

## **Appendix 2: EODC: General Terms and Conditions**

This English version of EODC General Terms and Conditions is translated from the German version (“EODC - Allgemeine Geschäftsbedingungen v1.2”). In the case of any legal dispute, the German version is binding.

### **1 Use of EODC Services**

- 1.1 To access and use the EODC Services, you must comply with these EODC Terms and Conditions and any applicable laws, rules and regulations governing your use of the EODC Service.
- 1.2 The EODC GmbH (EODC) may, from time to time, modify or discontinue the Service Offerings and the Service Level Agreements either in part or in whole, or change or remove the functionality of the Service Offering either in part or in whole. EODC will inform the customer of any material change or termination of service offerings and will maintain the service for at least six months in the existing form so as to give the customer the opportunity to respond to these changes.
- 1.3 The EODC service is being expanded continuously and gradually. The EODC endeavours to minimize the resulting downtime of the EODC service to a minimum.

### **2 Data Protection Terms**

- 2.1 Scope
  - 2.1.1 The terms in this section apply to all Online Services of the EODC.
- 2.2 Processing of Customer Data
  - 2.2.1 Customer Data will be used or otherwise processed only to provide the Customer the Online Services including purposes compatible with providing those services. EODC will not use or otherwise process Customer Data or derive information from it for any advertising or similar commercial purposes, except for informing the Customer about events such as the EODC Forum or the status of the EODC infrastructure.
  - 2.2.2 As between the parties, the Customer retains all right, title and interest in and to Customer Data. EODC acquires no rights in Customer Data, other than the rights the Customer grants to the EODC to provide the Online Services to Customer.
- 2.3 Disclosure of Customer Data
  - 2.3.1 EODC will not disclose Customer Data outside of EODC and affiliates except (1) as the Customer directs, (2) as described in the General Terms and Conditions, or (3) as required by law.
- 2.4 Processing of Personal Data (GDPR)

2.4.1 Personal Data provided to EODC by, or on behalf of, the Customer through use of the Online Services is also Customer Data and is treated as described in paragraph 2.2 (Processing of Customer Data).

## 2.5 Processor and Controller Roles and Responsibilities

2.5.1 The Customer and EODC agree that the Customer is the controller of Personal Data and EODC is the processor of such data, except when Customer acts as a processor of Personal Data, in which case EODC is a subprocessor. In any instance where the GDPR applies and the Customer is a processor, the Customer warrants to the EODC that Customer's instructions, including appointment of the EODC as a processor or subprocessor, have been authorized by the relevant controller.

### 2.5.2 Processing Details

2.5.2.1 The parties acknowledge and agree that:

2.5.2.1.1 The subject-matter of the processing is limited to Personal Data within the scope of the GDPR;

2.5.2.1.2 The duration of the processing shall be for the duration of the Customer's right to use the Online Service and until all Personal Data is deleted or returned in accordance with Customer instructions or the General Terms and Conditions;

2.5.2.1.3 The types of Personal Data processed by the Online Service include those expressly identified in Article 4 of the GDPR;

2.5.2.1.4 The categories of data subjects are Customer's representatives and end users, such as employees, contractors, collaborators, and customers.

### 2.5.3 Records of Processing Activities

2.5.3.1.1 EODC shall maintain all records required by Article 30(2) of the GDPR and, to the extent applicable to the processing of Personal Data on behalf of Customer, make them available to Customer upon request.

## 2.6 Data Security

2.6.1 EODC shall take appropriate and reasonable measures to protect content of the Customer against accidental or unlawful loss, access or disclosure.

2.6.2 All storage media, as well as the entire server infrastructure, which are made available as part of the EODC service offering are located in Austria.

## 3 Limitation of Liability

3.1 EODC assumes no liability, nor provides guarantees, for results generated by the EODC Service.

3.2 The EODC, as well as the Customer, assume no liability for newly acquired or existing intellectual property (Foreground Intellectual Property, Background Intellectual

Property) arising from the contract and any other information. All information is provided without any warranty.

#### **4 Temporary suspension of the EODC service**

- 4.1 EODC may, in whole or in part, suspend the Customer's, or Customer's end user, right of access or use in respect of the Services upon notification, if EODC determines that:
- a) there is a security risk for the entire EODC infrastructure, which goes beyond the usual threat and the customer does not respond adequately despite being requested to do so;
  - b) the Customers activities could adversely affect the service offerings or systems or content of another EODC customer,
  - c) the Customers activities could be liable to the EODC or third parties,
  - d) the Customers activities could be fraudulent,
  - e) the EODC customer violates this agreement and the respective service contract,
  - f) the EODC customer violates his payment obligations
  - g) the EODC customer has ceased trading and / or has been the subject of an insolvency, reorganization, liquidation, dissolution, or similar process
- 4.2 In the event of a temporary suspension of the EODC service, the customer remains responsible for all fees and charges incurred during the period of suspension.

#### **5 Service Guarantees**

- 5.1 The EODC service will be available 24 hours a day, seven days a week with a minimum availability (level 4 and level 5, see § 5.3) of 95% (calculated on an annual basis). However, a single service interruption will have a duration less than 72 hours (weekdays only). Scheduled maintenance downtime is announced with a notification period of more than 1 week.
- 5.2 If the minimum availability (§5.1) is not provided by the EODC, EODC will grant an annual service credit of 10% of the price of the service, which will be deducted on the next outstanding invoice.
- 5.3 The EODC Standard Service Level Agreement (SLA) includes the provision a ticketing-system provided 24 hours a day, seven days a week. The notification system is available via the following link: <https://osticket.eodc.eu/>. Direct support requests may also be sent via e-mail to [support@eodc.eu](mailto:support@eodc.eu). The incoming support requests are serviced on the following working day. The requests are assessed by EODC according to the following impact categories:
- a) Level 1 (error-free): The service runs without restriction;
  - b) Level 2 (non-critical error): The service is executed with a slight restriction. The error has little or no impact on the business process or security. These are mainly cosmetic errors that can be resolved by the users themselves;
  - c) Level 3 (moderate error): The proper use of the system is slightly limited. The defect has a negligible effect on the EODC service or security, but allows further processing without limitation;

- d) Level 4 (significant error): The proper use of the service is severely limited. The error has a major impact on the EODC service or security, but allows further processing;
- e) Level 5 (critical): The service is not running and is not providing data. The error has serious implications for EODC service or security. These are mainly errors that prevent further data usage.

## **6 Customer obligations**

- 6.1 The EODC customer is responsible for all activities under the EODC service agreement, whether the activities were undertaken by the customer himself, his employees or third parties (such as end users of the EODC customer). EODC is not responsible for unauthorized access to the customer's service.
- 6.2 The EODC Customer must ensure that its content and use of this content or service by the EODC Customer or its End Users does not violate any of the EODC General Terms and Conditions or applicable law. The EODC customer is solely responsible for the development, content, operation, maintenance and use of its content.
- 6.3 The EODC customer is responsible for the proper configuration and use of the EODC service offerings and must take reasonable measures to safeguard and protect it. The Customer is responsible for the backup of its own content and accounts. To protect the content, encryption technologies must be used against unauthorized access.
- 6.4 The EODC credentials and the private keys generated by the Services are for use by EODC customers only and may not be sold, transferred or sublicensed to any other company or person.
- 6.5 EODC does not provide software licenses for operating systems or applications under the Service. The licensing of any software components (kernel, operating system and application software) deployed upon any Virtual Machine (e.g., Windows Server) is to be undertaken by the EODC Customer. For example, in the case of the provision of a virtual machine with the Windows operating system Windows, the EODC customer is required to provide the relevant Windows license.
- 6.6 The EODC customer is obliged to install the latest software patches the latest patches of all deployed software components (kernel, operating system and application software) within a maximum of one month, in order to ensure safe operation. If a safe operation is not guaranteed then EODC GmbH and the customer must together define how a secure operation of the EODC Service can be ensured in other ways (for example, limiting external access, etc.).
- 6.7 The EODC hardware is embedded in the Austrian Academic Computer Network AConet (<http://www.aco.net/>), which provides its members with high performance access to international academic networks via GÉANT (<http://www.geant.org>) as well as enabling access to the Internet. While the data transfer within this academic network is limited only by the physical bandwidth, the data upload and download to other networks is based on the fair use principle.

- 6.8 Data uploaded from other networks (i.e. commercial networks to ACONet) exceeding the contractual range of the EODC with ACONet will incur additional costs which must be borne by the EODC customer as the originator of the transfer, if the EODC has informed the customer of this breach in contractual range in a timely manner.

## **7 Publications**

- 7.1 During the period of the EODC-Service and for three years after the end of the EODC-Service both Parties agree that any publications related to the EODC-Service (Foreground Intellectual Property) are only permitted by mutual agreement of the Parties.
- 7.2 Each party to the contract has the option to request the approval of a publication.
- 7.3 Planned and final publications have to be provided to both parties as soon as it is practicably possible.
- 7.4 Content-related publications that use the EODC merely as a framework for generating results are excluded. This includes in particular scientific publications, presentations, project reports, as well as non-EODC-specific software.

## **8 Confidentiality**

- 8.1 Both contractual parties agree that the following clauses on confidentiality obligations apply unrestrictedly in terms of time and place beyond the end of the active contractual period.
- 8.2 The Parties agree to treat as confidential all confidential information received from the other Party in writing as "confidential" at the time of publication or in the case of oral or intangible disclosure (see §8.3). Each party to the contract will not disclose or use any third party confidential information unless the disclosure has been expressly approved by written consent of the other party.
- 8.3 If confidential information is disclosed orally or any other intangible form the disclosing Party shall point out that the information is confidential and confirm the confidentiality in writing within thirty (30) calendar days as from the oral disclosure.
- 8.4 The confidentiality of both parties with regard to new or existing knowledge and property rights or other information shall be waived insofar as:

- 8.4.1 The information is known to the disclosing contracting party before it learns of its confidentiality and this information is not already the subject of a confidentiality obligation to another contracting party;
- 8.4.2 It is or becomes publicly known without violating this Agreement;
- 8.4.3 It has been or is independently developed by the Party without use of the confidential information of the disclosing Party;
- 8.4.4 It has been obtained by the Party receiving the confidential information from a third party free to disclose this information to the receiving Party hereunder;
- 8.4.5 It is disclosed pursuant to the requirement of any law or regulation or the order of any Court of competent jurisdiction, and the receiving Party required to make that disclosure has informed the other, within a reasonable time after being required to make the disclosure, of the requirement to disclose and the information required to be disclosed;
- 8.4.6 The consent to the publication of the confidential information has been given in writing by authorized representatives of the other contracting party.

## **9 Force Majeure**

- 9.1 If the performance by either Party of any obligation under this Agreement is delayed or prevented by circumstances beyond its reasonable control, that Party will not be in breach of this Agreement because of that delay in performance.