

# General terms and conditions of business TCB

1. Mission Statement
2. Scope and Application
3. Definitions
4. Object of the Contract
5. Contractual Documents
6. Operational Services
7. Consulting Services
8. Project Deliverables
9. Customer's Duty to Cooperate
10. Compensation
11. Ownership and Intellectual Property Rights
12. Warranty
13. Liability
14. Data Protection
15. Quotations and Pricing
16. Confidentiality
17. IT Security
18. Audit Rights
19. Entering into Force and Term of Contract
20. Extraordinary Termination
21. Effect of Termination
22. Final Provisions

## 1. Credo

We work with our customers to fulfill the orders they entrust to us to their full satisfaction. This requires a high level of mutual trust, transparency and respect. These contractual terms help to enable these aspects, establish clarity, and maintain and expand customer relationships and friendships for the long term.

## 2. Scope and Application

These T&C govern the conclusion, content and performance of contracts concerning (i) trade and brokerage, (ii) consulting, (iii) project deliverables, and (iv) operational services. Furthermore, they apply for all services provided to the customer by UPGREAT.

## 3. Definitions

Within the contract, the terms listed below shall have the meaning set forth in the definitions in this clause 3 when used in the contract. For further definitions, please see the glossary.

- **T&C:** These terms and conditions.
- **Party/parties:** The customer and/or UPGREAT.
- **Customer(s):** The customer to which UPGREAT is offering or providing services and deliverables in accordance with the contract.
- **Operational services:** Services provided by UPGREAT which involve the operation and maintenance of IT systems and software applications, including service levels as detailed in clause 6, the quotation and/or Addendum 5, if agreed.
- **Consulting services:** Services provided by UPGREAT which involve advising the customer, e.g., regarding management, digital transformation, and IT as detailed in Addendum 4, if agreed.
- **Project deliverables:** Services provided by UPGREAT concerning the realization of information technology projects, such as the delivery and installation of hardware and software as well as the development of software as detailed in these T&C and the quotation.
- **Equipment:** Hardware and software components used in the context of operational services and/or project deliverables as detailed in Addendum 3 and/or the quotation.
- **Trade and brokerage services:** The sale of hardware (e.g., servers) by UPGREAT to the customer, and the brokering of software licenses by UPGREAT to be concluded directly between the customer and third parties (e.g., cloud solutions) as detailed in the quotation.
- **Hardware:** The hardware (e.g., servers) sold as part of the trade and brokerage services.
- **IT services:** All services provided by UPGREAT to operate the IT systems.
- **Initial procurement quantity:** Number of units of IT services which the customer procures from UPGREAT at the start of contract.
- **Initial contract term:** Binding, fixed term of contract as agreed from the start of contract, during which the contract cannot be terminated.

- **Class 1 error:** Defect in a project deliverable causing one or more core functions of the project deliverable as set out in the quotation to become unavailable or significantly impaired. The other error classes (particularly class 2 and class 3 errors) are defined in Addendum 5.
- **Service level:** Business and service hours, and response and troubleshooting times as detailed in Addendum 5.
- **Customer data:** All data which the customer provides to UPGREAT. Customer data includes personal data and other data processed by UPGREAT to fulfill the contract.
- **Personal data:** Customer data which constitutes personal information in the meaning of the General Data Protection Regulation of the European Union (GDPR) and/or the Swiss Federal Act on Data Protection (DSG).
- **Confidential data:** As defined in clause 16.1.
- **Quotation:** The quotation drawn up by UPGREAT specifically for the customer, on the basis of which the contract was signed, where applicable containing a description of the trade, brokerage, consulting, operational services and project deliverables to be provided by UPGREAT.
- **Contract:** The framework contract (or other agreement) concluded by the customer and UPGREAT on the basis of these T&C, which bindingly governs the deliverables and prices, notably also in its addenda (see clause 5), of which these T&C are part and which form an integral part of this contract.
- **Unit price:** The price that is set per unit of measurement of the service to be provided.
- **UPGREAT:** UPGREAT AG, Allmendstrasse 19, 8320 Fehraltorf, Switzerland (register no. CHE-108.349.263).

## 4. Object of the Contract

4.1 If and insofar as agreed in the contract, UPGREAT shall provide

- trade and brokerage services;
- consulting services;
- project deliverables; and/or
- operational services

on behalf of the customer.

4.2 The customer shall pay the fee agreed in the contract.

## 5. Contractual Documents

Depending on the arrangement in the framework contract, the contract between the customer and UPGREAT may consist of the following integral parts, with the higher-priority document taking precedence over a lower-priority document in the event of conflicts or discrepancies. The following order applies (1 being the highest priority and 5 the lowest priority):

- 1) Framework Contract
- 2) Addenda
  - Addendum 1 Consulting and Project Costs: A description and list of the prices payable by the customer for these consulting services and project deliverables as well as equipment.
  - Addendum 2 Operating Costs: A description and list of the prices payable by the customer for these operational services and equipment.

- Addendum 3 Sizing Requirements: A description and list of the equipment and devices, networks, servers, and app inventory used by UPGREAT or provided to the customer to fulfill the contract.
  - Addendum 4 Terms and Expenses: A description and list of the prices and compensation payable by the customer for travel expenses, fees, entertainment, weekly rates, hourly rates, overtime, mileage allowances.
  - Addendum 5 Service Level Agreement: A description of the service levels promised by UPGREAT as part of providing the operational services.
  - Addendum 6: Contacts and Addresses
- 3) TCB
  - 4) Quotation
  - 5) Glossary
  - 6) Any addenda or quotations which are based on or supplement this contract or were amended at a later date. These shall only take precedence over the preceding documents in the event of conflicts or discrepancies if expressly agreed in writing.

## 6. Operational Services

- 6.1 The operational services include the outsourcing of support and operation of the customer's IT system to UPGREAT as described in the quotation and in Addendum 5. The same documents also establish which services shall be provided pursuant to the definition of services and deliverables for the agreed fixed costs or for compensation on a time and material basis.
- 6.2 The service levels, i.e. the business and service hours, and the response and troubleshooting times, as well as availability, stability, and performance, are defined in Addendum 5. The same applies for changes, increases, and reductions to operational services as well as for the reporting of incidents (First Level Support, Second Level Support/Help Desk), if agreed.

## 7. Consulting Services

- 7.1 The substance of the consulting services may be derived from the quotation.
- 7.2 UPGREAT undertakes to provide the consulting services diligently and to safeguard the customer's interests.

## 8. Project Deliverables

### 8.1 Contents

The substance of the project deliverables may be derived from the quotation.

### 8.2 Deadlines

- 8.2.1 Deadlines for the development and implementation of project deliverables are based on the quotation or shall be agreed by the parties.
- 8.2.2 If a deadline is missed, the customer must give UPGREAT a written warning in order to establish default.

### 8.3 Delivery without prior Testing

- 8.3.1 Project deliverables are deemed delivered when UPGREAT sends notice to this effect. The customer must inspect the

project deliverables and their warranty rights as per clause 12.2.2 immediately.

### 8.4 Delivery and Acceptance with prior Testing

- 8.4.1 The parties can agree that project deliverables will be accepted according to the following procedure.
- 8.4.2 In this case, the customer shall be required to carry out testing prior to acceptance. If agreed, UPGREAT shall assist the customer in handling the project deliverables during testing. The parties shall document the tests and results and, provided there are no class 1 errors, shall sign a written certificate of acceptance.
- 8.4.3 In the event that testing is carried out jointly, the parties shall establish a testing plan together. In this case, the parties shall agree a testing plan and appropriate testing periods no later than ten (10) days before delivery and provision of the respective project deliverable.
- 8.4.4 The customer may only refuse acceptance if UPGREAT has failed to rectify a class 1 error identified during testing within the testing period as per clause 8.4.6. Otherwise, acceptance shall be considered as given. The project deliverables are also considered accepted the first time they are used in a live system.
- 8.4.5 The customer undertakes to report and document defects identified during testing. The documentation must enable UPGREAT to reproduce the error on the live system and testing system or in the project deliverable or on associated systems of UPGREAT.
- 8.4.6 UPGREAT undertakes to resolve class 1 errors during testing within the testing period at its own expense, and to provide a corrected version of the faulty part of the project deliverable for new testing within the testing period. The customer undertakes to test such corrected versions during the testing period. The testing period shall be automatically extended by the time required for troubleshooting and subsequent testing of the corrected parts of the deliverables; however, in no event shall it be extended by more than thirty (30) working days after reporting and documentation.
- 8.4.7 UPGREAT undertakes to resolve all identified faults which do not constitute class 1 errors as part of the service levels defined in Addendum 5, if agreed.
- 8.4.8 If a class 1 error is not resolved during the (possibly extended) testing period, preventing acceptance of the respective project deliverables, the customer (i) may grant UPGREAT an additional grace period for rectification, and in the event of default may reassert their rights under this clause 8.4.8, (ii) may accept the respective project deliverables despite the unresolved class 1 error and obligate UPGREAT to grant the customer a reduction of the fee corresponding to the reduced value of the project deliverables, or (iii) may refuse acceptance of the project deliverables and withdraw from the contract involving the project deliverables affected by the class 1 error and may also demand a refund of payments made for the respective project deliverable.

## 9. Customer's Duty to Cooperate

- 9.1 The customer is obliged to establish the organizational and technical conditions that UPGREAT requires to perform the services in accordance with the contract.
- 9.2 When using the services and deliverables from UPGREAT in accordance with the contract, the customer must observe the

applicable legal and regulatory provisions and may not infringe third-party rights.

9.3 The customer is obliged to provide UPGREAT with all information required to fulfill the contract in good time and free of charge.

9.4 The customer's duties to cooperate include in particular:

- appoint and name qualified contact persons with decision-making authority for UPGREAT;
- protect the equipment and hardware which UPGREAT provides for the customer's use, in particular against fire, theft, and vandalism;
- provide all necessary project information as specified by UPGREAT on time, provide all relevant information requested by UPGREAT, and inform UPGREAT thoroughly and in good time about the customer's business processes, organization, requirements, and framework conditions;
- grant access to the premises and the IT infrastructure of the customer, whereby UPGREAT must adhere to the security precautions and prevailing organizational conditions of the customer;
- provide an internal workplace in the offices of the customer with furniture, internet, network and telephone connections in the event of the use of on-site consulting services, project deliverables and/or operational services;
- guarantee lawful acquisition of software licenses and consistent proper and complete coverage of all software installations with the appropriate licenses, provided this is not the object of the contract agreed with UPGREAT;
- immediately report any defects to UPGREAT, including as exact and comprehensive a description of the matter and resulting problems as possible;
- train the customer's users;
- comply with IT security provisions (see clause 17) insofar as they apply to the customer, its employees, sub-contractors or agents;
- refrain from distributing prohibited mass advertising (spam), penetrating the systems of UPGREAT and/or third parties without authorization, or interfering with the network security of UPGREAT and/or third parties in any way;
- involve UPGREAT in the procurement of IT systems (e.g., new system components) which affect project deliverables or operational services;
- observe manuals and concepts defined by UPGREAT;
- consult with UPGREAT before undertaking installations of new software or hardware (including releases) or altering configurations;
- regularly maintain and renew system components of third-party systems in agreement with UPGREAT, to guarantee that the IT system is up-to-date and available;
- guarantee access to the customer's IT system, program library, and data to the extent required to implement the agreed work;
- provide relevant information, e.g., contact persons of third parties such as software producers or hardware suppliers;

- ensure the physical safety of the IT system (access control, fire warning, air conditioning, etc.).

9.5 UPGREAT shall not be bound to the service level agreement and shall provide no warranty whatsoever pursuant to clause 12.2 in the event of subsequent errors and/or error statuses resulting from installations or configuration adjustments carried out by the customer, which were not previously agreed with UPGREAT (see also clause 12.6).

9.6 If the customer does not fulfill, incorrectly fulfills, or delays fulfilling the duties to cooperate for reasons for which it is responsible, UPGREAT has the right to bill the customer on a time and material basis (see clause 10.1.7 and Addendum 4) for resulting additional expenditures.

## 10. Compensation

### 10.1 Type and Amount

10.1.1 Operational services shall be compensated for according to the prices and terms agreed in the quotation and Addendum 4. Generally, compensation for operational services will be in the form of unit prices based on the number of procured IT services. All services and costs relating to the infrastructure and functionality extensions which are not explicitly mentioned in the quotation shall be compensated for separately as per Addendum 4.

10.1.2 Consulting services and project deliverables shall be compensated for according to the prices and terms agreed in the quotation and Addendum 4.

10.1.3 If UPGREAT provides services on a time and material basis, they shall be reported separately. The work report shall specify the individual services and the expenditure per day for each assigned person.

10.1.4 Additional services shall be compensated for according to the prices and terms agreed in the quotation and Addendum 4.

10.1.5 Any taxes and charges which take effect in the future and encumber the services of UPGREAT, as well as any other increases in costs for which UPGREAT is not responsible, may be billed in addition.

10.1.6 For all assignments outside of UPGREAT's registered office, UPGREAT is entitled to reimbursement of the costs for travel, accommodation, entertainment, and communication in accordance with the UPGREAT expense rates in Addendum 4. UPGREAT may decide at its discretion if a service or assignment can or should be carried out on-site (e.g., at the customer's registered office) or at UPGREAT's registered office.

10.1.7 Unless explicitly indicated otherwise, all prices are exclusive of VAT, rebates, discounts, transport, installation, training, support, and other fees, which are shown and billed separately.

### 10.2 Billing and Payment Date

10.2.1 Bills are issued in CHF.

10.2.2 Consulting services and additional services are billed monthly after provision on a time and material basis unless otherwise agreed in the contract.

10.2.3 Costs for project deliverables are billed as a lump sum or according to actual time and material expended as per the quotation and/or Addendum 1. Cost estimates are billed at the end of the month according to work actually performed and an exact list of the work carried out. Lump sum project

deliverables are due in three installments, i.e. 1/3 of the agreed remuneration is due at project confirmation, 1/3 at handover testing (see clause 8.2), and 1/3 at project completion.

- 10.2.4 Operational services are billed as a lump sum or according to actual time and material expended as per the quotation and/or Addendum 2. They are charged either at the start of the year (yearly basis) or at the end of a month (monthly basis). Cost estimates are billed at the end of the month according to work actually performed and an exact list of the work carried out.
- 10.2.5 Equipment or hardware which UPGREAT or a sub-supplier of UPGREAT sells, transfers, leases, assigns, or licenses to the customer shall be billed upon delivery or provisioning.
- 10.2.6 Bills are payable without deductions within 30 days of receipt.

### 10.3 Unit Price Increases

- 10.3.1 For compensation specified as unit prices (based on the number of units of procured IT services; see clause 10.1.1) UPGREAT may increase the unit prices if the customer falls short of the initial procurement quantity by more than 50%.

### 10.4 Price Adjustments for Equipment

The prices for equipment and/or electricity included in the project deliverables and/or operational services of UPGREAT or procured to provide the same may change during the term of contract. In this case, UPGREAT may adjust the compensation for the respective project deliverables and/or operational services to reflect these changes in price at any time.

### 10.5 Default Interest

In the event the customer fails to observe, or does not fully observe, its payment obligations, the customer shall owe interest of 5% to UPGREAT from the date the amount became due.

## 11. Ownership and Intellectual Property Rights

### 11.1 Equipment

#### 11.1.1 Property

The ownership of, and all intellectual property rights to, the equipment (in particular in the form of object or source code, including development documentation), project deliverables, and any additional services reside with UPGREAT or its licensor or lessor irrespective of copyright protection, provided the customer does not procure, license, or lease the equipment itself.

If the customer purchases equipment or hardware from UPGREAT, it shall remain the property of UPGREAT until paid for in full. UPGREAT may reserve title to secure its claim. The customer authorizes UPGREAT to have the corresponding entry made in the retention of title register.

#### 11.1.2 Rights of Use

The customer is entitled to use equipment for its own operational purposes.

If the equipment is software, the customer undertakes to observe the applicable license terms in each case. The customer shall be responsible for informing itself about the scope of its

licensed rights (in particular when the software is from third parties).

### 11.2 Copies of the Work

In respect to ownership of copies of the work (such as documents, data, patches, or documentation), insofar as they are transferred under this agreement, upon complete payment of the agreed amount the written or machine-readable copy of the work shall become the property of the customer. The related rights of use are subject to clauses 11.1.2, 11.4, and 11.5.

### 11.3 Infrastructure

Pre-existing system components of the customer's IT system (PCs, printers, scanners, LAN, servers, etc.) shall remain the property of the customer.

### 11.4 Inventions and Developments

The copyrights and other intellectual property rights to the inventions and developments implemented in the course of providing the services under the present agreement shall remain with UPGREAT. The customer shall have a free, comprehensive, transferable, non-exclusive and unlimited right of use and disposal in perpetuity (license).

### 11.5 Know-how

In each case, UPGREAT shall have the right to use (without compensation) the ideas, concepts, documents (on paper or stored electronically) and processes which it has acquired through providing project deliverables, and operational and consulting services by itself or jointly with the customer or a third party, when carrying out similar types of work for itself and/or other partners. This is without prejudice to the obligation of secrecy pursuant to clause 16.

## 12. Warranty

### 12.1 For Consulting Services

UPGREAT always provides the consulting services with diligence. Customer claims that go beyond this scope (including the right to a price reduction or compensation) are expressly excluded, unless explicitly agreed otherwise in this contract.

### 12.2 For Project Deliverables

- 12.2.1 The rectification of defects identified during testing is subject to clause 8.2.

- 12.2.2 Pursuant to clause 8.2, upon acceptance UPGREAT shall provide warranty for 12 months that the respective project deliverable will function the way it was tested and demonstrated when used for the purpose agreed in the contract. This warranty shall be exclusively limited to class 1 errors which the parties did not identify during testing. If the customer identifies a hidden class 1 error during the preceding warranty period, the customer undertakes to document the class 1 error and to report it to UPGREAT, providing a description, within 10 working days. The description must enable UPGREAT to reproduce the class 1 error on the relevant systems. UPGREAT undertakes to rectify hidden class 1 errors discovered during this warranty period and reported as outlined above within an appropriate time frame. If such a class 1 error is not rectified during this grace period, the customer may set a new appropriate deadline for rectification of the defect. If the defect is still not rectified within this grace period, the customer shall be entitled to demand a reduction in

the fee charged by UPGREAT equivalent to the reduced value of the project deliverable (abatement).

### 12.3 For Operational Services

- 12.3.1 UPGREAT warrants that it shall provide the operational services in accordance with the agreed service levels.
- 12.3.2 The customer acknowledges that software, meaning both standard and customer-specific programs, is generally not free from defects and that disruptions in functionality or availability may occur for which UPGREAT is only liable within the scope of the service levels. Therefore, UPGREAT cannot be made responsible for ensuring that the systems it operates can be used uninterrupted and without defect in all combinations desired by the customer with any data, IT systems and programs, or that the rectification of an error precludes the occurrence of other errors. The customer acknowledges that malfunctions cannot be fully excluded, even by taking the utmost care, and that uninterrupted functioning cannot be guaranteed.
- 12.3.3 UPGREAT monitors and determines compliance with the agreed service levels, and shall provide this information to the customer on request. In the event of non-compliance with the agreed service levels, the customer shall be entitled to a restoration of the agreed service levels in future. Further claims of the customer in the event the guaranteed availability is not achieved are excluded to the extent permissible by law. This is without extraordinary termination due to an ongoing interruption of operational services as per clause 20.

### 12.4 For Trade and Brokerage Services, and Equipment

- 12.4.1 The customer acknowledges that UPGREAT cannot provide any warranties or assume any responsibility whatsoever for brokered software (cloud solutions in particular), as the corresponding contracts are concluded directly between the customer and third parties (software rights holders), and UPGREAT is not party to those contracts. Consequently, the customer's warranty rights arise from the terms of warranty of those third-party providers.
- 12.4.2 The customer's warranty rights regarding purchased hardware arise from the terms of guarantee and warranty of the third-party suppliers. UPGREAT excludes any and all warranty in this respect, and assigns the warranty rights to the customer for enforcement.

### 12.5 Return Shipments

Return Shipments must be announced in advance in writing and be approved by UPGREAT. Returns shall only be accepted in the original packaging and must include a copy of the invoice or shipping list. The sender shall always bear the cost and risk for return shipments. Software which has been opened and is no longer in its original condition cannot be returned. UPGREAT reserves the right to bill the customer an appropriate sum for the resulting time and effort.

### 12.6 Restriction

Changes, repairs, or maintenance work by third parties on hardware or software delivered by UPGREAT, which was carried out without the express written consent of UPGREAT, non-compliance with agreed terms of transport, installation, and operation, as well as non-observance of the customer's duties to cooperate as per clause 9.4 (see also clause 9.5) shall render UPGREAT's warranty obligations void.

### 12.7 Warranty of Title

- 12.7.1 UPGREAT hereby declares and warrants that the customer is entitled to use the project deliverables, equipment, and hardware within the contractually agreed scope. UPGREAT shall indemnify the customer up to a limit of liability of CHF 100,000.00 against any liability for the infringement of copyrights and other intellectual property rights of third parties, if and insofar as the infringement of third-party rights was caused exclusively by the contractual use of the project deliverables, equipment, or hardware. Any warranty provided by UPGREAT to the customer in the event of factual or alleged third-party claims that goes beyond this scope is excluded.
- 12.7.2 The customer shall notify UPGREAT immediately of any claim brought on the grounds of infringement of copyrights or other intellectual property rights of third parties due to its contractual use of the project deliverables, equipment, or hardware. UPGREAT is entitled to take action and negotiate all in-court or out-of-court settlements of the dispute at its own expense. The customer shall be responsible for any disadvantages resulting from notifying UPGREAT belatedly.

### 12.8 Exclusive Warranty

Further warranty claims by the customer (beyond those pursuant to this clause 12) are expressly excluded, unless explicitly agreed otherwise in this contract and provided that this does not conflict with peremptory norms. In particular, warranty cannot be excluded in the event of gross negligence or defects which UPGREAT deliberately concealed.

## 13. Liability

### 13.1 Limitation of Liability

- 13.1.1 For direct or indirect losses arising out of this agreement, UPGREAT shall only be liable up to an amount of CHF 500,000.00, and in the case of financial losses up to an amount of CHF 100,000.00. Liability for indirect or consequential loss such as secondary damage, third-party claims, lost profits, loss of data, etc. is hereby excluded to the extent legally permissible, as is liability for minor negligence.
- 13.1.2 Furthermore, UPGREAT shall in all cases perform services under the contract to the extent covered by UPGREAT's indemnity insurance. The limitations and exclusion of liability apply both to contractual claims and non-contractual or quasi-contractual claims. The parties' unlimited liability for losses caused by deliberate or grossly negligent conduct remains unaffected.
- 13.1.3 UPGREAT shall not be liable in any way for any type of breach of contract, such as non-compliance with deadlines, delays in delivery or service levels caused by its suppliers, sub-contractors or agents, by force majeure as per clause 13.3, or by a breach of the duty to cooperate as per clause 9, or a breach of other obligations of the customer.

### 13.2 Customer Liability

- 13.2.1 The customer shall indemnify UPGREAT against any liability and any losses in the event that third parties assert claims against UPGREAT which arise due to non-contractual use of UPGREAT's deliverables and services. The indemnity obligation also includes expenditure incurred by UPGREAT. The customer shall assist UPGREAT to an extent that is appropriate and reasonable.

### 13.3 Force Majeure

- 13.3.1 UPGREAT shall not be liable for delays in providing the deliverables and services or for their omission if this is due to circumstances beyond its control, such as in particular actions by the state, flooding, fire, explosions, accidents, rioting, terrorism, labor disputes, interrupted transportation or communication, extraordinary virus or hacker attacks, or an inability to procure material (force majeure).
- 13.3.2 If UPGREAT establishes a case of force majeure, the customer shall be notified as soon as possible, stating the exact circumstances.
- 13.3.3 If the force majeure lasts for more than three months, each party may rescind the contract without notice. In this case, the agreed compensation that was due up until the time the deliverable or service was provided under the terminated contract shall be paid proportionally.

## 14. Data Protection

- 14.1 The parties undertake to always comply with the requirements of the applicable laws on data protection (the General Data Protection regulation of the European Union, GDPR, and/or Swiss Federal Data Protection Act, DSG, depending on applicability), teleservices, and any applicable special laws (bank regulation, professional secrecy).
- 14.2 The customer shall be the owner of personal data, and shall be the controller for the processing of personal data. UPGREAT shall be the processor within the scope of UPGREAT's contract.
- 14.3 UPGREAT shall implement appropriate technical and organizational measures to ensure that personal data is processed in compliance with applicable legislation on data protection and teleservices as well as any applicable special laws (bank regulation, professional secrecy), and that the rights of the data subjects are always safeguarded.
- 14.4 The customer acknowledges and agrees that UPGREAT may engage additional processors. In each case, UPGREAT shall notify the customer of the intended changes concerning the inclusion or replacement of other processors, whereby such notification shall afford the customer an opportunity to object to such changes.
- 14.5 UPGREAT shall process personal data insofar and for as long as is required to fulfill the contract.
- 14.6 UPGREAT shall process personal data only in accordance with the contract or the customer's instructions, also with regard to the transmission of personal data to a third country or an international organization, provided that UPGREAT is not obligated to do so under applicable law; in this case, UPGREAT shall notify the customer of these legal requirements prior to the processing, provided that the applicable law does not prohibit such notification in the public interest.
- 14.7 Taking into account the state of the art, costs for implementation, and the type, scope, circumstances, and purposes of the processing, as well as the varying probability of occurrence and severity of risk with regard to the rights and freedoms of natural persons, UPGREAT shall implement appropriate technical and organizational measures to ensure a level of protection appropriate to the risk; these measures shall include the following:
- a) the ability to ensure on a continuing basis the confidentiality, integrity, availability, and capacity of the systems and services in connection with processing;
  - b) the ability to quickly restore the availability of personal data, and access to it, in the event of a physical or technical incident;
  - c) a procedure for the periodic inspection, assessment, and evaluation of the effectiveness of the technical and organizational measures in place to ensure the security of the processing.
- 14.8 When assessing the appropriate level of protection, the risks associated with processing shall be taken into account, in particular — whether intended or unintended — those arising due to destruction, loss, modification, or unauthorized disclosure of, or unauthorized access to, personal data which was transmitted, stored, or otherwise processed.
- 14.9 UPGREAT shall implement measures to ensure that the natural persons who are its subordinates and who have access to the personal data shall only process it in connection with the fulfillment of the contract, unless they are obligated to process it in accordance with applicable law.
- 14.10 With respect to the type of processing, as far as possible UPGREAT shall assist the customer with appropriate technical and organizational measures so that the customer can fulfill any obligation to respond to requests from natural persons exercising the following rights. Depending on the applicable data protection laws, these may include:
- a) The right to transparency, access, and information;
  - b) The right to disclosure of, or access to, the personal data concerned;
  - c) The right to rectification;
  - d) The right to erasure (right to be forgotten);
  - e) The right to restriction of processing;
  - f) The right to data portability (right to transfer of data);
  - g) The right to withdraw consent;
  - h) The right to object;
  - i) The right to protection against automated decision-making, including profiling;
  - j) The right to obtain judicial remedy from a competent supervisory authority.
- 14.11 Taking into account the type of processing and the information available to UPGREAT, UPGREAT shall assist the customer in observing the following obligations it may have under applicable data protection laws:
- a) To ensure a level of protection for personal data that is commensurate to the associated risks;
  - b) To report breaches of the protection of personal data to the competent supervisory authority;
  - c) To notify the data subject in case of a breach of the protection of their personal data;
  - d) To assess the impact of the intended processing operations for the protection of personal data (data protection impact assessment);
  - e) Prior consultation with the supervisory authority where processing activities involve high risk.
- 14.12 After providing the processing services, UPGREAT is obligated at the customer's discretion to either return all personal data or to delete it insofar as this is technically feasible, unless

applicable law requires storage of the personal data or UPGREAT has a compelling legitimate interest in storing it. Anonymization shall equate to erasure.

- 14.13 UPGREAT shall make available to the customer all information necessary to demonstrate compliance with the obligations laid down in this clause 14, and shall allow for and contribute to audits — including inspections — conducted by the customer or another auditor mandated by the customer. An audit or inspection must be carried out during normal business hours without disrupting operations, following a prior announcement that allows sufficient preparation time. UPGREAT may make an audit or inspection contingent on a prior announcement that allows sufficient preparation time, the signing of a non-disclosure agreement, and the technical and organizational measures that are in place. An audit may only be conducted to the extent that it does not affect or disclose data of other customers. Such an audit or inspection may not be carried out by a person or company that is a competitor of UPGREAT. UPGREAT may demand a fee as per Addendum 4 for assisting with the execution of an audit or inspection. As a rule, the expenditure for an inspection is limited to one day per calendar year for UPGREAT.
- 14.14 UPGREAT shall inform the customer if UPGREAT believes that an instruction infringes applicable law.
- 14.15 UPGREAT undertakes to completely wipe any and all storage media or data storage devices that come into its possession in conjunction with the provision of the services and deliverables under this contract (notably, during maintenance work, such as the replacement of old or defective devices) prior to any further utilization thereof.
- 14.16 The customer may demand the return of personal data at any time. Moreover, the customer may demand in writing that UPGREAT erase (or anonymize) personal data at any time. UPGREAT shall not be responsible for data which has been erased. The services provided by UPGREAT under this clause 14 shall be compensated in accordance with Addendum 4.
- 14.17 Provided that the customer is acting as a representative or otherwise on behalf of a third party, or supplies UPGREAT with information about a third party, the customer hereby declares that they are an authorized representative or agent of said third party and/or that they have obtained all necessary agreements (as stipulated by applicable law) from said third party concerning the collection, processing, use, and disclosure of said third party's customer data to or by UPGREAT.
- 14.18 The customer undertakes to ensure that the customer data is free of any illegal and/or immoral content. Excluded from this is the lawful, professional processing of data in connection with illegal conduct (e.g., the processing of files by compliance bodies or attorneys in criminal cases).

## 15. Quotations and Pricing

- 15.1 The quotation and all its parts are confidential and may only be viewed and processed by the customer as the recipient.
- 15.2 UPGREAT retains all copyrights and other intellectual property rights to, and know-how involving, all cost estimates, schematics, sketches, and drafts or other parts of the quotation.
- 15.3 Except for the quotations, all documents (catalogs, product sheets, mailings, price lists, offers), in particular the prices contained therein, are always provided without obligation and do not constitute a quote by UPGREAT.

## 16. Confidentiality

- 16.1 The parties undertake to keep confidential all customer data, facts, information, and data, including associated documents and data storage devices, of which they become aware in connection with this contract and which are neither obvious nor available to the public (confidential data). The obligation to confidentiality also extends to the prohibition of use and exploitation for internal or external purposes, the prohibition of providing access to unauthorized parties, and the obligation to protect against unauthorized access, and shall survive the contract for as long as an interest in confidentiality exists.
- 16.2 Data which is known to the public or which was acquired by a party by legitimate means independent of the contractual relationship shall not constitute confidential data. Moreover, this is without prejudice to the statutory disclosure requirements. The customer acknowledges that UPGREAT shall cooperate fully with the competent authorities in accordance with the relevant legal provisions.
- 16.3 The parties shall ensure that their employees, agents, and sub-contractors undertake to observe confidentiality. Excluded from this are telecommunications service providers, which regarding confidentiality are subject to the privacy of telecommunications and for which UPGREAT shall not assume any responsibility.
- 16.4 If a special interest in confidentiality exists (e.g., bank secrecy, medical confidentiality, attorney-client privilege), at the customer's request UPGREAT shall ensure that all of its employees, sub-contractors, and agents sign a non-disclosure agreement amended to accommodate the special interest in confidentiality prior to disclosing the facts, information, or data.
- UPGREAT may list the customer as a reference, using the customer's logo, in advertising materials and publications of any type. Any presentation of the substance of the customer relationship beyond this scope shall require the customer's prior consent.

## 17. IT Security

- 17.1 Where applicable, UPGREAT shall provide the operational services in accordance with the security standards explicitly agreed in the quotation (e.g., data encryption, access protection, access logging, and virus protection). The type of solutions deployed for these purposes shall be in line with industry standards. Personal data shall be processed in accordance with clause 14.
- 17.2 UPGREAT must manage all customer data so that it remains at least virtually separated from that of other customers. UPGREAT shall employ special technical and organizational measures to ensure separation is seamless.
- 17.3 The customer shall secure its access controls against unauthorized and prohibited access, and shall keep user names and passwords confidential.

## 18. Audit Rights

Moreover, the customer may carry out individual audits at any time. UPGREAT shall assist the customer therein in accordance with the terms in Addendum 4. The restrictions concerning the audit or inspection as per clause 14.13 shall apply mutatis mutandis.



## 19. Entering into Force and Term of Contract

- 19.1 The contract between the parties enters into force with the signing of the framework contract by both parties.
- 19.2 Consulting services and project deliverables shall be provided from the dates stated in the quotation unless otherwise agreed (see clause 8.2).
- 19.3 The operational services concerning the initial contract term shall commence with the acceptance of the corresponding project deliverables or with the separately agreed commencement of the provision of the operational services, and shall end in accordance with the arrangement in Addendum 5 and/or the quotation.
- 19.4 After the initial contract term has ended, the contract shall be extended for operational services by 12 months in each case unless it is terminated in writing giving 3 months' notice to the end of the initial contract term or year of extension.
- 19.5 The contract concerning the project deliverables ends when it is fulfilled. The parties may agree a schedule to this end.
- 19.6 The contract concerning the consulting services shall be concluded for an indefinite period and may be terminated by either party at any time upon payment of expenditures accrued up until the date of termination.

## 20. Extraordinary Termination

- 20.1 Each party may terminate the contract for cause and without notice if the other party is in material breach of contract, or if the other party is subject to asset seizure or insolvency or composition proceedings.
- 20.2 For rescission of contract on grounds of force majeure, see clause 13.3.3.
- 20.3 Prior to extraordinary termination due to a material breach of contract, the other party must receive a written warning that threatens extraordinary termination, and must be afforded an appropriate grace period of at least 30 days to remedy the breach of contract, provided the breach of contract is not impossible to remedy.
- 20.4 In addition, the legal provisions regarding late payment apply.

## 21. Effect of Termination

- 21.1 Upon termination, the receiving party must return to the transferring party all information, documents, and data with which it was provided by the transferring party to fulfill the contract. This is without prejudice to the statutory retention obligations of the receiving party.
- 21.2 At the customer's request, UPGREAT is obligated to make every effort to assist the customer with insourcing, migration, or transferal of the operational services to a third party for up to three months after the contract has ended.
- 21.3 At the customer's request, UPGREAT shall hand over a copy of the customer data stored on its servers within 14 days but no later than upon termination of the contract. The data shall be handed over on a standard data storage device and in a standard format. UPGREAT shall delete the customer data stored on its servers within 30 days of handing over the data to the customer in the context of ending the contract, unless the customer sends notification within this period that the customer data that was handed over is unreadable or

incomplete. An omission of such notification shall be deemed as consent to the deletion of the customer data. The handing over of personal data shall be subject to clause 14.16.

- 21.4 The assistance provided in accordance with clauses 21.2 and 21.3 shall be billed on a time and material basis at the applicable rates of UPGREAT as set out in Addendum 4.
- 21.5 The terms of this contract which claim validity beyond termination of this agreement in spirit and purpose shall remain in force. This is particularly true for the terms regarding confidentiality (clause 16), data protection (clause 14) ownership/intellectual property rights (clause 11), warranty (clause 12), liability (clause 133) and partial nullity (clause 22.2), applicable law (clause 22.7) and jurisdiction (clause 22.8).

## 22. Final Provisions

- 22.1 In all cases, these T&C shall prevail over any conflicting terms and conditions of the customer. Cancellation of, or changes and/or supplements to the contract as well as specific liabilities arising therefrom must be agreed in writing to be binding.
- 22.2 Should a provision in this contract be or become void or invalid, this shall not affect the remainder of the contract. Provisions which are void or invalid must be replaced by effective provisions which come as close as possible to their economic purpose. The same procedure shall apply in the event of contractual gaps or if a provision proves unenforceable.
- 22.3 The contract supersedes all previous verbal or written agreements between the parties, and conclusively governs the legal transaction entered into by the parties under this contract.
- 22.4 This contract or individual rights and obligations arising from it may only be assigned or transferred to third parties with the prior written consent of the other party. However, UPGREAT is entitled to engage third parties as suppliers, agents, or sub-contractors to provide its services and deliverables. In the event of the takeover or restructuring of one of the parties, the contract shall be transferred unchanged to the successor.
- 22.5 If a party fails to enforce a contractual right in individual cases, this cannot be considered a general waiver of such rights.
- 22.6 The parties shall issue notifications to each other regarding the contract in writing to the addresses and contact persons listed in Addendum 6. Any change of address must be communicated to the parties in writing.
- 22.7 This contract is governed exclusively by Swiss law, excluding any references to the Federal Act on the Conflict of Laws, and excluding the Vienna Convention (CISG).
- 22.8 The ordinary courts at the registered office of UPGREAT have jurisdiction over all disputes and/or claims arising out of or in connection with the contract.

UPGREAT AG, Fehraltorf, Switzerland: May 17, 2019, Version 3.4