TERMS AND CONDITIONS FOR THE SUPPLY OF
IT SERVICES
of the SPAR Group

Supplier and the ordering party hereby agree that the following Terms and Conditions for the Supply of IT Services (hereinafter IT Terms) are applicable to all orders the ordering party will place with the supplier. These IT Terms will be part of all contracts, including but not limited to license agreements, software and hardware purchase contracts, maintenance contracts etc. concluded between supplier and the ordering party by virtue of such orders.

1.   Scope of Application of IT Terms
1.1   These IT Terms will become an integral part of contracts between supplier and ordering party, i.e. the ordering entity of the SPAR Group (including all foreign entities of the SPAR Group) concluded by virtue of orders or supplies. The supplier's terms and conditions of business or any other terms are applicable only if the ordering party has expressly acknowledged these in writing. This applies also if the supplier sends its own terms and conditions to the ordering party, whereupon the ordering party places an order, or if the ordering party, having placed an order, does not object to the supplier's terms and conditions upon receipt.

1.2.   Amendments and modifications of these Terms and of the contract executed with the supplier are valid only if made in writing; this applies also to any waiver of the written form requirement.

2.   General
2.1.   "Hardware" as used herein means data processing facilities (computers and computer accessory, such as printers) and their terms of use.

2.2.   "Software" as used herein means standard or customized or adjusted computer programs for use, operation or control of electronic facilities and systems, including the related documentation which is made available.

2.3.   "Standard Software" as used herein means any Software that covers a clearly defined scope of application and is purchased as a ready-made product, hence was not customized for the ordering party.

2.4.   "Customized Software" as used herein means any Software that was customized for the ordering party.

2.5.   "Goods" as used herein means the subject-matter from time to time, hence Hardware, Software, Source Code etc.

2.6.   "Preliminary Delivery" as used herein means the physical delivery of Software as program copy on a carrier or making available Software to the ordering party as free download on the Internet or another network that can be accessed by both parties.

2.7.   "Go Live" as used herein means the Software's going live by the ordering party's initial operation of Software.

2.8.   "Actual Delivery" as used herein means the physical delivery of Hardware to the ordering party.

2.9.   "Troubleshooting" as used herein means any search for Software errors, whether during the Go Live or later on, for example due to a complaint made by the ordering party.

2.10.   Also supplements (e.g. patches, user manual supplements etc) or updates or upgrades which are provided to the ordering party in the course of improvements or maintenance to replace previous Goods (e.g. existing Software) are governed by these IT Terms.

2.11.   "Major Update" as used herein means a general change of a product to an upgraded configuration or version.

2.12.   "Proof of Concept (PoC)" as used herein means proof of feasibility which confirms the Software's functioning in the ordering party's system environment.

2.13.   "Service Pack" as used herein means a whole maintenance package to update Software.

2.14. The purchase of Software grants the ordering party an unlimited, non-exclusive (exploitation) right to use Software for its operations. The number of installations (number of servers, clients) depends on the number of workstations or users licensed pursuant to the license agreement. If the license agreement does not set a certain number of licenses, the ordering party and its affiliates may install the Software in any number.

2.15. The execution of a license agreement includes also updates that comprise adjustments to changes in legislation, upgrades and improvements of and additions to Software, unless these fundamentally change the original function of Software; updates are provided to the ordering party free of charge either as downloads on the Internet or any other network that the ordering party is able to access, or also on data carrier at the ordering party's request.

3. Orders and Execution of Contract

3.1. Orders are valid only if placed in writing. This form requirement is also fulfilled if orders are placed via fax, e-mail or in any other electronic form, whereby electronic messages need not contain the ordering party's signature.

3.2. Unless the supplier's written objections to an order are received by the ordering party immediately and at least within 5 business days from the order date in a form referred to in Section 3.1., the ordering party and supplier are deemed to have concluded a contract.

4. Energy Efficiency

Supplier shall always evaluate the energy efficiency of all items not defined in more detail in the ordering party's purchase order, or mentioned alternatives, and products with the highest energy efficiency shall be preferred.

5. Delivery, Delivery Date, Delayed Delivery

5.1. Deliveries shall be made to the address stated in the order form.

5.2. Supplier shall purchase adequate transport insurance at its own cost.

5.3. Each order shall be shipped based on a separate delivery note which shall state the order number and the ordering party's relevant contact person.

5.4. Partial deliveries are allowed only if expressly agreed in writing. In case of partial deliveries, the delivery note must contain the following notice: "Residual delivery on or before ....“; the specific date must be given and the delivery date stated in the order must not be exceeded; these dates are binding for the supplier. If a collective invoice is issued for partial deliveries, maturity and time for payment start on the invoice date, but not earlier than after receipt of the last partial delivery. The ordering party may reject partial deliveries that were either not agreed or are made at times other than the agreed delivery times even if the ordering party has already accepted one or several partial deliveries made pursuant to an order or deliveries outside agreed delivery times. The ordering party is not obliged to accept early deliveries.

5.5. The supplier delivers Software either - as agreed with the ordering party - (i) by providing the ordering party with a free copy of Software on machine readable carrier and a copy of the user documentation or (ii) making available Software on the Internet or on any other network accessible to the ordering party, and gives so notice to the ordering party. If agreed, Software may also be provided via webhosting, in which case the parties will conclude a corresponding hosting agreement.

5.6. Compliance with agreed delivery times or delivery dates depends on acceptance of the Goods at the delivery address ("delivery"). Compliance with times or dates for the delivery of Software depends

    5.6.1 in case of Standard Software, on the date of Preliminary Delivery,

    5.6.2 in case of Customized Software, on positive takeover by the ordering party in the form of a takeover certificate that is signed by both parties.

5.7. The ordering party may postpone delivery times or dates even after the conclusion of a contract by giving notice to the supplier. The supplier may not derive any claims whatsoever and the ordering party is not required to accept early deliveries.

5.8. If the supplier cannot meet the agreed date for delivery or takeover, it shall promptly advise the ordering party, giving the reasons for and the probable length of the delay. The supplier is liable to the ordering party in any case for any resulting disadvantages and losses. The ordering party is entitled to the rights described below already upon receipt of that notice (same rights as in case of already occurred delay in delivery).

5.9. In case of a delay in delivery, especially when a certain date has been agreed for delivery or takeover, the ordering party may withdraw from the contract without setting a grace period and may at its election assert the following claims or insist on service performance. The ordering party is entitled to those rights even if it does not immediately exercise its withdrawal right.

5.10. If the ordering party withdraws from the contract, it may source the ordered or the same goods from another supplier. The related extra costs shall be borne by the supplier.

5.11. If the supplier is in default, especially if the supplier does not meet a date for delivery or takeover, the ordering party, regardless of the supplier's fault, may seek a penalty of up to 3 % of the order sum for each day of default. In any case, seeking compensation for damage in excess of that amount is not excluded. The ordering party will determine the amount of the penalty based on the severity of the infringement. The supplier may nevertheless prove a lower damage. The order sum as the basis for determining the amount of the penalty shall be the agreed price, including value added tax. This default clause does not apply if the ordering party unilaterally changes the delivery date pursuant to Section 5.7.

5.12. Notwithstanding the above, the ordering party can still rely on the rights pursuant to Sections 918 et seq. of the Austrian Civil Code. The ordering party may also recover any loss in excess of liquidated damages, including lost profit or other drawbacks which the ordering party suffers, for example due to claims being asserted against the ordering party by third parties as a result of non-compliance with its obligations accepted towards such third parties. Disadvantages to be compensated include also frustrated expenses, for example for advertising of the Goods which cannot be (timely) offered due to the supplier's default, and costs arising from claims under competition law which are asserted towards the ordering party for these reasons.

5.13. Every shipment shall be accompanied by all necessary freight documents, such as customs documents, delivery notes, permits, certificates, guarantee certificates, etc ("Transport Documents"). The ordering party may reject shipments without attached Transport Documents. Should the supplier delivery the Goods to the ordering party by way of cross-border traffic, it guarantees that the Goods are lawfully imported, customs duties and taxes properly paid, and in accordance with all relevant standards and legal provisions, including but not limited to safety regulations. The supplier is liable for the completeness and correctness of the Transport Documents. The ordering party is not subject to any liability whatsoever, if the shipment was not delivered in the agreed form at the agreed place of performance due to incorrect or incomplete accompanying documentation. In those cases, the ordering party may withdraw from the contract pursuant to Section 5.9.

5.14. The appointment of a subcontractor shall require the ordering party's written consent. In case of subcontracting, the supplier shall solely and exclusively be responsible for the provision of the services and compliance with the contractual obligations toward the ordering party. Subcontractors will act as vicarious agents (Section 1313a of the Austrian Civil Code) of the supplier.

6. Place of Performance and Transfer of Risk

6.1. As a matter of principle, the place of performance for the supplier's obligations shall be the delivery address. Software, however, is governed by Section 5.6.

6.2. The risk will transfer only with delivery and takeover of the Goods at the place of performance; as far as Standard Software is concerned, the risk will transfer with the Go Live or in case of Customized Software with positive takeover by the ordering party in the form of a takeover certificate signed by both parties, and, in any event, within 6 months after Preliminary Delivery. Any change by supplier of the place of performance shall require the ordering party's express written consent. The risk of transport shall exclusively be borne by the supplier.

7. Prices, Invoicing and Payment

7.1. Unless otherwise stated, the prices stated in the order are in Euros, exclusive of VAT, and inclusive of handling fee, packaging, transport, transport insurance and customs clearance, and other taxes imposed on the Goods.

7.2. Increases in prices due to fluctuations of exchange rates are always payable by the supplier.

7.3. The time for payment is 45 days net, unless otherwise agreed in the order. The invoice must be sent to the invoice address (stating the delivery address) indicated in the order. Each order shall be shipped by virtue of a separate invoice. The invoice shall contain the delivery address, the order number and any other details prescribed by law, such as a reference to the provisions of Article 28, Part E, paragraph 3 of the Sixth EC Directive in case of triangular operations. Maturity

and commencement of the payment term are not triggered if that information is incomplete or missing. Furthermore, in case of software agreements, the invoice must state the duration of an agreed maintenance agreement. Whenever licenses are granted for a limited period of time, the duration of a license must be stated.

7.4. Monetary receivables of the ordering party towards the supplier are subject to 12% default interest.

8. Warranties and Guarantees, Property Rights and Product Liability

8.1. The supplier warrants that the Hardware is in conformity with the contract pursuant to Sections 922 and 923 of the Civil Code. The statutory presumption period pursuant to Section 924 of the Austrian Civil Code is extended to 24 months.

8.2. The ordering party will inspect the Hardware within 5 business days after receipt only as to whether it is identical with the ordered Goods, as to volume and externally immediately visible flaws or damage; Software is governed by the provisions of Section 10.1. Furthermore, the ordering party is released from the obligation to inspect the Goods and to give notice of flaws pursuant to Section 377 of the Austrian Companies Code (UGB).

8.3. The warranty period for Hardware commences on the date of Actual Delivery; the warranty period for Standard Software commences with the Go Live or for Customized Software with positive takeover by the ordering party in the form of a takeover certificate signed by both parties. Each Major Update will trigger a new warranty period.

8.4. In case of purchase of Software, the supplier warrants that Software is fully operational and is fully operational in the ordering party's system environment.

8.5. The supplier guarantees state-of-the-art information security in all its products and services, at least, however, the measures listed in the "General Security Measures" manual (including the measures listed in the "Secure Coding Guidelines" and the measures according to the "indispensable baseline security requirements for the procurement of secure ICT products and services" issued by the European Union Agency for Network and Information Security (ENISA). In case of a "purchase" of products, this obligation is confined to the time of purchase. Where maintenance agreements were concluded, the supplier shall regularly check and adjust the "state-of-the art" at appropriate intervals.

8.6. The supplier shall compensate all costs and disadvantages the ordering party has incurred due to the supplied Goods being flawed, regardless of fault, if any. This includes, for example, indemnification of the ordering party for all claims asserted by third parties due to the flawed condition of the Goods, the costs of necessary subsequent inspections of other Goods on stock, return shipments, inspections, appraisals, extra costs of sourcing replacements, costs for enforcing rights, expert fees, etc.

8.7. In case of compensation deliveries, the supplier shall also take back flawed Goods at its own cost and expense.

8.8. Should the ordering party's Software require Troubleshooting and should any such measure require more than three business days, the supplier is required to provide a sufficient number of its own staff free of charge. If the supplier's own staff in cooperation with the staff provided by the ordering party (see Section 10.310.2.) not be able to eliminate the Software error within 21 days, the ordering party may withdraw from the contract, notwithstanding other provisions in these IT Terms.

8.9. The supplier shall also hold harmless and indemnify the ordering party if claims are asserted towards the ordering party due to the flawed nature of a product delivered or marketed by it (e.g. by virtue of product liability or breach of other provisions).

8.10. The supplier guarantees that the supplied Goods, including but not limited to the labelling of the Goods, are/is in conformity with all national and European laws and the legal provisions of the final country of destination according to the order and that the Software supplied can be used in a manner which ensures that the ordering party can fulfil all obligations under the General Data Protection Regulation. Furthermore, the supplier guarantees that the delivered Goods are free and clear of third-party property rights (such as patents, trademarks, design or copyrights). If the Goods are branded, the supplier guarantees that the delivered Goods are genuine and are put into circulation in the EEA either by the proprietor of the trademark which is used for the Goods and/or under which it is sold or with the consent of that trademark proprietor. Notwithstanding the above, the supplier also warrants that the putting into circulation and distribution of the Goods with the trade mark is legally admissible without any qualification in Austria or in the final country of destination pursuant to the order.

8.11. The supplier, except a non-Austrian supplier, hereby confirms in respect of its entire scope of business with the ordering party to participate in a collection and disposal system within the meaning of the Austrian Ordinance Regulating the Handling of Waste Electrical Equipment and simultaneously confirms in connection with the collection, disposal and recycling of waste electrical equipment in the context of all Goods delivered to the ordering party that it will fulfil the ordering party's resulting obligations as distributor or final distributor or producer.

8.12. Notwithstanding other or further rights, the supplier undertakes to hold harmless and indemnify the ordering party for and against any losses and disadvantages arising from the non-applicability of the above guarantees, and to compensate the ordering party for all costs and consequential damage of whatever nature resulting from an even partial non-applicability of the above guarantees, including for and against claims of the trademark proprietor or other third parties. This obligation of the supplier includes also reimbursement of fines imposed upon the ordering party's officers or employees or its customers due to the flawed condition or improper labelling of the Goods; the related payments shall be made to the ordering party if the ordering party pays compensation to the injured party(parties), or otherwise to the injured parties themselves.

8.13. The provisions of Section 8. do not affect other or further rights the ordering party can assert towards the supplier by virtue of the law or another agreement with the supplier.

8.14. The ordering party may copy Software for its archives and as data backup. If Software contains a copyright notice, that notice will also be affixed to copies.

8.15. Unless otherwise agreed, the supplier will provide free training upon request and provide advisory services regarding the installation, use and application of Software to allow an optimal application of delivered Software. The supplier will make available to the ordering party free written user documentation (e.g. a user manual) in the ordering party's national language, but at least in English.

9. Assignment of Claims and Set-off, Transfer Pricing Clause

9.1. The supplier may assign its claims against the ordering party. The supplier shall notify the ordering party of its intention to assign claims at least 12 weeks prior to any assignment, failing which Sections 5.11. and 5.12. will apply by analogy. In derogation of Section 3., that notice and the assignment notice itself shall be sent by registered mail to the ordering party's management at the Company's address; the date of the postmark is relevant. Any other form of notice, including but not limited to notes on invoices, etc. is not permitted. In case of assignments, a service fee (to cover a higher level of administrative effort) at a rate of one ‰ of the claim assigned or to be assigned, plus VAT, and at least an amount of EUR 100.00 plus VAT is payable. At the ordering party's election, that service fee may be applied towards any claim of the supplier from receipt of the notice on the intended assignment or receipt of the assignment notice, notwithstanding the ordering party's rights pursuant to the second sentence. Notwithstanding and in addition to the above, the supplier expressly acknowledges that the assignment of claims as described above might affect the credit exposure of the ordering party or of the members of the SPAR Group. In case of the assignment of claims, the supplier will therefore accept any disadvantages which the ordering party and also other members of the SPAR Group may suffer. The parties expressly agree that a written confirmation of the banks concerned will constitute sufficient proof of any such disadvantage. The supplier shall be obliged to prove the non-existence of damage.

9.2. The ordering party may set-off the supplier's claims not only against its own claims against the supplier, but also against claims of its affiliated companies (pursuant to Section 15 Stock Corporation Act, Section 115 Limited Liability Companies Act).

9.3. Any set-off of the supplier's claims against the ordering party's claims is inadmissible and invalid without the ordering party's express written consent.

10. Ordering Party's Obligation to Cooperate

10.1. Prior to using Software, the ordering party will test and examine Software as to whether it is free from flaws and fit for application in the existing hardware and software configuration. For this purpose, the supplier will allow the ordering party to conduct free acceptance tests at the ordering party's request. Should the ordering party thereby discover any Software deficiencies, these deficiencies shall be recorded in the acceptance report which shall be drawn up and signed upon acceptance by both parties; the ordering party will list errors and deficiencies by severity, with those errors and deficiencies which in the ordering party's opinion are most significant being recorded first. In case of significant errors and deficiencies, the ordering party may refuse to accept Software or customized software.

10.2. The supplier will make available to the ordering party instructions for the installation and operation of the ordered Goods; this applies also to updates or Major Updates. The ordering party is not obliged to inform itself about current instructions.

10.3. Should supplier services other than the provision of the ordered Goods be necessary, the ordering party will cooperate by making available not more than one employee and, if necessary, office space and telecommunications facilities. Should further employees of the ordering party be necessary, the number of necessary employees shall be timely agreed with the ordering party in advance, failing which the ordering party will make those individuals available - if possible - only against separate charge. The supplier ensures compliance with all labour regulations and will hold harmless and indemnify the ordering party in this respect.

10.4. The ordering party will grant access to the subject-matter of a contract, including but not limited to Software, at the ordering party's election either directly and/or via remote data transfer, for the purpose of Troubleshooting and error fixing. The ordering party will provide information for that purpose by allowing the supplier to inspect those books and records which concern Hardware and Software. Any dial-up costs arising in connection with remote data transfer shall be borne by the supplier. The ordering party grants access to the business premises as agreed.

10.5. The ordering party will take adequate precautions in case that Software should not or only partly work properly, especially by making regular data back-ups and testing the data processing results.

11. Confidentiality

11.1. The parties undertake to keep confidential for an indefinite period of time any confidential information and business secrets of the respective other party obtained in connection with the contract negotiations and the consummation of the contract and to use these only for the consummation of the contract. Besides the respect subject-matter of a contract, the ordering party's business secrets include also the services provided according to these IT Terms and any knowledge obtained through remote access.

11.2. The supplier will make available the Goods and confidential information to its employees and other third parties only if this is necessary to exercise its utilization rights granted to it. In the course of performing the contract, either party shall ensure compliance by its employees with the relevant laws, including but not limited to data protection laws. The parties undertake to require individuals entrusted with the consummation of the contract to accept corresponding obligations. These obligations do not refer to information which is already known to a party or is already public domain when that party becomes aware of it or has become public domain later on without any action and infringement of that party. These obligations do not apply towards authorities or courts, unless there is a statutory right to refuse disclosure.

11.3. Affiliated companies of the ordering party, as defined in Section 15 of the Austrian Stock Corporation Act, are not "third parties, although information may be exchanged only on a "need to know" basis.

12. Data Privacy

12.1. The supplier guarantees to process any personal data disclosed to it only in accordance with the EU General Data Protection Regulation ("GDPR") and to protect the rights of data subjects. Where the supplier processes personal data as processor on behalf of SPAR, the following will apply:

12.1.1. The subject-matter, the duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subjects are disclosed in the purchase order.

12.1.2. The supplier undertakes to process personal data only within the scope of the relevant contract and for the fulfilment of the purpose of the contract. Any data transmitted or provided to the supplier may be stored and processed only in the European Union.

12.1.3. The supplier undertakes to process personal data only on an instruction of the ordering party. The supplier will immediately inform the ordering party if the supplier believes that any instruction infringes the GDPR or any other laws. The supplier will erase all data after conclusion of the processing operations. Prior to erasure, the supplier will offer the ordering party to return data in a format which the ordering party is able to read.

12.1.4. The supplier will implement all data security measures prescribed in Art 32 GDPR.

12.1.5. Notwithstanding other agreements, the supplier will appoint other processors only with the ordering party's prior consent. The supplier will transfer to any other supplier all data protection obligations the suppler has accepted vis-à-vis the ordering party.

12.1.6. The supplier will implement appropriate technical and organizational measures to assist the ordering party in the fulfilment of its data protection obligations, including the obligation to respond to requests to exercise certain rights of the data subjects and the compliance with the obligations mentioned in Articles 32 to 36 GDPR to ensure the security of personal data.

12.1.7. The supplier makes available to the ordering party any information to prove the compliance with the above obligations and takes part in inspections conducted by the ordering party or by any other person appointed by the ordering party.

12.1.8. Furthermore, the supplier declares in a legally binding way that those persons who have access to the ordering party's data were obliged to protect the data secrecy. This confidentiality obligation shall especially survive also after termination of the employee's activities and his/her resignation from the supplier's business. The confidentiality obligation applies also to data of legal entities and commercial partnerships.

12.1.9. Any processing agreement the parties have concluded according to Article 28 GDPR will not be affected by these provisions.

12.2. In case of a breach of this Section 12., the ordering party is entitled to seek a penalty equal to 10% of the (gross) annual order value, and at least to EUR 50,000 (notwithstanding the supplier's fault), notwithstanding the right to recover any damage in excess of that amount.

13. Termination and Cancellation of Contract

13.1 The ordering party may prematurely terminate all contracts (license agreement, Hardware agreement, Software agreement, maintenance agreement etc) by registered letter for good cause, due to which the ordering party cannot reasonably be expected to continue a contract.

13.2 Events of good cause entitling the ordering party to give premature notice of termination include, but are not limited to the following:

(i)   the supplier does not take corrective action within a reasonable time limit to rectify major deficiencies or significant defects of the subject-matter;

(ii) the supplier breaches the confidentiality obligation;

(iii) the supplier is insolvent, or judicial or non-judicial insolvency proceedings are initiated in Austria or abroad in respect of a significant portion of supplier's assets. In that case, the ordering party may cancel the non-performed portion of a contract;

(iv) the delivered Goods cannot be used in accordance with GDPR or national data protection laws or the supplier's services otherwise infringe applicable data protection laws.

14. Liability

14.1 The supplier will pay damages on the basis of the legal provisions in all cases of contractual and non-contractual liability. Liability cannot be confined simply to intent and gross negligence. Liability is not limited to a certain amount either.

14.2 The supplier warrants that it lawfully sells and re-sells the Goods and that it holds authorizations, if any (including but not limited to licenses).

15. Use of Business Identifiers

All business identifiers of the ordering party (brands and non-registered signs) may be used only with the ordering party's express prior written consent; this applies in particular to naming the ordering party as a reference customer of the supplier.

16. Governing Law and Place of Jurisdiction

16.1 The contractual relationship between supplier and ordering party, including but not limited to an assessment whether such a relationship exists, and these IT Terms shall exclusively be governed by and construed in accordance with the laws of Austria. The UN Convention on the International Sale of Goods (CISG) shall not apply.

16.2 All disputes arising out of or in connection with contracts concluded between supplier and ordering party, as well as disputes on the conclusion thereof, shall exclusively be subject to the court in the City of Salzburg which has subject-matter jurisdiction. However, the ordering party may also sue the supplier at the supplier's general venue.

17. Corporate Compliance

17.1 The supplier undertakes to comply at all times with all applicable European and national legal provisions and standards. Therefore, the supplier is especially obliged to do the following:

17.2 The supplier undertakes to prevent corruption and bribery. The supplier may therefore neither offer, nor promise or guarantee through its employees, its management or third parties any money or services in money's worth (expensive gifts, invitations etc) to the ordering party's employees or management or related persons (relatives etc) ("prohibition of corruption").

17.3 In case of any breach of that prohibition of corruption, the ordering party may send a prior written warning letter and immediately terminate all existing contracts without notice. No prior warning is necessary in case of serious violations.

17.4 The supplier undertakes to comply with European and national anti-trust provisions and to take all necessary and appropriate measures to prevent any infringement of anti-trust provisions by its employees and vicarious agents.

17.5 In case the supplier, its employees, vicarious agents or any third parties contracted by the supplier repeatedly breach anti-trust provisions, the ordering party may prematurely and immediately terminate all contracts with the supplier for good cause without compliance with periods and/or dates of notice. In case any breach of anti-trust provisions is a breach of a so-called hard-core restriction pursuant to Section 4 of the Vertical Block Exemption Regulation or Part III.3 and III.4. of the Guidelines on Vertical Restraints, the ordering party may immediately terminate all contracts with the supplier for good cause on the first breach and also without prior written notice and without compliance with periods and/or dates of notice.

17.6 The supplier undertakes to comply with European and national data protection laws and to take all necessary and appropriate measures to avoid any unlawful conduct of its employees and vicarious agents in violation of data protection laws. The supplier guarantees to maintain an integrated data protection and information security management system and to have fully implemented the GDPR.

18. Special Provisions for License Checks

18.1 The supplier shall notify the ordering party of license checks by virtue of separate agreements such a license agreements with at least 4 weeks' written notice prior to an actual license check; Section 10.3. governs local license checks at the ordering party's premises.

18.2 If the license check is not performed by way of self-disclosure by the supplier or by the supplier itself, the license check shall be performed by an independent auditor of an internationally recognized auditing firm who is subject to a confidentiality obligation. Furthermore, the independent auditor shall assure in writing that the check does not constitute or create any conflict of interest. On the occasion of the announcement of a license check, the ordering party may request the supplier or third parties instructed by the supplier to sign a corresponding non-disclosure statement.

18.3 Unless contractually agreed otherwise, a license check is permitted not more than once per contract year.

19. Special Provisions for Maintenance and Support

19.1 The supplier undertakes to guarantee technical support for the Software products for at least 3 years from delivery of Hardware or, in case of Software, from positive takeover by the ordering party. Furthermore, the supplier guarantees that the Software products are operable also without Update 5 years from the contract signing date in a stable environment (same basic systems).

19.2 The supplier undertakes that spare parts will be available for Hardware products over a period of at least 5 years from the last date on which a Hardware product was ordered. The supplier shall also ensure that a comparable successor Product is available in case any of the Products are phased out. A phase-out must be notified at least 6 months prior to the phase-out date.

19.3 Technical support and Software updates (including Major Updates) will be governed, if appropriate, by a separate maintenance agreement. Not more than one maintenance fee per year is charged for all maintenance services. No further costs are payable by the ordering party regardless of whether the ordering party downloads updates or Service Packs from the Internet or whether these are provided on carriers. The supplier may not increase the agreed maintenance fee for any reason whatsoever; however, the supplier may adjust it to reflect an increase in the Consumer Price Index (CPI 2010 or any official subsequent index). The annual maintenance fee includes in any event on-site maintenance services. The maintenance fee is a flat-rate price which includes travel expenses and personnel expenses.

19.4 The maintenance agreement may be terminated by the ordering party at any time with two months' notice, unless the maintenance agreement provides otherwise. A maintenance agreement is automatically renewed by one year, unless it is terminated by the ordering party in writing.

19.5 Should an error or malfunction occur, the supplier shall have the following response times after an error message (depending on the severity of an error) to take corrective action:

Type of Error	Maximum Response Time	Maximum Time for Corrective Action
Minor error (There will hardly be any restrictions to the use of Hardware or Software; also: errors in documentation or general issues of use)	Within one week	During the next update
Medium error (Use of Hardware or Software will be limited, yet errors can be bypassed for a short while with little effort)	Within one business day	Within three business days
Serious error (Majority or critical function of Hardware or Software is unfit; work no longer possible or very difficult; workaround impossible)	Within two hours on business days	Within one business day

These are absolutely mandatory response and repair times, more stringent provisions can be agreed in a particular case.

If the supplier does not correct a Hardware error within the response times and times for corrective action stated above or the supplier does not correct a Software error within the above response times, the ordering party may assert towards the supplier a penalty of EUR 1,500 for each commenced calendar day in excess of those times. In any case, the recovery of any excessive damage is not excluded.

19.6 If the supplier is not domiciled in Austria, the ordering party is not required to make available one or several employees if support services (e.g. maintenance, Troubleshooting) are provided on a public holiday in Austria. If the supplier provides a support service on a day which is a public holiday in the country where the supplier has its domicile or establishment, the supplier will notify the ordering party in due time, no later than within 1 week prior to the scheduled service provision date.

20. Special Provisions for the Deposit of the Source Code

20.1 If the parties agree to register the source code, the provisions of this Section will apply.

20.2 The supplier will deliver the updated version of the source code of the created application software on sealed CD to the ordering party solely for the purpose of depositing it for security purposes; the supplier does not accept any further warranty. New releases will be created on a continuous basis, released and delivered at least 2 months after they were created. The ordering party shall reliably destroy earlier versions of the source code. The supplier warrants that source code and releases are free of any damage, deficiency and malfunction as well as third-party property rights. Costs for updating the source code and the expenses arising in connection with updating and deposit are payable by the ordering party.

20.3 In case of any breach of Section 20.2, the ordering party may recover a penalty equal to up to 3% of the order sum, regardless of the supplier's fault. In any case, seeking compensation for damage in excess of that amount is not excluded. The ordering party will determine the amount of the penalty on the basis of the gravity of the infringement. The supplier may nevertheless prove a lower damage. The order sum as the basis for determining the amount of the penalty shall be the agreed price, including value added tax.

20.4 The ordering party has the right to verify the completeness of the delivered source code exclusively in the supplier's presence. The supplier will then seal the delivered source code and hand it over to ordering party for safe custody. All employees who have access to the source code shall be informed and obliged accordingly. The ordering party will use all care and diligence to protect the source code from access by third parties.

20.5 Prior to receipt of the contractual terms of use, the ordering party shall not use the source code in any form, make available all source code programs, whether in the original or also in changed

form, to third parties or instruct third parties to edit the source code, or copy or transfer to third parties the original or changed form.

20.6 The ordering party may use the delivered source code for its own purposes, if and when
   (i)   the supplier abandons its business operations without nominating a successor,
   (ii)   a successor company does not accede to the rights and obligations of the existing agreement,
   (iii)   the supplier fails to deliver further developments in the Software as per the ordering party's order within a period of time adequate in terms of the scope of the order despite several written and verifiable reminders, or
   (iv)   the supplier consents in writing to the use of the source code.
   In the cases referred to in paragraphs (ii) and (iii), the ordering party may immediately withdraw from the contract by written notice. The supplier is not entitled to damages, if any. The ordering party may not market or pass on the original or edited form of the source code. The development tool necessary for editing the source code does not form part of the source code.

20.7 The ordering party may terminate the agreement on the safe deposit of the source code with three months' notice. After termination of the agreement, all versions and copies of the source code that were delivered to the ordering party shall be destroyed.

21. Special Provisions – Withholding Tax

21.1 Where the supplier is no fully taxable person in Austria (non-resident taxpayer) according to Section 1 (2) of the Individual Income Tax Act (*EStG)* and generates any of the income referred to below from the contractual relationship with the ordering party, the supplier shall submit to the ordering party a fully completed ZS-QU1 form (natural persons) or a ZS-QU2 form (legal entities) (see website of the Austrian Federal Ministry of Finance – Forms) for each calendar year, without any request being made. The ZS-QU1 or ZS-QU2 forms shall discharge the supplier from withholding tax and shall be provided for the following income on or prior to 31 January of the calendar year after the year in which the income was generated:
   21.1.2 Income from commercial or technical consultancy (physically) provided in Austria
   21.1.3 Income from the assignment of rights (e.g. license fees)
   21.1.4 Income from any activity as author, artist, architect, athlete, speaker or entertainer exercised or exploited in Austria.

21.2 Unless the ordering party has received the relevant form (or a statement why none of the above income was generated) on or prior to 31 January of the following calendar year, the ordering party reserves the right to deduct legal withholding tax at a rate of currently 20% according to Section 99 EStG from any outstanding or future payments.

22. Severability, Other Provisions

22.1 If any of the above term should be or become invalid, the remaining terms hereof shall thereby not be affected. The invalid term shall be replaced by a valid term which closest reflects the economic purpose and intent of the invalid term.

22.2 Unless otherwise agreed herein, the legal regulations agreed in Section 0. shall apply. Furthermore, the ordering party's rights referred to herein shall not prevent the assertion of other or further statutory or contractual rights of the ordering party.

........................, this ....

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   Supplier (Company stamp & signature)