Special Terms and Conditions of Contract (T&C) - Cloud Services / Leasing of Standard Software

to the General Terms and Conditions of EnBITCon GmbH Status: 25

October 2021

1 Scope

These Special Terms and Conditions of Contract (hereinafter **"T&C"**) shall apply to all contracts of EnBITCon GmbH for the provision of cloud services and the leasing of standard software. In addition, the General Terms and Conditions (**"GTC"**) of EnBITCon GmbH shall apply. These BVB as well as the GTC are each available online at https://www.enbitcon.de/rechtliche-informationen/agb/. In the event of any contradictions, these GTC shall take precedence over the GTC.

2 Scope of services

2.1 EnBITCon shall provide the following services to the customer during the term of the contract:

2.1.1 Provision of own data centre capacity and/or cloud services from third-party providers (hereinafter collectively **"Cloud Services"**) for the purpose of in-house operation by the Customer;

2.1.2 Transfer of standard software for the purpose of own operation by the customer.

2.2 The functionality of the cloud services and/or standard software in detail as well as any supplementary services provided by EnBITCon are described in more detail in the offer. The installation and commissioning of the cloud services and/or standard software shall be the responsibility of the customer, unless otherwise stipulated in the offer.

2.3 The customer has no right of withdrawal after conclusion of the contract.

3 Reservation of self-delivery

3.1 Insofar as EnBITCon procures cloud services / standard software from third party suppliers, EnBITCon's obligation to perform shall be subject to timely and correct self-supply. If in these cases there are performance deficiencies on the part of the third party provider (e.g. limitations of availability), EnBITCon shall not be liable for any damages incurred by the customer as a result thereof.

3.2 Impediments to performance for which EnBITCon is not responsible shall lead to a corresponding extension of the performance period. This shall apply in particular to lack or absence of self-supply (see clause 3.1), force majeure, war, natural disasters, traffic or operational disruptions, power failures, disruptions of network access, impeded import, shortage of energy and raw materials, official measures and labour disputes as well as the breach of duties or obligations of the customer to cooperate. EnBITCon shall be entitled to withdraw from the contract if the impediment to performance continues for an unknown period of time and the purpose of the contract is endangered. If the impediment lasts longer than two (2) months, the customer shall be entitled to withdraw from the contract with regard to the part not yet fulfilled, unless the customer is entitled to withdraw from the contract as a whole.

3.3 An extension of the performance period shall also occur as long as the parties negotiate a change in the performance or EnBITCon submits a supplementary offer after assumptions in the offer that have become part of the contract turn out to be incorrect.

3.4 EnBITCon's compliance with its performance obligation shall be conditional upon the timely and proper fulfilment of the customer's obligations.

4 Provision of cloud services

4.1 Unless otherwise agreed in the offer, EnBITCon shall only provide the respective infrastructures and the Internet access thereto within the scope of the Cloud Services. The connection of the customer to the

Internet, the maintenance of the network connection as well as the quality and provision of the hardware and software required on the part of the customer is not part of the contract.

4.2 EnBITCon may provide cloud services in the form of its own data centres / infrastructures or via data centres / infrastructures of third-party providers. Unless otherwise agreed in the offer, EnBITCon shall not be subject to any restrictions regarding third-party providers and/or regions when selecting the data centre/infrastructure.

4.3 Insofar as EnBITCon provides the customer with fixed IP addresses, EnBITCon reserves the right to reassign them if this is necessary for technical or legal reasons.

5 Leasing of standard software

5.1 Unless expressly agreed otherwise, software provided by EnBITCon shall be standard software that has not been individually produced for the needs of the customer. Contracts for the temporary provision of software are therefore rental contracts. The parties agree that it is impossible, given the state of the art, to develop standard software error-free for all application conditions.

5.2 In the case of standard software from third-party manufacturers, EnBITCon shall supply the customer with the original user documentation of the manufacturer. EnBITCon shall not be obliged to deliver any additional documentation. Upon request, the customer shall be given access to the original user documentation to be delivered prior to the conclusion of the contract. Apart from that, the documentation shall be delivered as online help within the scope of the software. If the customer wishes further written documentation, he may inform EnBITCon prior to the conclusion of the contract. EnBITCon shall then provide him with an offer for such documentation.

5.3 EnBITCon shall provide the object code of the standard software. There shall be no claim to surrender or disclosure of the source code.

5.4 If EnBITCon is obliged to install software, the customer shall ensure that the requirements communicated to it regarding hardware and the other environment, in particular the connection to the network including all cabling, are met prior to installation.

5.5 The installation of suitable computer workstations, in particular the compliance with occupational health and safety regulations, is neither owed nor checked by EnBITCon, but is the responsibility of the customer.

5.6 During test operations and during installation, the customer will ensure the presence of competent and trained staff and stop other work with the computer equipment if necessary. He will ensure backup of his data from each installation.

6 Cloud Services: Support / Service Level Agreement

6.1 EnBITCon shall provide support for the Cloud Services. Unless otherwise agreed in the offer, the service commitments pursuant to this clause shall apply.

6.2 Availability regulations

6.2.1 Downtime means the total time in hours in a year during which the Cloud Services are unable to respond to interaction requests from Customers and/or Users, excluding downtime that occurs due to the causes specified in Clause 3.2. Availability determines the percentage of a year in which the provided service runs without unplanned disruption. The year is a period of 365 calendar days or 8,760 hours during which the Cloud Services are provided. The year begins on the day the Cloud Services are provided and ends 365 days later. Availability per year in percent is calculated as:

(8,760 hours - downtime) / 8,760 hours.

6.2.2 The cloud services are provided with an availability of at least 99% on an annual average.

6.2.3 Downtime shall be excluded from the calculation of downtime under clause 6.2.1 in the following circumstances:

- Scheduled maintenance and announced downtime, including backup intervals as well as EnBITCon's / the third party provider performed scheduled maintenance and announced downtime;

- Misuse of access rights by the customer and/or the user or other use of the Cloud Service in violation of the contractual terms and conditions for the Cloud Service;

- Other problems beyond EnBITCon's reasonable control, including: work on the system at the customer's request, restoring a current database status from a backup medium or using database transaction logs, failure by the customer to comply with the technical requirements for use.

6.3 Helpdesk / Support hours

6.3.1 EnBITCon shall set up a helpdesk for the support of the Cloud Service within the support hours, which shall be staffed with professionally qualified and experienced personnel. Only if expressly agreed, a telephone on-call service shall be available outside the support hours. Support times and media are agreed in the offer and/or in the price list of EnBITCon.

6.3.2 Outside the support hours, the customer can only report errors via a telephone on-call service if this is contractually agreed. If error reports are initiated outside the support hours via e-mail or other telephone numbers, these shall only be deemed to have been made at the beginning of the following supervised support hours.

6.4 Interference suppression

6.4.1 Faults are assigned to the following fault classes:

- Fault class 1 comprises serious faults which prevent or unreasonably restrict the appropriate, economically reasonable use of essential parts of the service ("everything is in place, nothing works"). This presupposes that the customer / user is not capable of working.

- Error class 2 comprises functional interruptions which severely restrict the application of essential parts of the service for an economically reasonable use. This requires that the customer / user is restricted in his work.

- Failure class 3 includes limitations of the functional capability, so that the services can be used in an economically reasonable way, with exceptions.

- Failure class 4 includes weaknesses in the performance which do not restrict use. The impairment is so slight that the services can essentially be used until further notice and the work results are usable.

6.4.2 Each error message shall be assigned to an error class by EnBITCon at its reasonable discretion. A suggestion of the customer shall be taken into account. If EnBITCon does not deviate from the customer's suggestion by more than one defect class, the classification shall be deemed to be consensual. The customer shall be responsible for proving the lower classification.

6.4.3 The later reclassification of a defect report to another defect class is only possible by mutual agreement.

6.4.4 In the event of an error, EnBITCon shall respond to the customer's error message within the support times within the agreed response time. Unless expressly agreed otherwise, the response time for error messages of error class 1 shall be a period of four (4) hours, for error class 2 a period of eight (8) hours, for error class 3 a period of one week and for error class 4 a period of two weeks. The periods according to this clause are suspended outside the agreed support times, i.e. they only run within the support times.

6.4.5 A successful elimination of the functional impairment within the response times is not owed.

6.4.6 The decisive factor for the initiation of the response times is the receipt of a qualified error message from the customer by the helpdesk via the agreed contact channels.

6.4.7 An error message is only to be assessed as qualified if the described error is reproducible, i.e. the operating situation and the working environment are described so precisely that a qualified EnBITCon employee can trigger the error himself at any time.

6.4.8 Each error message should also contain as precise a description as possible of the functional impairment and the time at which it was first detected. If the error only occurs at individual workplaces, these are to be designated.

6.4.9 If the customer has made a change to his own system before the error occurred, this must also be reported.

6.4.10 In the case of serious errors of error classes 1 and 2, EnBITCon shall begin to limit the consequences of the error immediately following the initial reaction and shall continue its activities outside the support time. As long as the error has not been eliminated, the service shall be deemed to be unavailable, unless it turns out that the customer is responsible for the error or that it should have been assigned to error class 3 or 4. Errors of error classes 3 and 4 shall not be deemed to be non-availability of the Service.

6.5 Dealing with non-compliance with service levels

Insofar as EnBITCon complies with service levels or only in individual cases, i.e. does not repeatedly / persistently violate service levels, claims of the customer shall be excluded. In the event that service levels are not complied with, the parties shall establish the following procedure:

6.5.1 EnBITCon notifies the customer, or the customer asks EnBITCon to analyse the service level data.

6.5.2 EnBITCon immediately determines the (possible) cause of the malfunction (if known) in order to maintain the service level.

6.5.3 Unless pursuit of the failure is waived, EnBITCon shall develop a corrective action plan, submit it to the Customer for written confirmation (which shall not be unreasonably withheld or delayed) and implement it within a reasonable period of time (and in accordance with the agreed deadlines) after confirmation has been given.

6.5.4 EnBITCon has not violated any Service Levels to the extent that the root cause analysis (properly performed by EnBITCon) shows that the non-compliance with the respective Service Level was caused by the customer.

7 Special obligations of the customer

7.1 Insofar as operation of the services on the customer's systems ("**own operation**") exists or has been agreed, the provision of the services is linked to certain requirements with regard to the technical infrastructure used at the customer. The customer shall inform himself about the essential functional features of the services and their technical requirements and observe them. He shall bear the risk as to whether the services correspond to his wishes and circumstances.

7.2 Insofar as in-house operation by the customer exists or has been agreed, the customer shall provide for the customer's working environment for the services (hereinafter "**IT systems**") in accordance with EnBITCon's specifications. It shall be the customer's responsibility to ensure the proper operation of the necessary IT systems, if necessary by means of maintenance contracts with third parties. The customer shall in particular observe EnBITCon's specifications in this respect. The customer shall grant EnBITCon direct access to the standard software installed at the customer's premises and to the other IT systems to be installed at the customer's premises by means of remote data transmission.

systems in charge as well as to the IT systems and provides all existing documents (e.g. log files) that enable EnBITCon to trace and reproduce malfunctions and errors.

7.3 Technical requirements and specifications pursuant to clauses 7.1 and 7.2 may change from time to time, in particular in connection with updates of the standard software. EnBITCon shall make the current requirements and specifications of the respective manufacturers available to the customer in a suitable form in a timely manner after the corresponding information has been provided by the manufacturers. The customer shall implement current requirements and specifications without delay, unless this is unreasonable for the customer, taking into account the interests of the parties.

7.4 Insofar as in-house operation by the customer exists or is agreed, the customer shall bear sole responsibility for the definition, documentation and execution of its processes in the area of application of the standard software, in particular with regard to the configuration of the standard software and IT systems, system administration, application and data security guidelines and other statutory requirements.

7.5 The customer shall protect the usage and access authorisations for the cloud services / standard software assigned to him or the users as well as identification and authentication safeguards from access by third parties and shall not pass them on to unauthorised users. He shall change passwords at regular intervals and secure accesses by multi-factor authentication as far as possible. The aforementioned obligations shall also be fulfilled if the customer receives a password which serves to identify him to EnBITCon when making declarations concerning the contractual relationship. Persons who use the customer's password when submitting such a declaration shall be deemed to have been authorised by the customer for the submission of the respective declaration in a refutable manner vis-à-vis EnBITCon. If, due to the customer's fault, third parties use EnBITCon's services by misusing the passwords, the customer shall be liable to EnBITCon.

7.6 The customer shall indemnify EnBITCon upon first request against all claims of third parties which are based on an unlawful use of the Cloud Services / Standard Software by the customer or which are made with the customer's approval or which arise, in particular, from data protection law, copyright law or other legal disputes connected with the use of the Standard Software. If the customer recognises or must recognise that such a breach is imminent, EnBITCon shall be obliged to be informed immediately;

7.7 The customer shall oblige the users authorised by it to comply for their part with the provisions listed for the use of the standard software, in particular Sections 7.5 and 7.6.

7.8 To the extent necessary and reasonable, the customer shall cooperate in any changes, e.g. by re-entering access data or simple conversions of its systems.

7.9 The customer shall avoid excessive load on the Cloud Services, e.g. through scripts / commands that require an excessively high computing power or take up an above-average amount of RAM. EnBITCon shall be entitled to block access to content that does not meet the above requirements. EnBITCon shall immediately inform the customer of such a measure and shall make the contents concerned accessible again as soon as the customer proves to EnBITCon that they have been redesigned in such a way that they meet the above requirements.

7.10 The customer shall make use of EnBITCon's services only to the extent required for proper business operations. The customer shall avoid excessive use of EnBITCon's services and capacities in order not to impair EnBITCon's IT systems and to ensure the security of EnBITCon's network.

7.11 If a customer endangers the security, integrity or availability of our networks, servers, software or cloud services or if such suspicion arises at EnBITCon on the basis of objective indications that serious disruptions of the network, software or stored cloud services will occur, EnBITCon may temporarily block or restrict the same. The times of blocking or restriction shall be excluded from the calculation of downtime. This regulation shall also apply to so-called "Denial of
Service" attacks (hereinafter "**DoS attacks**") carried out by the Customer via Cloud Services. The same

applies if the threat arises via the customer's system without the customer being responsible for this. It is clarified that this regulation also applies to DoS attacks for which the customer's server is used by third parties.

7.12 If the customer sends spam mails via EnBITCon's cloud services, EnBITCon may block the service.

8 Rights of use to cloud services / standard software

8.1 The scope of the rights of use granted to the customer for the cloud services / standard software is determined by the relevant terms of use and licensing conditions of the third-party provider. These are described in more detail or referenced in the offer. The customer undertakes to comply with the terms of use and licence conditions. If no terms of use and licence conditions for the cloud services / standard software are attached to the offer, EnBITCon shall grant the customer and the employees intended by the customer for the use of the cloud services / standard software (**"users"**), upon payment of the agreed prices, the simple, non-sublicensable, non-transferable licence, which is revocable at any time, The customer grants the customer the right, limited in terms of content to the term of the agreement and in accordance with the following provisions, to use the respective current version of the cloud services / standard software and the functionalities associated with the cloud services / standard software in accordance with this agreement, unless otherwise agreed in the offer. The customer shall not receive any further rights, in particular to the Cloud Services / standard software.

8.2 If the customer is granted the right to use the Cloud Services / standard software for testing purposes, his rights of use shall be limited to such actions which serve to determine the condition of the Cloud Services / standard software and its suitability for operation by the customer. In particular, productive operation of the cloud services / standard software or preparation for productive operation is not permitted.

9 Prices and terms of payment

9.1 EnBITCon shall always invoice its services in advance according to the billing period selected by the customer. Invoices shall be due for payment immediately after their issue. Unless otherwise agreed, the customer authorises EnBITCon to collect the payments to be made by him from an account to be named by the customer.

9.2 In addition to the agreed prices for the respective services, EnBITCon may charge additional fees for additional services (e.g. for additional data transfer / storage space) in accordance with the respective contract. Unless otherwise agreed, the use and billing of the additional services shall always be based on the price list valid at the time of use.

9.3 The customer shall be granted encrypted and password-protected access to the customer centre and service-specific administration consoles for the setup of the services. If services are added by the customer beyond the existing contract, EnBITCon shall be entitled to invoice them at the agreed prices.

9.4 If the customer selects an additional service in the course of a billing period, this will be charged immediately. If a higher-value service is selected instead of the previous service ("upgrade"), the prices already paid will be charged proportionately.

9.5 Section 3.9 of the GTC shall apply to default of payment by the customer. If the customer makes up the payment within two months after the due date, EnBITCon shall immediately grant him access again.

9.6 EnBITCon may increase the monthly prices for recurring services in continuing obligations without the consent of the customer at its reasonable discretion by up to 10% per year at the earliest, but not before four (4) months after the beginning of the term of the contract. The price increase for partial services is only possible if these have already been agreed for at least four (4) months.

were. The price increase shall only be made to cover increased costs. The customer shall be responsible for proving that the price increase made by EnBITCon was not made for this purpose.

9.7 If the customer is a consumer, he may terminate the current contract within two (2) weeks after receipt of the written price increase notification with a notice period of three months to the end of the month in the event of a price increase pursuant to clause 9.6. In this case, the previous fee shall be charged until the end of the contract and the increase shall therefore not take effect. However, the customer's consent is deemed to have been given if the customer does not give notice of termination within this period. This assumes that we have pointed out the consequences to the customer with the notice of change.

10 Warranty for material defects

10.1 In the event of defects in the Cloud Services / Standard Software, EnBITCon shall ensure the contractual use by updating the Cloud Services / Standard Software as soon as and insofar as EnBITCon is able to do so. The production of the contractual use shall also be deemed to be a reasonable possibility of circumventing errors in relation to the Cloud Services / Standard Software (**"workaround"**) made available to the customer by EnBITCon, insofar as an insignificant error remains after taking the workaround into account.

10.2 The customer's claims for defects shall become statute-barred twelve (12) months after the statutory commencement of the limitation period. This period shall not apply if longer periods are prescribed by law. Legally required notifications of defects by the customer must be made immediately in writing with a precise description of the problem. Only the contact person (clause 2.2 of the GTC) is authorised to give notice of defects.

10.3 The customer shall have no right of retention if its claims for defects are time-barred. If the notification of defects is unjustified, EnBITCon shall be entitled to claim compensation from the customer for the expenses incurred by it. The support provided by EnBITCon shall be remunerated by the customer at the prices agreed with EnBITCon or, in the absence of an agreement, at the prices customary in the market.

10.4 Claims for defects on the part of the customer do not exist in the case of only insignificant deviation from the agreed quality, in the case of only insignificant impairment of usability or in the case of damage arising as a result of faulty or negligent handling or in the course of the breach of obligations to cooperate.

11 Warranty for defects of title

11.1 EnBITCon warrants that the cloud services / standard software provided do not infringe any third-party rights when used by the customer in accordance with the contract. This warranty requires that the customer immediately notifies EnBITCon in writing of any third party rights asserted against him and leaves the legal defence and settlement negotiations to EnBITCon. The customer shall support EnBITCon free of charge to a reasonable extent, in particular by providing EnBITCon with the necessary information. Legal obligations of the customer to give notice of defects shall remain unaffected. Rights in this sense are only those to which the third party is entitled in the Federal Republic of Germany as well as in the states in which the customer uses the provided hardware and standard software as intended.

11.2 If the customer cannot use the provided Cloud Services / standard software in accordance with the contract due to a conflicting right of a third party, EnBITCon may, at its own discretion, either (a) modify the services in such a way that the right of the third party is no longer violated, or (b) procure the required authority for the customer to use the services. Self-performance by the customer or by involving third parties shall be excluded. Clause 4 of the GTC shall apply to claims for damages by the customer.

11.3 The customer shall have no claims based on defects of title if the Cloud Services / standard software provided have been modified by the customer or third parties after acceptance, unless the customer proves that the infringement of rights is not a consequence of the modifications. Claims of the customer shall also not exist in the event of infringements of rights as a result of a combination of the Cloud Services / standard software with such services or products of third parties who are not subcontractors of EnBITCon in this respect.

If the notification of defects is unjustified, EnBITCon shall be entitled to demand reimbursement of the expenses incurred by EnBITCon from the customer. The support provided by EnBITCon shall be remunerated by the customer at the prices agreed with EnBITCon or, in the absence of an agreement, at the prices customary in the market.

12 Responsibility for content / labelling / personal data

12.1 EnBITCon is not obliged to check the data stored by the customer on systems made available to it for infringements of the law. The customer shall bear full responsibility for all content processed within the framework of the Cloud Service. The customer guarantees not to process and store any illegal content, in particular not to deposit or use any copyrighted works on EnBITCon's servers without the consent of the copyright holder, nor any content that violates criminal provisions.

12.2 If the customer notices illegal content, he is obliged to block it immediately and to notify EnBITCon.

12.3 EnBITCon shall be entitled to block potentially illegal content on the Cloud Services used by the customer at its own discretion and to inform the customer about the blocking. If the customer does not comply with its obligation to delete the content within ten (10) days or if it proves to EnBITCon within this period that the content does not violate protective laws, EnBITCon shall be entitled to delete it without the customer's consent.

12.4 If the customer processes personal data of third parties within the scope of this contractual relationship, the customer itself shall be responsible for compliance with data protection regulations. EnBITCon shall process the data processed by the customer within the framework of the cloud data only within the framework of the customer's instructions on the customer's behalf.

13 Data security

Insofar as EnBITCon provides cloud services in the form of its own infrastructures, the following data security regulations shall apply:

13.1 The data stored on EnBITCon systems is backed up daily. The backups are stored redundantly on different computers. Backup copies of the last 14 days are kept. These backups are to be understood as system backups and are not used for versioning customer data. In particular, it is not possible to perform a targeted restore for a customer to a specific data stock in the past.

13.2 The customer shall therefore ensure that all data, in particular those stored on EnBITCon's servers, are backed up at least once a day by means of copies on the customer's own systems, as these may be lost, for example, during training, repair, installation and other interventions. Data backup on EnBITCon's servers is not sufficient to fulfil this obligation.

13.3 Upon the customer's request, EnBITCon shall return a copy of the data stored by the customer on the storage space allocated to him at any time during the term of the contract, but no later than upon termination of the contractual relationship. The data shall be handed over by download in the data format in which the data are stored on EnBITCon's data server, or, in deviation therefrom, in a data format agreed upon between EnBITCon and the customer.

13.4 After termination of the contract - for whatever reason - EnBITCon will store the stored data in the interest of the customer for another one (1) month (**"grace period"**), so that the customer has the possibility to transfer the data to another system. After expiration of this grace period the data will be deleted automatically. EnBITCon shall specifically point this out upon termination of the contract.

13.5 EnBITCon expressly points out to the customer that confidentiality cannot be comprehensively guaranteed for data transmissions in open networks such as the Internet according to the current state of the art. The customer is aware that EnBITCon has access to the contents of the Cloud Services and, under certain circumstances, to further data.

could view data stored there at any time. However, EnBITCon undertakes to do so only if the customer requests EnBITCon to do so in writing and if this is necessary to ensure the technical functioning of the Cloud Services. Data protection regulations shall be observed by EnBITCon in any case. However, as far as other users of the internet may be technically able to interfere with the network security without authorisation, to access customer data and to control message traffic, this shall be beyond EnBITCon's responsibility.

13.6 The customer is fully responsible for the security of the data transmitted to the internet and stored at EnBITCon. For an additional charge, which has to be agreed individually, EnBITCon can provide secured connections.

14 Term and termination

14.1 Unless otherwise agreed, EnBITCon shall provide the agreed services for an initial minimum contract period of 24 months from the date of provision. A termination by both contracting parties is possible with a notice period of three (3) months to the end of the minimum contract term. If no notice of termination is given within this period, the contract term shall be extended by a further year in each case.

14.2 Beyond the notice periods agreed in the offer, the customer has no right of revocation or ordinary termination, in particular not during the minimum contract period.