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# Master Service Agreement of firstcolo Datacenters GmbH

## A. Introduction

### 1. Contracting Parties

1.1 The parties to this Master Service Agreement (hereinafter referred to as "MSA") are firstcolo Datacenters GmbH, Kruppstrasse 105, 60388 Frankfurt am Main (hereinafter referred to as "firstcolo") and the customer (hereinafter jointly referred to as "Parties").

1.2 The customer and contractual partner of firstcolo within the meaning of this MSA can only be entrepreneurs within the meaning of Section 14 of the German Civil Code (BGB), legal entities under public law or special funds under public law.

### 2. Scope of Application

2.1 Any terms and conditions of the customer that deviate from this MSA shall only become part of the contractual agreement if firstcolo confirms this in advance. This shall also apply if firstcolo does not expressly object to any deviating terms and conditions of the customer, even if these are attached to requests for quotations, orders or declarations by the customer.

2.2 This MSA shall also apply to all future orders, contracts and other agreements between the parties, even if they are not expressly agreed again or referred to again, unless the parties agree otherwise in writing.

## B. General contractual basis

### 1. Subject matter of the contract

1.1 The content and scope of the contractual services are regulated in the offer or order form and in the associated service descriptions (or the respective selected service profiles).

1.2 The service descriptions of firstcolo may be subject to ongoing change and adaptation due to new technical developments and advances or possible new legal and/or regulatory requirements. Service descriptions may therefore be adapted by firstcolo to the respective state of development, but only to the extent that the fulfilment of the services agreed in the contract is not unreasonably impaired or rendered impossible and the adaptation is reasonable for the customer, taking all circumstances into account.

1.3 In the event of contradictions between the information in the offer, order form or service descriptions and this MSA, or in the event of deviating written agreements, these provisions shall take precedence over the MSA.

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## 2. Conclusion of contract and orders

2.1     Offers made by firstcolo are non-binding and subject to change. This shall not apply if they expressly contain a binding period and acceptance period.

Unless the parties agree otherwise, the contract or the respective order shall be concluded upon signature of the order form by firstcolo. Confirmation by firstcolo may be provided electronically, e.g. by email or via the ticket system.

## 3. Terms and durations of orders

3.1     The term of the respective order, including the notice periods, is specified in the offer or order form from firstcolo.

3.2     In this context, firstcolo shall specify the actual start date of the respective contractual obligations in the order form (desired date). The reason for this is that firstcolo still needs time to procure the necessary hardware and software, depending on availability (e.g. from the supplier). In addition, in accordance with the contractual agreements in the offer or order form, it may be necessary to set up the customer's IT infrastructure before it can be used by the customer in accordance with the contract. firstcolo will therefore notify the customer separately of the actual start of service (i.e. the date that is decisive for billing and the term of the actual service). The rights and obligations under this MSA that apply independently of this, in particular the basis of cooperation, shall apply beforehand. If firstcolo does not provide such separate notification, the respective order shall commence no later than the date of actual provision (e.g. of access data) by firstcolo to the customer.

3.3     Unless otherwise agreed in the offer or order form, a minimum contract term (within which ordinary termination is excluded) of 36 months applies to the respective services provided by firstcolo, and the notice period for the contractual relationship or the respective service description is six (6) months to the end of the agreed term. In case of doubt, any termination shall only be effective with regard to the respective service description specified at or the respective order. If the respective service description is not terminated or not terminated in due time, it shall be extended for a further thirty-six (36) months in the absence of any agreement to the contrary.

3.4     The right of the parties to terminate the entire contractual relationship for good cause without notice remains unaffected. Good cause shall be deemed to exist in particular in the following cases: if the customer is more than two (2) months in arrears with due payments or if one of the contracting parties, after prior warning, again violates its obligations under the contract.

3.5     All terminations must be made in writing.

## 4. General obligations of the parties

4.1     The contracting parties shall immediately and continuously inform each other of all circumstances within their own business sphere that may have an impact on their cooperation (e.g. departure or replacement of employees who are of great importance to the cooperation between the parties, lack of resources).

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4.2 During the cooperation, the contracting parties shall appoint contact persons who are responsible for the respective defined tasks and roles. The replacement of contact persons and changes to their roles must always be agreed with the other contracting party. Any costs incurred as a result (e.g. for training these employees) shall not be borne by the other party.

4.3 In the event that the parties specify specific obligations to cooperate and these are demonstrably not fulfilled or only insufficiently fulfilled, any additional expenses resulting from this may be claimed on the basis of the agreed hourly rates. The parties must inform each other of this in advance.

## 5. Special provisions for hire purchase

5.1 If specified in the offer or order form from firstcolo, the customer has the option, upon expiry of the agreed rental period, to request the conversion of the rental agreement for the respective contractual components into a purchase agreement in accordance with the following conditions. A separate declaration by the customer is required to exercise this option, provided that the contractual rental relationship between the parties has not been terminated. The customer's option may be exercised at any time, but no later than the end of the respective rental period. Any transfer of ownership to the customer shall always be subject to the condition precedent that ownership of the contractual asset has previously been transferred to firstcolo. The customer must expressly exercise the purchase option specified in the offer or order form within the term and make the final payment specified therein. The details of the purchase price and any instalment payments are specified in the offer or order form.

5.2 After expiry of the agreed rental period, the customer may acquire ownership of the respective components covered by the contract, provided that
   a) they have exercised the purchase option in accordance with Section 5.1 in a timely and explicit manner,
   b) the final payment specified therein has been made, and
   c) ownership has previously been transferred to firstcolo.

5.3 The customer's right to exercise this option is not transferable to third parties.

5.4 With the transfer of ownership, the risk of damage to the property is also transferred to the customer.

5.5 firstcolo shall only provide warranty for material defects and defects of title in such a way that firstcolo assigns all warranty claims against the supplier, in particular claims for subsequent performance, withdrawal, reduction, damages and reimbursement of expenses, to the customer accepting this. Otherwise, Section 14.7 of this MSA shall apply.

## 6. Special obligations of the parties

6.1 All IT infrastructure provided by the customer (e.g. within the scope of the colocation service) must comply with any legal regulations and the technical specifications of firstcolo and must not cause any impairment or danger to other customers and their IT infrastructures.

6.2 firstcolo has the right to enter the data centre area for justified reasons if and to the extent that this is necessary for technical or security reasons.

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6.3   The customer is not permitted to make the rented data centre space available to third parties ("subletting") without the prior consent of firstcolo.

6.4   The customer must insure their IT infrastructure for the duration of their use of the data centre space with liability and operational (electrical) insurance covering at least three million (3,000,000) euros. Insurance policy must be presented to firstcolo upon request. firstcolo reserves the right to demand a higher sum insured from the customer, in particular if the IT infrastructure brought in exceeds the value of three million (3,000,000) euros.

6.5   firstcolo must be notified of the customer's authorised access persons and any changes must be communicated immediately. The customer is obliged to keep the access authorisations received from firstcolo strictly confidential and to protect them from unauthorised access. The customer must inform firstcolo immediately if access authorisations are lost or made available to third parties. The customer is responsible for all damages resulting from the unauthorised transfer or disclosure of these access authorisations.

Upon expiry of the contract, the customer shall, unless otherwise agreed, dismantle and remove their equipment at their own expense within one (1) week and return any items owned by firstcolo and provided to the customer without delay, at the customer's risk and expense. If the parties agree on a longer transition period, the customer shall bear the costs incurred for this period (e.g. for electricity). A return report shall be drawn up and signed by the parties. firstcolo shall also be entitled to discontinue all services upon expiry of the contract without further notice or right of objection on the part of the customer and, in particular, to block access authorisations. firstcolo shall not be liable for any resulting damages such as loss of revenue or data loss.

6.6   firstcolo reserves a line on any equipment brought in by the customer that is located in the data centre area. This does not apply to personal data and data carriers on which personal data is stored.

6.7   If the customer manages, sets up or distributes usage rights for software (licences) on the servers and/or in the hosting environment themselves, they are solely responsible for ensuring correct licensing.

6.8   The customer is obliged to treat the access data (in particular user names and passwords) as confidential and to keep them secret from unauthorised third parties. The customer must take appropriate internal measures to ensure that the access data is not passed on to unauthorised third parties.

6.9   The customer is obliged not to misuse the IT environment and the associated services and/or allow them to be misused, not to post and/or allow data and content to be posted, not to store and/or allow data and content to be stored, and not to make them publicly available or allow them to be made publicly available if they violate or infringe legal regulations, laws or the rights of third parties. firstcolo shall be indemnified against all claims by third parties based on the unlawful use of the customer's IT infrastructure.

6.10  If the customer recognises or should recognise that such a violation is imminent, they are obliged to inform firstcolo immediately. firstcolo will in turn inform the customer about the assertion and/or enforcement of third-party rights and any official measures and, as far as legally possible and permissible, give them the opportunity to remedy or defend against the asserted claim. Firstcolo shall not provide such notification if it is subject to a legal or official obligation that prohibits such notification.

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6.11   If there is sufficient suspicion of a breach of the customer's obligations in the aforementioned paragraphs, firstcolo may, in cases of imminent danger, temporarily block the service concerned and/or secure the data concerned until the matter has been clarified. firstcolo is not obliged to check the customer's content for illegality. In any case, the blocking shall be limited to the allegedly infringing content and services, provided this is technically possible, with reasonable effort and at reasonable cost. The customer must be notified immediately of the blocking, stating the reasons, and requested to remove the allegedly illegal content, to take the necessary security and documentation measures, or to demonstrate and, if necessary, prove the legality of the content. The blocking of the service does not result in the loss of firstcolo's claim to remuneration.

## 7.   Remuneration

7.1   The prices and amount of remuneration for the contractual services are specified in the respective offer or order form. All prices and remuneration are subject to the applicable statutory value added tax.

7.2   Payment claims by firstcolo are due upon receipt of the invoice and must be settled within fourteen (14) days of the invoice date, unless firstcolo specifies a different payment term on the invoice. If the customer does not object to the invoice within 30 days of receipt, stating reasons, objections to the amount of the invoice are excluded.

Fixed fees are invoiced monthly in advance, while usage-based fees are invoiced retrospectively at the beginning of the following month. If a monthly fee is usage-independent (fixed) and only payable for part of a calendar month, this will be charged from the first day of the respective month, unless otherwise agreed.

7.3   All prices and payment obligations incurred by the customer shall be stated by firstcolo in euros. Currency or exchange rate fluctuations and any transaction costs shall not be borne by firstcolo, but shall be borne by the customer. The invoice amount actually credited to firstcolo's account shall be decisive for contractual and complete payment.

## 8.   Price adjustments

8.1   The prices in the service specifications are subject to regular price adjustments, as set out in the offer or order form and in the associated service descriptions (or the selected service specifications).

8.2   Price adjustments shall take effect on 1 January of the following year, but no earlier than twelve (12) months after conclusion of the contract within the meaning of this MSA. The respective reference price is always the price as at 31 December, i.e. the previous year's price.

## 9.   Energy costs

9.1   The prices of the service profiles do not include energy costs; these costs are billed separately to the customer.

9.2   The energy costs to be borne by the customer are calculated on the basis of firstcolo's actual electricity purchase prices and the ancillary costs incurred by firstcolo for air

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conditioning, the provision of an uninterruptible power supply, power losses through cable routes, losses due to transformer conversion, the supply of lighting and the operation of other consumers that are not installed by the customer or at their request, as well as other operating costs. This also includes fees for the grid, concession, metering and statutory levies within the framework of the KWKG (German Heat and Power Act) as well as the electricity tax.

Adjusted purchase prices of firstcolo change directly the fee to be paid by the customer. The calculation of the fee to be paid by the customer is set out in the service certificate and the offer/order form.

9.3 In the event of a technical defect in an energy meter, firstcolo is entitled to bill on the basis of reference measurements using a current clamp if the customer objects to the meter being replaced. In this case, the customer is not entitled to regular updates of the reference measurement. firstcolo will carry this out at its own discretion.

## 10. Third-party providers and third-party IT infrastructure

10.1 Costs for third-party services commissioned or arranged on behalf of the customer (e.g. software licences, procurement of external IT infrastructure) will be shown separately and must be paid separately.

10.2 If firstcolo procures or arranges third-party services on behalf of the customer, firstcolo has no influence on subsequent price changes (e.g. adjustment of licence fees or subscription costs). firstcolo will always inform the customer of price changes by these manufacturers or licensors as early as possible.

10.3 In the event of the transfer or procurement of software licences by firstcolo, the rights of use, including their duration and scope, shall always be granted to the customer in accordance with the terms of use and licence conditions of the respective manufacturer.

firstcolo has the right, but not the obligation, to remove the systems and IT infrastructures provided, operated or monitored by firstcolo or third parties from its support, monitoring and maintenance (to terminate their maintenance) at the latest when the manufacturer discontinues support and maintenance of the respective systems, IT infrastructures or software ("end-of-support"). In this case, firstcolo does not require separate notice of termination, unless the parties agree otherwise in writing.

## 11. Default

In the event of default, firstcolo shall be entitled to statutory default interest.

If the customer is in default of payment and fails to pay within a further payment period of at least two (2) weeks, firstcolo shall be entitled, with reference to these consequences, to withhold or suspend, in whole or in part, the provision of the contractual services owed until full payment has been made. In this case, the customer shall not be released from the obligation to pay.

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firstcolo is entitled to charge a reasonable reminder fee in the event of a reminder initiated by the customer due to unjustified non-payment. In this case, the customer always retains the right to prove that firstcolo has suffered no or only minor damage.

## 12. Dealing with critical security vulnerabilities & zero-day vulnerabilities

12.1 Critical security vulnerabilities, especially those reported by national and international security authorities (e.g. BSI warnings), often pose a serious threat to customers and require an immediate response from firstcolo, which cannot be handled within the framework of formal requests and/or orders due to the time-critical nature of the situation. firstcolo reserves the right to implement warnings and recommendations from security authorities immediately and without prior consultation with the customer in order to protect the customer if such prior consultation would lead to a risk for the customer due to the loss of time and if, otherwise, the security of the customer's data and IT systems and those of firstcolo cannot be guaranteed or cannot be guaranteed comprehensively.

12.2 The customer is advised that the costs of dealing with such security breaches, which become known at short notice, cannot be predicted or calculated. Therefore, these are not covered by the existing remuneration and must be paid for separately by the customer. firstcolo's obligation to keep the customer fully and promptly informed in such cases remains unaffected.

## 13. Change management

13.1 Changes to the contractual services requested by the customer or quantitative deviations and adjustments to the contractually agreed scope of services (CR) must be agreed upon by the parties using the ticket systems provided for this purpose.

13.2 firstcolo has the right to review extensive CR requests and those that require a considerable amount of work and review on the basis of a cost estimate to be prepared in advance and submitted to the customer. firstcolo will always inform the customer of this in advance and, in such cases, will only carry out further work on the CR concept, which is subject to a fee, after the customer has given their approval.

## 14. Warranty

14.1 The limitation period for claims arising from material defects is 12 months. Claims for damages due to material defects, with the exception of claims due to intentional or grossly negligent behaviour and claims due to damage to life, limb and health, shall also become time-barred after 12 months according to. Claims arising from the Product Liability Act remain unaffected by this provision.

14.2 The response times and deadlines for remedying any defects are regulated in the service descriptions (service level).

14.3 The customer's rights in respect of defects are excluded if the customer
   a) makes changes to systems provided, operated or monitored by firstcolo or has changes made by third parties, or
   b) the customer does not implement or does not wish to implement the measures provided or recommended by firstcolo for accessing, maintaining and servicing the

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systems or the IT infrastructure (in particular, but not limited to, the import, installation and implementation of updates, patches, upgrades or security features), or

c)  the systems or IT infrastructure are used by the customer beyond the "end-of-support" period,  contrary to the prior information provided by firstcolo.

14.4   firstcolo's claim to remuneration for the underlying orders or services shall remain unaffected even in the scenarios specified in Section14.2. Additional expenses incurred by firstcolo as a result of the customer's failure to act or measures taken by the customer can be invoiced separately by firstcolo at the agreed hourly rates. However, firstcolo will notify the customer of this in advance.

14.5   The customer's right to indemnify firstcolo from warranty and liability claims on the basis of individual agreements in the cases specified in Section 14.3 remains unaffected. However, this does not result in a special right of termination with regard to the respective service profile in the event of such indemnification for the customer.

14.6   Defects and errors that originate from and are caused by a service provided by a third-party provider (e.g. manufacturer) or initiated or taken over by the customer themselves (e.g. bugs/errors in the application/ errors in the process flow/independent access to IT systems/changes to password management), for which firstcolo is not responsible, or for which firstcolo cannot be held responsible in the absence of a contrary agreement, the following applies:

a)  If the analysis and evaluation of the resulting defects or technical problems requires effort on the part of firstcolo and if

b)  these defects or technical problems of the third-party provider and/or the customer have a direct impact on firstcolo's own contractual services,

firstcolo may invoice the expenses incurred for this on the basis of the agreed terms and conditions. However, this is subject to prior notification to the customer, specifying or estimating the resulting expected expenses. If and to the extent that the third-party provider compensates firstcolo financially for the defects and errors that have occurred, these services or payments shall be credited or taken into account vis-à-vis the customer.

14.7   If and to the extent that the contract concerns the purchase of a used item, this shall be done to the exclusion of any liability for material defects. In this respect, firstcolo shall also not be liable for claims for damages – regardless of the legal basis – unless firstcolo, its legal representatives or vicarious agents have violated their obligations through gross negligence or intent.

## 15.   Maintenance and servicing measures (SLA)

15.1   Malfunctions or technical problems with the services provided by firstcolo and the IT infrastructure within its area of responsibility shall be dealt with within the scope of the applicable service level. Unless the parties have concluded a separate SLA, malfunctions or technical problems shall be dealt with and rectified within a reasonable period of time.

15.2   The customer is obliged to report malfunctions or technical problems as soon as possible and to support firstcolo in remedying them and determining the causes of the errors to a reasonable extent. This includes, in particular, the customer describing any malfunctions that occur in sufficient detail and in a comprehensible manner and forwarding the report to the responsible ticket and support system of firstcolo.

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If, during the review and processing of the fault report, it transpires that the fault or technical problems were not the responsibility of firstcolo, firstcolo is entitled to charge the customer for the costs incurred in reviewing the fault in accordance with its current price list.

15.3    For the maintenance and servicing of systems and work on the IT infrastructure, operational interruptions by firstcolo must be tolerated if these are reasonable and appropriate for the customer. This maintenance work is not relevant to the SLA and is counted as uptime when measuring availability. This does not entitle the customer to compensation or a reduction in the agreed remuneration. The terms and conditions of the applicable service level apply. firstcolo will endeavour to keep any disruption to the customer to a minimum and to always give reasonable advance notice. Irrespective of this, firstcolo retains the option and right to take action at any time, even outside the maintenance window, to remedy acute malfunctions or to avert imminent malfunctions and security risks. Such maintenance work is also not relevant to the SLA.

## 16.    Liability

16.1    The contracting parties shall be liable to each other at all times and without limitation for damage caused intentionally or through gross negligence, in accordance with the Product Liability Act and on the basis of an express guarantee assumed, as well as in the event of injury to life, limb or health. This liability remains unaffected by the following limitations of liability.

16.2    Liability of the contracting parties, their legal representatives and vicarious agents for slight negligence is excluded. This shall not apply in the event of a culpable breach of fundamental contractual obligations, i.e. obligations whose fulfilment is essential for the proper execution of the contractual relationship or whose breach would jeopardise the achievement of the purpose of the contract. In such cases, however, the liability of the contracting parties shall be limited to the amount of damage typical for the contract and foreseeable.

16.3    However, in the absence of any agreement to the contrary, the maximum total amount for simple negligence shall be limited to a maximum of two (2) months' net turnover generated by firstcolo with the customer, based on the month and order in which the damage occurred.

16.4    There shall be no further liability in cases of slight negligence beyond the amount specified in Section16.2. This also applies to lost profits, lost savings or other consequential damages. The above limitations of liability also apply to the personal liability of the employees, representatives and organs of the contracting parties.

16.5    firstcolo's liability in the event of data loss or data recovery is limited in any case to the amount of damage that would have occurred even if the customer had carried out regular and proper data backups (at least half-daily backup copies).

16.6    Insofar as services are procured directly from third-party providers for the customer (e.g. Microsoft® services), the provisions of the third-party provider shall take precedence. These include all agreements – in particular those relating to warranty and liability – which the third-party provider enters into with its customers on the basis of its contractual terms and conditions. firstcolo shall inform the customer of the rights of the third-party provider.

firstcolo shall not be liable if it is unable to fulfil its obligations under this contract due to circumstances beyond its control. In particular, firstcolo cannot guarantee the availability of energy or

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telecommunications services (from third parties) or the (technical) performance of these third parties. This also applies accordingly if firstcolo is unable to perform due to force majeure (e.g. pandemics, natural disasters, wars, including their effects within the country).

## 17.  Security deposit and retention of title

firstcolo has the right to demand that the customer provide security (e.g. in the form of a directly enforceable bank guarantee from a German bank). In this case, the guarantee must cover at least the regularly recurring or expected one-off claims for a period of two months. If the claims change during the current contractual relationship, the contracting parties may demand an adjustment of the security deposit. firstcolo retains ownership of sold items until receipt of the agreed total payment. Until transfer of ownership, the customer is obliged to treat the contractual items properly and with care. However, the customer may not pledge the goods subject to retention of title or assign them as security. In this case, however, the customer hereby assigns to firstcolo all claims arising from such resale, regardless of whether this takes place before or after any processing of the goods delivered under retention of title, in the amount of the invoice value of the claim. firstcolo accepts this assignment. Notwithstanding the authority to collect the claim itself, the customer remains authorised to collect the claim even after the assignment. In this context, firstcolo undertakes not to collect the claim itself as long as and to the extent that the customer meets their payment obligations, no application for the opening of insolvency or similar proceedings has been filed against their assets and there is no suspension of payments. Insofar as the above-mentioned securities exceed the claims to be secured by more than 10%, firstcolo is obliged to release the securities of its own choice upon request.

## 18.  Confidentiality and confidentiality

18.1   The parties undertake to maintain secrecy and treat as confidential all confidential information (including trade secrets) that they learn in connection with this contract and its implementation, and not to disclose, pass on or use it in any other way to third parties.

18.2   The contracting parties shall also impose these obligations on their employees and any third parties they may engage and shall ensure that the contractual services are only made available to employees and third parties to the extent necessary for contractual use.

18.3   Any confidentiality agreements already concluded between the contracting parties shall apply in addition.

## 19.  Data protection and data security

19.1   Each party is responsible for ensuring that its employees and other vicarious agents comply with the relevant legal provisions, in particular those of the EU General Data Protection Regulation and the applicable national data protection laws.

19.2   The contracting parties undertake to take and maintain the necessary technical and organisational measures and security precautions within their organisational sphere to protect personal data from unauthorised use, access, disclosure, alteration or destruction.

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## C. Final provisions

### 1. Reservation of changes, applicable law and place of jurisdiction

1.1 Amendments or additions to the terms of the contract must be made in writing to be effective. The written form is not satisfied by sending an email or using a ticket system. The same applies to any waiver of this written form requirement.

1.2 This contract and the agreements and provisions made under it in the annexes are subject to the law of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.

1.3 If the customer is a merchant within the meaning of the German Commercial Code, a special fund under public law or a legal entity under public law, Frankfurt am Main shall be the exclusive place of jurisdiction for all disputes arising from the contract. The same applies if the customer moves their place of residence abroad after conclusion of the contract or does not have a general place of jurisdiction in Germany.

### 2. Severability clause

Should individual provisions of this MSA prove to be invalid or unenforceable, this shall not affect the validity of the remaining provisions of this MSA.

In such a case, the invalid or ineffective provision shall be replaced by a new provision that corresponds to the intended purpose and shall apply from the beginning of the invalidity.