General Terms and Conditions for Services

(ADB, July 2011)

1. Subject of the contract

1.1 The terms and conditions of service here apply for consulting, conception, implementation, commissioning, training and all other services provided by Peak Solution to the customer. Unless explicitly agreed on in written, contrasting, contradicting or supplementing general terms and condition of the customer are not part of the contract.

1.2 For the licensing of software, the general software licensing agreement (AÜS) of Peak Solution shall apply. For customization and extensions to software that was transferred to customers, the agreements on customized or extended standard software made between the customer and Peak Solution shall apply with respect to usage rights of these adjustments and extensions. For software maintenance, the general maintenance conditions for software (APS) of Peak Solution shall apply.

1.3 The type and scope of the services must be agreed in a separate contract for the provision of services. More detailed service descriptions may be referred to such as main concepts, detailed concepts and functional specifications.

1.4 Peak Solution is only responsible for a certain service result if this service result is defined explicitly in writing as such in the individual contract.

2. Remuneration

2.1 Prices

The customer pays the working time of Peak Solution on the basis of time spent, provided no other agreements exist, in accordance with the agreed service prices of Peak Solution when the contract was signed.

2.2 Price adjustments

Peak Solution is entitled to raise prices for services, at three months notice. If the rates are raised by more than 10%, the customer is entitled to terminate the individual contract in question.

2.3 Billing

One man day equals 8 man hours. Work is charged for each hour that is started.

2.4 Travel costs/travelling time

Travel costs are calculated according to actual costs incurred (rail: 1st class, flights: business class, taxi). For journeys by car, € 0.65 per kilometer driven is charged. Travel costs are always calculated from the Nuremberg location. Travelling time is considered as working hours, whereby Peak Solution charges 75% of the agreed rate for this. Accommodation expenses are charged according to the actual expense incurred, daily allowances according to the rates of the employment tax guidelines.

2.5 Sales Tax

All prices are subject to the applicable sales tax.

2.6 Time protocols

Peak Solution bills the costs on a monthly basis, based on the time protocols made by Peak Solution, provided that no other method of billing has been agreed.

2.7 Due date

Payments are due upon receipt of invoice, unless another method of payment has been agreed.

2.8 Late payment

In the case of a delay in payment Peak Solution shall charge interest at the rate of 8 percentage points above the base rate. Further claims for compensation for delay remain unaffected by this provision.

2.9 Advance payments

Peak Solution is entitled to request advance payment if the customer has filed for composition or bankruptcy, if the customer is over indebted or has stopped payments, or if the customer is getting into arrears with Peak Solution.

3. Cooperation of the parties involved

3.1 Contact partners

At the beginning, the customer shall inform Peak Solution of a contact partner who is authorized to make important decisions in terms of the services to be provided by Peak Solution, or to bring about such necessary decisions. In particular this contact partner shall establish the contacts with the technical departments of the customer required for the work of Peak Solution, ensure that communication is established with all the necessary departments in the company for the work of Peak Solution and take charge of schedule coordination of the work of Peak Solution with the departments concerned at the customer.

In return, Peak Solution appoints a contact person for the customer. This person coordinates all technical and organizational matters, insofar as these involve the services of Peak Solution.

3.2   Support by the customer

For the work of Peak Solution the customer supplies the necessary means for work, in particular, if work is required at the customer's location, the rooms needed for this and the organizational and technical IT capacity and infrastructure, as well as informations and test data.

The customer undertakes to support the work of Peak Solution as well as he can. The customer is responsible for ensuring that the specifications made by the customer can be implemented technically and under acceptable conditions using the tools and materials provided.

4.   Granting of rights

For work results subject to property rights, Peak Solution grants the customer a non-exclusive right, unlimited in time and territory. The usage right only exists once the complete of the service has been made. Until complete payment, Peak Solution may prohibit further usage.

5.   Protection of confidence

5.1   on-disclosure

The contractual partners undertake to treat confidential information and documents of the other partner as commercial secrets. In particular the customer undertakes to mark confidential information and documents as such, insofar as these cannot obviously be seen to be confidential.

5.2   Loyalty

For each case in which a partner poaches or tries to poach employees from the other partner in an anticompetitive manner (§1 UWG), a contractual penalty to the amount of half a year gross salary of the employee concerned shall be payable.

6.   Liability

Peak Solution is liable beyond warranty, regardless of the legal reason, only according to the following provisions:

6.1   Unlimited liability

Peak Solution has unlimited liability

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- In case of intent, gross negligence and severe organizational negligence.

- In case of damage from loss of life, physical injury or damage to the health of person, irrespective of the severity of the negligence.

- In case of the assumption of a warranty.

6.2 Foreseeable damages typical of contracts of this type

In the event of the breach of essential contractual obligations, the liability of Peak Solution shall be limited to typical contractual foreseeable damage, if none of the cases apply as stated in Item 6.1.

6.3 Other cases

In all other cases, the liability of Peak Solution is restricted to the contractual payment for each case of damage.

6.4 Liability without negligence

on the part of Peak Solution is ruled out.

6.5 Contributory negligence and data protection

If damage is the result of both negligence of Peak Solution and negligence of the customer, the customer must allow this contributory negligence to be taken into account.

The customer is responsible in particular for the regular backup of his data. In case of data loss caused by Peak Solution, Peak Solution is therefore liable exclusively for the costs of reproducing the data of the backup copies to be made by the customer and the reconstruction of this data, which would also have been lost at regular intervals when backup copies were made.

6.6 Product liability law

Liability under the German Product Liability Law remains unaffected by this.

6.7 Property rights of third parties

If a service of Peak Solution should breach the property rights of third parties, Peak Solution indemnifies the customer from all claims from third parties due to such a breach of property rights. A requirement for this is that the customer must report to Peak Solution in a timely manner the assertion of property rights infringements by third parties against the customer and includes Peak Solution in the negotiations with the third party, leaves these negotiations as far as possible to Peak Solution and supports Peak Solution in the negotiations with third parties to a reasonable extent.

7. Special arrangements for consulting work

7.1 <u>Project presentation</u>

The parties agree by means of a project presentation on the concrete consulting contents, on the scope of consulting and the procedure.

7.2 <u>Cost framework, additional or reduced costs</u>

Based on this, Peak Solution estimates a cost framework which corresponds to experiences made in similar projects, which, however, cannot take into account possible specific conditions in the operation and in the environment of the customer that are not yet known to Peak Solution. Any additional work that may result from this will be announced to the customer in good time by Peak Solution during the course of the project, and Peak Solution will only do this work and charge it to the customer if the customer has explicitly agreed to this.

7.3 <u>Confirmation of completion</u>

The customer shall confirm to Peak Solution the completion of each of the individual consultation phases specified in the project presentation.

8. Special arrangements for programming and configuring work

8.1 <u>Detailed concept (functional specifications)</u>

In the context of programming and configuring work, the customer undertakes to provide Peak Solution with an in-depth and detailed concept before work commences. The customer is responsible for ensuring that the specifications for the work to be performed by Peak Solution are complete and error-free. In particular the customer must provide Peak Solution with all system information necessary for the work. If necessary, the customer must very that the specifications for the work were adequate and complete.

In the context of creating functional specifications and detailed concepts, Peak Solution provides consultation and support only. Before the start of the configuring and programming work, the customer will check the specifications in detail and then forward these to Peak Solution as a binding work instruction.

8.2 <u>Cost framework, additional or reduced costs</u>

Based on this, Peak Solution estimates a cost framework which corresponds to experiences made in similar projects, which, however, cannot take into account possible specific conditions in the operation and in the environment of the customer that are not yet known to Peak Solution. Any additional work that may result from this will be announced to the customer in good time by Peak Solution during the course of the project, and Peak Solution GmbH will only do this work and charge it to the customer if the customer has explicitly agreed to this.

8.3   Source code

Insofar as the parties have not explicitly agreed anything else, software shall be supplied exclusively in object code. If Peak Solution should supply the source code on the basis of a separate agreement, the customer is granted a right to use the source code: exclusively to create interfaces from other programs and to eliminate errors in the programs.

8.4   Right of amendment and editing

The customer is entitled to make amendments in the programming to eliminate errors and to create further interfaces, exclusively under the provisions and to the extent applicable in §§ 69 d and e UrhG [German Copyright Act].

8.5   Disposal

In case of the disposal or transfer of the programming and configuring, the customer shall hand over all copies made by him to the purchaser or acceptor and delete any copies remaining on his computer.

8.6   Backup copy

The customer is entitled and obliged to make a backup copy and store this carefully before every programming and configuring work step.

8.7   Protection of programming and configurations

The customer undertakes to protect the programming and configurations from the unauthorized access of third parties.

8.8   Property rights of third parties

The customer bears the responsibility of ensuring that the software provided by the customer in the context of programming work by Peak Solution and the specifications provided by the customer do not lead to the breach of property rights of third parties.

9.   Acceptance when a certain result is due

9.1   Detailed concept (system specifications)

In the detailed concept (systems specification), the work of Peak Solution that is to be accepted is to be described as well as the acceptance criteria and the acceptance tests. The acceptance procedure, including test operation, shall take 4 weeks at the longest.

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9.2 Acceptance protocol

After the successful completion of the test described in the systems specification, the parties undertake to sign an acceptance protocol together.

9.3 Reworking

If significant differences from the performance specification in the system specification (detailed concept) or significant defects in the services of Peak Solution are determined during the acceptance procedure, Peak Solution will rectify these defects within a reasonable period of time. After the defect has been rectified the parties shall again perform the acceptance test. If the first attempt of subsequent performance should fail, the customer is entitled to set Peak Solution a deadline to rectify the defect. With expiry of the deadline set at the latest, the acceptance procedure will be again performed.

10. Warranty when a certain result is due

10.1 Material and legal defects

Peak Solution supplies the due specific result free from any material and legal defects. A material defect exists if the result does not have the contractual quality or is not suitable for the intended use.

10.2 Exclusion of warranty

The exercise of the warranty by the customer assumes that the customer uses the result unchanged and in the environment intended. Insofar as the customer uses the result with others as released products, or provided that the customer changes the result himself or has this changed by a third party, the warranty obligation of Peak Solution becomes void, unless the customer can verify that the errors that have occurred are not the result of this fact and the error analysis and rectification by Peak Solution is also not influenced by this.

10.3 Limitation for warranty claims

The limitation period for warranty begins with the acceptance. Under legal requirements the acceptance can be replaced by an expert report. Furthermore, it is considered to be effected if the customer, after the result has been prepared for acceptance by Peak Solution, does not reject the acceptance within 2 weeks, stating the reasons.

The warranty claims lapse regularly after one year. In case of fraudulent intent and undertaken warranties, the statutory provisions shall apply.

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10.4 Reporting defects

Defects that have occurred must be documented by the customer for Peak Solution as comprehensively as possible and reported to Peak Solution in writing and as soon as possible after their discovery.

10.5 Supplementary performance

10.5.1 If defects are reported to Peak Solution during the course of the warranty period, Peak Solution shall provide supplementary performance. The supplementary performance can at the option of Peak Solution be provided by the elimination of defects or by delivering a new product.

The elimination of defects can also be performed by telephone or written instructions to the customer via remote data transmission or the shipment of data media with correction software. In these cases, the customer undertakes to implement the instructions given, provided it can be reasonably expected that he enables the remote data transfer and installs the correction software immediately after it is supplied.

A technical software workaround is also considered to be an elimination of defects, provided that use of the service for the contractually intended use is not impaired by this.

10.5.2 The following response times apply from the time when a defect is reported to Peak Solution:

Category A - 8 hours: For defects in the programs that cause the failure of core processors.

Category B - 16 hours: For other defects.

The reaction times are calculated during the normal business hours of Peak Solution, that is Monday – Friday from 8:00 - 17:00, with the exception of bank holidays in Nuremberg. The services of Peak Solution are also provided exclusively during this time, unless agreed otherwise between the parties.

During the response times, Peak Solution will introduce the necessary measures to eliminate the defect. There is no obligation to eliminate the defect entirely during the response times, however.

10.5.3 Peak Solution is entitled to have the work performed by third parties as applicable. With this step, however, the responsibility for data protection and system security of Peak Solution GmbH is not delegated.

10.5.4 Additional costs that arise from the service to the customer being provided at a different location than the delivery location specified in the software license agreement or certificate are incurred by the customer.

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10.5.5 If it transpires that a problem reported by the customer is not caused by a defect to the service covered by the contract, Peak Solution is entitled to charge the costs that arise for problem analysis and elimination in accordance with the price lists for services of Peak Solution, provided that the customer is liable for gross negligence and intent during the reporting of defects.

10.6 Further warranty claims

After the unsuccessful expiration of a reasonable time limit set by the customer for supplementary performance, the customer can

- eliminate the defect himself and demand compensation for the necessary expenses or

- withdraw from the contract or

- reduce the purchase price

and demand damages instead of performance or compensation for wasted expenses. In this respect the statutory provisions apply.

10.7 Compensation for benefits received in case of resignation

In the event of resignation, Peak Solution is entitled to demand reasonable compensation for the customer's usage of benefits from the service up to the time of settlement.

The compensation for use is calculated on the basis of a four-year overall utilization time of the services, after deduction of a suitable reduction corresponding to the degree to which usage was restricted due to the defect.

11. Miscellaneous

11.1 Transfer of rights and obligations

The transfer of rights and obligations from this contract requires the agreement of Peak Solution.

11.2 Set-off

The customer is only entitled to offset undisputed or legally binding claims.

11.3 Applicable law

This contract is subject to German law. The UN Sales Convention is ruled out.

11.4 Place of jurisdiction

The place of jurisdiction is Nuremberg.

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11.5 Written form requirement

Changes and additions to this contract must be made in writing. This also applies to changes to this provision.

11.6 Ineffective provisions or loopholes

Should individual provisions of this contract in whole or in part not be legally valid, or become unenforceable, then the validity of the remaining provisions of this contract are not affected by this. The same shall apply in case the contract is found to be incomplete. In place of the ineffective or inapplicable provision, or in order to fill any gaps, an appropriate provision shall apply which, as far as is legally possible, most closely corresponds to what the contractual partners would have wanted, if they had considered that point when they signed the agreement.

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