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## General Terms & Conditions for the Provision of Software on a Temporary Basis (Lease) of GBTEC Software AG

GBTEC AG lets software to customers ("Lessee(s)") on the basis of the following general contractual conditions ("General Terms and Conditions for the Lease of Software"). These General Terms and Conditions for the Lease of Software do not apply to services with which the customer commissions GBTEC AG. For such services separate terms and conditions specifically developed for such purposes shall apply.

**Software:** means the contractual software specified in more detail in the licence certificate, which the Lessor provides to the Lessee for use on a temporary basis.

**Version:** means a specific development stage of the Software.

**Update/ New Version:** means functionally modified Software.

**Licence Certificate:** is a document that lists the Software and modules and that states the number of computers, i.e. servers and user computers (Named User or Company Licence) for which the Lessee acquires the right to use the Software. The licence certificate shall be an integral part of the contract and shall be adapted to each contract amendment/modification, if necessary.

### 1. Conclusion of the Contract

These General Terms and Conditions for the Lease of Software govern the general rights and obligations of the parties under the contract. The subject matter of the contract is the provision of Software for a limited period of time against payment, as described below and specified and agreed in more detail between the parties in an individual contract. Such an "individual contract" is concluded as follows: (i) GBTEC AG offers its (potential) customers, among other things, the provision of more closely specified software/modules/number of licences for a limited period of time at corresponding prices in a letter entitled "Offer VKA [...]". At the end, the letter contains a form for placing the order by signing and returning it.

By returning this signed form or its own order document (with respect to the products proposed in the letter "Offer VKA [...]"), the Lessee accepts the offer to conclude a contract with GBTEC AG. The order confirmation generated by GBTEC AG and sent to the Lessee by e-mail or return of the countersigned form reflects the content of the contract. The lease contract is concluded with the receipt of the order or at the latest with the provision of an access to the Software.

## 2. Subject Matter of the Contract

- 2.1 The subject of the contract is the temporary provision of Software from GBTEC AG's portfolio including the documentation and the granting of network licences for the use of the Software against a fee.
- 2.2 As documentation, GBTEC AG shall supply, as far as available, installation instructions and an online help which allows for explanations of the functionalities to be retrieved and printed during the operation of the Software. The specifications can be viewed at <https://www.gbtec.com/user-documentation/>.
- 2.3 The installation of the Software is not owed by GBTEC AG according to these General Terms and Conditions for the Lease of Software.

## 3. Handover & Installation as well as Ancillary Performance Obligations of the Lessee

- 3.1 The Software is provided to the Lessee by way of granting an access to the encrypted download of the installation media and instructions and according to the respective current system requirements.
- 3.2 The installation of the Software is carried out by the Lessee.
- 3.3 Training for the use of the Software as well as further services can be ordered by the Lessee against a separate remuneration.

## 4. Consideration

- 4.1 The Lessee shall pay an annual rental fee for the provision of the Software agreed in the individual contract.
- 4.2 The rental fee shall be due and paid in advance for each contractual year. For the first contractual year it shall be due and paid upon the conclusion of the contract against
- the provision of an access to the encrypted download of the installation media and
  - instructions in accordance with the respective current system requirements.
- 4.3 Unless otherwise agreed, invoices shall be paid within 30 days of receipt of the invoice.
- 4.4 GBTEC AG may adjust the rental fee at its reasonable discretion (§ 315 III BGB) by notifying the Lessee (receipt of such notification at the latest six weeks before the end of a contractual year) with effect for the following contractual years.
- 4.5 All prices are quoted in EUR plus the applicable statutory value added tax.

## 5. Rights of Use

- 5.1 For the duration of this contract the Lessee has the right to reproduce the Software for use on the contractually agreed number of computers. The permitted acts of reproduction include the installation on a data carrier of the computer as well as transfers of the Software in whole or in part from this data carrier into the main memory and subsequently into the CPU and the graphics card of the computer.
- 5.2 The parties may agree on the number of access rights by way of a "Named User Licence" or a "Company Licence".
- **Named User Licence:** Only named users who use the Software as end users may access the Software. The Lessee shall name the corresponding number of persons who may use the Software via the network. Persons other than the named users may not use the Software. However, the Lessee shall be entitled to replace named persons with others if he notifies the Lessor of such replacement in advance. The granting of further access rights is possible against further payment.

- **Company licence:** Permits the Lessee to use the Software within several (or all) locations of a company without restriction of the number of installations (servers/computers) or the number of users (access rights). The term company in this context means any legal entity, including subsidiaries of which this legal entity owns more than 50 percent of the shares. The Lessee must notify GBTEC AG of such affiliated companies by name at the latest at the conclusion of the contract. They must be listed in the licence certificate; otherwise, the use of the company licence for these companies is not permitted. However, GBTEC AG reserves the right of requiring subsequent licensing (i.e. acquiring further access rights) if the number of employees at the Lessee's company (including the affiliated companies) increases significantly. An increase in the number of employees by more than 20% compared to the time of the original licence lease agreement is considered significant and entitles GBTEC AG and obliges the Lessee to re-license. The number of employees of the Lessee stated in the annual report of the Lessee or other official publications is binding. Unless otherwise agreed to in writing, the conditions of the licence acquisition also apply to the subsequent licensing. In any case, the Lessee must ensure that the scope of use remains within the limits of the licences acquired and that several individuals do not share access.

5.3 The granting of such rights shall be subject to the condition precedent of full payment of the relevant annual rental fee. Until such time GBTEC AG agrees to the use of the Software according to the above regulations. On the other hand, the above rights are granted under the condition subsequent that GBTEC AG completes or replaces the Software by way of supplementary performance (in the context of a warranty) or as a gesture of goodwill. If GBTEC AG supplements or replaces the provided Software, the Lessee has the same rights to this subsequently provided Software as to the supplemented or replaced Software. Until the installation of the additionally provided Software the Lessor tolerates the use of the previous Version to the described extent, at the longest, however, until the expiration of 12 months after the date of the general publication of the respective additionally provided

Software or New Version. The Lessee is obligated to permanently destroy or archive any surplus Software including backup copies and to confirm this destruction/archiving in text form.

5.4 The Lessee may not sell, give away or lend the Software to third parties, nor may it sublet or lease it.

5.5 The Lessee is not entitled to remove or circumvent the existing protective mechanisms of the programme against unauthorised use unless this is necessary to achieve trouble-free use of the programme.

5.6 ANY ATTEMPTED REPRODUCTION, MODIFICATION, RE-LICENSING OR DISTRIBUTION NOT PERMITTED UNDER THIS AGREEMENT SHALL BE VOID AND SHALL AUTOMATICALLY TERMINATE THE LESSEE'S RIGHTS UNDER THIS AGREEMENT.

## 6. Intellectual Property Rights' Infringement

6.1 GBTEC AG shall indemnify the Lessee at its own expense against all claims of third parties arising from an infringement of intellectual property rights for which GBTEC AG is responsible. The Lessee shall inform GBTEC AG immediately of the asserted claims of third parties. If the Lessee does not inform GBTEC AG immediately of the asserted claims, this right of indemnification expires.

6.2 In the case of an infringement of intellectual property rights GBTEC AG may - without prejudice to possible claims for damages of the Lessee - at its own choice and at its own expense with regard to the affected contractual obligation

- a. and after prior consultation with the Lessee, make changes which, while safeguarding the interests of the Lessee, ensure that an infringement of intellectual property rights no longer persists or
- b. acquire the necessary rights of use for the Lessee.

## 7. Liability for Material Defects and Defects of Title

7.1 Technical data, specifications, and performance data in public statements, in particular in advertising material, are not quality data.

The functionality of the Software is based on the performance and

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product description of the respective Version and the description in the user documentation. In all other respects, the Software must be suitable for the use presumed under this contract and otherwise have a quality that is customary for software of the same type.

- 7.2 GBTEC AG will provide and maintain the Software in a condition suitable for the contractual use. The obligation to maintain does not include the adaptation of the Software to changed conditions of use and technical and functional developments, such as changes to the IT environment, in particular changes to the hardware or the operating system, adaptation to the functional scope of competing products or the establishment of compatibility with new data formats.
- 7.3 Strict liability for damages for defects that were already present at the time of the conclusion of the contract is excluded.
- 7.4 The Lessee shall support GBTEC AG in the determination and elimination of the defect and shall immediately grant access to the documents from which the more detailed circumstances of the occurrence of the defect can be gleaned.

## Special Terms & Conditions for the Remedy of Defects

### § 1 Service Description regarding Software Maintenance & Support

#### (1) Prerequisites for Receiving Software Maintenance & Support

- (a) The Lessee shall name two administrators with their respective e-mail addresses, via which contact with the support service will subsequently take place exclusively. A claim for support only exists if such administrators have previously been trained with regard to the contractual Software, have consulted the user documentation and have participated in webinars on the relevant problem.
- (b) In the event of functional failures, malfunctions or impairments of the Software, the Lessee shall therefore first use the available user documentation and videos as well as reports published by GBTEC AG on malfunctions and their rectification (to be found at <https://www.gbtec.com/de/>) and attempt to remedy the situation itself in this way. Should it still not be possible to rectify the error, the Lessee has the option of reporting errors via the support hotline and/or by e-mail to [biccloudsupport@gbtec.de](mailto:biccloudsupport@gbtec.de).

#### (2) Content and scope of maintenance and support respectively

GBTEC AG provides the owed remedy of defects in the form of maintenance and support services by its own or by subcontracted qualified personnel. It is entitled to entrust third parties with the fulfilment of the obligations under this contract.

The following applies to the scope of the maintenance services:

- (a) The software maintenance and support consist in the delivery of updates in order to keep the Software up to date, to prevent malfunctions and to solve known application problems. As far as a corresponding update is not yet available, GBTEC AG will describe possible workarounds to the Lessee in order to avoid malfunctions and application problems.

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- (i) New Versions are made available by granting an access to download.
  - (ii) Error handling is carried out by the support services of GBTEC AG. The administrators indicated by the customer have access to the support services exclusively during the following service hours: Working days (Monday through Friday) from 8.00 a.m. to 6.00 p.m. (CET/CEST) with the exception of public holidays in the federal state of North Rhine-Westphalia. These shall be treated as Sundays.
  - (iii) Support services shall carry out error processing on the basis of the description of the error reported by the customer. The description of the error by the administrators must contain at least the following information: description of the user interactions that led to the error (reproduction instructions, sample data with which the error occurred, information on the number and types of users with whom the error occurs). Support services will request further information necessary to analyse or reproduce the error on a case-by-case basis. On this basis, support services will check whether the error is already known, whether a Software Update is available to remedy the error, what triggers the error and how the error can be circumvented. For this purpose, the support services may, at their own discretion and with the consent of the Lessee, use remote accesses provided by the Lessee to determine further information for error handling. GBTEC AG will provide the Lessee with information on available Software Updates to solve the error as well as the description of possible workarounds to avoid the error, in text form.
  - (iv) GBTEC AG will eliminate defects of the Software notified by the Lessee within reasonable time and according to the following priority. Defects are divided into three categories of defects by mutual agreement of the parties. Should the parties not reach an agreement on the category at hand, GBTEC AG shall take the final decision, taking into account the legitimate interests of the Lessee. Depending on the error category or error classes the following differing reaction times apply (reaction times start and run exclusively during the service times stated in this clause):



((a)) Error class 1 ("very high"): The use of the Software is impossible or is considerably (severely) restricted. This is the case if the following conditions apply simultaneously:

- Functions from a list of core functionalities explicitly defined in the specifications at the time of the order are affected (only if these functions fail or are impaired is the incident or error treated as error class 1) AND
- no user can use the affected function and no workaround is available AND
- the incident or defect affects the majority of the data (processes, documents, workflows).

A response time of 4 hours is agreed for defects of error class 1.

((b)) Error class 2 ("high"): The use of the Software is not impossible but is impaired to a considerable extent. This is the case if the following conditions apply simultaneously:

- not all criteria of error class 1 are fulfilled AND
- the incident or error affects a significant part of the data AND
- an available workaround requires considerable additional effort.

For defects of error class 2, a response time of 8 hours is agreed.

((c)) Error class 3 ("low"): all other incidents or defects.

No reaction time is agreed for defects of error class 3. The error correction shall be carried out through the regular update to a New Version.

(b) GBTEC AG reserves the right to publish the support announcement for the following half-year every six months due to the permanently changing system landscape. Errors in Software Versions that are no longer supported will be eliminated by way of an Update to the latest Software Version supported by GBTEC AG, if they can only be eliminated by a program change. As far as the Lessee has made specific adaptations which are not standard, further adaptations will be necessary during an Update

which will be charged by GBTEC AG according to expenditure. This also applies to the possibly required additional Software, e.g. database system. GBTEC AG explicitly points out to the Lessee, who operates the Software on-premises, that he is obligated to protect his data by appropriate data backup tapes and to prove this by logs if necessary.

### **(3) Special Conditions/ Restrictions/ Exclusions**

(a) The Lessee is entitled to receive maintenance services for previous Versions of the Software for a maximum of 12 (twelve) months from the date of the general release of the respective New Version. After this period, the Lessee is obligated to upgrade to the latest Version. When the Lessee has installed the New Version, the previous Version will either be destroyed or archived.

(b) The maintenance services do not include:

- the provision of new products or the obligation to further develop the Software, unless otherwise expressly agreed;
- the installation and configuration of the Software. GBTEC AG will submit a separate offer covering such services upon request;
- the correction of problems caused by improper use of the service;
- the recovery of the Lessee's data, unless the loss of data concerns the whole or the majority of the Lessee's data and is caused by GBTEC AG;
- individual programming services, in particular adaptation to new products and services, a changed hardware and software environment as well as to changed operational procedures of the Lessee or third party software used by the Lessee;
- on-site service at the Lessee's premises;
- training courses;
- Support services regarding the cooperation of the Software with third party software used by the Lessee, which is not the subject of a maintenance contract with GBTEC AG;
- the development of an implementation specific to a Lessee such as scripts, programs, configurations and the like;

- assistance with modelling issues.

Services that go beyond those agreed upon in these Special Terms & Conditions for the Remedy of Defects can be requested and are, if available, to be agreed upon in individual contracts and to be charged according to time and effort. This includes, among others, changes to New Versions, which become necessary due to a Lessee's specific adaptations of the Software. If a valid agreement on the hourly rate for comparable services exists between GBTEC AG and the Lessee at the time of service provision, this hourly rate shall apply. Otherwise, the then current hourly rates of GBTEC AG apply.

- (c) If GBTEC AG determines that an error reported by the Lessee does not actually exist or is not due to a defect of the Software of GBTEC AG, GBTEC AG is entitled to charge the time and effort spent on the analysis and other processing according to the applicable hourly rate.

## § 2 System Requirements

- (1) GBTEC AG publishes the applicable system requirements for each software Version and specifies therein recommended or supported system configurations via GBTEC AG's website at <https://www.gbtec.com/terms-conditions/>. By using the support and maintenance services of GBTEC AG the Lessee confirms that he has read, understood and accepted the respective applicable system requirements as part of the contract. GBTEC AG owes maintenance and support services only as far as the Lessee complies with the system requirements.
- (2) GBTEC AG is not responsible for the quality or performance of the hardware and/or third party software on the Lessee's end, that is required according to the relevant applicable system requirements.
- (3) If the system configuration used by the Lessee is no longer recommended or supported by GBTEC AG, THE LESSEE IS ONLY ENTITLED TO CONTINUED COMPREHENSIVE MAINTENANCE SERVICES ACCORDING TO THESE TERMS AND CONDITIONS IF HE CHANGES HIS SYSTEM REQUIREMENTS TO THE ONES RECOMMENDED OR SUPPORTED BY GBTEC AG.

## § 3 Duties to cooperate and Obligations of the Lessee

- (1) The Lessee is obligated to backup his data before using the Software for the first time and at regular intervals. The Lessee also has the option of using the Software offline. It is his responsibility, however, to independently and fully back up his data prior to any intended offline use.
- (2) In addition to the aforementioned telephone hotline GBTEC AG will, in case of remote maintenance, connect directly via telecommunication to the EDP system of the Lessee in order to remedy the errors immediately. For this purpose, the Lessee must enable remote service which includes a direct access to all computers used by the Lessee on which the contractual Software is installed. The exact configuration shall be agreed upon with GBTEC AG beforehand. The Lessee must ensure that GBTEC AG can access the corresponding systems in such a way that all applications can be started by remote maintenance and, if necessary, system changes can be made for the proper operation of the Software. If the Lessee is not able to provide such a remote service option in time, the on-site appointments made by GBTEC AG will be charged according to expenditure. Regarding the use of third-party software, which has been provided by GBTEC AG upon the Lessee's request, the contractual provisions of the respective manufacturer apply in this respect. Any and all liability of GBTEC AG for such third-party software is excluded.
- (3) The Lessee will inform GBTEC AG of all errors in the Software immediately after they have been detected.
- (4) The Lessee will grant reasonable opportunity for error correction (such as allowing workarounds) and assist in the correction of an error as required, including but not limited to providing printed documentation of the problems, additional computer runs to mimic the conditions at the time the error occurred, and access authorization to data files, directories, and control records. In order to be able to correct errors or Software misbehaviour reported by the Lessee, GBTEC AG requires the Lessee's data records, during the use of which the error or Software malfunction occurred, to use such data records e.g. to reconstruct the error, to carry out test runs and to verify

the error correction. The Lessee therefore consents to the use of his data records in this context and by providing such data record implicitly confirms that he is authorised to do so.

## **8. General Liability**

- 8.1 GBTEC AG is liable for intent and gross negligence. For slight negligence it is only liable in case of violation of an essential contractual obligation (cardinal contractual obligation), the compliance with which only enables the proper execution of the contract and on the compliance with which the Lessee may generally rely, as well as in cases of damages resulting from injury to life, body or health.
- 8.2 GBTEC AG owes the due diligence customary in the industry. In determining whether GBTEC AG is at fault, it must be taken into account that Software cannot be created technically free of errors.
- 8.3 In case of slight negligence the liability is limited to the amount of the foreseeable damage, that can typically be expected to occur; the maximum liability per calendar year is limited to the amount of the annual rental fee and in total to the amount of all rental fees paid up to that point.
- 8.4 GBTEC AG is not liable for the loss of data and/or programs insofar as the damage is based on the fact that the Lessee has omitted to carry out data backups and thereby to ensure that lost data can be restored with reasonable effort.
- 8.5 The above regulations are also valid for the benefit of the vicarious agents of GBTEC AG.

## 9. Term of the Agreement/ Return of Software

- 9.1 Unless otherwise agreed in the individual contract, the Software shall initially be provided for a fixed contract period of 12 months. This begins with the provision of an access to download the Software. The term of the lease contract shall be extended by a further 12 months in each case if the contract is not terminated in writing with a notice period of 6 months to the end of the respective current 12-month period.
- 9.2 Termination for good cause remains unaffected.
- 9.3 After the termination of the contract the Lessee must return or destroy the created backup copies, uninstall the Software and delete any remaining recognisable Software residues from the IT system. Upon request of GBTEC AG the Lessee must confirm the compliance with the aforementioned obligations in writing.

## 10. Confidentiality

The parties mutually undertake to keep know-how and trade secrets which they learn about each other during the performance of this contract and all know-how which is not generally known secret from third parties - even after termination of the contract - and to oblige their employees accordingly.

## 11. Final Clauses

- 11.1 GBTEC AG reserves the right to unilaterally change the service and product description of a Version as well as these Terms and Conditions for the Lease of Software at any time, provided that the change is based on factual reasons and is reasonable for the Lessee or if the change is only advantageous for the Lessee. Justified reasons for changes to the service and product description as well as to these Terms and Conditions for the Lease of Software may be:

- new legal or official requirements,
- requirements of a court decision addressed to GBTEC AG,
- changed current availability of used and required technologies,
- introduction of new, additional services or of software, which require a service description in these Terms and Conditions for the Lease of Software or in the service and product description, respectively, unless the previous relationship concerning the remedy of defects is thereby changed adversely,
- necessary changes to close existing security gaps,
- adjustments which serve the technical progress or are technically and procedurally necessary unless they have essential effects for the tenant.

11.2 GBTEC AG will inform the Lessee about the change by e-mail at least four (4) weeks before the change comes into effect. The change requires the consent of the Lessee. The consent shall be deemed granted and the new General Terms and Conditions for the Lease of Software or the new service and product descriptions shall be included in the contractual relationship unless the Lessee objects in writing within four (4) weeks after receipt of the notification of change. If the Lessee objects, the previous contractual provisions shall continue to apply to it. The Lessee shall have the burden of proof for such objection. With the notification of the amended Version GBTEC AG will set the Lessee the above-mentioned reasonable reaction period and point out the consequences of a lack of reaction.

11.3 If the Lessee objects, each party has the right to terminate the contract in writing giving the notice applicable to an ordinary termination of the agreement.

11.4 If any provision of the contract is held illegal or unenforceable in a judicial proceeding, such provision shall be severed and shall be inoperative, and the remainder of this contract shall remain operative and binding on the parties. The parties agree that in this case the

invalid provision shall be replaced by a valid provision that comes as close as possible to the economic purpose of the invalid provision. The same shall apply to any unintentional contractual gaps.

- 11.5 In the event of a dispute arising from this agreement, the parties shall, prior to conducting legal proceedings (legal action), conduct conciliation in accordance with the Conciliation Rules of the Hamburg Conciliation Board for IT Disputes in the Version valid at the time of the initiation of conciliation proceedings. The conciliation proceedings shall serve to settle the dispute in whole or in part, provisionally or finally. If no agreement is reached before the conciliation board, recourse shall be had to the ordinary courts.
- 11.6 The assignment of claims other than monetary claims is only permitted with the prior written consent of the other contracting party. Consent may not be unreasonably withheld.
- 11.7 A right of retention may only be asserted with respect to counterclaims from the same contractual relationship.
- 11.8 The contracting parties may only offset claims that have been legally established or are undisputed.
- 11.9 There are no side agreements to the contract. General terms and conditions of the Lessee shall not apply to this contract. They shall also not apply if such terms and conditions have not expressly been objected to. Amendments and supplements to the contract must be made in writing. This formal requirement can only be waived by written agreement.
- 11.10 The law of the Federal Republic of Germany shall apply.
- 11.11 Exclusive place of jurisdiction for all legal disputes arising from or in connection with this contract is Bochum (Germany). However, GBTEC AG is also entitled to sue at the general place of jurisdiction of the Lessee.

**GBTEC Software AG**