

## Terms and Conditions MobiMedia AG

### I. Licensing of standard software

#### § 1 Use rights in the software

- (1) MobiMedia grants the customer the non-exclusive right to use the licence acquired in the software to the extent stipulated in the agreement for the purpose of processing the customer's own business transactions within the company or within the companies which are affiliated to the customer's corporate group.
- (2) The amount of the licensing fee is based on the scope of use stipulated in the licence certificate and on the contractually agreed maximum number of authorised users. In the event that the customer increases the agreed scope of use, the customer shall be required to pay an additional fee for the licensing of the software. The amount of such an additional fee shall be based on the MobiMedia price list as amended.
- (3) The software may be deployed on the contractually agreed IT system which MobiMedia has authorised for the software. The customer is required to notify MobiMedia of any change to the customer's technical software environment.
- (4) The present licence does not entitle the customer to sub-license or to sell the software.
- (5) Upon termination of the present Agreement, the rights assigned shall revert to MobiMedia without requirement for further legal action.
- (6) The customer shall, at the request of MobiMedia, be required to provide comprehensive proof and confirmation within 14 days that the use of any software is in accordance with the conditions of the licence at the time when such an enquiry is made.

#### § 2 Delivery and deployment of the software

- (1) The software is stored on data media together with user documentation and will be delivered in this form insofar as nothing to the contrary is agreed. The customer shall confirm receipt of the software in writing upon delivery.
- (2) MobiMedia will assist the customer in commissioning the software on request. All support services (preparation for deployment, installation, instruction, training or advice) will be remunerated according to costs incurred insofar as nothing to the contrary is agreed.
- (3) The customer shall confirm successful implementation in the event that MobiMedia carries out installation of the software. The customer shall test the software under the customer's conditions of deployment prior to active use.
- (4) MobiMedia will undertake the necessary programme protection measures and shall be entitled to make deployment of the software dependent on the entry of a programme key, such as the number of the central units used, and require that deployment takes place pursuant to § 15 (3) below. Use of the software on a back-up system will be facilitated by MobiMedia within the scope of the present Agreement if relevant and necessary.

#### § 3 Protection of use of the software

- (1) The customer expressly acknowledges that the software and the software and user documentation, including in future releases, are protected by copyright and constitute company secrets of MobiMedia or of the respective manufacturer.
- (2) The customer shall be required to initiate comprehensive and suitable measures in order to prevent unauthorised third party access to programmes and documentation provided by MobiMedia. Within this context, the customer shall be further required to make all employees aware of the provisions of copyright law and to instruct them in compliance with the contractual conditions concluded with MobiMedia.  
Insofar as original data media are provided, said data media and back-up copies are to be securely stored in such a way so as to prevent unauthorised access by third parties.
- (3) Insofar as source programmes are supplied, the customer may only make such source programmes accessible to third parties with the prior approval of MobiMedia. MobiMedia will not unreasonably refuse such approval.
- (4) The customer is entitled to make copies of software for back-up purposes. The customer may copy the user documentation within the scope of the purpose of the contractual relationship. Both the above rights to copy material are exclusively for the customer's own use.
- (5) MobiMedia may revoke right of use for cause in the event that the customer acts in an unauthorised manner in expanding right of use or in breaching the customer's duties regarding programme protection pursuant to § 3 of the present General Terms and Conditions. MobiMedia will set a deadline for remedy in less serious cases.
- (6) Right of use within the contractually agreed scope may not be sold to another user unless the customer waives use of the software in full and the new user which the customer wishes to propose makes a legally valid declaration to MobiMedia prior to the granting of rights to the effect that said new user commits to programme protection and recognises the agreed scope of right of use in the programme by assuming the contractual obligations of the former customer vis-à-vis MobiMedia.
- (7) Export of the software to some countries may not be permitted or may require special approval on the basis of domestic or foreign statutory stipulations. The customer shall be required to comply with all relevant legal provisions and to act in a timely manner in notifying MobiMedia in writing prior to export to a country in which entitlement regarding installation and use of the software is not certain or in which compliance with the present General Terms and Conditions is not guaranteed. At the request of MobiMedia, the customer shall be required not to take the software out of the country in which installation has been contractually agreed.

#### § 4 Software warranty

- (1) MobiMedia guarantees that the software is in accordance with the user documentation and does not contain errors which prevent or reduce its serviceability in this regard. MobiMedia wishes to point out that the current status of technology means that it is impossible to exclude errors in the software under all conditions of application.
- (2) MobiMedia shall be entitled primarily to guarantee the serviceability of the software by providing subsequent performance. The customer shall offer MobiMedia reasonable support for this purpose, in particular by making machine and line time available. MobiMedia shall equally be entitled to make replacement delivery of software which is free from defects. The customer shall bear any transport costs which may be incurred in connection with the return of software for the purpose of subsequent performance or replacement delivery.
- (3) The warranty period shall be 12 months. This shall be calculated from the time of installation by MobiMedia or from delivery once relevant notification has been provided by the customer, whereby the customer is required to make such notification no later than 1 week following delivery. Expansion of scope of use (cf. § 1 above, in particular Clause (2)) does not result in a new warranty period for the software. Notwithstanding this, the warranty period for programmes which are

only deployed periodically does not end until three months after the day which triggers first use. Such an extension does not affect the duty to pay the maintenance fee.

In the event that MobiMedia fails to remedy material defects within 4 weeks of receipt of proper notification of defect within the scope of the warranty or fails to provide an appropriate interim solution, the customer may set MobiMedia an appropriate subsequent deadline in conjunction with a declaration that remedy of defect will not be accepted after the expiry of such a deadline. Following the expiry of such a deadline, the customer may withdraw from the contract in whole or in part or require a reduction in remuneration if the defect is not remedied in a timely manner. This shall be without prejudice to the fee assigned to the planning phase of the present Agreement.

- (4) At customers option can be concluded a separately source code escrow agreement at the local notary of MobiMedia.

#### **§ 5 Software from preliminary/third party suppliers/add-ons**

- (1) In the case of software which is expressly labelled as originating from preliminary/third party suppliers or as an add-on, MobiMedia guarantees only that such software has the properties necessary for the operation of MobiMedia programmes. MobiMedia has carefully tested such programmes.
- (2) MobiMedia is able to arrange a maintenance agreement for these programmes where necessary. MobiMedia has no duty to remedy errors in such software by dint of the fact that it has no access to the source code. MobiMedia will instead endeavour to obtain corrective and circumvention measures from the preliminary supplier. MobiMedia will also provide the customer with conversion guides from the preliminary supplier if required when new software statuses or releases are made available. In the event that the above measures are not sufficient so as to enable the customer to deploy the software in a reasonable manner in overall terms, the customer may set a supplementary deadline pursuant to §4 (3) Clause 2 above. MobiMedia shall first be entitled to offer software from another suitable supplier.

## **II. Custom programming**

### **§6 Object**

- (1) MobiMedia grants the customer the same right of use in modifications and expansions as in the licensed standard programmes of which such modifications and expansions form a part. The customer may use additional programmes (individual programmes capable of independent deployment) within the scope of §1 (1) above.
- (2) User documentation (stored on data media) will only be supplied if expressly agreed. In the case of the supply of user documentation, the following shall apply. In the event that modifications/expansions affect user documentation, such modifications/expansions shall be presented separately rather than being integrated into the user documentation.

### **§ 7 Provision of service and acceptance**

- (1) Insofar as it is necessary to specify the requirements of the customer in detailed terms, MobiMedia shall draw up a detailed concept in accordance with such requirements and with the support of the customer. MobiMedia shall present such a concept to the customer for approval. The customer shall issue approval within 14 days in writing. Insofar as nothing to the contrary has been agreed, such a service shall be remunerated according to costs incurred. The detailed concept as approved shall constitute a binding stipulation for further work. MobiMedia shall refine such a concept with the agreement of the customer during the course of programme implementation if required.
- (2) The customer shall monitor services under conditions of the customer's deployment and shall, insofar as such services are in accordance with the requirements pursuant to §7 (1) above, declare acceptance in writing. The deadline for testing shall be three weeks insofar as nothing to the contrary has been agreed. Services shall be deemed to have been accepted following expiry of the deadline for testing as soon as serviceability is not restricted for a period of two weeks due to Class 1 and Class 2 errors reported pursuant to §18 below. MobiMedia shall notify the customer of the above in writing upon delivery.

### **§ 8 Amendments to requirements**

- (1) MobiMedia shall agree to customer wishes to amend requirements as long as feasible for MobiMedia. Insofar as a desired amendment affects the contract, MobiMedia may adapt the contract accordingly and may in particular require an increase in remuneration and/or the postponement of deadlines.
- (2) Agreements regarding amendments to requirements shall not be valid unless made in writing. In the event that the customer expresses a desired amendment verbally, MobiMedia may require the customer to formulate such a wish in writing or for its part confirm such a wish in writing. In the second case, the formulation of MobiMedia shall be binding unless contradicted by the customer without delay.
- (3) The object of the Agreement in such a case is the documentation included by MobiMedia upon submission of offer.

### **§ 9 Warranty**

- (1) MobiMedia guarantees that services shall be in accordance with the requirements as set out pursuant to §7 (1) above and do not contain errors which prevent or reduce their serviceability in this regard. The warranty period shall commence following acceptance pursuant to §7 (2) above.
- (2) Warranty shall otherwise be governed pursuant to §18 below. In the event that MobiMedia is in default of the rectification of errors, the customer may set an appropriate deadline for the remedy of such errors and may indicate that rectification of errors will be refused following the expiry of such a deadline. In the event that such a deadline expires without the remedy of errors and in the event that rectification of errors finally fails, the customer may, in accordance with the statutory stipulations, require reduction of remuneration, cancellation of the contract or – within the scope of §19 below – compensation.

## **III. Maintenance of the programmes**

### **§ 10 Basic maintenance of standard programmes by MobiMedia**

- (1) Basic maintenance encompasses rectification of errors, continuing development of the standard programmes by MobiMedia, the transmission of further releases developed by MobiMedia, new updates within the releases and rectification of errors following expiry of the warranty period. All further services shall be remunerated separately, in particular the rectification of malfunctions in connection with other programmes which have not been supplied by MobiMedia.
- (2) Basic maintenance commences together with the warranty period.

- (3) MobiMedia is entitled to give three months' notice of adaptation of services and of the processing of services pursuant to §10 (1) above to the development of IT technology and of the maintenance market insofar as appropriate for users of MobiMedia and reasonable for the customer.
- (4) Duty to rectify errors relates to the latest update of the last two authorised releases of the standard programmes respectively. MobiMedia may require remuneration for additional costs incurred in circumstances where MobiMedia acts on the request of the customer in rectifying errors in older updates of releases. In such circumstances, MobiMedia will endeavour to comply with the deadlines stated in §18 (3) but shall not be obliged to do so.
- (5) Rectification of errors shall also be governed by § 18 below. The customer may set an appropriate deadline for the remedy of errors and may indicate that rectification of errors will be refused following the expiry of such a deadline. In the event that such a deadline expires without the remedy of errors or in the event that rectification of errors finally fails, the customer may reduce the maintenance agreement, give extraordinary notice of termination of the maintenance agreement in writing or – within the scope of §19 below – require compensation.

#### **§ 11 Further developments of standard software**

- (1) MobiMedia commits to the transmission of further developments, releases, new updates within the releases including the relevant documentation stored on data media once market release has been authorised. The above shall not apply to developments which MobiMedia offers separately as new programmes.
- (2) The customer shall ensure that the customer's IT system operates at the required technical level for MobiMedia programmes within the scope of further development in accordance with the provisions stated above. A new release may require that the customer needs to deploy an updated version of system software. MobiMedia will act in a timely manner in notifying the customer when and which prerequisites need to be provided for maintenance services. The customer shall notify MobiMedia in advance if the customer wishes to install a new release of the required system software.

#### **§ 12 Hotline (separate service)**

- (1) The hotline comprises telephone-based advice in issues relating to the deployment of the programmes. The service is provided during the normal business hours of MobiMedia. MobiMedia may also provide responses in writing. The customer shall nominate contact partners who are permitted to receive the advisory service. Said contact partners need to have been trained in MobiMedia programmes. MobiMedia may reject contact partners who have not completed a MobiMedia programme training course.
- (2) Support does not extend to operation of the IT systems on which the programmes are deployed or to the rectification of errors in customer data. If MobiMedia nevertheless provides such services, said services shall be remunerated according to costs incurred.
- (3) Advice may also be taken for the formulation of error messages. This does not absolve the customer of the duty to provide notification of errors in writing pursuant to §18 (1) below.

#### **§ 13 Remuneration for maintenance/termination**

- (1) The relevant fees agreed for basic maintenance and/or for the hotline will be charged as a percentage of the respective licensing fees for the standard programmes (price list as amended) in accordance with the agreed scope of use as such licensing fees fall due for payment. Fees will be adjusted as soon as such scope of use increases. In the case of multiple deployment, reduced licensing fees shall only serve as the basis if the processing of maintenance is restricted to a single installation (lead installation).
- (2) The relevant remuneration shall be paid annually in advance. The customer may also pay bi-annually or quarterly with a supplementary charge of 5% and 8% respectively.
- (3) MobiMedia will, with effect from the next calendar year, adjust the percentage to the percentage charged by MobiMedia at the conclusion of new maintenance agreements. Increases may only be made once annually with a period of notice of three months and must be appropriate.
- (4) The present maintenance agreement may be terminated with a period of notice of three months to the end of a maintenance year.

#### **§ 14 Maintenance of custom programming**

- (1) Insofar as a maintenance agreement for standard programmes is in place, MobiMedia will also provide maintenance for modifications/expansions and additional programmes it has supplied in accordance with costs incurred.
- (2) In the event that a flat-rate fee is agreed for maintenance, maintenance services will be provided in the same way as for standard programmes. Such a fee shall cover the transmission of modifications and expansions in further developed releases of the standard programmes and, in the case of express agreement, shall also cover the adaptation of additional programmes to such further developed releases. The customer may give notice of termination of maintenance independently of maintenance for the standard programmes pursuant to §13 (4) above.

### **IV. General conditions**

#### **§ 15 Remuneration, payments**

- (1) The licensing fee shall fall due as follows.
  - 1/3 of the total costs after placing order
  - 1/3 of the total costs after training administrator in MobiMedia/MobiWork
  - 1/3 of the total costs after roll out or acceptance software
- (2) Insofar as payment is made in accordance with costs incurred, daily and hourly rates, travel costs and ancillary costs shall be based on the MobiMedia price list as amended. Travelling time constitutes work time. MobiMedia may invoice at the agreed intervals.
- (3) MobiMedia shall be entitled to deploy a timeout in order to make usability of the programmes dependent upon the contractually agreed payment of the licensing fee.
- (4) Payments shall be made immediately upon issue of invoice and without deductions.
- (5) All prices are subject to Value Added Tax at the relevant statutory rate.
- (6) Even when making notification of defects or asserting counterclaims, the customer shall only be entitled to set off claims or have a right of retention or reduction if counterclaims are established in law or undisputed.
- (7) Claims for defects against MobiMedia are only due to the direct customer and may not be assigned.

## **§ 16 Malfunctions in the provision of services**

Insofar as compliance with a deadline is adversely affected by a cause which is not the responsibility of MobiMedia, including strike or lockout, MobiMedia may require an appropriate extension of the deadline. MobiMedia may also require payment for additional costs incurred in circumstances where costs are increased due to a cause which is the responsibility of the customer.

## **§ 17 Remote support**

- (1) The customer shall facilitate remote support for MobiMedia (remote diagnosis and corrections, installation of new releases) in accordance with the technical options stipulated by MobiMedia. For this purpose, the customer shall act in agreement with MobiMedia, in accordance with the technical options stipulated by MobiMedia and at the customer's own expense in providing a connection to a telecommunications network to enable the systems of both sides to be linked. The customer shall pay the line costs incurred.
- (2) Log-in to the system of the customer by MobiMedia shall take place via a user profile/password over which the customer has control. For reasons of data protection, the customer shall authorise access to the line on an individual case basis. MobiMedia shall notify the customer of measures carried out.
- (3) In the event that the customer does not facilitate remote support, the customer shall reimburse MobiMedia for additional costs caused in this regard and shall in every case reimburse travel times and costs in accordance with the table of fees for rectification of errors as amended.

## **§ 18 General rules relating to rectification of errors**

- (1) In the event that errors occur in connection with correct contractual use of the software, the customer shall report such errors in a clearly comprehensible form providing proper information for identification of the error and using the form provided. Prerequisite for the right to claim rectification of error shall be that the error is reproducible or can be displayed using computer generated output.  
The customer shall undertake all reasonable steps to support MobiMedia in the rectification of errors and shall in particular at the request of MobiMedia transmit the programme in the form in which it was being used at the time when the error occurred, make machine time available to MobiMedia and install the corrective measures supplied by MobiMedia.
- (2) MobiMedia shall rectify errors within an appropriate deadline. The following classes of error shall apply in this regard.  
Class 1: It is not possible for the customer to use the application or a significant part of the application. The operational process is seriously impaired, immediate remedy is required.  
Class 2: The customer is able to deploy the application, there are, however, serious restrictions to important parts of the application.  
Class 3: The customer can use the application with limited functionality, restrictions are not critical to the overall process.  
Class 4: Functions are not restricted, but their application is more difficult and needs to be simplified.
- (3) In the case of a Class 1 error, MobiMedia will commence rectification of error immediately, and in the case of a Class 2 error will commence rectification of error no later than the next working day. MobiMedia shall work on the rectification of the error until such time as the error is either rectified or else has been alleviated via a circumvention solution and corresponds merely to a Class 3 error in terms of the effects it exhibits.  
Class 3 and Class 4 errors shall be rectified in the next update or in the next but one update when the following update is already undergoing the final quality assurance check at the time when notification of error is made.
- (4) The customer may set an appropriate deadline for the rectification of errors reported. In the event that such a deadline expires without the remedy of errors and in the event that rectification of errors finally fails, the customer may, in accordance with the statutory stipulations, require reduction of remuneration, cancellation of the contract or – within the scope of §19 below – compensation.
- (5) All claims against MobiMedia shall lapse for programmes which the customer amends or in which the customer intervenes in any other way unless the customer is able to demonstrate in conjunction with the error report that such an intervention is not the cause of the error.
- (6) MobiMedia may require remuneration for costs incurred insofar as MobiMedia has taken action on the basis of an error report without the customer's having demonstrated an error.

## **§ 19 Liability of MobiMedia for compensation**

- (1) MobiMedia shall be responsible for ensuring that programmes, including future releases, do not include any third party rights which restrict the contractual use of the programmes. MobiMedia shall indemnify the customer against claims for compensation asserted by third parties for breach of intellectual property rights.  
In the event that a third party asserts a claim against the customer for infringement of rights in respect of the programmes, the customer shall notify MobiMedia in writing without delay. The customer shall, insofar as legally permissible, allow MobiMedia and the preliminary suppliers of MobiMedia to defend any claims asserted at the cost of MobiMedia and its preliminary suppliers.
- (2) In addition to the provisions contained within §19 (1) above, claims for compensation against MobiMedia (including its vicarious agents) shall be unrestricted in circumstances where:
  - a) there is intent or gross negligence on the part of MobiMedia;
  - b) properties which have been guaranteed are absent.

In cases of ordinary negligence, claims for compensation shall be limited to 50% of the agreed licensing fee. Liability for loss of profits shall be excluded. The customer may require further liability upon payment of a risk premium. The above restrictions shall not apply insofar as damages are covered by the company liability insurance of MobiMedia.

- (3) The above shall be without prejudice to claims made on the basis of the German Product Liability Act.
- (4) Compensation claims shall lapse two years after termination of the service in the execution of which the damage occurs insofar as a shorter period of limitation of claims is not statutorily stipulated.

## **§ 20 Confidentiality**

- (1) MobiMedia commits to using all knowledge of company secrets acquired within the scope of the contractual relationship and all information which has been identified in writing as confidential solely for the purpose of implementing the contract and further commits to treat such knowledge and information confidentially for an unlimited period of time.
- (2) MobiMedia shall require its employees to maintain confidentiality.
- (3) Commitment to confidential treatment does not apply to ideas, design concepts, know-how and technologies which relate to programme development and further does not apply to data which is already known to MobiMedia or of which MobiMedia has become aware or becomes aware outside the scope of the present Agreement.

- (4) If data is transmitted to MobiMedia for the purpose of error identification or restoration, MobiMedia shall comply with all technical and organisational measures within its own domain as the customer is required to put in place pursuant to §9 of the German Data Protection Act. Details may form the object of separate agreement at the request of the customer.
- (5) MobiMedia may include the name of the customer and a brief description of services provided in a list of references. All other references to the customer for the purpose of advertising shall be agreed with the customer in advance.

#### **§ 21 Written form, place of jurisdiction, interpretation**

- (1) Amendments and or supplementary provisions to the present Agreement or its annexes, all future supplementary provisions and all legal actions during the implementation of the present Agreement shall not be valid unless given in writing.  
MobiMedia and the customer confirm that no other verbal or implied agreements exist outside the scope of the present Agreement.
- (2) The original Agreement is drawn up in the German language. The German version shall be definitive in cases of doubt.
- (3) In the event that a provision contained within the present Agreement shall be invalid or unenforceable, this shall be without prejudice to the other provisions herein contained. In such a case, the parties shall agree that any excluded provision shall be replaced by a legally valid provision that as closely as possible reflects the purpose of the excluded provision.
- (4) The present Agreement is signed in Germany and is exclusively governed by the law of the Federal Republic of Germany. Application of provisions contained with international civil law and the UN Convention on Contracts for the International Sale of Goods (CISG) are excluded.
- (5) Both parties agree that the exclusive place of jurisdiction for contractual disputes and legal relations arising shall be the location of the Registered Office of MobiMedia.

#### **§ 22 Conflict with other General Terms and Conditions**

Insofar as the customer also applies General Terms and Conditions, the contract shall be concluded without express agreement on the applicability of General Terms and Conditions. The content of the different General Terms and Conditions shall be deemed to be agreed insofar as such content coincides. Divergent individual provisions shall be replaced by non-mandatory provisions of the law. The same shall apply in cases where the General Terms and Conditions of the customer contain provisions which are not included within the scope of the present General Terms and Conditions. In the event that the present General Terms and Conditions contain provisions which are not included within the General Terms and Conditions of the customer, the present General Terms and Conditions shall apply.

**MobiMedia AG**