



## General Terms and Conditions of Contract for the Provision of IT Services of E.ON IT Italia S.r.l.

As of: April / 2009

### 1. Subject matter of agreement

- 1.1 These Terms and Conditions of Contract supplementally apply to the provision of IT services (the "Services") by the Contractor to E.ON IT Italia S.r.l ("E.ON IT"). The contract does not include the performance of works and services under a contract for works and services.
- 1.2 If the Contractor confirms an order in a manner which deviates from E.ON IT's Terms and Conditions, then only E.ON IT's Terms and Conditions shall nevertheless apply even if E.ON IT does not object to the deviating or conflicting Terms and Conditions. Deviations from or additions to E.ON IT's Terms and Conditions shall only apply to the extent E.ON IT has expressly acknowledged them in writing.

### 2. Type and scope of Services

- 2.1 The Contractor shall render the Services pursuant to the state of the art which is current at the time the contract is concluded and shall use such personnel to do so as is qualified to render the agreed Services.
- 2.2 The Contractor shall alert E.ON IT to relevant changes in the state of the art where such impact the manner the contractual Services are rendered.

### 3. Orders and confirmation

- 3.1 Orders shall only be deemed valid where they are placed in writing. Oral ancillary agreements to orders shall only be deemed binding when they are confirmed in writing. The foregoing shall also apply to any amendments and addenda to any agreement.
- 3.2 Digital copies of orders and other contract documents stored on unchangeable data storage media have the same evidentiary value as the respective original documents.
- 3.3 The Contractor shall notify E.ON IT without delay and in writing in respect of changes to and/or extensions of the scope of Services which prove necessary in the course of execution of the Services. They shall require E.ON IT's prior written consent.

### 4. Cooperation of the parties

- 4.1 The Contractor shall designate a competent official contact within its organisation who is able to provide the necessary information and render decisions on behalf of the Contractor. E.ON IT shall exclusively communicate its instructions with respect to the Services to be rendered to this official contact.
- 4.2 All persons the Contractor deploys for rendering its Services to E.ON IT (Service Providers) shall, in organisational terms, remain the employees of the Contractor or its sub-Contractors, irrespective of whether they are deployed at E.ON IT for an extended period of time. The Contractor has the sole authority to instruct and direct its Service Providers, and shall manage its Service Providers independently. The Service Providers deployed by the Contractor are not deemed to enter into an employment relationship with E.ON IT, even where they render Services at its premises.
- 4.3 Where Service Providers are deployed who are not nationals of an EU Member State, the Contractor must submit corresponding work permits to E.ON IT prior to their commencement of work.

### 5. Service delivery periods

- 5.1 The Contractor shall inform E.ON IT without delay and in writing where circumstances arise or it becomes aware of any circumstances from which it appears that agreed deadlines cannot be met.
- 5.2 The Contractor may only rely on its failure to receive necessary documents to be supplied by E.ON IT where it has not received such documents within a reasonable time despite a written demand therefor.

- 5.3 The public holidays deemed relevant to the provision of the Services are the statutory holidays of the *City of Milan*.

### 6. Replacement of Service Providers

- 6.1 A Service Provider deployed by the Contractor for the performance of this contract may only be replaced by another following E.ON IT's prior written consent. If the replacement entails on-the-job training, then any such shall be for the account of the Contractor.
- 6.2 E.ON IT may demand the replacement of a Service Provider if that Service Provider has repeatedly breached contractual obligations.
- 6.3 The costs arising as a result of the replacement of a Service Provider shall be for the account of the Contractor.
- 6.4 Reassignment of any deployed Service Providers to a higher qualification level is not permitted during the term of this Agreement.

### 7. Rights to the work product of the Services

The Contractor hereby grants E.ON IT the exclusive right, unlimited in geographical scope and time, transferable including by sub-license, to use the work product from the Services rendered in connection with this Agreement, such as, in particular, agreed interim work product, training documentation and work aids. The foregoing also includes the right on the part of E.ON IT to pass the contract's work product to third parties by the grant of a right of use, which may be either gratuitous or for consideration and limited or unlimited in time.

### 8. Collaboration by E.ON IT

- 8.1 Any collaborative contributions by E.ON IT shall require an express agreement to that effect in the contract.
- 8.2 Where the Contractor requires access to E.ON IT's IT system in order to perform the contract, it may only use that IT system by prior agreement with E.ON IT. In this respect, lead times must be taken into account.

### 9. Job recording and compensation

- 9.1 Where the contract provides for time- and expenses-based compensation, compensation is payable for the time necessary to render the contractual services. Unless otherwise agreed, timekeeping and invoicing shall be done on the basis of fifteen minute increments. No separate compensation is payable for materials used.
- 9.2 The Contractor's Services are invoiced in each case from the 16th of the previous month to the 15th of the current month (Service Period).
- 9.3 Invoicing is performed on the basis of job records, to be prepared each month on the basis of the client's CATS job recording system. For this purpose, the contractor's Service Providers shall record and release at the client CATS system, the hours worked by the 15th of the current month. Time must be entered on at least a weekly basis. When beginning work, the Contractor's Service Providers will receive the relevant accounting rules from E.ON IT project manager (Project Manager).
- 9.4 The hours recorded and released are subject to the Project Manager's approval at the end of the Service Period.
- 9.5 On the basis of the approved hours, the Contractor shall prepare an invoice for the relevant Service Period within a four-week period, unless it is agreed that the Contractor will participate in E.ON IT's credit procedures. Invoicing should be itemised broken down by project and shall quote the PSP project numbers/CS order numbers which may be obtained from the Project Manager. The approved job records should be attached to the invoice.

No other type of job records will be accepted by E.ON IT.

9.6 Every invoice must separately show VAT at the statutory rate. Original invoices must be sent in paper form to the administrative offices of E.ON IT in Milan (E.ON IT Italia S.r.l., Accounting/Finance, Via Vespucci 2, 20124 Milano, [Italy](#)), quoting order numbers and attaching invoice documentation.

9.7 Incidental costs (net of deductible input tax) can only be reimbursed when this has been expressly agreed in the order and upon submission of the original invoices.

9.8 Where recorded and released hours are not approved by the Project Manager in accordance with clause 9.4 hereof, the Contractor must raise any objections without delay.

#### 10. Infringement of IP rights

The Contractor hereby warrants that no intellectual property or copy rights of third parties will be infringed by the contractual Services. The Contractor hereby undertakes to indemnify and hold E.ON IT harmless against any possible third party claims for infringement of such rights and otherwise also to indemnify E.ON IT.

#### 11. Liability

The Contractor shall bear liability pursuant to the statutory requirements in the event of intentional acts or omissions and negligence [dolo e negligenza].

#### 12. Sub-contractors

12.1 The Contractor may not assign its obligations under the contract, whether in whole or in part, to sub-contractors without E.ON IT's prior written consent, nor may it transfer Services assigned to it to sub-contractors without such consent. Where E.ON IT consents to the use of sub-contractors, the Contractor must impose all of the obligations on the sub-contractors which the Contractor itself has assumed *vis-à-vis* E.ON IT, and ensure that they comply therewith.

12.2 The Contractor may not prevent its sub-contractors from concluding agreements with E.ON IT for other services.

12.3 If the Contractor deploys sub-contractors without E.ON IT's consent, E.ON IT shall have the right to cancel and rescind the Agreement [*recesso dal contratto*] and to demand compensatory damages in lieu of specific performance.

#### 13. Performance of Services, health and safety

13.1 In addition to E.ON IT's corporate rules and policies, the Contractor must, in particular, also observe the generally recognised rules on health and safety and occupational health.

13.2 E.ON IT keeps records of occupational accidents and accidents on the way to and from work of its own employees and third party Service Providers working for it. This record keeping is intended to improve occupational safety. If a Service Provider deployed by the Contractor or one of its sub-contractors should have an accident on the way to or from the place of performance of the Services (accident on the way to or from work) or at the place the Services are rendered in connection with the agreed job (on the job accident), the Contractor shall inform E.ON IT in writing thereof and provide further details thereof to the local health and safety officer of E.ON IT. The foregoing accident notification to E.ON IT shall, however, not relieve the Contractor of its existing statutory notification obligations, such as, in particular, the obligation to notify the INAIL.

13.3 E.ON IT attaches overriding importance to social consciousness in connection with its commercial activities, and for this reason is a participant in the "United Nations Global Compact" initiative. This initiative is based on ten fundamental principles intended to render the globalisation process more socially and economically compatible and to prevent corruption. The "E.ON Energie Bulletin on Social Responsibility" describes the principles of the UN Global Compact and it may be downloaded from the Internet at <http://materialwirtschaft.eon-energie.de>. The Contractor hereby undertakes to comply with these principles.

#### 14. Insurance

The Contractor must maintain liability coverage upon terms and conditions customary in the sector (minimum sum assured of EURO 1.5 million per event of loss) for the duration of the contract. The Contractor must furnish evidence to E.ON IT of its compliance with its obligation upon E.ON IT's demand; any lower sums assured must be agreed in an individual case with E.ON IT.

#### 15. Prohibition on assignment, set-off

15.1 Assignments as well as any other transfers of the rights and duties of the Contractor are hereby prohibited; any exceptions to the foregoing shall require E.ON IT's written consent.

15.2 The Contractor may only exercise a right of set-off against claims of E.ON IT with counterclaims which are either undisputed or have been determined by *res judicata* judgment. The Contractor may not exercise any right of retention in this contractual relationship on the basis of other contractual relationships it has with E.ON IT.

#### 16. Confidentiality, data protection and security

16.1 The Contractor hereby undertakes to treat all information furnished to it by E.ON IT in connection with the assignment as confidential without limitation, and to use the same exclusively for the performance of the contract. Confidential information within the meaning of this provision shall include documents, specifications, data as well as other information, which is either designated as such or is to be regarded as confidential by its nature.

16.2 The Contractor hereby undertakes to grant access to E.ON IT's confidential information only to such Service Providers, sub-contractors and suppliers as are engaged with rendering Services under this Agreement and as have themselves undertaken to maintain confidentiality in identical fashion. Upon E.ON IT's demand, the Contractor shall furnish proof of its imposition of this requirement on the foregoing. All information E.ON IT may provide shall remain the property of E.ON IT. The same shall also apply to any copies even where they are produced by the Contractor. Upon conclusion of the Agreement, the information provided by the client must be returned to E.ON IT upon E.ON IT's demand therefor, or, at E.ON IT's option, destroyed in its entirety and unbidden, but in any event no later than at such time as the contract has been completely performed, except where statutory duties of document retention otherwise require.

16.3 The Contractor shall observe the provisions of applicable law on data protection (e.g. Italian Data Protection Act) [*Decreto Legislativo 196/2003 - DL 196/2003*] and shall ensure and monitor compliance therewith. It must impose these obligations on all such person as it engages to perform the Agreement. The foregoing applies particularly to the obligation in respect of data secrecy. The Contractor hereby undertakes to furnish evidence in the necessary form thereof upon demand to E.ON IT's data protection officer that it has imposed this obligation on the foregoing in such form as is required pursuant to law.

16.4 The Contractor shall process personal data only pursuant to assignment and the instructions of E.ON IT in accordance with Art. 12 Italian Data Protection Act. The regulations on commissioned data processing shall, in addition, apply analogously where the Contractor performs testing or maintenance of automated processes and the possibility cannot be excluded in this respect that personal data may be accessed (Art. 11 and 12 Italian Data Protection Act). E.ON IT is competent, as the responsible party, for assessing the permissibility of data processing as well as for preserving the rights of affected data subjects pursuant to the data protection acts (entitlement to information, correction, deletion etc.). The Contractor shall ensure sufficient data protection in connection with data processing performed pursuant to contract, in order to ensure the confidentiality, availability and correctness of the data, and shall ensure compliance with the necessary technical and organisational security measures for data protection pursuant to Art. 11 Italian Data Protection Act. E.ON IT shall be entitled at any time to monitor whether the data processing is being performed in accordance with instructions and whether the technical and organisational measures for

data protection are being complied with. The Contractor must provide such information as is necessary for verification and grant necessary rights of admission as well as of inspection and access. E.ON IT is entitled to stipulate further technical and organisational measures for data protection in an individual case.

- 16.5 Access to data files of employees and customers is granted only to the extent and to such scope as is necessary for the Contractor's proper performance of its tasks.
- 16.6 At such time as the contractual relationship ends, the Contractor may only continue to store or retain the personal data to which it was given access where statutory or contractual retention periods require it to retain them further. Otherwise, documents containing personal data must either be surrendered to E.ON IT or – following consultation with E.ON IT – destroyed by the Contractor in a manner compliant with data protection law.
- 16.7 The Contractor shall inform E.ON IT without delay in the event of any indications of a breach of any provisions of the data protection acts or of this section.
- 16.8 E.ON IT may rescind and cancel [*recedere*] the Agreement if the Contractor should fail to comply with its obligations pursuant to this section "Confidentiality, data protection and security" within a reasonable grace period set therefor, or if it breaches provisions of data protection law either by intentional act or omission, or in a grossly negligent manner. The Contractor shall be liable to E.ON IT for all loss or damage arising to E.ON IT as a result of a breach of the Contractor's obligations.
- 16.10 The obligations under clauses 16.1 – 16.8 shall remain unaffected by any termination of this Agreement.
- 16.11 E.ON IT hereby reserves the right to provide any data and information the Contractor may furnish in connection with E.ON IT's order to affiliated E.ON entities within the meaning of Art. 2359 Italian Civil Code. For purposes of group-wide procurement, and to store the same, even after this Agreement comes to an end, within the scope of its applicable retention policies or for possible future orders.

**17. Insurance of non-discriminatory use of information**

- 17.1 The Contractor hereby undertakes not to pass on information coming to it from the scope of E.ON IT's influence which is economically sensitive and economically advantageous, as to which it acquires knowledge in the course of its performance of its assignments and which may be of commercial interest to energy distribution, trader, producer or generator organisations/companies.
- 17.2 In particular, the addresses and direct debit details of connection customers, the names of retail suppliers, information regarding the willingness of connection customers to change providers, information on the interest of potential new customers to obtain connection, information on network expansion and development projects, information on non-active residential connections as well as information on cost-benefit criteria for assessing connections and network expansions shall be treated in confidence.
- 17.3 The Contractor hereby undertakes to alert its employees expressly to these obligations and to impose an analogous obligation on them and on any sub-contractors deployed by it in connection with its assignment.

**18. Written Form**

Subject to clause 3.1 hereof, the contract and any amendments thereto as well as any declarations, notices and documentation requirements relevant under the contract must be in writing.

**19. Publications, advertising**

Any disclosure of the business relationship with E.ON IT shall require E.ON IT's prior written consent. The foregoing also applies to the publication of data related to this contractual relationship with E.ON IT.

**20. Jurisdiction and venue**

Jurisdiction and venue for any disputes shall lie with the courts of Milan.

**21. Language of contract, applicable law**

- 21.1 The language of the contract is English.
- 21.2 Applicable law is Italian law, excluding application of the UN Convention on the International Sale of Goods dated 11 April 1980. Clauses customary in the trade shall be interpreted in accordance with the ICC Incoterms from time to time in effect.

**22. Severability clause**

If individual provisions of the Agreement should be or become invalid or impracticable, the remaining provisions as well as the contract as a whole shall nevertheless remain in effect. The parties shall replace the invalid/impracticable provision from the time the invalidity/impracticability arises, taking their mutual interests in account, by a provision which is commercially as equivalent as possible. The foregoing shall also apply analogously in the case of any contractual gaps.