

## General Terms and Conditions for Services

(as of 01 July 2019)

### Index:

- Part I: Terms and Conditions for Services (incl. Managed Services)
- Part I.A: General Terms
- Part I.B: Specific Terms for Services [*Dienstleistungen*]
- Part I.C: Specific Terms for Performance of Works [*Werkleistungen*]
- Part I.D: Specific Terms for the Sale of Hardware and Software licenses
- Part II: Supplementary Terms for Communications Services
- Part III: Supplementary Terms for the use of ASP (application service providing) and Cloud Services
- Part IV: Supplementary Terms for Consulting and Design Services
- Provisions for insurance protection

### Part I: Terms and Conditions for Services (incl. Managed Services)

In addition to the General Terms (Part I.A) the respective Specific Terms for Services [*Dienstleistungen*] (Part I.B), the Specific Terms for Performance of Works [*Werkleistungen*] (Part I.C) as well as the Specific Terms for the Sale of Hardware and Software licenses (Part I.D) shall apply. They amend the regulations in Part I.A and shall take precedence, where the regulations conflict with one another

#### Part I.A: General Terms

##### 1 Scope of Services

Unify has to provide the agreed-upon Services in compliance with the terms of the Service Agreement.

##### 2 Cooperation between contract partners; scope and execution of work

- 2.1 Unify (depending on which is the contracting entity either: Unify Software and Solutions GmbH & Co. KG or Unify Communications and Collaboration GmbH & Co. KG) will provide the agreed-upon Services, generally remotely via public networks; for this purpose, the customer allows the system be connected to remote service for the duration of the contract. When the obligation to provide the Services ends, the connection to remote service and the corresponding equipment in the devices or system are shut down. The customer shall provide cost free the necessary service infrastructure, in particularly with regard to the Remote Service.
- 2.2 At the customer's request and against commensurate compensation, the agreed-upon Services can also be provided on the customer's premises.
- 2.3 Unless otherwise agreed, Unify shall provide the agreed services for the customer within its normal working hours. These are Monday to Friday from 08:00 to 16:00, except on public holidays.
- 2.4 The Unify employees do not enter into any employment relationship with the customer, even when they are working on the customer's premises. Functional authority to issue instructions to delegated personnel shall be exercised by Unify. The same shall also apply to subcontractors commissioned by Unify. The customer shall make any requests regarding the Services to be performed exclusively to the person appointed by Unify and not issue instructions to any other Unify personnel in this regard.
- 2.5 Unify reserves the right to deploy the dispatched personnel as it sees fit. This applies in particular to the choice of employees

used, arrangements with respect to work hours and overtime, vacation scheduling, attendance checks and monitoring of operational procedures.

- 2.6 If, due to mandatory legal requirements, a legal employment relationship should arise between Unify and the customer's personnel in conjunction with this contract, the customer shall bear any and all resulting additional costs arising for Unify, unless the transfer or personnel was expressly agreed upon.
- 2.7 Unify can issue subcontracts but remains responsible for performing the services to be provided.
- 2.8 Unify has the right to reject work demanded by the customer against which Unify has serious reservations (for example, due to safety regulation).
- 2.9 These terms and conditions apply exclusively; any terms and conditions provided by the customer that contradict or deviate from the Unify terms and conditions shall not be acknowledged by Unify unless Unify agreed to in writing. These terms and conditions shall also apply to the provision of any and all services by Unify to the customer, notwithstanding any previously existing, contradicting or deviating terms and conditions of the customer.
- 2.10 Unify may mention the customer as a reference to third parties.

##### 3 Internet-based services, access to password-protected pages

- 3.1 Internet-based services may be password-protected. Access to these pages shall, in the interests of business operations security, be possible only for registered users. The customer is represented by his employees and must take responsibility for their actions and know-how.
- 3.2 Upon logging in or, should a separate log-in not be necessary, on commencement of use, the validity of the license conditions applicable to the Unify web pages concerned, shall be accepted in their respective wordings.
- 3.3 The customer shall be obligated to provide truthful details and

in the event of any subsequent changes to communicate these without delay to Unify. The customer shall in particular inform Unify without delay in writing, possibly in advance via e-mail, as soon as the right of representation of the employees authorized by the customer to access the password-protected pages of Unify expires.

- 3.4 If registration is provided for, then the user shall be obligated to provide truthful details for registration and in the event of any subsequent changes to communicate these without delay to Unify (where provided: online).
- 3.5 Once registration is completed, the user shall be given a username and password (hereinafter also: "user data"). Upon initial access, the user shall change the password transmitted by Unify to a password known only to him.
- 3.6 The user shall ensure that the e-mails which are sent to the e-mail address specified by him actually reach him.
- 3.7 The user shall ensure that the user data does not become accessible to third parties and shall be liable for all orders and other activities undertaken using the user data. After each use, he must exit the area protected by password. Where the user acquires knowledge that third parties are misusing the user data, he shall be obligated to notify Unify without delay in writing, or possibly in advance via a simple e-mail.
- 3.8 After receiving notification as per item 3.7, Unify shall block access to the password-protected area containing this user data. Lifting of the block shall be possible only after a separate application has been made by the user to Unify or after re-registration.

#### 4 Customer collaboration, back ups of data

- 4.1 By fulfilling his collaboration obligations, the customer shall do his part to enable Unify to start the work on time and carry it out without hindrances or interruptions.
- 4.2 The customer must provide the operating conditions, hardware and software and free access required for the agreed-upon service modules, ensure comprehensive service and maintenance coverage for all relevant System components, and make the following available free-of-charge to Unify:
  - Documents, information and system operating data in suitable format (e.g. for the system, applications, network).
  - External connection to the public dial-up phone network/ WAN in proximity to the equipment and the necessary technical transmission equipment.
  - Data media containing the current version of the system programs used, along with the current data set and the system parameters (e.g. current system programs, data backups).
  - Unrestricted access at all times to all customer property, buildings, rooms and communications equipment/ IT data center, etc.
  - Administration rights to the extent required for the respective services and, if applicable, integration of the system programs inside the customers network ( e.g. entitlement for firewalls).
- 4.3 Changes to the system planned by the customer (such as relocations, upgrades, migrations, etc.) shall be coordinated between the customer and Unify in good time where such changes may affect the agreed-upon services.
- 4.4 If the customer omits to do this, Unify is entitled to discontinue the agreed-upon services if the cause of a fault can be attributed to these changes. In this case, Unify is entitled to

compensation of at least the amount of the agreed-upon prices.

- 4.5 If the System changes in accordance with Art. 4.3 planned by the customer make it necessary to adapt the contract (e.g., service certificates, annexes, and prices), Unify will immediately communicate this in writing to the customer.
- 4.6 Unless otherwise agreed-upon in the performance description, the customer shall back up his affected data prior to all services which Unify performs on his System at his request or in connection with a warranty claim. At the customer's request, Unify will perform the data backup against separate compensation on a time-and-expense basis.

#### 5 Support and product discontinuation (End of Life)

- 5.1 Unify's hardware and software products are subject to continuous development. This means that some products are regularly replaced by improved products or are superseded by successor products. Details of the product lifecycle (the End of Life process) of Unify's products, including further details on how to obtain End of Life information, are provided by Unify under the URL: <http://www.unify.com/de/support/product-lifecycle-policy.aspx>.
- 5.2 Once a product reaches the designated milestone for the completion of the manufacturer's development assistance as per the product life cycle plan, the agreed scope of the service could be adjusted so that
  - reported incidents can no longer be completely processed or resolved, or
  - Unify will, within Unify's operational capabilities, general and product independent support, or
  - in order to continue to receive the full scope of the services, a paid upgrade to the then current version of the relevant product must be obtained, or, if applicable, a successor product must be obtained.This has already been reflected in the remuneration for the services.
- 5.3 Upon request of the customer Unify will examine if for that individual customer a time-limited extension of the development support for a Unify product (Extended Manufacturer Software Support - EMSS) can be realized, which is also subject to payment of a separate remuneration. Details of EMSS are then agreed individually.
- 5.4 For independent third-party products, such as operating systems or active network components and even if the customer acquired them together with Unify products, this section 5 shall apply accordingly, but with the proviso that the relevant product life cycle planning and the resulting availability of support services is determined solely by the terms of the respective third party manufacturer. Unify will endeavor to offer the customer, or arrange for the third party manufacturer to offer to the customer, services similar to EMSS which may possibly be offered by the third party manufacturer.
- 5.5 If the services provided for the products are restricted or suspended as a result of the adjustment of the manufacturer's development assistance, or if, with regard to hardware, Unify's stock of spare parts for the relevant product is exhausted, and thus the provision of the agreed scope of the services becomes either permanently impossible or is no longer economically justifiable, the contract shall be adjusted appropriately and in good faith, in particular the remuneration. If such adjustment is not acceptable, the customer may

prematurely terminate the services for all affected products and § 313, paragraph 3 of the German Civil Code (BGB) shall apply accordingly.

- 5.6 The term and the scope of Unify's warranty obligations shall not be limited by the provisions of this section 5.

## **6 Payment conditions, billing, price adjustments**

- 6.1 The agreed-upon prices are to be paid for the remainder of the calendar month and then monthly in advance from the moment the system becomes operational; prices for which no ongoing payments have to be made must be paid within 10 days after the service has been provided and the invoice has been sent to the customer.

- 6.2 Over and above this, unless regulated otherwise in the agreed-upon service specifications, Unify will charge separately for the following at its currently valid list prices:

- The first test and any System maintenance required when the agreed-upon services are accepted.
- Changes requested by the customer or required by public authorities, e.g. changes to the scope of services, the user data, the installation site, or the call charge tariffs.
- The diagnosis and repair of faults or damages resulting from the age of the customer's cable network or from faults on the equipment of the public telephone network operator (e.g., Deutsche Telekom AG).
- The diagnosis and repair of faults or damages resulting from improper handling, the impact of products or services supplied by the customer or a third party, or other circumstances for which Unify is not responsible.
- The replacement of used batteries and rechargeable batteries (e.g., for cordless telephones), as well as consumables.
- The packing, dismantling (including existing systems or parts thereof), return transportation including transport insurance, as well as disposal.
- The repair of faults or damages that have been caused by computer viruses, so-called Trojan horses, hoaxes or by security gaps, etc. that were not generally known at the time the software was provided.
- New software versions.

- 6.3 Unless any flat-rate prices are agreed, Unify calculates its services on working time, travel and waiting time expended at its list prices valid at the time. For billing on hourly or monthly rates, each hour or month started is billed using a pro-rata billing rate. For services which are to be provided outside Unify's normal working hours, special rates apply. The customer allows ancillary costs, e.g. for telephone, costs for necessary journeys and any overnight stay needed.

- 6.4 The customer may at any time before signing a contract ask for the valid list prices if they are not known to him. On customer's request Unify will provide the respective applicable price lists.

- 6.5 The customer is only justified in offsetting or holding back payments due if Unify has expressly agreed to this in writing or if the counterclaims are undisputed or established with legal force.

- 6.6 In case of direct debits Unify charges outstanding debts on their due date, however, non-ongoing prices at the earliest 5 working days after receipt of the invoice. It is the customer's responsibility to ensure that the account is sufficiently covered on due date.

- 6.7 If, to compensate for increases in personnel and/or other

miscellaneous costs, Unify's normal list leasing prices or payments to be made on an ongoing basis for software or services are increased, Unify can increase the prices in this contract which are not yet due in this contract accordingly, provided they are affected by the price increase.

## **7 Time for services; delay**

- 7.1 Times set for services can only be observed if all documents to be supplied by the customer, necessary permits and releases, especially concerning plans, are received in time and if agreed terms of payment and other obligations of the customer are fulfilled. Unless these conditions are fulfilled in time, times set shall be extended appropriately; this shall not apply where Unify is responsible for the delay.

- 7.2 If non-observance of the times set is due to force majeure such as mobilization, war, acts of terrorism, rebellion or similar events, e.g. strike or lockout, such time shall be extended accordingly.

- 7.3 If Unify is responsible for the delay and the customer demonstrably suffered a loss there from, the customer may claim a compensation as liquidated damages of 25 % of the monthly service fee for every completed week of delay, but in no case more than a total of 2,5 monthly fees of the price of that part of the services which because of the delay could not be put to the intended use. If the delay relates to spare parts or software, for which a one-off payment is agreed to, then instead of 25% of monthly service fee and 2.5 monthly rents, 0.5% and 5 % of the one-off price applies.

- 7.4 Customer's claims for damages due to delayed services as well as claims for damages *in lieu of performance* exceeding the limits specified in section 7.3 above shall be excluded in all cases of delayed services even upon expiry of a time set to Unify to effect the Supplies. This shall not apply in cases of mandatory liability based on intent, gross negligence, or due to injury of life, body or health. Cancellation of the contract by the customer based on statute shall be limited to cases where Unify is responsible for the delay. The above provisions do not imply a change in the burden of proof to the detriment of the customer.

- 7.5 At Unify's request the customer shall declare within a reasonable period of time whether the customer cancels the contract due to the delayed Supplies or insists on the Supplies to be carried out and/or which of the claims and rights due to the customer it is enforcing.

## **8 Impossibility of performance; adaptation of contract**

- 8.1 To the extent that services are impossible to be carried out, the customer shall be entitled to claim damages, unless Unify is not responsible for the impossibility. The customer's claim for damages shall, however, be limited to an amount of 10 % of the value of the part of the Supplies which, owing to the impossibility, cannot be put to the intended use. This limitation shall not apply in the case of mandatory liability based on intent, gross negligence or injury of life, body or health; this does not imply a change in the burden of proof to the detriment of the customer. The right of the customer to cancel the contract shall remain unaffected.

- 8.2 For temporary impossibility, section 7 (time for services; delay) shall apply.

- 8.3 Where unforeseeable events within the meaning of section 7.2 substantially change the economic importance or the contents of the services or considerably affect Unify's business, the

contract shall be adapted taking into account the principles of reasonableness and good faith. Where doing so is economically unreasonable, Unify shall have the right to cancel the contract. If Unify intends to exercise its right to cancel the contract, it shall notify the customer thereof without undue delay after having realised the repercussions of the event; this shall also apply even where an extension of the delivery period had previously been agreed with the customer.

- 8.4 If for the contractually agreed system the manufacture of the system and/or parts thereof is discontinued by Unify and/or its suppliers and the stock of spare parts for this system is exhausted at Unify and as a result the agreed services or parts thereof are either permanently no longer possible or economically no longer justifiable, the contract shall be appropriately amended, taking into account the principles of reasonableness and good faith. If this is not economically justifiable, each party shall be entitled to repudiate the contract in whole or in part.

## 9 Liability on the part of Unify

- 9.1 Unify bears unlimited liability for the injury of life, body or health for which it is responsible and makes good a damage to property for which it is to blame, up to an amount of EUR 500.000,- for each instance of damage to property. The compensation obligation does not include the expense of restoring lost data and information.
- 9.2 Any claims for damages based on whatever legal reason, in particular loss of profit, data and/or information, consequential harm caused by a defect, including infringement of duties arising in connection with the contract or tort, shall be excluded. The above shall not apply in the case of mandatory liability, e. g. under the German Product Liability Act ("*Produkthaftungsgesetz*"), in the case of intent, gross negligence, injury of life, body or health, or breach of a guarantee for the conditions of the goods [*Beschaffenheitsgarantie*] or of a condition which goes to the root of the contract ("*wesentliche Vertragspflichten*"). However, claims for damages arising from a breach of a condition which goes to the root of the contract shall be limited to the foreseeable damage which is intrinsic to the contract, unless caused by intent or gross negligence.
- 9.3 To the extent that the customer has a valid claim for damages according to this section, it shall be time-barred upon expiration of the limitation period applicable to defects pursuant to section 2.8 of the Special Conditions for Performance of Works [*Werkleistung*] (Part I.C) and section 5.6 of the Special Conditions for the Sale of Hardware and Software licenses.(Part I.D). This shall not apply where Unify intentionally or grossly negligently fails to fulfil its obligation or fraudulently conceals a defect as well as in cases of injury of life, body or health or in the case of claims for damages under the German Product Liability Act.
- 9.4 The above provision does not imply a change in the burden of proof to the detriment of the customer.

## 10 Intellectual property rights and copyrights; defects of title

- 10.1 Unless otherwise agreed, Unify shall provide the services free from third parties' intellectual property rights and copyrights (hereinafter referred to as "IPR") with respect to the country of the place of destination. If a third party asserts a justified claim against the customer based on an infringement of an IPR with respect to the Supplies made by Unify and then used in

conformity with the contract, Unify shall be liable to the customer for 1 year, starting at the earliest as allowable by law:

- 10.1.1 Unify shall choose whether to acquire, at its own expense, the right to use the IPR with respect to the Supplies concerned or whether to modify the Supplies such that they no longer infringe the IPR or replace them. If this would be unreasonable to demand from Unify, the customer may cancel the contract or reduce the remuneration pursuant to the applicable statutory provisions.
- 10.1.2 The above obligations of Unify shall only apply if the customer (i) immediately notifies Unify of any such claim asserted by the third party in writing, (ii) does not concede the existence of an infringement and (iii) leaves any protective measures and settlement negotiations to the discretion of Unify. If the customer stops using the Supplies in order to reduce the damage or for other good reason, it shall be obliged to point out to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.

- 10.2 Claims of the customer shall be excluded if it is itself responsible for the infringement of an IPR. .
- 10.3 Claims of the customer shall also be excluded if the infringement of the IPR is caused by specifications made by the customer, to a type of use not foreseeable by Unify or to the I and C Solution being modified by the customer or being used together with products not provided by Unify..
- 10.4 In addition, with respect to claims by the customer pursuant to section 10.1.1 above, section 5.8 and 5.9 of the Special Conditions for the Sale of Hardware and Software licenses.(Part I.D) shall apply mutatis mutandis in the event of an infringement of an IPR.
- 10.5 Where other defects in title occur, section 5 of the Special Conditions for the Sale of Hardware and Software licenses.(Part I.D).shall apply mutatis mutandis.
- 10.6 Customer's claims for damages based on an infringement of an IPR or a defect in title are excluded. This shall not apply where Unify fraudulently conceals a defect, breaches a guarantee for the condition of the goods or intentionally or grossly negligently fails to fulfil its obligation as well as in cases of injury of life, body or health. Any other claims or any such claims exceeding the claims provided in this section 10 of the customer, no matter for what legal reason is excluded. The above provision does not imply a change in the burden of proof to the detriment of the customer.

## 11 Confidentiality, data protection

- 11.1 Unify and the Customer shall treat all information, business operations and documents ("Information"), of which they become aware in connection with this Agreement and which have been marked for them as confidential, as confidential in relation to third parties unless such Information has become generally known in some other way. Said duty shall also endure beyond termination or expiry of this Agreement. Unify and the Customer shall impose a corresponding obligation on their employees affected by this Agreement.
- 11.2 Unify shall be entitled to pass on Information to subcontractors provided that such subcontractors are bound by an obligation of secrecy equivalent to this provision.



- 11.3 In relation to the performance to be rendered in the individual case Unify shall be entitled to access and process the databases available at the Customer, including personal data.
- 11.4 If personal data is processed Unify shall render said performance through employees who are bound by the data secrecy under Paragraph 5 of the Federal Data Protection Act (Bundesdatenschutzgesetz) and the telecommunications secrecy under Paragraph 88 of the Telecommunications Act (Telekommunikationsgesetz). When working together with subcontractors Unify shall impose an obligation on said subcontractors in accordance with the data protection provisions of this Agreement.
- 11.5 If personal data is stored or otherwise processed Unify shall observe the Customer's directions and shall take the necessary technical and organizational measures to protect the data from misuse. Said duties shall also endure after termination or expiry of this Agreement.
- 11.6 Unify's liability for breaches of data protection shall be excluded if Unify acted in accordance with a direction from the Customer.
- 11.7 Unify shall process the data obtained exclusively for the purposes of rendering the performance and shall delete such data from Unify's systems if no longer needed for said purpose.
- 11.8 Unify shall be entitled to forward personal data to subcontractors if said forwarding is necessary to carry out the performance. If forwarded to subcontractors outside the EU/EEC Unify shall take care that there is a level of data protection in place that satisfies the data protection rules of the European Union.
- 11.9 The Customer shall be responsible for all statutorily required preconditions being met (e.g. by obtaining declarations of consent or observing rights of co-determination) so that in this regard also Unify can render the agreed performance without infringing any law.
- 12 Amendments of terms and conditions**
- 12.1 As far as continuing obligations are concerned. Unify is entitled at any time to change these general terms and conditions with a reasonable notification period. Changes or completions will be communicated to the customer in written form, by electronic mail or, if the customer has named a fax connection to Unify, by facsimile or in another suitable form.
- 12.2 If the customer does not contradict the changes of the terms and conditions within a time limit of four weeks from receipt of the notification of change or completion, they will be included effectively according to the notification. If the customer contradicts in due time, the contract will be continued in accordance to the previous conditions. Unify is however entitled to terminate the current contracts by due notice. Unify will refer to this in the notification.
- 12.3 If the changes or completions are necessary for Unify because of mandatory reasons, Unify's obligation for a notification and the customers' right of contradiction shall be inapplicable. Changes and completions, which are effected as a result of such mandatory reasons, shall not justify any compensation claims against Unify.
- 13 Export approvals,**
- 13.1 Unify's obligations are subject to the proviso that the fulfillment is not prevented by any impediments arising out of national and international foreign trade and customs requirements or any embargos or other sanctions.
- 13.2 If the customer transfers goods (for the purpose of this clause goods refers to hardware and/ or software and/ or technology as well as corresponding documentation, regardless of the mode of provision) delivered by Unify, or works or services (including all kinds of technical support) performed by Unify, to a third party, or if the customer reexports such goods, works or services, the customer shall comply with all applicable national and international export/re-export control regulations of the Federal Republic of Germany, the European Union, the USA and with the applicable national export law.
- 13.3 Prior to any transfer or export/re-export of goods, works or services, the customer shall in particular check and guarantee by appropriate measures that
- there will be no infringement of an embargo imposed by the Federal Republic of Germany and/or the European Union and/or the United States of America and/ or the United Nations by such transfer or export, by brokering of agreements concerning those goods, works or services or by provision of other economic resources in connection with those goods, works or services, also considering the limitations of domestic business and prohibitions of by-passing those embargos;
  - such goods, works and services are not intended for use in connection with armaments, nuclear technology or weapons, if and to the extent such use is subject to prohibition or authorization, unless the customer has obtained the required authorization;
  - the customer is in compliance with the regulations of all applicable Sanctioned Party Lists of the European Union and the United States of America concerning the trading with entities, persons and organizations listed therein.
- 13.4 If required to enable the relevant authorities or Unify to conduct export control checks, the customer, upon Unify's request, shall promptly provide Unify with all relevant information pertaining to the particular end customer, the particular destination and the particular intended use of goods, works and services provided by Unify, as well as any export control restrictions existing.
- 13.5 The customer shall indemnify and hold harmless Unify from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any noncompliance with export control regulations by the customer, and the customer shall compensate Unify for all losses and expenses resulting thereof.
- 14 Transfer of contractual rights and duties, subsidiary agreements, court of jurisdiction**
- 14.1 Unify can transfer the rights and obligations from this contract to a third party. The transfer will not take effect if the customer objects to the transfer in writing within 4 weeks of receiving such a notification; Unify will draw attention to this fact in the notification.
- 14.2 This contract is governed by substantive German law under exclusion of the conflict of laws provisions and of the UN Convention on Contracts for the International Sale of Goods (CISG).
- 14.3 Subsidiary agreements must be made in writing.
- 14.4 The court of jurisdiction, when the customer is a business administrator in the sense of the HGB, is the place specified at the top right on Page 1 of the contract for the contract region. If no place is specified, the court of jurisdiction shall be Munich,

Germany

- 14.5 If there is any ambiguity, discrepancy, inaccuracy or inconsistency between relevant provisions of these General Terms and Conditions and any provisions of the German text hereto available at Unify, the provisions of such original German document shall prevail.

## 15 Legally ineffective provisions

Should individual provisions of this contract be ineffective in law or unable to be executed for legal reasons, this does not affect the overall validity of the contract. In such a case the parties to the contract will make an agreement which replaces the provision involved by a provision which has the equivalent economic effect where possible.

## Part I.B: Specific Terms for Services [Dienstleistungen]

### 1 Defaults [Qualitative Leistungstörung]

- 1.1 If Unify is responsible that agreed services are (i) not performed, (ii) not performed according to the agreed scope of work or (iii) performed with deficiencies, then Unify shall reproduce incorrect performances within an adequate period of time provided that the customer reports the deficiencies without delay, at the latest 2 weeks after completion of the

performances, and in written form.

Claims shall be time-barred upon 12 months after completion of the agreed services or premature cancelation of the contract.

- 1.2 In addition section 9 of the General Conditions applies *mutatis mutandis*

## Part I.C: Specific Terms for Performance of Works [Werkleistungen]

### 1 Time for handover

- 1.1 Adherence to deadlines is conditional on prompt arrival of the final release of the scope of work (e.g. instruction manual) and all other information necessary for the performance of works to be supplied by the customer and other obligations of the customer. If these requirements are not met in good time, the deadlines are extended appropriately; this does not apply if Unify is responsible for the delay.
- 1.2 The same applies if Unify is hindered in performing the agreed works, e.g. by alterations of the scope of work or other circumstances for which Unify is not responsible for. This includes but is not limited to delay or default supplies of the customer as well as Force Majeure, e.g. mobilization, war, riots, strikes or lock-out.

### 2 Acceptance , Liability for Defaults

- 2.1 With performance acceptance test (if agreed in the scope of work) the customer shall confirm the recorded results at the point of handover.  
Partial-/final results are subject to acceptance pursuant to section 2.2.
- 2.2 The customer shall perform an acceptance test without delay upon handover and declaration of Unify that the partial-/final works are completed. Unify has to correct detected faults within a reasonable period cost-free. In case of substantial faults, Unify has to handover the work again to continue the acceptance test. A substantial fault is evident in cases when the works does not comply with the scope of work in such a manner, that the suitability of the partial-/final works has to be denied or is considerably affected. In case of insubstantial faults the customer shall declare acceptance of the partial-/final works without delay.
- 2.3 If the customer fails to accept the works for other reasons than substantial faults, the partial-/final works are deemed to be accepted 2 (two) weeks after Unify handed over the works. The respective partial-/final works are also deemed to be

accepted if and when the customer actively uses the works.

- 2.4 Unify has to remedy defaults, which the customer claims within the limitation period, within an adequate period of time free of charge.
- 2.5 Claims for defaults are excluded, if the customer modifies the delivered partial-/final works, even if the default occurs in a non-modified part of the works. This will not apply, if the customer provides evidence, that the modifications are in no causal relationship to the defaults occurred.
- 2.6 If the supplementary performance is unsuccessful, despite an adequate period of time set by the customer, or if Unify does not perform supplementary due to disproportional costs, the customer shall be entitled to withdraw from the contract for the effected works or to reduce the remuneration
- 2.7 Claims for supplementary performance, to cancel the contract or to reduce the remuneration are subject to a limitation period of 12 months, starting at the earliest as allowable by law. This provision shall not apply where longer periods are prescribed by law according to §§ 438 (1) No. 2 (items used for a building), 479 (1)1 (right of recourse) and 634a (defects of a building) German Civil Code (BGB) as well as in cases where Unify fraudulently conceals a defect or breaches a guarantee for the condition of the goods [Beschaffenheitsgarantie]. The legal provisions regarding suspension of expiration [Ablaufhemmung], suspension [Hemmung] and recommencement of limitation periods remain unaffected.
- 2.8 In addition section 9 of the General Conditions applies *mutatis mutandis*.

### 3 Usage Rights on Work Results

With complete payment of the agreed remuneration, the customer is granted the non-exclusive, irrevocable and non-transferrable right to use the work results for contractually defined purposes. Any modification of this usage rights require a separate written agreement.

## Part I.D: Specific Terms for the Sale of Hardware and Software licenses

### 1 Delivery of goods

- 1.1 Unify delivers to ordered goods to the customer. Installation and set up are the customer's responsibility. If installation and set-up form part of the order, then Unify shall install ( pre-install and set up the ordered goods.

### 2 Supply of spare parts (hardware)

- 2.1 Spare parts for which no package price has been agreed upon are supplied at the latest Unify list prices and the conditions of this contract.
- 2.2 If Unify replaces objects in order to fulfill a customer order or to rectify a material deficiency, the replaced parts become the property of Unify again, while the replacement parts become the customer's property if any claims that Unify may have against the customer are satisfied.
- 2.3 Unless some other agreement has been made in this regard, the customer is responsible for deleting his customer data before dismantling work starts.
- 2.4 Objects for which dismantling and disposal has been commissioned by Unify's customer or by their subcontractors are transferred to Unify's ownership when dismantled. If the customer commissions Unify merely to dispose of the objects, transfer of ownership to Unify's occurs upon delivery to Unify or to its subcontractors.

### 3 Inclusion of "End User License Agreement (EULA) for the Use of Unify Software,,"

- 3.1 Software products for which Unify provides service support are subject to the original license terms which are agreed between the customer and licensor.
- 3.2 Every supplementary program code (e.g. patch) which is made available to the customer as part of a service or under warranty shall be subject to the license terms of the respective software product, unless otherwise agreed in an individual case.
- 3.3 In case Unify provides a new software product in order to fulfil a customer's service request, the "End User License Agreement (EULA) for the Use of Unify Software, valid on the date of the service request, shall apply.
- 3.4 If they are not known to the customer, he can at any time ask for the respective applicable license terms before issuing the service request.
- 3.5 In case provided data media contain several software products, the customer shall only use the software licensed for him in the contract. The unbundling or repackaging of software for sale or resale is not permitted.
- 3.6 The customer may not decompile or disassemble the Software, remove any program parts, undertake reverse engineering or otherwise try to derive the source code, except as provided by mandatory law to gain its functionality or interoperability with other computer programs.
- 3.7 Software shall only be licensed in machine-readable form. However, insofar as the terms of license for Open Source Software provide for provision of the source code, Unify shall make this available at the customer's request in return for corresponding reimbursement of expenses.

### 4 Retention of Title

- 4.1 Without affecting any of the provisions in Art.3.1,**Fehler! Verweisquelle konnte nicht gefunden werden.** delivered goods remain the property of Unify until any and all claims

which Unify may have against the customer in connection with the business relationship have been fulfilled. If the value of all the security interests to which Unify is entitled exceeds the level of all secured claims by more than 20%, Unify shall at the customer's request release a corresponding share of the security interests.

- 4.2 While the security interest is in existence, the customer is forbidden from mortgaging, transferring the ownership of, or selling such goods to others.
- 4.3 In case of a seizure, confiscation or any other decree or intervention by a third party the customer must inform Unify immediately.
- 4.4 If the customer breaks his obligations, in particular by delaying payment, Unify has the right to withdraw from the contract and take back the goods after a reasonable deadline set for the customer has passed without success. The customer is obligated to release the goods.

### 5 Defects as to quality

- 5.1 All parts or services where a defect as to quality [*Sachmangel*], (hereinafter referred to as defects) becomes apparent within the limitation period shall, at the discretion of Unify, be repaired, replaced or provided again free of charge irrespective of the hours of operation elapsed, provided that the reason for the defects had already existed at the time when the risk passed.
- 5.2 With software errors, Unify supplementary performs by giving the customer a new release of the software version delivered as soon as this is available at Unify or accessible with reasonable efforts.
- 5.3 Software is free of material deficiencies when, on transfer of risk, it substantially conforms to the characteristics, finally described in the pertaining Software Documentation.
- 5.4 If a defect as to quality is caused by faulty 3rd-party software, which Unify needs to perform and Unify is not authorized to correct the defect, then the supplementary performance of Unify is limited to lodge a claim against the particular vendor, supplier or licensor,
- 5.5 The obligation of Siemens Enterprise Communication to supplementary perform does not apply, if a defect occurs in goods and services provided by the customer. However, Unify will on request support to an appropriate extend in the technical correction of the defects. For this support Unify will charge separately at its currently valid list prices
- 5.6 Claims for supplementary performance, to cancel the contract or to reduce the remuneration are subject to a limitation period of 12 months, starting at the earliest as allowable by law. This provision shall not apply where longer periods are prescribed by law according to §§ 438 (1) No. 2 (items used for a building), 479 (1)1 (right of recourse) and 634a (defects of a building) German Civil Code (BGB) as well as in cases where Unify fraudulently conceals a defect or breaches a guarantee for the condition of the goods [Beschaffenhheitsgarantie]. The legal provisions regarding suspension of expiration [*Ablaufhemmung*], suspension [*Hemmung*] and recommencement of limitation periods remain unaffected. Claims according to §§ 377, 381 (2) German Commercial Code (HGB) have to be made in written form without delay.
- 5.7 In the case of notification of a defect, the customer may withhold payments to a reasonable extent taking into account

the defect occurred. The customer, however, may withhold payments only if the subject-matter of the notification of the defect occurred is justified beyond doubt. The customer's right to withhold payments shall be time barred upon expiration of the limitation periods applicable to defects. Unjustified notifications of defect shall entitle Unify to have its expenses reimbursed by the customer.

- 5.8 Unify shall be given the opportunity to supplement its performance [*Nacherfüllung*] within a reasonable period of time.
- 5.9 If the supplementary performance is unsuccessful, the customer shall be entitled to cancel the contract or to reduce the remuneration.
- 5.10 There shall be no claims based on defect in cases of insignificant deviations from the agreed quality, of only minor impairment of usefulness, of natural wear and tear or damage arising after the transfer of risk from faulty or negligent handling, excessive strain, unsuitable equipment or from particular external influences not assumed under the contract, or from non-reproducible software errors. The same applies when the software is not used in accordance with the applicable installation requirements or not in accordance with the appropriate conditions of usage. Claims based on defects attributable to improper modifications or repair work carried out by the customer or third parties and the consequences thereof shall be likewise excluded.
- 5.11 Unify makes no guarantee that the software functions satisfy the demands of the customer, that software products interoperate as selected by the customer, that these will operate without interruption and without faults or that all

software errors can be rectified.

- 5.12 Claims for defects cannot be made with regard to the quality and suitability of the objects and materials provided by the customer. This applies equally to defects in the work done by customer-supplied personnel, unless the customer can prove that the defect is attributable to incorrect instructions or violation of the duty of supervision by Unify.
- 5.13 The customer shall have no claim with respect to expenses incurred in the course of supplementary performance, including costs of travel and transport, labour, and material, to the extent that expenses are increased because the subject-matter of the services was subsequently brought to another location than the customer's branch office, unless doing so complies with the intended use of the Supplies.
- 5.14 If information, software, or documentation is licensed free of charge – such as, for instance, in the case of shareware, freeware, or open-source software – Unify will not be liable for any legal imperfections in title or for any faults in the information, software, or documentation concerned. In particular, it will not be responsible for their correctness, accuracy, freedom from the protective and proprietary rights of third parties, completeness, and/or usefulness. This will not apply in the case of malicious concealment of a defect, failure to comply with a quality guarantee, imperilment of life, bodily injury, damage to health, restriction of freedom, and intentional or grossly negligent breach of duty. The above regulations are not associated with a change in the burden of proof to the disadvantage of the customer.
- 5.15 In addition section 9 of the General Conditions applies *mutatis*.

## Part II: Supplementary Terms for Communications Services

### 1 Scope

These Supplementary Terms shall be valid for communication services. They supplement the regulations in Part I and shall take precedence, where the regulations conflict with one another

### 2 Transfer and maintenance of items, technical adaptations, liability and duties of the customer

- 2.1 Unify shall provide at work points the agreed quantity of communications services described in the conclusion of the service overview.
- 2.2 Unify shall carry out the agreed communications services carefully and in due time. Unify shall be entitled to employ subcontractors for this purpose.
- 2.3 Unify shall be entitled to select and/or to modify at its discretion the equipment, hardware, software including utilities and tools, telecommunications equipment and terminals, IT systems and other items including the associated documentation (e.g. operating instructions, application guides and specifications) and the configuration that is appropriate to requirements in each case (hereinafter referred to as the "communications infrastructure" for short), provided that this does not impair the type and scope of Unify services.
- 2.4 The customer shall contribute all that is necessary in order that Unify can commence the agreed communications services at the proper time and implement them without interruption. In particular, he shall, insofar as this is necessary for carrying out the communications services for the purposes of this contract,

provide at his own expense:

- suitable installation rooms and the necessary in-house network of the type and quality required,
  - facility for connection to the public network (telephone/Internet) of the type and quality required,
  - unrestricted access at any time to all his sites, buildings, switchgear and rooms, etc.
  - electricity, including the necessary mains connections through to the point of use, heating, general lighting and, where necessary, air conditioning, ventilation and water,
  - details about the carrier(s) to be used and the configuration data needed for the installation,
  - administrator rights on the scale needed for the respective services.
- 2.5 Employees, vicarious agents and other authorized persons shall not be entitled to operate the communications infrastructure installed under this operator agreement or to undertake changes unless this is indispensable for use of the installed technology as contractually required (e.g. in the case of technology to be used on the workstation). The communications infrastructure shall remain the property of Unify.
  - 2.6 The customer shall himself make good all damage which occurs as a result of loss or damage to items in rooms which are under the supervision of the customer or of one of his vicarious agents, unless the customer and his vicarious agents have verifiably observed all due care or unless the damage would have occurred even if such care had been observed.



2.7 In using the communications infrastructure, the customer must, in particular, not:

- transmit contents containing viruses, so-called Trojans or other program coding which can damage software or data,
- breach intellectual property rights and copyrights or other proprietary rights,
- by his conduct as a user act contrary to public morality

### 3 Termination

3.1 The rights granted to the customer to use the communication services and the communication infrastructure which he has, for example, been permitted to use (e.g., workpoints, client software and documentation) shall terminate upon termination of this contract. The customer shall destroy the services which he has been permitted to use and copies made thereof within

a reasonable period of time from the date of termination of the contract or, if Unify requires this, return them at Unify's expense to Unify. The customer will receive the necessary return documents from Unify for this purpose. The rights of the customer to the work results, in particular to the processed data, obtained by him using the ASP services shall remain unaffected.

3.2 Unless otherwise agreed in the service specifications, the customer shall be obligated to back up on its own data media the data and contents stored on the systems of Unify, by no later than the date of termination of the contract; in the event of extraordinary termination of the contract by Unify, Unify shall, for this purpose, enable the customer to back up his data by means of downloading for a reasonable period of time beyond the termination of the contract

## Part III. Supplementary Terms for the use of ASP (Application Service Providing) and Cloud Services

### 1 Scope

These Supplementary Terms shall be valid for ASP (application service providing) and Cloud services. They supplement the regulations in Part I and shall take precedence, where the regulations conflict with one another.

### 2 Cooperation

- 2.1 The customer shall grant Unify an irrevocable, non-exclusive, transferable, sub-licensable, gratuitous and worldwide right to use, reproduce, edit, publish, distribute, execute and display content transmitted by the customer to Unify wholly or in part, where this is necessary in order that Unify can fulfil its contractual obligations to the customer under this contract. The customer shall guarantee that he is entitled to grant Unify the rights listed under this item.
- 2.2 Unify shall assume no responsibility for content transmitted by the customer. No substantive check of the content transmitted by the customer to Unify shall be made by Unify. The customer shall indemnify Unify against all third-party claims and demands filed by third parties against Unify in connection with the customer's content.
- 2.3 Unify may block access to the ASP services at any time if the customer breaches his duties arising out of these terms or if there are grounds to suspect that he has done so, and may delete all materials and contents connected with the breach. Expenses which Unify incurs as a result shall be charged to the customer.

### 3 Cloud services

3.1 Unify shall provide the customer with cloud services as described in the performance description and agreed to in the contract.. Unify shall be entitled to continue developing and

expanding cloud services or to replace them by functionally equivalent or state of the art cloud service packages at any time. The customer is not entitled to refuse the development, expansion or replacement. Unify will announce possible changes in the system requirements for cloud service packages adequately in advance.

3.2 The services of a public network carrier are not part of the contract performances of Unify.

### 4 Termination

- 4.1 The rights granted to the customer to use the ASP and/or cloud services and the services which he has, for example, been permitted to use (e.g. client software and documentation) shall terminate upon termination of this contract. The customer shall destroy the services which he has been permitted to use and copies made thereof within a reasonable period of time from the date of termination of the contract or, if Unify requires this, return them at Unify's expense to Unify. The rights of the customer to the work results, in particular to the processed data, obtained by him using the ASP and/or cloud services shall remain unaffected.
- 4.2 Unless otherwise agreed in the service specifications, the customer shall be obligated to back up on its own data media the data and contents stored on the systems of Unify, by no later than the date of termination of the contract; in the event of extraordinary termination of the contract by Unify, Unify shall, for this purpose, enable the customer to back up his data by means of downloading for a reasonable period of time beyond the termination of the contract

## Part IV. Supplementary Terms for Consulting and Design Services

### 1 Scope

These Supplementary Terms shall apply to consulting and design services. They shall supplement the regulations in Part I and shall take precedence where the regulations conflict with one another.

### 2 Cooperation between the contracting parties

2.1 The Contractor shall assist the Principal in his projects with

consulting and design services. The Principal shall bear responsibility for the project and overall results.

- 2.2 The Contractor shall render his performance as a service in accordance with the service specifications and the state of the art.
- 2.3 If an employee is prevented from rendering performance due to illness, vacation or other reasons beyond the control of Unify, Unify shall, at the request of the customer, immediately

deploy another suitable employee. In other respects, Unify may replace its employees at any time with other suitable employees.

### **3 Amendments of the scope of services, delays in operations**

- 3.1 If change requests by the customer or other circumstances for which the customer is responsible lead to increased expenditure, then Unify shall communicate this without delay in writing to the customer. Unify shall charge for these services on a usage basis, unless it has been agreed otherwise.
- 3.2 Each contracting party shall be entitled, during the term of this contract, to submit change requests in writing in relation to the agreed services.
- 3.3 In the case of change requests made in writing by the customer, Unify shall respond as quickly as possible, indicating whether the changes can be carried out and what impact this will have on the performance to be rendered, in particular on the timetable and remuneration.
- 3.4 Where Unify submits change requests, the customer shall be obligated to give notice as quickly as possible of whether he consents to the proposed changes. Unify shall continue the

works on the basis of the contract concluded until notification from the customer.

### **4 Work results, acceptance, licenses**

- 4.1 Upon handover of the work results, e.g. in the form of completion documentation, to the customer, the works shall be deemed to have been completed and performance to have been duly rendered.
- 4.2 All work results produced within the framework of this contract shall be protected under copyright law. Unify shall grant to the customer the non-exclusive, non-transferable right to use the work results for contractually defined purposes. The customer shall reproduce and disclose the work results and documents only with the prior written consent of Unify.
- 4.3 Unify shall hold documents and objects of any kind which constitute work results in safekeeping for the customer until these are handed over.
- 4.4 Minutes, documentation and similar documents which the customer was permitted to use under this contract shall remain the property of Unify or its subcontractors and must be returned upon request within a reasonable period of time following the termination of the contract.

## **Provisions for insurance protection**

### **1 Compensation for damages**

- 1.1 Damages which fall under insurance protection shall be made good through repair or redelivery of the items.
- 1.2 Damages shall be regulated directly between Unify and Allianz.

### **2 Commencement of liability, duration of the insurance contract**

- 2.1 Allianz's liability shall commence upon delivery of the materials or upon signing, provided the insured party pays the insurance premium without delay upon receipt of the invoice; otherwise, Allianz's liability shall commence upon receipt of the initial insurance premium at Unify.
- 2.2 The insurance contract shall run until the end of the third year following readiness of the system for operation. It shall, however, be extended for a further year respectively unless notice is given in writing at least three months before the respective date of expiration.

### **3 Payment of insurance premiums, subsidiary agreements, insurance certificate**

- 3.1 The insurance premiums shall be paid to Unify for the period from the date of readiness of the system for operation for the remainder of the current calendar year quarter and then quarterly in advance, together with the price of the agreed communications services. Ancillary costs shall not be charged.
- 3.2 Subsidiary agreements must be made in writing.
- 3.3 The signed official copy of the protection contract issued to the insured party shall be valid as an insurance certificate (block policy). The insured party can request at any time copies of the declarations which it has issued with regard to the insurance contract. It must reimburse Allianz for the costs thereof.
- 3.4 Details of insurer and other data entered in the Commercial Register can be found in the document entitled "ALLG 1266".