

Master Service Agreement

between

1. **Giant Swarm GmbH**, with address c/o Startplatz, Im Mediapark 5, in 50670 Köln, with its registered seat in Cologne and registered with the commercial register of the local court of Cologne under HRB 81484,

– hereinafter referred to as “**Giant Swarm**” –

and

2. [REDACTED],

– hereinafter referred to as “**Customer**” –

– Giant Swarm and Customer
individually also referred to as “**Party**” or jointly as the “**Parties**” –

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1. Preamble

- 1.1 Giant Swarm GmbH has developed a Platform to deliver fully managed and Multi-Workload Kubernetes Clusters on Cloud infrastructures and provides certain additional services to customers. The Platform services are based on various components such as the Management-Cluster which allows the launch of Workload-Clusters that can be used by the customer for their applications and provides additional services such as infrastructure monitoring, logging, managed services and customer support. The Platform can be used by the customer in his own infrastructure (On Premise) or in its Cloud hosting accounts.
- 1.2 The Parties conclude the following agreement which shall be an overall Master Agreement governing the cooperation and the supply of software services or the use of the Platform by the Customer respectively. If the parties agree on individual contract (Statemen of Work, Individual Work Order) these agreements have priority, especially if they contradict the contractually agreed framework agreement (as stated "Service Master Agreement" above). Other than that the Service Master Agreement also applies.

2. Interpretations and Definitions

- 2.1 The following terms shall have the definitions set forth below:
- 1.
- 2.1.1 **"Application"**: a program designed to perform a specific function directly for the user or, in some cases, for another application program.
- 2.1.2 **"Cloud"**: software running on computers in a remote facility manageable via APIs.
- 2.
- 2.1.3 **"Cloud Services Provider"**: providers of cloud services for servers like Amazon Web Services, Microsoft Azure or Alicloud.
- 2.1.4 **"Content"** means any information designed for consumption and to be shared.

- 2.1.5 **“Delegated Access System”**: role-based access control models; delegation of authority involves delegating roles that a user can assume or the set of permissions that he can acquire, to other users. In this case the customer creates a role in his account that is delegated to Giant Swarm users.
- 3.
- 2.1.6 **“Workload-Cluster”**: any of the Kubernetes Clusters that the Customer can use to run applications.
- 2.1.7 **“Giant Swarm Version”**: refers to a new version of the software of a "Workload-Cluster"
- 2.1.8 **“Managemet-Cluster”**: the Kubernetes Cluster that Giant Swarm uses to manage Workload-Clusters and the entire infrastructure.
- 2.1.9 **“Infrastructure”** means Cloud Service Providers like Amazon AWS, Mircosoft Azure or in On-Premisses data center location with servers that the customer provides.
- 2.1.10 **“Jump Host”** (or jump server): a special-purpose computer on a network, typically used to manage devices in a separate security zone. The most common example is managing a host in a DMZ from trusted networks or computers.
- 2.1.11 **“Kubernetes Clusters”** are Clusters of hosts based on the open-source container-orchestration system Kubernetes, used for automating application deployment, scaling and management of container-based applications.
- 2.1.12 **“Updates”** are changes to any component of the Platform, including updates, upgrades, patches or any other new release of any software, including open source software, used for and in connection with the Platform.
- 2.1.13 **“Major Updates”** (also called Major Releases) are Updates that potentially include breaking changes and a possible downtime for the Applications of the Principal.

- 2.1.14 **"Minor Updates"** (also called Patches or Minor Releases) are Updates that do not include any known breaking changes and will not lead to a possible downtime for the Applications of the Principal.
- 2.1.15 **"On-Premise"** (a.k.a. "on-prem"): software running on computers on the customer premises (in the building) as opposed to a remote server farm and/or Cloud facility.
- 2.1.16 **"Site 2 Site VPN"**: two firewalls/routers/servers at different sites with a secure connection between them, allowing connections at both ends. One end would connect to the computers of the customer and the Jump Host, while the other is managed by Giant Swarm and allows Giant Swarm employees to connect securely
- 2.1.17 **"Monthly Uptime Percentage"** is calculated by subtracting from 100% the percentage of minutes during the month in which Giant Swarm's Platform, as applicable, was in the state of "GS Unavailable." Monthly Uptime Percentage measurements exclude downtime resulting directly or indirectly from any Suppliers SLA Exclusion and Limitations (defined below).
- 2.1.18 **"GS Unavailable" and "GS Unavailability"** means that a monitoring system on the Management-Cluster of Giant Swarm or outside of the entire installation, cannot successfully finish a request to a service running in Giant Swarm's systems namespace in the respective cluster, going through the standard Giant Swarm provided ingress, due to reasons that are not in the sphere of the respective user of the platform or the Customer but within the sphere of Giant Swarm.
- 2.1.19 **"GS Unavailable" and "GS Unavailability"** in respect to the Kubernetes API of the Workload-Clusters means that a monitoring system on the Management-Cluster of Giant Swarm or outside of the entire installation, cannot successfully finish a request to the Kubernetes API for more than 10 minutes at a time, due to reasons that are not in the sphere of the respective user of the platform or the Customer but within the sphere of Giant Swarm.

3. **Giant Swarm Services**

- 3.1 Giant Swarm will provide the following services (the “**Services**”) to the Customer:
 - 3.1.1 Provisioning of access to the Platform and its services and management of the Platform for the Customer as well as the provisioning of customer support in respect to operating the Platform.
 - 3.1.2 Provisioning of training services related to operating the Platform.
 - 3.1.3 Provisioning of consultancy services as individually agreed.
 - 3.1.4 Provisioning of software development services related to the development of open source software components. Any software development implemented as a Service and within the scope of this Agreement shall become open source under the Apache License 2.0 and shall become part of the Platform and available for any authorized user of the Platform.
 - 3.1.5 Provisioning of installation services for setting up the Platform. In particular: On Premise installations as agreed individually.
- 3.2 The Services provided by Giant Swarm are defined in **Annex 1.1**.
- 3.3 Any Services rendered by Giant Swarm related to the Platform shall be done remotely, unless the Parties explicitly agree that these must be rendered on the Customer’s premises.
- 3.4 For the provisioning of Services, the SLA in attached **Annex 1.3** shall apply, which also defines cooperation duties and support obligations of the Customer.

4.

4. Obligations of the Customer

- 4.1 The Customer shall procure that the use of the Platform by the Customer shall fully comply with all applicable laws and regulations.

- 4.2 In order to use the Platform and in order to access some services or main elements of the Platform, the Customer will have to create an account on the Platform comprised of the Customer's personal login details (the "**Account**") to manage the Customer's Workload-Clusters.
- 4.3 The Customer shall be obliged to provide current, accurate and complete identification, contact and other information when creating the Account. The Customer shall be responsible for maintaining, keeping current and updating any registration data and other information provided to Giant Swarm.
- 4.4 The Customer shall ensure that access to and use of the Account is restricted to authorized users only. Therefore, the Customer shall keep its password secure and confidential. The Customer is entirely responsible for maintaining the security of its password, identification and Account and for any and all activity that will occur under the Customer's Account. The Customer shall in particular be held liable for any losses or damages resulting from someone else using the Customer's password or Account due to a breach of the obligations of this Agreement.
- 4.5 The Customer shall procure that no third parties under its control (e.g. employees, advisors working for Customer etc.) will copy, modify, create derivative works of, reverse engineer, decompile, translate, disassemble or otherwise extract any or all of the source code of the Platform, unless the source code is already open source and in such case complies with the license governing the open source code.
- 4.6 The Customer shall not (i) access the administrative interface of the Platform by any means other than through the interfaces that are provided by Giant Swarm in connection with the Platform, unless Giant Swarm has explicitly approved such access in writing, and (ii) engage in any activity that interferes with or disrupts the Platform or the servers and/or networks which are connected to the Platform.
- 4.7 The Customer shall use the Platform only to develop and run applications on the Platform. The Customer may not access the Platform for the purpose of bringing an intellectual property infringement claim against Giant Swarm or for the purpose of creating a product or service competitive with the Platform.

4.8 The use of the Platform is subject to the Data Privacy Policy of Giant Swarm as attached as **Annex 1.4.**

4.9 The Customer shall procure that all employees of Customer and all freelancers, advisors or other third parties using the Platform on behalf of the Customer comply with and abide by the obligations of the Customer as set out in this Agreement.

5. Obligations of Giant Swarm

2. 5.1 To the extent Giant Swarm requires support and actions of cooperation by the Customer in order to be able to perform its Services, Giant Swarm shall inform the Customer about the nature of support and cooperation required, the estimated work amount and any other details which Giant Swarm deems relevant with reasonable and adequate advance notice in writing (unless the requirement is already defined within this Agreement or a Purchase Order).

6. Mutual Obligations, Cooperation

6.1 The Parties shall mutually and in good faith support and cooperate with each other in order to facilitate the Services to be provided by Giant Swarm.

6.2 Giant Swarm shall provide the Customer with any updates, upgrades, patches or any other new release of any software and open source software used for and in connection with the Platform (the “**Updates**”). The Customer shall be obliged to install any Update without undue delay. In case the Customer does not install or implement an Update within six (6) weeks after its release, Giant Swarm cannot be held liable for missing any contractually agreed SLA.

7. Installation of the Platform

7.1 The Parties agree on a date of installation of the Platform with the Customer, either On Premise or based on the Cloud, with dates defined in the Quote and Purchase Order.

7.2 Depending on whether the Platform is used On Premise or based on a Cloud the Customer shall abide by the following:

7.2.1 In case the Platform is operated On Premise:

- a) Giant Swarm shall inform the Customer in detail on the hard- and software required for installation, administration and operating the Platform. The Customer shall provide exactly the hard- and software as requested by Giant Swarm. The Customer may only substitute hard- and software with other components of equal quality and performance, with written consent of Giant Swarm.
- b) The Customer shall provide Giant Swarm with access to all systems and information as required for the provision of the Platform via a Site2Site VPN connection for use by Giant Swarm in order to be able to directly access a Giant Swarm Managed Jump Host.

7.2.2 In case the Platform is operated in the Cloud:

- a) The Customer shall provide to Giant Swarm administration access to the Customer's Cloud account or a sub account where possible.
- b) The Customer shall grant access to the Cloud via a Delegated Access System.
- c) Customer hereby provides Giant Swarm with authority to change, expand or limit the Cloud services on the Customer's behalf directly to ensure unhindered performance of the Platform. Giant Swarm shall in that context be entitled to perform all actions and measures deemed necessary in order to warrant the performance of the Platform.

d) The Parties agree that Giant Swarm shall not be held liable in any circumstances for any defects, delays, malfunctions or any other problems with the Platform which are based on, caused by or relate to any problems, or malperformance or non-performance of the Customer's Cloud Services Provider.

7.3 After installation of the Platform, Giant Swarm shall inform the Customer accordingly. Customer shall be entitled to fully test the Platform for compliance with the requirements set forth in this Agreement and/or the SOW and/or the PO and shall declare acceptance within seven (7) days. Acceptance may not be denied for minor defects or minor malfunctions. In case Customer does not declare acceptance and does not decline acceptance within the aforementioned period of seven (7) days the Platform shall be deemed accepted by the Customer.

8. Fees and Payment Terms

8.1 The fees and payment terms for the Services provided to the Customer are defined in **Annex 1.2**. All amounts stated in Annex 1.2 are excluding any applicable value added tax, unless explicitly stated otherwise.

9. Point of Contact, Project Management

9.1 Each Party shall appoint one representative (the "**Representative**") who shall be the sole point of contact for the respective other Party for all questions and matters related to the Services or the subject matter of this Agreement. The Parties hereby confirm that the representatives appointed by them are sufficiently authorized in order to fulfil the task as described.

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9.2 Both Parties shall be entitled to replace the Representative with another person by giving written notice to the respective other Party. In case of a replacement the respective Party shall ensure that this will not disturb or hinder the Services and that the new Representative shall receive all required information.

10. Intellectual Property Rights

- 10.1 With the exception of the Content and/or Application(s) submitted by the Customer to the Platform the Customer hereby acknowledges and agrees that all legal right, title and interest in and to the Platform, including any copyright, trade mark right and their intellectual property rights, is either owned by or licensed to Giant Swarm.
- 10.2 To the extent the Platform is based on open source, it has been licensed under the Apache 2.0 license unless explicitly stated otherwise. Customer's use of those parts of the Platform is governed by the respective underlying open source license.
- 10.3 By submitting any ideas or comments about the Platform, including without limitation about improvements of the Platform or products of Giant Swarm, Customer hereby agrees that its disclosure is free of charge, unsolicited and without restriction and that Customer will not place Giant Swarm under any obligation. In this context the Customer agrees that Giant Swarm shall be free to use such ideas without any additional compensation to Customer, and/or to disclose such ideas on a non-confidential basis or otherwise to anyone.
- 10.4 Giant Swarm, in its sole discretion, shall be entitled to use Customer's trade names, trademarks, service marks, logos, domain names and other distinctive brand features in presentations, marketing materials, customer lists, financial reports and website-listings (including links to your website) for the purpose of advertising or publishing Customer's use of the Platform.
- 10.5 Giant Swarm hereby grants the Customer a limited, non-exclusive, royalty-free, non-transferable license, with no right to sub-license, to display the Giant Swarm trademarks and Giant Swarm logos as provided in and solely in accordance with the principles as set out under <https://giantswarm.io/brandguidelines>, for the sole purpose of promoting or advertising the Customer's use of the Platform.

11. Term and Termination

11.1 This Agreement shall become effective immediately and shall have a term of 5 years. The Agreement may be terminated ordinarily by each Party for the following contract year by giving at least three months prior written notice to the respective other Party, unless the contract is a multi-year commitment contract, in which case the ordinary right to terminate does not apply. In case the Agreement is not terminated within the aforementioned notice period the Agreement shall automatically extend for one further year. In and after the Extended Term of the Agreement shall automatically be prolonged for rolling one-year terms if it is not terminated, in each case, with three months' prior written notice.

11.2 The right of both Parties to terminate this Agreement for good cause remains unaffected. A good cause shall be assumed in case the mutual trust between the Parties is impaired by one of the Parties in such a way that it becomes unreasonable for the other Party to maintain this Agreement.

11.3 Giant Swarm shall *inter alia* be entitled to terminate this Agreement for good cause in case of the following:

11.3.1 The Customer is in breach of its obligation pursuant to Section 6.2 and is in default of implementing and installing an Update.

11.3.2 The Customer has not paid an invoice of Giant Swarm when due and after Customer has received a written reminder by Giant Swarm requesting payment and setting a payment deadline of at least five Business Days; and

11.3.3 The contractual obligations from this Agreement are not materially fulfilled in spite of a reminder and granting of a reasonable period for subsequent provision.
2.

12. Data Protection

12.1 Both parties undertake to comply with applicable Data Protection Legislation, including, but not limited to, the European General Data Protection

Regulation and Member State law, in particular the German Federal Act on Data Protection.

12.2 **Annex 1.5** shall apply for the handling of Application Data by Giant Swarm.

13. Liability

13.1 Giant Swarm shall be unrestrictedly liable for losses caused intentionally or with gross negligence. Giant Swarm shall be unrestrictedly liable for death, personal injury or damage to health caused by intent or negligence.

3.

13.2 Giant Swarm shall be liable in accordance with the German Product Liability Act in the event of product liability.

4.

13.3 Giant Swarm shall be liable for losses caused by the breach of its primary obligations by Giant Swarm. If Giant Swarm breaches its primary obligations through simple negligence, then its ensuing liability shall be limited to the amount which was foreseeable by Giant Swarm at the time the respective service was performed. Primary obligations are obligations, for which the fulfilment is an essential condition enabling the proper implementation of the contract and the breach of which jeopardizes the accomplishment of the purpose of the contract.

5.

13.4 Giant Swarm shall be liable for consequential damages, lost profit or other indirect damages only in the case of wilful intent, if it has assumed a guarantee or has fraudulently concealed a circumstance causal for the relevant indirect damage. Strict liability (without fault of Giant Swarm) for defects and errors already present at the time of the conclusion of the contract is expressly excluded.

6.

13.5 Giant Swarm shall be liable for loss of data only up to the amount of typical recovery costs which would have arisen had proper and regular data backup measures been taken.

7.

13.6 Any more extensive liability of Giant Swarm shall be excluded.

14. Indemnity

- 14.1 Unless specified in Section 14.2.2, each Party will indemnify and hold harmless the other Party against all losses, liabilities, costs, claims, damages (incl. administrative fines and criminal penalties) and expenses incurred due to or arising from any failure by the other Party or its employees or agents (incl. the other Party's subcontractors) to comply with its obligations under Annex 1.4 or applicable Data Protection Legislation (including, but not limited to, the European General Data Protection Regulation and Member State law, in particular the German Federal Act on Data Protection).
- 14.2 In regard to liability for data processing violations arising from or in connection with operating the Platform, the internal assignment of responsibility for data processing violations and liability for these between the Parties, shall be as follows:
- 14.2.1 Giant Swarm is responsible and vis-à-vis Customer fully liable for any violation of applicable Data Protection Legislation that occurs due to or arises from technical defects, faults or inadequacies of the Platform and the technical framework Giant Swarm provides (excluding any defects, faults or inadequacies of the runtime environment as such) insofar as these defects, faults or inadequacies of the Platform could have been reasonably avoided by Giant Swarm.
- 14.2.2 The Customer is responsible and fully liable vis-à-vis Giant Swarm for any other violation of applicable Data Protection Legislation that occurs due to or arises out of processing operations upon its direction or under its control. This in particular includes violations due to or arising out of any processing of Application Data by its Applications hosted on the Platform. Furthermore, the Customer is responsible for any violation due to or arising from defects, faults or inadequacies of the infrastructure it provides to Giant Swarm.
- 14.2.3 Each Party ("first Party") will indemnify and hold harmless the other Party against all losses, liabilities, costs, claims, damages (incl. administrative fines and criminal penalties) and expenses incurred due to or arising from any

violation of applicable Data Protection Legislation for which responsibility is assigned to the first Party under this clause 15.

- 14.3 For the avoidance of doubt, Giant Swarm shall under no circumstances be responsible and/or liable for any Content or Applications the Customer hosts on the Platform and Giant Swarm shall have no obligations whatsoever to control or review such Content or Applications with respect to its compliance with laws.

15. Confidentiality

The Parties agree to treat the content of this Agreement as confidential and not to disclose the content to third parties, unless they are obliged to do so by mandatory statutory provisions or official orders.

16. Communication

- 16.1 If not specified otherwise, all additional declarations of intent (*Willenserklärungen*) pursuant to this Agreement by the Parties requiring receipt, shall require written form. The receipt of communication in connection with this Agreement or copies thereof by the consultants of the Parties does not represent or replace the receipt of communication by the Parties themselves.

17. Final Provisions

- 17.1 Any amendments and additions to this Agreement, including of this provision, require the written form. This also applies to a waiver of the written form requirement.
- 17.2 Both Parties shall be entitled to set off any claims against the respective other Party against claims which the respective other Party is entitled to arising from or in connection with this Agreement.

- 17.3 This Agreement is subject to German law, under exclusion of the UN Convention on the International Sale of Goods (CISG) and under the exclusion of German private international law.
- 17.4 Place of jurisdiction for all disputes arising out of or in connection with this Agreement and its implementation, including on its effectiveness, is Cologne.
- 17.5 For the assignment of claims arising from this Agreement, the consent of the other Party is required.
- 17.6 In case one or more provisions of this Agreement is/are invalid or unenforceable, this shall not affect the validity of the remaining provisions. In such case, the invalid or unenforceable provision shall be replaced by the Parties by a valid and enforceable provision, which, to the extent legally permissible, comes closest to the economic purpose of the invalid or unenforceable provision with regard to its form, content, time and scope. The same applies in the event of any loopholes in this Agreement. It is the explicit intention of the Parties that the provision of this Section 18.6 does not only cause a reversal of the burden of proof but excludes the applicability of § 139 BGB.

Signature Page

Customer

Giant Swarm GmbH

Date, City

Date, City

Name, Signature

Name, Signature

Annex 1.1

Services & Obligations

This Annex shall define the obligations of Giant Swarm as well as the Customer. The Parties agree that Giant Swarm shall deliver the Services in accordance with the following description.

1. Service Delivery

Subject of this Annex is the implementation, customization, installation, and subsequent management of Kubernetes based Clusters based on the Platform, including but not limited to consulting services with the purpose of operating Kubernetes Clusters in the Customer's infrastructure.

1.1. Services to be delivered by Giant Swarm

The goal is to have Giant Swarm's Kubernetes deployed and operational in the Customer's infrastructure, On Premise or in the Cloud.

The Platform is constantly being updated and the latest status can be found at <https://giantswarm.io/> and <https://docs.giantswarm.io/> as well as in Open Source Repositories at <https://github.com/giantswarm/>.

Both parties agree that general completion is Customer being able to run Services on that platform through direct Kubernetes access, while the exact structure and configuration of the platform will develop over time through close cooperation. This includes possible trainings and documentation (<https://docs.giantswarm.io/>) to achieve that objective.

1.1.1 Exclusions

Giant Swarm can help in building services on top of Giant Swarm's Platform but will not provide specific software development work on those services above and beyond recipes for deploying standard tools around Kubernetes. Due to the fully standard Kubernetes Clusters used in Workload Clusters, a lot of community recipes will work as is and grow over time.

Giant Swarm only provides the Platform and possibly manages the servers as provided by Customer. On Premise this means that Customer

is providing the servers and on Cloud providers, Customer gives Giant Swarm full access on the Customer's account of the Cloud provider.

2. Cooperation duties

Customer fulfils its cooperation duties resulting from the Agreement by providing the following information and material (and granting the below listed access rights necessary for the performance of the agreed services):

- Provide full access to the Customer's account on its chosen Cloud Providers (e.g. Azure or AWS) to allow Giant Swarm to manage installation. This will be handled, for example, through an AWS delegated access system (https://docs.aws.amazon.com/IAM/latest/UserGuide/id_roles_create_for-user_externalid.html) or similar solutions on other Cloud providers.
- Provide full access via Site to Site VPN and with a Jump Host to manage the entire On-Premise installation. Customer will provide bare metal servers, including network configuration (IP segments/DHCP range/...) that Giant Swarm can boot via e.g. PXE Boot with its own OS of choice and take care of the platform installation from there.
- Customer provides access to a service manager as a direct contact to clear any project related priorities.
- Customer and Giant Swarm will work together on adapting the timeline based on learnings in a continuous manner.

Required Access Rights:

Application Name	Required Role	Access right required on the following system:
	<ul style="list-style-type: none">• User who needs to perform maintenance work• User who needs to extract/change/delete data• User who is in charge of administration of backend problems	<ul style="list-style-type: none">• development system• test system• productive system
Customer AWS, Azure or similar Account	Administrator Account as well as Special Role as stated above	Full AWS, Azure or similar Account
VPN	Site to Site VPN Account to Customer on-premise Datacenter	Only Access to Giant Swarm Managed Infrastructure but including ILO of Servers.
Jump Host	On Cloud Systems and On-Premise, managed by Giant Swarm	Full rights to access the required Infrastructure.

The aforementioned list of cooperation duties by the Customer is exhaustive but might develop over time.

3. Grant of rights to Supplier

Customer grants Giant Swarm a non-exclusive, non-transferable, non-sublicensable right to use the materials described under Sec. 2 of this Annex solely for the purpose of performing the Services as described in this Annex. Giant Swarm is free to use those materials as needed for the performance of the services, especially in relation to Amazon Web Services or other Cloud providers, where changes will be frequent.

4 Timelines

The timelines are adapted frequently based on business need and will be under Giant Swarm's github account in a shared Project.

5 Acceptance

Acceptance is subject to Sec.4 of the Master Service Agreement. Acceptance shall be made explicitly and in writing. Implicitly declared acceptance shall not be effective.

Giant Swarm will work with Customer on specifying acceptance criteria in the process of this contract.

- In rough terms, Customer being able to use the Kubernetes Clusters for production purposes can be seen as an acceptance criterion, but as the first services running on these clusters are still being cleared, the exact structure of those clusters will develop over time.
- Giant Swarm will provide frequent updates (with the goal of not being more than 30 work days behind the public release of any open source version) to the infrastructure platform and will work with the required teams of the Customer on a fitting update strategy for both minor updates as well as major updates to make sure production usage is not interrupted.

Annex 1.3

Service Level Agreement (SLA)

1. Definition of included items in Infrastructure Management & Support

- Continuous development and updates of the Supplier's Platform in all Data Centers of the Customer, including all included software components like Kubernetes, Logging, Monitoring, User Management, Interfaces, and yet undefined parts of the Platform. The goal is to be no later than 30 workdays behind any public release of an Open-Source Component of the Platform at any one time in 95% of the cases, unless resulting from dependencies of different parts of the Platform.
- Communication and Coordination with the Customer for frictionless deployment of those updates. Patches and Minor releases without potential breaking changes in the underlying systems and without disruptions of service for the customer will happen continuously with logging inside a Supplier platform and communication at the time of the deployment. Major releases with potential breaking changes and potential downtime for the Customer will only occur after notification of the customer and an agreed timeframe.
- Management Plane will be updated by Supplier on a constant basis as they do not interfere with workload-clusters running on the installation.
- In case of needed coordination, the process in line with timelines detailed below, includes
 - a) Notification of an incident by either party.
 - b) Prioritisation and clearing of responsibilities by Giant Swarm.
 - c) Development of a solution by Giant Swarm.
 - d) Agreement on said solution by both parties.
 - e) Release of solution by Giant Swarm.
 - f) Implementation of solution by Giant Swarm.
 - g) Testing of solution by both parties as needed.
 - h) Roll out of solution by Giant Swarm in cooperation with the Customer.

- 24/7 Management of each installation with the following response times:

Priority	Description	Response Time	Resolution Time
Priority 1 Critical Service Affecting	A complete breakdown or outage or a critical performance degradation causing service unavailability for a significant proportion of end Customers (Business Impact for the Company: Critical).	30 minutes	4 hours (a solution or work-around shall be made available within 4 hrs for 90% of all Incidents (measured over the Term))
Priority 2 Major Service Affecting	The functionality of the Service is affected to a large extent, a major performance degradation or loss of important function occurs, Security is critically affected, or a breach of an applicable law occurs (Business Impact for the Company: Major)	30 minutes	12 hours (a solution or work-around shall be made available within 12 hrs for 90% of all Incidents (measured over the Warranty Period))
Priority 3 Minor Service Affecting	A minimal limitation to the functionality of the Service. (Business Impact for the Company: Minor)	4 Business Hours	9 Business days (a solution or work-around shall be made available within 9 Business Days for 90% of all Incidents (measured over the Warranty Period))
Priority 4 Non-Service Affecting	No limitation to the functionality, e.g. faulty documentation, handling questions etc. (Business Impact for the Company: Negligible)	4 Business Hours	18 days

With the following **exceptions**:

- a) In case a workload-cluster was not upgraded for 90 days, meaning that the last upgrade has been 90 days or more ago, or the Version running in the workload-cluster is 90 days older than the newest Version of Giant Swarm's Platform, 24/7 Management is no longer included in the Infrastructure Management and Support pricing for that workload-cluster, but needs to be paid separately based on the Professional Service pricing on a time and material basis.
- b) In case the workload-cluster was not upgraded for 120 days, meaning that the last upgrade has been 120 days or more ago, or the Version running in the workload-cluster is 120 days older than the newest Version of the Giant Swarm Platform, Giant Swarm can no longer guarantee the upgradability of the

workload-cluster and the Customer will likely need to move to new workload-clusters for each workload-cluster instance.

- c) If Giant Swarm publishes a new Giant Swarm version as part of its platform (e.g., version 14), the previous major version (e.g., version 12) will be released 30 days after the release of this version (e.g., version 14) no longer supported. This means that Giant Swarm no longer guarantees that any problems that may arise in these clusters can be resolved. In this case, the service level agreements no longer apply.
 - d) If the client refuses to cooperate with the scaling of the workload cluster, although Giant Swarm has informed about the necessity of scaling or if this does not require more than 20% additional resources, the client is not entitled to claim "Service Credit" do.
 - e) Giant Swarm undertakes, in the event of the occurrence of one of the previously defined exceptions, to make use of its entitlement to separate payment only after three times written notification. Written information via email or a Slack message is sufficient.
- Access to a special Slack channel on Giant Swarm's Slack account for up to three administrators of the Customer for communicating problems and working on solutions together as a team during business hours.
 - Access to a special Github Project for handling of non-urgent tickets and incidents.
 - Access via email (urgent@giantswarm.io) for critical issues, with email communication for critical issues being mandatory for logging reasons. All critical incidents will be put into an incident report, no later than 3 days after the critical incident. Additionally, a general incident report for the month can be requested.

2. Service Commitment

- Giant Swarm will use commercially reasonable efforts to make the Platform available with a Monthly Uptime Percentage of 99.95% during any monthly billing cycle (the "Service Commitment").

- In case the workload-cluster was not upgraded for 120 days, meaning that the last upgrade has been 120 days or more ago, or the Version running in the workload-cluster is 120 days older than the newest Version of the Giant Swarm Platform, Giant Swarm does not give a Service Commitment anymore for that workload- cluster.
- A "Service Credit" is a credit balance that is calculated as specified below and that can be credited to the client's account.

Monthly Uptime Percentage	Service Credit Percentage
Below Service Commitment	10%
Below 0.20% under the Service Commitment	20%
Below 0.40% under the Service Commitment	30%
Below 0.65% under the Service Commitment	40%
Below 0.95% under the Service Commitment	50%

Monthly Response Time Exceedance	Service Credit Percentage
Second exceeding of the time response	10%
Third exceeding of the time response	20%
Fourth exceeding of the time response	30%
Fifth exceeding of the time response	40%
Sixth exceeding of the time response	50%

- To receive a "Service Credit", the client is obliged to assert his claim by sending an email to support@giantswarm.io and the responsible account engineer. A "Service Credit" is only eligible if the assertion of the claim has been received by Giant Swarm within 10 days of the "GS Unavailability" and includes the following points:
 - a) the words "SLA Service Credit Request" in the subject line;
 - b) Date and time of each "GS Unavailability" incident asserted by the client;

- c) the affected Kubernetes cluster that was used; and
- d) the information documenting the errors and confirming the failure (confidential or sensitive information in these logs should be removed or replaced with asterisks)

3. Monitoring and Help Desk

- Giant Swarm will handle monitoring of the Platform
- This includes but is not limited to CPU, RAM, Storage and Network usage
- Giant Swarm will alert the Customer if Giant Swarm finds a misuse of the Platform and that might impeach availability going forward

4. Restrictions

The client is not entitled to claim "Service Credit" if he does not fulfil his obligations under the contract. The client is not entitled to claim service credit if the claim for downtime or outages is a result of a breach of contract or a misuse / abuse of the Giant Swarm platform. Likewise, there is no entitlement to downtime or outages in service attacks, virus activity, hacking attempts, or any other circumstances that are beyond the control of Giant Swarm.

- Notwithstanding anything to the contrary in this agreement, the maximum total credit for the monthly accounting period, including all guarantees, must not exceed 50% of the costs for the month in which the "GS Unavailable" and "GS Unavailability" took place.
- The client is not entitled to a credit if the unavailability is due to problems beyond the control of Giant Swarm. This could be a bug in the underlying hardware, loss of access to Giant Swarm, or similar circumstances beyond Giant Swarm's control.

5. SLA Exclusions

- The Service Commitment does not apply to any unavailability, suspension or termination of a Kubernetes Master or Nodes, or any other Kubernetes Master or Kubelet performance issues:

- a) caused by factors outside of our reasonable control, including any force majeure event or Internet access or related problems beyond the demarcation point of the Kubernetes Master, Nodes or Storage;
- b) that result from any actions or inactions of the Customer or any third party;
- c) that result from your equipment, software or other technology and/or third party equipment, software or other technology (other than third party equipment within Giant Swarm's direct control);
- d) that result from failures of individual instances not attributable to "GS Unavailability" or
- e) that result from any maintenance previously agreed on (collectively, the "GS SLA Exclusion").

Annex 1.4

Privacy Policy of Giant Swarm

1. Our Commitment to Data Protection

At Giant Swarm, we take our data protection and information security responsibilities very seriously. The effective management of all personal data, including its security and confidentiality, lies at the very heart of our business. This is not only conditioned by our legal and regulatory responsibilities, but also fundamentally driven by our commitment to our clients and to meet their expectations of us having in place robust compliance and risk management practices and protocols.

2. ISO 27001

With ISO 27001 we implemented the technical and organizational measures necessary to reduce the risk of a data breach. As the international standard outlining best practice for implementing an information security management system (ISMS), it allows Giant Swarm to take a risk-based approach to data protection mandated by the Regulation. In fact, by implemented ISO 27001 Giant Swarm is achieving GDPR compliance by minimizing the risk of a data breach.

An effective ISMS that conforms to ISO 27001 meets all the in Article 32(2) of the GDPR listed requirements. The GDPR states that organizations must adopt appropriate policies, procedures, and processes to protect the personal data they hold and be able to demonstrate compliance. Putting an appropriate framework in place – such as an ISMS – like we did, is an excellent way of ensuring this.

It also helps us to avoid significant fines and reputational damage, as well as it shows our customers that we are trustworthy and responsible. Article 32 of the GDPR is the primary provision requiring technical and organizational measures to protect data. Although it gives examples of security measures and controls, the Article does not provide detailed guidance regarding what you should do to achieve this. Instead, the GDPR, compels companies to look at existing best practices and recommendations, such as ISO 27001, to minimize the risk of a data breach.

That is why we decided on getting ISO 27001 certified two years ago. With our Certification we ensure that we manage, monitor, audit and improve your organization's information security practices in one place, consistently and cost-effectively.

We ensure to protect all corporate information and intellectual property, not just its personal data.

ISO 27001 compliance means that we have taken steps to regularly identify and manage our data security risks and to keep up with constantly evolving data security threats.

ISO 27001 provides guidance for implementing appropriate measures to mitigate those risks, with recommended technical measures in line with the requirements of the GDPR.

An ISO 27001- conformant ISMS delivers a set of appropriate technical controls, policies, and procedures for reducing, monitoring, and reviewing risks.

ISO 27001 promotes a culture and awareness of information security that makes sure data security is entrenched across Giant Swarm.

Obtaining certification to ISO 27001 provides independent assurance that our ISMS has been tested and audited in accordance with internationally accepted standards for good information security practice.

With Achieving ISO 27001 certification we provide convincing evidence to regulators and our customers that we have taken the necessary measures to comply with the data security requirements of the GDPR.



Management Service

CERTIFICATE

The Certification Body
of TÜV SÜD Management Service GmbH
certifies that



Giant Swarm GmbH
Im Mediapark 5
50670 Köln
Germany

has established and applies
an Information Security Management System
according to "Statement of Applicability" for

**The development and operation of an
enterprise-grade, multi-tenant container platform
built on top of Kubernetes.**

An audit was performed, Order No. **707113542**.
Proof has been furnished that the requirements
according to

ISO/IEC 27001:2013

are fulfilled.

The certificate is valid from **2020-09-09** until **2023-09-08**.

Certificate Registration No.: **12 310 60534 TMS**.

Version of the statement of applicability: **V1: 17.03.2020**.



Product Compliance Management
Munich, 2020-09-09



Annex 1.5

Order Data Processing ('Auftragsdatenverarbeitung')

The Supplier has developed an administration services for a managed Kubernetes infrastructure (hereinafter »Platform«). The Platform consists of various components for three areas: a runtime environment for containers, the Kubernetes system for container orchestration and Giant Swarm's platform for managing several Kubernetes clusters. The Platform is deployed and operated in the customer infrastructure, either on the customer's premise or in the customer's Amazon Web Service or Microsoft Azure accounts.

Simply put, Giant Swarm provides the Customer with an infrastructure service that's entirely used and operated by the Customer in the Customer's own environment. Giant Swarm neither process Customer applications and thus potentially personal data nor host them anywhere as processing and hosting data is entirely up to the Customer and not in scope of the Giant Swarm service.