

## **1. Subject matter of Contract**

- 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 GmbH ("E.ON IT").
- 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 in accordance with best industry practice current at the time the contract is concluded and shall use only such personnel to do so who are qualified to render the agreed Services.
- 2.2 The Contractor shall alert E.ON IT to relevant changes in best industry practice where such impact on the manner of the contractual Services are rendered.

## **3. Orders and confirmation**

- 3.1 Orders (in these GT&C also called "purchase 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 any proposed changes to and/or extensions of the scope of Services which prove necessary in the course of execution of the Services. Any such changes and/or extensions 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, independent from the length of time for which these persons are deployed at E.ON IT. 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 respective national statutory/bank holidays.

## **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 Contract.

## **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 Contract, 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.

In case the work product of the IT services is copyright-protected the respective copyrights shall be regarded assigned to E.ON IT for an initial term of ten calendar years. Upon the first ten year period the right of use shall be deemed automatically renegotiated under the same conditions for another term of ten years unless the Contractor duly objects against that.

## **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 shall make job records in each case from the 16th of the previous month to the 15th of the current month (Service Period) according to sec. 9.3.
- 9.3 Invoicing is performed on the basis of the aforesaid job records, to be prepared each month on the basis of the E.ON IT's CATS job recording system. For this purpose, the contractor's Service Providers shall record and release at the E.ON IT 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 Any applicable local value added taxes, sales taxes or other similar taxes imposed are chargeable in addition to E.ON IT. In case the VAT reverse charge mechanism is applicable, the Contractor issues a net invoice with a notification of the applicability of the reverse charge procedure. Original invoices must be sent in paper form to the administrative offices of E.ON IT, Finanz- und Rechnungswegen, Humboldtstrasse 33, 30169 Hannover, 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 copyrights 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 full liability pursuant to the statutory requirements in any event of intentional acts or omissions and negligence [*Vorsatz und Fahrlässigkeit*]. It may not invoke § 831 (1) second sentence of the German Civil Code [*Bürgerliches Gesetzbuch - BGB*], meaning that liability in damages also applies, even if the Contractor exercises reasonable care when selecting the person deployed and, to the extent that the Contractor is to procure devices or equipment or to manage the business activity, in the procurement or management, or if the damage would have occurred even if this care had been exercised.
- 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 unilaterally cancel and rescind the Contract [*Rücktritt vom Vertrag*] without prior notice and to demand compensatory damages.
- 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 competent national authorities.
- 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 Responsible Procurement Policy" describes the principles of the UN Global Compact and it may be downloaded from the Internet at [http://www.eon-einkauf.com/terms/en/html/index\\_terms.html](http://www.eon-einkauf.com/terms/en/html/index_terms.html). 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 as far as legally possible; 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**
- 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 Moreover, in so far as confidential information contains person-related data, the use thereof shall be governed by the stipulations under section 17. In the event of conflict between the provisions in this section 16 and the provisions in section 17, the provisions in section 17 shall take precedence in respect of person-related data.
- 16.3 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 Contract 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. The Contractor shall have no right to retain the information, copies or data carriers.

After delivery of the contractual services, the information provided by E.ON IT 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 and the limitation period for the claims related to the breach of contractual duties has expired, except where statutory duties of document retention otherwise require.

16.4 The Contractor shall inform E.ON IT without undue delay in the event of any indications that any of the terms of this section have been breached.

16.5 E.ON IT may rescind and cancel [zurücktreten] the Contract if the Contractor should fail to comply with its obligations pursuant to this section "Confidentiality" within a reasonable grace period set therefore, or without setting any grace period as the Contractor commits a material breach of the Contract. 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.

16.6 The obligations under this section shall survive the termination of the contract.

**17. Data Protection, Data Security, Commissioned Data Processing**

17.1 The Contractor shall be obliged to observe the provisions of the applicable laws on data protection and shall ensure and monitor compliance therewith in observance of the provisions in this section 17.

17.2 The Contractor shall collect, process and use person-related data for E.ON IT by way of commissioned data processing subject to directives of E.ON IT, in accordance with the applicable provisions on the Commissioned Data Processing (hereinafter referred to as "Commissioned Data Processing") only in so far as this is essential for the performance of the Contractor's duties arising from the purchase order. All appendices and documents which the purchase order refers to are also content of the purchase order within this meaning.

The type of data to be used by the Contractor within the framework of commissioned data processing, as well as the categories of persons concerned shall be specified in the purchase order and/or in an appendix to the purchase order (hereinafter referred to as "Person-Related Data").

Person-related data within the meaning of these GT&C also include person-related data which E.ON IT processes itself on behalf of a third party and makes available to the Contractor, in so far as the E.ON IT uses the Contractor's services for the performance of its duties in relation to the third party.

E.ON IT shall, also in the case of commissioned data processing, continue to remain the owner and "master" of the person-related data. The Contractor shall not have the right to retain person-related data or retain data carriers or documents containing such data.

Commissioned data processing shall, in respect of person-related data, encompass the acts which are essential for the performance of the Contractor's duties arising from the purchase order and are referred to in the purchase order. Access to data stocks and the right to process data on a commissioned basis shall be granted only in so far as, and to the extent that, such access is essential for the proper performance of the aforesated duties. Use of the data by the Contractor beyond the foregoing shall not be permitted. In particular, the Contractor shall not be permitted to make any copies or duplicates of the data without E.ON IT's knowledge and consent.

The duration of commissioned data processing shall be limited to the duration of the services to be rendered by the Contractor according to the purchase order.

E.ON IT shall have the right to issue the Contractor with directives concerning the type, scope and methods of data processing and concerning the data security measures to be taken in this connection. The Contractor shall solely be entitled to process person-related data within the scope of E.ON IT's directives. If the Contractor is of the opinion that a directive from E.ON IT contravenes the statutory provisions concerning data protection, it shall point this out to E.ON IT without undue delay.

E.ON IT's right to issue directives and its right of control arising from the purchase order and this section 17 may also be safeguarded by any other person mandated by E.ON IT.

The processing and use of the data shall take place exclusively in the territory of the Federal Republic of Germany, in a member state of the European Union or in any other state which has signed up to the European Economic Area Treaty. Any relocation to a country other than the above shall require E.ON IT's prior consent.

Changes to the subject, scope, type, duration or purpose of the commissioned data processing, or changes to the circle of persons concerned, shall require a corresponding written agreement between the Contractor and E.ON IT.

17.3 Furthermore, the provisions on commissioned data processing shall apply mutatis mutandis, if the testing or servicing of automated procedures or of data processing systems is carried out by the Contractor for E.ON IT and access to person-related data cannot be ruled out in this respect.

17.4 The Contractor warrants that its protection of data shall be adequate for ensuring the confidentiality, availability and accuracy of the data. Within the sphere of its responsibility, the Contractor shall monitor compliance with the essential technical and organisational security measures relating to data protection in accordance with the applicable data protection laws. In particular, the Contractor shall safeguard corresponding entry, admission, access, circulation, input, order and availability controls. The Contractor further warrants that person-related data collected for different purposes shall be able to be processed separately. Moreover, the Contractor warrants that the following data shall be processed separately:

- E.ON IT's data,
- the Contractor's data and
- the data of other clients of the Contractor.

Prior to the commencement of commissioned data processing, and thereafter at E.ON IT's request, the Contractor shall prove in writing that it is complying with the technical and organisational measures relating to data processing. If intervals of time for the furnishing of proof are stipulated in the purchase order, the proof shall, in addition to the stipulation in the sentence above, also be furnished at those intervals on a regular basis. In each case, the Contractor shall be obliged to furnish proof in such a manner that the Contractor hands over to E.ON IT in each case written documentation in which the technical and organisational measures taken by the Contractor, within the meaning of this no. 17.4, are described in sufficient detail that E.ON IT can meet the examination duties incumbent upon it under the applicable data protection laws. Owing to technical progress and developments in legislation which are to be expected, it may become necessary that the technical and organisational measures taken be adapted to technical progress and developments in legislation. In this respect, therefore, the Contractor shall be permitted, for adaptation to technical progress, to implement alternative adequate technical and organisational measures. The level of security of the measures agreed upon with E.ON IT must not be fallen below in this respect. Material changes shall be documented and communicated to E.ON IT without undue delay. Essential adaptations of the technical and organisational measures to changed statutory provisions shall be implemented by the Contractor without undue delay. Material adaptations shall be documented and communicated to E.ON IT without undue delay.

17.5 E.ON IT shall be responsible, as the data controller, for assessing the permissibility of the data processing and for safeguarding the rights of the persons concerned under the data protection laws. If E.ON IT has caused person-related data to be corrected, deleted or locked in relation to the Contractor, the Contractor shall be obliged to wholly follow this directive. If a person concerned asserts rights in relation to E.ON IT, particularly the right to information, the Contractor shall carry out, without undue delay, all acts essential for the performance of E.ON IT's obligations in relation to the person concerned.

17.6 No later than prior to the commencement of commissioned data processing, the Contractor shall appoint in writing a data protection officer as provided for by the applicable data protection laws. This person must possess the essential expertise and reliability and use his influence to bring about compliance with the provisions on data protection. The Contractor shall inform the data protection officer about the commissioned data processing.

Further duties of the Contractor shall ensue from the applicable data protection laws.

The Contractor shall be obliged to ensure that it passes on E.ON IT's directives to all employees who have access to person-related data in connection with the performance of the Contractor's contractual duties according to the purchase order. Moreover, the Contractor shall be obliged to prohibit those employees, also for the period after their employment ends, from processing or using person-related data contrary to E.ON IT's directive or for a purpose other than for the performance of the contractual duties in relation to E.ON IT (data secrecy). The obligation of data secrecy shall be imposed upon the employees prior to the take-up of commissioned data processing. On request, the Contractor shall prove in writing to the data protection officer designated by E.ON IT that this obligation has been passed on.

17.7 The contracting of subcontractors by the Contractor shall only be permissible in so far as this is expressly permitted by the purchase order in conjunction with section 12 of these GT&C.

The Contractor shall diligently select the subcontractor and, prior to contracting the subcontractor, satisfy itself that this subcontractor is able to comply with all duties laid down in this agreement for the Contractor. Moreover, the Contractor shall be obliged to impose upon the respective subcontractor the duties laid down in this section 17, with the proviso that the subcontractor takes the place of the Contractor. Furthermore, the Contractor shall contractually ensure that all rights laid down in this agreement are, at E.ON IT's option, able to be safeguarded either by the Contractor in accordance with E.ON IT's directive or by E.ON IT itself. If the Contractor safeguards the rights in accordance with E.ON IT's directive, the Contractor shall be obliged to pass on all information to E.ON IT without undue delay, particularly documentation and results of controls. On request, the Contractor shall prove in writing to E.ON IT's data protection officer that the duties laid down in this section 17.7, subsection 2 have been performed.

The provisions in the above subsection 2 of this section 17.7 shall also apply mutatis mutandis to other persons who are appointed for the performance of the Contractor's duties in relation to the E.ON IT and who have access to person-related data. The appointment of such persons shall only be permissible in so far as this is expressly permitted by the purchase order.

17.8 The Contractor's duties stated in this section 17 shall not be affected by discontinuation of the contractual relationship which has been established with E.ON IT as a result of the purchase order. This particularly applies to the obligation to maintain data secrecy. After commissioned data processing has ended, the Contractor shall only be permitted to continue to store or otherwise retain the person-related data made available, in so far as statutory retention periods mandatorily demand further retention at the Contractor. Otherwise, the Contractor shall be obliged, upon discontinuation of commissioned data processing, to hand over all person-related data in its possession to E.ON IT without undue delay or, according to consultation and agreement with E.ON IT, destroy the person-related data without undue delay in conformity with data protection rules and provide E.ON IT with written confirmation of destruction. The above also covers person-related data generated for data securing and logging. In the case of returning person-related data to E.ON IT, the data mentioned in the above sentence, as well as any and all copies or duplicates of the data shall, following hand-over to E.ON IT, be destroyed at the Contractor by the Contractor without undue delay in conformity with data protection rules and E.ON IT shall be provided with written confirmation of destruction.

17.9 The Contractor grants the E.ON IT, particularly its data protection officer, the right to monitor at any time, and without hindrance, whether the data processing is being carried out in accordance with the provisions of the law on data protection, the contractual provisions and the directives issued by E.ON IT. The Contractor undertakes to support E.ON IT in this connection to the extent necessary, particularly by making the necessary information available, carrying out all acts necessary in this connection and granting the necessary admission, entry and access rights. E.ON IT shall be entitled to call in third parties (particularly supervisory authorities) for carrying out

the aforesaid controls, in so far as the third parties are entitled to carry out the controls in relation to E.ON IT. The Contractor shall also acquiesce to and support documentation of the results of the controls prior to the commencement of commissioned data processing and during commissioned data processing.

17.10 E.ON IT shall be entitled to have a security check carried out on the Contractor's service providers, if they render services to E.ON IT. The Contractor undertakes to make such data of these Service Providers available as is essential for this.

17.11 The Contractor shall, without undue delay, give E.ON IT written notification of all indications of a breach of the data protection provisions or of this section 17 or of E.ON IT's directives. The duty to inform E.ON IT shall particularly apply in the case of indications of events which require a notification to the concerned persons or to any authorities under the applicable data protection laws. If the security or confidentiality of the person-related data at the Contractor is jeopardised by attachment or seizure, by insolvency or composition proceedings or by other events or measures of third parties, the Contractor shall inform E.ON IT thereof in writing without undue delay. The Contractor shall, without undue delay, inform all persons responsible in this connection that the sovereignty over and ownership of the data lie with E.ON IT.

17.12 E.ON IT reserves the right to pass on to affiliates of E.ON AG and to E.ON AG for the purposes of Group-wide procurement the Contractor's data made available in connection with the purchase order and the right to store those data, even after a contract has ended, within the scope of applicable data retention provisions or for possible further purchase orders.

17.13 E.ON IT may at any time rescind and cancel [zurücktreten] the Contract if the Contractor should fail to comply with its obligations pursuant to this section "Data Protection, Data Security, Commissioned Data Processing" or breach any provisions of data protection laws. 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.

#### **18. Insurance of non-discriminatory use of information**

18.1 The Contractor hereby undertakes not to pass on information coming to it from the sphere 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.

18.2 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 18.3 The Contractor hereby undertakes to alert its employees expressly to these obligations and to impose analogous obligations on them. The Contractor additionally undertakes hereby to impose the aforesaid obligations on any sub-contractors deployed by it in connection with its assignment.

18.4 The provisions of the sections 16 and 17 above remain unaffected.

#### **19. Written Form**

This contract may only be varied or amended by written notice in hard copy signed by both parties. Any notices under this Contract must also be in writing and must be sent by post and accordingly any notice sent by email shall only be valid if confirmed by a hard copy sent by post.

#### **20. 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.

#### **21. Jurisdiction and venue**

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

#### **22. Language of contract, applicable law**

22.1 The language of the contract is English.

22.2 Applicable law is German 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.

#### **23. Severability clause**

If individual provisions of these Terms and Conditions 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.