

1 Subject of Contract, Services

- 1.1 On the basis of the hosting contract, BYES InTec will provide the support services commissioned by the customer in the field of information and communication systems. This agreement governs the content of the service to be provided by both parties and defines the collaboration. The scope of service can comprise the entire range of services offered by BYES InTec.
- 1.2 The customer's data that are seen when carrying out the service will be treated as strictly confidential.

2 Document Hierarchy

If individual parts of the contract contradict one another, their ranking shall be defined in descending order pursuant to the following: In the event of contradictions, the later provision takes precedence over the earlier one.

1. Offer
2. Special Conditions of CloudServices of the Companies of BYES InTec, ICT Services Division (version November 2019).
3. General Terms and Conditions of Business of the Companies of BYES InTec, ICT Services Division (version October 2018).

3 Obligations of Collaboration and Information

The customer undertakes to

- report all faults that are discernible to him/her immediately to BYES InTec;
- to take all reasonable measures that make it possible to determine the faults and their causes or to make it easier to correct them;
- reimburse BYES InTec for the costs incurred in checking their facilities after a fault report has been submitted if and to the extent that it emerges after this check that the fault was the responsibility of the customer;
- treat his/her user ID and its access password as confidential and to prevent dial-in by third parties, whereby he/she has the opportunity at any time to change his/her access password or have it changed;
- keep the access data to his/her account confidential, whereby he/she is liable for any damage that is incurred by BYES InTec as a result of the misuse of this access;
- comply with international Swiss law and generally recognised rules of conduct;
- give immediate notification of any change to his/her name, his/her company, his/her place of residence or registered office, his/her invoice address, the legal form of his/her company and other fundamental circumstances that could be associated with legal consequences for the contractual relationship with BYES InTec and to pay the costs for the additional costs resulting from the notification not being given immediately.

4 Prohibited Content and Activities

It is generally forbidden for the customer to edit or save the following content on the servers of BYES InTec or to make it available via the servers to third parties or himself/herself:

- Depictions of violence pursuant to Art. 135 of the Swiss Penal Code (StGB);
- pornographic publications, audio and visual recordings and depictions pursuant to Art. 197 of the StGB (Penal Code);
- instigations to violence pursuant to Art. 259 of the StGB (Penal Code);
- content relating to racial discrimination pursuant to Art. 261bis StGB (Penal Code);
- instruction or instigation to prosecutable behaviour;
- offering and/or procuring prohibited gambling pursuant to the Lottery Act;
- information that breaches copyright, associated property rights or other intellectual property rights;
- software that offers free data transfer over a long period of time or results in excessive usage (e.g. mass mailings, pure download sites, etc.);
- software or settings that facilitate advertising circulars or mass mailings (mailing campaigns) via electronic mail using e-mail addresses of his/her domain.

5 Use of media (e.g. e-mail, SMS, phone)

- 5.1 The customer is responsible for checking his/her personal, electronic mailbox (e-mail) regularly for non-trustworthy messages. The sending of promotional e-mails by the customer to third parties is not permitted unless he/she has been asked to do so by the third parties. If BYES InTec becomes aware of a breach against this provision, it reserves the right to block the customer's access account without prior announcement until the circumstances have been clarified.
- 5.2 The sending of SMS, unwanted mass e-mails (spamming, mail bombing) and the improper use of phone conferences via the servers of BYES InTec is prohibited. The operation of mailing lists and SMS to an extent that could jeopardise the operational stability of the systems is also strictly prohibited. Such conduct is deemed to be a misuse of the service and will result in the blocking of the access and possible termination of the hosting contract without notice.

6 Blocking of Access

- 6.1 BYES InTec reserves the right to block the customer's access at the customer's cost with immediate effect in the event of misuse. Access will remain blocked until the respective circumstances have been clarified or the customer has provided evidence of the actual harmlessness of the content concerned.
- 6.2 BYES InTec also reserves the right to block the hosting service of the customer at his/her costs if the latter's user behaviour has a negative influence in any way on the operating characteristics of the server. BYES InTec reserves the right in any case to file claims for compensation.
- 6.3 If the customer succeeds in providing evidence of the harmlessness of the content concerned, or if the server operation is impaired in any way by the user's conduct, BYES InTec will terminate the hosting contract without giving notice.

7 Data Security

- 7.1 BYES InTec will also itself produce back-up copies of data that are transmitted to the servers of BYES InTec by the customer. BYES InTec will also back up the customer data at regular intervals on a separate location. If the customer wishes BYES InTec to restore data, this will be done where possible.
- 7.2 However, BYES InTec does not give any guarantee in any way that the customer's data can actually be restored. BYES InTec assumes no guarantee for the replacement or restoration of customer data and rejects any liability for the loss of such data and for any consequential damage.
- 7.3 There will be no automatic back-up of data stored locally on a PC or laptop of the customer to an external storage medium automatically at any time or by manual activation. The customer therefore bears the risk of loss alone for such data and BYES InTec rejects any liability for the loss of such data and any consequential damage.

8 Transmission of Data via the Internet

- 8.1 Data from and to the cloud resources will only be transmitted in encrypted form. This applies to access via Citrix, VPN, Outlook, etc.
- 8.2 The sending of e-mails to external companies is not encrypted by default. E-mails that are transmitted in non-encrypted form can be read, modified or suppressed by third parties. At the customer's request, BYES InTec can implement encryption of e-mails for a fee.
- 8.3 BYES InTec's responsibility shall be limited to the cloud services defined in the offer. BYES InTec disclaims any liability towards third party products and providers that are not part of the Service. This includes all IT components that impair the quality and operability of the service.

9 Data protection and Secrecy

- 9.1 BYES InTec shall protect the data stored in the cloud against unauthorized processing, copying or theft by means of currently available and appropriate technical and organizational measures. BYES InTec declines any liability for the violation of such activities by users with access authorization.
- 9.2 BYES InTec shall treat all information and data of the customer confidentially and secretly and shall make such information and data accessible to third parties only to the extent that this is absolutely necessary for the execution of the contract.
- 9.3 BYES InTec shall store and use customer data exclusively for the provision of Cloud Services. No further user information shall be stored.
- 9.4 Compliance with the Data Protection Act at the application level is the responsibility of each customer. It must be independently checked by the customer whether the applications and websites used comply with legal requirements and the customer's own guidelines.

10 Indemnification of BYES InTec

The customer undertakes to hold harmless or indemnify BYES InTec against claims of third parties, irrespective of their nature, which result from the unlawfulness of content that the customer has saved on the memory space that forms the subject of this contract. The obligation of indemnification also includes the obligation to hold harmless or indemnify BYES InTec in full against legal defence costs (e.g. court, lawyer and expert costs).

11 Prices, Conditions of Payment, Deadlines for Payment, Arrears in Payment

- 11.1 The prices defined in the hosting contract are net prices in CHF, exclusive of VAT (ex Zurich) and are based on an order-based service relationship.
- 11.2 The hosting resources are invoiced monthly in advance based on the effective usage by the customer. The first monthly invoice is based on the resources indicated in the order and is billed in advance on that basis.
- 11.3 BYES InTec explicitly reserves the right to block access to the Hosting Centre immediately in the event of late or outstanding payments (cf. Clause 7 of the General Terms and Conditions of Business ICT Services Division of Bouygues Energies & Services InTec, version October 2018).

12 Minimum Term of Contract and Termination

- 12.1 The hosting contract becomes legally valid when it is signed by both parties. The hosting contract is concluded for an indefinite period of time. Termination without cost consequences is possible for the first time at the end of the minimum term.
- 12.2 The term is automatically renewed by twelve months at a time. The hosting contract can be terminated by the contractor listed in the contract by registered letter (formal requirement) and giving a period of notice of three months to the end of a calendar month.
- 12.3 BYES InTec can terminate the hosting contract at any time, giving a period of notice of three months to the end of a calendar month.

13 Information regarding Confidentiality and Ownership

Transmission, receipt or possession of this document and the hosting contract does not give the right to use the information that it contains in another form elsewhere (internally or towards third parties). Information from this document and the hosting contract may not be copied, published or disclosed without the prior written consent of BYES InTec.

14 Customer Reference

BYES InTec is entitled to name the customer or its company (incl. customer brand) as a reference towards third parties.

15 Liability

BYES InTec rejects any warranty or liability for errors in the software and hardware used or marketed by it or for the loss or unauthorised modification of data and e-mails of the customer. BYES InTec is not liable for interruptions to the customer's operations which are used for troubleshooting, maintenance, changeover of the infrastructure (switchovers, etc.) or the introduction of new or other technologies. The liability for damage or consequential damage of any kind, in particular for loss of earnings, is excluded. In addition to this liability restriction clause, Clause 11 of the General Terms and Conditions of Business of BYES InTec, ICT Services Division (version October 2018) is also to be complied with.

16 Severability Clause

If individual provisions of this contract should be invalid or lose their validity due to a circumstance that occurs subsequently, this shall not affect the validity of the remaining contract. The invalid provision will be replaced by an appropriate provision that, insofar as this is legally permissible, comes closest to that which the parties would have intended according to the meaning and purpose of the agreement. This applies accordingly in the case of unintended gaps in the provisions of the agreement.

17 Amendment to the Contract

Amendments or supplements to the hosting contract and the General Terms and Conditions of Hosting must be made in writing and must be signed by both parties in a legally valid manner.

18 General Terms and Conditions of Business

The General Terms and Conditions of the companies of the BYES InTec, Division ICT Services (version October 2018) apply.