

**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 "**Group**" and/or "**Group Companies**" include Uniper SE, Duesseldorf, and its legal successors ("**Uniper**") as well as companies which are affiliated with Uniper SE pursuant to sections 15 et seq. of the German Stock Corporation Act. The list of Group Companies 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 the standard software specified in the purchase order as well as the associated 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 Unless otherwise stipulated in the purchase order, the service includes the installation of the standard software.
- 4.3 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. Furthermore, the Contractor shall, at UIT's request, perform a functional test of the standard software under conditions of use and prove that the standard software complies with the specifications set out in the purchase order.

- 4.4 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 standard software shall be handed over at the time specified in the purchase order. 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 Group Companies, perpetual and geographically unrestricted right of use, to use the standard software in any system environment for the purposes of the Group and/or to have said software used by third parties (e.g. third parties commissioned by UIT and/or Group companies).
- 7.2 The right of use in accordance with Section 7.1 includes the right to lease the standard software within the Group, and the Group Company acting as the lessee will, in turn, be entitled to sublease to another company of the 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 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 Group companies shall occur at all times within the scope of the contractually agreed usage volume.
- 7.9 UIT shall be granted the rights listed in section 7 accordingly for corrections, patches, updates, upgrades, new versions or similar provided within the scope of the rectification of defects as well as for the respective updated documentation.

## **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). Purchase order numbers and order position 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.
- 9.5 The Contractor shall remedy defects reported by UIT in accordance with the defect classes and response and defect removal times set out in the purchase order.

## **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 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 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 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 Should personal data be processed by the Contractor on behalf of UIT in accordance with instructions, the Parties shall conclude a separate agreement on commissioned processing pursuant to Art. 28 GDPR ("Commissioned Data Processing")

17.3 The provisions on commissioned processing shall also apply if access to or inspection of personal data cannot be excluded in the context of the provision of services (e.g. remote maintenance of applications).

17.4 Personal data of the Client may only be processed under the conditions of the commissioned processing agreement concluded between the Parties Use of personal data by the Contractor beyond the foregoing shall not be permitted. In particular, the Contractor shall not be permitted to make any copies or duplicates of the data without UIT's knowledge and consent. 17.5 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.

17.5 The Contractor guarantees that its level of data protection shall be adequate for ensuring the confidentiality, integrity, availability, resilience and accuracy of the personal data. Within the sphere of its responsibility, the Contractor shall monitor compliance with the essential technical and organizational security measures relating to data protection in accordance with 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 mandatory require access in order to fulfil the Admissible Purpose.

17.6 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.

17.7 The Contractor shall ensure that the employees who are entrusted with the processing of personal data of the Client within the scope of the order are bound to data secrecy

17.8 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.

17.9 The Contractor shall, without undue delay, inform UIT 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. Should the security and confidentiality of the Contractor's personal data be endangered by seizure or confiscation, by insolvency or composition proceedings or by other events or measures of third parties, the Contractor shall inform UIT immediately in writing.

17.10 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. The Contractor's obligations set out in this Section 17 shall not be affected by the termination of the contractual relationship with the Client established as a result of the order.

17.11 UIT reserves the right to disclose any Contractor data, which was furnished in connection with the order, to affiliated Group 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. Written form is also fulfilled if a qualified electronic signature within the meaning of section 126a para 1 of the German Civil Code (BGB) or at least an advanced electronic signature within the meaning of Article 26 of the European eIDAS Regulation (2014/910/EU) is used.

## **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.