

Annex: Special Terms and Conditions for Software and Software-Based Services

1. Scope

The following Special Terms and Conditions for Software and Software-Based Services shall apply in addition to the General Terms and Conditions, provided they refer to software, Software as a Service, or other digital services, especially the web portal ENERGY MONITOR and the CHARGE POINT OPERATOR.

2. Subject matter of the contract, scope of use and maintenance

2.1. The subject matter of the contract is Software as a Service, covering either the ENERGY MONITOR (high-resolution, near-realtime visualization of the energy consumption and generation data collected and transmitted by the client in a simple, easy-to-use web application) or the CHARGE POINT OPERATOR service (a detailed presentation of the operation of the charging infrastructure including billing models).

2.2. Digital Energy Solutions GmbH & Co. KG shall grant the client and the users stipulated by the client the simple, non-transferable, non-exclusive right of use against payment of a license fee for the duration of the contract. The criterion for the granted rights of use is the appropriate and suitable use of the ENERGY MONITOR, software-based services or any other software. The client shall bear the risk of usability for economic purposes. The rights of use shall be granted on condition of the remuneration agreed.

2.3. If the client is in arrears with the payment of the remuneration, Digital Energy Solutions GmbH & Co. KG shall have the right to take steps to prevent the use of the software or software-based service for the duration of default in payment. The right of Digital Energy Solutions GmbH & Co. KG to withdraw from the contract shall remain unaffected thereof.

2.4. The client shall not transfer granted rights to third parties, use the ENERGY MONITOR for purposes others than the client's, create derivative works or sell derivative works or services to third parties without the written consent of Digital Energy Solutions GmbH & Co. KG.

2.5. Digital Energy Solutions GmbH & Co. KG reserves its right to perform modifications associated with or supporting the software maintenance process as part of its software maintenance, the modification of a software product after its delivery aimed to correct errors, enhance the performance or other attributes or make adjustments to changes in the environment.

2.6. The client shall be required to report any disruptions in the system's availability immediately after noticing. Prior to notifying Digital Energy Solutions GmbH & Co. KG about any malfunction, the client is, however, requested to check his own responsibilities.

2.7. Digital Energy Solutions GmbH & Co. KG shall remove errors and restore operation as part of software maintenance within a reasonable period. Digital Energy Solutions GmbH & Co. KG will make all reasonable efforts to eliminate interruptions immediately or work towards their elimination. Software maintenance is generally provided from Monday to Friday, 9.00 am to 5.00 am on working days in Germany, except for December 24 and December 31.

3. Warranty

3.1. The software or software-based service is usable as defined in the description issued and applicable at the time of delivery to the client, provided the system configuration and browser installation required to use the software are available.

3.2. If the provision of current and/or correct data has not been expressly agreed in the contract offer or is considered a major obligation, Digital Energy Solutions GmbH makes no warranty as to the correctness or up-to-datedness of the information made available by the services. The client acknowledges and accepts that computer and telecommunication systems are not fault-free may experience occasional downtime. Digital Energy Solutions GmbH & Co. KG makes no warranty that the services will be uninterrupted, operate in realtime, are secure or error-free. In the case of any loss of data or programs caused by Digital Energy Solutions GmbH & Co. KG, Digital Energy Solutions GmbH & Co. KG shall only be liable to the client to the extent of the verifiable recovery effort, which occurs when the client has performed regular backups and thus ensured that lost data can be recovered at reasonable cost.

3.3. Digital Energy Solutions GmbH & Co. KG regularly checks its software for virtual attacks from third parties, especially viruses, worms or Trojan horses. The client is aware that technology cannot fully avoid virtual attacks by third parties. Digital Energy Solutions GmbH & Co. KG shall therefore not be held liable for any interruptions caused by virtual attacks of any kind from third parties that infect the client's systems. The client shall be obliged, in accordance with the state of the art, to ensure protection of the client's systems against virtual attacks by third parties, especially viruses, worms, Trojan horses, etc.
