

## TERMS AND CONDITIONS OF BUSINESS

of

**VSHosting GmbH**

Registered office in Germany, Breslauer Platz 2 – 4, 50668 Cologne  
registered in the Commercial Register maintained by Commercial Court of Cologne, HRB 113514

### 1. INTRODUCTORY PROVISIONS

These Terms and Conditions of Business (hereinafter referred to as the '**Terms and Conditions of Business**') of VSHosting GmbH., registered office in Germany, Breslauer Platz 2 – 4, 50668 Cologne registered in the Commercial Register maintained by the Commercial Court of Cologne, HRB 113514 (hereinafter referred to as the '**Service Provider**') govern and regulate the mutual rights and obligations between the Service Provider and other legal entities acc. to § 14 BGB (hereinafter referred to as the '**Costumer**'), arising in particular from the following:

- 1.1.1. managed server service contracts, including managed server – windows cluster service contracts (hereinafter referred to as a '**Managed Server Service Contract**' and the '**Managed Server Service**');
- 1.1.2. dedicated server service contracts (hereinafter referred to as a '**Dedicated Server Service Contract**' and the '**Dedicated Server Service**');
- 1.1.3. server housing service contracts (hereinafter referred to as a '**Server Housing Service Contract**');
- 1.1.4. AWS-managed server service contracts (hereinafter referred to as an '**AWS-Managed Server Service Contract**' and the '**AWS Management Service**');
- 1.1.5. private cloud service contracts (hereinafter referred to as a '**Private Cloud Service Contract**' and the '**Private Cloud Service**');
- 1.1.6. VMware cloud service contracts (hereinafter referred to as a '**VMware Cloud Service Contract**' and the '**VMware Cloud Service**');  
  
(hereinafter collectively referred to as a '**Service Contract**').
- 1.2. In the event of a framework agreement being concluded between the parties (hereinafter referred to as a '**Framework Agreement**'), the Terms and Conditions of Business shall also apply to the Service Provider's and the Customer's rights and obligations under the various Service Contracts concluded on the basis of the Framework Agreement.
- 1.3. Deviating provisions in each Service Contract or in a Framework Agreement shall take precedence over the provisions of the Terms and Conditions of Business.



- 1.4. The provisions of the Terms and Conditions of Business shall form an integral part of each Service Contract.
- 1.5. For the avoidance of any doubt, the parties have agreed that any changes to a Service Contract do not need to be printed out in written form. However, changes to a Service Contract must at least be in text form.

## 2. CLIENT ACCOUNT (CLIENT ZONE)

- 2.1. Following the conclusion of a Service Contract or a Framework Agreement, the Customer may access its user interface within the Service Provider's customer system. From the customer system user interface, the Customer may, *inter alia*: administer individual user accounts, including assigning defined roles to individual users at the Customer's end (administrator, technical administrator, financial administrator) and removing individual users; to modify a Service Contract or to conclude a contract for additional services (Art. 8.1); perform user configuration of services (Art. 20.5); and access other information, including the Service Provider's price list (hereinafter referred to as the '**Client Zone**').
- 2.2. The Customer hereby acknowledges and agrees that individual users designated as technical administrators or administrators for the Client Zone may be provided, *inter alia*, with access to user configuration administrative tools (hereinafter referred to as '**Administrative Tools**') for certain services.
- 2.3. All of the Customer's email contact addresses identified in the Client Zone as administrators and financial administrators shall be intended for communication under each Service Contract.
- 2.4. Access to the Client Zone shall be secured by a user name and password. The Customer shall maintain confidentiality with regard to information required to access the Client Zone and shall ensure compliance with this obligation by all users authorised to access the Client Zone by the Customer. The Customer hereby acknowledges that the Service Provider shall not bear liability or responsibility for breach of this obligation on the part of the Customer.
- 2.5. The Customer hereby acknowledges and agrees that the Client Zone may not necessarily be accessible at all times, especially in view of the maintenance required for the Service Provider's hardware and software and, where applicable, third-party hardware and software.

## 3. SPECIAL PROVISIONS OF A MANAGED SERVER SERVICE CONTRACT

- 3.1. The Service Provider shall provide the Customer with services, for the term of a Managed Server Service Contract, comprising the leasing and administration of the hardware



(server), administration of software and connection of the server to the Internet in accordance with the specifications in the Managed Server Service Contract. By way of consideration for the Managed Server Service, the Customer shall pay the Service Provider the flat-rate payment agreed in the Managed Server Service Contract.

- 3.2. If a virtual server is leased to the Customer on the basis of a Managed Server Service Contract, the Customer hereby acknowledges that it shall not constitute lease of hardware for which use is reserved exclusively for the Customer.
- 3.3. As part of its obligations under the Managed Server Service Contract, the Service Provider shall provide access to the hardware (server) leased to the Customer under the Managed Server Service Contract and Internet access, through connecting the said hardware (server) to its network (Ethernet) and providing the Customer with Internet connectivity at the bandwidth stipulated in the Managed Server Service Contract. The Service Provider's hardware (server) shall be located in a data centre and connected to the Service Provider's backbone network via a wired data connection. Unless agreed otherwise, the volume of data transmitted shall be unlimited. The Provider reserves the right to charge an additional fee in the event of excessive line utilization.
- 3.4. As part of its obligations under the Managed Server Service Contract, the Service Provider shall provide technical management of the leased hardware (server) and software management (software updates) and shall also bear the electricity consumption costs. In the client zone (knowledge base) it is specified which software the Service Provider is administering for the Customer under the respective contract (hereinafter referred to as the '**Managed Software**').
- 3.5. For the purposes of the Managed Server Service Contract, software management (server administration) shall be taken to refer to:
  - 3.5.1. administration of the Managed Software by the Service Provider. Computer programs other than the Managed Software may only be installed on the server with the Service Provider's prior consent and, unless agreed otherwise, for separate remuneration;
  - 3.5.2. software configuration optimisation, at the Service Provider's discretion, based on the Service Provider's experience;
  - 3.5.3. modifications and configuration of the Managed Software, stipulated by the Service Provider, at the Customer's request, made as specified in Art. 20.3 of the Terms and Conditions of Business (the Service Provider shall be entitled to refuse such requests if it might compromise the security of the server);
  - 3.5.4. assistance from the Service Provider to the Customer with operating the Customer's software, through the provision of 'logs' from the server to the



Customer and through monitoring server load when modifying and configuring the Customer's software (performed by the Customer). System logs (kernel logs, system services, audit logs, etc.) shall not be provided to the Customer. Logs shall also not be provided to the Customer in situations where it could lead to a security breach of the Service Provider's environment or the Internet;

- 3.5.5. updating the server software components, apart from the application layer of the server or other computer programs operated and administered directly by the Customer.
- 3.6. In case the Managed Server Service is provided in the Docker variant, the following applies:
  - 3.6.1. the Service Provider shall fulfil its obligations regarding the availability of the Managed Server Service by making the API of the Managed Server Service available to the Customer; the Service Provider shall not be responsible for the Customer's services running within the Docker (container), which are managed entirely at the Customer's own responsibility and risk. These services are not monitored by the Service Provider;
  - 3.6.2. the Service Provider does not perform backups of the data placed by the Customer within the Docker (container). Any backups of such data are the responsibility and risk of the Customer.
- 3.7. The Managed Server Service may take the form of a NAS server with S3 (Simple Storage Service) (hereinafter referred to as the '**NAS server with S3**'), in which case:
  - 3.7.1. the Service Provider shall provide the Client with a service consisting in renting and managing the hardware (server) intended for backing up the Client's data, in managing the software on this server and in providing access to this server to the public Internet network, for which the Client shall pay the Provider a flat-rate payment determined depending on the size of the disk space reserved for the Client, in the amount agreed in the Managed Server Service Contract;
  - 3.7.2. the Customer acknowledges and agrees that the S3 protocol may not be implemented in its entirety within the service and that some of its specific functionalities may be missing, in accordance with the specification provided at <https://support.vshosting.cz/en/Managed-services/s3-api/> ;
  - 3.7.3. the administration (management) of the data backup within the NAS server with S3 service is carried out by the Customer at their own responsibility through a software tool.
- 3.8. Where (third-party) support of the Service Provider's Managed Software under a



Managed Server Service Contract (hereinafter referred to as the '**Original Software Version**') is to be terminated, or if the Managed Software has otherwise become obsolete, the Service Provider may propose a software upgrade to the Customer. Should the Customer refuse the said software upgrade:

- 3.8.1. the Customer shall thereafter bear liability for all security risks associated with operating the Original Software Version;
  - 3.8.2. no new computer programs may be installed by the Customer on the Original Software Version;
  - 3.8.3. the Service Provider shall not perform any updates to the Original Software Version.
- 3.9. The parties have agreed that, unless agreed otherwise, the Service Provider shall prioritise use of free software and open-source programs for provision of the Managed Server Service. The Customer acknowledges not only the advantages associated with use of these computer programs, but at the same time the significant legal and factual risks associated therewith (Art. 18.1.9).
- 3.10. Should the Customer request privileged access for operation of any of the Service Provider's Managed Software or any components thereof, including changes in the configuration, version or running performance of such software or components, the Service Provider shall be entitled to refuse such requests. Where the Customer is granted access, as specified in the previous sentence, the Service Provider shall not bear liability for the condition of such software or components and shall not monitor their condition as part of the Managed Server Service (Art. 3.12).
- 3.11. The Service Provider's undertakings under the Managed Server Service Contract shall not include user configuration of the Managed Server Service. The Customer shall arrange the user configuration of the Managed Server Service separately (Art. 20.5).
- 3.12. The Service Provider shall also provide server monitoring for the Customer under the Managed Server Service Contract, without prejudice to the provisions of Art. 3.10 of the Terms and Conditions of Business. Server monitoring shall be taken to refer to monitoring the availability and status of services operated on the server, excessive server load, verifying backing up and utilisation of system resources and, if the Customer is provided with a dedicated physical server, monitoring the hardware status. As part of the server monitoring service, the Service Provider shall monitor standard metrics to check the status of the various services operated on the server and to check the utilisation of system resources, so as to detect potential adverse situations. The parties may agree on the monitoring of other server parameters specific to the computer programs operated by the Customer on the server, thereby extending the scope of the server monitoring service, that being for separate remuneration, unless agreed otherwise. Should server monitoring



by the Service Provider reveal server outages, the Service Provider shall be required to take the following measures:

- 3.12.1. in the event of disruptions to the Managed Server Service (Art. 18.1), for which the Service provider is responsible, start resolving the situation without undue delay, in accordance with the provisions of the Managed Server Service Contract,
  - 3.12.2. in all other cases, notify the Customer about the situation without undue delay.
- 3.13. If stipulated in the Managed Server Service Contract, the Service Provider shall back up the Customer data. The maximum volume of backup data is twice the usable capacity of the managed server, unless agreed otherwise in the Managed Server Service Contract.
- 3.13.1. Customer data shall be taken to refer to website data, web app data, database data and email data forming part of the Managed Server Service. Temporary files and directories used for this shall not be backed up.
  - 3.13.2. Unless agreed otherwise in the Managed Server Service Contract, the Customer's data shall usually be backed up once a day. If technically possible, backups shall be retained by the Service Provider for at least fifteen (15) days, but the Service Provider may choose another, more appropriate backup retention period. The Service Provider shall normally perform data backup at night or in the early morning.
  - 3.13.3. Following a prior warning, the Service Provider shall be entitled to payment, as specified in the Service Provider's price list, if the Customer exceeds the maximum amount of backup data. Payment shall be owed for each GB (gigabyte), or part thereof, exceeding the maximum amount of backup data, for each calendar day, or part thereof.
  - 3.13.4. The Customer acknowledges and agrees that in the event of large volumes of backup data, data backup may not be completed within 24 hours and consequently the following data backup will not be initiated and the Service Provider will not perform data backup for the relevant day.
  - 3.13.5. This shall be without prejudice to the provisions of Art. 18.2 of the Terms and Conditions of Business.
- 3.14. Under a Managed Server Service Contract, the Service Provider undertakes to ensure the Managed Server Service is available for at least 99.92% of each calendar month. For the purposes of a Managed Server Service Contract, the total availability of the Managed Server Service in a calendar month shall be calculated using the formula  $((DS-DO)/DS)*100$ , where DS stands for duration of services for the month, DO stands for duration of outages in the Managed Server Service (as defined under Art. 18 of the Terms



and Conditions of Business) and \* is a multiplication sign. Scheduled downtime of the Managed Server Service, as defined under Art. 19.4 of the Terms and Conditions of Business, shall not be added to the unavailability of the Managed Server Service as per the previous sentence.

- 3.15. In the event of a technical fault in the hardware (server) leased under a Managed Server Service Contract, where the defect does not apply to a virtual server, the Service Provider undertakes to rectify the fault within sixty (60) minutes of it being notified to the Service Provider by the Customer, in accordance with Art. 20.1 of the Terms and Conditions of Business (or after when the Service Provider detects the fault), provided that the Service Provider has the requisite spare parts available for repairing the respective hardware (server) or if alternative hardware (server) can be used for repairing.

#### **4. SPECIAL PROVISIONS OF A DEDICATED SERVER SERVICE CONTRACT**

- 4.1. The Service Provider shall provide the Customer with services, for the term of the Dedicated Server Service Contract, comprising the leasing and administration of the hardware (server), as specified in more detail in the Dedicated Server Service Contract and provision of Internet access for the said hardware (server), in accordance with the specifications for such connection provided in the Dedicated Server Service Contract. By way of consideration for the Dedicated Server Service, the Customer shall pay the Service Provider the flat-rate payment agreed in the Dedicated Server Service Contract.
- 4.2. As part of its obligations under the Dedicated Server Service Contract, the Service Provider shall ensure Internet connection of the hardware (server) leased to the Customer under the Dedicated Server Service Contract, through connecting the said hardware (server) to its network (Ethernet) via a port stipulated in the Dedicated Server Service Contract, and shall provide the Customer with internet connectivity at the reserved bandwidth stipulated in the Dedicated Server Service Contract. The Service Provider's hardware (server) shall be located in the Service Provider's data centre and connected to the Service Provider's backbone network via a wired data connection. Unless agreed otherwise, the volume of data transmitted shall be unlimited. The Provider reserves the right to charge an additional fee in the event of excessive line utilization.
- 4.3. As part of its obligations under the Dedicated Server Service Contract, the Service Provider shall provide technical management of the leased hardware (server) and shall also bear the electricity consumption costs. Software administration, however, shall not form part of the Service Provider's obligations under a Dedicated Server Service Contract.
- 4.4. The Dedicated Server Service may take the form of a GPU Service, on the basis of which the Service Provider provides the Customer with a service comprising the rental and management of hardware (servers) equipped with computing (graphics) cards for





specialized use by the Customer (hereinafter referred to as the '**GPU Service**')

- 4.5. Unless agreed otherwise, the services, according to the Dedicated Server Service Contract, shall be provided for operation of the Customer's online projects. In the case of the GPU Service, this service is then provided for the purpose specified in the Dedicated Server Service Contract.
- 4.6. In the event of a technical fault in the hardware (server) leased under a Dedicated Server Service Contract, the Service Provider undertakes to rectify the fault within sixty (60) minutes of it being notified to the Service Provider by the Customer, in accordance with Art. 20.1 of the Terms and Conditions of Business (or from when the Service Provider detects the fault), provided that the Service Provider has the requisite spare parts available for repairing the respective hardware (server).

## **5. SPECIAL PROVISIONS OF A SERVER HOUSING SERVICE CONTRACT**

- 5.1. The Service Provider shall provide the Customer with services, for the term of the Server-Housing Service Contract, comprising installation of the Customer's hardware, as specified in more detail in the Server-Housing Service Contract, in premises provided by the Service Provider, and connection of the said hardware to the Internet, in accordance with the specifications provided in the Server-Housing Service Contract. By way of consideration for this service, the Customer shall pay the Service Provider the flat-rate payment agreed in the Server-Housing Service Contract.
- 5.2. As part of its obligations under the Server-Housing Service Contract, the Service Provider shall provide Internet connection of the Customer's hardware (server), subject to the conditions stipulated in the Server-Housing Service Contract. The Customer's hardware (server) shall be located in a data centre and connected to the backbone network via a wired data connection. The data centre is designed so that the Customer's servers can be powered from two (2) independent power circuits and the Customer's servers should therefore be equipped with multiple power sources and connected by the Customer to both power circuits. If one power circuit is not working in the data centre, it shall not be taken to constitute service disruption.
- 5.3. Server housing services can comprise server housing (installing an individual server/individual servers) or rack housing (installing an entire rack of servers). The Service Provider shall only bear the electricity consumption costs in the case of the server-housing service. If a rack-housing service is provided to the Customer under a Server-Housing Service Contract, the electricity consumption of the Customer's rack shall be measured. In that case the Customer shall reimburse the Service Provider for the electricity consumption costs, in addition to the Service Provider's flat-rate payment agreed in the Server-Housing Service Contract.





- 5.4. Should the Customer change the hardware (server) configuration, the Customer must notify the Service Provider beforehand by email and also at the location of the configuration changes (the server room), so that the Service Provider can perform a reference measurement of the server's electricity consumption before the modified hardware (server) is brought online (following the configuration changes), to check compliance of the changes with the conditions agreed in the Server-Housing Service Contract. In the event of a change in the characteristics of the Customer's server (change in server size, server source value or maximum server power consumption) without the Service Provider receiving prior notice, the Service Provider shall be entitled to demand a contractual penalty of EUR 300.00 for each such breach of contract. The defence of continuation of proceedings is excluded. Any contractual penalty to be paid shall be offset against any additional claims for damages on the part of the Service Provider, whereby the contractual penalty shall be incurred as a minimum damage. Failing to notify the Service Provider also gives good cause for the Service Provider to terminate the Server-Housing Service Contract without prior notice.
- 5.5. A lessor's lien within the meaning of § 562 BGB exists in favour of the Service Provider to secure all of the Service Provider's claims arising from the Server-Housing Service Contract. The lien includes all of the Customer's hardware located in the data centre. The Customer must notify the Service Provider in writing (text form) at least 5 working days in advance of any removal of hardware (server) from the data centre in which the hardware is located. The Service Provider may object to the removal of the hardware in accordance with § 562 a BGB, whereby the parties agree that the removal of a server does not correspond to the Customer's regular business operations. In the case of rack housing, the parties agree that if individual servers in a rack are removed, there is only sufficient security if at least 50 % of the rack size agreed in the contract remains in the data centre.
- 5.6. If agreed in a Server-Housing Service Contract that the Customer will have access to the data centre where the hardware is installed (through the Customer's employees or employees of the Customer's own customers), the parties' associated rights and obligations shall be regulated and governed by the data centre's operating regulations.
- 5.7. In the event that the Customer fails to collect the hardware installed in the data centre after termination of the Server-Housing Service Contract, the Service Provider shall notify the Customer to collect such hardware in text form. Should the Customer fail to collect the hardware within ten (10) days of the Service Provider sending such notification, the Service Provider may, at its discretion, sell the hardware, donate it to a third party or destroy it, at the Customer's expense.

## 6. SPECIAL PROVISIONS OF AN AWS-MANAGED SERVER SERVICE CONTRACT

- 6.1. The Service Provider shall provide the Customer with service and maintenance support



services for technical infrastructure belonging to Amazon Web Services EMEA SARL, registered office: 38 Avenue John F. Kennedy, Luxembourg 1855, Luxembourg (hereinafter referred to as 'AWS') for the entire term of the AWS-Managed Server Service Contract. The said services shall comprise administration of the AWS-managed server and provision of technical support for the AWS-managed server by the Service Provider. By way of consideration for the AWS Management Service provided, the Customer undertakes to pay the Service Provider the flat-rate payment agreed in the AWS-Managed Server Service Contract and also, if applicable, to compensate the Service Provider for costs charged to the Service Provider by AWS for the Customer's use of AWS technical infrastructure (Art. 6.4) (hereinafter referred to as '**Cost Reimbursement**'). The AWS Management Service shall not include activities relating to data migration or copying.

- 6.2. The AWS Management Service shall be provided to the Customer for operation of the Customer's online projects. The Customer shall enter into contractual relations with AWS independently and at the Customer's own risk, but undertakes to comply fully with its contractual obligations towards AWS (hereinafter referred to as the '**AWS Terms and Conditions**').
- 6.3. The AWS technical infrastructure is inherently variable over time and shall be fully maintained and managed by AWS. The AWS technical infrastructure shall be configured and equipped with computer programs specified in the technical specifications, which must be agreed in advance in text form by the parties. The Service Provider may arrange for the installation of other computer programs on the AWS technical infrastructure at the Customer's request (Art. 20.3).
- 6.4. Should it state in an AWS-Managed Server Service Contract that the Service Provider is required to pay AWS the costs for using the AWS technical infrastructure, the Customer shall always reimburse the Service Provider for such costs. In such an eventuality:
  - 6.4.1. the payment made by the Service Provider to AWS for use of the AWS technical infrastructure shall be calculated using the AWS price list, which may change over the term of the AWS-Managed Server Service Contract, and also based on actual use of the AWS technical infrastructure;
  - 6.4.2. the Customer shall specify an estimated initial cost reimbursement in the AWS-Managed Server Service Contract and invoice this to the Service Provider as an advance payment. The estimated advance payment may be adjusted by the Service Provider at any time over the term of the AWS-Managed Server Service Contract, according to the estimated extent of the Customer's use of the AWS technical infrastructure, in particular according to the actual AWS payment charged by AWS for the previous period;
  - 6.4.3. the Service Provider shall invoice the actual costs paid to AWS and offset them



against advance payments in accordance with Art. 6.4.2 of these Terms and Conditions of Business.

- 6.5. Failure to comply with the payment terms laid down under the AWS-Managed Server Service Contract on the part of the Customer (default by the Customer on payment of the Service Provider's flat-rate payment or the Cost Reimbursement) shall be deemed to constitute material breach of the AWS-Managed Server Service Contract.
- 6.6. The Customer shall bear sole responsibility and liability for the content of data (information) stored on the AWS technical infrastructure and for the content of data transmitted via data lines to that infrastructure. The content of such data must comply with the AWS Terms and Conditions. The Customer must not store and/or allow the transmission of data as part of the AWS Management Service for which the content is contrary to the AWS Terms and Conditions. This shall be without prejudice to the provisions of Articles 20.8 to 20.16 of the Terms and Conditions of Business.
- 6.7. The Customer acknowledges and agrees that the Service Provider cannot directly affect the availability and other quality-related features of the AWS technical infrastructure.

## 7. SPECIAL PROVISIONS OF A PRIVATE CLOUD SERVICE CONTRACT

- 7.1. The Service Provider shall provide the Customer with services, for the term of the Private Cloud Service Contract, comprising the leasing and administration of the hardware (server), administration of virtualisation software on the server and connection of the hardware (server) to the Internet in accordance with the specifications in the Private Cloud Service Contract. By way of consideration for the Private Cloud Service, the Customer shall pay the Service Provider the flat-rate payment agreed in the Private Cloud Service Contract.
- 7.2. Administration of virtualisation software on a server shall be taken to refer to:
  - 7.2.1. modifications and configuration of the virtualisation software, at the Customer's request, performed as specified in Art. 20.3 of the Terms and Conditions of Business (the Service Provider shall be entitled to refuse such requests if it might compromise the security of the server);
  - 7.2.2. updates to virtualisation software and its components by the Service Provider.
- 7.3. Where VMware vSphere virtualisation software (hereinafter referred to as '**VMware vSphere Software**') from VMware, Inc., registered office: 3401 Hillview Avenue, Palo Alto, CA 94304, USA (hereinafter referred to as '**VMware, Inc.**') is administered by the Service Provider as part of the Private Cloud Service, the Customer's rights and obligations shall also be regulated and governed by VMware, Inc.'s End-User Licence Agreement (EULA). The Customer must have read the EULA prior to conclusion of a



Private Cloud Service Contract, must agree thereto and must undertake to comply with the provisions thereof. Changes may be made to VMware, Inc.'s EULA over the term of the Private Cloud Service Contract. The Customer hereby agrees to the said revised EULA and undertakes to comply therewith. The Service Provider makes no warranties or guarantees to the Customer regarding the functioning of the 'VMware vSphere' virtualisation software, over and above the warranties or guarantees provided under VMware, Inc.'s EULA.

- 7.4. If another virtualisation computer program is administered by the Service Provider as part of the Private Cloud Service, the Customer's rights and obligations shall also be governed and regulated by the EULA for that computer program. The Service Provider shall make the relevant EULA available to the Customer before concluding a Private Cloud Service contract. The Customer confirms that he has received the EULA and has read them prior to conclusion of a Private Cloud Service Contract. When necessary, the Customer must agree thereto and must undertake to comply with the provisions thereof.
- 7.5. Under a Private Cloud Service Contract, the Service Provider undertakes to ensure the Private Cloud Service is available for at least 99.92% of each calendar month. For the purposes of a Private Cloud Service Contract, the total availability of the Primary Cloud Service in a calendar month shall be calculated using the formula  $((DS-DO)/DS)*100$ , where DS stands for duration of services for the month, DO stands for duration of outages in the Private Cloud Service (as defined under Art. 18 of the Terms and Conditions of Business) and \* is a multiplication sign. Scheduled downtime of the Private Cloud Service, as defined under Art. 19.4 of the Terms and Conditions of Business, shall not be added to the unavailability of the Managed Server Service as per the previous sentence. This shall be without prejudice to the provisions of Art. 7.3 of the Terms and Conditions of Business.
- 7.6. In the event of a technical fault in the hardware (server) leased under a Private Cloud Service Contract, the Service Provider undertakes to rectify the fault within sixty (60) minutes of it being notified to the Service Provider by the Customer, in accordance with Art. 20.1 of the Terms and Conditions of Business (or from when the Service Provider detects the fault), provided that the Service Provider has the requisite spare parts available for repairing the respective hardware (server).

## **8. SPECIAL PROVISIONS OF A VMWARE CLOUD SERVICE CONTRACT**

- 8.1. The Service Provider shall provide the Customer with services, for the term of the VMware Cloud Service Contract, comprising provision of access to the system resources forming part of the VMware vSphere virtualisation software for the creation and operation of virtual servers by the Customer and connection of those virtual servers to the Internet in accordance with the specifications in the VMware Private Cloud Service Contract. By way of consideration for the VMware Cloud Service, the Customer shall pay



the Service Provider the flat-rate payment agreed in the VMware Cloud Service Contract.

- 8.2. As part of the VMware Cloud Service, the Customer shall be provided with access to VMware, Inc.'s 'VMware vSphere' virtualisation software. With respect to the foregoing, the Customer's rights and obligations shall also be regulated and governed by VMware, Inc.'s EULA. The Customer must have read the EULA prior to conclusion of a VMware Cloud Service Contract, must agree thereto and must undertake to comply with the provisions thereof. Changes may be made to VMware, Inc.'s EULA over the term of the VMware Cloud Service Contract. The Customer hereby agrees to the said revised EULA and undertakes to comply therewith.
- 8.3. If the Customer is provided with the VMware Cloud Service in the form of a 'resource pool', the Customer shall create virtual servers separately and allocate resources from the assigned resource pool through them. Otherwise the Service Provider shall create virtual servers for the Customer, in accordance with the VMware Cloud Service Contract.

## **9. ADDITIONAL SERVICES**

- 9.1. The parties may conclude contracts within the Client Zone regarding the provision of additional services to the Customer by the Service Provider (Articles 10 to 17).

## **10. CLOUDMAIL ADDITIONAL SERVICE**

- 10.1. The Service Provider shall, for the duration of the CloudMail service, provide the Customer with services comprising arranging the operation of the Customer's email on the Service Provider's infrastructure. For provision of the CloudMail service, the Customer undertakes to pay the Service Provider the agreed flat-rate payment.
- 10.2. As part of the CloudMail service, the Service Provider shall provide the Customer with basic antispy and antivirus protection for incoming email messages, access to email mailboxes via a web interface (webmail) and access to web administration for email mailbox management.
- 10.3. The number of domains for which the CloudMail service is used by the Customer shall be unlimited. This shall be without prejudice to the agreed scope of the CloudMail service (the limits shall be stipulated in the CloudMail Service Contract). For these purposes, the terms mailbox, email box or electronic mailbox shall be taken to refer to one separately accessible email address.
- 10.4. The Customer must not use the CloudMail service to send bulk or automated emails. Should the Customer breach the provisions of the previous sentence or the provisions of Art. 20.9 of the Terms and Conditions of Business (even if through one mailbox only), the Service Provider shall be entitled to suspend provision of the CloudMail service to the



Customer with immediate effect.

10.5. The following shall not be taken to constitute disruption of the CloudMail service, as defined under Art. 18 of the Terms and Conditions of Business:

10.5.1.suspension of the provision of services pursuant to Art. 10.4 of the Terms and Conditions of Business;

10.5.2.restriction of the service as a result of the limits of the service being reached, as stipulated in the CloudMail Service Contract;

10.5.3.non-delivery of an email where, in view of the nature of the content of the email, there was a justified suspicion by the automated anti-spam system that it was unsolicited email (spam);

10.5.4.non-delivery of an email rejected due to failed RFC compliance by the sender and where there was a reasonable suspicion that it was unsolicited email (spam).

10.6. The following protocols can be used for the CloudMail service: TCP/110 (POP3), TCP/143 (IMAP), TCP/25 (SMTP), TCP/995 (POP3S), TCP/993 (IMAPS), TCP/465 (SMTPS).

## 11. CONTENT DELIVERY NETWORK (CDN) ADDITIONAL SERVICE

11.1. The Service Provider shall, for the duration of a CDN Service, provide the content delivery network service, comprising distribution of the Customer's data (content) to the Internet from individual points of presence (POPs) via 'Anycast', designed for caching and delivering the Customer's data (content) to the Internet. For provision of CDN Service, the Customer shall pay the Service Provider the agreed flat-rate payment. The Service Provider also provides the CDN service in the CDN Cloud version (Art. 11.6).

11.2. The Customer hereby notes that distribution of the Customer's content to the Internet from individual points of presence (POPs) as part of the CDN service may be performed through third parties.

11.3. The Customer shall be required to identify the Customer's sources of data (content) to be distributed as part of the CDN service during configuration of the CDN service. The Customer is obliged to ensure availability for each data source for the various points of presence (POPs), so that no filtration or limits are applied to the data (content) source IP addresses specified by the Customer on ports TCP/80, TCP/443 and UDP/443.

11.4. The provisions of Art. 20.8 of the Terms and Conditions of Business shall apply with regard to the distribution of data (content) contrary to the laws of general application or contrary to the good morals applicable in the location to which such data (content) is to





be distributed.

11.5. For the purposes of the provisions of Art. 18.1 of the Terms and Conditions of Business, limitation or interruption of the CDN Service shall not be deemed to constitute disruption of the CDN Service in the following cases:

11.5.1.unavailability of any of the points of presence (POPs) if traffic is redirected to the nearest available POP;

11.5.2.as a result of the CDN service limits being reached, as stipulated in the CDN Service Contract or in the CDN service specifications;

11.5.3.unavailability of any of the points of presence (POPs) due to a fault, filtration or other reason on the network path between the end user and the POP;

11.5.4.unavailability of any of the points of presence (POPs) due to a fault, filtration or other reason on the network path between the POP and the data (content) source;

11.5.5.inability of the data (content) source to deliver data (content) to the CDN service.

11.6. The Customer may use the CDN Cloud service version according to one of the tariffs listed on the website at <https://vshosting.cz/services/cdn>. The technical parameters of individual tariffs cannot be changed (configured) by the Customer and therefore do not constitute configurable, scalable and customizable computing resources. The CDN Cloud service is always prepaid by means of so-called credit (Art. **Chyba! Nenalezen zdroj odkazů.**).

## 12. VIRTUAL DEDICATED SERVER (VDS) ADDITIONAL SERVICE

12.1. The Service Provider shall provide the Customer with system resources for operation of a virtual server and connection of the virtual server to the Internet, in accordance with the specifications for such a connection in a VDS Service Contract, for the term of the VDS Service Contract. By way of consideration for these services, the Customer shall pay the Service Provider the flat-rate payment agreed in the VDS Service Contract.

12.2. As part of its obligations under the VDS Service Contract, the Service Provider shall provide technical management of the virtualisation layer, i.e. management of the physical hardware and software required for virtualisation operation, and shall also bear the electricity consumption costs. The Service Provider's obligations under the VDS Service Contract shall not, however, include administration of computer programs operated inside the Customer's virtual server.

12.3. The VDS service may take the form of a GPU service, on the basis of which the Service Provider provides the Customer with system resources for the operation of a virtual





server equipped with computing (graphics) cards for specialised use by the Customer. The VDS GPU service may take the form of the GPU Cloud service (Art. 12.6).

- 12.4. The Customer shall be required to provide the Service Provider with full assistance to ensure the smooth running of the virtual server. In particular, the Customer undertakes to ensure the installation and operation of software ensuring full virtualisation support in accordance with the Service Provider's specifications, e.g. installation and operation of the required drivers or agents. Should the Customer fail to provide such assistance, none of the Service Provider's VDS service availability guarantees shall apply, but it shall not be taken to constitute a VDS service disruption.
- 12.5. In the event of a technical fault in the hardware (server) used for the provision of the VDS service, the Service Provider undertakes to rectify the hardware (server) fault within sixty (60) minutes of it being notified to the Service Provider by the Customer, in accordance with Art. 20.3 of the Terms and Conditions of Business (or from when the Service Provider detects the fault).
- 12.6. Within the GPU Cloud service version, the Customer may use graphics cards for its needs in the number selected by the Customer. However, the computing resources assigned to one graphics card cannot be changed (configured) by the Customer and therefore do not constitute configurable, scalable and customizable computing resources. The GPU Cloud service is always prepaid by means of so-called credit (Art. **Chyba! Nenalezen zdroj odkazů.**).

### 13. PROXMOX BACKUP ADDITIONAL SERVICE

- 13.1. The Service Provider shall, for the term of a Proxmox Backup Service Contract, provide the Customer with system resources for backing up data from virtual servers or containers in a geographically separated location (off-site) via the open source software tool Proxmox, whereby the Customer shall pay the Service Provider a fee for the provision of this service determined depending on the size of the disk space reserved for the Customer in the amount according to the Service Provider's price list. The Service Provider's current price list is always available to the Customer in the Client Zone (knowledge base).
- 13.2. The maximum disk capacity available for data backup by the Customer is specified in the Proxmox Backup Service Contract. The Customer's data within the Proxmox Backup Service is stored in incremental increments, compressed and deduplicated.
- 13.3. All configuration of the data backup within the Proxmox Backup Service, including the data backup period and the Customer's data recovery properties, shall be made by the Customer independently and under its own responsibility via the Proxmox software tool interface. Customer may also set up encryption of its data using the AES-256 encryption



standard within the Proxmox Backup Service. The Customer acknowledges that if the Customer loses the encryption key in such a case, the Service Provider has no possibility to recover the Customer's data or to provide other access to such data.

#### **14. FIREWALL CISCO ASA/FIREPOWER ADDITIONAL SERVICE**

- 14.1. The Service Provider shall, for the term of a Cisco ASA/Firepower Firewall Service Contract, provide the Customer with the rental and management of system resources for Internet traffic filtering through Cisco ASA or Cisco Firepower series devices or through their virtual instance Cisco vASA, while the Customer shall pay the Service Provider a flat-rate payment for the provision of this service in the amount agreed in the Cisco ASA/Firepower Firewall Service Contract.
- 14.2. The provisions of Art. **Chyba! Nenalezen zdroj odkazů.** to **Chyba! Nenalezen zdroj odkazů.**, **Chyba! Nenalezen zdroj odkazů.** and **Chyba! Nenalezen zdroj odkazů.** of the Terms and Conditions of Business shall apply *mutatis mutandis* to the Cisco ASA/Firepower Firewall Service.

#### **15. SHARED S3 STORAGE ADDITIONAL SERVICE**

- 15.1. The Service Provider shall, for the term of a Shared S3 Storage Service Contract, provide the Customer with system resources for backing up the Customer's data via the S3 protocol, for which the Customer shall pay the Service Provider a flat-rate payment determined depending on the size of the disk space reserved for the Customer, in the amount agreed in the Shared S3 Storage Service Contract.
- 15.2. The Customer acknowledges and agrees that the S3 protocol may not be fully implemented within the Shared S3 Storage Service and that some specific functionality may be missing, in accordance with the specification at <https://support.vshosting.cz/en/Managed-services/s3-api/>.
- 15.3. Within the framework of the Shared S3 Storage service, the administration (management) of data backup is the responsibility and risk of the Customer.

#### **16. CLOUD STORAGE ADDITIONAL SERVICE**

- 16.1. The Service Provider shall, For the term of a Cloud Storage Service Contract, provide the Customer with system resources for backing up the Customer's data using the NFS protocol, for which the Customer shall pay the Provider a flat-rate payment determined depending on the size of the disk space reserved for the Customer, in the amount agreed in the Cloud Storage Service Contract.



- 16.2. The Customer acknowledges and agrees that the Cloud Storage Service is not operated on public IP addresses. Therefore, the Cloud Storage Service is intended for use exclusively within the Service Provider's internal VLAN (with private IP addresses).
- 16.3. The Cloud Storage Service is functionally limited to a maximum of 10000 IOPS (Input/output operations per second) for each 1TB (terabyte) of disk space reserved for the Service Provider under the Cloud Storage Service Contract.

## 17. CLOUD DNS ADDITIONAL SERVICE

- 17.1. The Service Provider shall, for the term of the Cloud DNS Service, provide the Customer with system resources for the operation of the authoritative name server, while the Customer shall pay the Provider a flat-rate payment for the provision of this service in the agreed amount.
- 17.2. The additional Cloud DNS Service cannot be ordered separately (without other service of the Service Provider).
- 17.3. The number of domains managed under the Cloud DNS Service is limited to 250. The number of records within one domain is then limited to 100.

## 18. SERVICE DISRUPTION

- 18.1. Pursuant to the Service Contract, only a fault that causes an interruption in the availability of the service provided or a change in the parameters of the service that represents a demonstrable devaluation of the service shall be deemed to constitute a service disruption. Limitation or interruption of the service shall not be deemed to constitute disruption in the following cases:
- 18.1.1. the limitation or interruption occurred, in part, as a result of the Customer's actions or as a result of configuration of the software by the Customer or another party to whom/which the Customer granted access to the service, even unwittingly;
- 18.1.2. the limitation or interruption occurred, in part, as a result of unprofessional or unauthorised use on the part of the Customer or another party to whom/which the Customer granted access to the service, even unwittingly;
- 18.1.3. the limitation or interruption occurred as a result of an intentional attack aimed at restricting or disabling operation of the service, in particular as a result of a DoS (denial of service) attack, including a DDoS (distributed denial-of-service) attack, or as a result of exploitation of a security flaw;
- 18.1.4. the limitation or interruption occurred as a result of a hardware fault rectified by



the Service Provider within the time limit set for the Service Provider to repair the hardware (server);

18.1.5. the limitation or interruption occurred as a result of a scheduled action or installation, or a configuration change performed at the Customer's request, as defined under Art. 19.2 of the Terms and Conditions of Business;

18.1.6. the limitation or interruption occurred as a result of a scheduled interruption in provision of the service, due to a service outage as defined under Art. 19.4 of the Terms and Conditions of Business;

18.1.7. the limitation or interruption occurred as a result of a situation related to data backup;

18.1.8. failure or limited function of computer programs administered by the Customer (app software, website files, databases, etc.), failure or limited function of components for which the Customer has been granted the right to change the configuration, and failure or limited function of containerised application components (Docker, Containerd, Podman, Vagrant, etc.), to which the Customer has privileged rights;

18.1.9. the limitation or interruption occurred as a result of an error, property, configuration or incorrect interoperability of the software used on the server (with another computer program), unless the Service Provider exercises copyright to such software;

18.1.10. if any of the Customer's computer programs (apps) operated by the Customer as part of the service has a technical defect (e.g. code error) that causes server overload or another abnormality in the function of the Service Provider's server, or if any of the Customer's computer programs (apps) operated by the Customer as part of the service overloads software or hardware managed by the Service Provider as part of the service;

18.1.11. the limitation or interruption occurred as a result of suspension of the provision of a service by the Service Provider under a Service Contract.

18.2. The Customer hereby acknowledges and agrees that server overload, or table locking for some types of database, may occur at the time of data backup by the Service Provider, and that this may cause short-term unavailability of some functions of the software (website), especially where there are higher volumes of data in database tables. This unavailability shall not be deemed to constitute a service disruption. The following shall also not be deemed to constitute a service disruption:



- 18.2.1.no data backup on a backup server;
  - 18.2.2.unavailability of backup data for up to five (5) hours per month;
  - 18.2.3.loss of the Customer's data due to a backup server crash.
- 18.3. A service disruption shall be deemed to have started upon notification to the Service Provider by the Customer in accordance with Art. 20.1 of the Terms and Conditions of Business (or from when the Service Provider detects the service disruption). A service disruption shall be deemed to have ended upon at least partial renewal of provision of the service. The total duration of the disruption shall not include the time from when the Customer is invited by the Service Provider to provide the active assistance required for rectification of the disruption until when the Customer provides such assistance.
- 18.4. In the case of rectification of a technical fault in the hardware (server) or rectification of a service disruption by the Service Provider, the Customer undertakes to provide the Service Provider with all the assistance required to ensure that the fault in the hardware (server) or the service disruption can be remedied as quickly as possible.
- 18.5. In the event of a service disruption, the Service Provider undertakes to do its utmost to rectify the disruption. If a service disruption occurs for reasons attributable to the Customer, the Customer undertakes to reimburse the Service Provider for the costs involved in rectification of the disruption. In other cases, the Service Provider shall bear the costs associated with rectification of the service disruption.

## 19. SERVICE PROVISION

- 19.1. In order to fulfil its obligations under the Service Contract and to receive information about operation of the service from the Customer, the Service Provider undertakes to set up a 24-hour telephone line (HOTLINE), at +49 22 1948 990 55. This shall be without prejudice to the provisions of Art. 19.2 of the Terms and Conditions of Business.
- 19.2. The Customer must perform scheduled actions and installations requiring the Service Provider's assistance following prior agreement with the Service Provider. The Customer shall notify the Service Provider of any requirements for configuration changes or the installation of Managed Software solely through the Client Zone (not by telephone), in particular to ensure due specification of the requirement and to ensure that everything is understood correctly. This shall be without prejudice to the provisions of Art. 20.5 of the Terms and Conditions of Business and the availability of support from the Service Provider in the event of unforeseen situations affecting the Customer.
- 19.3. The Service Provider shall not be required to provide services merely to prevent the Customer or third parties facing difficulties. The Service Provider shall therefore not be



required to provide services in particular in the event of power cuts of more than 48 hours, wide-area data network outages, other disturbances caused by third parties or instances of *force majeure*.

- 19.4. In connection with performance of its obligations under the Service Contract, the Service Provider may implement scheduled service outages for the inspection, maintenance or replacement of the hardware or for software configuration or upgrades (hereinafter referred to as the '**Service Outage**'). Service Outages shall generally last an average of sixty (60) minutes per month. Should the Service Provider not exercise the right to a Service Outage of this extent in a given month(s), the Service Provider may extend the Service Outage in the months that follow (for more time-consuming measures). In the event of a scheduled Service Outage, the Service Provider shall notify the Customer of the Service Outage in advance by sending an email to the Customer or posting information about the scheduled Service Outage in the Client Zone at least fourteen (14) days before the start of the scheduled Service Outage. If the nature of the Service Outage so allows, the Service Provider shall do its utmost to implement the Service Outage when services are in less demand (at weekends, at night, on public holidays). In cases where there is a risk of detriment and to prevent or minimise such detriment, including prevention of a security risk (and also in the Customer's interests), the Service Provider may implement a Service Outage without providing the Customer with prior notice.
- 19.5. The Service Provider may also provide services through third parties.
- 19.6. The Service Provider shall provide services with the standard levels of care and attention and in accordance with the valid laws of the Federal Republic of Germany. When providing services the Service Provider shall proceed independently and in accordance with the Customer's interests, as far as they are known to the Service Provider.
- 19.7. The Customer undertakes to provide the Service Provider with the assistance required for provision of the services, including answering the Service Provider's questions regarding the services provided.
- 19.8. If the Customer is granted access to the Service Provider's information systems or other Administrative Tools for a service, the Customer shall only use such access for performance of the respective Service Contract and in accordance with their intended purpose.
- 19.9. Unless agreed otherwise, the services provided shall not include activities relating to data migration or copying.

## 20. USE OF SERVICES BY THE CUSTOMER

- 20.1. The Customer shall report service disruptions by submitting a ticket in the Client Zone.



This shall be without prejudice to the provisions of Art. 20.5 of the Terms and Conditions of Business.

- 20.2. In order to fulfil its obligations under the Service Contract and to receive information about operation of the service from the Customer, the Service Provider undertakes to provide technical support via email, at [support@vshosting.de](mailto:support@vshosting.de) and via the Service Provider's customer system.
- 20.3. In the event of the customer submitting a technical support ticket via the Client Zone, the ticket must be sent from the user account identified as one of the Customer's technical administrators or administrators in the Client Zone. In the event of Customer submitting a technical support ticket by email, the ticket must be sent from an email address specified for one of the Customer's technical administrators or administrators in the Client Zone. In the event of the Customer submitting a technical support ticket by telephone, the Service Provider's respective technical support agent shall be entitled to require authorisation of the ticket in all cases. Authorisation shall be performed using the telephone number specified in the Customer's Client Zone (hereinafter referred to as the '**Client Number**') and a numerical 'PIN', which the Customer shall set within the Client Zone. When the Customer submits a technical support ticket by telephone, the Service Provider shall check that the Client Number and the Customer's 'PIN' match. The Customer hereby notes that a ticket from a technical administrator will be refused if the technical administrator does not have set access to the required device or service.
- 20.4. The Service Provider shall provide the Customer with access to the Administrative Tools. The Customer shall be entitled to grant access to the Administrative Tools to other parties, but shall remain fully responsible and liable for any service configuration performed by such other parties and for which parties are granted access to the Administrative Tools. This shall be without prejudice to the provisions of Art. 20.6 of the Terms and Conditions of Business.
- 20.5. The Customer must perform administration (configuration) of services, using Administrative Tools, including having the required authorisation (service user settings) in the Administrative Tool, independently, without the Service Provider's assistance (independently or through third parties).
- 20.6. The Customer shall also be entitled to allow third parties to use the services. This shall be without prejudice to the provisions of Articles 2.4 and 20.4 of the Terms and Conditions of Business. The Customer undertakes to ensure that any third party authorised to use a service by the Customer complies with the Customer's obligations under the Service Contract and laws of general application when using the service. The Customer shall be liable towards the Service Provider for breach of these obligations as if the Customer themselves had breached the obligations. Should such a third party cause the Service Provider detriment, the Customer undertakes to compensate the Service Provider for that





detriment.

20.7. The Customer must not use a service in a way that would unduly restrict use of services by the Service Provider's other customers or otherwise unduly restrict the Service Provider.

20.8. The Customer must not allow storage and/or transmission of information, as part of a service, where the content is contrary to the generally binding laws (effective in the location where such information is available) or good morals, in particular content which is terrorist content within the meaning of Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online ("**the Regulation on addressing the dissemination of terrorist content online**") or content where public disclosure of that content:

20.8.1.would breach third-party copyright or copyright-related rights, such as unauthorised access to computer programs (including computer games), tools for unauthorised modification of computer programs ('cracks'), etc.;

20.8.2.would breach legal standards governing the use of pornographic material;

20.8.3.would breach legal standards or societal norms aimed at protecting against discrimination based in particular on sex, race, skin colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation;

20.8.4.would contravene legal standards aimed at protecting against hatred towards any nation, ethnic group, race, religion, class, or other group of individuals, or against restrictions on the rights and freedoms of their members;

20.8.5.would promote or foster clientelism or corruption;

20.8.6.could be false or misleading or support the dissemination of false or misleading information.

20.9. The Customer must not send unsolicited commercial communication or use a service for any other transmission of unsolicited email (spam), or permit such actions. The Customer shall be required to secure the computer programs used by the Customer as part of a service, to ensure that third parties cannot use those programs to send unsolicited commercial communication, other unsolicited email (spam) or to carry out attacks on the Service Provider's equipment or third-party equipment.

20.10.The Customer must not use a service to store information (or operate websites) closely resembling third-party services or applications, for the purpose of confusing or



misleading Internet users (phishing) or use other services and applications designed to confuse or mislead Internet users. The Customer must also not allow any third party to perform the actions described in the previous sentence.

20.11. The Customer must not use a service to store information that damages the Service Provider's reputation or legitimate interests (including hyperlinks to content that damages the Service Provider's reputation or legitimate interests), nor allow storage thereof.

20.12. The Customer must not use a service to disseminate computer viruses or allow dissemination thereof.

20.13. When using a service, the Customer must not use mechanisms, tools, software or procedures that have or could have a negative impact on operation of the Service Provider's equipment, data centre, data centre network, Internet security or Internet users. The Customer must not use a service in a way that could lead to overloading of the Internet or the Service Provider's data network, resulting in a reduced data transmission rate or a partial or complete outage of the said networks. A service may only be used in accordance with its intended purpose and to the extent agreed, and not at the expense of other users' legitimate interests.

20.14. The Customer shall be obliged to maintain all technological elements and components that are available to the Customer and relate to provision of a service in a condition corresponding to the latest security standards and other technological standards, thereby ensuring that the hardware or software components of the technical infrastructure used by the Service Provider to provide a service are not exposed to an increased risk of a security incident as a result of the Customer's actions or omissions. In particular, the Customer shall be obliged to keep all of its software and hardware components updated and equipped with the latest security features, and, where applicable, to provide the Service Provider with all the assistance necessary, at any time, to implement the relevant updates and modifications. In the event of a breach of the Customer's obligations as laid down under this Article, the Customer shall be liable towards the Service Provider and third parties for any detriment resulting from such a breach. The Customer acknowledges and agrees that the Customer shall bear full responsibility and liability for security and other risks associated with failure to implement measures recommended to the Customer by the Service Provider regarding ensuring software or hardware security, for the entire term of the Service Contract.

20.15. Should any of the Customer's computer programs (applications) operated by the Customer as part of a service be operated in breach of generally binding laws or with compromised security integrity (including sending unsolicited communication) and the Customer is notified thereof by the Service Provider, the Customer shall be required to rectify the situation without delay and within 48 hours at the latest from receiving such



notification. If the Customer is unable to rectify the situation within that time limit, the Customer shall be obliged to remove the entire application. If the Customer fails to rectify the situation, the Service Provider shall be entitled to suspend provision of the respective service to the Customer until the situation is rectified. Where a situation arises in which considerable loss or damage could be caused to the Service Provider or third parties, the Service Provider shall be entitled to immediately suspend provision of the respective service to the Customer.

20.16. The Customer acknowledges that the Service Provider does not bear responsibility or liability for the content of the information stored by the Customer. The Customer also acknowledges that the Service Provider shall not be responsible or liable for the Customer's illegal actions that may infringe the intellectual property rights of third parties (infringement of trademark rights, trade name rights or copy rights) and that the Service Provider is obliged, if applicable, to remove unlawful information stored by the Customer or other parties in connection with a service, if the Service Provider becomes aware of its unlawfulness. The Customer shall exempt the Service provider of costs of any kind, including damages and legal defence costs, incurred by the Service Provider due to an unlawful act by the Customer.

20.17. In the event that the Service Provider provides an information society service consisting in the storage of information provided by the Customer (as a recipient of the service) within the meaning of Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC (hereinafter as the "**DSA Regulation**"), the following applies:

20.17.1. the Service Provider does not use automated tools to moderate content and content moderation is always based on human review;

20.17.2. notifications of infringing content are received by the Service Provider via electronic mail, and the review of these notifications is always based on human review. The Service Provider shall always inform the entity submitting the notice without undue delay of its decision with regard to the information to which the notification relates and provide the entity submitting the notice with information on the remedies available to her in relation to that decision. The Service Provider shall always take decision on a notification in timely, non-arbitrary, objective and diligent manner, taking into account the information concerned by the notification;

20.17.3. the Service Provider provides the Customer with a clear and specific justification (to the extent set out in Article 17.3 of the DSA Regulation) for any of the following restrictions imposed on the grounds that the information provided by the Customer is unlawful content or is in breach of the Service Contract:

20.17.3.1. any restrictions on the visibility of specific information provided by the Customer, including removing content, making content inaccessible, or



assigning a lower search position to that content;

20.17.3.2. suspension, termination or other restriction of cash payments;

20.17.3.3. total or partial suspension or termination of the service;

20.17.3.4. suspension or cancellation of a user account.

20.18. The Customer notes that correct use of Microsoft software may require integration or interaction with other computer programs. The Customer notes that use of such other computer programs is governed and regulated by special contractual arrangements with the rights-holders of those other computer programs.

## **21. SERVICE PROVIDER'S PAYMENT AND PAYMENT TERMS**

21.1. The Service Provider shall be entitled to a lump-sum payment, as specified in the Service Contract, for the provision of a service.

21.2. Where the Service Provider's payment for services or other performance is not specified in the respective Service Contract, the Service Provider shall be entitled to payment calculated according to the Service Provider's price list effective on the date of conclusion of the respective Service Contract. The latest version of the Service Provider's price list, which may change over the term of the Service Contract, shall always be accessible for the Customer in the Client Zone (knowledge base). This shall be without prejudice to the Service Provider's right to provide such services or performance according to other price conditions.

21.3. Where the Service Provider's payment or part thereof under the Service Contract constitutes repeat performance (flat-rate payment), the amount of the Service Provider's flat-rate payment shall be adjusted by the highest of the four (4) following factors every twelve (12) months following conclusion of the Service Contract:

21.3.1. the rate of inflation published by the German Federal Statistical Office, calculated according to developments in the consumer price index for goods and services for the previous twelve (12) months, whereby the adjustment in the flat-rate payment shall come into effect at the end of the twelve (12) months after conclusion of the Service Contract and shall result from the difference in the rate of inflation (comparison of the rate on the two reporting dates) and thereafter at twelve (12) month intervals;

21.3.2. the producer price index for industrial products published by German Federal Statistical Office, calculated according to developments in the producer price index for industrial products for the previous twelve (12) months, whereby the adjustment in the flat-rate payment shall come into effect at the end of the twelve



(12) months after conclusion of the Service Contract and shall result from the difference in the rate of inflation (comparison of the rate on the two reporting dates thereafter at twelve (12) month intervals;

21.3.3. the year-on-year change in the Service Provider's electricity costs for the past twelve (12) months, calculated as a percentage (%) year-on-year change in the average price of electricity including the retail supply margin traded on the EEX exchange in EUR for the German market, comparing the current and previous year at the two reporting dates, whereby the adjustment in the flat-rate payment shall come into effect at the end of the twelve (12) months after conclusion of the Service Contract and thereafter at twelve (12) month intervals;

21.3.4. the year-on-year change in the Service Provider's costs for acquiring licences for third-party computer programs (Microsoft, PLESK, VMware, Veeam, etc.) according to the distributors' price lists for the previous twelve (12) months, calculated as the percentage (%) year-on-year change in payments made by the Service Provider for licences according to the contractual distributor's price list in the relevant years. The adjustment in the flat-rate payment shall come into effect twelve (12) months after conclusion of the Service Contract and thereafter at twelve (12) month intervals;

21.3.5. the adjustment in the flat-rate payment shall come into effect at the end of twelve (12) months after conclusion of the Service Contract (and thereafter at twelve (12) month intervals.

21.4. The revised price shall always be used as the basis for calculation of the Service Provider's payment according to Art. 21.3 of the Terms and Conditions of Business. If an increase is applied by the Service Provider retrospectively (the Customer was only informed of the increase subsequently), it shall not affect the increase in the Service Provider's flat-rate payment.

21.5. The provisions of Articles 21.3 and 21.4 of the Terms and Conditions of Business shall apply to the prices specified in the price list *mutatis mutandis*.

21.6. The amount of the Service Provider's payment for sublicences granted for Microsoft software may change over the term of the Service Contract, based on changes in Microsoft's price terms, if these changes are subsequently reflected in the contractual relationship between the Service Provider and the Microsoft software distributor. In that case the Service Provider's payment for provision of a Microsoft software sublicense shall increase by the same percentage as the increase in the Service Provider's payment to the Microsoft software distributor.

21.7. The following payments shall be payable within fourteen (14) days of billing by the



Service Provider:

21.7.1. payment to the Service Provider for exceeding the maximum volume of backup data (Art. 3.13);

21.7.2. payment to the Service Provider for the Customer exceeding the maximum amount of data transmitted, if such a restriction is agreed.

21.8. Unless agreed otherwise in the respective Service Contract, the Service Provider's total payment from the individual Service Contracts to which the Service Provider is entitled for one (1) calendar month shall be payable by wire transfer to the Service Provider's account, always within 15 days from the start of the respective calendar month. This is without prejudice to Art. **Chyba! Nenalezen zdroj odkazů.** of the Terms and Conditions of Business. However, the Service Provider's payment for the GPU Cloud service and the Service Provider's payment for the CDN Cloud service must always be paid by the Customer in the form of prepayment (hereinafter referred to as '**Credit**'), whereby the current prepayment balance is referred to as the '**Credit amount**'.

21.8.1. The Customer may pay the Credit through the third-party payment system Stripe, including payment by credit card, in accordance with Art. **Chyba! Nenalezen zdroj odkazů.** of the Terms and Conditions of Business.

21.8.2. In the event that, in accordance with generally binding laws, value-added tax or another similar tax (hereinafter referred to as '**VAT**') is to be added to the Service Provider's payment for the provision of the GPU Cloud service or the CDN Cloud service, the Customer's Credit shall always be increased only by the amount reduced by VAT.

21.8.3. The Customer may use the GPU Cloud service or the CDN Cloud service only after the Credit has been paid. The possibility of using these services may be postponed by the Service Provider until the Credit amount is actually credited to the Service Provider's account. In the event that the amount is not actually credited to the Service Provider's account, the Customer shall be obliged to pay the Credit without delay (for which the Service Provider may invite the Customer). Should the Customer fail to pay the Credit pursuant to the previous sentence, the Credit that has not been paid shall be deducted from the Customer and the Service Provider shall be entitled to serve notice of termination of the Service Contract. This shall be without prejudice to the Service Provider's right to its payment arising from the Service Contract.

21.8.4. The minimum Credit amount shall be the amount specified in the Customer's user account.

21.8.5. In the event that the Credit amount falls below the minimum Credit amount, the



service shall be automatically restricted in such a way that the Customer will not be able to use the service. Upon the Customer topping up (paying) the Credit above the minimum Credit amount, the service shall be restored.

- 21.8.6. The Customer acknowledges that the Service Provider may not notify the Customer of insufficient Credit or of the fact that the minimum Credit amount has been reached.
- 21.9. If the Service Provider limits or temporarily suspends provision of a service in accordance with Art. 27.4 of the Terms and Conditions of Business, or as a result of another delay, the Customer shall not be entitled to a discount on a payment already made or to a refund of a proportion thereof.
- 21.10. Where the Service Provider's payment or part thereof under a Service Contract is a flat-rate payment and the Customer does not utilise the Service Provider's services to the full extent of the flat-rate payment, this shall not affect the Service Provider's right to payment of the flat-rate payment in full. The parties shall agree on a flat-rate payment, in particular, where the Service Provider requires designated resources to comply with its obligations under the Service Contract.
- 21.11. Within the Client Zone, the Service Provider shall also allow the Customer to pay the Service Provider's payment for services via the third-party payment system Stripe, including payment by credit card. The payment button is only displayed to the Client's users in the role of 'administrator' or 'economic administrator' who are subject to the terms and conditions of the Stripe payment system operator - <https://stripe.com/en-cz/legal/consumer>. The Service Provider does not have access to the Customer's payment card information. This is without prejudice to Art. 21.21 of the Terms and Conditions of Business.
- 21.12. The Service Provider is registered for VAT and VAT at the statutory rate will always be added to the Service Provider's payment.
- 21.13. The Service Provider shall issue the Customer with an invoice satisfying the requirements laid down under the VAT Act for all payments made. The invoice shall be sent to the Customer's email address in electronic form. The Service Provider shall also send the invoice to the Customer in hard copy format at the Customer's request.
- 21.14. The Customer shall be sent information on the respective payments, including the 'variable code' in the payment instructions or in the invoice. The Customer shall be required to make the payments in accordance with that information and to specify the variable code.
- 21.15. The Customer's payment obligation shall be satisfied upon the relevant amount





being credited to the Service Provider's account.

- 21.16. Any discounts on a payment for services provided to the Customer by the Service Provider shall be one-off and cannot be transferred to another period or combined. If the Customer is in delay with any payment under the respective Service Contract, the Customer shall not be entitled to a discount on the payment for the Service Provider's services.
- 21.17. The Service Provider's claim to remuneration from each individual contract for the provision of services is subject to the statutory limitation period.
- 21.18. The Customer shall owe the statutory default interest pursuant to § 288 (2) BGB. In accordance with Art. 16.8, a deadline within the meaning of § 286 (2) No. 1 BGB has been set for payment, so that a reminder from the Service Provider is not required.
- 21.19. In the event of the Customer defaulting on payment of the Service Provider's payment by more than seven (7) days, the Service Provider shall be entitled to restrict or suspend the provision of services under all Service Contracts, after providing the Customer with prior notice, and may also withdraw from a Framework Agreement (if concluded) and from all Service Contracts. Through compliance with this provision, the Customer shall not be relieved of the obligation to pay the Service Provider the amounts owed for services already provided. The Customer acknowledges and agrees that the Service Provider cannot be held responsible or liable for any detriment caused to the Customer or third parties by limitation or suspension of the provision of a service in accordance with this Article.
- 21.20. If the Service Provider exercises its right under Art. 21.19 of the Terms and Conditions of Business, the Customer agrees that the Service Provider may demand payment from the Customer of a one-time reactivation fee of EUR 100,00 excluding VAT, for each such case.
- 21.21. Where the amount paid by the Customer is insufficient to cover all of its debts towards the Service Provider, it shall first be used to settle contractual penalties, then contractual default interest, and then the principal, starting with the debt with the oldest due date.

## 22. CONTRACTUAL PENALTY

- 22.1. Should the Service Provider breach the provisions of a Service Contract with respect to total availability, as specified under Art. 3.14 of the Terms and Conditions of Business, the Customer shall be entitled to a contractual penalty of 1/10 (one tenth) of the Service Provider's monthly flat-rate payment under the respective Service Contract for each hour of default, or part thereof, on the part of the Service Provider, up to a maximum in any one month of one (1) monthly flat-rate payment payable to the Service Provider under



the Service Contract.

## 23. RIGHTS ARISING FROM DEFECTIVE PERFORMANCE AND COMPENSATION FOR DETRIMENT

- 23.1. The parties' rights and obligations with regard to the Service Provider's liability and responsibility for defective performance shall be governed and regulated by the relevant laws of the Federal Republic of Germany. The parties have agreed that the Service Provider shall only be liable without limitation in cases of intent, gross negligence and culpable injury to life, limb or health.
- 23.2. Notwithstanding the cases of unlimited liability pursuant to Art. 18.1, the parties shall only be liable to each other in the event of a slightly negligent breach of contract in the event of a breach of material contractual obligations, i.e. obligations whose fulfilment is essential for the proper performance of the contract or whose breach jeopardises the achievement or the purpose of the contract and on whose compliance the other party may regularly rely, but limited to the damage foreseeable at the time of conclusion of the contract and typical for the contract.
- 23.3. With regard to the granting of the use of software, the provision of storage space and in the context of server housing, the warranty provisions of tenancy law (§§ 535 ff. BGB) apply. The Customer must notify the Service Provider immediately of any defects. The warranty for only insignificant reductions in the suitability of the service is excluded. Strict liability in accordance with § 535 a (1) BGB for defects that already existed when the contract was concluded is excluded.
- 23.4. If *force majeure* limits the duration or scope of a service provided, the parties shall be exempt from the obligations under the Service Contract for the duration of the *force majeure*.
- 23.5. The Customer hereby acknowledges that the Service Provider shall not be held liable or responsible for the results of activities for which a service is used.
- 23.6. The Customer hereby acknowledges that the Service Provider shall not be held liable or responsible for service disruptions resulting from third-party interference in the Client Zone or use of the Client Zone contrary to its intended purpose. The Customer hereby acknowledges that the Service Provider shall not be held liable or responsible for service disruptions or shortcomings resulting from configuration by the Customer performed using an Administrative Tool or by another party, granted access to Administrative Tools by the Customer or who has gained access to the administration tools through inadequate security measures on the part of the Customer.
- 23.7. The Customer hereby acknowledges that, unless agreed otherwise in the Service



Contract, the Service Provider shall not be held liable or responsible for the functioning of the Customer's data network, the functioning of the public data network up to the point of connection of the Service Provider's data centre, the functioning of the Customer's hardware, the backing-up of data by the Customer, the condition of the Customer's software or any third-party intervention in the Customer's said software. The Service Provider shall not be held liable for disruptions of the telecommunications infrastructure, including telephone lines. Insofar as otherwise relevant, the Service Provider's liability shall be governed by § 70 TKG.

- 23.8. The parties' other rights and obligations with regard to the Service Provider's liability and responsibility for defective performance may be regulated in more detail in the Service Contract.
- 23.9. The above mentioned limitations of liability shall also apply in favour of legal representatives, employees and vicarious agents of the Service Provider.
- 23.10. The parties undertake to do their utmost to prevent loss or damage resulting from defective performance on the part of the Service Provider. The parties' undertaking under the previous sentence shall be implemented through the Customer checking the Service Provider's performance or deliverables thoroughly and comprehensively before it/they is/are brought into normal operation or use.
- 23.11. In the event that the Service Provider is liable to the Customer in accordance with Art. 23.1 – 23.10 of these Terms and Conditions, the parties agree that the total compensation for damages arising from the Service Contract, including loss of profit, shall be limited to one third of the Service Provider's remuneration actually paid by the Customer under the respective Service Contract in the six months prior to the Service Provider's actions that caused the detriment.
- 23.12. If the Customer's claim is not settled through the procedure specified under Art. 20.1 of the Terms and Conditions of Business, the Customer shall submit their claims, resulting from the Service Provider's liability or responsibility for service disruptions, in writing to the Service Provider's registered office or by email (addressed to the Complaints Department). The Service Provider shall provide the Customer with further details on the scope, conditions and method of claiming compensation for service disruptions when a service is commissioned.

## 24. DATA PROTECTION

- 24.1. The Service Provider undertakes to maintain confidentiality with regard to all confidential information that comes to its attention in connection with the provision of services to the Customer, where disclosure thereof to third parties could cause the Customer loss or damage. In particular, the Service Provider undertakes to maintain



confidentiality with regard to all information regarding the Customer's clients. The Service Provider shall not be entitled to interfere with the content of data created by the Customer or any of its clients, in particular not to divulge it or otherwise make it available to third parties, nor to view the Customer's email communication. The provisions above shall not apply to cases in which the Service Provider is otherwise obliged under or on the basis of generally binding laws (when information is required by public authorities, etc.).

## **25. PERSONAL DATA PROCESSING**

- 25.1. Where the provision of services involves the processing of personal data by the Service Provider for the Customer (as the personal data controller), the parties' rights and obligations shall be governed and regulated by a separate contract on personal data processing.

## **26. ADDITIONAL PROVISIONS**

- 26.1. The Service Provider shall be entitled to use the Customer's logo, registered business name, trade name or name for marketing purposes, as a reference, in all types of promotional material (irrespective of the form thereof or the means by which it is communicated).
- 26.2. The Customer must not disclose any information about the Service Provider's services or the Service Provider without the Service Provider's prior written consent (text form).
- 26.3. The Customer agrees to receive information relating to the Service Provider's services or business and to receive business-related communication at the Customer's specified address.
- 26.4. The Customer acknowledges and agrees that if the Service Provider is exposed to terrorist content within the meaning of the Regulation on addressing the dissemination of terrorist content online (that is, if the Service Provider receives a decision to this effect from a public authority), the Service Provider may take special measures to protect its services against the public dissemination of terrorist content, including taking appropriate technical and operational measures to identify and promptly remove terrorist content or prevent access to it.

## **27. TERM OF SERVICE CONTRACTS**

- 27.1. Service Contracts shall come into force upon conclusion and shall come into effect on the day on which the Service Provider provides the Customer with the information required



for accessing the service.

- 27.2. Service Contracts shall be concluded for a fixed term, as specified in the respective Service Contract. Each party is entitled to terminate the Service contract in writing (text form) with a notice period of three (3) months to the end of the Service contract. If neither party terminates the Service Contract on time, whereby receipt by the other party shall be decisive, the term of the Service Contract shall be automatically extended by another twelve (12) months. Unless otherwise agreed, the Service Contract shall be extended as often as desired, provided that neither party exercises its right of cancellation.
- 27.3. Should the Customer breach any of their obligations under a Service Contract or generally binding laws, the Service Provider shall be entitled to serve notice of termination of the Service Contract. In such an eventuality, the notice of termination of the Service Contract shall come into effect upon service to the Customer. Unless agreed otherwise, the notice period shall be one (1) month, starting from the day following the effective date of notice of termination. This shall be without prejudice to the provisions of Art. 27.4 of the Terms and Conditions of Business.
- 27.4. Should the Customer breach any of the obligations laid down under Articles 11.4 or 20.8 to 20.15 of the Terms and Conditions of Business, the Service Provider shall be entitled to immediately restrict or suspend provision of the service and to terminate the Service Contract for good cause without notice. Termination as per this clause shall come into effect upon service to the Customer.
- 27.5. Should the Customer, or any of the Customer's customers whom/which the Customer has allowed to use a service or to whom/which the Customer has granted access to a service, become subject to international sanctions, as defined under § 1 (1) Sanction Enforcement Act (SanktDG), on implementation of economic sanctions (including sanctions under EU regulations, implementing a common position or joint action adopted pursuant to the provisions of the Treaty on European Union regarding the common foreign and security policy) or subject to similar sanctions under generally binding laws in the United States of America, the Service Provider shall be entitled to immediately restrict or suspend provision of the service and to rescind the Framework Agreement (if concluded) and all Service Contracts.
- 27.6. The termination of the Service Contract shall not affect the effectiveness of the provisions governing matters that extend beyond termination of the Service Contract.

## **28. SANCTIONS AND PENALTIES**

- 28.1. Should the Customer breach any of the obligations laid down under Articles 20.9 or 20.10 of the Terms and Conditions of Business, the Customer shall be obliged to desist without delay, that being within twenty-four (24) hours at the latest from being notified thereof by



the Service Provider via client ticket, via email or via letter.

- 28.2. Should the Customer breach any of the obligations laid down under Art. 28.1 of the Terms and Conditions of Business, the Service Provider shall be entitled to a contractual penalty of EUR 400.00 (in words: four hundred EUR) for each day on which the Customer fails to comply with the requirement of the Art. 28.1. This shall be without prejudice to the provisions of Art. 27.4 of the Terms and Conditions of Business.
- 28.3. The provisions of Art. 28.2 of the Terms and Conditions of Business shall not affect the right to compensation for potential loss or damage caused by breach of an obligation covered by a contractual penalty, even if the loss or damage exceeds the contractual penalty. Any contractual penalty to be paid shall be offset against any additional claims for damages on the part of the Service Provider, whereby the contractual penalty shall be incurred as minimum damages.
- 28.4. The contractual penalty shall be payable seven (7) days after breach of the legal obligation to which the contractual penalty applies.

## **29. FINAL PROVISIONS**

- 29.1. Framework Agreements (if concluded) and Service Contracts, as well as the rights and obligations arising from, or in connection with, such agreements and contracts shall be governed by and construed in accordance with German law to the exclusion of the conflict of laws provisions and the United Nations Convention on Contracts for the international Sale of Goods of 11<sup>th</sup> April 1980 (UN Sales Convention).
- 29.2. The parties agree that the exclusive place of jurisdiction for all disputes arising from or in connection with the framework agreement (if concluded) and/or any Service Contract shall be Cologne.
- 29.3. There are no verbal or written subsidiary agreements. The Customer's general terms and conditions shall not apply. Unless expressly agreed otherwise, amendments or additions to this contract must be made in writing in order to be effective, unless a stricter form is prescribed by law. This shall also apply to any amendment to this writing clause.
- 29.4. Should individual provisions of this contract be or become invalid or unenforceable in whole or in part, this shall not affect the validity of the remaining provisions of this contract. The parties shall replace the invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the legal and economic intent of the invalid or unenforceable provision and that they would reasonably have agreed upon if they had considered the invalidity or unenforceability of the respective provision when concluding this contract. The same applies in the event of a loophole.



- 29.5. The right to make changes to these General Terms and Conditions is reserved. The Service Provider shall inform the Customer of the changes by e-mail to the address specified in the Service Contract in good time before the change comes into effect. The changes shall be deemed approved if the Customer does not object within 4 weeks of notification. The objection must be sent to the Service Provider in writing (text form). In the event of objection within the deadline, contracts shall continue to run under the original conditions. There is no right of objection if the changes are exclusively advantageous for the Customer or of a purely administrative nature and have no negative impact on the Customer or are directly prescribed by Union law or national law.
- 29.6. Should the Customer agree to the new version of the Terms and Conditions of Business, the previous Terms and Conditions of Business shall cease to apply and the new version of the Terms and Conditions of Business shall become an integral part of the Service Contract.
- 29.7. In case these Terms and Conditions of Business are provided to the Customer in any other language than English, such a version shall be seen as for translational purposes only. They shall have no legal impact. The English Version of these Terms and Conditions of Business shall be legally binding and in case of contradiction prevail over any other translation.

Cologne, date: 4.12.2025

**VSHosting GmbH**

