

Terms of Contract of th data GmbH for the Use of Software Via the Internet (Software as a Service)

1. Services

1.1 The Provider offers the temporary use of standard software applications via an internet connection. The offer usually also includes the temporary provision of storage for the archiving of the customer's datasets in connection with the use of the software. The software shall be made available pursuant to the provisions of these General Terms of Contract for Software as a Service.

The Provider shall make the contractual services, in particular access to the software available within its sphere of control (from the interface of the computing centre with the internet). The scope of service, the properties and condition, the purpose of use, and the conditions for the use of the contractual services is described in the software user manual.

A fault-free use of the software requires the use of a current browser as described in the system requirements in the service specification. Not an object of this contract is the authorisation to use or provide such a browser.

1.2 Any services beyond this, for example, the development of customer-specific solutions or necessary adjustments require a separate contract.

Not an object of this contract is the performance of data backup measures. These can be contracted separately.

The Provider does not offer the provision of a connection to the internet. An internet connection is a prerequisite for the use of the software and the customer receives it as a service from a third-party provider.

1.3 The Provider may make updated versions of the software available. The Provider shall inform the customer electronically about the updated versions and corresponding notes regarding the use and make these available accordingly. Functional expansions, modifications in the use and the system requirements shall also be notified. The customer does not have a right to a certain version being provided.

1.4 A right to a free test/demonstration version does not apply. The Provider may reject/terminate a free test/demo version at any time and without a statement of reasons.

1.5 Contrary, opposing or deviating terms of the customer shall not become part of the contract, unless this is expressly agreed in the written form between the Provider and the customer (Sec. 126 BGB).

2. Scope of use

2.1 The Provider shall grant the customer a simple, non-transferable, non-sublicensable right without regional limitation to use the software on the conditions pursuant to this contract for the duration of the contractual relationship. The contractual services may be used exclusively by the customer. The customer may access the contractual services during the term of the contract by means of telecommunications (via the internet) and use the functionalities associated with the software in accordance with the contract by means of a browser. The customer shall not receive any rights beyond this, in particular not to the software or the provided infrastructure services, if any, in the respective computing centre. Any further use may require the prior written agreement from the Provider.

2.2 The customer may in particular not use the software beyond the agreed scope of use or permit third parties to use it or make it accessible to third parties. The customer is prohibited from reproducing the software, selling or transferring the use of the software for a limited time or lease or loan it.

2.3 The Provider is permitted to take appropriate technical measures to protect against any use not in accordance with the contract. This must not affect the use of the services in accordance with the contract more than to a merely insignificant extent.

2.4 In the event a user exceeds the scope of use contrary to the contract or in the event of an unauthorised transfer for use, the customer shall inform the Provider of all details available to it, immediately on the Provider's request, for the purpose of bringing claims based on the use contrary to the contract and, in particular, it shall disclose the name and address of the user.

2.5 The Provider may revoke the customer's access authorisation and/or terminate the contract if the customer exceeds the use permitted to it to a significant extent or if it violates rules on the protection against unauthorised use. In relation to this, the Provider may interrupt or block the access to the contractual services. The Provider shall generally set an appropriate grace period for the customer to remedy the situation. Solely the revocation of the access authorisation shall not be regarded as a termination of the contract at the same time. The revocation of the access authorisation without termination can be upheld by the Provider only for an appropriate period of at most 3 months.

2.6 The Provider can revoke the customer's access authorisation and/or terminate the contract if the customer comes to be in arrears with its payment obligations. In relation to this, the Provider may interrupt or block the access to the contractual services. The Provider shall generally set an appropriate grace period for the customer to pay the unsettled amounts. Solely the revocation of the access authorisation shall not be regarded as a termination of the contract at the same time. The revocation of the access authorisation without termination can be upheld by the Provider only for an appropriate period of at most 3 months.

2.7 The customer has a right to have its access authorisation with access possibility be restored, after proving that it has stopped the use contrary to the contract and a future use contrary to the contract is prevented, or after it has fulfilled its payment obligations.

3. Availability, service defects

3.1 The availability of the provided services is defined in the application documentation (manual). The Provider works toward offering a fault-free operation of the software at all times during the agreed term of the contract. This is naturally limited to services that are within the control of the Provider. The customer acknowledges, however, that a complete and uninterrupted availability of the software is technically not realisable. It is therefore up to the Provider to limit the access to the software temporarily or permanently, in full or in part for reason of maintenance work, capacity concerns or due to other incidents outside of its sphere of control. The Provider does not accept any responsibility for the functionality of the connection to the server resources covered by the contract or in the event of power outages, where this is outside of the Provider's sphere of control.

3.2 In the event of a merely insignificant reduction of the usability of the services for the use in accordance with the contract, the customer shall not be entitled to any claims relating to defects. The Provider's liability independent of fault for any defects pre-existing at the time when the contract was concluded, is excluded.

4. Customer's duties

4.1 The customer shall protect the access credentials, as well as the identification and authentication information attributed to it or to the users from coming into the possession of any third parties and not pass this information on to unauthorised parties. If the customer finds indications of misuse, it shall inform the Provider of this without delay.

The customer shall ensure that the users authorised for access fulfil the obligations under these terms of contract.

4.2 The customer is obligated to indemnify the Provider from all claims of third parties based on rights infringements in result of any illegal use of the object of service. If the customer detects or has to be able to detect that such an infringement is impending, it is obligated to immediately inform the Provider thereof.

4.3 The customer shall use the possibilities made available by the Provider to back up its data in its original sphere of responsibility.

4.4 The customer shall refrain from any activity, which is suitable to compromise and/or cause excessive load in the operation of the contractual software application or its supporting technical infrastructure.

4.5 The Provider is entitled to take technical measures to prevent any use that goes beyond the permissible scope of use. The customer must not use any means by which such technical measures are to be overcome.

4.6 If interferences should occur in the use of the software, the customer shall immediately inform the Provider thereof. The same applies if the customer discovers any use by authorised users in violation of applicable law or rights of third parties or if it discovers any use contrary to these terms of contract.

4.7 The customer undertakes not to use any datasets in the context of the use of the software in violation of applicable law or rights of third parties. It warrants in particular that it holds any potentially required licenses for such use.

5. Scope of use contrary to the contract, damage compensation

For each case in which a contractual service is used without authorisation within the customer's sphere of responsibility, which goes beyond the agreed scope of use, the customer shall pay damage compensation, respectively in the amount of the remuneration, which would have been incurred for the use in accordance with the contract within the term of the minimum contract period applicable to this service. The right to prove that the customer has no fault for the unauthorised use or that no or a significantly lesser damage is present remains reserved for the customer. The Provider retains the right to claim further damage.

6. Rights to use the datasets

The customer grants the Provider a simple right without regional limitation to store and reproduce the customer's datasets for the duration of the contractual relationship, insofar as this is required for the performance of the services owed pursuant to these Terms of Contract. The Provider is furthermore authorised to make changes to the structure or format of the customer's datasets to correct faults.

7. Incident management

7.1 The Provider shall accept fault reports from the customer, attribute them to the agreed fault categories (Section 7.3) and conduct the agreed measures for the analysis for the correction of the faults based on this attribution.

A fault is present when the software does not enable the functionalities described in the application documentation.

7.2 The Provider shall accept fault reports from the customer during its regular business hours (Mondays to Fridays except public holidays) from 9 a.m. to 6 p.m CET. On request by the customer, the Provider shall confirm to the customer that it has received the fault report.

7.3 Unless agreed otherwise, the Provider shall attribute received fault reports upon a first screening and according to its equitable discretion to one of the following categories, in appropriate consideration of the effects the relevant fault has on the use of the contractual services:

a) Major fault

The fault is based on an error in the contractual services, which makes the use of the contractual services, in particular of the software, impossible or which allows use only with severe restrictions. The customer cannot work around this problem in any reasonable way and it is therefore prevented from executing its tasks, which cannot be delayed.

b) Miscellaneous fault

The fault is based on a defect in the contractual services, with the effect of restricting the customer's use of the contractual services, especially of the software, to a more than merely insignificant extent without a major fault being present.

c) Miscellaneous report

Fault reports, which do not fall within the categories of a) and b) will be attributed to miscellaneous reports. Miscellaneous messages will be treated by the Provider only in accordance with the agreements made in this regard.

7.4 In the event of reports of major faults and miscellaneous faults, the Provider shall immediately initiate measures based on the circumstances reported by the customer to initially localise the cause of the fault.

If the reported fault turns out to be not a defect in the contractual services upon an initial analysis, in particular not of the provided software, the Provider shall inform the customer of this without delay.

Otherwise, the Provider shall initiate accordant measures for the further analysis and correction of the reported fault or – in the case of third-party software – forward the fault report together with its analysis results to the seller or manufacturer of the third-party software with the request for correction. The Provider shall make measures that are at its disposal as workarounds or bug fixes for the fault in the contractual services, in particular the provided software, available to the customer, for example, as instructions or corrections of the provided software. The customer shall adopt such measures for bypassing or fixing failures immediately and report any faults remaining after their application again to the Provider without delay.

8. Point of contact (hotline)

8.1 Contractual services

The Provider shall set up a hotline for the customer. This hotline shall process the customer's requests relating to the technical requirements and conditions for the use of the provided software, and requests relating to individual functional aspects. The hotline shall not serve as software user support.

Training in the application by users can be requested from the Provider and it will generally be provided only against separately agreed remuneration.

8.2 Acceptance and processing of requests

The condition for the acceptance and processing of requests is that the customer appoints personnel, who are appropriately qualified operationally and technically and assigned internally at the customer's company with the processing of requests from the users of the provided software. The customer is obligated to direct queries about this to the hotline solely through the personnel named to the Provider. The hotline will accept such queries by email and telephone during the Provider's regular business hours.

The hotline will process regular queries and answer them where possible in the ordinary course of business. For the answer, the hotline may refer to documentation accessible to the user and other training material for the provided software. If a request cannot be answered by the hotline or not immediately, the Provider shall forward the query for processing in particular for queries relating to software not manufactured by it.

Further services of the hotline, for example, other contact times and deadlines, as well as on-call duty or services by the Provider at the customer's site shall be expressly agreed in advance.

9. Term and termination of the contract

9.1 The contractually agreed services shall be performed as of the date indicated in the contract, initially for the duration of the term agreed in the order. During this minimum term, a premature ordinary termination by either of the Parties shall be excluded.

9.2 The contract can be terminated with a notice period of three months, whereas at the earliest toward the end of the minimum term. If this notice is not given, the contract shall extend by one more year, respectively, unless it is terminated ordinarily in writing toward the end of the respective extension period.

9.3 The right of each Party to extraordinary termination for good cause remains unaffected.

9.4 Any termination requires the written form for validity.

9.5 The customer shall back up its datasets under its own responsibility and on time before the termination of the contract (for example, by downloading). The Provider may help the customer with this on the customer's request and against remuneration to be agreed separately. On termination of the contract, the Provider shall delete all of the customer's datasets. The Provider shall be authorised to delete and back up the datasets based on legal or regulatory requirements and to block them in other respects. The same applies in case of any legal disputes between the Parties arising from this contractual relationship, if this serves for the securing of evidence and is required for this purpose. The customer shall have no right to access the blocked datasets.

10. Applicability of the General Terms of Contract of th data GmbH

In addition, the General Terms of Contract of th data GmbH apply.