



General Terms and Conditions of Contract for the Use of Software over the Internet (Software as a Service)

SaaS BITKOM

ConSense GmbH
Kackertstraße 11
D-52072 Aachen

Tel.: +49 (0)241 / 990 93 93 – 0
Fax: +49 (0)241 / 990 93 93 - 99
E-Mail: info@consense-gmbh.de

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1. Services

- 1.1** The provider shall render the contracted services, particularly access to the software, in its area of responsibility (from the data center interface to the Internet). The scope of performance, nature, purpose and conditions of use of the contracted services arise from the respective statement of work, supplemented by the operating instructions for the software.
- 1.2** Additional services, such as the development of customized solutions or necessary modifications, require a separate contract.
- 1.3** The provider may prepare updated versions of the software.

The provider shall inform the customer of updated versions and corresponding usage instructions through electronic means and make them available accordingly.

2. Scope of use

- 2.1** The contracted services may be used only by the customer and only for the purposes stipulated in the contract. During the term of the contract, the customer may access the contracted services through telecommunication (over the Internet) and use, as contracted, the functionalities associated with the software by means of a browser or other appropriate application (e.g. "app"). The customer does not receive additional rights, particularly in the software or any infrastructure services provided in the respective data center. Any further use requires the prior written consent of the provider.
- 2.2** The customer may, in particular, not use the software beyond the agreed scope of use or allow it to be used by or be made accessible to third parties. In particular, the customer is not permitted to copy or sell software or parts thereof, or to loan, lease or lend such for a specific term.
- 2.3** The provider is entitled to undertake appropriate technical measures to protect against non-contracted use. The contracted use of the services may not be more than merely nominally compromised through this.
- 2.4** If a user should exceed the contracted scope of use or permit unauthorized use, the customer shall, upon request, immediately communicate to the provider all information available to the customer for asserting claims due to the use in breach of contract, especially the name and address of the user.
- 2.5** The provider may revoke the customer's access rights and/or terminate the contract if the customer materially exceeds the customer's allowed usage or violates rules that protect against unauthorized use. Associated with this, the provider may suspend or block access to the contractual services. Before that, the provider shall, in principle, set a reasonable deadline for the customer to undertake remedial action. Revocation of the access authorization alone is not at the same time tantamount to termination of the contract. The provider may sustain the revocation of the access authorization without termination only for a reasonable time lasting no more than three months.
- 2.6** The right of the provider to be compensated for usage in excess of the agreed usage remains unaffected.
- 2.7** The customer has a right to have the authorization and opportunity for access restored after the customer has proven that usage in breach of contract has been

discontinued and future usage in breach of contract will be prevented.

3. Availability, deficiency in performance

- 3.1** The availability of the provided services is found in the statement of work.
- 3.2** In the case of a negligible reduction of the suitability of the services for the contracted use, the customer shall accrue no claims due to deficiencies. The strict liability of the provider is excluded for deficiencies which were already existing at the time of contract formation.

4. Data privacy and data security

- 4.1** To the extent the provider is able to access personal data of the customer or from the customer's area, the provider shall work exclusively as a contract data processor - § 11 (5) of the German Federal Data Protection Act (Bundesdatenschutzgesetz - BDSG) - and process and use such data only in performance of the contract. The provider shall comply with the customer's instructions for handling such data. The customer shall bear any adverse consequences of such instructions for contract performance. The parties shall agree in writing on details for handling personal data if such is necessary pursuant to § 11 (2) BDSG or other legislation.
- 4.2** The parties agree that the customer shall remain the data owner, both generally in the contractual relationship and in terms of data protection law. The customer shall have sole dispositional authority over all data used by the customer (input data, processed and stored data, output data). The provider and all participants who perform the contract for it do not monitor the legal sufficiency of the collection, processing and use of data stored for the customer. The customer bears exclusive responsibility for the collection, processing and use of personal data.
- 4.3** If the customer collects, processes or uses personal data in connection with the contract, it vouches that it is authorized to do so in accordance with the applicable regulations, particularly data privacy regulations, and shall indemnify the provider against third-party claims in the event of a violation.
- 4.4** The provider warrants that the customer's data will be stored exclusively in the territory of the Federal Republic of Germany, in a Member State of the European Union or in another contracting Member State to the Agreement on the European Economic Area.
- 4.5** The provider may award subcontracts, but must impose the corresponding obligations on each subcontractor which arise from this agreement and these terms and conditions.
- 4.6** The provider or third parties engaged by it shall take technical and organizational security precautions and undertake measures to comply with the statutory data privacy provisions.

5. Duties of the customer

- 5.1** The customer shall protect the access authorizations and identification and authentication information allocated to the customer or users from third-party access and not share them with unauthorized persons.
- 5.2** The customer is obligated to indemnify the provider against all third-party claims in

connection with infringements which are based on the unlawful use of the subject of the performance or occur with the customer's consent. Should the customer recognize or must recognize that such an infringement impends, a duty exists to immediately notify the provider.

- 5.3** The customer shall make use of provider-supplied opportunities to back up its data additionally in its distinct sphere of responsibility.

6. Use in breach of contract, damages

For each case in which a contracted performance in the customer's sphere of responsibility is utilized without authorization, the customer shall in each instance pay damages equal to the remuneration which would accrue for use as contracted during the minimum contract term applicable to such performance. The customer retains the right to prove that the customer is not responsible for the unauthorized use or that there is significantly less loss. The provider remains entitled to claim further loss.

7. Incident management

- 7.1** The provider shall receive the customer's incident reports, assign the agreed incident categories (section 7.3) and, on the basis of such assignment, execute the agreed measures for analyzing and correcting incidents.
- 7.2** The provider shall receive the customer's properly prepared incident reports during its customary business hours and furnish each one a case identifier. If requested by the customer, the provider shall confirm receipt of an incident report, including reporting the case identifier issued.
- 7.3** Unless otherwise agreed, the provider shall, after a cursory review, assign incident reports received to one of the following categories:

a) Serious incident

The incident is based on a deficiency in the contracted services that makes it impossible to use the contracted services - particularly the software - or allows use only with serious restrictions. The customer cannot work around this problem in a reasonable manner and is therefore unable to complete tasks that cannot be postponed.

b) Miscellaneous incident

The incident is based on a deficiency in the contracted services that makes it impossible for the customer to use the contracted services - particularly the software - in more than a merely insignificant way without the existence of a serious incident.

c) Miscellaneous report

Incident reports that do not fall into categories a) and b) are assigned to miscellaneous reports. Miscellaneous reports are handled by the provider only in accordance with the agreements that have been entered into for them

- 7.4** In the case of reports concerning serious and miscellaneous incidents, the provider shall immediately initiate appropriate measures based on the circumstances reported by the customer in order to first locate the cause of the incident.

If after initial analysis, the reported incident does not appear to be a deficiency in the contracted services, especially in the provided software, the provider shall immediately communicate this to the customer.

Otherwise the provider shall initiate appropriate measures for further analysis and correction of the reported incident or, in the case of third-party software, forward the incident report, together with the results of its analysis, to the distributor or manufacturer of the third-party software with the request for corrective action.

The provider shall immediately make measures available to the customer which it has for circumventing or correcting a deficiency in the contracted services - particularly in the supplied software - such as instructions or corrections for the supplied software. The customer shall immediately undertake such measures for circumventing or correcting incidents and immediately report again to the provider any incidents remaining during their use.

8. Contact point (hotline):

8.1 Contractual services

The provider shall set up a contact point for the customer (hotline). This office shall process the customer's questions in connection with the technical requirements and conditions for the use of the supplied software and in connection with individual functional aspects.

8.2 Acceptance and processing of queries

It is a prerequisite to the acceptance and processing of queries that the customer designate for the provider appropriate functionally and technically qualified personnel who are tasked to handle queries from users of the supplied software internally at the customer. The customer is obligated to direct queries to the hotline only through these personnel who have been designated for the provider and to use forms supplied by the provider for this. The hotline will accept such queries by e-mail, fax and telephone during the provider's customary business hours.

The hotline will process proper queries in the normal course of business and answer them to the extent possible. In response, the hotline can refer to documentation and other training materials for the supplied software which are accessible to the customer. If it is not possible for the hotline to answer the question, or not promptly, the provider shall - if this has been expressly agreed to - refer the query for processing, particularly queries on software that it has not manufactured.

Further hotline services, such as different response times and deadlines as well as on-call service or on-site assignments of the provider at the customer's premises shall be expressly agreed on in advance.

9. Contract term and termination

- 9.1** The contractually stipulated services are to be rendered, starting on the date indicated in the contract, initially for the duration of the term stipulated in the

contract. Early termination by either party without cause is prohibited during this minimum term.

- 9.2** The contract may be terminated upon three months' notice no earlier than the end of the minimum term. If this does not occur, the contract shall renew for another year in each case unless it has been regularly terminated upon three months' notice as of the end of the particular renewal period.
- 9.3** The right of either party to terminate summarily for cause remains unaffected.
- 9.4** To be effective, any termination declaration must be in writing. Section 8.4 of AV Bitkom applies.
- 9.5** The customer shall independently back up the customer's databases in a timely fashion before the end of the contract (such as through a download). If requested, the provider shall assist the customer with this. Section 4.3 of AV Bitkom applies. For reasons of contract data processing, among others, the customer will no longer regularly have the option to access these databases after termination of the contract.

10. Application of AV Bitkom

The Bitkom General Terms and Conditions of Contract (AV Bitkom) apply in addition.