

## **1 Subject matter of the Agreement**

- 1.1 These Terms and conditions apply in addition to the corresponding order (hereinafter collectively referred to as "**contract terms**") for a purchase, i.e. the temporally unlimited provision and use of standard software for a one-off remuneration.
- 1.2 If the Contractor's confirmation of the order deviates in its terms from Uniper IT GmbH's terms and conditions, only Uniper IT GmbH's terms and conditions shall apply even if Uniper IT GmbH raises no objection to the Contractor's deviating terms. Deviations from or additions to Uniper IT GmbH's terms and conditions shall only be valid to the extent Uniper IT GmbH has expressly acknowledged them in writing.
- 1.3 If this English version conflicts with the German version, the German version shall be exclusively binding.

## **2 Definitions**

- 2.1 For the purposes of these terms and conditions, the "**Uniper Group**" and/or "**Uniper Group companies**" include Uniper SE and its legal successors ("**Uniper**") as well as companies that are listed in the list of Uniper subsidiaries (hereinafter "**Uniper Group companies**").

The list of Uniper subsidiaries is available online at <http://www.procurement.uniper.energy> and will be provided to the Contractor upon request in writing.

If a company newly joins the Uniper Group, the company shall be deemed to be an Uniper company within the meaning of this section without delay upon joining the Uniper Group.

If an Uniper Group company leaves the Uniper Group, said company will still be deemed to be an Uniper Group company for a period of 12 months after leaving the Uniper Group.

- 2.2 "**Rights of use**" within the meaning of these terms and conditions are rights of exploitation covering all possible types of use under §§ 15 – 27 of the German Copyright Act [UrhG] as well as all rights of exploitation under §§ 69 a – g of the German Copyright Act and the right to further develop the standard software.

- 2.3 "**UIT**" means **Uniper IT GmbH**.

## **3 Purchase order and confirmation**

- 3.1 Purchase orders are only valid if they are concluded in writing. Oral ancillary agreements in respect of orders shall only be binding if they are confirmed in writing. The foregoing shall also apply to amendments and supplements to orders made subsequently.
- 3.2 Changes and/or additions to the scope of delivery and service that prove to be necessary in the course of implementation must be communicated by the Contractor to UIT without undue delay in writing. They will require the prior written consent of UIT.

## **4 Type, scope and quality of goods and services**

- 4.1 The Contractor must provide complete and clearly comprehensible documentation relating to the standard

software. The Contractor shall supply the documentation for the standard software in German or English and in printed or printable form. The documentation may be copied, used or edited by UIT as required.

- 4.2 The Contractor agrees to examine the standard software for viruses using a current virus detection program prior to its delivery to UIT. The Contractor hereby represents that its examination of the standard software has not revealed any indications of viruses, worms, spyware, Trojan horses or the like.
- 4.3 The Contractor shall alert UIT without undue delay where risks or the potential for additional expense could arise from applying the defined specifications or defined standards or from the software tools used or from interactions between them, or where such risks or potential for additional expense becomes the subject of publications or the Contractor otherwise gains knowledge thereof. The Contractor shall advise UIT with respect to possible solutions.

## **5 Time of delivery/performance**

The Contractor shall inform UIT without undue delay and in writing where circumstances arise or where it becomes aware of circumstances in which agreed deadlines cannot be met.

## **6 Place of performance, passage of risk, passage of title**

- 6.1 The place of performance for the supply of standard software shall be the delivery address as stated in the purchase order. The place of performance for payment is Duesseldorf.
- 6.2 Delivery of the standard software shall be deemed to have been completed when the software (including documentation) has been received at the place of performance or if the software has been downloaded completely and without errors and UIT has concluded its own functional testing thereof without encountering any problems.
- 6.3 Upon successful completion of the functional testing, title to the data carrier and risk shall pass to UIT.

## **7 Rights of use**

- 7.1 The Contractor shall grant UIT the non-exclusive, transferable to Uniper Group companies, perpetual and geographically unrestricted right of use, to use the standard software in any system environment for the purposes of the Uniper Group and/or to have said software used by third parties (e.g. third parties commissioned by UIT and/or Uniper Group companies).
- 7.2 The right of use in accordance with Section 7.1 includes the right to lease the standard software within the Uniper Group, and the Uniper Group company acting as the lessee will, in turn, be entitled to sublease to another company of the Uniper Group.
- 7.3 The right of use in accordance with Section 7.1 et seq. also includes the right to make the standard software available to Uniper Group companies as part of Application Service Providing (or comparable forms of

use) and/or by way of a software distribution program for automated installation and deinstallation processes.

If the software is made available by means of said software distribution program, a license key may be used for all installations irrespective of the individual user.

- 7.4 The grant of a right of use for the standard software shall include and cover all prior releases thereof.
- 7.5 UIT will be entitled to create a copy of the standard software as a backup. The act of copying the standard software, which is done for purposes of duly backing up data, is deemed to constitute a contract-compliant use.
- 7.6 Where UIT is authorized to transfer the right of use, it may retain a copy of the software for testing and archiving purposes.
- 7.7 The Contractor hereby warrants that the standard software shall not contain any copy protection or lockouts.
- 7.8 Any use by the Uniper Group companies shall occur at all times within the scope of the contractually agreed usage volume.

## **8 Compensation, prices, invoicing**

- 8.1 The total price stated in the contract shall be the full compensation for all contractual goods and services. Payment of compensation shall be due after 45 days where the Contractor has satisfied its delivery obligations (Section 6.2) and after UIT has received an invoice in verifiable form. The foregoing shall apply mutatis mutandis in the case of agreed partial performances.
- 8.2 The prices stated in the order are deemed to be fixed prices, inclusive of all reductions and surcharges, but are quoted net of the applicable statutory VAT.
- 8.3 Every invoice must separately itemize the legally applicable amount of VAT. Originals of invoices must be sent in written or text form to the invoice address *Uniper Financial Service GmbH, Lilienthalstr. 7; 93049 Regensburg*. (Uniper IT GmbH, Holzstr.6, 40221 Duesseldorf, Germany must be indicated as the benefit recipient). Order numbers must be specified and statement documentation must be attached.
- 8.4 If neither the Contractor's registered office nor its management is situated in Germany, UIT is entitled to retain the statutory withholding tax and to remit it to the competent tax authority unless the contractor submits a so-called "certificate of exemption" [Freistellungsbescheinigung] within five days following the conclusion of the contract in accordance with §50d of the German Income Tax Act [Einkommenssteuergesetz], issued for the purposes of the withholding tax on license payments by the German Federal Central Tax Office [Bundeszentralamt für Steuern]. UIT will certify the retained and remitted withholding tax on an official pre-printed form for the withholding tax refund procedure.

## **9 Warranty**

- 9.1 The Contractor will deliver the standard software supplied to UIT free and clear of any defects.
- 9.2 UIT is entitled to enforce the full scope of statutory warranty claims.
- 9.3 The warranty claims are subject to a limitation time period of three years commencing upon full delivery of the standard software; however, the statutory provisions shall apply where a defect was fraudulently concealed.  
  
If the defective standard software is remedied or replaced, in whole or in part, then the limitation period will be deemed to begin anew.
- 9.4 Elimination and cure of defects shall be deemed to include the delivery of a printed or printable set of instructions for corrections to the documentation, if such action is necessary.

## **10 Notice of defect**

In cases involving the delivery of standard software which UIT is required to inspect pursuant to § 377 of the German Commercial Code [HGB], the period for inspecting the standard software and for providing notice of an apparent defect will be 30 calendar days from the date the delivery was received. The notice period for hidden defects will be 15 calendar days from the date the defect was discovered. The notice of defect can be validly transmitted in electronic form.

## **11 Infringement of property rights**

The Contractor hereby warrants that the contractual services shall not infringe third-party industrial property rights or copyright. The Contractor hereby undertakes to indemnify and hold harmless UIT against any third-party claims for infringement of such rights and to hold UIT harmless in other respects.

## **12 Liability**

The Contractor shall bear liability pursuant to the applicable statutory provisions in cases involving intentional acts or omissions and negligence [Vorsatz und Fahrlässigkeit]. It may not rely on sec. 831(1) second sentence of the German Civil Code [BGB].

## **13 Insurances**

The Contractor must maintain liability insurance coverage on terms and conditions considered customary in the industry (minimum coverage EUR 1.5 million per claim) for the entire duration of the contract, which must also cover losses arising from the manufacture and supply of software. Upon UIT's request, the Contractor shall furnish evidence of its compliance with this obligation; lower levels of coverage in an individual case must be agreed in consultation with UIT.

## **14 Departing companies**

If a company leaves the Uniper Group (cf. Section 2.1), UIT is entitled to transfer the standard software to said company, the acquiring party or to a company affiliated with the acquiring party with permanent effect and at no additional costs. The Contractor consents already

now to the transfer and shall also endeavor, in this case, to provide the departing company, the acquiring party or a company affiliated with the acquiring party, with the rights of use in the standard software in such a way that the said company may use the software for its business purposes.

**15 Operation of the software on the premises of or by a third party(/ies)**

The provisions of Section 7 shall apply to the operation of the standard software on the premises of or by a third party commissioned by UIT or an Uniper Group company; for clarification purposes, attention is drawn to the fact that this also includes the right to install on hardware operated by said third party and/or to have said third party use or operate the standard software for the benefit of the Uniper SE Group.

Furthermore, the parties agree that UIT is entitled to disclose all information about the standard software as well as the existing contractual relation with the Contractor (e.g. contract term) to a third party, insofar as said third party requires the information to provide its services and has undertaken in writing to keep the information confidential.

**16 Assignment; right of retention**

16.1 UIT is entitled to transfer the contractual rights and obligations in whole or in part. The Contractor consents already now to this transfer, unless the transfer — for example to a departing company — results in a deterioration of the economic situation of the Contractor, or if the rights or obligations are to be transferred to a direct competitor of the Contractor.

16.2 Assignments as well as other transfers of rights and obligations of the Contractor are prohibited, unless they fall within the scope of § 354a of the German Commercial Code.

16.3 The Contractor may not enforce a right to withhold counter-performance under this contractual relationship, if such rights are based on other contractual relationships with UIT.

**17 Data protection and Data Security, Commissioned Data Processing**

17.1 The Contractor is obligated to comply with the statutory provisions on data protection (e.g., General Data Protection Act ("GDPR"), the German Federal Data Protection Act [Bundesdatenschutzgesetz], German Telecommunications Act [Telekommunikationsgesetz]) and to guarantee and monitor compliance with these provisions subject to the following provisions of this section 17.

17.2 The Contractor shall only process personal data by way of contract data processing subject to instructions, pursuant to Art. 28 GDPR ("Commissioned Data Processing") on behalf of UIT to the extent that this is necessary to comply with the obligations of the Contractor resulting from the order. The scope of the order in this respect also includes all annexes and documents to which the

order refers.

17.3 The type of data that are to be used by the Contractor as part of the contract data processing and the categories of data subjects are listed in the order or in an annex to the order (hereinafter referred to as "personal data").

17.4 Personal data also include personal data that UIT itself processes on behalf of a third party and makes available to the Contractor, insofar as UIT makes use of the services of the Contractor to fulfill its obligations vis-à-vis the third party.

17.5 Even in the case of contract data processing, UIT shall remain in control and responsible for the personal data. The Contractor will not be entitled to withhold the personal data including the data carriers and documents that contain such data.

17.6 Commissioned Data Processing shall, in respect of personal data, encompass the acts which are essential for the performance of the Contractor's duties arising from the order and which are specified in the order. The access to data files and the right to Commissioned Data Processing will be granted only if and to the extent that it is required to duly perform these duties. The Contractor shall not be permitted to use the personal data in any other way. In particular, the Contractor may not make any copies or duplicates of the data without the knowledge and approval of UIT.

17.7 The duration of Commissioned Data Processing shall be limited to the duration of the services to be provided by the Contract under the order.

17.8 UIT is entitled to issue instructions to the Contractor concerning the type, scope and methods of data processing and concerning the data security measures to be taken in this connection. The Contractor is only entitled to engage to process personal data pursuant to the instructions issued by UIT. If the Contractor believes an instruction issued by UIT contravenes the statutory provisions concerning data protection, then it must notify UIT thereof without undue delay.

17.9 UIT's power to issue instructions and exercise control under the order and this section 17 may also be exercised by another person authorized by UIT.

17.10 The processing and use of the data takes place exclusively in the territory of the Federal Republic of Germany, in a Member State of the European Union or in another Contracting State of the Agreement on the European Economic Area. Each relocation to a third country requires the prior written consent of UIT.

17.11 Changes to the subject matter, the scope, type, duration or of the purpose of the Commissioned Data Processing, or of the category of data subjects, require a corresponding written agreement between the Contractor and UIT.

17.12 The provisions governing Commissioned Data Processing continue to apply in the event that the Contractor performs reviews or maintenance on automated procedures or data processing facilities for UIT and

access to personal data cannot be prevented during such a procedure.

17.13 The Contractor guarantees adequate data protection to ensure the confidentiality, integrity, availability, resilience and accuracy of the personal data and monitors compliance with the technical and organizational safety measures specified in the order or in an annex to the order within its area of responsibility. Furthermore, the Contractor warrants that personal data collected for different purposes will be capable of being processed separately. In addition, the Contractor warrants that the following data will be processed separately:

- the data of UIT,
- the data of the Contractor, and
- the data of the Contractor's other clients.

Prior to the start of the Commissioned Data Processing and subsequently in the intervals defined in the order or in an annex to the order, as well as at any time upon request of UIT, the Contractor shall provide written proof that it complies with the technical and organizational safety measures pursuant to the order or to an annex to the order. The Contractor is obligated to provide the proof by submitting to UIT in each case written documentation in a form which enables UIT to perform the monitoring obligations incumbent on UIT pursuant to Art. 32 GDPR. The Contractor warrants that it has implemented the Data Security Standards and that it will maintain such Data Security Standards during the term hereof. Contractor shall ensure by means of appropriate mechanisms that access to UIT's (and/or the respective Uniper Group Companies) is strictly limited to those employees of the Contractor who require access in order to fulfil the Admissible Purpose.

17.14 Due to technical progress and the expected statutory developments, the need may arise to adapt the implemented technical and organizational measures to such technical progress and statutory developments. In this case, the Contractor is authorized to implement adequate alternative technical and organizational measures to make the adaptations to the technical progress. In doing so, the new measures may not drop below the safety level of the technical and organizational safety measures defined in the order or in an annex to the order. Essential changes must be documented and notified to UIT without undue delay. The Contractor must implement the necessary adaptations of the technical and organizational safety measures to the amended statutory requirements without undue delay. The essential adaptations must be documented and notified to UIT without undue delay.

17.15 UIT, or the controller (on behalf of whom UIT in turn acts as a Commissioned Data Processor) as the case may be, is responsible for assessing the reliability of the data processing system as well as for safeguarding the rights of the data subjects under the relevant data protection legislation. In the event that UIT, or the controller (on behalf of whom UIT in turn acts as a Commissioned Data

Processor) as the case may be, instructs the Contractor to correct, delete or block personal data, the Contractor shall follow such instructions in full. If a data subject asserts rights vis-à-vis UIT, or vis-à-vis the controller (on behalf of whom UIT in turn acts as Commissioned Data Processor) as the case may be, the Contractor shall perform all necessary acts to fulfill the obligations of UIT vis-à-vis the data subject without undue delay.

17.16 The Contractor shall appoint a data protection officer in accordance with applicable law or, if appointment of data protection officer is not required under the applicable law, another data protection official responsible for the data protection aspects of the processing of personal data and shall immediately provide UIT with relevant up to date contact details. The latter must provide proof of his or her requisite professional competence and reliability and must endeavor to promote compliance with the provisions regarding data protection. The Contractor shall inform the data protection officer about the contract data processing.

17.17 The Contractor is obligated to ensure that it communicates the instructions issued by UIT to all employees who have access to the personal data in connection with the performance of the contractually agreed obligations of the Contractor pursuant to the order. Moreover, the Contractor is obligated to prohibit such employees – even for the period following their employment – from processing or otherwise using the personal data, in contravention of the instructions of UIT or for purposes other than those related to performing the contractual duties for UIT (data secrecy). The obligation to maintain data secrecy shall be imposed upon the employees before the contract data processing is commenced. The Contractor undertakes to prove in writing (upon request) vis-à-vis the data protection officer appointed by UIT that this obligation has in fact been imposed.

17.18 The Contractor may only commission subcontractors to the extent that the purchase order expressly allows for the same in keeping with Section 12 of these terms and conditions. The Contractor shall select the subcontractor with care and make sure before commissioning the subcontractor that the latter is able to meet all obligations defined for the Contractor in this section 17. The Contractor is also obligated to impose upon the respective sub-contractor those duties set forth in this section 17, subject to the condition that the sub-contractor will be deemed to have assumed the Contractor's contractual rights and duties. The Contractor must also contractually ensure that all rights memorialized in this agreement can be exercised — at the choice of UIT — either by the Contractor according to the instructions of the Client, or by the Client itself. In the event that the Contractor protects and enforces the rights at the instruction of UIT, the Contractor will be obligated to forward all information, specifically documentation and monitoring results, to UIT without undue delay. At the request of UIT, the Contractor will



be obligated to prove to the UIT data processing agent in writing that the duties set forth in this subsection 17.18 have been satisfied.

- 17.19 The provisions of Section 17.18 apply with the necessary modifications also to the persons employed in the course of the obligations of the Contractor vis-à-vis UIT, who have access to personal data. The use of such persons is only permitted to the extent that the order makes express provision for it.
- 17.20 The obligations of the Contractor referred to in this section remain unaffected by the termination of the contractual relationship with UIT established by virtue of the order. The aforementioned applies, above all, to the obligation to maintain data secrecy. After the conclusion of the contract data processing, the Contractor may continue to save or otherwise retain the personal data provided to it, if such action is mandatory under the minimum statutory retention periods. In all other respects, the Contractor is obligated, upon termination of the Commissioned Data Processing, to return without undue delay all personal data in its possession to UIT or — after consultation with UIT — to destroy the data in line with data protection regulations and to confirm the destruction of the data to UIT in writing. This also includes personal data which was created for data backup and logging. In the event of a return of the personal data to UIT, the Contractor must destroy without undue delay any data remaining in its possession, as well as any copies or duplicates of the data, in line with the data protection regulations and confirm the destruction of the data to UIT in writing.
- 17.21 The Contractor grants UIT, especially its data protection officer, the right to conduct unrestricted monitoring during normal business hours to ensure the data is processed in keeping with data protection provisions, the terms and conditions of this Agreement and the instructions issued by UIT. The Contractor agrees to provide UIT with the requisite amount of support, above all to furnish the necessary information, to take any and all actions required and to grant the requisite physical access, systems access and data access rights. UIT is entitled to carry out the aforementioned monitoring also by relying on third parties (in particular third parties which are authorized to conduct such monitoring vis-à-vis UIT, e.g. the Client of UIT and regulatory authorities). In addition, the Contractor shall permit and support the documentation of the monitoring results before the start of and during the contact data processing.
- 17.22 UIT is entitled to have a safety inspection conducted on the Contractor's service providers in accordance with § 12b of the Atomic Energy Act [Atomgesetz], if such persons perform services that are connected with the handling or transport of radioactive materials or with the construction and operation of facilities within the meaning of §§ 7, 11 (1) no. 2 or § 9a (3) of the Atomic Energy Act. The Contractor agrees to furnish the service provider with data that is required for these purposes.

17.23 The Contractor shall inform UIT without undue delay in writing in the event of any indication of an infringement of data protection provisions or this section 17 or of instructions issued by UIT. The information duty shall apply in particular in the presence of indications for events pursuant to Art. 33 GDPR. If the security and confidentiality of the personal data held by the Contractor should be threatened by attachment or confiscation, by insolvency or composition proceedings or by other events or actions taken by third parties, then the Contractor must inform UIT thereof without undue delay and in writing. The Contractor shall without undue delay notify all responsible persons in this connection that UIT has dominion over and ownership of the information.

17.24 Taking into account the nature of the processing, the Contractor assists UIT by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of UIT's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III GDPR. The Contractor assists UIT in ensuring compliance with the obligations pursuant to Arts. 32 to 36 GDPR taking into account the nature of processing and the information available to the Contractor.

17.25 At the choice of UIT, the Contractor deletes or returns all the personal data to UIT after the end of the provision of services relating to processing, and deletes existing copies unless Union or Member State law requires storage of the personal data.

17.26 UIT reserves the right to disclose any Contractor data, which was furnished in connection with the order, to affiliated Uniper companies within the meaning of § 15 et seq. of the German Stock Corporation Act [AktG] for Group-wide procurement purposes and the right to save such information even after a contract ends, provided it is done in accordance with the applicable retention rules or for possible other orders.

## **18 Confidentiality**

18.1 The Contractor hereby covenants to treat as absolutely confidential any and all information, to which it becomes privy in connection with the present contractual relationship with UIT, and agrees to use such information only for purposes of performing this contract. Confidential information, within the meaning of this provision, are any documents, statements, data or other information that is labeled as such or that should be treated as confidential based on the nature thereof.

18.2 Where the confidential information comprises personal data, the use of such data is also subject to the provisions of Section 17. In the event of a conflict between the provisions of this section and the provisions of Section 17, the provisions of Section 17 take precedence in regard to personal data.

18.3 The Contractor hereby covenants only to provide such employees or third parties with access to UIT's confidential information as have a need to know it in order to perform the services under this contract and as

have previously given an identical written undertaking of confidentiality. Upon request, the Contractor must provide evidence to UIT that this obligation has in fact been imposed.

- 18.4 All information shall remain the property of UIT. The same applies to any copies, even if they were generated by the Contractor. The Contractor will not have a right to withhold any of this information, including copies or data carriers.
- 18.5 Upon the request of UIT, all information provided by UIT must be, in a complete fashion and unbidden, returned to UIT or, at its election, destroyed, once the Agreement has been performed but in any case no later than after the period of limitations ends for all defect claims, unless such return or destruction would violate statutory duties of retention.
- 18.6 The Contractor shall inform UIT without undue delay in the event of an indication that any of the terms of this section have been breached.
- 18.7 UIT may rescind the contract, either in whole or part, if the Contractor does not perform its obligations under this section within a reasonable grace period.
- 18.8 The obligations under this section shall survive the termination of the contract.

#### **19 Publication and advertising**

Disclosure of the business relationship that exists with UIT is only permitted with UIT's prior written consent. This shall also apply with respect to the publication of data relating to this contractual relationship.

#### **20 Written form**

Unless expressly agreed otherwise herein, the contract and its amendments, as well as all contract-related declarations, notification and documentation obligations must be made in writing. The Contracting Parties agree that the provision under § 126(3) of the German Civil Code shall never apply to them.

#### **21 Place of jurisdiction**

The place of jurisdiction is Duesseldorf.

#### **22 Contractual language, applicable law, miscellaneous**

- 22.1 The contractual language is German.
- 22.2 The laws of the Federal Republic of Germany govern, to the exclusion of the UN Convention on Contracts for the International Sale of Goods of April 11<sup>th</sup> 1980. Trade terms shall be interpreted in accordance with the respective valid Incoterms - ICC, Paris.
- 22.3 Should any provisions of this Agreement be or become invalid or unenforceable, then the remaining provisions hereof and the Agreement as a whole will remain valid and enforceable. The contractual parties are obligated to replace the invalid/inoperable provision at the beginning of invalidity/inoperability with a provision that comes as close as possible to the economic purpose of the invalid/inoperable provision, while taking into

account the interests of both parties. The foregoing rule will apply in the event the agreement yields contractual gaps.