# BPMN MODELER FOR CONFLUENCE ENTERPRISE

# NUTZUNGSBEDINGUNGEN /

# TERMS OF USE

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# 1 Nutzungsbedingungen

The English version of the Terms of Use is located further below.

Für die Auslegung der Regelungen dieser Nutzungsbedingungen ist ausschließlich die deutsche Fassung die rechtlich maßgebliche.

## 1.1 Allgemeine Bestimmungen, Geltung des Standard EULA

Die Software-Lösung „BPMN Modeler for Confluence Enterprise" (im Folgenden „Software") wird von der viadee Unternehmensberatung AG, Anton-Bruchausen-Straße 8, 48147 Münster, Deutschland (im Folgenden „Anbieter") ausschließlich an Nutzer überlassen, die Unternehmer (§14 BGB), juristische Personen des öffentlichen Rechts oder öffentlich-rechtliches Sondervermögen sind (im Folgenden „Lizenznehmer" oder „Nutzer").

Der Anbieter bewirkt die Überlassung der Software an den Lizenznehmer, indem der Anbieter die Software zum Download auf dem Atlassian Marketplace bereitstellt. Für die Nutzung des Atlassian Marketplace hat der Lizenznehmer die Atlassian Marketplace Terms of Use (https://www.atlassian.com/licensing/marketplace/termsofuse) (nachfolgend „**Atlassian ToU**") des Betreibers des Atlassian Marketplace, der Atlassian Pty Ltd (nachfolgend „**Atlassian**"), zu beachten. Mit dem Download der Software über den Atlassian Marketplace akzeptiert der Lizenznehmer diese Nutzungsbedingungen und erklärt, dass er kein Verbraucher (§ 13 BGB) ist – andernfalls darf er die Software nicht herunterladen, installieren, lizensieren und nutzen. Der Quellcode der Software ist nicht Vertragsgegenstand und wird dem Lizenznehmer nicht überlassen.

Diese Nutzungsbedingungen und die hierin in Bezug genommenen Dokumente gelten ausschließlich. Abweichende, entgegenstehende oder ergänzende Allgemeine Geschäfts- und Einkaufsbedingungen des Lizenznehmers werden nur dann und insoweit Vertragsbestandteil, als der Anbieter ihrer Geltung ausdrücklich und schriftlich zugestimmt hat. Dieses Zustimmungserfordernis gilt in jedem Fall, beispielsweise auch dann, wenn der Anbieter in Kenntnis der Allgemeinen Geschäfts- und Einkaufsbedingungen des Lizenznehmers mit der Leistungserbringung an ihn vorbehaltlos beginnt. Die vorrangige Geltung des Standard EULA gemäß Ziffer 3. der Atlassian Marketplace Terms of Use bleibt unberührt.

Die Bestimmungen dieser Nutzungsbedingungen gelten entsprechend für die Überlassung der Anwendungsdokumentation sowie die Überlassung von Patches, Updates, Upgrades sowie neuer Releases und Versionen der Software an den Lizenznehmer im Rahmen der Nachbesserung oder des Softwaresupports.

## 1.2 Abwicklung der Softwareüberlassung, Installation der Software, Funktionsumfang

Die Überlassung und Abrechnung der Lizenzgebühren für die vom Lizenznehmer erworbene Software erfolgt über Atlassian als Reseller des Anbieters. Nach Abwicklung und Bezahlung der Softwareüberlassung erhält der Lizenznehmer über den Atlassian Marketplace einen Lizenzschlüssel zur Installation der Software. Der Bezug des Lizenzschlüssels erfolgt ausschließlich über den Atlassian Marketplace und für die Enterprise-Wiki-Software Atlassian Confluence (nachfolgend „Confluence").

Der Lizenznehmer wird durch Confluence bei der Installation unterstützt. Er hat dafür Sorge zu tragen, dass die überlassene Version der Software nur auf einer kompatiblen Version von Confluence installiert wird. Die Angabe zur Kompatibilität zwischen der Software und Confluence ist in der auf dem Atlassian Marketplace veröffentlichten Produktbeschreibung der Software enthalten. Für die Installation der Software sind die in der Produktbeschreibung und/oder der Anwendungsdokumentation (siehe nachfolgend Ziffer 1.4) beschriebenen Installationshinweise, insb. die Hard- und Softwareumgebung, die beim Lizenznehmer vorhanden sein muss, zu beachten.

Soweit nicht ausdrücklich vereinbart, schuldet der Anbieter keine weiteren Leistungen, insbesondere keine Installations-, Einrichtungs-, Beratungs-, Anpassungs- und/ oder Schulungsleistungen. Weitere Angaben zur Software, z.B. in Prospekten, auf Internetseiten des Anbieters oder im Rahmen von mündlichen Präsentationen, sind keine Beschaffenheitsangaben, sofern diese Angaben nicht ausdrücklich auch in der Produktbeschreibung genannt werden. Der Funktionsumfang der Software sowie die technischen Nutzungsvoraussetzungen sind in der Produktbeschreibung für die Software festgelegt. Die Angaben in der Produktbeschreibung sind indes nicht als Beschaffenheitsgarantie für die Software zu verstehen, soweit diese nicht ausdrücklich als solche in der Produktbeschreibung bezeichnet wird.

## 1.3  Nutzungsrechte

Alle Rechte an der Software stehen ausschließlich dem Anbieter bzw. den jeweiligen Lizenzgebern des Anbieters zu. Die Software wird durch das Urheberrecht sowie internationale Abkommen zum Schutz des geistigen Eigentums geschützt.

Der Lizenznehmer erhält vom Anbieter das nicht-ausschließliche nicht-übertragbare, zeitlich und räumlich unbeschränkte Recht eingeräumt, die ordnungsgemäß über den Atlassian Marketplace überlassene Software in kompilierter Form (Object Code) für die in der Produktbeschreibung festgelegten Zwecke zu nutzen.

Der Lizenznehmer darf die Software nur für die beim Download festgelegte Anzahl von autorisierten Usern nutzen. Das vorübergehende oder dauerhafte Zur-Verfügung-Stellen der Software im Rechenzentrumsbetrieb für Dritte (z.B. als „Software as a Service") sowie die Vermietung sind unzulässig.

Der Lizenznehmer hat ferner sicherzustellen, dass die Anzahl der von ihm für die Software erworbenen autorisierten User, zu jeder Zeit der Anzahl der vom Lizenznehmer für Confluence erworbenen autorisierten Nutzer entspricht oder diese Anzahl übersteigt.

Der Lizenznehmer darf die Software nicht verändern oder weiterentwickeln. Eine Dekompilierung der ausführbaren Dateien der ausgelieferten Software sowie die sonstige Rückentwicklung oder Veränderung seitens des Lizenznehmers sind nicht zulässig. Eine Bearbeitung, Rückentwicklung oder Dekompilierung der Software im Rahmen gesetzlich zwingender Regelungen (§ 69d Abs. 2, 3 und § 69e UhrG) bleibt unberührt.

Der Nutzer darf die Software nur insoweit vervielfältigen, wie dies zur vertragsgemäßen Nutzung erforderlich ist. Dies schließt das Recht ein, eine Sicherheitskopie der Software anzufertigen. Diese Sicherungskopie ist als solche zu kennzeichnen. Die Sicherungskopien sind an einem gegen den unberechtigten Zugriff Dritter gesicherten Ort aufzubewahren.

Soweit der Lizenznehmer nach geltendem Recht unabdingbar berechtigt ist, die von ihm erworbene Software dauerhaft an einen Dritten zu überlassen, gilt folgendes: Der Lizenznehmer hat dem Anbieter die Überlassung an den Dritten unter Angabe von dessen Namen und Anschrift unverzüglich schriftlich anzuzeigen. Ferner wird

der Lizenznehmer die Software nur vollständig und einheitlich dem Dritten dauerhaft, d.h. nicht nur zeitweise, zur Nutzung überlassen. Des Weiteren wird der Lizenznehmer die eigene Nutzung der Software vollständig aufgeben, sämtliche installierten Kopien der Software von seiner Hardware sowie von allen sonstigen in seinem Besitz befindlichen Datenträgern vollständig und endgültig in einer Art und Weise deinstallieren bzw. entfernen, bei der eine Widerherstellung der Software nachweislich ausgeschlossen ist.

Die Nutzung der Software durch den Lizenznehmer ist zeitgleich nur auf einer Hardware gestattet, die entweder im Eigentum des Lizenznehmers steht oder deren Nutzung er anderweitig rechtlich kontrollieren kann. Der Lizenznehmer hat die Software vor dem Zugriff Dritter oder der Nutzung durch Dritte zu schützen.

Die Software verwendet Bestanteile von "Open-Source-Software", für deren Nutzung die jeweiligen Open-Source-Lizenzbedingungen gelten. Die Auflistung der Open-Source-Software-Komponenten, deren Urheber sowie die geltenden Lizenzbedingungen sind dieser Nutzungsvereinbarung beigefügt. Diese Lizenzbedingungen gelten für die jeweils in der Software verwendeten Open Source Software Bestandteile, soweit diese in Übereinstimmung mit den jeweiligen Lizenzbedingungen gegenüber diesen Nutzungsbedingungen vorrangig gelten.

## 1.4 Dokumentation, empfohlene Browser

Die Software wird zusammen mit der zugehörigen Anwendungsdokumentation (in elektronischer Form in der Hilfe-Funktion der Software) an den Lizenznehmer überlassen. Informationen über die wesentlichen Funktionen und Anwendungsbereiche der Software finden sich ferner auf der Internetpräsenz des Anbieters (https://www.viadee.de/business-process-management/bpmn-modeler-for-confluence). Weitere Informationen zur Nutzung können zudem beim Anbieter erfragt werden.

Die Software darf nur für die Anwendungsbereiche verwendet werden, die in der o. g. Anwendungsdokumentation festgelegt sind.

Für eine optimale und fehlerfreie Funktion der Software wird die Verwendung der jeweils aktuellen Versionen der folgenden Browser empfohlen: Firefox, Chrome oder Safari. Die Software ist auch mit anderen Browsern grundsätzlich nutzbar, der Anbieter kann jedoch bei der Verwendung anderer Browser oder bei der Verwendung nicht aktueller Versionen der empfohlenen Browser keine Gewährleistung für einen fehlerfreien Lauf der Software übernehmen.

## 1.5 Gewährleistung

Bei Mängeln der Software wird der Lizenznehmer zunächst seine Gewährleistungsrechte direkt gegenüber Atlassian geltend machen; der Anbieter wird den Lizenznehmer hierbei im angemessenen Umfang unterstützen. Verweigert Atlassian die Erfüllung der Gewährleistungsansprüche oder scheitert die Erfüllung aus anderen Gründen, die der Lizenznehmer nicht zu vertreten hat, erbringt der Anbieter gegenüber dem Lizenznehmer die Gewährleistung nach Maßgabe der folgenden Bestimmungen:

Ein Mangel der Software liegt vor, wenn (a) die Software bei vertragsgemäßem Einsatz die in der Produktbeschreibung festgelegten Funktionalitäten nicht erbringt oder (b) wenn sie sich für die vertraglich vorausgesetzte Verwendung nicht eignet oder (c) wenn sie sich für die gewöhnliche Verwendung nicht eignet und nicht die Beschaffenheit aufweist, die bei Software der gleichen Art üblich ist und die der Lizenznehmer nach der Art der Software erwarten kann. Ein Mangel liegt (insbesondere) nicht vor, wenn

- sich das Vorliegen einer der vorgenannten Voraussetzungen (a)-(c) nur unwesentlich auf die Nutzung der Software auswirkt;
- eine Störung durch unsachgemäße Behandlung der Software (z.B. Nichtbeachtung der Anwendungsdokumentation) hervorgerufen wurde;
- die Ursache für eine Störung nicht in der Software liegt, sondern durch sonstige Ursachen hervorgerufen wird, die nicht in der Sphäre des Anbieters liegen (z.B. Systemabsturz, Mängel von Drittsoftware).

Der Lizenznehmer hat dem Anbieter Mängel unverzüglich unter Angabe der ihm bekannten und für deren Erkennung zweckdienlichen Informationen zu melden. Der Lizenznehmer hat im Rahmen des Zumutbaren die Maßnahmen zu treffen, die eine Feststellung der Mängel und ihrer Ursachen erleichtern. Die Meldung hat insbesondere folgende Angaben zu enthalten:

- die aufgetretenen Symptome, die betroffene Programmfunktionalität,
- die Anzahl der betroffenen Anwender,
- die Schilderung der System- und Hardwareumgebung sowie ggf. simultan geladener Drittsoftware.

Die Anzeige von Mängeln durch den Nutzer erfolgt über die vom Anbieter zur Verfügung gestellten Support-Wege (z. B. das vom Anbieter benannte Ticketsystem).

Art und Weise der Mangelbeseitigung stehen im billigen Ermessen des Anbieters. Bietet der Anbieter dem Lizenznehmer zur Vermeidung oder Beseitigung von Mängeln neue Softwareteile, insbesondere Patches, Bugfixes oder neue Versionen, insbesondere Updates, Upgrades, neue Releases, etc. an, so hat der Lizenznehmer diese zu übernehmen und auf seiner Hardware gemäß den Installationsanweisungen des Anbieters zu installieren. Die Beseitigung eines Mangels kann darüber hinaus auch in der Form von Workarounds oder sonstiger Handlungsanweisungen gegenüber dem Lizenznehmer erfolgen. Der Lizenznehmer hat derartige Handlungsanweisungen zu befolgen.

Ansprüche wegen mangelhafter Software verjähren innerhalb eines Jahres ab Download der Software durch den Lizenznehmer. Bei Vorsatz oder grober Fahrlässigkeit des Anbieters, bei arglistigem Verschweigen des Mangels, bei Personenschäden oder Rechtsmängeln i.S. des § 438 Abs. 1 Nr. 1a BGB sowie bei Garantien (§ 444 BGB) gelten die gesetzlichen Verjährungsfristen, ebenso bei Ansprüchen nach dem Produkthaftungsgesetz.

## 1.6  Haftungsbegrenzung

Der Anbieter haftet unbeschränkt für Schäden, die vorsätzlich oder grob fahrlässig herbeigeführt werden, für Schäden aus einer Verletzung von Leben, Körper und Gesundheit, sowie für Schäden, die eine Ersatzpflicht nach § 1 ProdHaftG begründen.

Im Falle einfacher Fahrlässigkeit haftet Anbieter nur, soweit es sich um eine Verletzung vertragswesentlicher Pflichten handelt, deren Erfüllung die ordnungsgemäße Durchführung des Überlassungsvertrages überhaupt erst ermöglicht und auf deren Einhaltung der Lizenznehmer vertrauen durfte. Im Übrigen ist die Haftung für leicht fahrlässig verursachte Schäden ausgeschlossen. Die Regelungen im 1. Absatz von dieser Ziffer 1.6 bleiben unberührt.

Bei der einfach fahrlässigen Verletzung von wesentlichen Vertragspflichten durch den Anbieter ist die Ersatzpflicht auf den vertragstypischen, vorhersehbaren Schaden begrenzt. Der vertragstypische, vorhersehbare Schaden ist der Schaden, den der Anbieter bei Vertragsschluss als mögliche Folge einer

Vertragsverletzung vorausgesehen hat oder den der Anbieter bei Anwendung verkehrsüblicher Sorgfalt hätte voraussehen müssen. Mittelbare Schäden und Folgeschäden, die Folge einer nicht vertragsgemäßen Leistungserbringung sind, sind außerdem nur ersatzfähig, soweit solche Schäden bei bestimmungsgemäßer Verwendung der Software typischerweise zu erwarten sind. Die Regelungen im 1. Absatz von dieser Ziffer 1.6 bleiben unberührt.

Bei Datenverlust bzw. Datenvernichtung haftet der Anbieter nur, soweit der Anbieter die Vernichtung vorsätzlich, grob fahrlässig oder aufgrund eines Verstoßes gegen eine wesentliche Vertragspflicht verursacht hat. Die Haftung des Anbieters ist der Höhe nach auf den Schaden begrenzt, der auch im Fall einer ordnungsgemäßen Datensicherung durch den Lizenznehmer entstanden wäre.

Die vorstehenden Regelungen zur Haftungsbeschränkung gelten auch für die persönliche Haftung der Mitarbeiter, Vertreter und Organe des Anbieters.

Schadensersatzansprüche und Ansprüche auf Ersatz vergeblicher Aufwendungen des Lizenznehmers verjähren innerhalb von einem Jahr; hinsichtlich des Beginns der Verjährungsfrist findet § 199 Abs. 1 BGB Anwendung. Dies gilt nicht für Ansprüche auf Schadenersatz wegen Verletzung des Lebens, des Körpers oder der Gesundheit, bei Ansprüchen nach dem Produkthaftungsgesetz und bei der Verletzung einer Beschaffenheitsgarantie. Dies gilt weiter nicht für Ansprüche, die auf einer vorsätzlichen oder grob fahrlässigen Pflichtverletzung von Anbieter bzw. eines gesetzlichen Vertreters oder eines Erfüllungsgehilfen von Anbieter beruhen.

## 1.7 Support-Leistungen

Zeitgleich mit dem Erwerb der Software schließt der Lizenznehmer mit dem Anbieter einen Supportvertrag für die Software. Der Supportvertrag hat eine Mindestlaufzeit von 12 Monaten und endet automatisch nach Ablauf dieser Mindestlaufzeit, wenn die Parteien nicht vor Ablauf eine Verlängerung vereinbaren. Die Vergütung für die Supportleistungen ist während der Mindestlaufzeit bereits in der vom Lizenznehmer gezahlten Vergütung für den Erwerb der Software enthalten. Nach Ablauf der Mindestlaufzeit sind die Supportleistungen kostenpflichtig und vom Lizenznehmer für den Fall der Verlängerung des Supportvertrages zu zahlen. Die Abrechnung der Vergütung für die Supportleistungen erfolgt über Atlassian.

In den Supportleistungen sind folgende Leistungen enthalten:

Der Lizenznehmer kann dem Anbieter über das vom Anbieter benannte Ticketsystem Störungen der Software melden. Der Anbieter wird hierauf in einem Zeitraum von drei Werktagen reagieren und den Lizenznehmer bei der Störungsanalyse und bei der Identifikation von Workarounds unterstützen. Die Supportleistungen werden nur in den Sprachen Englisch und Deutsch geleistet.

Darüber hinaus erhält der Lizenznehmer aktualisierte Versionen der Software mit Fehlerbehebungen, potenziellen Funktionserweiterungen und Softwareänderungen, die die Kompatibilität mit aktuelleren Confluence-Versionen sicherstellen. Die Häufigkeit der Versions-Updates wird ausschließlich vom Anbieter festgelegt.

Fehlerbehebungen und Kompatibilitätsanpassungen setzen voraus, dass der Lizenznehmer die jeweils aktuelle Version der Software ordnungsgemäß installiert hat. Die rechtzeitige und ordnungsgemäße Installation von Updates obliegt dem Lizenznehmer.

Der Anbieter ist zu einer Anpassung der Software an sich ändernde rechtliche Rahmenbedingungen (d.h. zwingende Gesetze, Rechtsverordnungen, aufsichtsrechtliche Anforderungen) oder aufgrund sich ändernder Anforderungen in der Sphäre des Lizenznehmers nicht verpflichtet.

Die Unterstützung bei Fehlerbehebungen setzt ferner voraus, dass der Lizenznehmer die zum Zeitpunkt der Supporterbringung aktuellen Versionen der Browser Firefox, Chrome oder Safari verwendet.

In den Supportleistungen sind die folgenden Leistungen nicht enthalten:

- Endanwendersupport (z.B. Fragen zur Bedienung der Software).
- Software-Schulungen
- Schulung im Umgang mit den Modellierungssprachen BPMN, DMN und CMMN
- Confluence Support oder Support für andere Confluence Apps

Die vorstehenden Leistungen können vom Anbieter ggf. auf Basis einer separaten Vereinbarung angeboten werden.

Ansprüche wegen mangelhafter Supportleistungen verjähren innerhalb eines Jahres. Bei Vorsatz oder grober Fahrlässigkeit des Anbieters, bei arglistigem Verschweigen des Mangels, bei Personenschäden sowie bei Garantien (§§ 444, 639 BGB) gelten die gesetzlichen Verjährungsfristen, ebenso bei Ansprüchen nach dem Produkthaftungsgesetz.

## 1.8 Evaluationsperiode

Über den Atlassian Marketplace kann die Software für eine Evaluationsperiode von 30 Tagen kostenfrei auf Basis einer Evaluationslizenz getestet werden. Der Bezug dieser Lizenz ist nur über den Atlassian Marketplace zulässig (Funktion „Try it free"). Zur Vermeidung von Missbrauch ist die Nutzung der Evaluationslizenz auf einen maximal 3-maligen Download beschränkt. Für die Nutzung der Evaluationslizenz gelten die nachfolgenden Regelungen:

- Das Nutzungsrecht gemäß Ziffer 1.3 ist auf 30 Tage begrenzt. Nach Ablauf wird die Nutzungsmöglichkeit der Software deaktiviert.

- Der Anbieter haftet bei Sachmängeln für unmittelbare Mangelschäden, die dem Lizenznehmer entstehen, weil dem Lizenznehmer ein Sachmangel der Software arglistig verschwiegen wurde und bei Mangelfolgeschäden, die auf vorsätzlichem oder grob fahrlässigem Handeln des Anbieters beruhen. Eine darüberhinausgehende Gewährleistung für die Sachmängel ist ausgeschlossen. Der Anbieter haftet bei Rechtsmängeln nur für Schäden, die dem Lizenznehmer entstehen, weil dem Lizenznehmer ein Rechtsmangel der Software arglistig verschwiegen wurde. Eine darüberhinausgehende Gewährleistung für Rechtsmängel ist ausgeschlossen.

- Der Anbieter haftet nur für Vorsatz und grobe Fahrlässigkeit. Weitergehende Schadens- und Aufwendungsersatzansprüche des Lizenznehmers, gleich aus welchem Rechtsgrund, insbesondere wegen Verletzung von Pflichten aus dem Schuldverhältnis und aus unerlaubter Handlung, sind ausgeschlossen. Die Haftung nach dem Produkthaftungsgesetz bleibt jedoch unberührt.

## 1.9 Geheimhaltung, Datenschutz

Der Lizenznehmer verpflichtet sich sämtliche als vertraulich gekennzeichneten Unternehmensinformationen sowie alle sonstigen vertraulichen Informationen und Betriebsgeheimnisse des Anbieters zeitlich unbegrenzt vertraulich zu behandeln und nur für Zwecke der Durchführung dieses Vertrags zu verwenden. Die vorstehende Verpflichtung gilt nicht für vertrauliche Informationen, die (i.) zur Zeit ihrer Übermittlung bereits offenkundig oder dem Lizenznehmer nachweislich bekannt waren; (ii.) nach ihrer Übermittlung ohne Verschulden des Lizenznehmers offenkundig geworden sind; (iii.) nach ihrer Übermittlung dem Lizenznehmer von dritter Seite auf nicht rechtswidrige Weise und ohne Einschränkung in Bezug auf Geheimhaltung oder Verwertung zugänglich gemacht worden sind; (iv.) die vom Lizenznehmer eigenständig, ohne Nutzung der Betriebsgeheimnisse des Anbieters, entwickelt worden sind; (v.) die gemäß Gesetz, behördlicher Verfügung oder gerichtlicher Entscheidung veröffentlicht werden müssen – vorausgesetzt, der Lizenznehmer informiert den Anbieter hierüber unverzüglich und unterstützt den Anbieter in der Abwehr derartiger Verfügungen bzw. Entscheidungen; oder (vi.) soweit dem Lizenznehmer die Nutzung oder Weitergabe der vertraulichen Informationen auf Grund zwingender gesetzlicher Bestimmungen oder vom Anbieter gestattet ist.

Für die im Rahmen der Vertragsanbahnung, -durchführung und -abwicklung ggf. anfallende Verarbeitung von personenbezogenen Daten gelten die Datenschutzhinweise in der unter

https://www.viadee.de/datenschutzerklaerung/

abrufbaren Datenschutzerklärung des Anbieters. Soweit der Anbieter im Rahmen der Erbringung der Supportleistungen personenbezogene Daten des Lizenznehmers verarbeitet, wird der Anbieter im Auftrag des Lizenznehmers tätig. Der Anbieter wird die personenbezogenen Daten daher nur im Rahmen der vertraglich geschuldeten Leistungserbringung oder anderer schriftlicher Weisungen des Lizenznehmers und gemäß den datenschutzrechtlichen Bestimmungen verarbeiten. Die Einzelheiten der Auftragsverarbeitung werden die Parteien in einer gesonderten „Vereinbarung über eine Verarbeitung von personenbezogenen Daten im Auftrag" festlegen. Diese geht in ihrem Anwendungsbereich den Regelungen dieser Nutzungsbedingungen vor.

## 1.10 Referenz

Der Anbieter ist berechtigt, auf die Vertragsbeziehung zum Lizenznehmer in geeigneter Form in Broschüren und Publikationen (bspw. Referenzlisten) hinzuweisen. Sollte der Lizenznehmer damit nicht einverstanden sein, wird er den Anbieter entsprechend darauf per E-Mail an marketing@viadee.de hinweisen.

## 1.11 Schlussbestimmungen

Es gilt das Recht der Bundesrepublik Deutschland. Die Vorschriften des Internationalen Privatrechts und des UN-Kaufrechts finden keine Anwendung. Gerichtsstand für alle Streitigkeiten aus dieser Vereinbarung ist der Sitz des Anbieters in Münster, Deutschland.

Änderungen und Ergänzungen dieser Nutzungsbedingungen sowie sonstiger Erklärungen im Zusammenhang mit dem Vertrag, die eine Rechtsfolge auslösen (z.B. Fristsetzungen), bedürfen zu ihrer Wirksamkeit der Schriftform.

Sollten einzelne Bestimmungen dieser Nutzungsbedingungen rechtsunwirksam sein oder werden oder sollte sich eine Lücke in den Nutzungsbedingungen herausstellen, berührt dies die Gültigkeit der übrigen Bestimmungen dieser Nutzungsbedingungen nicht.

# 2 Terms of Use

The German version of the Terms of Use is located above. For the legal interpretation of the provisions of these Terms of Use only the German version shall prevail.

## 2.1 General provisions, validity of the Standard EULA

The "BPMN Modeler for Confluence Enterprise" software solution (hereinafter referred to as "software") is provided by viadee Unternehmensberatung AG, Anton-Bruchausen-Strasse 8, 48147 Muenster, Germany (hereinafter referred to as "provider") exclusively to users, who are entrepreneurs, (Section 14 *BGB* [German Civil Code], legal entities under public law or a special fund under public law (hereinafter referred to as "licensee" or "user").

By making the software available for download on the Altlassian Marketplace, the provider effects the provision of the software to the licensee. For use of the Atlassian Marketplace, the licensee shall comply with the Atlassian Marketplace Terms of Use (https://www.atlassian.com/licensing/marketplace/termsofuse) (hereinafter referred to as "**Atlassian ToU**") of the operator of the Atlassian Marketplace, Atlassian Pty Ltd (hereinafter referred to as "**Atlassian**"). By downloading the software via the Atlassian Marketplace, the licensee accepts these Terms of Use and declares that it is not a consumer (Section 13 *BGB*) - otherwise the licensee may not download, install, license and use the software. The source code of the software is not the object of the contract and shall not be provided to the licensee.

These Terms of Use and the documents referred to herein apply exclusively. Different, conflicting or supplementary General Terms and Conditions and Terms and Conditions of Purchase of the Licensee shall become an integral part of the contract only if and to the extent that the provider has expressly consented to their validity in writing. This consent requirement shall apply in any case, for example also if the provider, having knowledge of the licensee's General Terms and Conditions and Terms and Conditions of Purchase, begins to provide the service to the licensee without reservation. The priority application of the Standard EULA pursuant to paragraph 3. of the Atlassian Marketplace Terms of Use remains unaffected.

The provisions of these Terms of Use apply accordingly to the provision of user documentation as well as the provision of patches, updates, upgrades and new releases and versions of the software to the licensee within the scope of rectification or software support.

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Provision and billing of the license fees for the software purchased by the licensee shall be via Atlassian as the provider's reseller. After handling of and payment for provision of the software, the licensee shall receive a license key for installation of the software via the Altlassian Marketplace. Purchase of the license key shall be exclusively via the Atlassian Marketplace and for the enterprise wiki software Atlassian Confluence (hereinafter referred to as "Confluence").

The licensee shall be supported by Confluence during the installation. The licensee must ensure that the version of the software provided is installed only on a compatible version of Confluence. Information concerning compatibility between the software and Confluence is contained in the product description for the software

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## 2.4  Documentation, recommended browsers

The software shall be provided to the licensee together with the related user documentation (in electronic form in the Software help function). Information on the essential functions and applications of the software can also be found on the provider's website (https://www.viadee.de/business-process-management/bpmn-modeler-for-confluence). Further information on use can be obtained in addition from the provider.

The software may only be used for applications determined in the above-mentioned user documentation.

To ensure the optimal and error-free function of the software, use of the respectively current versions of the following browsers is recommended: Firefox, Chrome or Safari. The software can also be used in principle with other browsers but the provider cannot give a warranty for error-free operation of the software where other browsers are used or versions of the recommended browsers are used which are not current versions.

## 2.5  Warranty

In the case of software defects, the licensee shall first assert its warranty rights directly against Atlassian. The provider shall adequately support the licensee in this respect. If Atlassian refuses to fulfil the warranty claims or fulfilment fails for other reasons, for which the licensee is not responsible, the provider shall provide the warranty to the licensee according to the following provisions:
A software defect exists if (a) the software, when used according to the contract, does not provide the functionalities determined in the product description or (b) is not suited for the use provided under the contract or (c) is not suited for customary use and does not have the quality which is customary for software of the same type and which the licensee can expect from the type of software. A defect does not exist (in particular) if
- the existence of one of the above-mentioned conditions (a)-(c) has only an insignificant effect on the use of the software;
- a malfunction was caused by incorrect handling of the software (e.g. failure to comply with the user documentation);
- the cause of a malfunction does not lie with the software but is the result of other causes which are not within the provider's sphere (e.g. system crash, defects in third-party software).
The licensee shall report defects immediately to the provider, indicating the information known to it and relevant for identifying them. The licensee shall take the measures, which may reasonably be expected to facilitate the identification of the defects and their causes. The report must include in particular the following information:
- the symptoms which have occurred, the program functionality concerned;
- the number of users concerned;
- the description of the system and hardware environment and, where applicable, simultaneously loaded third-party software.
The user shall notify defects via the support channels made available by the provider (e.g. the ticket system designated by the provider).
The nature and manner of remedying defects shall be at the reasonably exercised discretion of the provider. If the provider offers the licensee new software parts, especially patches, bug fixes or new versions, especially

updates, upgrades, new releases etc., to prevent or remedy defects, the licensee shall accept and install them on its hardware according to the provider's installation instructions. A defect can furthermore also be eliminated in the form of workarounds or other instructions to the licensee. The licensee shall follow such instructions. Claims for defective software shall become statute-barred within one year of the software being downloaded by the licensee. In the case of intent or gross negligence of the provider, fraudulent concealment of a defect, personal injury or defects of title within the meaning of Section 438 (1) No 1a *BGB* [German Civil Code] and in the case of guarantees (Section 444 *BGB*), statutory limitation periods shall apply, likewise in the case of claims under the *Produkthaftungsgesetz* [German Product Liability Act].

## 2.6  Limitation of liability

The provider shall be liable without limitation for damages caused intentionally or due to gross negligence, for damages resulting from injury to life, limb and health, as well as for damages, which constitute a compensation obligation in accordance with Section 1 *ProdHaftG* [German Product Liability Act].

In the case of ordinary negligence, the provider shall be liable only if it is a violation of material contractual obligations, the fulfilment of which makes the due performance of the provision contract at all possible in the first place and compliance therewith the licensee could rely on. Furthermore, liability for damages caused due to slight negligence shall be excluded. The provisions in the first sub-paragraph of this paragraph 2.6 remain unaffected.

In the case of violation of material contractual obligations by the provider due to ordinary negligence, the compensation obligation shall be limited to the foreseeable damage typical for the contract. Foreseeable damage typical for the contract is damage which the provider, when concluding the contract, has foreseen as possible consequence of a violation of the contract or which the provider should have foreseen when applying due diligence. Indirect damages and consequential damages resulting from a service provision, which is not in accordance with the contract, shall also only be reimbursable if such damages are typically to be expected when the software is used as intended. The provisions in the first sub-paragraph of this paragraph 2.6 remain unaffected.

In the event of data loss or data destruction, the provider shall be liable only to the extent that the provider caused the destruction intentionally, due to gross negligence or due to a violation of a material contractual obligation. Liability of the provider shall be limited in amount to the damage that would also have arisen in the event of a proper data backup by the licensee.

The foregoing provisions on the limitation of liability shall also apply to the personal liability of the employees, representatives and bodies of the provider.

Claims for damages and claims for compensation for wasted expenditure by the licensee shall become statute-barred within one year. Regarding commencement of the limitation period, Section 199 (1) *BGB* [German Civil Code] shall apply. This shall not apply to claims for damages due to injury to life, limb or health, claims under the *Produkthaftungsgesetz* [German Product Liability Act] and in the case of violation of a guarantee of quality. Furthermore, this shall not apply to claims based on an intentional or grossly negligent breach of duty by the provider resp. a legal representative or vicarious agent of the provider.

## 2.7 Support services

At the same time as the software is purchased, the licensee shall conclude a support contract for the software with the provider. The support contract shall have a minimum term of 12 months and shall end automatically after expiry of this minimum term unless the parties agree to extend the contract before it expires. During the minimum term, remuneration for the support services is already included in the remuneration paid by the licensee to purchase the software. After the minimum term expires, the support services shall be subject to a fee and must be paid by the licensee if the support contract is extended. Remuneration for the support services shall be billed via Atlassian.

The support services include the following services:

The licensee can report malfunctions in the software to the provider via the ticket system designated by the provider. The provider shall respond to this within a period of three working days and support the licensee in analysis of the malfunction and identification of workarounds. The support services shall only be provided in English and German.

In addition, the licensee shall receive updated versions of the software with bug fixes, potential feature enhancements and software changes, which ensure compatibility with newer Confluence versions. The frequency of version updates shall be determined exclusively by the provider.

Bug fixes and compatibility adjustments shall require that the licensee has properly installed the respectively current version of the software. The timely and proper installation of updates is the responsibility of the licensee.

The provider is not obliged to adapt the software to changing legal framework conditions (i.e. mandatory laws, regulations, supervisory requirements) or due to changing requirements in the licensee's sphere.

Support in the case of bug fixes further requires that the licensee is using current versions of the Firefox, Chrome or Safari browsers at the time support is provided.

The support services do not include the following services:

- end user support (e.g. questions on the operation of the software)
- software training
- training in dealing with the modeling languages BPMN, DMN and CMMN
- Confluence support or support for other Confluence apps

The provider can offer the foregoing services based on a separate agreement.

Claims for defective support services shall become statute-barred within one year. In the case of intent or gross negligence of the provider, fraudulent concealment of a defect, personal injury or in the case of guarantees (Section 444, 639 BGB [German Civil Code]), the statutory limitation periods shall apply, likewise in the case of claims under the *Produkthaftungsgesetz* [German Product Liability Act].

## 2.8 Evaluation period

The Atlassian Marketplace allows users to test the software free of charge for an evaluation period of 30 days based on an evaluation license. Purchase of this license is only permitted via the Atlassian Marketplace ("Try it free" function). To avoid misuse, use of the evaluation license is limited to a maximum of 3 downloads. The following provisions apply to use of the evaluation license:

- The right of use according to paragraph 2.3 is limited to 30 days. After expiry, all functionalities to use the software shall be disabled.

- The provider shall be liable in the case of material defects for damages directly caused by a defect, which the licensee, incurs because a material defect in the software was fraudulently concealed from the licensee and in the case of consequential harm caused by a defect, which is based on intentional or grossly negligent conduct of the provider. A further warranty for material defects is excluded. The provider shall be liable in the case of defects of title only for damages incurred by the licensee because a defect of title of the software was fraudulently concealed from the licensee. A further warranty for defects of title is excluded.

- The provider shall be liable only for intent and gross negligence. Further claims for damages and for reimbursement of expenses of the licensee, for whatever legal reason, especially for breach of duty arising from the obligation and arising from unlawful act, are excluded. This shall not, however, affect liability according to the *Produkthaftungsgesetz* [German Product Liability Act].

## 2.9 Confidentiality, data protection

The licensee undertakes to treat as confidential for an indefinite period all company information designated as confidential and all other confidential information and company secrets of the provider and to use this only for the purposes of implementing this contract. The foregoing obligation does not apply to confidential information which (i.) is already publicly known at the time of its transmission or proven to be known to the licensee, (ii.) has become publicly known after its transmission through no fault of the licensee, (iii.) has been made accessible to the licensee after its transmission by a third party lawfully and without limitation in relation to confidentiality or exploitation, (iv.) has been developed by the licensee independently, without using the provider's company secrets, (v.) must be published pursuant to the law, official order or judicial decision, provided that the licensee informs the provider of this immediately and supports the provider in averting such orders resp. decisions, or (vi.) if the licensee is permitted to use or disclose the confidential information based on mandatory statutory provisions or by the provider.

The privacy policy in the provider's privacy statement, which is available at

https://www.viadee.de/datenschutzerklaerung/

applies to any processing of personal data which may arise in the negotiation, implementation and processing of the contract. If the provider processes personal data of the licensee in providing the support services, the provider shall act on behalf of the licensee. The provider shall therefore process the personal data only within the scope of providing the services owed under the contract or other written instructions of the licensee and in

accordance with data protection regulations. The parties shall determine the details of commissioned data processing in a separate "Contract on Commissioned Data Processing". This shall take precedence in its scope of application over the provisions of these Terms of Use.

## 2.10 Reference

The provider has the right to refer to the contractual relationship with the licensee in appropriate form in brochures and publications (e.g. reference lists). If the licensee is not in agreement with this, the licensee shall accordingly indicate this to the provider by email to marketing@viadee.de.

## 2.11 Final provisions

The law of the Federal Republic of Germany shall apply. The provisions of Private International Law and the UN Convention on Contracts for the International Sale of Goods shall not apply. All disputes arising from this agreement shall be settled before a competent court of law at the location of the provider's registered office in Muenster, Germany.

Amendments to and modifications of these Terms of Use and other declarations in relation to the contract which produce a legal consequence (e.g. the setting of time limits) shall only be valid when given in writing.

Should individual provisions of these Terms of Use be or become legally invalid or the Terms of Use are found to have a gap, this shall not affect the validity of the other provisions of these Terms of Use.

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## 3.8  bowser 2.11.0:

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