

Enclosure 5

to the Partner Agreement [Agreement with Distributor or 1st Tier Reseller or Service Provider]

General Terms and Conditions for Services

[Applicable to Partner and/or the End Customer (named herein "Customer") in the case of Resale (to End-Customer) and Co-Delivery Services (to Partner) provided by Unify]

Applicable as of 5. September 2018

Part I: General Terms

1 Scope of Services

Unify shall provide the agreed-upon Services in compliance with the terms of the relevant Service Agreement.

2 Cooperation between the parties; scope of work

- 2.1 Unify shall provide the agreed-upon Services, generally remotely via public networks; for this purpose, Customer ("Customer" means either End-Customer or Partner, as the case requires) allows the system to be connected to remote service for the duration of the Service Agreement. When the obligation to provide the Services ends, the connection to remote service and the corresponding equipment in the devices or system are shut down. Customer shall provide cost free the necessary service infrastructure, in particularly with regard to the Remote Service.
- 2.2 At Customer's request and against commensurate compensation, the agreed-upon Services can also be provided on Customer's premises.
- 2.3 Unless otherwise agreed, Unify shall provide the agreed services for Customer within its normal working hours. These are Monday to Friday from 08:00 to 16:00, except on public holidays.
- 2.4 The Unify employees do not enter into any employment relationship with Customer, even when they are working on Customer premises. Functional authority to issue instructions to delegated personnel shall be exercised by Unify. The same shall also apply to subcontractors commissioned by Unify. Customer shall make any requests regarding the Services to be performed exclusively to the person appointed by Unify and shall not issue instructions to any other Unify personnel.
- 2.5 Unify reserves the right to deploy the dispatched personnel as it sees fit. This applies in particular to the choice of employees used, arrangements with respect to work hours and overtime, vacation scheduling, attendance checks and monitoring of operational procedures.
- 2.6 If, due to mandatory legal requirements, a legal employment relationship should arise between Unify and any Customer's personnel in conjunction with the Service Agreement, Customer shall bear any and all resulting additional costs arising for Unify.
- 2.7 In the performance of its obligations hereunder, Unify shall have the right, in its sole discretion, to subcontract its rights and responsibilities to any third party, provided that Unify shall

remain responsible for the performance of any such third party.

- 2.8 Unify has the right to reject work demanded by Customer against which Unify has serious reservations (for example, due to safety regulation).
 - 2.9 These terms and conditions apply exclusively to the Services under the Service Agreement; any terms and conditions provided by Customer shall not apply.
 - 2.10 Customer authorizes Unify, for the purposes of its internal or external communication, to advise third parties of the signature of the Service Agreement, the contractual subject matter and the name of Customer on any support material and media, including without limitation, in the press, on the Internet, in its commercial brochures and on lists of references that may be distributed among prospective customers and other third parties.
- ##### 3 Internet-based services, access to password-protected pages
- 3.1 Internet-based services may be password-protected. Access to these pages shall, in the interests of business operations security, be possible only for registered users. Customer is represented by its employees and must take responsibility for their actions and know-how.
 - 3.2 Upon logging in or, should a separate log-in not be necessary, on commencement of use, the validity of the license conditions applicable to the Unify web pages concerned, shall be accepted in their respective wordings.
 - 3.3 Customer shall be obligated to provide truthful details and in the event of any subsequent changes to communicate these without delay to Unify. Customer shall in particular inform Unify without delay in writing, possibly in advance via e-mail, as soon as the right of representation of the employees authorized by Customer to access the password-protected pages of Unify expires.
 - 3.4 If registration is provided for, then the end user shall be obligated to provide truthful details for registration and in the event of any subsequent changes to communicate these without delay to Unify (where provided: online).
 - 3.5 Once registration is completed, the end user shall be given a username and password (hereinafter also: "user data"). Upon initial access, the end user shall change the password transmitted by Unify to a password known only to him.
 - 3.6 The end user shall ensure that the e-mails which are sent to the e-mail address specified by him actually reach him.

3.7 The end user shall ensure that the user data does not become accessible to third parties and shall be liable for all orders and other activities undertaken using the user data. After each use, the end user must exit the area protected by password. Where the end user acquires knowledge that third parties are misusing the user data, he shall be obligated to notify Unify without delay in writing, or possibly in advance via a simple e-mail.

3.8 After receiving notification as per item 3.7, Unify shall block access to the password-protected area containing this user data. Lifting of the block shall be possible only after a separate application has been made by the end user to Unify or after re-registration.

4 Customer collaboration, back ups of data

4.1 By fulfilling its collaboration obligations, Customer shall do its part to enable Unify to start the work on time and carry it out without hindrances or interruptions.

4.2 Customer must provide the operating conditions, hardware and software and free access required for the agreed-upon service modules, ensure comprehensive service and maintenance coverage for all relevant System components, and make the following available free-of-charge to Unify:

- Documents, information and system operating data in suitable format (e.g. for the system, applications, network).
- External connection to the public dial-up phone network/WAN in proximity to the equipment and the necessary technical transmission equipment.
- Data media containing the current version of the system programs used, along with the current data set and the system parameters (e.g. current system programs, data backups).
- Unrestricted, full, free access at all times to all customer property, buildings, rooms and communications equipment/ IT data center, etc.
- Administration rights to the extent required for the respective services and, if applicable, integration of the system programs inside the customers network (e.g. entitlement for firewalls).

4.3 Changes to the system planned by Customer (such as relocations, upgrades, migrations, etc.) shall be coordinated between Customer and Unify in good time where such changes may affect the agreed-upon services.

4.4 If Customer omits to do as per clause 4.3 above, Unify is entitled to discontinue the agreed-upon services if the cause of a fault can be attributed to these changes. In this case, Unify is entitled to compensation of at least the amount of the agreed-upon prices.

4.5 If the System changes in accordance with Art. 4.3 planned by Customer make it necessary to adapt the Services Agreement (e.g., service certificates, annexes, and prices), Unify will immediately communicate this in writing to Customer.

4.6 Unless otherwise agreed-upon in the performance description, Customer shall back up its affected data prior to all services which Unify performs on its System at Unify's request or in connection with a warranty claim. At Customer's request, Unify will perform the data backup against separate compensation on a time-and-expense basis.

5 Support and product discontinuation (End of Life)

5.1 Unify's hardware and software products are subject to continuous development. This means that some products are regularly replaced by improved products or are superseded by successor products. Details of the product lifecycle (the End of Life process) of Unify's products, including further details on how to obtain End of Life information, are provided by Unify under the URL: <http://www.unify.com/de/support/product-lifecycle-policy.aspx>.

5.2 Once a product reaches the designated milestone for the expiry of the manufacturer's development assistance as per the product life cycle plan, this may affect scope and content of the agreed services in the following respects:

- Reported incidents may not be finally resolved anymore
- Unify may provide only general, product-independent, support, going forward, within current operational capacities.
- A purchase of an upgrade to the most current version of the product or of a successor-product may be required to obtain the full scope of available services

5.3 Upon Customer request, Unify will examine if for that Customer a time-limited extension of the development support for a Unify product (Extended Manufacturer Software Support - EMSS) can be realized, which is also subject to payment of a separate remuneration. Details of EMSS are then agreed individually.

5.4 For independent third-party products, such as operating systems or active network components and even if the customer acquired them together with Unify products, this section 5 shall apply accordingly, but with the proviso that the relevant product life cycle planning and the resulting availability of support services is determined solely by the terms of the respective third party manufacturer. Unify will endeavour to offer Customer, or arrange for the third party manufacturer to offer to Customer, services similar to EMSS which may possibly be offered by the third party manufacturer.

5.5 If the services provided for the products are restricted or suspended as a result of the adjustment of the manufacturer's development assistance, or if, with regard to hardware, Unify's stock of spare parts for the relevant product is exhausted, and thus the provision of the agreed scope of the services becomes either permanently impossible or is no longer economically justifiable, the contract shall be adjusted appropriately and in good faith, without further liability on the part of Unify. If such adjustment is not acceptable, Customer may prematurely terminate the services for the affected products

6 Payment conditions, billing, price adjustments

6.1 The agreed-upon prices are to be paid for the remainder of the calendar month and then monthly in advance from the moment the system becomes operational; prices for which no ongoing payments have to be made must be paid within ten (10) days after the service has been provided and the invoice has been sent to Customer.

6.2 In addition, and unless regulated otherwise in the agreed-upon

service specifications, Unify will charge separately for the following at its currently valid list prices:

- The first test and any System maintenance required when the agreed-upon services are accepted.
- Changes requested by Customer or required by public authorities, e.g. changes to the scope of services, the user data, the installation site, or the call charge tariffs.
- The diagnosis and repair of faults or damages resulting from the age of the customer's cable network or from faults on the equipment of the public telephone network operator.
- The diagnosis and repair of faults or damages resulting from improper handling, the impact of products or services supplied by Customer or a third party, or other circumstances for which Unify is not responsible.
- The replacement of used batteries and rechargeable batteries (e.g., for cordless telephones), as well as consumables.
- The packing, dismantling (including existing systems or parts thereof), return transportation including transport insurance, as well as disposal.
- The repair of faults or damages that have been caused by computer viruses, so-called Trojan horses, hoaxes or by security gaps, etc. that were not generally known at the time the software was provided.
- New software versions.

6.3 Unless any flat-rate prices are agreed, Unify calculates its services on working time, travel and waiting time expended at its list prices valid at the time of performance. For billing on hourly or monthly rates, each hour or month started is billed using a pro-rata billing rate. For services which are to be provided outside Unify's normal working hours, special rates apply. The customer allows ancillary costs, e.g. for telephone, costs for necessary journeys and any overnight stay needed.

6.4 In no circumstances may Customer deduct or offset against Unify invoices due and payable under this Agreement, any sums payable by or claims against Unify.

6.5 In case of direct debits Unify charges outstanding debts on their due date, however, non-ongoing prices at the earliest five (5) Business Days after receipt of the invoice. It is Customer's responsibility to ensure that the account is sufficiently covered on due date.

6.6 If, to compensate for increases in personnel and/or other miscellaneous costs, Unify's normal list leasing prices or payments to be made on an ongoing basis for software or services are increased, Unify can increase the prices in this contract which are not yet due in this contract accordingly, provided they are affected by the price increase.

7 Time for services; delay

7.1 Times set for services can only be observed if all documents to be supplied by Customer, necessary permits and releases, especially concerning plans, are received in time and if agreed terms of payment and other Customer's obligations are fulfilled. Unless these conditions are fulfilled in time, times set shall be extended appropriately; If Unify is responsible for the delay and Customer demonstrably suffered a loss there from, Customer may claim a compensation as liquidated damages of twenty five percent (25 %) of the monthly service fee for every

completed week of delay, but in no case more than a total of 2,5 monthly fees of the price of that part of the services which because of the delay could not be put to the intended use. If the delay relates to spare parts or software, for which a one-off payment is agreed to, then instead of 25% of monthly service fee and 2.5 monthly rents, 0.5% and 5 % of the one-off price applies.

7.2 Customer's claims for damages due to delayed services as well as claims for damages *in lieu of* performance exceeding the limits specified in section 7.1 above shall be excluded in all cases of delayed services even upon expiry of a time set to Unify to effect the Supplies.

7.3 Force Majeure:

- 7.4.1 Neither party shall be responsible for any failure or delay in performance of its obligations under this Agreement (other than obligations to make payment) due to any Force Majeure Event including, Act of God, adverse weather conditions, volcanic eruption, earthquake or other natural disasters, refusal of licence (other than as a result of any act or omission of Unify) or other Government act, war, threat of war, fire, explosion, embargo, sanctions, breaking off of diplomatic relations, terrorism, civil disturbance, accident, epidemics, pandemics, lightning damage, interruption or failure of utility services, electromagnetic interference, radio interference, strikes, industrial dispute, or any other cause beyond its reasonable control.

- 7.4.2 If non-observance of terms for delivery is due to a Force Majeure Event, such terms for delivery shall be extended accordingly.

- 7.4.3 If a Force Majeure Event prevents a party from fulfilling this Agreement for a period of more than six (6) months, the Agreement may be mutually terminated by the Parties;

8 Adaptation of contract

8.1 Where unforeseeable events substantially change the economic importance or the contents of the services or considerably affect Unify's business, the Service Agreement shall be adapted taking into account the principles of reasonableness and good faith. Where doing so is economically unreasonable, Unify shall have the right to cancel the Service Agreement. If Unify intends to exercise its right to cancel the Service Agreement, it shall notify Customer thereof without undue delay after having realised the repercussions of the event; this shall also apply even where an extension of the delivery period had previously been agreed with Customer.

8.2 If for the contractually agreed system the manufacture of the system and/or parts thereof is discontinued by Unify and/or its suppliers and the stock of spare parts for this system is exhausted at Unify and as a result the agreed services or parts thereof are either permanently no longer possible or economically no longer justifiable, the Service Agreement shall be appropriately amended, taking into account the principles of reasonableness and good faith..

9 Liability

9.1 **Unlimited liability:** Neither Party's Liability for any of the

following is excluded or limited (even if any other term of the Agreement would suggest otherwise):

- Death or personal injury caused by that party's negligence or the negligence of its employees, agents or sub-contractors
- Fraud or fraudulent misrepresentation; or
- Any liability which cannot be legally excluded or limited.

9.2 **Exclusion of liability:** Subject to clause 9.1 above, in no event shall either party be liable to anyone for any indirect, special or consequential loss or damages (including loss of revenue, profits or goodwill), loss of data and costs of restoring lost data, arising out of, or in any way connected with this agreement.

9.3 **Limited liability:** subject to clauses 9.1 and 9.2 above, Unify's total aggregate liability for the term of the Services Agreement in respect of all claims arising under the Services Agreement (including in relation to all enclosures and associated services agreements and other contractual documentation) by way of indemnity or otherwise (including any liability to pay liquidated damages or credit any sums in service credits) shall in no event exceed 100.000,00 Euros.

10 Intellectual property rights and copyrights; defects of title

10.1 Unless otherwise agreed, Unify shall provide the services free from third parties' intellectual property rights and copyrights (hereinafter referred to as "IPR") with respect to the country of the place of destination. If a third party asserts a justified claim against Customer based on an infringement of an IPR with respect to the Services made by Unify and then used in conformity with the Services Agreement, Unify shall choose whether to (i) acquire, at its own expense, the right to use the IPR with respect to the Contractual Products concerned or (ii) modify the Contractual Products so that they no longer infringe the IPR or (iii) replace the Contractual Products.

10.2 The above obligations of Unify shall only apply if Customer (i) immediately notifies Unify of any such claim asserted by the third party in writing, (ii) does not concede the existence of an infringement and (iii) leaves any protective measures and settlement negotiations to the discretion of Unify. If Customer stops using the Contractual Products in order to reduce the damage or for other good reason, it shall be obliged to point out to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.

10.3 Customer's claims shall also be excluded if (i) Customer is responsible for the infringement, or (ii) the infringement of the IPR is caused by specifications made by Customer, or (iii) due to a type of use not foreseeable by Unify or (iv) due to the Services or Contractual Products being modified by Customer or being used together with products not provided by Unify.

11 Confidentiality

"Confidential Information" means any information supplied by or obtained from one party ("the Disclosing Party") to or by the other ("the Receiving Party") that is confidential to the Disclosing Party, information marked as confidential and/or information concerning business, finance, personnel and internal procedures.

11.1 Confidential Information shall not include information that: (a) at the time of receipt by the Receiving Party was already published or was otherwise generally available to the public through no act or omission of the Receiving Party or breach of any Agreement, (b) subsequent to receipt by the Receiving Party is published or becomes generally available to the public otherwise than through the Receiving Party's default hereunder; (c) the Receiving Party can demonstrate was rightfully in its possession prior to the time of receipt from the Disclosing Party; (d) becomes known independently to the Receiving Party from any third party who did not acquire it under pledge of secrecy; or, (e) is independently developed by the Receiving Party.

11.2 Confidential Information may only be used by the Receiving Party for the purposes of the Services Agreement and may not be disclosed to any third party without the express written consent of the Disclosing Party.

11.3 The Receiving Party shall: (a) treat all such Confidential Information as strictly confidential; (b) not disclose any Confidential Information in any way to any third party without the consent of the Disclosing Party nor to any employee of the Receiving Party except as is necessary in the performance of obligation under this Agreement; (c) ensure that all those of its officers or employees to whom the Confidential Information is disclosed are made aware of the confidentiality of the same and bound in writing to adhere to the provisions in this Clause 18; (d) require any third party to whom Confidential Information is disclosed to enter into a written confidentiality and non-disclosure agreement no less restrictive than this Agreement; (e) not use any Confidential Information in any way except in fulfillment of obligations under this Agreement and in particular (without limiting the generality of the foregoing) shall not use any Confidential Information for any purpose competitive with the Disclosing Party or in such a way as to obtain any commercial advantage over the Disclosing Party.

11.4 If a Receiving Party is required by law, regulation, or court order to disclose Confidential Information of the Disclosing Party, the Receiving Party shall (to the extent permissible at law):

11.5.1 promptly notify the Disclosing Party;

11.5.2 reasonably cooperate with Disclosing Party to minimize such disclosure; and

11.5.3 to otherwise protect the confidentiality of such Confidential Information under the relevant circumstances.

11.5 The nondisclosure obligations described herein shall survive termination or expiration of the Services Agreement for a period of five (5) years.

11.6 Unify shall be entitled to pass on Information to subcontractors provided that such subcontractors are bound by an obligation of secrecy equivalent to this provision.

12 Personal Data

12.1 To the extent Personal Data are being processed, the Parties expressly agree that they respectively share the roles and responsibilities of a Controller as follows:

- Unify (i) defines the means of the Processing, (ii) the purpose of Processing, (iii) is in charge of implementing the security measures, and (iv) is responsible for making notification of Personal Data Protection breach to data protection authorities, if needed, in relation to breach in iii) above
- Customer (i) is responsible for the accuracy of Personal Data provided to Unify for Processing (ii) is responsible for informing the data subjects about the processing of their Personal Data and the modalities for the exercise of their rights.

12.2 Prior to purchasing services covered by this Enclosure, Customer shall execute the Data Processing Agreement for Resale and Co-Delivery Services and Commercial Processing (DPA) with Unify provided under <https://unify.com/en/data-protection> via a click and accept function.

13 Export approvals

- 13.1 Unify's obligations are subject to the proviso that the fulfillment is not prevented by any impediments arising out of national and international foreign trade and customs requirements or any embargos or other sanctions.
- 13.2 If the customer transfers goods (for the purpose of this clause goods refers to hardware and/ or software and/ or technology as well as corresponding documentation, regardless of the mode of provision) delivered by Unify, or works or services (including all kinds of technical support) performed by Unify, to a third party, or if Customer re-exports such goods, works or services, the customer shall comply with all applicable national and international export/re-export control regulations of the Federal Republic of Germany, the European Union, the USA and with the applicable national export law.
- 13.3 Prior to any transfer or export/re-export of goods, works or services, Customer shall in particular check and guarantee by appropriate measures that
- there will be no infringement of an embargo imposed by the Federal Republic of Germany and/or the European

Union and/or the United States of America and/ or the United Nations by such transfer or export, by brokering of agreements concerning those goods, works or services or by provision of other economic resources in connection with those goods, works or services, also considering the limitations of domestic business and prohibitions of by-passing those embargos;

- such goods, works and services are not intended for use in connection with armaments, nuclear technology or weapons, if and to the extent such use is subject to prohibition or authorization, unless the customer has obtained the required authorization;
- Customer is in compliance with the regulations of all applicable Sanctioned Party Lists of the European Union and the United States of America concerning the trading with entities, persons and organizations listed therein.

13.4 If required to enable the relevant authorities or Unify to conduct export control checks, the customer, upon Unify's request, shall promptly provide Unify with all relevant information pertaining to the particular end customer, the particular destination and the particular intended use of goods, works and services provided by Unify, as well as any export control restrictions existing.

13.5 Customer shall indemnify and hold harmless Unify from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any noncompliance with export control regulations by Customer, and Customer shall compensate Unify for all losses and expenses resulting thereof.

14 Transfer of contractual rights and duties

Unify shall have the right to transfer, assign or otherwise dispose of any of its rights and obligations under the Services Agreement in whole or in part, by operation of laws or otherwise, without the requirement of a prior written consent of Customer, and provided that the assignee has at least the same requisites than the assignor in terms of solvency. For purposes of the Agreement, an "assignment" under this Section will be deemed to include, without limitation, the following: (a) a merger of Unify where Unify is not the surviving entity; (b) any transaction or series of transactions whereby a third party acquires direct or indirect power to control the management and policies of Unify, whether through the acquisition of voting securities, by contract, or otherwise; or (c) the sale of more than fifty percent (50%) of Unify's assets (whether in a single transaction or series of related transactions).

Part II. Supplementary Terms for Consulting and Design Services

1 Scope

These Supplementary Terms shall apply to consulting and design services.

2 Cooperation between the contracting parties

- 2.1 Unify shall assist Customer in its projects with consulting and design services. Customer shall bear responsibility for the project and overall results.
- 2.2 Unify shall render the services in accordance with the service specifications and the state of the art.
- 2.3 If an employee is prevented from rendering performance due to illness, vacation or other reasons beyond the control of Unify, Unify shall, at the request of Customer, immediately deploy another suitable employee. In other respects, Unify may replace its employees at any time with other suitable employees.

3 Amendments of the scope of services, delays in operations

- 3.1 If change requests by Customer or other circumstances for which Customer is responsible lead to increased expenditure, then Unify shall communicate this without delay in writing to Customer. Unify shall charge for these services on a usage basis, unless it has been agreed otherwise.
- 3.2 Each contracting party shall be entitled, during the term of the Service Agreement, to submit change requests in writing in relation to the agreed services.
- 3.3 In the case of change requests made in writing by Customer, Unify shall respond as quickly as possible, indicating whether

the changes can be carried out and what impact this will have on the performance to be rendered, in particular on the timetable and remuneration.

- 3.4 Where Unify submits change requests, Customer shall be obligated to give notice as quickly as possible of whether he consents to the proposed changes. Unify shall continue the works on the basis of the Services Agreement until notification from Customer.

4 Work results, acceptance, licenses

- 4.1 Upon handover of the work results, e.g. in the form of completion documentation, to Customer, the works shall be deemed to have been completed and performance to have been duly rendered.
- 4.2 All work results produced shall be protected under copyright law. Unify shall grant to Customer the non-exclusive, non-transferable right to use the work results for contractually defined purposes. Customer shall reproduce and disclose the work results and documents only with the prior written consent of Unify.
- 4.3 Unify shall hold documents and objects of any kind which constitute work results in safekeeping for Customer until these are handed over.
- 4.4 Minutes, documentation and similar documents which the customer was permitted to use under this contract shall remain the property of Unify or its subcontractors and must be returned upon request within a reasonable period of time following the termination of the Service Agreement.