

## General Terms and Conditions of weSystems AD

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### 1. SCOPE

- 1.1. These General Terms and Conditions apply to services provided by weSystems AD (hereinafter referred to as weSystems).
- 1.2. weSystems shall provide its services in accordance with the respective individual contract concluded with the Customer, the respective product description, the respective service level agreement, the respective special terms and conditions and these General Terms and Conditions.
- 1.3. In the event of any contradictions between the aforementioned documents, they shall apply in the order indicated, unless otherwise agreed in the individual contract.
- 1.4. Deviating terms and conditions of the customer shall not become part of the contract unless their validity is expressly agreed in writing. Any reference to the customer's terms and conditions of business in the form of a form shall be objected to.

### 2. WESYSTEMS SERVICES

- 2.1. The scope of services is defined in the individual contract and in the respective product description.
- 2.2. Deviations that represent technical improvements are permissible insofar as they do not impair the usability for the contractually intended purpose. weSystems is free to implement the technical implementation, provided that the implementation is in accordance with the contractual provisions.
- 2.3. Telecommunication services are subject to changes due to possible legal and/or official regulations. weSystems is therefore entitled to adjust its services according to the changed legal framework conditions.
- 2.4. weSystems may commission third parties to provide the services.
- 2.5. The deadlines and dates for services promised by weSystems are always only approximate, unless a fixed deadline or date has been expressly agreed.
- 2.6. Unforeseeable events, such as force majeure, official measures as well as other disruptions, on which weSystems has no influence and for which weSystems is

not responsible, shall release weSystems from the obligation to perform in due time for the duration of the disruption as well as for a reasonable grace period required to restore operational readiness. If the disruption lasts longer than four weeks, the customer may withdraw from the contract.

- 2.7. If events, which are described in the aforementioned regulation, make the performance of weSystems significantly more difficult or impossible and the hindrance is not only of temporary duration, weSystems is entitled to withdraw from the contract or to terminate it.
- 2.8. weSystems shall be entitled to partial performance if
  - a. the partial performance is usable for the customer within the scope of the contractual intended purpose,
  - b. the provision of the remaining service is ensured and
  - c. the Customer does not incur any significant additional expenses or costs as a result (unless weSystems agrees to bear such costs).

### **3. CUSTOMER'S DUTY TO COOPERATE**

- 3.1. The Customer shall provide all necessary cooperation in full and in a timely manner so that weSystems can provide its services.
- 3.2. In particular, the customer shall provide all necessary information and create all technical prerequisites. The customer shall name a contact person for the provision of the services.
- 3.3. If the customer does not fulfill his obligations to cooperate or does not fulfill them completely, this may lead in particular to the postponement of agreed performance times.

### **4. ORDER OF SERVICE**

- 4.1. An order for a service is placed on the basis of an order form containing the Customer's name, a description of the service, the relevant charges and the minimum term. weSystems is not obliged to accept the order.
- 4.2. An Individual Order shall not be formed until the Order Form is signed by both parties and shall be subject to the terms and conditions of this Agreement. weSystems shall, however, be entitled to reject or (subject to Clause 4.3) vary details of a Service in an Individual Order, including the expected delivery date of a Service, if:
  - a. the costs for the services of a third party required for the service differ from those on which weSystems had based the individual order when calculating the charges; and/or
  - b. a service is provided subject to appraisal and such appraisal uncovers information that was unknown to weSystems at the time the price quote was submitted and that could affect the availability, performance, delivery timeframe and/or charges offered.

- 4.3. If weSystems modifies the individual order for a Service in accordance with Section 4.2, weSystems will notify Customer and provide Customer with a new order form for the affected Service. Customer will have five (5) business days to accept the proposed changes or cancel the affected Service. If the Customer does not accept the changes within such five (5) business days from the date of notification, weSystems reserves the right to revoke the amended proposal and ultimately reject the original Individual Order without liability to the Customer. If the individual order contains other services, these remain unaffected.
- 4.4. Any reference to the customer's terms and conditions shall be invalid unless they have been incorporated into the contract in writing.

## **5. CREDIT APPROVAL AND DEPOSIT**

- 5.1. weSystems shall be entitled to obtain information from SCHUFA, the Customer's bank or any other credit information agency regarding the creditworthiness of the Customer or to request the Customer to provide corresponding credit information.
- 5.2. weSystems can make the acceptance of the order dependent on a positive credit assessment about the customer.
- 5.3. If
  - d. the customer's credit assessment is inadequate;
  - e. Customer has suffered a material and adverse change in its financial or business condition (as determined by weSystems in its reasonable discretion); or
  - f. the customer does not settle due and undisputed claims in due time;

weSystems may require from the Customer, at the Customer's expense, an advance payment of three (3) months' fees, a security deposit, a directly enforceable guarantee or other security acceptable to weSystems. Any deposit shall be used by weSystems as security for the payment of charges and other outstanding amounts. In the event of termination of this Agreement, weSystems may apply such deposit or surety bond to any amounts not yet paid by the Customer; any credit balance will be returned to the Customer. Deposit and advance payments are not subject to interest by weSystems.

- 5.4. weSystems is entitled at any time to set a credit limit in an appropriate amount for the Customer with reasonable prior written notice. If the remuneration for any services increases and the credit limit is exceeded as a result, the Customer is obliged to pay the exceeding amount in advance or to deposit it as a security.

## **6. SCHEDULED START-UP DATE AND TIME OF AVAILABILITY**

- 6.1. weSystems will endeavor to provide the ordered service on or before the scheduled commissioning date. weSystems will hand over the services to the Customer and provide the Customer with a service handover document. In the service handover document the time of availability is documented.
- 6.2. The Customer shall have the opportunity to perform performance test runs within five (5) working days after handover of the service handover document. If the

Service deviates significantly from what is contractually owed, the Customer must give notice of this within this period and submit the test results proving this.

- 6.3. Upon receipt of the information provided for in Clause 6.2, weSystems will take the action reasonably necessary to provide the Service in accordance with the Additional Terms. The procedure under clause 6.2 will be repeated until the performance test run can be successfully completed.
- 6.4. If the verification shows that the deviation of the service from the parameters agreed in the additional terms and conditions is not attributable to weSystems, weSystems is entitled to charge the Customer for the costs of troubleshooting and, if necessary, its elimination.
- 6.5. If the Customer does not complain about the deviation of the Service from the Additional Terms and Conditions in accordance with Clause 6.2, the Service shall be deemed provided in accordance with the Contract at the time specified in the Service Delivery Document and weSystems shall be entitled to start invoicing. Notwithstanding any other provision of this Agreement, Customer's use of the Service for other than testing purposes shall constitute acceptance of the Service. As of such acceptance, Customer shall be limited to exercising its contractual warranty rights.
- 6.6. If the provision of the service is delayed due to reasons within the responsibility of the customer, e.g. because:
  - a. information requested by weSystems has not been provided by the customer,
  - b. the information provided by the customer is incomplete, incorrect and/or illegible,
  - c. the access to the location at the customer or to the device necessary for the provision is not possible, or
  - d. there is any other reason that prevents weSystems from checking the performance or performing an installation (e.g. no internet connection, if this has to be provided by the customer),

the service is considered provided on the date communicated in the service handover document and weSystems can start billing.

## **7. TERM, SUSPENSION AND TERMINATION**

- 7.1. An individual order shall be concluded upon signature by both parties and for the duration of the minimum term or the respective extension period. After expiry of the minimum term, the individual order shall be automatically renewed for a further twelve (12) months each, unless it is terminated by one party in writing with a notice period of sixty (60) days to the end of the minimum term or the end of the respective renewal period.
- 7.2. Either party may terminate this Agreement with immediate effect in writing in the following circumstances:
  - a. The other party shall discontinue its business (either in its entirety or with respect to the portion relating to performance under this Agreement),

- b. insolvency proceedings are opened against the assets of the respective other party or the opening of insolvency proceedings is rejected for lack of assets,
  - c. the other party becomes insolvent and is unable to pay its liabilities as they fall due,
  - d. a court decision/decision has been issued on the dissolution or liquidation (except in the context of a solvent merger or restructuring) of the respective other party, or
  - e. the respective other party commits a breach of material contractual obligations and the remedy thereof is either not possible or has not been remedied within thirty (30) days after written request.
- 7.3. weSystems shall be entitled to suspend all Services and/or this Agreement and/or any other agreements existing between the parties with immediate effect without liability or penalty if Customer
- a. submits materially false, inaccurate, illegible or incomplete information to weSystems and fails to correct the same within five (5) business days after receipt of written notice from weSystems,
  - b. impairs the services of weSystems or causes damage to the network, equipment or property of third parties. The same applies if there are strong objective indications of this and therefore a reasonable suspicion arises at weSystems that the Customer is taking such actions and the Customer is not able to dispel this suspicion with reasonable efforts,
  - c. is in default of payment and does not remedy this default within a period of 72 hours after written request by weSystems,
  - d. uses the Services in violation of the Terms of Use (AUP) despite a warning and an appropriate deadline (unless there is a material violation of the AUP - in which case weSystems is entitled to terminate the Agreement without notice),
  - e. has violated the terms of any license for Licensed Software; or
  - f. Uses or permits any of the Services to be used (or, in weSystems' reasonable judgment, is likely to use or permit the use) for fraudulent purposes or other illegal purposes.
- 7.4. In case of suspension of the service, the customer remains obliged to pay the fee for the suspended service.
- 7.5. In case of resumption of services after a suspension, weSystems may demand from the Customer a reasonable fee for the resumption.
- 7.6. weSystems shall be entitled to terminate in writing all Services pursuant to an Individual Order(s) and/or this Agreement and/or any other agreements existing between Customer and weSystems with immediate effect, without liability or penalty, if weSystems has exercised its right of suspension under Section 7.3 and Customer has not remedied the cause of suspension within 10 business days after notice of suspension.

## **8. CONSEQUENCES OF THE TERMINATION**

- 8.1. Termination or cancellation of an Individual Order and/or this Agreement for any reason whatsoever shall not affect any rights, available remedies, or obligations or liabilities of the parties accrued at the time of such termination or cancellation.
- 8.2. At the time of termination or cancellation of this Agreement or any Individual Order, the following shall apply:
  - a. all amounts payable to weSystems up to the date of termination shall become immediately due and payable to weSystems without undue delay,
  - b. the items provided to the Customer and owned by weSystems or a partner shall be returned to weSystems or its partner immediately at the Customer's risk and expense. If the customer culpably fails to comply with this return obligation, the customer must allow weSystems or weSystems' suppliers reasonable access to its premises, free of charge, to collect the equipment. If the weSystems equipment or that of the partner is not returned, or is returned damaged or defective, the customer shall be obligated to pay damages in the amount of the replacement value of the items, unless higher or lower damages are proven,
  - c. weSystems shall have the right to retain Customer's equipment located on weSystems' or a partner's premises until all amounts owed to weSystems have been paid; if such amounts are not received within a reasonable period of time determined by weSystems, weSystems reserves the right to sell the relevant Customer's equipment at the prevailing market price and to offset the proceeds against its receivables.
- 8.3. If an individual order and/or the contract is terminated for reasons not based on a breach of contract by weSystems or if weSystems exercises its right of termination due to breach of contract by Customer, the Customer will either reimburse weSystems for the third party cancellation/termination fees associated with the terminated services or will pay the equivalent of seventy-five percent (75%) of the agreed monthly charges for each month of the remaining minimum term or the corresponding renewal term, whichever is greater, unless the Customer proves that weSystems has suffered no or only minor damage.
- 8.4. In the cases of section 8.3, weSystems shall be entitled to claim higher damages, provided that weSystems can prove such damages.

## **9. FEES AND TERMS OF PAYMENT**

- 9.1. Unless otherwise agreed in the individual order or in the relevant additional terms and conditions,
  - a. the installation fees and any other one-time initial fees will be invoiced after signing the individual contract;
  - b. weSystems will invoice all recurring charges from the time the service is provided and monthly in advance thereafter;
  - c. weSystems will charge other fees not covered by (a) or (b) above as they are incurred;

- d. all fees are due for payment within ten (10) days after the invoice date. The receipt of the entire due claim by weSystems shall be deemed to meet the deadline.
- 9.2. weSystems reserves the right to adjust the Charges in accordance with the EU HICP Index (28 countries) at the beginning of each Renewal Period. In this case, the Charges will increase or decrease in the same proportion as the EU HICP Index (28 countries) in the previous twelve (12) months.
- 9.3. All fees shall be paid in Euros or otherwise as agreed in the individual order and free of any exchange rate charges, bank charges, withholdings or deductions.
- 9.4. In case of default of payment by the customer, weSystems is entitled to charge default interest at the statutory rate (8% above the prime rate of the European Central Bank). The assertion of further damage caused by default remains unaffected.
- 9.5. In the event that the Customer disputes in good faith a portion of the charges contained in a due invoice, the Customer shall pay the undisputed portion of the invoice in full and shall substantiate its objections to the remainder of the invoice in writing in a comprehensible manner. For this purpose, the Customer shall at least inform weSystems of the disputed amount, the reason for its complaint and all possible evidence for the complaint. The parties will endeavor to settle the dispute by negotiation; if the dispute cannot be settled within thirty (30) days after the invoice date, either party may initiate legal proceedings.
- 9.6. Unless the customer demonstrably complains about an invoice before it is due by submitting appropriate documents, the invoice shall be deemed to be undisputed.

## 10. TAXES

- 10.1. All fees and other charges listed in the contract do not include value added tax. Value added tax or any similar tax shall be added to the agreed price and invoiced additionally.
- 10.2. If withholding tax is due on any payments for services provided, Customer may withhold the relevant withholding tax under applicable law, but will pay a further amount in accordance with clause 9.3 and notify weSystems prior to payment that withholding tax is due. The parties agree to cooperate to the extent possible to minimize the amount of withholding tax due by filing an *advance clearance application* under the relevant double taxation treaty (if applicable) with the relevant tax authority to reduce the rate of withholding tax or, if applicable, obtain relief for the total amount. In any case, the customer undertakes to justify the withheld tax to the tax office in due time.

## 11. SERVICE LEVELS AND SERVICE CREDITS

- 11.1. weSystems or a partner engaged by it shall provide the Service(s) in accordance with the Service Levels set forth in the Additional Terms and Conditions. In the event that weSystems does not achieve such a service level or does not achieve it completely, the customer is entitled to the agreed service credit in accordance with the additional terms and conditions. weSystems only assumes a guarantee

or assures a property in the legal sense if these have been expressly designated as such by weSystems in writing.

- 11.2. If weSystems is responsible for the failure to meet the Service Levels, Customer shall be entitled to a Service Credit as further defined in the Additional Terms and Conditions. These service credits are the only claim for breach of the Service Levels, unless there is a further possible claim for damages according to clause 17, which, if it occurs, will be credited against issued service credits. The violation of several Service Levels by one event shall be considered as one violation of the Service Levels and shall only entitle the Customer to claim a single Service Credit.
- 11.3. Any credit balance due to the customer shall be calculated monthly, carried forward to the next billing period and credited against the charges then due.
- 11.4. Service credits will be provided if Customer requests weSystems to do so within twenty-one (21) days after the end of the month in which the claim-triggering event occurred. Customer must prove its claim in this regard and the reason therefor within this period.
- 11.5. For the first monthly review period of a service, service credits will be prorated from the time the service is made available until the end of the first monthly review period. If a service is canceled during a monthly review period, the entitlement to any service credit will cease for that month.
- 11.6. A claim for service credits is excluded if the following events have led to the violation of the service levels:
  - a. fault or culpable conduct of the customer, its employees, agents or suppliers;
  - b. the customer violates the contractual provisions of this contract;
  - c. an event of force majeure;
  - d. the customer does not provide weSystems or any of its partners with access to any device or equipment of the customer and/or to the site;
  - e. Maintenance during a scheduled downtime;
  - f. a fault or problem on a device connected to the transfer point, e.g. customer LAN, of our partner on the customer's side;
  - g. any downtime or degradation of performance of the existing service to the extent that such downtime or degradation is due to modifications or upgrades of the services requested by the customer;
  - h. Damage or disruption to the submarine cables;
  - i. lack of supply of spare parts for equipment provided by the customer;
  - j. any malfunction in the software used by the Customer including lack of shutdown or startup in the software used by the Customer;
  - k. DNS matters outside the direct control of weSystems. For example, in all cases where a domain is not managed by weSystems or one of its partners on their own DNS server.



## 12. OPERATION AND MAINTENANCE

- 12.1. If the integrity of the weSystems network or that of a partner is compromised, damaged or interrupted, weSystems will initiate and coordinate troubleshooting, which may include shutting down some or all services. Except in emergency situations, weSystems or a Partner will notify the Customer in advance of the troubleshooting.
- 12.2. weSystems or a Partner will from time to time perform scheduled maintenance and, to the extent possible, provide Customer with ten (10) days prior written notice (or shorter notice if necessary) of the timing and scope of the scheduled maintenance if it will result in, or is likely to result in, scheduled downtime. To the extent possible, weSystems or a Partner will notify Customer of downtime within two (2) hours after becoming aware of it. Such notification will be provided twenty-four (24) hours a day, seven (7) days a week.
- 12.3. weSystems will use reasonable efforts to perform any scheduled downtime of said network between midnight and 6:00 a.m. CET ("Central Europe Time") Monday through Sunday.

## 13. COMPLIANCE WITH THE LAW

- 13.1. Customer will obtain all necessary permits, consents, approvals and authorizations required by any applicable governmental or regulatory authority, as well as any required landlord's building permits and consent forms, if any, necessary to use the Services. Customer will use the Services in accordance with and subject to the provisions of applicable laws and any order or determination of any competent authority.
- 13.2. The parties undertake to use and provide the Service in compliance with the applicable laws, in particular the Data Protection Act and the data protection regulations. They shall provide each other with support insofar as this is necessary to maintain data protection. In particular, the Customer is informed about the type, scope, location and purpose of the collection of personal data required for the performance of Services. The Customer is aware and agrees that, to the extent necessary for the desired performance of the contract, weSystems processes and transfers data to affiliated companies and to external service providers of weSystems. Further details at <https://wesystems.de/en/data-protection-policy/>.
- 13.3. The Customer shall use the Services in compliance with the Terms of Use of weSystems.
- 13.4. In addition to the above compliance provisions, the following applies specifically to the handling of export controls/sanctions:

- a. Termination in the event of restrictive measures

weSystems shall have the right to terminate this Agreement with immediate effect in writing if restrictive measures adopted directly or indirectly by the United Nations, or implemented by the European Union, a Member State of the European Union ("Member State") or the United States, prevent the Parties from performing their obligations.

- b. Assurance in case of economic sanctions and control of the final use

Customer warrants and represents to weSystems that (i) no financing, economic resources or other benefits will be made available, directly or indirectly, through the performance of its obligations, to any individual, entity or body subject to restrictive measures adopted by the United Nations, or implemented by the European Union, any Member State or the United States, nor to any party acting in the name of or on behalf of any such individual, entity or body, and (ii) no goods, works or services provided by weSystems or any Affiliates that may be intended for any relevant end use will be sold, exported, transferred, re-imported or repatriated without prior written authorization from a competent authority.

c. Cooperation

If weSystems is required by a competent authority to provide records and/or information, Customer shall promptly provide weSystems, upon request, with all information pertaining to the relevant end user, destination and end use of the goods, works and services provided to Customer.

d. Indemnification

Customer shall indemnify and hold weSystems harmless from and against any and all claims, proceedings, actions, penalties, losses, costs and damages arising out of or related to any failure to comply with any international sanctions measures adopted by the United Nations or implemented by the European Union, any Member State or the United States, and shall indemnify weSystems for all losses and expenses resulting therefrom.

## 14. SOFTWARE

14.1. Insofar as the provision of licensed software is required for the use of the Service, the Customer shall be granted a non-exclusive and non-transferable right to use the licensed software for its own internal use and exclusively required for the use of the Services during the term of the Agreement. To the extent that such Licensed Software is provided by a third party, such license will be subject to the terms and conditions of the applicable software license incorporated into such software.

14.2. The customer will

- a. not obtain or assert any ownership rights in any Licensed Software, including any modifications or enhancements thereto;
- b. not copy the licensed software unless weSystems has given its written consent to do so and in accordance with the terms of the applicable software license;
- c. not locate the source code of the Licensed Software, nor decompile or disassemble it, except as permitted by law;
- d. not sell, lease, license or sublicense the Licensed Software;
- e. not create, write or develop any Modified Software or any other software based on the Licensed Software;
- f. not take any action prohibited by the applicable software license.

The Customer shall use reasonable efforts to ensure that third parties also do not violate any of these prohibitions.

## **15. DEVICES AND ACCESS**

- 15.1. To the extent that equipment is required to be placed at the Customer Site in order to provide the Services, Customer hereby grants to weSystems, its employees, agents and representatives, the right to place, install and operate such equipment at the Customer Site and, to the extent required, access to the equipment 24 hours a day, 7 days a week, in accordance with the access procedures agreed to between the parties.
- 15.2. Customer is responsible for providing an environment (including, weather protection, security, availability of power including backup generator, ventilation, heating and cooling) adequate and suitable for the Equipment. Customer shall not interrupt the power supply to the Equipment except to the extent absolutely necessary and only if it has given weSystems at least fourteen (14) days prior written notice thereof, unless it is an emergency. Furthermore, he shall reduce the interruption to a minimum. The interruption of the power supply in accordance with this clause shall not give rise to any liability on the part of the Partner.
- 15.3. Customer shall not, (a) replace the Equipment located at Customer's site, (b) modify, alter, or connect to the Equipment unless weSystems has given prior written consent, nor (c) disconnect the Equipment in violation of this Agreement.
- 15.4. Except in cases where it has been contractually agreed that ownership of the Equipment shall pass to the Customer, the ownership and right of the Equipment provided by weSystems shall remain with weSystems or its supplier. Accordingly, the customer is prohibited from granting any rights to the equipment to third parties and shall take reasonable steps to ensure that no rights to the equipment are granted to third parties. Furthermore, the customer has no right of retention to the devices.

## **16. ASSIGNMENT AND SUBCONTRACTING**

- 16.1. Subject to the following provisions, neither weSystems nor Customer may assign, sublicense or otherwise dispose of any of its rights or obligations under this Agreement, in whole or in part, without the prior written consent of the other party (which consent shall not be unreasonably withheld or delayed).
- 16.2. weSystems may assign its rights and obligations under this Agreement to an affiliate (or its or their successors in title as a result of merger or acquisition of all substantial interests) without the prior written consent of the other party.
- 16.3. weSystems may subcontract a third party or an affiliated company to perform its obligations under this Agreement.
- 16.4. The Customer may not subcontract its obligations under this Agreement without the prior written consent of weSystems.

## **17. LIABILITY AND EXEMPTION FROM LIABILITY**

- 17.1. weSystems is liable without limitation for damages caused intentionally by weSystems or its vicarious agents.
- 17.2. In addition, weSystems shall be liable without limitation for damages due to injury to life or health of persons.

- 17.3. For damages other than those listed in the foregoing Sections 17.1 and 17.2, weSystems shall only be liable without limitation under the condition that the damages were caused by gross negligence on the part of weSystems, its legal representatives or executives.
- 17.4. In all other respects, liability for the contractual and non-contractual obligations of the Contractor, its legal representatives, its agents and vicarious agents shall be limited to gross negligence, subject to the provision in Section 17.5 of this Agreement.
- 17.5. Liability for simple negligence shall only be considered for the violation of essential contractual obligations, whereby liability shall be limited to the foreseeable damage typical for the contract.
- 17.6. The maximum amount of liability under Sections 17.4 and 17.5 shall be the sum of the twelve (12) most recent net monthly revenues for the affected Services prior to the incident giving rise to liability. If the Services were provided for a shorter period than twelve (12) months, the liability shall be limited to the estimated charges for the Services in twelve (12) months.
- 17.7. The liability referred to in Clauses 17.4, 17.5 and 17.6 shall be subject to a maximum amount of EURO 250,000.00 for each Event or series of connected Events and EURO 500,000.00 for all Events in any twelve (12) month period.
- 17.8. Except as otherwise provided in this Agreement, weSystems shall not be liable (a) for any business Customer enters into with a third party using the Services, (b) for the content of any communication transmitted using the Products and/or Services or for any information or content on the Internet, (c) for loss of or damage to data, and (d) for indirect, incidental and/or consequential damages, lost profits and lost savings.
- 17.9. In the event of loss of data, the Contractor shall only be liable for the expenditure required to restore the data if the Client has properly backed up the data.
- 17.10. Liability in accordance with the provisions of the Product Liability Act shall remain unaffected.
- 17.11. Customer shall indemnify and hold weSystems harmless from and against any and all proceedings, losses, costs, damages, judgments, expenses, fees (including attorneys' fees incurred by weSystems and/or awarded by judgment), suits, claims or demands in any way related to this Agreement attributable to Customer, indemnify and hold harmless weSystems from and against any and all claims, including any such claims brought or threatened against weSystems by any third party relating to the Content or Customer's use of the Services attributable to Customer, or any willful or negligent act or omission of Customer or Customer's customers and/or agents. Customer shall further, at its expense, provide weSystems with unrestricted authority to act, information and assistance reasonably necessary for the defense or comparative settlement of any such claim.
- 17.12. The Customer hereby undertakes to use its best efforts to take reasonable measures to mitigate any damage that may arise from this Agreement. In order to minimize potential damage, the Customer shall operate its critical (in particular operational and production-critical) IT systems redundantly.

## **18. ENTIRE CONTRACT**

This contract contains the entire agreements between the parties regarding its subject matter and replaces all previous oral or written contracts, agreements and understandings between the parties. It is clarified that any advertising material etc. is neither part of the contract nor constitutes a legally binding condition.

## **19. INDEMNIFICATION IN THE CASE OF INDUSTRIAL PROPERTY RIGHTS**

- 19.1. Each party shall indemnify, hold harmless and defend the other party from and against any claim, suit or proceeding brought against such party to the extent based on an actual or threatened infringement of any Intellectual Property Rights by such party, provided that it is promptly notified of such claim and is given full authority to act and the information and assistance necessary to defend such claim.
- 19.2. weSystems shall not be liable for any alleged infringement based on the sale or use of products in conjunction with other products not supplied by weSystems (unless expressly agreed to by weSystems).
- 19.3. weSystems shall not be liable in case of unauthorized modifications or alterations of the services provided by weSystems by the Customer or its representatives.

## **20. INSURANCE**

- 20.1. Each party shall obtain and maintain for the term of this Agreement such reasonable and adequate insurance coverage with reputable insurance companies as may be required by applicable law, as well as such other insurance coverage as a prudent businessman would obtain. The coverage amounts shall cover the obligations of the Parties under this Agreement.
- 20.2. During the term of this Agreement, Customer shall keep all Equipment, including, without limitation, Equipment at Customer's location and Customer Equipment at premises of weSystems or an affiliate, insured at Customer's expense against loss, theft, damage or destruction with a reputable insurance company for an amount at least equal to the replacement value of all Equipment. The risk with respect to such equipment and customer equipment shall always remain with the customer.
- 20.3. Each Party shall, upon request of the other Party, provide evidence of adequate insurance coverage under this Agreement by producing such documents as the requesting Party may reasonably request as evidence that the other Party is in compliance with the terms of this Agreement.

## **21. HIGHER FORCE**

Unavoidable, unforeseeable events beyond the control of a party, such as force majeure, war, natural disasters, labor disputes (e.g. strike or lockout) or damage to or interruption of submarine cables, shall release the affected party from the obligation to provide its services or obligations under this Agreement for the duration of the event (unless such event serves as an excuse of the Customer in case the Customer is in default of payment). Agreed deadlines shall be extended by the duration of such event. The parties shall inform each other immediately upon the occurrence of the impairment. If the end

of the impairment is not foreseeable or if it lasts longer than one (1) month, either party shall be entitled to withdraw from this Agreement.

## **22. SEVERABILITY CLAUSE**

Should any provision of this contract be or become invalid, this shall not affect the legal validity of the remaining provisions. In place of the invalid provision, the contracting parties shall agree on a valid provision that comes as close as possible to the mutually intended economic purpose. The same shall apply to any loopholes.

## **23. COMMUNICATIONS**

Any notices required to be given hereunder shall be in writing, signed by an authorized representative and delivered in person or sent by mail, certified mail, courier, or facsimile transmission to the address of such party as set forth in the applicable individual order, unless a different address has been provided. Any such notice, demand or other communication shall be deemed to have been given,

- a. if delivered in person, at the time of delivery, or
- b. if sent by mail, at 5:00 p.m. on the second business day after mailing, or
- c. if sent by courier, on the date and at the time when the courier's delivery bill is signed, or
- d. if sent by registered mail, at 9:00 a.m. on the second business day following dispatch, or
- e. if transmitted by fax, on the date on which the transmission report confirms successful transmission, or
- f. if sent by airmail, at 9:00 a.m. on the fifth business day after shipment; or
- g. if made by electronic transmission, at 5:00 p.m. on the first business day after the electronic notice is sent.

## **24. CHANGES**

Amendments and supplements must be made in writing to be effective. This shall also apply to amendments to this written form clause.

## **25. SECRET**

- 25.1. Each Party agrees to keep confidential all confidential information (including the terms of this Agreement) and documentation, including (without limitation) such information regarding trade and business secrets, processes, know-how or methods ("Confidential Information"), received from the other Party in accordance with or in connection with this Agreement. In order to protect the rights and interests of the other party under this Agreement, the receiving party will disclose such Confidential Information only to its own employees and to employees of its Affiliates who need such Confidential Information for the purposes of this Agreement. Each Party will use the same care as it uses in its own affairs to protect against unwanted disclosure to prevent the disclosure of the other Party's Confidential Information to third parties.

25.2. Each party agrees not to use the Confidential Information of the other party for any purpose other than the performance of its respective obligations or the enforcement of its rights under this Agreement, nor in any manner not permitted under this Agreement, nor to copy or disclose such Confidential Information to any third party without the written consent of an authorized representative of the other party. Subject to appropriate confidentiality obligations, either party shall be permitted to disclose this Agreement to its consultants, agents or representatives or the consultants, agents or representatives of its affiliates (including those providing support in connection with this Agreement).

25.3. The provisions of this clause shall not apply to Confidential Information that is

- a. were already known to the receiving party (without any obligation to keep them secret) at the time of disclosure;
- b. was lawfully acquired in good faith by the receiving party from an independent third party after the date of disclosure and the third party is not subject to a corresponding confidentiality obligation;
- c. were already generally available at the time of disclosure without any violation by the receiving party of the restrictions set forth in this or any other agreement;
- d. developed independently of and without access to the Confidential Information by or on behalf of the Receiving Party;
- e. required to be disclosed as a result of legal proceedings, court action, at the request of a recognized stock exchange, governmental department or agency or other regulatory authority; in such case, the receiving party shall take all reasonable steps to accommodate the reasonable needs of the other party in making such disclosure;
- f. have been issued with written consent to disclosure.

The party invoking one of the aforementioned exceptions must prove its existence to the other party.

## **26. PRESS RELEASES AND ADVERTISING**

26.1. No press releases or public notices, circulars or other communications concerning this Agreement or its subject matter may be issued or sent without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

26.2. Notwithstanding the provision of Section 26.1, weSystems may refer to Customer in its marketing materials, including on its website and in correspondence with prospective Customers.

26.3. The customer agrees that the personal data for market research and advertising within the framework of the Federal Data Protection Act (BDSG) will be stored, processed and used to inform the customer about product innovations and services of weSystems. The consent to advertising can be revoked in writing at any time.

## 27. APPLICABLE LAW AND JURISDICTION

27.1. This contract shall be governed by German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

27.2. Disputes arising out of or in connection with this Agreement, including a dispute over its existence, validity or termination or the consequences of its invalidity, shall be subject to the non-exclusive jurisdiction of the courts at the place in Germany where weSystems has its registered office. In addition, weSystems is entitled to initiate proceedings at any place of jurisdiction where the customer has its registered office.

## 28. DEFINITIONS

In this Agreement, unless otherwise expressly stated, terms written with a capitalized initial letter shall have the meanings defined below:

**Customer Premises Equipment** - "CPE" - means a terminal device located at the Customer's site and provided and managed by weSystems or by weSystems' suppliers

**Service(s)** are the telecommunication services and, if applicable, these supplementary services specified in the individual order, which the Customer receives from weSystems on the basis of this Agreement;

**Individual Order** means the order for specific Services signed by both Parties (supplemented by any amendment or renewal agreements, if applicable);

**Charges** are the contractually agreed fees, charges, costs and expenses to be paid by the customer;

**Planned downtime** is routine maintenance or upgrade work that affects or may affect service availability;

**Devices** means the devices (including CPEs, if applicable) owned or managed by weSystems or weSystems' suppliers, including licensed software owned by weSystems or weSystems' suppliers;

**Industrial property rights** are patents, copyrights, trademarks, trade names, service marks, moral rights, database copyrights, know-how and any other industrial property rights, whether registered or registrable or not, and whether existing in Germany, the United Kingdom or any other part of the world, together with all the goodwill relating thereto;

**Installation Fee** shall be the one-time fee to be paid by the Customer for the installation of the Service(s) as agreed in the respective Individual Order;

**Partner Network** means the fiber optic communications network owned or operated by our Partner and the Partner's affiliates;

**Handover or termination point** means the boundary of the network from our partner, i.e. logical or physical boundary between the partner network and the customer equipment. At Managed CPE sites, the physical boundary between the Partner and the Customer is the CPE Interface. For sites without CPE management, the handover or termination point is the customer port.



**The customer** is the respective legal entity, partnership or company as named in the individual order;

**Customer Equipment** is the equipment that either belongs to the Customer or is provided to the Customer by a third party (other than weSystems);

**Customer Site** means a location under the responsibility of the Customer where the Equipment is installed for the provision of the Service;

**Customer Service Center** is weSystems' incident management headquarters;

**Term** includes the Minimum Term and, if applicable, the Renewal Period pursuant to Clause 5.1;

**Licensed Software** is the computer software in object code format provided to the Customer by weSystems for the use of the Services;

**Minimum Term** means, with respect to each Individual Service, the duration of 12 calendar months, commencing on the *Ready for Service Date*, unless otherwise agreed in the Individual Order;

**Monthly** fees are recurring fees to be paid by the Customer, as agreed in the individual order, for weSystems' services;

**Monthly Review Period** means calendar month periods beginning on the first calendar day of each month during the term of this Agreement;

**Network Management System** means the fault management system used by our partner integrated into the network;

**Terms of use** are the terms of use of weSystems, which are available in their currently valid version on the website of weSystems at <https://wesystems.de/en/data-protection-policy/>;

**Premises** means the location provided by Customer and/or weSystems where Customer uses the Service or to install the Customer Premises Equipment required to provide the Services to Customer;

**Relevant end use** includes: military use; or use related to chemical, biological, or nuclear weapons or other nuclear explosive devices, or the development, manufacture, maintenance, or storage of missiles capable of delivering such weapons;

**Restrictive measures refer to** restrictive measures adopted by the United Nations or implemented by the European Union, a Member State or the United States;

**Service Credit** is the amount weSystems will credit if weSystems is in violation of the applicable Service Quality;

**Service Levels** are the agreed upon performance characteristics with respect to the quality of the Service, as set forth in the Additional Terms and Conditions;

**Service Handover Document** is a document used to indicate to the Customer that the Service has been made available for use and, if applicable, for test runs by the Customer;

**Site** means the location used by Customer and/or weSystems where Customer needs the Service or to install the Customer Premises Equipment supplied by weSystems that is required to provide the Services to Customer;

**Troubleshooting** is the work necessary to restore or repair the network or service in an emergency after / before imminent damage to or disruption of the network or service;

**Hourly rates** are fees for the provision of various services according to individual order;

**Affiliated Company** means, with respect to a Party, a company affiliated pursuant to Sections 15 et seq. German Stock Corporation Act;

**Renewal Period** means the 12-month period commencing after the expiration of the Minimum Term or any applicable Subsequent Term;

**Contract** includes the individual order, these General Terms and Conditions of Contract, the additional terms and conditions as well as any supplements and change orders;

**The parties to the contract** are weSystems and the Customer, whereby the term "party" refers to either the Customer or weSystems;

**Intended Commissioning Date** means the date weSystems determines for the provision of the Service after the signed Order Form has been accepted by weSystems. The date is non-binding unless weSystems expressly confirms it as "binding";

**weSystems** is the supplier of the service named in the individual order, unless otherwise described;

**Business Day** means any day from Monday to (and including) Friday from 9:00 a.m. to 5:00 p.m. that does not fall on a legal or national holiday in the country in which the relevant Notice is given or in which the relevant Activity is conducted;

**Time of availability** is the time when weSystems hands over the services to the Customer unless otherwise specified in Annex 2;

**Additional terms and conditions** are the product-related terms and conditions that supplement these General Terms and Conditions;

Other terms not defined herein are further explained in the respective additional terms and conditions.