

Preliminary remarks and structure

BACKUP EAGLE GmbH provides its customers with specialized services in the field of monitoring data centre operations. Furthermore, BACKUP EAGLE GmbH develops and distributes its own software as an on-prem version and as SaaS/Cloud around data backup - BACKUP EAGLE® (hereinafter referred to as software).

- I. The General Terms and Conditions (GTC) of BACKUP EAGLE GmbH consist of the following parts:
- II. General part of the General Terms and Conditions
- III. Special terms and conditions for on Prem software
- IV. Special terms and conditions for SaaS/cloud software
- V. Special Terms and Conditions for Maintenance Services
- VI. Special Terms and Conditions for Contracts for Work and Services
- VII. Special terms and conditions for consulting and training
- VIII. The special provisions in Parts II. to VI. shall always apply together with the general provisions of Part I. and shall, however, take precedence over these general provisions.

I.

General part of the GTC

1. 1 Scope of the General Terms and Conditions

1.1 Scope of application of the General Terms and Conditions

- a. All business relations between BACKUP EAGLE GmbH and a customer shall be governed exclusively by these General Terms and Conditions and the current price list of BACKUP EAGLE GmbH.
- b. Deviating terms and conditions of the customer shall not apply unless they have been expressly agreed to by BACKUP EAGLE GmbH.

1.2 Amendment of the General Terms and Conditions

BACKUP EAGLE GmbH is entitled to amend or supplement these General Terms and Conditions at any time, including with effect for current contracts, subject to a reasonable period of notice; however, a significant change in the main performance obligations always requires agreement between BACKUP EAGLE GmbH and the client. The customer has the right to object to the change or addition. If the customer does not object within six weeks of receipt of the notification of change, the changes or additions shall become effective. BACKUP EAGLE GmbH shall inform the customer of the possibility of objection and the objection period together with the notification of change.

2. Content of the agreement

2.1 Test period

- a. Any test periods offered shall not constitute any entitlement to specific services from BACKUP EAGLE GmbH. During the test period, the customer may use the software provided exclusively for test purposes. BACKUP EAGLE GmbH, and the customer may terminate the test period at any time by means of a unilateral declaration and without giving reasons. At the end of the test period, access to the software ends.
- b. BACKUP EAGLE GmbH offers the customer the opportunity to set up a customer account. The customer must enter all details such as name, address and e-mail address in the customer data. Technically, the user account can only be set up if the customer provides a functional e-mail address. This e-mail address is mandatory for communication with BACKUP EAGLE GmbH. The creation of a customer account does not constitute a claim by the customer to services from BACKUP EAGLE GmbH in relation to the software.



2.2 Offers, effect and content of the contract

- a. Offers from BACKUP EAGLE GmbH are always subject to change, unless they are expressly binding.
- b. A contract is in effect when the order confirmation is sent out. The content of the contract is set out in the order confirmation by BACKUP EAGLE GmbH.
- c. If the customer books services from BACKUP EAGLE GmbH via a customer account (also known as Protected items), the contract is concluded as soon as BACKUP EAGLE GmbH confirms the order. The confirmation can be sent by e-mail or via the customer portal.

2.3 Amendment and supplementation of the contract

- a. Amendments and additions to a contract must be made in writing or in text form (e.g. by e-mail). Amendments and supplements must be expressly identified as such.
- b. Any verbal ancillary agreements are cancelled by the subsequent conclusion of the contract; in the event of any contradictions between verbal and written agreements, written agreements shall take precedence.

3. Terms of payment

- a. The agreed prices shall apply. Unless stated otherwise, the prices are exclusive of statutory VAT, which is shown separately on the invoice.
- b. All payments are to be made to BACKUP EAGLE GmbH without deduction within 14 days of receipt of the invoice. Payment deadlines are deemed to have been met if BACKUP EAGLE GmbH can dispose of the amount within the deadline.
- c. The offsetting of disputed or not legally established or disputed and not ready for decision claims by the customer is excluded. The same shall apply to the customer's right of retention insofar as it is not based on the same contractual relationship. The assignment or pledging of claims arising from the contractual relationship between the customer and BACKUP EAGLE GmbH to third parties is only permitted with the consent of the other party to the contract.
- d. The client must raise any objections to invoices from BACKUP EAGLE GmbH in text form (e.g. by e-mail) within six weeks of receipt of the invoice to BACKUP EAGLE GmbH. After expiry of this period, objections can only be asserted (preclusion period) if the client was prevented from complying with the deadline through no fault of his own.

4. Contract terms and termination of contract

- a. If the service offers contain a time limit, especially in the case of maintenance offers and cloud offers, the following shall apply:
- c. Unless the parties have agreed otherwise, the contract is initially concluded until the end of the current calendar year and is subsequently extended by one calendar year in each case.
- b. The contract can be terminated by either party with a notice period of three months to the end of the contract in text form (e.g. by e-mail).
- c. The right of each contracting party to extraordinary termination for good cause remains unaffected.
- d. BACKUP EAGLE GmbH deletes the registration data and all databases for cloud offers 30 days after the end of the contract and only retains data that BACKUP EAGLE GmbH is legally obliged or entitled to retain (accounting data, commercial letters, etc.).

5. Acceptance

- a. Acceptance shall only take place if this has been agreed in writing between the parties or if a contractual service has been agreed.
- b. If acceptance has been agreed, BACKUP EAGLE GmbH shall notify the customer of readiness for acceptance at least in text form (e.g. by e-mail) and shall make the agreed work (performance result) available to the customer to the agreed extent.



- c. The customer shall carry out a functional test within a reasonable period, which shall normally be 14 calendar days. If the functional test shows that the work corresponds to the service description, the customer shall declare acceptance without delay.
- d. Acceptance may not be refused due to defects which are insignificant, or which do not or only insignificantly impair the functionality of the service.
- e. Acceptance shall be deemed to have taken place upon expiry of a reasonable functional test period if the customer has neither declared acceptance, nor stated the reasons for non-acceptance or extension of the functional test, nor set a grace period himself. BACKUP EAGLE GmbH shall inform the customer of the start of the period when the readiness for acceptance is notified.
- f. In any case, acceptance is deemed to have taken place as soon as the customer has used the services of BACKUP EAGLE GmbH without complaint after expiry of the appropriate functional test period.**

6. Duties and obligations of the customer

6.1 Obligations of the customer to cooperate

The success of BACKUP EAGLE GmbH's work also depends on whether and to what extent the Client cooperates with BACKUP EAGLE GmbH's services. The Client is willing and obliged to do so.

Unless otherwise stipulated in individual contracts, the customer shall, to the extent necessary for the performance of the contract:

support BACKUP EAGLE GmbH to a reasonable extent in the performance of the contract,

check on its own initiative whether the services provided by BACKUP EAGLE GmbH are compatible with its IT environment,

- provide or make available to BACKUP EAGLE GmbH all information, templates, documents or data free of charge, in full and with the correct content,
- to deposit a means of payment in the customer account for bookings, which allows a debit over the entire payment period (contract period), or to update this as soon as the means of payment is no longer current,
- grant BACKUP EAGLE GmbH access to IT systems, rooms and equipment as well as contact with employees,
- inform BACKUP EAGLE GmbH about relevant safety regulations and occupational health and safety rules,
- keep the latest data and software versions and the associated documentation,
- coordinate, prepare and follow up on appointments or meetings with BACKUP EAGLE GmbH, and
- carry out regular data backups and ensure their storage.
- follow the instructions of BACKUP EAGLE GmbH regarding use. This applies in particular to compliance with standards and requirements for hardware, software and personnel that BACKUP EAGLE GmbH communicates to the client, as well as to security measures if there is a risk of unauthorized use.

6.2 Third-party property rights and indemnification claim of BACKUP EAGLE GmbH

- a. Insofar as the customer uses software in the performance of the contract or BACKUP EAGLE GmbH is to use the customer's software in the performance of the contract, the customer guarantees BACKUP EAGLE GmbH that it has the necessary license for BACKUP EAGLE GmbH's acts of use.



- b. The customer shall indemnify BACKUP EAGLE GmbH against all third-party claims in this respect, insofar as the customer is at fault.

7. Claims for defects and liability

7.1 Claims for defects in software development, purchase or work contracts

- a. The customer must immediately inspect the results of services delivered by BACKUP EAGLE GmbH for obvious defects. If he does not immediately notify BACKUP EAGLE GmbH of obvious defects in writing or in text form (e.g. by e-mail), the claims for defects for unreported defects expire (§ 377 HGB).
- b. If a defect occurs in the new items delivered or manufactured by BACKUP EAGLE GmbH (which the customer shall describe as precisely as possible), BACKUP EAGLE GmbH shall, at its discretion, either remedy the defect within a reasonable period or provide the defective service again free of defects (overall subsequent performance).
- c. If the supplementary performance fails, because the defect is not remedied despite attempts to remedy it, the supplementary performance is unreasonably delayed or is unjustifiably refused, the customer may, at his discretion, withdraw from the contract or reduce the price.
- d. The customer has no claims for defects because of errors caused by damage, incorrect connection or incorrect operation by the customer himself. He shall also have no claims for defects if he himself or a third party commissioned by him modifies the delivered works or services, unless he can prove that the modification has not made the analysis or processing work by BACKUP EAGLE GmbH significantly more difficult and that the defect in the software was present at the time of acceptance.
- e. If the customer withdraws from the contract, he shall pay BACKUP EAGLE GmbH an appropriate usage fee for the period up to the time of withdrawal. The usage fee is calculated based on a linear four-year amortization.
- f. Claims for defects shall become statute-barred within one year from the start of the statutory limitation period. This does not apply to claims based on injury to life, limb or health, which are based on a negligent breach of duty by BACKUP EAGLE GmbH or an intentional or negligent breach of duty by a legal representative or vicarious agent of BACKUP EAGLE GmbH, and not to claims based on a grossly negligent breach of duty by BACKUP EAGLE GmbH or an intentional or grossly negligent breach of duty by a legal representative or vicarious agent of BACKUP EAGLE GmbH.

7.2 No claims for defects in service contracts

BACKUP EAGLE GmbH fulfils service contracts with the usual commercial care. Our customers have no claims for defects in service contracts.

7.3 Liability

- a. The customer's claims for damages or reimbursement of futile expenses shall be governed by this provision.
- b. BACKUP EAGLE GmbH shall be liable without limitation for damages resulting from injury to life, limb or health which are based on an intentional or negligent breach of duty by BACKUP EAGLE GmbH or a legal representative or vicarious agent of BACKUP EAGLE GmbH.
- c. In the case of other liability claims, BACKUP EAGLE GmbH shall only be liable without limitation in the absence of the guaranteed quality and for intent and gross negligence on the part of its legal representatives and vicarious agents.
- d. BACKUP EAGLE GmbH shall only be liable for slight negligence if an obligation is breached, compliance with which is of particular importance for achieving the purpose of the contract (cardinal obligation). In the event of a slightly negligent breach of a cardinal obligation, liability for a software license agreement is limited to 100% of the license price agreed by the customer, calculated for one year, and for a software maintenance agreement is limited to 100% of the annual maintenance fee for the calendar year in which the liability was established, and in each



case limited to such damages as must typically be expected to occur in the course of performance of the contract.

- e. Liability for loss of data shall be limited to the typical restoration costs that would have been incurred if backup copies had been made regularly and in accordance with the risks involved, unless one of the conditions set out in other provisions in this Section I. 7.3 applies.

- f. **Liability under the Product Liability Act remains unaffected.**

8. Confidentiality and data protection

- a. The contracting parties undertake to treat all knowledge of business and trade secrets of the other contracting party, or its business partners acquired within the scope of the contractual relationship as strictly confidential and not to make use of them for themselves or for third parties or to pass them on to third parties.
- b. Information or data is not confidential if
 - they were known to the other contractual partner or publicly known at the time of disclosure,
 - they become public knowledge after disclosure to the other contracting party and this is not directly or indirectly due to the conduct of the other contracting party,
 - the other contractual partner is legally or officially obliged to disclose them.
- c. BACKUP EAGLE GmbH is obliged to treat the analogue and digital documents provided to it as strictly confidential, to secure them against unauthorized access and not to reproduce them or pass them on to third parties or otherwise make their contents accessible to third parties without the consent of the customer.
- d. Insofar as BACKUP EAGLE GmbH processes personal data as part of the performance of its obligations under this contract, it shall comply with the statutory provisions on data protection and in particular the General Data Protection Regulation (GDPR) and the Federal Data Protection Act (BDSG) and shall oblige its employees accordingly. This obligation shall continue to apply throughout the term and after the end of the contractual relationship.

9. Final provisions

- a. If individual clauses have not become part of the contract in whole or in part or are ineffective, the remainder of the contract shall remain effective. Insofar as provisions have not become part of the contract or are invalid, the content of the contract shall be governed by the statutory provisions.
- b. The exclusive place of jurisdiction for all disputes arising from and in connection with contracts with BACKUP EAGLE GmbH is Cologne. Statutory exclusive places of jurisdiction remain unaffected.
- c. The law of the Federal Republic of Germany shall apply exclusively to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).



II.

Special terms and conditions

for on Prem software

1. Scope of application

These special terms and conditions apply exclusively to the components listed below, including all patches, updates or upgrades (also referred to as programs or software) of the BACKUP EAGLE® software purchased by the customer:

- BACKUP EAGLE® “CONTROL” or
- BACKUP EAGLE® “DOC” or
- BACKUP EAGLE® “HOST_DETECT” or
- BACKUP EAGLE® “OPT_EDIT” or
- BACKUP EAGLE® “DEVICE_CONTROL”

2. Rights of use (license agreement)

- a. BACKUP EAGLE GmbH grants the customer the non-exclusive, non-transferable right to use the software on its own IT systems for the duration of the statutory copyright. The granting of rights does not apply to the source code.
- b. Furthermore, the customer shall have the right to use the documentation provided to him for internal operational purposes, insofar as the use of the programs requires it.
- c. The customer is entitled to transfer the license to the “other owner” in the event of a transfer of business within the meaning of § 613a BGB after prior notification to BACKUP EAGLE GmbH. The “other owner” is entitled to use the license to the extent specified in the underlying order description. The same applies in the case of outsourced IT services (outsourcing).
- d. BACKUP EAGLE GmbH may terminate the license agreement extraordinarily if the customer uses the software outside of the granted right of use and has not paid the claimed license fee within 14 days of a warning from BACKUP EAGLE GmbH.

3. Obligations of BACKUP EAGLE GmbH

- a. BACKUP EAGLE GmbH shall provide the customer with the current, released version of the software at the time the contract is concluded. BACKUP EAGLE GmbH shall make it available for download and provide the customer with the access data. The installation and any setup of the software shall be carried out by the customer.
- b. BACKUP EAGLE GmbH is not obliged to hand over the source code of the software to the customer or to deposit it.
- c. BACKUP EAGLE GmbH warrants that the software is free from third-party property rights and that, to its knowledge, no other rights exist which restrict or exclude the use of the software by the customer.

4. Obligations of the customer

- a. The customer shall install the delivered software and immediately carry out a functional test.



- b. The customer shall be solely responsible for creating the hardware and software environment required for the software to run at its own expense and for updating it on an ongoing basis as required.
- c. **The customer is obliged to return the software and all objects, files or documents belonging to the software to BACKUP EAGLE GmbH within a period of one week after the expiry of the license and to delete all files belonging to the software on all computers of the customer or, if applicable, contractual partners of the customer who have been commissioned to provide IT services.**

III.

Special terms and conditions

for SaaS/Cloud-Software

1. Scope of application

- a. These special terms and conditions apply exclusively to the components listed below, including all patches, updates or upgrades (also referred to as programs or software) of the BACKUP EAGLE® software as Internet-based software use as a Software as a Service service (SaaS), which can be used by the Customer for the duration of the contract:
- b. BACKUP EAGLE® (SaaS/Cloud)

2. Rights of use (license agreement)

- a. BACKUP EAGLE GmbH grants the customer the non-exclusive, non-transferable right to use the programs provided as part of the software license for the contractually agreed duration for the customer's operational purposes to the extent specified in the contract. The granting of rights does not apply to the source code.
- b. Furthermore, the customer has the right to use the documentation provided to him for the customer's operating purposes, insofar as this is required for the use of the programs.
- c. The customer is entitled to transfer the license to the "other owner" in the event of a transfer of business within the meaning of § 613a BGB after prior notification to BACKUP EAGLE GmbH. The "other owner" is entitled to use the license to the extent specified in the underlying order description. The same applies in the case of outsourced IT services (outsourcing).
- d. BACKUP EAGLE GmbH may terminate the license agreement extraordinarily if the customer uses the software outside of the granted right of use and has not paid the license fee claimed for the overuse within 14 days of a warning from BACKUP EAGLE GmbH.
- e. BACKUP EAGLE GmbH shall always provide the customer with the latest version of the software in SaaS. BACKUP EAGLE GmbH is entitled to further develop the software and to update it for all or individual customers; this is always done outside the agreed service period. Software changes can lead to changes in user behavior when using the software. Familiarization and training costs as well as any further subsequent investments on the part of the client do not constitute a defect or any damage to be compensated by the client.

3. Obligations of BACKUP EAGLE GmbH

- a. BACKUP EAGLE GmbH shall provide the customer with an IT environment connected to the Internet (especially including storage space, computing capacity and operating system environment) in a computer centre, on which the customer can use the BACKUP EAGLE® software - provided that the Internet is functioning and the customer's connection to the Internet is error-free. Hosting is provided either by BACKUP EAGLE GmbH itself or by a supplier of BACKUP EAGLE GmbH, at the discretion of BACKUP EAGLE GmbH.



- b. Support services and other software and hardware services outside of this section III. and consulting services are not included in the SaaS scope of services.
 - c. Should BACKUP EAGLE GmbH provide additional services free of charge, the customer shall not be entitled to any claims arising from this. BACKUP EAGLE GmbH may discontinue or change these free additional services within a reasonable period. BACKUP EAGLE GmbH shall inform the customer of this change in good time.
4. Availability and services
 - a. BACKUP EAGLE GmbH shall ensure an availability of the software at the transfer point of the IT environment to the Internet of 98% per month during the term of the contract.
 - b. The availability always refers to the service time, namely Monday to Friday, in each case from 09:00 to 18:00, but not on public holidays in the state of North Rhine-Westphalia and not on Rose Monday or on December 24 and 31.
 - c. If the monthly average availability provided for in the contract is not met, the remuneration in the month concerned shall be reduced as follows:
 - Availability reduction
 - 95-97 % 20 %
 - 93-95 % 30 %
 - 91-93 % 40 %
 - < 91 % 50 %
5. BACKUP EAGLE GmbH is entitled to carry out maintenance work outside the service period and reserves the right to carry out maintenance work within the service period in technically necessary cases, but only with at least three hours' notice.
6. BACKUP EAGLE GmbH offers support within the service time with the following services:
 - a. The support includes the initial response and error analysis with the aim of eliminating errors in the software.
 - b. An error in the software exists if functions of the software do not correspond to the product description, incorrect results occur, or the program run is interrupted in an uncontrolled manner.
 - c. BACKUP EAGLE GmbH can access the customer's IT system via remote maintenance to diagnose errors if the customer has created the necessary technical and organizational prerequisites for remote maintenance.
 - d. BACKUP EAGLE GmbH tracks and processes the errors reported by the customer via a ticket system.
 - e. The initial response time of BACKUP EAGLE GmbH to error messages from the customer is 8 working hours within the service period. BACKUP EAGLE GmbH shall inform the customer within this time by telephone or in text form of the results of the error analysis and whether and how the error can be rectified or what further measures BACKUP EAGLE GmbH will take. The contracting parties may define special escalation levels and response times in a separate agreement.
 - f. Error analysis by BACKUP EAGLE GmbH includes the localization and determination of the cause of the error. The elimination of errors shall be carried out, insofar as this is technically possible and economically justifiable, within a reasonable period; it shall include either the restoration of the original or comparable operability of the software, also by bypassing the error (work-around), insofar as this does not unreasonably disadvantage the rights of the customer.
7. Obligations of the customer



- a. The customer shall carry out a functional test immediately upon first use of the software and after each notification of a change to the software. He shall immediately report any errors to BACKUP EAGLE GmbH; § 377 HGB applies accordingly.
- b. The customer alone is responsible for procuring the hardware and software environment required for the software to run, especially browsers, at his own expense and for updating them on an ongoing basis as required.
- c. The customer shall ensure careful handling of the access and identification data which the customer receives from BACKUP EAGLE GmbH for the use of SaaS or creates itself during use. In the event of loss, theft or other events that lead to a risk of unlawful use, the customer must notify BACKUP EAGLE GmbH immediately so that the contracting parties can take appropriate protective measures. The costs of the security measures shall be borne by the customer. BACKUP EAGLE GmbH shall charge the customer for the services on a time and material basis.
- d. The customer shall refrain from using the SaaS or configuring it in such a way that damage to the SaaS or disruptions in the use of the SaaS may occur. In particular, the customer shall refrain from any overloading and especially from performance tests or port scanning without the prior express consent of BACKUP EAGLE GmbH.

IV.

Special terms and conditions

of software maintenance

1. Scope of application

- a. The maintenance services, including care services (hereinafter referred to as "Maintenance") shall apply exclusively to software listed in Section II. 1. (Special Terms and Conditions for Software Licenses - Scope of Application).
- b. The rights of use to the work results of the maintenance services of BACKUP EAGLE GmbH result from the underlying agreements on the transfer of rights to the software.

2. Prerequisites

- a. The function of software depends on many factors. Suitable hardware and a functioning network are required, which must be carefully coordinated with each other and with the software. The customer must ensure that the system requirements defined by BACKUP EAGLE GmbH for the use of the software are met. BACKUP EAGLE GmbH may demand compensation for the additional costs incurred because of the inadequate system requirements.
- b. Maintenance does not include the elimination of faults:
 - caused by interventions and operating errors by the customer or third parties commissioned by the customer,
 - due to the influence of hardware or software that does not fulfil the system requirements defined by BACKUP EAGLE GmbH,
 - due to the influence of third parties or force majeure,
 - due to environmental conditions at the place of set-up or installation, due to faults or non-performance of the power supply, faulty hardware or other influences for which BACKUP EAGLE GmbH is not responsible.
- c. BACKUP EAGLE GmbH is able and entitled to provide services remotely if the customer has created the necessary technical and organizational conditions for remote maintenance on his side.



- d. The customer should promptly implement every release upgrade of the standard data backup program used (IBM Spectrum Protect, EMC NetWorker, Veeam, etc.).
- e. Maintenance does not include support that does not relate to errors in the software or software documentation.

3. Maintenance services of BACKUP EAGLE GmbH include

- a. BACKUP EAGLE GmbH shall only maintain the current, released versions of the software.
- b. A version of the software will be maintained for a maximum of 18 months after a more recent version has been released. After the expiry of these 18 months, BACKUP EAGLE GmbH is no longer obliged to provide initial response, bug fixes or program updates.
- c. Maintenance includes the initial response, error correction, additions, improvements and further development of the software.
- d. An error in the software exists if functions of the software do not correspond to the product description, incorrect results occur, or the program run is interrupted in an uncontrolled manner.
- e. BACKUP EAGLE GmbH can access the customer's IT system via remote maintenance to diagnose errors if the customer has created the technical and organizational conditions necessary for remote maintenance.
- f. BACKUP EAGLE GmbH tracks and processes the errors reported by the customer via a ticket system.
- g. The initial response time of BACKUP EAGLE GmbH to error messages from the customer is 8 working hours (from Monday to Friday from 09:00 to 17:00, but not on public holidays in the state of North Rhine-Westphalia and not on Rose Monday and not on December 24 and 31). BACKUP EAGLE GmbH shall inform the customer by telephone or in text form within this period how the fault can be rectified or what further measures BACKUP EAGLE GmbH will take. The contracting parties may determine special escalation levels and response times within the framework of a separate agreement.
- h. Error rectification includes error diagnosis, isolating the cause of the error and rectifying the error or, if this is not possible with reasonable effort, restoring the operability of the software by bypassing the error, also by means of a bug fix or workaround (temporary error rectification).
- i. As a result of the maintenance measures, BACKUP EAGLE GmbH shall provide the customer with a software version with an error-corrected, adapted or further developed software part. This takes place in one of the following forms:
 - Program update delivery: BACKUP EAGLE GmbH continues to develop the software and therefore creates software updates at irregular intervals. An update is a program in which software errors are eliminated or new software functionalities may be added.
 - Release adaptations: BACKUP EAGLE GmbH's software is based on a standard data backup program (including Spectrum Protect from IBM and NetWorker from EMC). If the software manufacturer of the standard data backup program makes a release change to its software, BACKUP EAGLE GmbH also makes the resulting adjustments to its own software within a reasonable time after the release of the data backup software.

4. Maintenance services of BACKUP EAGLE GmbH do not include:

- a. Installation of software on the customer's IT systems.



- b. Maintenance or support of third-party software (e.g. operating system software or databases),
- c. Network components or hardware.
- d. Data backup at the customer's premises.
- e. Training, consulting services or familiarization of the customer's employees.
- f. Conversion of the customer's databases.
- g. Elimination of the effects of maintenance on forms and individual program adaptations at the customer.

5. Remuneration

The maintenance price is to be paid in advance for the respective contract period, unless otherwise agreed upon.

V.

**Special terms and conditions
for work contracts**

1. Scope of application

These special conditions regulate the content of the contract if BACKUP EAGLE GmbH provides services for the **customer under a contract for work and services, i.e. if it promises a specific result.**

2. Scope of services

Unless the parties agree upon otherwise, the following shall apply to work services:

- a. The exact specification results from the order description, which BACKUP EAGLE GmbH submits to the customer and the customer approves. Implementation shall only take place after approval by the client.
- b. BACKUP EAGLE GmbH creates an appropriate and economical IT solution in the form of suitable software based on the specifications.
- c. BACKUP EAGLE GmbH grants the customer the non-exclusive, non-transferable right to use the software on server systems, which are specified in the underlying order description, for the duration of the statutory copyright for the results of the service, i.e. the created or adapted software.
- d. BACKUP EAGLE GmbH warrants that the service results are free of third-party property rights and that, to the best of its knowledge, no other rights exist that restrict or exclude use by the customer. The order confirmation contains any deviations.
- e. BACKUP EAGLE GmbH shall make the software available for download and provide the customer with the access data. The software is installed by the customer.
- f. BACKUP EAGLE GmbH is not obliged to hand over the source code to the customer or to store it.



VI.

Special section

consulting and training

1. Scope of application
2. These special terms and conditions apply to all support services, such as consulting. This includes, for example, planning, conceptual design, consulting, implementation, software adaptations, programming of reports, training and the provision of courses.
3. Obligations of BACKUP EAGLE GmbH
 - a. BACKUP EAGLE GmbH provides the support services as a service, so that BACKUP EAGLE GmbH does not owe a specific performance success to the customer. The law on contracts for work and services only applies to consulting services if the contracting parties have agreed that BACKUP EAGLE GmbH owes a specific, precisely described result to be checked as part of an acceptance (functional test).
 - b. Support services for software and hardware outside the SaaS and consulting services are not included in the scope of services.
 - c. BACKUP EAGLE GmbH shall provide the support services within the service hours at no extra charge. In consultation with the customer, BACKUP EAGLE GmbH also provides support services outside of service hours. In this case, BACKUP EAGLE GmbH charges a surcharge of 25% for work between 18:00 and 09:00 (late and night work) and a surcharge of 50% for all work on a weekend or on a national public holiday. Both surcharges can be combined.
4. Special agreements on training
 - a. BACKUP EAGLE GmbH generally conducts training courses (including seminars, webinars, workshops, etc.) online, by agreement with the customer, also on the customer's premises or in its own or other training rooms. The specific training content, the maximum number of participants, the target group and the speaker are included in the offer.
 - b. Cancellation of a training course by the customer is free of charge if it is made at least 14 days before the start of the training course.
 - c. The customer shall pay BACKUP EAGLE GmbH a cancellation fee for bindingly agreed participation in a training course if a participant does not attend or does not cancel participation in good time. The cancellation fee shall amount to 30% of the remuneration. The customer is permitted to prove that BACKUP EAGLE GmbH has not incurred any damage or that the damage is lower than the lump sum. BACKUP EAGLE GmbH