

Terms and Conditions of Use of the SGIM Portal - Software

provided by

the **BeEnergy SG GmbH**

Registered office: Weißenburgerring 23, in 35415 Pohlheim,

Court of registration: Amtsgericht Gießen, HRB 9550

Sales tax identification number: DE 319 104 470

- hereinafter referred to as:
„BeEnergy“-

These terms and conditions of the SGIM Portal – Software License Agreement shall only apply vis á vis merchants, governmental entities, or special governmental estates within the meaning of sec. 310 para. 1 BGB (German Civil Code) (hereinafter referred to as: “Customer”).

§ 1 Subject Matter of this Agreement

- (1) Subject matter of this Agreement is the provisioning of the SGIM Portal – Software by BeEnergy for the use by Customer via remote data transmission.
- (2) The licensed product SGIM Portal – Software and the versions and updates thereof are set out in the respective product description which is part of the manual.

§ 2 Provisioning of Software

- (1) BeEnergy provides Customer with the use of the SGIM Portal – Software in accordance with its range of functions and subject to its functional requirements as stipulated in the manual. Furthermore, BeEnergy provides Customer with the use of the SGIM Portal – Software at the interfaces of the data network driven by BeEnergy to the transmission network. The SGIM Portal - Software remains on the server driven by BeEnergy. However, BeEnergy is not obligated to set up and/or maintain the remote data transmission between the interfaces and the Customer's IT system.
- (2) BeEnergy intends to use the latest available versions of the SGIM Portal – Software within the scope of the current technical possibilities. BeEnergy will point a modification of the software used out to Customer at least two months before the date of its modification; unless this modification is an error correction which is urgently necessary for the maintenance of the system. BeEnergy shall inform Customer of such error correction at least two weeks before its implementation. However, if it is not possible and/or reasonable for BeEnergy to inform Customer of such error correction two weeks before its implementation, BeEnergy is allowed to implement it at any time also without prior notice. If BeEnergy updates the software in accordance with the first-mentioned case, so Customer has the right to object to the modification with a period of one month to the date of the modification. In the case of error

correction which is urgently necessary for the maintenance of the system, Customer is allowed to object to the modification without undue delay up to the date of the modification or if the modification has already been implemented, Customer has the right to object to the modification without undue delay after becoming aware of it. If Customer does not object to the modification, so the failure to object shall be deemed to be an approval for or a prior consent to the modification of the software. However, if Customer objects to the modification, then BeEnergy is entitled to terminate this Agreement for good cause to the date of modification, in so far as because of technical and/or economical reasons it is impossible and/or unreasonable for BeEnergy to provide Customer with a customer-specific special-version in the form of the latest version before the modification. When BeEnergy informs Customer of its intention to modify the software, BeEnergy shall explicitly point the consequences of Customer's behaviour out to Customer. However, Customer is not entitled to demand the provisioning of a newer version, if a newer version is not set out in the manual.

- (3) According to the respective rate of availability, BeEnergy provides Customer with the SGIM Portal – Software at the interfaces Monday to Sunday from midnight to 11:59 pm Central European Time considering standard time and summer time. The rate of availability of the respective version of the SGIM Portal – Software provided by BeEnergy is stated in the manual. BeEnergy is entitled to interrupt the provision of services for carrying out maintenance work every day between 10:00 pm and 05:00 am Central European Time considering standard time and summer time. BeEnergy shall inform Customer at least seven days in advance of the time frame during which the maintenance work is to be carried out. Should unplanned and/or unforeseeable maintenance work or fault clearance become necessary at other times and should it be not possible or reasonable for BeEnergy to inform Customer subject to the notification period of seven days of the upcoming interruption, BeEnergy will inform Customer at the earliest possible point in time of the time frame during which the interruption has to take place. Only within the rate of availability defined BeEnergy is obligated to provide the services in accordance with the values of quality as stipulated in the manual.
- (4) Customer will have access to the SGIM Portal – Software from an unlimited number of PC workstations at the same time using a standard web browser which is stipulated in the manual. The PC workstations have to meet the system technical minimum requirements as set out in the manual. The connection between the Customer's PC workstations and the interfaces of BeEnergy's data network takes place via remote data transmission established by Customer.
- (5) Also the connection between the BeEnergy – terminal device put into operation by Customer and the interfaces of the data network driven by BeEnergy takes place via remote data transmission established by Customer in accordance with the guidelines of the manual.

§ 3 Manual, Hotline and Faults Department

- (1) BeEnergy will provide Customer with a manual for the use of the respective software version in form of an online manual which can be downloaded at the website www.beenergy-sg.de.
- (2) Moreover, BeEnergy maintains a hotline to render technical support to customer. Customer has access to the hotline via e-mail or telephone. The hotline is only set up to support Customer regarding the services due in accordance with this Agreement. BeEnergy also provides other customers with the hotline. Customer enquiries to the hotline will be processed

in order of their entry. Trouble reports shall be announced to the faults department as mentioned in the manual and at the website www.beenergy-sg.de, but not to the hotline.

§ 4 Data Storage

- (1) Customer receives storage space on the server driven by BeEnergy according to the number of BeEnergy – terminal devices purchased by Customer. Via the interfaces as described in the manual Customer will have access to this storage space and the possibility to store its data. BeEnergy is only obliged to provide Customer with storage space for the using by Customer. However, concerning the data transmitted and processed by Customer BeEnergy is not obliged to observe custody obligations and other duties of care which are more extensive than the lessor's obligations.
- (2) The amount of storage space provided by BeEnergy is defined in the product description of the respective version of the BeEnergy – terminal device. The manner of data processing is also explained in the product description. The manual contains a reference to the respective version of the BeEnergy – terminal device product description.

§ 5 Processing of Personal Data

If Customer processes personal data in the framework of this contractual relationship, so it is responsible for the compliance with legal stipulations for data protection. The processing of the personal data which are transmitted by Customer shall only take place on the basis of instructions issued by Customer. As far as BeEnergy considers that an instruction given by Customer constitutes a breach of data protection regulations, BeEnergy will inform Customer without undue delay. BeEnergy offers Customer encrypted data transmission.

§ 6 Issuance of Data

- (1) Only on request of Customer BeEnergy is obliged to hand over to Customer a copy of the customer data which are placed on the storage space allocated to Customer without delay at any time during the normal business hours of BeEnergy. Considering the customer needs the issuance of data shall take place via delivery of a data carrier or via data transmission in a data format which is to be agreed between BeEnergy and Customer. If Customer demands the issuance of a copy of its data more than once per calendar quarter, so BeEnergy shall be entitled to claim therefore remuneration with regard to expense and calculated on an hourly basis.
- (2) Regarding the Customer data BeEnergy has no right to exercise a right of retention as well as the lessor's lien.
- (3) BeEnergy will delete the storage space and all customer data on the server after 14 days from the date of ending of this Agreement, if the issuance of a copy of customer data is not demanded by Customer in writing and in accordance with paragraph (1) within the period of 14 days. The lack of notification by Customer is deemed to be a consent of Customer to delete the data. At least one week before ending of this Agreement BeEnergy will explicitly point the upcoming deletion of the data as well as the consequences of Customer's behaviour out to Customer. The obligation of deletion does not apply to backup copies of the electronic data traffic prepared routinely, in so far as obligatory legal provisions constitute that customer data

or the copies of them must be kept by BeEnergy. These backup copies will be treated confidentially by BeEnergy for an unlimited period.

§ 7 Data Backup

Customer data are backed up on the server on each working day. The data backup procedures take place at least on a daily rolling basis in such a manner that the data backed up during one weekday are written over during the data backup on the following weekday. In the same way customer data are also backed up at least on a weekly rolling basis in such a manner that the data backed up weekly are written over in a rolling way after a period of four weeks.

§ 8 Access Authorization

- (1) For using the SGIM Portal – Software on the server driven by BeEnergy Customer receives access authorization, consisting of an user identifier and a selectable password. The user identifier and the password allow Customer the access to the SGIM Portal – Software from every PC workstation used by it.
- (2) Customer is only allowed to disclose its user identifier and password to users who are authorized by it to use the SGIM Portal –Software. Incidentally, Customer is obliged to treat its user identifier and the password as confidential.
- (3) The manual describes in detail the procedure regarding the granting of access authorization and registration at the SGIM – Portal.

§ 9 Cooperation Obligations of the Customer

- (1) According to the guidelines of the manual Customer is responsible for establishing a data connection between the PC workstations used by it as well as the BeEnergy – terminal devices which are put into operation by it and the data transfer interface defined by BeEnergy. BeEnergy is entitled to redefine the data transfer interface at any time, if it is necessary to provide the trouble-free use of the SGIM Portal – Software by Customer. In that case Customer will establish a data connection to the redefined data transfer interface.
- (2) The provision of the contractual services by BeEnergy depends on the conformance of Customer`s hardware and software including the PC workstations, routers, means of data communication etc with the minimum technical requirements as stipulated in the manual regarding the use of the SGIM Portal – Software version currently offered and on the familiarity of the authorized users with the handling of the SGIM Portal – Software as well as depends on the installation of the standard web browser as described in the manual on every PC workstation from which Customer wants to have access to the SGIM Portal – Software legitimately. Customer undertakes the task to configure its IT system accordingly under its own responsibility. In this connection BeEnergy offers to assist Customer against payment on the basis of a separate agreement.
- (3) If the services which are to be provided by BeEnergy fail completely or if the operational workflows of Customer`s plants or installations are significantly impaired by failures of services, then Customer shall contact the faults department as stated in the manual. Moreover, before putting the BeEnergy – terminal device into operation Customer is obligated to prepare

an emergency plan regarding its plants and installations as well as to take appropriate safety precautions for such emergencies. So in case of an emergency as described in sentence 1 Customer will promptly take measures on the basis of its emergency plan to maintain the operational workflow of its plants and installations.

§ 10 Rights regarding the Customer Data

Customer grants to BeEnergy the right to copy the customer data stored for Customer by BeEnergy, if it is necessary for providing the services due to and in accordance with this Agreement. BeEnergy is also entitled to retain the data in a reserve data processing center and/or to change the structure of the data or the data format for eliminating faults.

§ 11 Rights to Use the SGIM Portal – Software, authorized Use of the SGIM Portal – Software by a third party (Sub-Licensing)

- (1) BeEnergy hereby grants to Customer the non-exclusive, non-assignable and non-transferable right to use the SGIM Portal – Software for the duration of the Agreement subject to the guidelines of the manual and to the provisions of the following paragraphs.
- (2) According to the guidelines as stated in the manual Customer is entitled to use the SGIM Portal – Software from an unlimited number of PC workstations.
- (3) Customer is entitled to allow a third party the use of the SGIM Portal – Software only as “User” in accordance with the manual for the duration of this Agreement. The function and the access authorization of a “User” are explicitly stipulated in the manual (hereinafter referred to as: “authorized User”). Apart from that, Customer is not entitled to grant third parties other rights to use the SGIM Portal Software than the right of use of the authorized User. However, third party shall not mean any natural or juridical person who fulfills an order of Customer and uses the software free of charge in the framework of its contractual relationship. Contractors of Customer are, for example, employees of Customer, freelancers who have access to the software in the framework of their agreed contractual relationship etc. Customer is not entitled to transfer the right to sub-license to a third party without prior consent of BeEnergy.

§ 12 Licence Fees

- (1) Customer is obligated to pay the fees in due time as stipulated in the valid price list at the time of the conclusion of this Agreement. The fees for the use of the SGIM Portal – Software represent an ongoing licence fee.
- (2) Customer is obliged to pay fees occurred as a result of the authorized as well as the unauthorized use of the SGIM Portal – Software and the embedded client – Software, unless Customer proves that it is not responsible for this use. Customer has to inform BeEnergy of the unauthorized use by third party without delay. Until receipt of this notification at BeEnergy’s permanent business establishment Customer is liable for the fees occurred as result of the unauthorized use by third parties, if Customer is responsible for the unauthorized use or if the notification to BeEnergy is performed by Customer with delay.

- (3) Customer shall send objections relating to the invoice to the address as stated in the invoice within two weeks after receipt of the invoice.
- (4) The invoiced amounts shall be paid into the bank account mentioned in the invoice not later than fourteen days after receipt of the invoice.
- (5) By using equitable discretion according to the provisions of § 315 BGB (German Civil Code) BeEnergy is allowed to adjust the list prices to the cost trend regarding all costs which are relevant for the price calculation of the provisioning of the SGIM Portal – Software and related services. Any changes to the list prices are to notify to Customer at least six weeks in advance before the changes shall come into effect. The notification of price change will be performed in writing. Regarding the costs which are relevant for the price calculation, Customer can demand a cost representation of BeEnergy within one week after receipt of the notification. The cost representation will be performed in writing and can be sent by mail, e-mail or by fax to Customer. Customer has the right to object to the price change within one week before the price change shall come into effect, if the cost representation does not clarify that BeEnergy will adjust the list prices by using equitable discretion according to the provisions of § 315 BGB (German Civil Code). The objection will be performed in writing. If Customer does not object to the price change, so the failure to object shall be deemed to be a consent to the price change. However, if at least two weeks before the price change shall come into effect Customer does not receive the cost representation demanded in time by Customer, Customer shall be entitled to object to the price change within one week after receipt of the invoice which is based on the price change. When BeEnergy informs Customer of its intention to change the list prices, BeEnergy shall explicitly point the consequences of Customer's behaviour and rights of objection out to Customer.

§ 13 Warranty for Defects

- (1) The functionality of the SGIM Portal - Software goes according to the product description in the manual. Technical data, specifications and performance figures which are part of other public statement, particularly in the advertising media of BeEnergy, do not describe the characteristics and the quality of the software. The software shall be suitable for the use assumed according to this Agreement, and otherwise the software shall be of a quality which is usually found in software of the same kind. But there can be no claim under this warranty in the case of minor or immaterial deviations from the agreed or assumed characteristics nor in the case of just slight impairment of use. BeEnergy is liable for defects in quality and defects in title pursuant to the statutory provisions unless otherwise agreed.
- (2) BeEnergy is only liable for defects of the software, if BeEnergy is responsible for their existence at the time of enabling access to the software. Customer's minimum claims arising from the liability for defects are stated in the **schedule „Service-Level-Agreement“**.
- (3) Customer is obliged to inform BeEnergy of defects without delay. The warranty is limited to 12 months.
- (4) Any claims for damages are subject to the limitations set forth § 14.

§ 14 Liability, Damages

- (1)** BeEnergy shall be liable under the terms of this Agreement only in accordance with the provisions set out under (a) to (e):
 - (a)** BeEnergy shall be unrestricted liable for losses caused intentionally or with gross negligence by the management of BeEnergy and its legal representatives or assistants in performance. Other than in case of intent, BeEnergy is not liable for indirect damage and consequential damage, in particular, not for loss of profit, interruption in production and/or interruption of operations at Customer or its customers.
 - (b)** BeEnergy shall be unrestricted liable for death, personal injury or damage to health caused by the intent or negligence of BeEnergy, its legal representatives or assistants in performance.
 - (c)** BeEnergy shall be liable for losses arising from the lack of any warranted characteristics up to the amount which is covered by the purpose of the warranty and which was foreseeable for BeEnergy at the time the warranty was given;
 - (d)** BeEnergy shall be liable in accordance with the German Product Liability Act in the event of product liability.
 - (e)** BeEnergy shall be liable for losses caused by the breach of its primary obligations by BeEnergy, its legal representatives or assistants in performance. Primary obligations are such basic duties which form the essence of the Agreement, which were decisive for the conclusion of the Agreement and on the performance of which Customer may rely. If BeEnergy breaches its primary obligations through simple negligence, then its ensuing liability shall be limited to the amount which was foreseeable by BeEnergy at the time the respective service was performed.
- (2)** BeEnergy shall be liable for loss of data only up to the amount of typical recovery costs which would have arisen had proper and regular data backup measures been taken.
- (3)** In the event that BeEnergy is liable to Customer for direct property damage caused by slight negligence, the compensation which BeEnergy has to pay to Customer shall not exceed the sum of EUR 3.000.000, 00.
- (4)** Any more extensive liability of BeEnergy is excluded on the merits.

§ 15 Term of Agreement, Termination

The minimum term of Agreement is 12 months for each activated BeEnergy – terminal device, from the date of its activation at the SGIM Portal. The minimum term of Agreement shall be automatically renewed for a further period of twelve months unless either party gives notice at least three months prior to the end of the minimum term of Agreement. In the following contractual years, the term of Agreement shall be automatically prolonged in each case for a further period of twelve months unless either party gives notice at least three months prior to the end of the current contractual period. The right to terminate this Agreement for good cause remains unaffected. The notice of termination requires written form. Upon the ending of

this Agreement the access authorization of Customer to the account of the activated BeEnergy – terminal device will be blocked by BeEnergy. BeEnergy will point the ending of this Agreement as well as the blocking out to Customer at least four weeks before expiry of the term of Agreement.

§ 16 Amendments or Supplements

Unless otherwise especially agreed BeEnergy is entitled to amend the conditions of this Agreement or to add supplements to this Agreement as follows. BeEnergy will inform Customer in writing of the amendments or supplements not later than six weeks before the date on which they come into effect. If Customer does not agree with the amendments or the supplements, so it has the right to object to the amendments or the supplements in writing with a period of one week to the effective date. If Customer does not object, so the failure to object shall be deemed to be a consent to the amendments or supplements. When BeEnergy informs Customer of its intention to amend this Agreement or to add supplements to it, BeEnergy shall explicitly point the consequences of Customers` behaviour out to Customer.

§ 17 Miscellaneous

- (1) The assignment of claims shall only be permitted with the prior written consent of the respective other party. The respective other party will not withhold the consent without reasonable cause. The provisions of § 354 a HGB (German Code of Commercial Law) are not affected hereby.
- (2) The parties are only entitled to the assertion of a right to retention in the case of counterclaims resulting from the respective contractual relationship.
- (3) The parties shall be entitled to offset only insofar as their counterclaims are acknowledged, undisputed or assessed in a legally binding judgement.
- (4) All amendments, supplements and declarations of termination must be made in written form. This applies also to any agreement by which such written form requirement is to be contracted out.
- (5) If one or more provisions of this Agreement are or become in whole or in part invalid or void, or if it contains a gap, the validity of this Agreement shall not thereby be affected. The parties are obliged to replace any invalid or void provision with a valid provision which comes closest to what the parties had intended with respect to the purpose under the invalid or void provision.
- (6) This Agreement and its terms shall be governed by and construed in accordance with the laws of the Federal Republic of Germany except for the UN Sales Convention. Exclusive place of jurisdiction for all disputes arising out of or in connection with this contract shall be Wetzlar.

Schedule

-Service-Level-Agreement for the use of the SGIM Portal - Software

Terms and Conditions of the Service – Level – Agreement regarding the Use of the SGIM Portal – Software

provided by

the **BeEnergy SG GmbH**

Registered office: Weißenburgring 23, in 35415 Pohlheim,

Court of registration: Amtsgericht Gießen, HRB 9550

Sales tax identification number: DE 319 104 470

- hereinafter referred to as:
„BeEnergy“-

These terms and conditions of the Service-Level-Agreement shall only apply vis á vis merchants, governmental entities, or special governmental estates within the meaning of sec. 310 para. 1 BGB (German Civil Code) (hereinafter referred to as: “BeEnergy”).

§ 1 Subject Matter of this Agreement

The provisions of this Service – Level – Agreement (in the following also referred to as “SLA”) put the liability for defects arising out of the SGIM Portal – Software License Agreement concluded between BeEnergy and Customer in concrete terms. The provisions of the SLA are only to be understood as the contractually defined minimum content of the warranty claims according to the SGIM Portal – Software License Agreement. However, in any case, the extent of the warranty claims as agreed in the SGIM Portal – Software License Agreement is not affected by this SLA.

§ 2 Reference System

All performance figures of this SLA refer to the quality of services regarding the SGIM Portal – Software which is provided by BeEnergy at the data transfer interface of BeEnergy’s data network in accordance with the SGIM Portal – Software License Agreement. Data transmission impairments between this data transfer interface and Customer and/or impairments of Customer’s IT system are left out of consideration. The data transfer interface is defined as the router of the internet service provider in the data network of BeEnergy.

§ 3 Reports, Assertion of Claims

- (1) On request of Customer BeEnergy will provide a monthly overview report about the compliance with the agreed availability and quality of the services for the purpose of evaluation.

- (2) In the case of providing a monthly overview report according to paragraph (1), Customer will only be entitled to assert claims under §§ 6 and 7, if it notifies the assertion without undue delay, not later than within two weeks after receipt of the monthly overview report.

§ 4 Priorities

If the services provided by BeEnergy are not in accordance with the values as stipulated in this SLA, so in the case that both availability and performance quality are impaired, BeEnergy shall restore the availability first, then the quality of the services.

§ 5 Trouble Report, Fault Clearance

- (1) Trouble reports which are treated in accordance with this SLA shall be announced by Customer to the faults department of BeEnergy. Customer shall give BeEnergy a description of the malfunction pursuant to paragraph (2). At the time of giving this description Customer is also obliged to appoint at least one member of its staff as contact person to support BeEnergy during the fault clearance. For this purpose, Customer shall inform BeEnergy as to how the contact person can be reached by telephone. The contact person must be directly available at all times during the business hours of Customer until the elimination of the malfunction will have been performed.
- (2) A malfunction exists within the meaning of this SLA only, if a client is not able to log in at the data transfer interface of the SGIM Portal – System or if the login time which is specified in the manual is exceeded. All kinds of unavailability announced by Customer have to be verified by the monitoring systems of BeEnergy. Only the unavailability verified by the monitoring systems of BeEnergy is deemed to be determined.
- (3) In case of malfunctions according to paragraph (2) the response time of BeEnergy is 60 minutes. The response time is calculated from the receipt of the trouble report at the faults department of BeEnergy. The presence of the characteristics as stipulated in paragraph (2) is decisive for the classification of a malfunction. The availability will be determined pursuant to § 2 of the SGIM Portal – Software License Agreement.
- (4) BeEnergy is obligated to start the fault clearance not later than 60 minutes after receiving a proper trouble report from Customer. The fault clearance takes place within BeEnergy's framework of possibilities under observance of its contractual obligations. However, BeEnergy is not obliged to eliminate the malfunction within a certain time.
- (5) Data transmission impairments beyond the data network driven by BeEnergy, for example because of disruptions or failures of communication networks, mobile phone networks etc driven by other internet providers or telecommunications providers, or the use of the system capacity in breach of the SGIM Portal – Software Agreement, for example because of an excessive number of accesses to the SGIM – Portal by Customer, are not malfunctions which BeEnergy has to eliminate.

§ 6 Non-Obligation to pay fees in case of malfunction

Customer is not obligated to pay the agreed fees for the use of the SGIM Portal – Software during the existence of a malfunction as described in § 5 (2).

§ 7 Termination

Customer is entitled to terminate the SGIM Portal – Software License Agreement for good cause subject to a notice period for up to two weeks defined by Customer, if three times within twelve months malfunctions notified by Customer and verified by the monitoring systems of BeEnergy occur according to § 5 (2) by exceeding the availability rate specified in the manual.

§ 9 Remuneration

No separate remuneration will be agreed for the provisioning of the services according to this SLA. However, in the case that a malfunction was announced by Customer and after examination by BeEnergy it turns out that the cause of the malfunction announced was or is not a malfunction within the data network of BeEnergy, BeEnergy is entitled to claim remuneration for the services regarding the fault detection calculated on the basis of the applicable hourly rates for such services provided by BeEnergy, unless Customer could not have recognized with the requisite care that the cause of the malfunction announced was or is not a malfunction within the data network of BeEnergy.

§ 10 Limitation

All claims under this SLA will become time-barred after 12 months.