General Terms and Conditions for the Temporary Provision of Software (Lease and Subscription incl. the Provision of Software as a Service (SaaS))

General Terms and Conditions (GTC) of baramundi software GmbH, Forschungsallee 3, 86159 Augsburg, Germany, hereinafter referred to as "baramundi", for the temporary provision of software products by way of lease, including the provision of software as a service (SaaS), as so-called cloud solutions, as a subscription module.

§ 1 General

(1) The following General Terms and Conditions shall apply to the business relationship between baramundi and the Customer, where the Customer is provided with software for use, limited to the respective contractual term. They apply to the provision of software by way of leasing and/or the provision of software as a service (SaaS) as so-called cloud solutions and/or as subscription modules) together with the granting of the rights required for contractual use, for services agreed within the scope of the corresponding contract and for pre-contractual obligations. The version valid at the time of conclusion of the contract shall apply in each case.
Even if repeat reference is not made to these GTC when similar contracts are concluded, baramundi's General Terms and Conditions in the version provided to the Customer when the Customer submits its declaration shall apply exclusively, unless otherwise expressly agreed between the contracting partners.

(2) For the purpose of these General Terms and Conditions, "entrepreneur" means any natural or legal persons or partnerships with legal personality which, when concluding the legal transaction, are acting in the exercise of their commercial or independent professional activity. For the purpose of these General Terms and Conditions, customers are exclusively entrepreneurs.

(3) Individual contractual agreements shall take precedence over these General Terms and Conditions. Divergent, opposing or supplementary general terms and conditions shall not become part of the contract unless their validity is expressly approved.

(4) If the customer uses the baramundi Mobile Devices Premium (bMD Premium) module, the following terms and conditions apply in addition:
The baramundi Mobile Devices Premium (bMD Premium) module aims to support customers in separating private data from operational data (also called business data) on mobile devices. The module enables an administrator authorized by the customer to configure settings to separate private data from operational data using existing functions of the relevant operating system of the mobile device (iOS or Android). From a technical perspective, use of the aforementioned module also requires the integration of additional modules of the software application baramundi Management Suite (bMS). This includes in particular the baramundi Mobile Devices (bMD) module. The specific system requirements are listed in the performance specification for baramundi Mobile Devices Premium (bMD Premium). With regard to the baramundi Management Suite (bMS), baramundi's General Terms of Business for the Sale of Software and/or for temporary provision of Software shall additionally apply.

(5) If the customer uses the baramundi Managed Software (bMSW) module, the following terms and conditions apply in addition:
The baramundi Managed Software (bMSW) module is designed to support customers in maintaining the third-party software applications used by them. The module is thus used to manage and integrate new program updates or patches of software applications which are selected by baramundi, as well as their installation or uninstallation. From a technical perspective, use of the aforementioned module also requires the integration of additional modules of the software application baramundi Management Suite (bMS). The specific system requirements are listed in the performance specification for baramundi Managed Software (bMSW). With regard to the baramundi Management Suite (bMS), baramundi's General Terms for the Sale of Software and/or for the temporary provision of Software shall additionally apply. Sections 611 et seq. of the German Civil Code (BGB) shall apply to supplementary services (e.g. installation, parameterization, training).

(6) If the customer uses the baramundi Defense Control (bDC) module, the following terms and conditions apply in addition:
The baramundi Defense Control (bDC) module is designed to enable customers to encrypt their hardware used under Microsoft Windows operating systems. The module enables central control using Microsoft Windows Bit-Locker, allowing the status of the encryption to be managed transparently and uniformly on different Windows computers. From a technical perspective, use of the aforementioned module also requires the integration of additional modules of the software application baramundi Management Suite (bMS). The specific system requirements are listed in the performance specification for baramundi Defense Control (bDC). With regard to the baramundi Management Suite (bMS), baramundi's General Terms for the Sale of Software and/or for the temporary provions of Software shall additionally apply. Additional contractual conditions may apply to the use of third-party hardware or software. Sections 611 et seq. of the German Civil Code (BGB) shall apply to supplementary services (e.g. installation, parameterization, training).

(7) Our general conditions for training and consulting services supplemented by Sections 611 et seq. of the German Civil Code (BGB) shall apply to supplementary services (e.g. installation, parameterization, training).

Additional contractual conditions may apply to the use of third-party hardware or software. Sections 611 et seq. of the German Civil Code (BGB) shall apply to supplementary services (e.g. installation, parameterization, training)

§ 2 Contract conclusion

(1) Unless otherwise expressly stated in the respective offer, all offers of baramundi shall be subject to change and non-binding. baramundi reserves the right to make minor deviations on technical grounds within reasonable limits. Before concluding the contract, the Customer must check whether and to what extent the software's specification meets its wishes and requirements. To this extent, customers must keep themselves informed about the software's key functional characteristics and conditions.

(2) The Customer may order the software by e-mail, by fax, or in writing. The Customer's purchase order shall constitute a binding offer to conclude a contract for the transfer of the software for use in the scope required by the Customer. Unless otherwise separately agreed between the parties, baramundi shall be entitled to accept the contractual offer contained in the order placement within one week of receipt. Acceptance may as a whole be declared by means of a written declaration of acceptance or by another form of declaration through which the willingness to accept the order which has been placed is discernible. If baramundi provides the service which has been ordered, this shall be deemed equivalent to acceptance. As a rule, a legal obligation shall materialize when a contract is signed by both parties or when baramundi issues a written order confirmation.

(3) The contract shall be concluded subject to the proviso that if baramundi itself does not receive correct or proper delivery, it shall not be obliged to perform the contract, or may perform the contract only partially. This shall apply only in cases where baramundi is not responsible for the non-delivery and baramundi has acted with the required diligence in concluding a specific covering transaction. baramundi shall make all reasonable endeavors to enable it to provide performance. If this is not the case, any consideration already received shall be reimbursed without delay. The Customer shall be informed immediately in case of unavailability or only partial availability.

(4) With regard to the respective software used, baramundi shall provide software maintenance services in accordance with the attached General Terms and Conditions for Software Maintenance. Separate contracts must be concluded for other types of deliveries and services (e.g. consulting in relation to the set-up and installation of the software).

§ 3 Object of the contract

(1) The object of the contract is the transfer of the software and the granting of the rights of use which are required in order to use the software in accordance with the contract, limited to the term of the contract, in accordance with these General Terms and Conditions, baramundi's product specifications, and in accordance with any individual contractual agreements made between the parties within the context of the purchase order.

(2) As a rule, the scope of the software functions provided in each case is regularly based on the customer's hardware and software environments suggested by baramundi (System Requirements and Combatibility). It is expressly pointed out that as a rule, the software also requires third-party software components in order to ensure it offers trouble-free and unrestricted characteristics and functionalities. Any modifications to such software components and/or to the Customer's hardware and software environments may restrict the functionality of the software to be provided by baramundi. The availability and absence of defects in hardware and software not originating from baramundi is generally not owed.

(3) The agreements made in each individual case between the parties pursuant to the contractual offer contained in the order and the associated order confirmation by baramundi shall be authoritative as regards the specific scope of performance and the type and quality of the services as well as the specific functional scope of the software.
In all other respects, the software's qualities and functionalities shall derive from the corresponding product specifications, which shall not be construed as constituting warranties. A warranty shall be granted only if it is expressly designated as such.

(4) The Customer shall be entitled to provision of the software which is the object of this contract, comprising the machine program and a corresponding user manual. The technology used to supply the software shall be based on the agreements made between the parties. Unless otherwise expressly agreed, the software comprising machine program and user manual shall be provided via the Internet.

The Customer shall not be entitled to have the source code transferred.

(5) baramundi shall provide all services and deliveries in accordance with the current state of the art.
In the event of a change in the state of the art, baramundi reserves the right to change the services within reason.

(6) If the Customer uses the bLicense module from the baramundi Management Suite, the following terms and conditions shall apply additionally:
(a) The bLicense software solution determines which licenses are used on the respective hardware being checked and compares these to the actually existing license portfolio that is to be managed manually by the Customer. Based on the information provided by the Customer, the Customer is then informed of the products which might be underlicensed.
(b) To ensure proper functioning, the Customer has to correctly manage its existing software assets and license portfolio. The software can only supply correct and plausible results if complete and relevant information is available. baramundi shall not be liable for inaccurate license check results where these are based on inaccurate information from the Customer. No advisory or management services concerning the legally correct or commercially viable licensing of the Customer's software assets shall be provided.
(c) Where this has not been separately commissioned, baramundi shall not provide any configuration, expansion, adaptation or other modification of the IT infrastructure, in particular in relation to the Customer's software assets and license portfolio.

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(7) If the Customer uses the baramundi Ticketing System (bTS) module, the following terms and conditions shall apply in addition:

(a) The object of the contract is the provision of the baramundi Ticketing System software for use via the Internet, and the granting of storage space on baramundi's servers ("SaaS"). The baramundi Ticketing System is a software for service departments (helpdesks) to electronically record and process service incidents ("tickets") from the Customer's own operational business. It is not used for ticketing between baramundi and the Customer itself. Furthermore, the Customer can configure the software itself via its web access. The functional scope of the contract software arises from the online help linked in the bTS application.

(b) baramundi is permitted to involve subcontractors when granting storage space. The use of subcontractors does not release baramundi from its sole obligation to the Customer to completely fulfill the contract.

(c) baramundi is not obligated to establish and maintain the data connection between the Customer's IT system and baramundi's servers.

(d) baramundi shall strive to achieve overall availability of 99.50% of the technical infrastructure underlying the software. This availability is calculated as follows: (total service time per year − downtime) / total service time per year X 100. Regular maintenance activities to maintain and expand the software functionality and the associated technical infrastructure are excluded from the availability calculation. The Customer is informed of such activities ordinarily on the baramundi Forum or by e-mail notice. Furthermore, the availability calculation only takes into account outages lasting more than 2 minutes individually.

(8) If the customer uses the baramundi Argus Cockpit (bAC) module, the following terms and conditions shall apply in addition:

(a) The object of the contract is the provision of the baramundi Argus Cockpit software for use via the Internet ("SaaS").
The baramundi Argus Cockpit enables IT teams to have access to the status of the entire IT environment or several environments at any time and from anywhere. With baramundi Argus Cockpit, it is possible to clearly display and evaluate the important and relevant data of the end devices. Individual filters and threshold values are available in Argus Cockpit to quickly detect anomalies. The number of filters can be individually defined for each environment. This allows end device states to be defined that meet the company's compliance requirements. If these threshold values are exceeded or not reached, IT managers receive a warning by e-mail and are thus able to initiate solutions in good time. The relevant IT data can also be examined retrospectively to identify recurring anomalies and trends.
The entire functional scope of the contract software can be found in the online help linked in the bAC application.

(b) baramundi is permitted to involve subcontractors when granting storage space. The use of subcontractors does not release baramundi from its sole obligation to the customer to fulfill the contract in full.

(c) baramundi is not obligated to establish and maintain the data connection between the customer's IT system and the baramundi servers.

(d) baramundi reserves the right to limit the availability for regular maintenance activities to maintain and expand the software functionality and the associated technical infrastructure to an appropriate extent. The customer is usually notified of these activities in the baramundi forum or by e-mail notification. In addition, only outages with a single duration of more than 2 minutes are taken into account in the availability calculation.

(9) If the customers uses the baramundi Argus Experience (bEX) module, the following terms and conditions shall apply in addition:

(a) The object of the contract is the provision of the baramundi Argus Experience software for use via the Internet ("SaaS").
The baramundi Argus Experience helps IT administrators increase the satisfaction of end users: The IT devices with which the users work run more stably and perform better, and the view of the IT administrators becomes more comprehensive through intelligent collection, visualization and evaluation of relevant experience data. The selection of experience data can be defined individually for each environment. The primary function of the module is the monitoring of relevant experience data.
The entire functional scope of the contract software can be found in the online help linked in the bEX application.

(b) baramundi is permitted to involve subcontractors when granting storage space. The use of subcontractors does not release baramundi from its sole obligation to the customer to fulfill the contract in full.

(c) baramundi is not obligated to establish and maintain the data connection between the customer's IT system and the baramundi servers.

(d) baramundi reserves the right to limit the availability for regular maintenance activities to maintain and expand the software functionality and the associated technical infrastructure to an appropriate extent. The customer is usually notified of these activities in the baramundi forum or by e-mail notification. In addition, only outages with a single duration of more than 2 minutes are taken into account in the availability calculation.

(10) If the Customer uses the baramundi Mobile Devices Premium (bMD Premium) module, the following terms and conditions shall apply in addition:

(a) The object of the contract is the provision of the baramundi Mobile Devices Premium (bMD Premium) module to the Customer for use and the granting of corresponding rights of use in accordance with these General Terms and Conditions. This use shall include supporting the Customer in the administration of certain third-party software applications.

(b) The scope of the functions of the baramundi Mobile Devices Premium (bMD Premium) module is regularly based on the customer's hardware and software environments proposed by baramundi (System Requirements and Compatibility | baramundi).

(c) The customer is given the possibility of configuring settings to separate private data from operational data (also called business data) on mobile devices. Data separation is effected by using existing functions of the relevant operating system.

It is not baramundi's responsibility to assess the extent to which access to the mobile device using data separation and corresponding configuration is permissible and lawful. The customer must itself check the extent to which the use of the baramundi Mobile Devices Premium (bMD Premium) module is deemed permissible. In particular, restrictions imposed by labor law or data protection legislation on examining and monitoring mobile devices used by employees for business purposes must be taken into account by the customer at its own responsibility.

(11) If the customers uses the baramundi Managed Software (bMSW) module, the following terms and conditions shall apply in addition:

(a) The object of the contract is the provision of the baramundi Managed Software (bMSW) module to the Customer for use and the granting of corresponding rights of use in accordance with these General Terms and Conditions. This use shall include supporting the Customer in the administration of certain third-party software applications.

(b) For the use of the contractual module (bMSW), baramundi shall offer the following services:
The Customer shall be informed about with those new program releases (e.g. updates) of the managed third-party standard software applications which are issued during the contractual term;
The Customer shall be informed about those patches of the managed third-party standard software applications which are issued during the contractual term. A link or other means shall be used to provide the Customer with new program releases or patches for retrieval. The Customer alone shall be responsible for installing new program releases or patches. baramundi itself shall not as a rule provide such services for the Customer. baramundi shall not have any more extensive obligation to check the new program releases or patches for any defects, for improper use or modification of the relevant third-party standard software applications, for any contamination of software components with computer viruses or other malware, or for other security gaps.
baramundi shall not be obliged to protect against faults originating from the sphere of risk of the Customer, of the third-party suppliers of the relevant software application or of other third-party suppliers, and in particular shall not be obliged to protect against faults which were caused by improper use or modification of third-party software, by contamination of relevant software components with computer viruses, the use of unsuitable data media, defective hardware, a power failure or failure of data-carrying cables, or to protect against faults which were caused by a lack of information security, unsuitable environmental conditions at the place where the software is operated, or force majeure.

(c) The agreements made in each individual case between the parties pursuant to the contractual offer contained in the order and the associated order confirmation by baramundi shall be authoritative as regards the specific scope of performance and the type and quality of the services offered via the baramundi Managed Software (bMSW) module. In all other respects, the qualities and functionalities shall derive from the corresponding product specifications, which shall not be construed as constituting warranties. A warranty shall be granted only if it is expressly designated as such.

(d) baramundi expressly reserves the right to suspend or entirely cease the provision of new program releases or patches of certain software applications on technical grounds or on grounds which are otherwise outside baramundi's sphere of influence. This shall apply only in cases where provision would be unreasonable or impossible for baramundi. baramundi shall make all reasonable efforts in order to enable it to provide new program releases or patches of specific software applications. If baramundi's services are nevertheless restricted in this way, any remuneration paid to baramundi in advance shall be reimbursed accordingly on a pro-rata basis. The Customer shall be informed immediately if services are unavailable or are only partially available.

(12) If the customer uses the baramundi Defense Control (bDC) module, the following terms and conditions shall apply in addition:

(a) The object of the contract is the delivery of the baramundi Defense Control (bDC) module to the Customer for use and the granting of corresponding rights of use in accordance with these General Terms and Conditions. This use shall include supporting the Customer in the administration of certain Microsoft software applications.

(b) For the use of the contractual module (bDC), baramundi shall offer the following services:
The customer is given the possibility of orchestrating Microsoft Windows BitLocker. In particular, the customer is given the possibility of protecting the system at boot time with a PIN; this functionality can be activated by bDC.
An analysis of the status of Bitlocker on managed systems provides an overview of the state of encryption on different partitions.
The customer is aware that baramundi is not itself responsible for providing Microsoft Windows BitLocker under the terms of the agreement. baramundi does not guarantee that Microsoft Windows BitLocker will ensure suitable technical and organizational measures for an adequate, state-of-the-art level of protection through the encryption of data. The customer is responsible for checking the extent to which Microsoft Windows BitLocker provides sufficient data security for its needs.

(13) If the Customer uses the baramundi Remote Desk (bRD) module, the following terms and conditions shall apply in addition:

(a) The object of the contract is the provision of the baramundi Remote Desk software for use via the Internet and the granting of storage space in servers provided via baramundi ("SaaS"). baramundi Remote Desk is a module for IT departments for the remote maintenance of end devices and for the support of users. It is also used for quick access to the systems by sharing content (screen, files, chat, etc.). It is not used for remote maintenance and support of the customer by baramundi. The functional scope of the module can be found in the online help.

(b) baramundi is permitted to involve subcontractors when granting storage space. The use of subcontractors does not release baramundi from its sole obligation to the customer to fulfill the contract in full.

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(c) baramundi shall owe the possibility of using the functionalities of the module, but not the establishment and maintenance of the internet connection between the customer's IT system and the servers provided via baramundi.

(d) baramundi reserves the right to limit the availability for regular maintenance activities to maintain and expand the software functionality and the associated technical infrastructure to an appropriate extent. The customer is usually notified of these activities in the online help, in the baramundi forum or by e-mail notification. In addition, only outages with a single duration of more than 2 minutes are taken into account in the availability calculation.

§ 4 Rights of use

(1) The Customer shall be entitled to a non-exclusive, non-transferable and non-sublicensable right, limited to the agreed contract term, to use the respective software in unmodified form in the scope of the agreed type of use on the devices for which it is intended. The software may, at maximum, be used only by the type and number of authorized users (clients) in accordance with the software licenses purchased by the Customer.

Contractual use shall include the installation and also the loading, displaying and running of the installed software. In the case of SaaS solutions , contractual use covers loading the contract software into the memory on baramundi's server, but not (even temporary) installation or storage of the software on data carriers of hardware used by the Customer.

(2) The Customer shall only be entitled to duplicate, edit or decompile the software if this is permitted by law and only if baramundi has not made the requisite information accessible following a request from the Customer. Customer is only allowed to duplicate the user documentation/user manual for internal purposes.

(3) Beyond the cases specified in paras. 1 to 2, the Customer shall not be entitled to duplicate the software.

(4) The Customer shall not be entitled to give the software and the user documentation/user manual with which it has been provided or any backup copies made to third parties. In particular, it shall not be permitted to sell the software, to lend it, to lease it or to sub-license it in any other way, or to publicly reproduce the software or make it publicly accessible.

(5) If the Customer breaches one of the above provisions, all rights of use granted within the framework of this contract shall immediately become null and void and shall automatically revert to baramundi. In such case the Customer must immediately and fully cease its use of the software, delete all copies of the software that may have been installed on its systems, and delete any backup copies that may have been made or hand them over to baramundi.

(6) The decompilation of the program code into other code forms as well as other forms of reverse engineering of the different production stages of the software, including a program modification, for the Customer's own use shall in principle be prohibited.

(7) baramundi may terminate the rights pursuant to § 4 for good cause. Good cause shall in particular apply if baramundi cannot reasonably be expected to continue to adhere to the contract, in particular if the Customer does not pay the remuneration or significantly infringes § 4.

(8) If the rights pursuant to § 4 do not materialize or if they end, baramundi may demand that the Customer return the items which have been provided to it or give baramundi a written assurance that they have been destroyed, and may also demand the deletion or destruction of all copies of the items and a written assurance that this has been done.

§ 5 Remuneration

(1) The prices quoted by baramundi shall be binding. In principle, prices are exclusive of the statutory rate of value added tax and any other duties.

(2) The amount of the monthly remuneration owed shall be based on the agreements made in each individual case between the parties pursuant to the contractual offer contained in the order and the associated order confirmation by baramundi. If the contract is not concluded on the first day of a calendar month, the remuneration to be paid for the first month shall as a rule be calculated pro-rata, based on the number of days remaining in the month, starting with the day following the day on which the software was made available.

(3) Unless otherwise agreed between the parties, the remuneration owed shall be payable annually in advance. In the first month of the contract period, the remuneration owed shall be payable when the software is made fully available to the Customer.

(4) During the period of default, the Customer shall pay interest of 9 percentage points above the base interest rate on the monetary debt. baramundi reserves the right to claim higher damages for default.

(5) baramundi reserves the right to adjust the remuneration to be paid at its reasonable discretion in line with the development of the costs that are relevant for the price calculation. A price increase can be considered and a price reduction should be applied if, for example, the costs for the procurement of hardware and software as well as energy, the use of communication networks or labor costs rise or fall, or if other changes in the economic or legal framework conditions result in a changed cost situation. Increases in a cost category, e.g. labor costs, may only be used for a price increase to the extent that they are not offset by possible declining costs in other areas, such as hardware and software costs. In the case of cost reductions, e.g. hardware costs, baramundi shall reduce prices insofar as these cost reductions are not fully or partially offset by increases in other areas. When exercising its reasonable discretion, baramundi shall choose the respective dates of a price change in such a way that cost reductions are not taken into account in accordance with criteria less favorable for the customer than cost increases, i.e. cost reductions affect prices to at least the same extent as cost increases. baramundi shall inform the customer in writing of changes to fees no later than six weeks before the changes take effect.

(6) The Customer shall have a right of set-off only if its counterclaims have been established by a court of law, have been acknowledged or have not been contested by baramundi. This shall not affect the Customer's right of set-off against contractual and other claims resulting from the initiation or implementation of this contractual relationship. The Customer may only exercise a right of retention if its counterclaim is based on the same contractual relationship.

§ 6 Term and termination

(1) The contract shall, in principle, be concluded for a specific minimum contractual term of 1, 3 or 5 years from the date of contract conclusion. Unless it is terminated by one of the parties at the respective end of the term with three months' notice, it shall be automatically extended by a further 12 months.

(2) The contract may also be terminated in writing by either party for good cause, without complying with any notice period. Good cause which entitles baramundi to terminate the contract shall in particular exist, if the Customer does not settle due payments despite of reminder and extension of time or infringes rights of use of baramundi in such a way that it uses the software beyond the extent permitted under this contract and does not cease such infringement within a reasonable period following a warning by baramundi.

(3) Termination must be made in writing.

(4) In the event of termination, the Customer must cease use of the software and remove all copies of the program that may have been installed from its computers and, as decided by baramundi, immediately return any backup copies that may have been made to baramundi or immediately destroy such copies.

§ 7 Customer obligations

(1) The Customer shall be obligated to take suitable measures to protect the software from access by unauthorized third parties, and in particular to keep all copies of the software or access data, if any, in a secure location.

(2) Before commencing productive use, the Customer must thoroughly test use of the software in accordance with the intended use. It must in each case cooperate in an active and appropriate way in order to promote proper use of the software and must provide baramundi with the necessary information and data to enable proper provision of performance.

(3) The Customer shall be responsible for ensuring that it creates the technical requirements for using the object of the contract, including in particular with regard to the hardware and software used, the Internet connection and current browser software. Where the Customer uses baramundi software within the context of Software Asset Management (SAM, e.g. baramundi's bLicense solution), it is explicitly pointed out that in order to ensure its proper functioning, the Customer must properly manage its existing software assets and license portfolio. The software can only supply correct and plausible results if complete and relevant information is available. baramundi shall not be liable for inaccurate license check results where these are based on inaccurate information from the Customer. The Customer shall in particular perform regular data back-ups and use a current virus protection software. baramundi shall not be liable for virus damage which could have been prevented if corresponding software had been used. In this connection, the limitations of liability pursuant to § 11 of these General Terms and Conditions shall also apply.

(4) The Customer must take appropriate precautions for a situation where the software does not work properly, whether in full or in part (e.g. by making data backups, fault diagnosis, regular checking of results, emergency planning). The Customer shall be responsible for ensuring the operability of the software's working environment.

(5) The Customer must in principle comply with the applicable law of the Federal Republic of Germany, notably provisions on data protection and the protection of young people, penal provisions and the present General Terms and Conditions. In particular, the Customer shall independently be obliged:

(a) to protect access data provided by baramundi or generated by the customer itself for SaaS solutions and also corresponding identification and authentication mechanisms from access by unauthorized third parties and not to forward these to such third parties;

(b) not to infringe third-party rights, including in particular copyrights and neighboring rights, trademark, patent and other property and individual rights;

(c) to respect the privacy of others, i.e. not to distribute any content which is defamatory or threatening, which glorifies violence, which is abusive, harmful, racist, or otherwise reprehensible;

(d) not to execute any applications, such as viruses, which can lead to a change in the physical or logical structure of the networks;

(e) not to use the infrastructure which is made available to it for unauthorized advertising purposes, in particular for the unsolicited sending of electronic mail.

(6) Where the Customer arranges for personal data to be collected, processed and used during usage of baramundi's contractual services, without

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this already being permitted pursuant to applicable data protection provisions or other legal provisions, the Customer must obtain the required consent of the respective party concerned. Personal data are data which contain information about the personal and material circumstances of a certain or identifiable person.

(7) Where storage capacity is made available to the Customer, it may not file any content which is illegal, which violates laws or official provisions, or which infringes rights of third parties. In particular, any infrastructure which has been made available by baramundi and/or the storage capacity which has been made available by it may not be used for offers which infringe industrial property rights (such as trademark, patent, utility model and design rights), copyrights and neighboring rights, and other rights (such as copyright regarding one's own image, rights to a name and personal rights), and may not be used to advertise or sell such offers. The same shall apply to offers which are pornographic in nature or harmful to young people, to propaganda items and to products with symbols of unconstitutional organizations.

(8) If the Customer learns that its access data or the identification and authentication mechanisms have been misused, it must inform baramundi of this immediately. In the event of misuse, baramundi shall be entitled to block access to its services. The block may only be lifted by means of a written request from the Customer. The Customer shall be liable for any misuse for which it is responsible.

§ 8 Blocking of access

(1) baramundi reserves the right to delete information from servers and to block user accounts if the present General Terms and Conditions are infringed. If applicable laws are infringed, baramundi shall be entitled to forward the corresponding information to the competent government agencies.

(2) baramundi reserves the right to temporarily block access to all or part of the agreed services if and to the extent that the Customer uses such services illegally and/or breaches the obligations anchored in § 7 of these General Terms and Conditions. The Customer shall be informed of this by e-mail without delay.

§ 9 Indemnification

In principle, baramundi shall not be responsible for the Customer's own content. In particular, baramundi shall not be obliged to check the content for possible illegalities. The Customer shall indemnify baramundi in respect of all justified claims asserted by third parties against baramundi on account of a breach of their rights and for which the Customer is responsible. In this respect, the Customer shall also assume the costs of baramundi's legal defense including all court and attorney expenses, in the amount of the statutory fees. The Customer must provide baramundi with a reasonable advance for such costs.

§ 10 Maintenance and warranty

(1) The Customer shall be obliged to professionally examine or to arrange for the professional examination of the software provided by baramundi immediately after delivery or immediately after it has been made accessible and to notify any defects identified together with a precise description of the defect. Before commencing productive use, the Customer must thoroughly test use of the software in accordance with the intended use.

(2) baramundi warrants that the contractually agreed quality characteristics of the software shall be maintained throughout the contractual term and that no third-party rights conflict with using the software in accordance with the contract. baramundi shall eliminate any material defects and defects of title occurring in the leased item within an appropriate period of time.

(3) The Customer shall be obliged to notify baramundi in writing of any defects in the software immediately after they are discovered. In the event of material defects this shall include a description of the time the defect occurred and the detailed circumstances. Any defects in the services owed by baramundi shall be rectified immediately following a description of the defect by the Customer. If baramundi is unable to rectify the defect within a reasonable time, the Customer may demand a pro-rata reduction. This shall not apply if the defect is due to circumstances for which the Customer is responsible, in particular, if it has not fulfilled its duty of cooperation, inter alia, pursuant to § 7 et seq. In the event of repeated significant defects the Customer may, moreover, terminate the contract without notice. This shall not affect further rights of the Customer.

(4) Unless otherwise expressly agreed, baramundi shall not give the Customer any warranties in the legal sense.

(5) The content which is integrated into any baramundi infrastructure that is provided shall be deemed external content for baramundi. The legal responsibility therefor shall lie with the Customer.

(6) Based on the current state of the art, no guarantee can be given that data communication via the Internet will be free of errors and/or available at all times. Consequently, baramundi shall not assume any warranty for technical defects for which it is not responsible, in particular for the constant, uninterrupted availability of the databases and their contents or for the full and error-free reproduction of any content input by the Customer. In the event that services from baramundi are used by unauthorized third parties using the Customer's access details, the Customer shall be liable for any fees incurred as a result within the scope of civil liability, until receipt of the Customer's request to change the access details or notification of the loss or theft, provided the Customer is at fault for the access of the unauthorized third party.

§ 11 Limitations of liability

(1) baramundi shall not assume any liability for the uninterrupted availability of systems or for system-related failures, interruptions and malfunctions of the technical systems and services for which baramundi is not responsible. In particular, baramundi shall not be liable for disruptions to the quality of the access to its services due to force majeure or due to events for which it is not responsible. This shall include in particular strikes, lockouts, lawful internal company industrial dispute measures and official orders. It shall also include the full or partial failure of the communications and network structures and gateways of other suppliers and operators which are required for baramundi to provide its own performance. baramundi shall be entitled to postpone the performance it owes for the duration of the hindering event plus an appropriate lead time. baramundi shall not be liable for minor interruptions.
Furthermore, baramundi shall not assume any liability for data loss or hardware malfunctions caused by incompatibility of the components existing on the Customer's end devices or IT systems with the new hardware and software (or hardware and software to be changed) and for system malfunctions that may arise due to existing misconfigurations or older, disruptive drivers that have not been completely removed, unless baramundi is responsible for these.

(2) In the event of slightly negligent breaches of duty, liability shall be limited to the average foreseeable, direct damage typical for the contract, based on the type of goods. This shall also apply in the event of slightly negligent breaches of duty on the part of baramundi's statutory representatives or vicarious agents or persons employed by baramundi in the performance of its obligations. baramundi shall not be liable for slightly negligent breaches of minor contractual obligations. In contrast, baramundi shall be liable for a breach of legal positions of the Customer which are material to the contract. Legal positions which are material to the contract are legal positions which the contract must guarantee to the Customer according to the content and purpose of the contract. baramundi shall also be liable for a breach of obligations the fulfillment of which makes due performance of the contract possible in the first place and on the fulfillment of which the customer may rely.

(3) The above limitations of liability shall not affect claims of the Customer involving warranties and/or product liability. Furthermore, the limitations of liability shall not apply in the event of malicious intent, in the event of a breach of essential contractual obligations or in the event of physical injury to, damage to the health of or death of the Customer which is attributable to baramundi.

(4) baramundi shall not be liable for the loss of data and/or programs where the damage is due to the fact that the Customer has failed to perform a data back-up and thus ensure that lost data can be restored with justifiable effort and at reasonable expense.

§ 12 Data privacy

(1) The contracting parties shall observe the applicable data protection regulations, in particular those valid in Germany, and shall bind separately their employees employed in connection with the contractual relationship and its performance to data secrecy – unless they are already generally obliged in this regard.

(2) If the Customer collects, processes or uses personal data, it shall be responsible for ensuring that it is entitled to do so in accordance with the applicable provisions, in particular those of data protection law, and shall indemnify baramundi from claims by third parties in the event of an infringement.

(3) Personal data which baramundi collects in the course of performing its contractual obligations shall be dealt with in confidence and shall be collected, processed and used only to the extent that this is permitted by reason of provisions of data protection law or that the Customer consents thereto. If an agreement on contract data processing is required in this regard, baramundi shall provide this to be concluded with the Customer. The Customer itself is responsible for the declarations of consent by its customers and contractual partners required under the provisions of data protection laws

(4) The Customer itself shall as a rule retain sole power of control over corresponding data and information. The Customer shall have sole responsibility for deciding the extent to which users and other third parties authorized by it may input data and information (where applicable using baramundi software) and/or receive access to such data and information. To this extent, the Customer shall therefore also be responsible for ensuring that corresponding access to such data and information takes place in a permissible and restrictive manner. Where applicable, this must be ensured by issuing corresponding password-protected administrator access accounts or by issuing access rights.

(5) The proper functioning of the SaaS service bTS requires functional cookies. Without these functional cookies, bTS does not provide the full performance per the service specification.

§ 13 Mobile devices

Where baramundi's software is accessed on mobile devices within the context of contract fulfillment and processing, the Customer shall on its own responsibility ensure that there is no interference in any ownership positions of the respective users or other third parties. To this extent the Customer shall also ensure that where it does not own corresponding mobile devices, it is in possession of the requisite declarations of consent for such access.

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§ 14 Implementation of certificates

The implementation of certain certificates shall as a rule be required in order to use baramundi's software. Such certificates can be used to verify certain properties of persons or objects, by means of encryption software based on cryptographic methods. Information on the individual certificates required can be found in baramundi's product specifications. Where baramundi does not expressly provide the Customer with corresponding certificates or unless otherwise separately agreed between the parties, the Customer itself shall be originally responsible for such certificates.

§ 15 Amendment of these General Terms and Conditions

(1) baramundi reserves the right to amend these General Terms and Conditions at any time while observing an appropriate period of notice of at least six weeks. baramundi shall inform the Customer of a corresponding amendment in text form.

(2) If the Customer does not object, the amended Terms and Conditions of Business shall be deemed to have been accepted. If an objection is made, the contract shall continue to apply unchanged, with the existing terms and conditions; baramundi shall, however, be entitled to pronounce ordinary termination in accordance with the contract.

§ 16 References

baramundi is entitled to include the Customer's name, company sign and, if applicable, its logo and other publicly accessible information in a list of references, which will also be published on the Internet. Other references in a promotional context must be agreed with the Customer in advance. The Customer is entitled to object to the use of this information for the future.

§ 17 Final provisions

(1) The law of the Federal Republic of Germany shall apply. The provisions of the United Nations Convention on the International Sale of Goods shall not apply.

(2) Where the Customer is a merchant, a legal entity under public law or a special fund under public law, the legal venue for all disputes arising under the present contract shall be the court with jurisdiction for baramundi's registered office, unless an exclusive legal venue applies. baramundi shall, however, also be entitled to bring an action against the merchant at his place of residence or place of business. This shall not affect jurisdiction based on an exclusive legal venue.

Address	**Managing Director**	**Registered office and register court**	
baramundi software GmbH	Dr. Lars Lippert	Augsburg	
Forschungsallee 3	Michael Huber	HRB No. 38692	VERSION 11/2023 - PAGE **5** OF **5**
86159 AUGSBURG			