

## **Attachment 1: General Terms and Conditions for IT Projects and Services**

### **1. Applicability**

Except as otherwise agreed, in any contractual relationship between the Customer and a third party ("Agreement") in which Customer procures the provision of work products (*Werkleistungen*) and services (*Dienstleistungen*) relating to information technology ("Contractual Services") from a third party ("Contractor") these General Terms and Conditions for IT Projects and Services ("GTC") shall apply in the version valid at the time the Agreement is concluded.

All capitalized terms used in these GTC shall be considered references to those terms as defined in the Agreement or these GTC respectively.

### **2. Service Provision and Quality Requirements**

#### **2.1. Service Quality**

The Contractor shall perform the Contractual Services in line with the requirements set out in the Agreement, but as a minimum requirement based on the latest generally accepted technical rules or, if there are no such generally accepted technical rules, based on the standards of proper professional practice, with the Contractual Services being rendered by employees with appropriate qualifications and skills within the agreed period. Before performing the Contractual Services, the Contractor shall provide Customer, at the latter's request, with a list of the employees who will be involved in the performance of the Agreement (including project roles and skill levels). In particular, the Contractor shall take into account (i) applicable general standards (e.g. ITIL or DIN) or (ii) directions, methods and practices that are specific to Customer, provided that the Contractor has been informed of them in advance. The Contractual Services must be provided in compliance with all applicable laws and regulations at the time of performance.

#### **2.2. Customer's Specifications**

If the Contractor finds the Customer's specifications to be incorrect, incomplete, unclear or if they cannot be implemented in objective terms, the Contractor shall inform the Customer of this and any foreseeable consequences in writing or by e-mail without undue delay, and shall give the Customer the opportunity to correct or confirm these specifications. The Contractor will only implement specifications of this nature after the Customer has explicitly confirmed the specifications.

#### **2.3. Handover of the Work Results**

The Contractor shall hand over all of the results arising from the provision of the Contractual Services (hereinafter referred to as "Work Results") to Customer after their completion. If project phases have been agreed, the handover shall be done after each individual project phase. If the subject-matter of the Agreement is the creation of individual software by Contractor, then the source code and any corresponding documentation must also be handed over to the Customer. The Customer is entitled to request the handover of the Work Results that have already been produced at any time.

#### **2.4. Status Reports and Right to Information**

In cases the Contractual Services are scheduled to be performed over a period of more than one month, the Contractor shall submit written status reports on the current status of the provision of the Contractual Services at periodic intervals. The Customer shall specify the reporting period, which can vary from one to four weeks. Furthermore, the Contractor must inform the Customer of the current status of the provision of the Contractual Services and must provide information on interim results at any time on request. The Customer reserves the right to review the progress of the provision of the Contractual Services and compliance with the agreed quality standards either itself or via third parties that are commissioned to do so at any time.

#### **2.5. Right to Issue Instructions**

The right to issue professional and disciplinary instructions to the employees of a Party shall reside exclusively with the Party who is the employer of the employees in question, irrespective of the place at which the work is being carried out.

### 3. Committees and Coordination for Projects

#### 3.1. Project Managers and Project Steering Committee

In order to coordinate and manage the provision of the Contractual Services, the Contractor shall appoint a project manager (hereinafter referred to as “Project Manager”) and the Customer shall appoint a contact person (hereinafter referred to as “Customer Contact”) in the Agreement. Both, the Project Manager and the Customer Contact, shall be entitled to make/receive binding declarations or take decisions. The Project Manager must be specially qualified and skilled in order to manage IT projects and must have sufficient and adequate experience in the realization of similar IT projects. The Customer is entitled to request evidence thereof and, in case no such evidence can be furnished, to demand the replacement of the Project Manager. Each Party shall immediately inform the respective other Party in writing or per e-mail in the event of any change in the person of the Project Manager/Customer Contact or a change of the contact details. During the term of the Agreement the Contractor is only entitled to replace the Project Manager for important reason (in particular: illness, change of job position, termination of the employment relationship). If required by the complexity and duration of a project, the Parties may set up a project steering committee to ensure the targeted, smooth execution of the project in the Agreement, comprising of employees of the Contractor and the Customer having sufficient IT-related experience and qualifications (hereinafter referred to as “Project Steering Committee”).

#### 3.2. Duties of the Project Manager

The duties of the Project Manager include, in particular but not limited to, the following:

- Management of the project in line with the project plan;
- Obtaining and providing necessary information and documents;
- Ensuring that all necessary decisions are taken in a timely manner;
- Nomination of contacts to clarify and solve project-specific issues and questions;
- Preparation of change requests (if applicable, for submission to and approval by the Project Steering Committee);
- Preparing, aligning and presenting change requests.

The Project Manager can be a member of the Project Steering Committee.

#### 3.3. Duties of the Project Steering Committee

The Project Steering Committee is, in particular but not limited to, responsible for the following tasks:

- Setting priorities and taking decisions regarding the management of the project;
- Assessing the progress of the project and the provision of the Contractual Services;
- Discussing and coordinating change requests.

The Project Steering Committee meets as necessary. Meetings may be initiated by a member of the Project Steering Committee, by the Project Manager or the Customer Contact. If no Project Steering Committee has been set up, the above tasks shall be performed by the Project Manager and the Customer Contact.

### 4. Documentation Requirements

The Contractor shall provide the Customer with full, due and proper documentation of the Contractual Services. This documentation must be prepared during the term of the Agreement in line with the project activities and must be updated on an ongoing basis. With regard to the creation or modification of software, databases or user interfaces, such documentation shall in particular include user manuals, design documentation/specifications and operation/installation manuals, relating to the software describing, explaining and assisting the use of the software which can reasonably be expected to be provided with the software according to industry best practice.

## 5. Project Plan and Deadlines

The project plan as agreed in the Agreement shall set forth the individual project phases and performance deadlines to be met by the Contractor. The performance deadlines set out in the project plan are binding. The Contractor is obliged to immediately notify the Customer in writing or by e-mail, if circumstances due to which the agreed deadlines or dates cannot be met occur or become apparent to the Contractor setting out the main reasons causing such delay. Such notification does not relieve the Contractor from its performance obligations.

## 6. Transfer of Rights to the Work Results

### 6.1. Scope of Usage Rights

In the absence of any provisions to the contrary in the Agreement, the Contractor irrevocably and unconditionally grants the exclusive, perpetual, worldwide and transferable right to use the Work Results, without use restrictions, to the Customer. The right of use shall include, in particular, the right to load, install, configure, access, execute, display, copy (including for back-up or archival purposes) and save the Work Results, and to make the Work Results available for use (also via network, e.g. by providing application services).

### 6.2. Customer' Modification Right

The Customer is entitled to modify the Work Results, at its own discretion, either itself or via third parties, and to use the modified Work Results in the same manner as the original Work Results.

### 6.3. Transferability

The Customer is entitled to transfer and/or sublicense rights of use in respect of the Work Results.

### 6.4. Pre-Existing Work Products

In respect of pre-existing work products independently developed by the Contractor and/or its Subcontractors outside the scope of the Agreement that form part of a Work Result, the Customer shall be granted rights of use pursuant to sections 6.1, 6.2 and 6.3 only on a non-exclusive basis.

### 6.5. No Separate Remuneration

The grant of rights regarding the Work Results is settled in full with the remuneration agreed in the Agreement.

## 7. No Third-Party Rights

### 7.1. Contractor's Rights

The Contractor represents and warrants having sufficient rights in the respective Work Results and Contractual Services to grant the rights as contemplated in these GTC and the Agreement.

### 7.2. Indemnification

7.2.1. The Contractor shall indemnify and hold harmless the Customer from and against any damages, liabilities, costs and expenses arising out of any claims asserted by third parties against the Customer due to an actual or alleged infringement of intellectual property rights resulting from the use of the Contractual Services in accordance with these GTC and the Agreement.

7.2.2. The Contractor shall bear the expense of such defense and pay any damages awarded and reasonable attorneys' fees that are attributable to such claim.

7.2.3. The Customer shall (i) notify the Contractor of each notice and communication regarding any claim that would fall under this section 7.2, and (ii) give the Contractor reasonable information and reasonable assistance necessary to defend all actions associated with such claim and to conduct all negotiations for its settlement or compromise, provided that (i) the Contractor shall have no authority to make any commitments or enter into any obligations binding upon the

Customer without the Customer's prior written consent, and (ii) the Contractor shall keep Customer reasonably informed on the status of such actions and negotiations.

7.2.4. The Customer shall make no admission regarding an infringement claim that would fall under this Section 7.2 without the Contractor's consent not to be unreasonably withheld.

### **7.3. Remedies of Customer**

If the Contractual Services become or are likely to become the subject-matter of any third party claim, the Contractor will, in addition to its obligation to indemnify and any other rights the Customer may have pursuant to statutory law, promptly at Contractor's expense:

- a) obtain for the Customer the right to continue to use the Contractual Services without any infringement of third party rights;
- b) modify the Contractual Services, so as to render it non-infringing (provided that any such modification shall not negatively affect the functionalities of the software); or
- c) replace the Contractual Services with an at least equally suitable, non-infringing alternative.

## **8. Remuneration**

### **8.1. Agreement on Remuneration in this Agreement**

The Parties agreed the remuneration to be paid to the Contractor in this Agreement. The remuneration is exclusive of any statutory VAT (if applicable).

### **8.2. Remuneration Models**

The Parties can select from the following remuneration models:

#### **8.2.1. Fixed Price**

"Fixed price" means that the agreed remuneration is independent of the actual resources required for the provision of the Contractual Services and applies irrespective of whether the Contractor has calculated the resources required for the performance of the Contractual Services correctly. The Contractor shall, at the Customer' request, disclose the calculation of the fixed price based on the hourly/daily rates set out in Attachment 4 (Rate Card) to this Agreement.

#### **8.2.2. Remuneration based on Time Expended**

Remuneration based on time expended means that the remuneration is calculated on the basis of the number of hours/man days required to provide the Contractual Services, multiplied by the applicable hourly/daily rates. The hourly/daily rates in Attachment 4 (Rate Card) to the Agreement apply.

One man day corresponds to 8 (eight) working hours (upper threshold for billing for a calendar day). Man days started are calculated pro rata on an hourly basis. The maximum number of days that may be billed shall be the number of man days on which the Contractor was working for the Customer (hours cannot be carried forward to the next calendar day).

If the Parties agree on remuneration based on time expended, the Contractor shall provide a cost estimate in the Agreement, specifying the costs estimated to be incurred and the hours/man days expected to be required to provide the Contractual Services. If the actual costs deviate from the cost estimate, the Contractor shall inform the Customer without undue delay in writing or by e-mail; any deviations shall require the prior written consent of the Customer. The Contractor shall submit an overview of the hours/man days worked with a description of the activities on a weekly basis.

#### **8.2.3. Remuneration based on Time expended with an Upper Limit**

Remuneration based on time expended with an upper limit means that the remuneration based on time expended is calculated on the basis of the previous section, but limited by the agreed upper limit. The amount agreed as the upper limit remains the maximum remuneration even if the resources required to perform the Contractual Services are not covered by the estimate.

### **8.3. Travel Expenses, Out-of-Pocket Expenses, Ancillary Costs and Travel Time**

The remuneration is stated in the form of inclusive prices, i.e. no reimbursement shall be provided for travel expenses and travel time to and from the place of work. In the absence of any provisions to the contrary in the Agreement, the Customer will not reimburse any out-of-pocket expenses or ancillary costs either.

### **8.4. Invoices; Payment Term**

#### **8.4.1. Invoices Content**

Invoices shall be issued in Euro and submitted to the Customer's location specified in the Agreement. In addition to the information required by law, the invoice must include a reference to the Agreement and, if provided, the respective order number; the statutory VAT shall be stated separately if applicable.

#### **8.4.2. Payment Term**

The remuneration shall be due for payment thirty (30) days after Customer's receipt of the orderly issued invoice.

#### **8.4.3. Acceptance Requirement**

If provision of Work Results has been ordered by the Customer, payment for such Contractual Services will not become due before the Customer has declared acceptance of such Work Results according to the acceptance procedure set out in section 10 of these GTC.

### **8.5. Default in Payment**

#### **8.5.1. Contractor's Information Obligation**

The Customer shall only be in default (i) upon expiry of the payment term and (ii) upon receipt of a default notice by which the Contractor has demanded payment of the respective amount in writing.

#### **8.5.2. Default Interest**

In the event of default in payment (*Zahlungsverzug*), the Customer shall owe interest at a rate that is five (5) percentage points above the base interest rate as set out by the German Central Bank.

### **8.6. Minimum Wage**

#### **8.6.1. Compliance**

The Contractor shall fulfill its obligations relating to the granting of terms and conditions of employment pursuant to the German Employee Secondment Act (*AEntG*) and its obligation to pay the minimum wage pursuant to the German Minimum Wage Act (*MiLoG*). The Contractor shall ensure that these obligations are also met by its Subcontractors and, in the case of the supply of temporary labor, by its employment agencies and the employment agencies of its Subcontractors.

#### **8.6.2. Obligation to Furnish Evidence and Provide Information**

The Contractor undertakes to furnish the Customer with evidence showing that the abovementioned provisions have been adhered to on request and without undue delay, and shall inform the Customer of any breaches without undue delay.

#### **8.6.3. Indemnification**

The Contractor shall indemnify the Customer against all claims asserted against the latter in the event that the Contractor breaches one of the obligations set out in section 8.6.1, in particular resulting from the "liability as guarantor" (*Bürghaftung*) pursuant to the German Minimum Wage Act and the German Employee Secondment Act. This shall also apply if the liability as guarantor results from the commissioning of a Subcontractor and/or an employment agency.

#### **8.6.4. Right to Termination**

The Customer shall be entitled to terminate the Agreement for cause if it becomes aware of the fact, or has sufficient grounds to suspect, that the Contractor has breached the provisions set out in section 8.6.1 in connection with the performance of the Agreement.

## 9. Customers Cooperation Obligations

### 9.1. Requests for Customers Cooperation

The Customer shall provide assistance to the Contractor as set forth in the Agreement. To the extent that the timing and details of the cooperation is clearly and comprehensively specified in the Agreement, the Contractor will notify the Customer of the assistance requirement without undue delay as soon as the Contractor becomes aware of the Customer's actual or likely failure to provide the assistance as or when due. To the extent that the timing and/or details of the assistance is not clearly and comprehensively specified in the Agreement, the Customer shall be required to provide the relevant agreed assistance only upon reasonable prior written notification (e-mail is sufficient) by the Contractor. The notification must describe the activities to be performed by the Customer in reasonable detail.

### 9.2. Failure to perform Cooperation Obligations

If the Customer fails to perform its cooperation obligations, the Contractor shall be relieved from its obligation to perform the Contractual Services, but only if and to the extent that (i) the Contractor has complied with its obligations under Section 9.1 (ii) the non-performance is directly attributable to the Customer's failure to provide assistance as and when due, and (iii) the Contractor has used commercially reasonable endeavors to implement suitable alternative arrangements without undue delay and to perform the Contractual Services notwithstanding the Customer's failure to assist.

## 10. Acceptance

### 10.1. Overall Acceptance Principle

If the Contractual Services relate to the production of a work product (*Werkleistung* - within the meaning of § 631 of the German Civil Code (BGB)), the respective Work Result shall be subject to acceptance.

Partial acceptance shall only occur if this is set out explicitly within the Agreement. In cases of doubt, intermediate inspections or partial payments shall not be deemed to constitute partial acceptance.

### 10.2. Notification of Completion of a Work Result and Handover

The Contractor shall notify the Customer without undue delay once the Work Result has been completed and shall hand the Work Result over to the Customer for acceptance.

### 10.3. Acceptance Period

The Customer will check the Work Result within a reasonable period of time that takes into account the complexity of the Work Result and the testing requirements. The minimum time for acceptance shall be 2 (two) weeks in the absence of any agreements to the contrary in the Agreement. Within the scope of the acceptance inspection, the Contractor shall provide evidence of the agreed functionalities and quality.

### 10.4. Formal Acceptance

The Work Result shall be formally accepted in writing. The Customer is entitled to withhold acceptance in the event of defects which are not only insignificant. The Contractor is not entitled to request acceptance again until it has furnished evidence showing that the defect hindering acceptance has been rectified.

## 11. Warranty

The Contractor warrants that the Contractual Services will be provided as set out in section 2.1 of these GTC. If the Contractual Services relate to the production of a work product (*Werkleistung* - within the meaning of § 631 of the German Civil Code (BGB)) then, in accordance with the warranty under statutory law, Contractor is obliged, in particular, to respond to any faults reported and to rectify any defects.

## **12. Change Request Procedure**

### **12.1. Definition of Change Requests**

The Parties are entitled to request contractual changes to the Contractual Services (hereinafter referred to as "Change Requests"). All Change Requests shall be processed in accordance with the Change Request Procedure set forth in this section 12.

### **12.2. Feasibility Assessment**

The Contractor shall examine Customer's Change Request within five (5) business days after receipt of the Change Request with regard to its feasibility and impact on the Contractual Services; if the five (5) business days are not sufficient to perform this examination, the Contractor can request in writing or by e-mail an appropriate extension of the deadline.

### **12.3. Change Proposal**

Insofar as the implementation of the Change Request has an impact on the deadlines or the price of the Contractual Services, the Contractor shall provide the Customer in writing or by e-mail within the deadline set out in section 12.2 with a proposal for the conclusion of a respective written amendment to the Agreement, which shall be based on the remuneration structure set out in the Agreement (hereinafter referred to as "Change Proposal").

If the implementation of the Change Request has no impact on the deadline or price of the Contractual Services, then the Contractor shall implement the Change Request within the timeline and for the agreed prices. The Parties agree that any corrections or specifications required by the Customer that are (i) reasonably required for the proper performance and provision of the Contractual Services or (ii) an inherent subtask of the Contractual Services, will not be remunerated separately. The Parties shall also record such Change Request in writing in an amendment to the Agreement.

### **12.4. Costs of the Assessment and Change Proposal**

The assessment of the Change Request and the preparation of the Change Proposal shall be free of charge. Only if the assessment of the Change Request causes considerable time and effort, the Contractor can submit a proposal for this assessment in writing or by e-mail within the deadline set out in section 12.2 of these GTC.

### **12.5. Conclusion of an Amendment**

An amendment will be concluded when the Customer accepts the Change Proposal in writing.

### **12.6. Provision of the Contractual Services during the Change Request Procedure**

During a Change Request Procedure, the Contractor shall continue to deliver the Contractual Services according to plan unless the Customer informs the Contractor in writing that the Contractual Services shall be suspended or restricted until a final decision on the Change Request has been taken. The Contractor shall immediately inform the Customer in writing if Contractual Services are to be provided or actions undertaken prior to the implementation of the Change Request which would no longer be of use to the Customer after the implementation of such Change Request.

### **12.7. Updating of Documentation**

When implementing any change, the Contractor will adapt the documentation accordingly.

## **13. Subcontractors**

### **13.1. Use of Subcontractors**

Any use of third parties for the performance of the Contractual Services (hereinafter referred to as "Subcontractors") by the Contractor shall require Customer's prior written approval. The Contractor shall be liable for any act or omission of any of its Subcontractor to the same extent as for fault on his own part. The Customer may revoke its approval of any Subcontractor, in particular if the Customer reasonably believes Subcontractor's performance to be deficient, and in such cases the Contractor will discontinue use of the Subcontractor's products and/or services and provide substitutes therefore. The Customer will allow the Contractor a reasonable time (not to exceed thirty (30) days or the applicable notice period in the relevant subcontract, whichever is greater) for termination and replacement in relation to the Contractual Services.

**13.2. Transfer of obligations**

The Contractor will ensure that the Subcontractor complies with all requirements stated in this Agreement to the extent that the same are relevant for the subcontracted activities. The Contractor shall provide evidence of this to the Customer on request. The Contractor monitors and controls that Subcontractors perform the Contractual Services in accordance with the provisions defined and agreed in the Agreement.

**13.3. List of Subcontractors**

Upon request of the Customer the Contractor will provide the Customer with a list of all approved Subcontractors, including the respective service locations.

**14. Reliability Assessment**

The Contractor confirms and continuously ensures that its personnel is fully reliable and sufficiently qualified to perform the Contractual Services. Upon the Customer' request, the Contractor shall describe its verification process, provide any supporting documentation as well as a written confirmation of reliability and qualification to the Customer without undue delay. The Contractor is obliged upon request of the Customer or a competent supervisory authority to evidence reliability and qualification of the personnel who has been assigned overall responsibility for the performance of the Contractual Services.

**15. Work on the Customer's Premises****15.1. Notification Obligation**

If, in order to perform the Contractual Services, the Contractor or its vicarious agents have to work on the Customers premises, the Contractor shall inform the Customer accordingly in good time before starting the work in question, naming the individuals to be deployed and the deployment period.

**15.2. Compliance with Company Provisions**

The Contractor undertakes to comply with the accident prevention and occupational health and safety provisions communicated to Contractor that apply on the relevant business premises of the Customer; it shall ensure, by way of corresponding instructions or contractual agreements, that its vicarious agents comply with these provisions.

**15.3. ID Cards; Keys**

If the Contractor and/or its vicarious agents receive ID cards for non-Customer employees and/or keys that provide them with access to Customer' premises for the duration of their activity, the Contractor shall ensure that such ID cards and/or keys are looked after carefully, are only used for their intended purpose and are protected from access by unauthorized third parties and shall ensure that they are immediately returned to the Customer once the work has been completed; any loss must be reported to the Customer without delay. The Contractor shall ensure, by issuing corresponding instructions, that its vicarious agents visibly wear an ID card while working on Customer' premises.

**16. Access to Customer's IT Systems****16.1. Own Work Resources; Access Rights to the Customer' IT Systems**

In the absence of any provisions to the contrary in the Agreement, the Contractor shall use its own work resources (including IT systems and applications) to perform the Contractual Services.

If, in order to perform the Contractual Services, it is required for the Contractor and/or its vicarious agents to access the Customer' IT systems or applications, the Contractor shall inform Customer accordingly in good time in writing or by e-mail, naming the individuals to be deployed. The Contractor shall inform the Customer without delay if individuals named in accordance with sentence 1 of this section are no longer required to provide the Contractual Services, or if they no longer require access to the Customer' IT systems or applications in order to perform the Contractual Services. The Contractor shall ensure that the access rights granted to the individuals deployed (user ID and passwords) are kept secret, are only used for



their intended purpose, are not passed on to unauthorized third parties or otherwise made accessible, and are protected against access by unauthorized third parties. The Customer must be informed without delay if there is any suspicion that the access rights may have been misused or used in an unauthorized manner, either by the individuals deployed or by unauthorized third parties.

#### **16.2. Use of the "Voicegate" Voice-Based Unblocking System**

The Contractor shall ensure that it and/or its vicarious agents register for the Customer' "Voicegate" voice-based unblocking system. First-time registration with this system via Customer shall be free of charge for the Contractor. Costs incurred in connection with the unblocking of the "Smartcard", "Windows" and "Host" systems by means other than the voice-based unblocking system shall be borne by the Contractor.

#### **16.3. External User Declaration**

Each employee of the Contractor or its Subcontractors who is assigned by the Contractor to work with access to Customer' IT systems must sign and hand out to the Customer a copy of the currently applicable version of the so-called "External User Declaration" of Customer Group.

### **17. Term of the Agreement; Termination**

#### **17.1. Term, Termination for Convenience**

The term and the termination for convenience rights, if any, are set out in the Agreement.

#### **17.2. Termination for Cause**

Either Party shall have the right to terminate the Agreement for good cause according statutory law. Furthermore, the Customer shall be entitled to terminate the Agreement for cause with immediate effect if the Contractor is in breach of section 18 of these GTC.

#### **17.3. Written Form**

All notices of termination of the Agreement must be submitted in writing.

### **18. Confidentiality**

#### **18.1. Use of Confidential Information**

All Confidential Information shall be used only for the purpose of exercising any rights or complying with any obligations under the Agreement. The Customer and the Contractor shall for an unlimited period of time protect such Confidential Information from unauthorized use or disclosure (intentional, inadvertent or otherwise) and, in any event, shall exercise at least the same level of care to avoid any such unauthorized use or disclosure as it uses to protect its own information of a like nature.

"**Confidential Information**" shall mean any information, and all information derived thereof, received from a disclosing Party under or in connection with the Agreement (i) that has been labelled as "confidential information" or similar by the disclosing Party or (ii) that should be regarded as confidential due to its nature or the circumstances of its disclosure. The following information shall not be regarded as Confidential Information: Information which (i) was independently developed by the receiving Party without aid, application or use of the Confidential Information, (ii) was disclosed by a third party without breach of a confidentiality obligation, (iii) is or becomes generally available to the public through no fault or breach of the receiving Party, or (iv) the receiving Party can demonstrate to have it rightfully in its possession prior to disclosure without being bound by confidentiality obligations.

#### **18.2. Permitted Disclosure**

Notwithstanding the foregoing, each receiving Party may disclose Confidential Information to third parties with the prior written consent of the disclosing Party. Each receiving Party will be free to disclose Confidential Information without the consent of the disclosing Party on a need-to-know basis:

- a) to the extent as required by mandatory law and/or regulatory authorities and provided the receiving Party has if legally permitted informed the disclosing party immediately in writing about such obligation,
- b) to its personnel and the personnel of its approved Subcontractors as the case may be, and to such professional advisors that have a secrecy obligation under applicable laws.
- c) In addition to the above, the Customer shall be entitled to disclose Confidential Information on a need-to-know basis within the Allianz Group.

### **18.3. Return or Destruction on Request**

If the Agreement ends for whatever reason, the receiving Party of each tangible item of Confidential Information, including documents, contracts, records or properties, will return such item to the disclosing Party and/or, in the disclosing Party's discretion, destroy it and provide a corresponding certificate to the disclosing Party, except to the extent that retention of any Confidential Information is required by applicable laws or expressly permitted under the Agreement.

### **18.4. Information Obligation**

Each Party will (i) promptly notify the other Party of any attempted or actual unauthorized possession, use or knowledge of the other Party's Confidential Information by any person or entity that may become known to such Party; (ii) promptly furnish to the other Party full details of the attempted or actual unauthorized possession, use or knowledge; and (iii) assist the other Party in investigating or preventing the recurrence of any attempted or actual unauthorized possession, use or knowledge of Confidential Information. Each Party will cooperate with the other Party in any investigation or litigation deemed necessary by the other Party to protect its confidentiality or proprietary rights. Unless otherwise agreed, the Party responsible for the unauthorized possession, use or knowledge of the other Party's Confidential Information will bear the costs incurred in any such investigation or litigation.

## **19. Data Protection**

### **19.1. Compliance with Statutory Law**

The Contractor shall collect, process, and use personal data solely for the purpose of fulfilling an Agreement and only in accordance with all statutory laws and regulations (in particular data protection laws) applicable to the Customer and/or the Contractor.

### **19.2. Commissioned Data Processing**

If the Contractor is supposed to collect, process or use any personal data by commission of the Customer, this shall require the conclusion of a separate written agreement covering the commissioned processing of personal data, in the currently applicable version. Any transfer of personal data outside the European Economic Area shall require the prior written approval of the Customer. Furthermore, in such case, the Contractor will (and will ensure that any Subcontractors shall) enter into the appropriate contractual arrangements with the Customer for the transfer of personal data outside the European Economic Area and the processing of such data, in each case in the form as prescribed and/or approved, where applicable, by the competent supervisory authority. Such contractual arrangements may include, at the direction of the Customer, the EU model clauses for the transfer of personal data to third countries.

## **20. Information Security**

### **20.1. Auditing Right**

The Customer has the right to conduct audits, either itself or via third parties, to check whether the Contractor is performing the Contractual Services in line with the information security requirements set out in the Agreement. If the audit reveals that the Contractual Services do not meet the specified requirements, the Contractor must rectify the findings without delay at its own expense and provide the Customer with evidence to this effect. In such cases, the Contractor also has to bear the costs associated with the audit.

## 20.2. Prohibition of Unauthorized Access

If the Contractual Services relate to the development or modification of software, then the Contractor warrants that unless authorized in writing by the Customer or unless otherwise agreed in the Agreement, the software provided to the Customer shall:

- contain no code and/or services, catering for functionality not authorized by the Customer, e.g., malware, backdoor, unauthorized remote access to or from the Customer's network;
- not replicate, transmit, or activate itself without control of a person (or a Customer created script) operating computing equipment on which it resides;
- not alter, damage, or erase any data or computer programs without control of a person (or a Customer created script) operating the computing equipment on which it resides;
- contain no key, node lock, time-out, or other function, whether implemented by electronic, mechanical, or other means, that restricts or may restrict use or access to the software, based on residency on a specific hardware configuration, frequency of duration of use, or any other limiting criteria.

## 20.3. Use of Open Source Software

The use of open source software in Work Results shall always require the prior written consent of the Customer and any open source components, as well as the license terms and conditions that apply to them, shall be specified in the Agreement.

## 20.4. Code Analysis

If the Contractual Services relate to the development or modification of software, then the Contractor shall perform a static code analysis (source code analysis) before making the Work Results available and before all major releases (e.g. version upgrade from 1.x to 2.x) in order to identify any security problems, and shall provide the Customer with the evaluated results of this analysis. When performing the static code analysis, the Contractor shall use suitable procedures and software tools in line with standard market practice to identify any security vulnerabilities.

The Customer is entitled to perform a security check on the Work Results (black box test), or to commission a third party to perform this test, at its own expense. If vulnerabilities are identified, the Contractor must rectify them without delay and at its own expense. Once the vulnerabilities have been rectified, the Customer shall arrange for a re-test at the Contractor's expense.

## 21. Disaster Recovery and Business Continuity

In case the Contractual Services are not provided as part of a project, but as ongoing operational service provision maintaining or supporting Customer's business processes (run), the Contractor shall, at its own cost, maintain, test and implement business continuity policies for the Contractor's operations that provide for the restoration and ongoing performance of the Contractual Services following any discontinuation of business (affecting the Contractor's operations) that disrupts such performance as can be reasonably expected from a leading Contractor of technology for business critical processes. When requested by Customer, the Contractor shall provide Customer with a description of Contractor's business continuity policies and shall give the Customer the opportunity to audit compliance of the Contractor with this obligation.

As part of its business continuity policies, the Contractor must maintain current documented crisis management procedures and shall inform Customer immediately upon becoming aware that a disaster has occurred or that it is likely, on the balance of probabilities, that a disaster shall occur.

Following the occurrence or knowledge of the likely occurrence of a disaster, the Contractor shall immediately invoke its crisis management procedures implementing its business continuity policies while fully communicating the status to Customer throughout its implementation of its business continuity policies.

The Contractor may not request any additional charges for the performance of services under its business continuity policies, or otherwise related to the disaster, upon the occurrence of a disaster.

## **22. Prevention of Corruption and Bribery**

### **22.1. No Breach of Anti-Corruption Laws**

The Parties shall not commit, authorize or permit any action in connection with the negotiation, conclusion or the performance of the Agreement which would cause the Parties and/or the Parties' Affiliates to be in violation of any applicable anti-corruption or anti-bribery laws or regulations. This obligation applies in particular to illegitimate payments including facilitation payments to government officials, representatives of public authorities or their associates, families or close friends.

### **22.2. No Unwarranted Benefits**

Each Party agrees that it will not either offer, or give, or agree to give, to any employee, representative or third party acting on behalf of the other Party or accept, or agree to accept from any employee, representative or third party acting on behalf of the other Party, any undue gift or benefit, be it monetary or other, with regard to the negotiation, conclusion or the performance of the Agreement.

### **22.3. Notification Duty**

Each Party shall promptly notify the other Party, if it becomes aware of or has specific suspicion of any corruption with regard to the negotiation, conclusion or the performance of the Agreement.

### **22.4. Termination Right**

In case any undue gifts or benefits with regard to the negotiation, conclusion or the performance of this Agreement are made by the Contractor in violation of this Section 22, or if the Customer has reasonable cause to believe that such payments or gifts have been or are being made, the Customer may terminate the Agreement with immediate effect.

## **23. Advertising; Naming as a Reference Customer**

The Contractor is not permitted to use the existence of its business relationship with the Customer or the specific content of this relationship or other information that it obtains in connection with the performance of the Agreement for advertising purposes or for other external communication purposes; the same applies to advertising using the Customer' name or logo as a reference customer. Exceptions shall require the prior written consent of the Customer.

## **24. Miscellaneous**

### **24.1. Applicable law**

The Agreement shall be governed exclusively by, and construed in accordance with, the laws of Germany with exception of its conflict of laws principles. The United Nation Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

### **24.2. Place of Jurisdiction**

The exclusive place of jurisdiction for all disputes arising from or in connection with the Agreement is Munich, Germany.

### **24.3. Severability**

If a provision of the Agreement (including these GTC) should be or become invalid or be inadvertently incomplete, the validity of the other provisions of the Agreement shall not be affected thereby.

### **24.4. Non-Assignment**

No Party may assign or transfer all or any part of its right and obligations under the Agreement to a third party without the prior written consent of the other Party, provided that Customer may assign its rights and obligations under the Agreement to any other entity of the Allianz Group without the Contractor's consent.

**24.5. Set-Off and Right of Retention**

The Contractor shall be entitled to a right to set-off or a right to retain only with respect to claims that are undisputed by the Customer or have been determined finally and legally binding by a competent court.