

## Terms of use DC- and Cloud-Services

### § 1 General

The terms of use for DC- and Cloud-Services (in the following 'terms of use') in addition to the supplementary general terms and conditions (in the following 'T&Cs') and the service level agreement (in the following 'SLA') create the foundation for the provision of services by the enterprises of the TechniData IT-Group (in the following 'TechniData') in the scope of data center and cloud products. In the case of conflicts these terms of use shall prevail over the T&Cs.

The terms of use in their then current version shall also apply to all future contracts of service provision between TechniData and the customer, even if not expressly stipulated.

To order DC- and Cloud services by means of the specific websites of TechniData, online registration of the customer and acceptance of these terms of use (besides T&Cs and SLA) is required.

### § 2 Provision of services by TechniData

The agreed scope and availability of the offered services as well as the technical requirements that are to be established by the customer are particularly set forth in the specific offer made by TechniData, in the product specifications as well as in the SLA.

TechniData establishes the contractual agreed services to the customer using IT infrastructure (server, storage systems, network infrastructure) that is not exclusively dedicated to the customer. The services are provided for a limited period of time solely for the customers' business use. TechniData may make use of data centers operated by partners and/or subcontractors (within the Federal Republic of Germany). Provision and presentation of the agreed scope of services is subject to the detailed regulations of the SLA.

Adequate adjustments to the contractually agreed services may be made by TechniData in case of new technical developments as well as changes in official regulations and/or laws. This only applies if these adjustments do not substantially impair the fulfillment of the contractual services, if they do not endanger the contractual purpose and if they are reasonable in light of the circumstances and customers' legitimate interest.

Besides the provision of IT infrastructure and resources (hard- and software), TechniData also offers accompanying support services as well as further management solutions (IT infrastructure management, backup services, virus protection, patch management, etc.) during the term of the contract. Immediate implementation of the latest hardware and/or software version made available by the vendor lies within the professional judgement of TechniData if not otherwise agreed upon by the contractual parties and provided that the provision of the agreed services is ensured.

Should the customer not use resource management services of TechniData, it is his sole responsibility to update the operating systems, applications or other software and abide to the common acknowledged security standards, such as the use of regularly updated anti-virus/firewall software and regular implementation of plausibility tests and data backup and archiving procedures. Comprehensive data backup needs to be made by the customer, especially prior to any access to the provisioned resources by TechniData or any third party as well as upon request by TechniData.

#### § 2.1 Remote Access

If remote access was agreed upon, it will be enabled on exclusively provided IT infrastructure. In case services for IT system management were ordered with TechniData, especially services that affect system security, all commonly recognized security standards are employed. The customer undertakes to not make any changes or de-install any of the implemented security systems and configurations, even if technically capable. To protect all systems in use, all security installations and configurations are monitored by TechniData. In case of changes to the security installations, our staff is alarmed by monitoring systems. To prevent further damage, all affected systems are taken out of service and checked thoroughly. Only after approval by the information security officer of TechniData, the affected IT systems are reinstated. Any downtime of the provisioned services caused hereby will be to the detriment of the customer and will not be considered in the calculations of system availability.

### § 3 Customer duties

Customer cooperation duties can be taken from TechniData's specific offer, from product specific service descriptions, from the SLA, these terms of use and from the T&Cs. In particular, the use of TechniData's provided services obliges its customers to the following duties:

The customer is responsible to meet the technical requirements to its hardware and software (including interfaces) as well as its internet connection that is necessary for the contractual use of the services.

Contents that are made available by TechniData's infrastructure via the internet to any third party, need to be marked legally conform and checked for legal violations regularly by the customer. The customer may not abuse the provided infrastructure to send bulk spam mail and not commit or knowingly allow a third party to commit the following:

- Unauthorized spying or intrusion into external computer systems (i.e. Hacking, Phishing, ARP-Spoofing, Webspoofing);
- Impair external computer systems by sending/relaying data streams and/or emails, run open mail relays (esp. Spam- Mail-Bombing, Stalking, Mail-Spoofing);
- Search for unprotected access to computer systems (i.e. port scanning);
- Fake IP-addresses (i.e. DNS-, DHCP-, IP/MAC-, URL-Spoofing), mail- and news headers, as well as spreading virus software, worms and trojans etc.;
- Use the servers to provide IRC (Internet Relay Chat, i.e. IRC server, bots, bouncer), anonymization services (i.e. Tor, JAP, proxy server, streaming-services, download-services, P2P-exchange) or linking;
- Interruption or obstruction of communication services;
- Store, use, publish or make publicly accessible contents of unlawful or unethical nature (i.e. contents violating third party rights, e.g. copyrights, trademarks or other property rights, pornography, extremist and violence glorifying contents);
- Commit administrative offenses, criminal offenses, or violations of other regulations and/or laws.

If a customer violates one or more of the afore mentioned duties or a third party claims that such a violation by a customer has taken place, TechniData may temporarily suspend the provision of services and block customers access to the infrastructure for as long as such a violation has been refuted by the customer. The customer is to be informed of such action, as far as possible in advance. The suspension is to be restricted to the affected services and resources for as much as this is technically possible and reasonable. Is the violation continued even after having been ordered to cease and desist or is another comparative violation of duties committed and/or continuance of service provision to the customer is not acceptable due to other reasons, TechniData may terminate the contract with the customer for cause without further notice. The right of TechniData to further claims to compensation remains unaffected.

The customer declares to hold TechniData harmless from and against any claims, costs and damages being raised against TechniData by third parties in connection to the use of the specific service by the customer (especially due to possible violations of the afore mentioned duties).

The customer undertakes to comply to utter secrecy in connection with any passwords or other access relevant data received by TechniData. He shall inform TechniData immediately upon becoming aware of such access data having been made available to a third party. Passwords are to be changed right away by the customer or notice to TechniData has to be made in order to have them changed, should there be reason to believe they have been compromised.

In case remote access to systems has been implemented for which the customer has ordered management services (management options) from TechniData, the customer furthermore commits to abide to the applicable password policy for user accounts with administrative rights:

- Minimum password length: 12 characters/digits
- Minimum password age: 1 days
- Maximum password age: 90 days
- The password needs to be comprised of different characters, numbers, special characters and capital characters.
- New passwords need to differ from 5 previously set passwords (password history).

Furthermore the customer assures that no user accounts and/or passwords for remote access are transferred or made available to a third party and that access only commences from trusted work stations. Should there be any unauthorized access or use of services by third parties due to a culpable violation of afore mentioned regulations, the customer can be made liable by TechniData for the compensation of such services and for any damages taken.

#### **§ 4 Right to use the Software**

Is software provision a part of the contractually agreed services, the following additional terms of use shall apply, together with the overriding license agreements of the specific software vendors. TechniData will provide any such vendor software license agreements to the customer.

The customer is granted a non-exclusive, non-transferable and non-sublicenseable right to use the software (including the documentation) via the internet for the duration of the contract. It is to be used for the customer's own business application and within the boundaries of the license scope. The license scope may be restricted in frequency or intensity of use (i.e. number of authorized users) and/or by the customer's use of resources (i.e. number of client systems, processors or processor cores).

The customer may backup data applying common technical procedures and therefore create backups of the software. Above this, the customer may not copy, edit, distribute, rent out, lease out or otherwise make the software available to a third party.

#### **§ 5 Commissioned data processing, Data security**

The customer is aware, that this form of service provision may be a commissioned data processing in accordance to § 11 BDSG. In this case, the customer is responsible to abide to the regulations set in BDSG and other data security regulations. TechniData warrants that all technical and organizational measures comply with § 9 BDSG in conjunction to the appendix to § 9 BDSG.

If the customer collects or processes personal data, he is required to do this in accordance to legally valid data protection regulations and laws. The customer explicitly holds TechniData harmless from any third party claims in case of violations of these regulations. TechniData will relay any complaints as well as claims to information, correction, deletion and blocking by third parties to the customer.

TechniData explicitly advises the customer that technical security for data transmission in open networks like the internet, cannot be entirely guaranteed at this point of time. The customer should therefore be aware, that it cannot be ruled out that a third party gains unlawful access to the customer's data. TechniData applies adequate technical countermeasures to prevent such an event and to warrant an appropriate level of protection. It is at the customer's discretion to operate their own, additional security measures.

#### **§ 6 Prices and terms of payment**

Amounts and due dates of the service fees are set out by TechniData in the issued customer offer as well as in a supplementary manner in the current valid price list. If not agreed otherwise, service fees are invoiced in advance for the first time after contract signature and then repeatedly in advance at the beginning of the next contractual period.

TechniData reserves the right to make adjustments to the amount of applicable service fees according to the general market pricing (in consideration of developments in the consumer pricing index and own costs). Pricing adjustments are communicated to the customer in written form or by e-mail, abiding to an announcement period of six (6) weeks to the end of a contractual period. Any adjustment may not exceed 10% of the previous contractual periods' service fees. If the pricing adjustment of the service fees exceeds 7.5%, the customer has the right to an extraordinary termination of the contract, allowing for a notice period of two (2) weeks to the end of the contractual period. Other rights to contract termination of the contractual partners for different reasons remain unaffected.

In case of default in payment, TechniData may block access to the contractual services to the customer after notice of the default and threat of blockage to the customer. Blockage may be upheld until full payment of all outstanding demands is made. Further rights of TechniData in case of payment default remain unaffected.

#### **§ 7 Contract period, contract termination, blockage of service**

TechniData provides the contractual services for the contractual period agreed upon. If not agreed otherwise, a contract made for an undefined period may be terminated by either party with a notice of one (1) month to the end of a calendar month without an obligation to state any reasons. Is the contract made for a definite or initial binding term, the contract may not be terminated without cause within this set period. The contract prolongs automatically by the agreed period or the last contractual period or 24 month at the most, if not terminated with a one (1) month notice to the end of the agreed to period, the initial binding term or the extension period.

A termination of the contract according to § 543 Sec. 2 Sent. 1 #1 BGB because of denial of service is only permissible if TechniData was provided with adequate time to remedy the cause of failure and those attempts were not successful.

Failure of rectification must be assumed if it is impossible to fix the defect, if remedy is denied by TechniData or if it is delayed intolerably or for other intolerable reasons (i.e. repeated unsuccessful attempts). The right to extraordinary termination of both parties for important reasons remains unaffected. Any termination of contract requires written form.

In case of important reasons, TechniData may at first temporarily block access of the customer to request ordinary fulfillment of the contract. Further rights of TechniData (especially the compensation of damages and extraordinary contract termination) remain unaffected.

Is the contract terminated extraordinarily by TechniData in case of important reasons that the customer is responsible for, TechniData reserves the right to claim full payment of any service fees due to the end of a contractual period or to the next ordinary contract termination possibility. This also applies for the time the service was blocked because of actions caused by customer. Does the contract end due to compliance failure made by TechniData, TechniData will reimburse service fees that were paid in advance, calculated 'pro rata temporis' to the contractual period.

TechniData reserves the right to delete or block any of the customer data or contents on the provided infrastructure after the end of the contractual period. As far as copies of software or any documentation was delivered to customer, those have to be returned to TechniData or deleted promptly after the end of the contract, should there be no further obligations of customer to safe keep such documents for an extended period. Upon demand, deletion must be acknowledged in writing to TechniData.