

# Terms and Conditions of NEXUS / ASTRAIA GmbH for astraia.obstetrics for Certified FMF license users

Status: 01. August 2023

## 1 General - Scope of Application

- 1.1 These Terms and Conditions (hereinafter referred to as "**Conditions**") shall apply to all users of **astraia.obstetrics** for **Certified FMF license users** ("**ASTRAIA.FMF Software**").
- 1.2 These Conditions constitute the whole of ASTRAIA's obligations with respect to the delivery, description, quality and fitness for purpose (if any) of the ASTRAIA.FMF Software and Services to be provided and all conditions, terms or warranties, implied by law or otherwise with respect to the description, satisfactory quality of the ASTRAIA.FMF Software or Services or their fitness for any particular purpose are hereby explicitly excluded.
- 1.3 These Conditions and the offer of ASTRAIA.FMF software shall apply only to Customers who, at the time of conclusion of the contract, are acting in the exercise of their commercial or independent professional activity (entrepreneurs pursuant to section 14 German Civil Code).
- 1.4 ASTRAIA.FMF software is not available for legal entities under public law or a special fund under public law.
- 1.5 Conflicting or deviating general terms and conditions of the Customer are hereby expressly contradicted. They shall only become part of the contract if ASTRAIA expressly agrees to them individually and in text form.

## 2 Definitions

The following definitions shall apply to these Conditions:

- 2.1 **Agreement** is the delivery of one astraia.obstetrics license, valued 2299,00€ (two thousand two hundred and ninety-nine) for free to a fellow of the FMF UK. The fellow agrees in paying the yearly fee for maintenance services ("**Software Maintenance**") from the seventh month of usage, if not otherwise agreed in text form.
- 2.2 **ASTRAIA** is the contracting company of the NEXUS Group that refers to these Conditions.
- 2.3 **ASTRAIA FMF software** is the software program consisting of one (1) obstetrics licence without any connectivity and any customizing.
- 2.4 **Customer** is a Fellow of FMF UK.
- 2.5 **Documentation** means the User Manual, the Performance Description as well as further descriptions of the ASTRAIA.FMF Software and its operation in text form or in paper form. If available, the Documentation shall be in German or English.
- 2.6 **Fellow of FMF UK** is a graduate of courses of the FMF UK. These fellows have the right to use the offer specified under "**Agreement**".
- 2.7 **FMF UK** means The Fetal Medicine foundation based in London, UK.
- 2.8 **Hotfix** means the customer-specific elimination/removal of a regularly critical defect and/or critical malfunction of the ASTRAIA.FMF Software.
- 2.9 **IT Infrastructure** means the technical framework conditions, including application and operating conditions as well as the necessary system configurations of the Customer for the use of ASTRAIA.FMF Software, as described in the Agreement.
- 2.10 **Invoice** means the invoice for the Maintenance Service that will be sent to the fellow after six months of using the agreement specified under "**Agreement**".
- 2.11 **Maintenance Service** shall be the collective term for the processing of Customer messages as well as the provision of Hotfix, Patch, Release and Update - excluding additional activities for the ASTRAIA.FMF Software - which are subject to a charge and which ASTRAIA provides on the basis of a Quotation. A data migration from FTS to astraia.FMF Software is a Supplement Service.
- 2.12 **Module** means a component of the licensed ASTRAIA.FMF Software according to the Agreement, its functions, sub-functions and specifications as described in the Documentation.
- 2.13 **Patch** means the elimination of one or more defects and/or malfunctions of the ASTRAIA.FMF Software.
- 2.14 **Quotation** means the quotation for any further services or licenses of ASTRAIA in text form. Components of the Quotation are the General License and Service conditions of NEXUS / ASTRAIA GmbH
- 2.15 **Release** means a periodic release of program parts and associated Documentation, which includes functional enhancements and changes, e.g., to increase security, as well as the elimination of known application problems in the ASTRAIA.FMF Software.

- 2.16 **Service** means any performance of service or work which ASTRAIA provides for, or in connection with, the already existing ASTRAIA.FMF Software
- 2.17 **Software Purchase** has the meaning defined in Clause 13.1.1.
- 2.18 **Third-Party Software** has the meaning defined in Clause 15.1.
- 2.19 **Update** means an extension, substantial modification or redesign of the ASTRAIA.FMF Software.
- 2.20 **User Manual** means the description of the intended operation and use of the ASTRAIA.FMF Software. The User Manual is provided with a separate document in text form.

### 3 Duty of the Customer to cooperate

Cooperation. The Customer shall assist the successful performance of the Agreement in every phase by active and appropriate cooperation free of charge. In particular, the Customer shall provide ASTRAIA with the information, documents and data, computer programs and other means necessary for proper performance of the Agreement - including remote access or access to the premises and the IT Infrastructure, if necessary - in accordance with the Agreement in a timely manner. If the Customer does not fulfil its obligations to cooperate and ASTRAIA cannot complete its performance or parts thereof within the agreed time as a result, the performance period shall be extended appropriately. ASTRAIA can assert a right to reasonable compensation (e.g., unplanned additional expenditure).

### 4 Limitation of Liability

- 4.1 ASTRAIA shall be liable without limitation for damages resulting from injury to life, body or health, which are based on a negligent breach of duty by ASTRAIA or on an intentional or negligent breach of duty by its legal representatives or vicarious agents, and in the case of liability without fault prescribed by law, in particular according to the Product Liability Act and in the case of a guarantee (*Garantie*).
- 4.2 ASTRAIA shall be liable for other damages which are based on an intentional or grossly negligent breach of duty by ASTRAIA or on an intentional or grossly negligent breach of duty by its legal representatives or vicarious agents.
- 4.3 ASTRAIA shall be liable in the case of intentional or negligent violation of an essential contractual obligation only for the typically occurring damage foreseeable at the time of conclusion of the contract subject to the limitation in Clause 4.5 below. An essential contractual obligation is such an obligation which makes the proper fulfilment of the contract concluded with the Customer possible in the first place and on which the Customer relied and could rely and whose culpable non-fulfilment endangers the achievement of the purpose of the contract.
- 4.4 ASTRAIA shall not be liable in all other cases.
- 4.5 Limitation of Liability to Insurance Coverage. If ASTRAIA is liable for damages according to Clause 4.3, the liability of ASTRAIA shall be limited to EUR 5 million. ASTRAIA shall increase the insurance coverage upon request and at the expense of the Customer; upon request of the Customer, ASTRAIA shall inform the Customer of the costs incurred after consultation with its insurance company.
- 4.6 Insofar as the liability of ASTRAIA is excluded or limited, this shall also apply to the personal liability of its employees, representatives and vicarious agents.
- 4.7 Information Obligation of the Customer. The Customer is obligated to inform ASTRAIA of all damages immediately and comprehensively after becoming aware of them. In particular, in cases of claims against the Customer by third parties, the Customer shall inform ASTRAIA immediately and comprehensively and grant ASTRAIA the opportunity to influence the development of the damage.
- 4.8 Exclusions of Liability Due to the Customer's Conduct.
- 4.8.1 ASTRAIA shall not be liable for the consequences of improper modification or handling of the ASTRAIA.FMF Software or the consequences of defective interventions on the part of the Customer.
- 4.8.2 ASTRAIA shall not be liable for the loss of data and programs and their restoration if and insofar as the damage is based on the fact that the Customer did not take appropriate precautions against data loss, in particular by making backup copies of all programs and data.

### 5 Remuneration

- 5.1 Remuneration for Maintenance, Service and Supplement Services as well as other payment obligations of the Customer ("**Remuneration**") as well as the due dates for the Remuneration are specified in the Quotation or the Invoice. If the due date is not stipulated, the Remuneration shall be due upon provision of the performance or, in the case of installation by ASTRAIA, upon declaration of readiness for operation.
- 5.2 Remuneration for time and material. Insofar as no package remuneration is agreed in the Quotation, ASTRAIA shall charge for Services and work performances (including Software Adaptation) on a time and material

basis, whereby working hours and travel times incurred shall be invoiced at the hourly rates, and the materials used shall be invoiced at the prices, valid at the time of the performance; other expenses, in particular travel, accommodation and overnight costs, shall be invoiced additionally. Cost estimates for Services and work performances stated in the Quotation on a time and material basis are non-binding.

- 5.3 The remuneration shall apply plus the statutory value-added tax.
- 5.4 ASTRAIA shall be entitled to change the regularly recurring remuneration (e.g., maintenance services) unilaterally by written notification to the Customer with a notice period of three months to the end of the current invoicing period for the new invoicing period. If the Customer does not agree to the new remuneration, it shall be entitled to terminate the Quotation with respect to the affected service within 4 weeks after receipt of the notification as of the end of the current invoicing period.

## 6 Payment Terms

- 6.1 All invoices are payable net within 60 days of the invoice date. Deviating terms of payment may be stipulated in the Quotation or Invoice. No cash discount shall be granted.
- 6.2 ASTRAIA reserves the right to use payments to settle the oldest due claims plus the default interest and costs accrued thereon, in the order of costs, interest, claim, unless the Customer has made an express stipulation for the allocation of the payment.
- 6.3 The Customer can only offset claims of ASTRAIA by written declaration to ASTRAIA if its counterclaim is based on the same contractual relationship, is undisputed or a legally binding title exists.
- 6.4 The assertion of a right of retention due to counterclaims which are not recognized or not legally established shall be excluded if these claims are not based on the same contractual relationship.

## 7 Data Protection

The protection of personal data is important to ASTRAIA. ASTRAIA therefore processes personal data only to the extent permitted by law. The data protection declaration can be viewed at <https://de-de.ASTRAIA-ag.de/unternehmen/datenschutzerklaerung> or requested from ASTRAIA free of charge. The responsibility of the Customer for the processing of data for which it is the controller in the sense of Art. 4 No. 7 GDPR remains unaffected by this.

## 8 Force Majeure, Contractual Impediments

- 8.1 **“Force Majeure”** means the occurrence of an event or circumstance that prevents a Party from performing a contractual obligation if and to the extent that the Party affected by the hindrance (**“Affected Party”**) proves (a) that such hindrance is beyond its reasonable control and (b) that the effects of the hindrance could not reasonably have been avoided or overcome by the Affected Party. An obstacle within the meaning of lit. (a) shall be deemed to include, but not be limited to, wars, civil wars, insurrections, acts of terrorism, piracy, currency and trade restrictions, embargoes, sanctions, governmental measures and orders, expropriation, epidemic, pandemic, natural disasters, fire, as well as legal or regulatory measures enacted in connection with such events, unless the unaffected party proves that the Affected party could nevertheless have avoided its inability to perform.
- 8.2 If a Party fails to perform its contractual obligation due to the failure of a third party which the Party has commissioned to perform the whole or part of a contract (including subcontractors), the Party may invoke Force Majeure only to the extent that the conditions set forth in Clause 8.1 are met for the third party and the occurrence of the Force Majeure could not have been foreseen by the Affected Party when it commissioned the third party.
- 8.3 Insofar as Clause 8.1 or 8.2 is fulfilled, the Affected Party shall be released from the contractual obligation and from any liability for its breach from the time when the impediment causes the inability to perform and to the extent that the impediment prevents performance, provided that it notifies the other Party thereof without undue delay. If the notification is not made immediately, the exemption shall not take effect until the date on which the notification is received by the other party. The other Party may suspend the performance of its obligations, if any, as of the date of such notice. This Clause 8.3 shall apply even if the impediment arises during an already existing default of the Affected Party.
- 8.4 If the effect of the asserted impediment or event is temporary, Clause 8.3 shall apply only for as long as the asserted impediment prevents the Affected Party from performing its contractual obligation. The Affected Party shall notify the other Party as soon as the relevant obstacle no longer exists.
- 8.5 The Affected Party is obliged to remedy the Force Majeure as far as possible and to limit its effects as far as possible.

## 9 Term

- 9.1 Principle. Unless a different term is specified in the Quotation or Invoice, the following shall apply
- a Quotation for Supplement Services shall have a term of at least six weeks
  - a Invoice for Maintenance Services shall have a term of at least one year.
- 9.2 The right of either party to terminate the contract without notice for good cause shall remain unaffected.
- 9.2.1 Good cause for a party shall be deemed to exist in particular if the other party has breached a material obligation under the Invoice or these Conditions and fails to remedy the breach of obligation within 15 calendar days after receipt of a written warning.
  - 9.2.2 ASTRAIA shall have good cause for termination in particular if the Customer is in default with two payments from the same Invoice and has not made the payment within 60 days after receipt of a written warning.
- 9.3 Each termination must be in text form to be effective.

## 10 Export and Import Control

- 10.1 Software and Hardware may be subject to export and import restrictions. In particular, there may be licensing obligations or the use of ASTRAIA.FMF Software or associated technologies may be subject to restrictions abroad.
- 10.2 The contractual obligation of ASTRAIA shall be subject to the proviso that national and international regulations of export and import law as well as other legal regulations do not oppose the performance of the particular obligation.
- 10.3 The Customer shall observe the applicable export and import control regulations, in particular of the Federal Republic of Germany and the European Union, in case of export or resale across national borders.

## 11 Place of Performance, Venue, Applicable Law

- 11.1 The place of performance shall be the registered office of the ASTRAIA company concluding the contract.
- 11.2 The exclusive place of jurisdiction for all disputes between the contracting parties arising from or in connection with service contracts, individual contracts or their business relationship shall be the registered office of ASTRAIA.
- 11.3 The United Nations Convention on Contract for the International Sale of Goods (CISG) of 11 April 1980 shall apply to the Software Purchase. Legal questions which are not regulated in CISG or which cannot be decided according to its principles as well as any Quotations for Services are subject to the law of the Federal Republic of Germany.

## 12 Final Provisions

- 12.1 The claims and other rights of the Customer from the Agreement are not assignable without the prior consent of ASTRAIA.
- 12.2 Should individual provisions of the Agreement or these Conditions be or become invalid or void in whole or in part, this shall not affect the validity of the remaining provisions.
- 12.3 In place of a loophole in the contract, the legally effective provision that comes closest to the economic purpose of the agreement shall apply.

## 13 Delivery of ASTRAIA.FMF Software

- 13.1 Scope of Performance.
- 13.1.1 The subject of the Agreement regarding the ASTRAIA.FMF Software is the granting of the rights to use the ASTRAIA Software described in Clause 14 for an unlimited period of time ("**Software Purchase**") against payment.
  - 13.1.2 ASTRAIA shall ensure with the care customary in the industry that the ASTRAIA.FMF Software is in compliance with the respective current legal situation and the respective current industry standards at the time of conclusion of the contract at the seat of the contracting ASTRAIA company.
- 13.2 Supporting Services. Supporting Services of ASTRAIA, such as support of the Customer in testing and training, are to be expressly agreed upon as Services.

## 14 License to the ASTRAIA.FMF Software

- 14.1 License. ASTRAIA grants the Customer a non-exclusive, non-licensable right to use the ASTRAIA.FMF Software on its IT Infrastructure for an unlimited period of time ("**License**") against payment of yearly Maintenance after a starting period of six months.
- 14.2 Restrictions of Use. Subject to and without prejudice to Clause 14.4, the Customer shall not be entitled to:

- a) make copies of the Documentation delivered on paper or in electronic form if such copies are not intended exclusively for use by the Customer;
  - b) to load, install, or use the ASTRAIA.FMF Software on any IT infrastructure not listed in the Agreement (“**MAC address**”);
  - c) to lease the ASTRAIA.FMF Software and the Documentation to third parties or to sublicense them in any other way, to reproduce them publicly or to make them accessible or to make them available to third parties against payment or free of charge;
  - d) to decompile, disassemble, translate, reverse engineer, or otherwise modify the ASTRAIA.FMF Software unless mandatory copyright provisions permit such actions;
  - e) remove or modify copy protection, copyright notices, serial numbers or other features serving to identify the program.
- 14.3 **Changes.** Any change intended by the Customer to the licensed Scope of Performance, which is not covered by the Agreement, requires notification by the Customer to ASTRAIA as well as approval by ASTRAIA.
- 14.4 **Use of Additional Functions.** If the Customer wants to use more than one astraia.obstetrics license, other additional modules and functions (e.g. connection to an ultrasound device) the usual sales process will apply.
- 14.5 **License Audit.** If there are indications that the Customer is using the ASTRAIA.FMF Software beyond the scope agreed in the Agreement, ASTRAIA shall be entitled to demand information about the actual scope of use from the Customer in text form within a reasonable period of time. If this information is not provided or if it is not suitable for eliminating the suspicion, ASTRAIA is entitled to verify by means of actual or electronic access to the IT Infrastructure whether the Customer complies with the obligations under licensing law (“**License Audit**”). The results of the License Audit shall be treated confidentially, but may be presented by both parties in the event of a formal legal dispute.
- 14.6 **Resale.** The customer is not allowed to transfer the installation to any other person or resell it.
- 14.6.1 In this case, the Customer shall completely stop using the ASTRAIA.FMF Software, remove all installed copies of the ASTRAIA.FMF Software from its IT Infrastructure and delete all copies located on other data carriers or hand them over to ASTRAIA unless it is legally obligated to retain them for a longer period.
- 14.6.2 At the request of ASTRAIA, the Customer shall confirm the complete implementation of the above measures in writing or, if necessary, explain the reasons for longer retention to ASTRAIA.
- 14.7 **Reservation of Rights.** ASTRAIA or, in the case of Third-Party Software, the respective third-party shall be exclusively entitled to all rights to the ASTRAIA.FMF Software exceeding the licensed Scope of Performance.

## 15 Third-Party Software

- 15.1 The Customer shall acquire a right of use for third-party software provided to the Customer together with the ASTRAIA.FMF Software (“**Third-Party Software**”) insofar as this is necessary for the use of such Third-Party Software in connection with the ASTRAIA.FMF Software in accordance with the Agreement.
- 15.2 Insofar as this is included in the Scope of Performance, ASTRAIA can arrange for or sublicense the necessary licenses to the Third-Party Software to the Customer.
- 15.3 The conditions of the right of use result from the respective conditions and performance descriptions of the third-party providers.

## 16 Obligations of the Customer

- 16.1 **IT Infrastructure.** The Customer shall ensure that the IT Infrastructure on which the ASTRAIA.FMF Software is installed is functional and capable of operating the ASTRAIA.FMF Software safely and that only Third-Party Software coordinated with ASTRAIA is operated on these computers.
- 16.2 **Information about Software Version.** The Customer is obligated to provide ASTRAIA with information about the software version in use so that it can be informed about any Releases or Updates.
- 16.3 **Data.**
- 16.3.1 The Customer shall provide all master data.
- 16.3.2 The Customer shall take care of the data maintenance and thus the backup and integrity of the data as well as the operation and maintenance of the hardware on which the ASTRAIA.FMF Software is operated.
- 16.4 **Security.**
- 16.4.1 The Customer shall provide for all necessary security measures in connection with the protection of the ASTRAIA.FMF Software against destruction, theft or misuse. In particular, the Customer shall be responsible for making backup copies of the ASTRAIA.FMF Software and storing them appropriately.
- 16.4.2 The Customer shall take appropriate precautions for the event that the ASTRAIA.FMF Software does not work properly in whole or in part (e.g., through data backup, fault diagnosis, regular testing of results, emergency planning).
- 16.4.3 Backup copies or data backup shall be made at the usual intervals in the Customer's field of activity, but shall be made at least once a day.

## 17 Liability for Defects in Software Purchase

- 17.1 Notice of Defects. The Customer shall inform ASTRAIA immediately in text form upon discovery of defects in the ASTRAIA.FMF Software. If the Customer fails to do this, ASTRAIA shall not be liable for the damage caused by the delay in notification.
- 17.2 Existence of Defects.
- 17.2.1 All asserted defects must be reproducible by ASTRAIA and documented in detail by the Customer.
- 17.2.2 ASTRAIA warrants (*gewährleistet*) that the ASTRAIA.FMF Software is properly functioning. Proper functioning shall be deemed to exist if the ASTRAIA.FMF Software can be used in accordance with the Agreement, deployed on the agreed IT Infrastructure and function in accordance with the Performance Description.
- 17.2.3 A defect of the ASTRAIA.FMF Software shall exist if it does not provide the agreed applications, functions and services in accordance with Clause 17.2.2 when used as agreed in the agreement.
- 17.2.4 No defect shall exist if the IT Infrastructure on which the ASTRAIA.FMF Software is installed cannot operate it or cannot operate it without malfunctions unless this is expressly included in the Scope of Performance. The same shall apply if and insofar as software from third parties affects the security and performance of the ASTRAIA.FMF Software.
- 17.2.5 Furthermore, there shall be no defect if the Customer interferes with the databases connected to the ASTRAIA.FMF Software, in particular their structure, or data models. This shall not apply to changes and processing of databases which are made during contractual use of the ASTRAIA.FMF Software, e.g., in the case of the database containing patient data.
- 17.3 Remedy of Defects. In the event of a defect, the Customer's claim is initially limited to the elimination of the defect or provision of defect-free ASTRAIA.FMF Software at the discretion of ASTRAIA. Elimination of the defect can also be carried out by providing Maintenance Services free of charge in the sense of Clause 20. ASTRAIA has the right to refuse to eliminate the defect if the elimination of the defect is not possible with reasonable effort (severity of the defect in relation to the effort to eliminate the defect).
- 17.4 Subordinate Rights. The right of the Customer to demand compensation for damages within the scope of liability according to Clause 4 of these Conditions shall remain unaffected.
- 17.5 Exclusion. A warranty obligation for a defect shall not apply if (a) the ASTRAIA.FMF Software has been changed or processed by the Customer or third parties and the defect has been caused by this or (b) defects are caused by the installation or connection of components (hardware or software) which do neither originate from, nor have been tested nor released by, ASTRAIA.
- 17.6 Reimbursement of expenses in case of non-existence of a defect. If it becomes apparent during or after the elimination of a malfunction - regardless of whether at the particular request of the Customer or in assumed fulfilment of warranty obligations - that a defect did not exist or that there is no warranty obligation for any other reason, the elimination of the defect shall be treated as a Supplement Service subject to remuneration.

## 18 Infringement of Third-Party Intellectual Property Rights

- 18.1 ASTRAIA warrants that the ASTRAIA.FMF Software does not infringe any intellectual property rights of third parties in Germany ("**Third-Party Rights**").
- 18.2 In the event of infringement of Third-Party Rights, ASTRAIA shall be entitled to modify the ASTRAIA.FMF Software at its own expense in order to avoid or eliminate an infringement or alleged infringement of Third-Party Rights.

## 19 Services

- 19.1 General. ASTRAIA is providing Services to the customer during the starting period of six months in accordance with the provisions of these Conditions. After this starting period against payment of the agreed remuneration.
- 19.2 Scope of Performance. The scope of Performance of Services is associated to these Conditions. The following services in particular shall be deemed Supplement Services:
- Elimination of malfunctions which have occurred due to Force Majeure, negligent or intentional behavior of the Customer or third parties, in particular due to use of the ASTRAIA.FMF Software which is not in accordance with the system description and operating instructions;
  - Activities in which the Customer has been instructed as evidenced by a training protocol and with regard to which it is reasonable for the Customer to perform them himself;
  - Extended familiarization and training;
  - services for fault elimination if the cause of the fault is based on unauthorized changes to the ASTRAIA.FMF Software by the Customer or a third party or on other circumstances not culpably caused by ASTRAIA.
  - Elimination of any defects caused by improper use of the ASTRAIA.FMF software.
  - services for fault elimination that are attributable to the use of system requirements other than those approved by ASTRAIA or incorrect infrastructure
  - Recovery of Customer data, unless culpably caused by ASTRAIA.

19.3 Changes. Clause 14.3 shall apply accordingly to changes to the Scope of Performance of Services.

## 20 Maintenance Services

20.1 ASTRAIA is obligated to provide Maintenance Services only within the starting period and after this, if the customer is paying for Software Maintenance

20.2 Services Contact.

possible ways:

- a) email: support@astraia.com
- b) phone: +49 89 540204 730

20.3 Business hours. “**Business Hours**” are Monday to Friday, 9am – 5pm (CET or CEST, as applicable) except on public holidays at the place of the registered office of ASTRAIA.

20.4 Fee. ASTRAIA shall charge an appropriate fee - as defined below - for provision of Maintenance Services not covered by the Agreement.

20.4.1 Maintenance Services within Business Hours / calculated per 10 minutes started

| Customer with valid Agreement | Customer without valid Agreement |
|-------------------------------|----------------------------------|
| 10 min/hour 24,16€/145,00€    | 10 min/hour 48,33€/290,00 €      |

20.4.2 Maintenance Services outside Business hours / calculated per 10 minutes started

| Customer with valid Agreement | Customer without valid Agreement |
|-------------------------------|----------------------------------|
| 10 Min/hour 33,16€/199,00€    | 10 Min/hour 63,00€/378,00 €      |

20.5 Hotline. ASTRAIA maintains a central hotline service, which supports the Customer during Business Hours as defined above. Additional service hours can be agreed upon.

20.6 Remote Service. ASTRAIA will perform remote diagnosis, remote control and remote maintenance as required on request of the Customer in order to eliminate system malfunctions and restore the availability of the system.

20.7 Software Maintenance. The Maintenance Services of ASTRAIA include regular improvements and extensions of the ASTRAIA.FMF Software. ASTRAIA reserves the right to decide at its reasonable discretion in which case a Hotfix, Patch, Release or Update is more appropriate.

20.7.1 Software Maintenance requires that the Customer operates the ASTRAIA.FMF Software in a version containing all Updates, Patches, and Releases made available by ASTRAIA up to the time of availability of the Maintenance Services.

20.7.2 Releases or Updates may necessitate an adjustment of the requirements for the IT Infrastructure specified in the Agreement. Insofar as Releases or Updates require amendments to the IT Infrastructure, ASTRAIA shall notify the Customer of this. If the Customer does not adapt the IT Infrastructure, restrictions in the Scope of Performance of the ASTRAIA.FMF Software may occur for which ASTRAIA is not liable.

## 21 Liability for Service and Supplement Service

21.1 Services. Insofar as Services or Supplement Services represent a service in the statutory sense (*Dienstleistungen*), ASTRAIA shall fulfil these with care customary in the industry. There is no liability for defects in this respect. The claim for damages within the framework of Clause 4 remains unaffected.

21.2 Works. Insofar as Services or Supplement Services, in particular Maintenance Services, constitute work performances (*Werkleistungen*), Clause 4 of these Conditions shall apply accordingly to the liability for defects.