs may include time

during which nymea GmbH resources are under-utilized because of delays.

- 9.4 nymea GmbH will, however, support the Customer with procurement and installation or any other assistance in relation to the tasks mentioned above under Article 9.1 and 9.2 against payment.

## 10. USE OF NYMEA:UX

- 10.1 It is the Licensee's responsibility to ensure that any resale of the App to an End User is subject to a legally binding EULA for the App that is resold to the End User as part of the Licensed Application through an app store. Licensee shall therefore resell the App including its own agreement for the Licensed Application, in which the terms and conditions for the use of the App as specified below are either integral part of the agreement or are attached to this Licensee's agreement as separate document. In any case the terms and conditions as set out below must be acknowledged and accepted as precondition of the successful download of the App by the End User.
- 10.2 Such an agreement must, at a minimum, include the following terms and conditions: (1) End User will have only a non-exclusive, non-transferable license to use the App for the Licensed Application, and hence the license is restricted to the scope of the use of the Licensed Application. (2) End User is prohibited from reverse engineering (unless required by law for interoperability), disassembly or decompilation of the App and the duplication of the App. (3) nymea GmbH disclaims, to the extent permitted by applicable law, any warranty including the implied warranties of satisfactory quality, fitness for a particular purpose, non-infringement and those arising from a course of performance. nymea GmbH does further not warrant that the operation of the App will be uninterrupted or error free or that all deficiencies will be corrected. (4) nymea GmbH disclaims any liability for any damages, whether direct, indirect, incidental, or consequential, arising from the use of the App. (5) The End User acknowledges that the App can only be used in conjunction with the Licensed Application and further, that App under certain circumstances supports services, features and devices of third parties, which are all subject to the terms of service entered into by the End User and the respective developer directly. (6) The End User is notified that the App is provided for free and hence, the permission to use the App ends with its revocation by nymea GmbH for good cause. (7) the End User can receive push notifications through the App which service is provided by nymea GmbH, however, the End User acknowledges that nymea GmbH does not act in its own name and own account, and hence, that there is no contractual or whatever legal relationship between nymea GmbH and the End User; moreover any claims from or in connection with push notification service have to be solely asserted against the Customer (7) nymea GmbH is designated and accepted expressly as a third party beneficiary due to its intellectual property rights in the App of and End

User shall agree that nymea GmbH shall be entitled to enforce its intellectual property rights in App as such under this agreement with the Customer.

- 10.3 The Licensee shall be financially responsible for all claims and damages to nymea GmbH caused by a failure to include the required contractual terms set forth above in each agreement between the Licensee and End User prior to the download of the App.

## 11. PROJECT ASSUMPTIONS

- 11.1 nymea GmbH's developers are using its development tools which they are used to. If the customer is using different tools such as SVN instead of git, the customer is required to transfer the source code to their source code versioning tool. Same applies for integrated development environments, compilers etc.
- 11.2 Customer designates a full-time project manager who is responsible for supporting all project tasks assigned to the Customer, is contact person for nymea GmbH in all questions relating to the project, handles all issues under the project and can make decisions and act on behalf of the Customer in the project.
- 11.3 Customer further designates a technical contact person that is capable to respond to technical enquiries within an appropriate time.
- 11.4 Allowed to make changes on the host operating system, if the operating system is not provided by nymea GmbH itself. Customer shall organize that all therefore required third party rights are provided. Minimal OS requirements will be specified and varies based on the technical requirements or specifications laid down in the SOW.
- 11.5 Apps that are developed for app stores will be hosted under the customers app store account if not specified otherwise. For that the customer receives the machine-executable or source code to upload it to the stores themselves.
- 11.6 In case of the usage of NYMEA:CLOUD the customer is required to use tools in the production line to install required certificates and registering the device in the NYMEA:CLOUD.
- 11.7 NYMEA:EDGE requires certain resources of the hardware (CPU, RAM, ROM), network and power consumption (due to increased CPU activity). Customer is obligation is to provide enough resources and inform the end user that minimum network requirements are in place.
- 11.8 WiFi, ZigBee, Bluetooth and other integrations are third party products and/or services that require a certification and a purchase of the particular license.
- 11.9 Provided encryption keys are to be handled carefully and must not be published. Keys shall not be added to any sources versioning tool repositories and handed

over keys only to engineers that are trained and in need of the keys.

- 11.10 Production tools for flashing or testing the devices and commission certificates can be provided by nymea GmbH but are not implicit delivery items.
- 11.11 If changes to NYMEA:EDGE itself are required to fulfil the requirements under the SOW, those changes will probably be merged into the mainline NYMEA:EDGE version and released under the same license as NYMEA:EDGE. (This is critical to have a single NYMEA:EDGE version being maintained and therefore reduce maintenance and rebasing effort.).

## SECTION VI COMMON PROVISIONS

### 12. GRANT OF LICENSE

- 12.1 nymea GmbH has developed the Licensed Software NYMEA, which is used for the Licensed Application. Sole owner of the Licensed Software in all expressions and therefore comprising the Object Code, the Source Code and the Documentation of the Licensed Software, as well as its layout, in particular, but without limitation, the user interface and the functions, is nymea GmbH.
- 12.2 As of the date of the Effective Order, subject to all the terms and conditions of this GTC nymea GmbH grants to Licensee a non-exclusive, worldwide, license-fee bearing, non-sub-licensable and non-transferable license limited to the duration of the Contract, revocable and solely for the purpose of embedding the Licensed Software in the Licensed Application and the resale of the Licenced Application:
  - 12.2.1 to use and reproduce the Licensed Software in Object Code form solely to design, develop, build and test Licensed Application; and
  - 12.2.2 to use the Licensed Software for the development of a plug-in attached to NYMEA:EDGE tailored for use in the Licensed Application;
  - 12.2.3 to sell the Licensed Application and grant access to the Licensed Software in Object Code form as implemented in the Licensed Application, as far as technically required to enable the proper use of the Licensed Application and its functions;
  - 12.2.4 to sublicense the Licensed Software to any Manufacturers that design, develop or build the Licensed Application on behalf of Customer.
- 12.3 Unless otherwise expressly set forth in writing, the Licensed Software is licensed by and restricted to the CPU as specified and calculated in the Contract. One license for the Licensed Software is required for each CPU and each CPU may be used in either a non-virtual or virtual environment. If a CPU is no longer in use (end of CPU lifecycle), a copy of the Licensed Software cannot be transferred to another device.
- 12.4 The Licensee is neither allowed to (i) install one copy of the Licensed Software on any other CPU than defined in the Contract and (ii) to modify, decode, decompile the Object Code on its own or by third parties, nor to nymea GmbH

produce or try to produce the Source Code through reverse engineering or by any other means, with the exception of cases regulated under Section 40d Austrian Copyright Act. Prior to such decompiling, nymea GmbH has to be requested in writing to provide the information necessary for establishing interoperability in an adequate grace period. Only if this written request is not successful albeit granting a grace period in writing, the Licensee shall be entitled for decompiling to the extent mentioned above.

- 12.5 The Licensee shall not be entitled to sell, resell, rent, transfer or make the Licensed Software or related documentation thereto available to any third party in any other way than provided for in this GTC and the attachments thereto. The Licensee shall also not be entitled to transfer the rights in the Licensed Software in whole or in part to any third party or to grant an exclusive or non-exclusive license or any other right to use to third parties.

### 13. OPEN SOURCE SOFTWARE

- 13.1 Licensee is aware that the Licensed Software is an open source project, and hence, the complete source code of NYMEA:EDGE is freely available. It is thus ensured by nymea GmbH that NYMEA:EDGE will continue to be freely available in the sense of the open source idea. Hence, for the event that any further developments during the Contract cause a contribution to the NYMEA:EDGE's code, this will also be freely available under GPL.
- 13.2 For the sake of clarification this does not apply to any further developments that are specifically developed for the Customer under this GTC, and conceived, created, or developed, independently of the Licensed Software.

### 14. REPRESENTATIONS OF LICENSEE

- 14.1 Licensee understands and accepts that:
  - 14.1.1 Nothing contained in this GTC shall be construed as conferring by implication, estoppel or otherwise any license to manufacture, use, sell, or otherwise dispose of any product or device other than a Licensed Application. Except as expressly granted in this GTC, Licensee shall have no other rights in Licensed Software. Under no circumstances shall anything in this GTC be construed as granting, by implication, estoppel or otherwise, a license to any software other than Licensed Software as specified herein.
  - 14.1.2 nymea GmbH has not investigated and will not investigate Licensee's particular Licensed Application and whether such Licensed Application include features beyond those realized by the Licensed Software, such features may infringe patents or any other intellectual property rights owned or licensable by nymea GmbH or any other third party which are not included in the license granted under this GTC and that

a separate license for same would, in such case, be required.

14.1.3 If the Licensed Software is prepared to enable the access to features of third parties through this Licensed Application, the sale of the Licensed Application may require the Licensee to enter additional agreements with third parties. Licensee shall be solely responsible for obtaining the proper agreements and certifications, in order to be able to make use of these third party features. nymea GmbH is not liable for the unavailability or any delays and suspensions of such third party features attributable to the lack of a proper relationship between Licensee and the third party.

## 15. REGISTRATION OF END-USER

15.1 The Licensee ensures that the Licensed Applications are only provided to such End Users that have properly purchased the Licensed Application, acknowledged that the Licensed Software is tied to the device on which the Licensed Software is first installed, and further, accepted the following conditions (by way of an EULA or any other separate agreement between Licensee and Customer), covers the following topics:

- i. End User is prohibited from reverse engineering (unless required by law for interoperability), disassembly or decompilation of the Licensed Software and the duplication of the Licensed Software,
- ii. End User is prohibited from transferring the Licensed Software to another machine;
- iii. nymea GmbH disclaims any warranty including the implied warranties of satisfactory quality, fitness for a particular purpose, non-infringement and those arising from a course of performance, and that the operation of the Licensed Software will be uninterrupted or error free or that all deficiencies will be corrected,
- iv. nymea GmbH disclaims any liability for any damages, whether direct, indirect, incidental, or consequential, arising from the use of the Licensed Software.

15.2 nymea GmbH is entitled to audit Licensee's compliance with the obligations under Article 15.1., in particular through inspection of the sales and registration process and of any agreements between Licensee and End User.

## 16. PRODUCT DEVELOPMENT AND COMMERCIALIZATION

16.1 Throughout the term of this GTC, nymea GmbH will make in its sole discretion bug fixes, updates and improvements (to the extent that bug fixes, updates or improvements are being created in the normal course of nymea GmbH's development work) to the Licensed Software available to Licensee under the terms and

conditions set forth herein. However, an obligation to updates and improvements does not exist.

16.2 Bug fixes will be at no charge additional to the license and release fees payable pursuant to the Price List Annex A. Updates, improvements and new features can be offered by nymea GmbH to Licensee for an extra fee. Notwithstanding the foregoing, the Licensee acknowledges that some updates may contain critical bug fixes or security enhancements which require immediate installation. If the Licensee fails to implement such updates, nymea GmbH does not accept any responsibility for damage resulting from this; therefore the Licensee himself carries the full risk.

16.3 Any updates are only released publicly available after the Customer has been provided the update through the update channel, has tested it for the Licensed Application within his test environment, and finally approved it in written form by the project manager.

16.4 In order to upgrade or update the Licensed Software, a valid license to use the previous version of the Licensed Software is required. Previous version means a former version of the Licensed Software to which an upgrade/update is made to the most recent version. If the Licensee does not accept this new version, this may interfere the operation of the Licensed Software and nymea GmbH expressly excludes any liability and warranty for any interference, upcoming mistakes of the Licensed Software, data loss or any other negative impact in the Licensed Application.

16.5 Customization work requested by Licensee for the Licensed Software in the Application or software interfacing with the Licensed Software will be offered by nymea GmbH at its then current standard consulting rates. Resulting changes to the Licensed Software will remain in nymea GmbH's ownership and automatically become an integral part of the Licensed Software.

## 17. CONSIDERATION - CALCULATION AND TERMS OF PAYMENT

17.1 For and in consideration of the limited license granted by nymea GmbH to Licensee in this GTC, Licensee agrees to pay nymea GmbH license and maintenance fees as well as other fixed price for certain services in accordance with the Appendix D, titled "Schedule of Fees".

17.2 Payments under this GTC shall be made within ten (10) days after receipt of the invoice to the account of nymea GmbH, Volksbank NÖ AG, BIC: VBOEATWWNOM, IBAN: AT40 4715 0215 3039 0000, in Euro, and shall not be deemed paid until actually

received at such account and freely withdrawable by nymea GmbH to the same extent as cash.

- 17.3 Each of the amounts payable under this GTC shall, when overdue, bear interest equal to the then current maximum legal rate until paid.
- 17.4 If any payment under this GTC is subject to tax in the country where the payment is initiated and such tax is:
- (i) required by law to be withheld from the payment by Licensee hereunder, and
  - (ii) permitted to be withheld from the payment to nymea GmbH under any applicable tax convention,

the amount of such tax shall be deducted from the payment by Licensee. Licensee shall promptly furnish to nymea GmbH all appropriate tax receipts to enable nymea GmbH to obtain corresponding tax credits. Any other tax or cost relating to the payment from Licensee to nymea GmbH shall be borne by Licensee.

## 18. TERM & TERMINATION

- 18.1 The Contract ends upon expiry of the delivery or term stated in the Order, without the need for a separate termination. Insofar as no delivery or term has been agreed, the Contract shall be deemed concluded for an indefinite period.
- 18.2 Failure to pay shall constitute an event of default. A failure period of thirty (30) days with respect to non-payment of funds shall entitle nymea GmbH giving such notice to terminate or suspend all or any portion of this GTC with immediate effect.
- 18.3 Upon termination, the license and all other rights created in favor of Licensee hereunder shall expire. However, any Licensed Application sold prior to Termination of this GTC or sold within the 3 (three) months notice period, shall remain unaffected by any such termination, and particularly Licensee shall be entitled to fulfill EULA and orders for Licensed Applications for which binding contractual obligations to third parties had been accepted prior to notice of such Termination, provided, however, that Licensee shall continue to fulfill all of its obligations hereunder, including the payment of all fees in accordance with Article 17.1 and as determined in Appendix D. Upon termination of this GTC, Licensee shall immediately return or destroy all copies of the Licensed Software, Documentation and related material and all other Confidential Information in its possession, which belongs to nymea GmbH.
- 18.4 The right to terminate the GTC for good cause shall remain unaffected. Good cause shall also be deemed to exist if a Party hereto is subject to insolvency, bankruptcy or winding up proceedings.

## 19. WARRANTY REGARDING THE QUALITY OF THE LICENSED SOFTWARE

- 19.1 Licensee is aware that it is not possible according to the current state of the art to exclude all software defects

under all conditions of application. For this reason, the warranty given hereunder is limited to the functionality of the Licensed Software as described in the Documentation enclosed to the SOW and in Appendix A. The Licensed Software is deemed to be defective if it does not materially function in accordance with the specifications contained in the Documentation or the SOW and its attachments, so that the use of the Licensed Software is prevented or considerably impaired. Imperfections of the Licensed Software that do not prevent or considerably impair the purpose of its use are not covered by the warranty given hereunder.

- 19.2 nymea GmbH does not warrant for defects of the Licensed Software:
- 19.2.1 caused by faulty application on the part of Licensee, its customers or End-Users, that could have been prevented in the event of careful consultation of the Documentation, or
  - 19.2.2 due to virus infestation for which nymea GmbH is not responsible or other external influences such as fire, accidents, power outage, etc., or
  - 19.2.3 due to defects of the hardware, the operating system, or other software contained in or working with the Licensed Application, or
  - 19.2.4 due to the use of the Licensed Software with a product or system (hardware and/or software) other than Licensed Application, or
  - 19.2.5 due to the Licensed Software having been modified by Licensee or a third Party, or
  - 19.2.6 caused by insufficient quality of hardware components like Bluetooth -, WLAN SoC or ROM (e.g. flash).
- 19.3 Licensee shall carefully examine the master copy and the Documentation of the Licensed Software and any updates thereto provided by nymea GmbH without undue delay upon delivery and complain vis-à-vis nymea GmbH about any defects according to Article 19.1 promptly in writing, however no later than 20 (twenty) working days after delivery of the master copy or update or – in the case of hidden defects which could not reasonably be detected within this period of time – within 14 (fourteen) working days after the defects are discernible.
- 19.4 In the event that any defects according to Article 19.1 are reported, Licensee shall be obligated to furnish nymea GmbH with all information necessary for the error analysis. Notifications of defects must contain information on the type of defect, the application during which the defect has occurred, as well as the measures that have been taken for purposes of removing or circumventing the defect. The defect must be described such that it can be reproduced. If nymea GmbH carries out an error analysis at Licensee's request and the analysis shows that there is no defect which nymea GmbH would be obligated to remove,

nymea GmbH may invoice the Licensee for its actual expenses in carrying out the analysis.

- 19.5 In the event that the Licensed Software is proven to be defective according to Article 19.1. and such defect has been notified to nymea GmbH in a timely manner pursuant to Article 19.3 together with all necessary information, nymea GmbH will try to rectify the defect in a reasonable period of time.
- 19.6 The warranty under this Article 19. covers only such defects that existed already at the time of delivery of the master copy and the Documentation of the Licensed Software or any update thereto provided by nymea GmbH. Claims based on defects of the Licensed Software shall be subject to a limitation period of three (3) months after delivery of the master copy or any update thereto. The foregoing does not apply to the extent that a longer limitation period is prescribed by mandatory provisions of applicable law. After the limitation period has elapsed, defects are only corrected against payment if the Parties have entered into a separate Support and Service Level Agreement (Appendix C).
- 19.7 nymea GmbH makes no representations and gives no warranties regarding the quality of the Licensed Software of any kind whatsoever, express or implied, except those contained in this Article 19. All implied warranties of merchantability and/or fitness for a particular purpose are hereby disclaimed by nymea GmbH and excluded. nymea GmbH makes, in particular, no representation and gives no warranty regarding the sufficiency or completeness of the Licensed Software for the purpose of making, using or selling Licensed Applications or the commercial utility of any Licensed Application. Further, nymea GmbH assumes no liability for any content that is received or transmitted through the Licensed Application and provides no warranty of any kind for the technical functionality thereof.
- 19.8 In the case of defects of the Licensed Software that are covered by the warranties given hereunder, Licensee shall have no other rights and remedies than those set forth in this Article 19.

## 20. AVAILABILITY OF THE SERVICES

- 20.1 The availability is measured on the central access point of the NYMEA:CLOUD. The availability is expressed as a monthly uptime percentage is 98 %. Scheduled or agreed unavailability (e.g. due to maintenance operations) windows are excluded from the availability calculation.
- 20.2 The following windows of time shall be monthly reserved for regular maintenance operations: first Monday 9 a.m. – 11a.m.. In urgent cases and upon announcement by nymea GmbH, maintenance may be done in off-peak hours.
- 20.3 Availability is calculated for each 5-minute interval as the percentage of requests processed by NYMEA:CLOUD that do not fail with errors and relate

solely to the provisioned NYMEA:CLOUD APIs. If you did not make any requests in a given 5-minute interval, that interval is assumed to be 100% available.

An Error is any Request that fails due to an API NYMEA:CLOUD internal service error.

Monthly Uptime Percentage is calculated as the average of the Availability for all 5-minute intervals.

A Request is an invocation of an endpoint of any API hosted on NYMEA:CLOUD.

When the agreed service level in availability in a period is not met, for this month the service fee will be reduced by 10%. This will be shown separately as credit on the next bill.

- 20.4 When the service level in availability is met for 12 sequential months, one violation of the service level in availability can occur without penalty.
- 20.5 The first three months of operation are treated as grace period, were service level violations are not penalized.

## 21. THIRD PARTY RIGHTS

- 21.1 As of the date of the Effective Order, nymea GmbH does not have knowledge of any actual infringement of any other third party intellectual property rights by the Licensed Software. It cannot be excluded that later a court would prohibit nymea GmbH the use of the Licensed Software due to infringement of third party intellectual property rights. nymea GmbH will then provide a new version of the Licensed Software to the Licensee, which fully substitutes the former Licensed Software, in so far as this is not economically unreasonable or impossible under technical aspects. In the latter case, nymea GmbH shall remove the infringing component of the Licensed Software. The Licensee cannot derive any claims of whatever nature from this exchange of the Licensed Software.
- 21.2 nymea GmbH does not provide any licenses to any third party patents, copyrights or other intellectual property rights, and the Licensee will be solely responsible for obtaining the proper licenses.
- 21.3 nymea GmbH makes no representations and gives no warranties regarding the non-infringement of any third party's intellectual property rights by the Licensed Software of any kind whatsoever, express or implied.
- 21.4 Licensee acknowledges that the Licensed Software may contain or be accompanied by certain software components of third parties including any open source software components (the "Third Party Components"). To the extent it is permitted to do so, nymea GmbH grants to Licensee a free, limited, personal, temporary, non-exclusive, non-sublicensable, and non-transferable sub-license to use the software governed by licenses of the Third Party Components as specified in the Documentation for the purpose stated in this GTC. Where nymea GmbH may not sublicense or provide a pass-through license to the Third Party Component, Licensee is responsible for independently obtaining the necessary rights to evaluate or use such

Third Party Component. Licensee is responsible for complying with the terms and conditions for any Third Party Component, whether sublicensed from nymea GmbH or obtained independently.

- 21.5 nymea GmbH makes no representations or warranties of any kind, whether express or implied with respect to Third Party Components, including, but not limited to, merchantability, fitness for a particular purpose, title, non-infringement, misappropriation of intellectual property rights of third party or suitability, all of which are expressly disclaimed.
- 21.6 In the case of an infringement of any third party's intellectual property rights by the Licensed Software that is covered by the warranties given hereunder, Licensee shall have no other rights and remedies than those set forth in this Article 21.
- 21.7 The Licensed Software may include or otherwise be distributed with certain third party open source and free software components ("Open Source Components"), each of which has its own copyright and its own license conditions ("Open Source License"). A list of included Open Source Components and their respective licenses can be viewed on the list, contained in the Documentation. Under certain Open Source Licenses, Licensee may be entitled to obtain the corresponding source files.
- 21.8 To the extent any Open Source License grants the Licensee rights to use, copy or modify the Open Source Component that are broader than the rights granted by nymea GmbH, then such rights shall take precedence over the rights and restrictions granted in this License solely for such Open Source Components. The Open Source Components are provided "as is" by the third party licensors who disclaim all liabilities, damages, warranties, indemnities and other obligations of any kind, express or implied, with regard to the Open Source Components. The Open Source Components are excluded from any indemnity provided by nymea GmbH in this GTC.

## 22. LIABILITY

- 22.1 To the maximum extent permitted by applicable law, in addition to the above warranty disclaimers, in no event will (a) nymea GmbH be liable for slight negligence, loss of profit, savings not made, compensation for consequential damages, including any damages for lost data or lost profits, indirect damages, as well as damages arising from End User claims, arising from or relating to the Licensed Applications or Licensed Software, even if nymea GmbH knew or should have known of the possibility of such damages, and (b) nymea GmbH's total cumulative liability arising from or related to the Licensed Application and Licensed Software, whether in contract or tort or otherwise, exceed the fees actually paid by the Licensee under the GTC in the prior twelve (12) months (if any). This limitation is cumulative and will not be increased by the existence of more than one incident or claim. Finally, nymea GmbH disclaims all liability of any kind of nymea

GmbHs' licensors and suppliers. The aforementioned applies to cases of liabilities towards companies within the meaning of Section 1 of the Austrian commercial code (Unternehmensgesetzbuch), insofar as this is not contrary to mandatory law.

- 22.2 nymea GmbH only provides the software and the cloud services for carrying out the functionalities through Licensed Application. The Licensee alone shall be responsible for the Internet connection between its IT systems (for instance own or third party cloud services not related to NYMEA), the application and the devices (including the hardware and software) required for the Licensed Application (e.g. PC, sensors, network connection, browser). The Licensee therefore acknowledges that nymea GmbH does not control data transmission via communication facilities, including the Internet, and that the services may be subject to restrictions, delays and other problems associated with the use of such communication facilities. nymea GmbH is not responsible for delays, delivery failures or other damages resulting from such problems. nymea GmbH is not responsible for any problems related to the performance, operation or security of the Services arising from the content, systems, applications or interfaces of the Licensee.
- 22.3 nymea GmbH does not have an economic, legal or factual connection with the End Users or with their use of the functionalities via Licensed Application and cannot exert any influence on the content and the impact of such undertakings. In particular, nymea GmbH is not obliged to check the functionalities of the Licensed Application and its influence on the real world and the End-Users assets, health and life. nymea GmbH has no influence on pricing or other contractual conditions. Pricing and the conclusion of the contract are the sole responsibility of the Customer.
- 22.4 In addition, nymea GmbH shall not be liable for damages resulting from imponderables in online use, in particular malware, viruses, malicious software or other sources of error and damage caused by Internet use.
- 22.5 nymea GmbH is not liable for damages caused by misuse or improper use of NYMEA:UX, by incomplete or incorrect information as well as by disregard of the duties of care stipulated in the terms of use by the Licensee. nymea GmbH is also not liable for damages caused by the fact that a third party obtains knowledge of the user name and password and any other personal data of the End User (such as personal habits) considering that Licensee as controller pursuant to GDPR has to implement sufficient technical and organizational measures in order to avoid any misuse.
- 22.6 nymea GmbH assumes no responsibility and is not liable for the content, correctness, integrity, completeness or up-to-dateness of the content on the NYMEA:CLOUD, nor for its correct, complete and timely transmission or for any other requirements in connection with actions via the NYMEA:CLOUD. nymea GmbH shall not be liable for any loss or damage caused

by errors or delays in the transmission of the information, regardless of how such errors or delays were caused.

- 22.7 nymea GmbH shall not be liable for the conclusion or non-existence of any legal transaction concluded via the NYMEA:CLOUD, nor for its performance or enforceability.
- 22.8 The Licensee is also aware that actual authentication of the contractual parties in online legal transactions and other actions is not possible by any means whatsoever and therefore does not take place via the Licensed Software and the NYMEA:CLOUD. The Licensee must therefore convince himself of the identity of his End Users and other contractual partners. The risk of the lack of authenticity of the contracting parties or the misuse of identity data is borne solely by the Licensee.
- 22.9 Claims according to this provision in Article 22. may only be asserted by the Licensee within one year of the claim arising and possible knowledge of the claim arising on the part of the Licensee.
- 22.10 The limitations of liability shall apply in the same way in favour of the organs, other representatives, employees, sub-processors and agents of nymea GmbH.
- 22.11 The Licensee must ensure that no harmful technologies and content are used or uploaded via the Licensed Application, whereby other users or third parties are harmed or harassed, or an excessive load on the NYMEA:CLOUD is caused, or other content is uploaded, used or published which could endanger the integrity, stability or availability of the Platform. The Licensee shall indemnify nymea GmbH for any and all disadvantages arising therefrom.

## 23. CONFIDENTIALITY

- 23.1 During the term of this GTC and for a period of five (5) years thereafter, Licensee shall use and reproduce Confidential Information only to the extent necessary to exercise its rights and obligations under this GTC. Reproductions of Confidential Information shall include any trade secret legends, proprietary notices and/or copyright notices present in the Confidential Information. Licensee shall use the same degree of care, but no less than a reasonable degree of care, to avoid unauthorized dissemination, use or publication of Confidential Information as it employs with respect to its own confidential information of a like nature.
- 23.2 Licensee agrees to limit access to Confidential Information to such directors, officers, employees, agents or other representatives of Licensee with a need to know and to cause each such person to whom any Confidential Information is disclosed to obligate himself or herself in writing to maintain the confidentiality of such information in accordance with the terms of this GTC. Licensee further agrees to be responsible for any breach of this GTC by any director,

officer, employee, agent or other representative of Licensee.

- 23.3 All Confidential Information that is disclosed for the purpose(s) set forth in this GTC shall be subject to these restrictions and may not be used for any other purpose. The fact that a discussion involving the disclosure of Confidential Information will occur or has occurred shall be considered Confidential Information.
- 23.4 Licensee's duty to protect Confidential Information commences upon receipt of the Confidential Information. On request by nymea GmbH Licensee shall promptly return all Confidential Information including all copies thereof made by Licensee.
- 23.5 These restrictions on the use and disclosure of Confidential Information shall not apply to any Confidential Information:
- 23.5.1 independently of NYMEA and of any other Confidential Information of nymea GmbH developed by licensee or lawfully received free of restriction from another source having the right to furnish the Confidential Information; or
- 23.5.2 after it has become generally available to the public without breach of this GTC by Licensee; or
- 23.5.3 that at the time of disclosure to Licensee, was known to Licensee free of restriction as evidenced by documents in Licensee's possession; or
- 23.5.4 that nymea GmbH agrees in writing is free of such restrictions.
- 23.6 In addition, Licensee shall not be considered to have breached its obligations by disclosing Confidential Information of nymea GmbH as required to satisfy any legal requirement of a competent court provided that, promptly upon receiving any such request and to the extent that it may legally do so, the Licensee advises nymea GmbH and prior to making such disclosure in order that Licensee may interpose an objection to such disclosure, take action to assure confidential handling of the Confidential Information, or take such other action as it deems appropriate to protect the Confidential Information.

## 24. MISCELLANEOUS PROVISIONS

- 24.1 **Compliance:** Licensee authorizes nymea GmbH to collect from Licensee's devices certain identifying information (e.g. the operating system, CPU, and terminal ID) for the sole purpose of tracking the compliance with this GTC. Further, nymea GmbH may request, and Licensee must provide within thirty (30) days from the request date, a system report verifying Licensee's correct deployment and usage. Additionally, if nymea GmbH requests, but not more than once a year, Licensee agrees to allow nymea GmbH to perform an audit at the locations where the devices are operated and the Licensed Software is installed, during normal business hours, to ensure compliance with the terms of the GTC and the Contract. If a System Report or the results of an audit

identify that Licensee is out of compliance with the license terms of this GTC and the Contract, Licensee will be required to purchase the additional licenses and pay any reinstatement fees associated with the licenses and support. Furthermore, nymea GmbH reserves the right to assert any other claims arising from such sublicensing or other non-contractual use.

- 24.2 **Assignment.** The GTC shall bind each of the parties and their successors in title in accordance with the provisions of the contract. The Licensee shall not be entitled to assign the GTC or the rights and obligations arising from the Contract between the parties on the basis of this GTC to a third party without the prior written consent of nymea GmbH or to transfer them in any other way, including by way of universal succession. nymea GmbH shall be entitled to transfer the contractual relationship with the Licensee and/or rights and obligations arising therefrom to other companies affiliated with nymea GmbH pursuant to Section 189a para. 1 no. 8 Austrian Commercial Code.
- 24.3 **Non-Waiver.** If at any time a Party shall elect not to assert its rights under any provision of this GTC, such action or lack of action in that respect shall not be construed as a waiver of its rights under said provision or of any other provision of this GTC.
- 24.4 **Applicable Law.** Austrian Law shall apply (with the exception of its conflict of law rules and the United Nations Convention on Contracts for the International Sale of Goods, CISG).
- 24.5 **Place of jurisdiction.** For all disputes arising out of or in connection with these GTC, in particular with regard to the question of the conclusion and validity of these GTC, the exclusive jurisdiction of the Vienna Commercial Court for the parties to the contract shall be agreed as the place of jurisdiction.
- 24.6 **Attachments.** All annexes mentioned in the GTC are integral parts of this GTC.
- 24.7 **Form.** Amendments and supplements to this GTC or the Contract must be made in writing. This written form requirement can only be deviated from by written agreement.
- 24.8 **Non-Recruit.** The Licensee hereby agrees and confirms that it will not directly (nor indirectly through an affiliated company) recruit, solicit or hire (or attempt to recruit, solicit or hire) any of nymea GmbH's employees, contractors or freelancers for the duration of this Contract and a period of 1 (one) year thereafter.
- 24.9 **Severability.** Should any provision of these GTC be or become invalid or unenforceable in whole or in part, this shall not affect the validity or enforceability of the remaining provisions. The invalid or unenforceable provision shall be replaced by a valid or enforceable provision which comes as close as possible to the economic content of the invalid or unenforceable provision; the same shall apply mutatis mutandis to any loopholes in these GTC.

**Appendix A**

Specification of NYMEA and Services

**Appendix B**

Order Form

**Appendix C**

Support and Service Level Agreement (Support Terms)

**Appendix D**

Data processing agreement according to Article 28  
GDPR