General Conditions of Business of inconso GmbH

As of: January 2015

Applicability of the General Conditions of Business

1. These General Conditions of Business (hereinafter, the "*General Conditions*") shall apply to all individual contracts, offers, or other agreements (hereinafter, "*Individual Contracts*") which refer to these General Conditions and which are entered into between inconso GmbH, In der Hub 2 – 8, D-61231 Bad Nauheim, Germany (hereinafter "*inconso,*" "*we,*" "*us,*" or "*our*") and the respective contracting partner of inconso (hereinafter "*Contracting Partner*"), and only if our Contracting Partner is acting in the exercise of its commercial activity or independent business (and therefore is an entrepreneur within the meaning of § 14 of the *Bürgerliches Gesetzbuch* (the German Civil Code, the "*BGB*")) or is a legal entity under applicable public law or an investment fund organized under applicable public law.

2. Our General Conditions—exclusively—shall apply to the Individual Contracts. Divergent, contradictory, or complementary general terms and conditions of business of our Contracting Partners shall become a constituent contractual element only to the extent that and insofar as we have, in writing, expressly consented to their applicability. This consent requirement shall apply in every case, also, for example, if with full knowledge of the Contracting Partner's general terms and conditions of business, we accept, without reservation, payments from the Contracting Partner.

3. Every Individual Contract shall be regarded as a separate contract without legal effect to any other Individual Contract concluded between inconso and the Contracting Partner.

Part A
General Conditions of Business

I. Applicability

1. These General Conditions of Business Part A shall apply to all Individual Contracts between our Contracting Partner and us, in the personal scope of applicability defined above.

2. In each case, the heading "Applicability" shall govern to which extent the special conditions in Part B, Part C, Part D, Part E, and/or Part F shall apply in addition to these General Conditions of Business Part A. To the extent that a provision in those special conditions stands in contradiction to a provision in Part A of these General Conditions, the provision in the special conditions shall, as a special-case provision, take precedence over said provision in these General Conditions of Business Part A.

II. Scope of services; data back-up by the Contracting Partner; subcontractors; migration of legacy data

1. The scope of services which we are obligated to provide shall result from each respective Individual Contract. To the extent that the provisions of the Individual Contract contradict these General Conditions, the provisions of the Individual Contract shall take precedence.

2. In the absence of a separate order, we are not obligated to conduct a review for completeness and accuracy of the task and of the description of the services by the Contracting Partner, or of the data, information, or services made available by it, unless there is reasonable cause. The Contracting Partner shall be responsible for suitably backing up—prior to software installations on the computers or to works on Contracting Partner's computers—the data stored on them. Moreover, the Contracting Partner shall be obligated to create proper backup copies of its data at regular intervals.

3. Whenever we express recommendations for the use of hardware components and peripheral devices, then the customization of peripheral devices used at the request of or installed by the Contracting Partner, and not covered by this recommendation, shall not be included within the scope of services. Customization, in the individual case, can be very time- and cost-intensive. In the event that an order for customization is placed without a coterminous fee agreement, payment shall be provided according to the amount of time expended, in accordance with our current price list, as amended.

4. For purposes of providing our services, we shall have the right to use independent subcontractors, whereby we shall always remain directly obligated to the Contracting Partner. Using our own discretion, we shall decide which vicarious agents we shall employ or exchange. We alone shall retain the right to instruct the employed vicarious agents.

5. In the event that we shall migrate existing data of the Contracting Partner into the software provided by us, then no warranty or other liability shall be assumed by us for the content and the consistency of that data, unless otherwise stipulated in the individual case.

III. Cooperation of the Contracting Partner

If and to the extent that our services extend only to the delivery (and, as applicable, the licensing) of hardware or software, the following provisions governing the cooperation obligations shall apply for our Contracting Partner:

1. The cooperation of the Contracting Partner shall be a prerequisite for us to provide our services as scheduled. Should the Contracting Partner be delayed in providing the required and owed cooperation, our time and efforts for the project will increase, and the subsequent dates will be postponed. The Contracting Partner acknowledges that postponing subsequent dates does not have to be commensurate with the caused delay, but can also be shorter or lengthier. The length of the date postponement shall, in this case, be determined in accordance with § 315 para. 3 BGB, according to our fair and equitable discretion which is subject to judicial review. Additional expenses incurred by us therefor shall be compensated by our Contracting Partner (see Article III Sect. 5).

2. Furthermore, we shall have the right to terminate the respective Individual Contract for cause if the Contracting Partner, despite a minimum of two requests in conjunction with a one-time, appropriate deadline set and a threat of termination, has not provided subsequent performance for the act for which it finds itself in delay.

3. The cooperation obligations of the Contracting Partner during a project shall, as a rule, be governed by separate agreement. Insofar as nothing is provided in the individual case, the Contracting Partner, however, in each case, shall:

   a) specify, at a minimum in text-form, the demands made by the Contracting Partner on the subject matter of the contract.

   b) make available the files and information necessary to provide services including, but not limited to, information concerning existing facilities, devices, programs and program components, which should act in concert with the services to be provided.

   c) warrant the timely preparation of test data.

   d) document, in comprehensible form, malfunctions ascertained during the testing or actual operation of provided services, and report such malfunctions to us without undue delay.

   e) provide at its own expense facilities, equipment, and professionally qualified personnel for cooperation, to the extent necessary to provide our services.

   f) make timely investment decisions necessary within the parameters of the project and arrange for such investments.

   g) procure us the right to use the systems of third parties, to the extent necessary in order to provide the services owed in accordance with the respective Individual Contract.

4. For the purpose of clarifying all questions concerning the project during its entire term, our Contracting Partner shall provide us with a contact person duly authorized to make decisions. This contact person shall, in particular, carry out the decisions of the Contracting Partner in a timely manner so that no delay in the progress of the project occurs due to the omission of or untimely decisions by the Contracting Partner. If the contact person is absent due to vacation or illness, the Contracting Partner shall ensure that an authorized deputy is available.

5. We are allowed to additionally invoice for time and expense at our hourly rates, as they may change from time to time, for down periods during which we, or our vicarious agents, cannot work productively because the Contracting Partner has not complied with its cooperation obligations in a due, complete, or timely manner. The right to prove lesser damages shall be reserved to the Contracting Partner. We shall be obligated to maintain a logbook during the project for this purpose. Down periods mandating payment may occur by means of, for example:

   a) unavailability of the Contracting Partner's contact person, if such should result in down periods;

   b) missing or incorrectly operating hardware and/or software components from within the Contracting Partner's area of responsibility (e.g., databank, LAN requester, access authorization);

   c) unavailability or down period of communications networks from within the Contracting Partner's area of responsibility, insofar as those are technically required for purposes of development, testing, or integration;

   d) unavailable or faulty interfaces or interface programs insofar as such are to be installed by the Contracting Partner; and/or

   e) delayed provision of the Contracting Partner's test data or any unwarranted delay in acceptance.

   We shall inform the Contracting Partner without undue delay in the event of one of the above-mentioned or a comparable case (e.g., corresponding acts/omissions by third parties on behalf of the Contracting Partner).

IV. Delivery dates, obstructions to delivery, reservation of self-delivery

1. Delivery dates or dates for the provision of our services shall be binding only when they have been expressly agreed with the Contracting Partner as binding.

2. In the absence of a binding delivery and/or service deadline, we shall determine the delivery and/or service deadline at our fair and equitable discretion, which is subject to judicial review.

3. Occurrences of *force majeure* unforeseeable upon contract formation, which make provision of services materially more difficult or impossible for one party, shall give the affected party the right to postpone fulfillment of this obligation by a reasonable phase-in period. Equivalent to *force majeure* shall be labor unrest in the operations of the parties or labor unrest in third-party operations, and similar circumstances, by which the parties are directly or indirectly affected, such that timely cooperation of the Contracting Partner, or our delivery and/or provision of services, shall be impossible, at no fault of the responsible party.

4. If, despite entering into a congruent coverage contract ("*Deckungsgeschäft*"), we do not receive timely delivery from a supplier known to be reliable, the applicable dates for providing our deliveries and services shall be extended by a reasonable period of time, to be determined by us, at our fair, equitable, and verifiable discretion.

5. If a delay due to one of the circumstances mentioned in Article IV Sects. 3 or 4 makes it unreasonable that we perform the contract, when we are not responsible for the circumstances which have caused the delay, we shall have the right to withdraw from the respective Individual Contract concerned.

6. The following dates shall be defined as "Holidays": 1 January, Good Friday, Easter Sunday, Easter Monday, 1 May, Ascension Day, Whit Sunday, Whit Monday, 3 October, 24 December, 25 December, 26 December, and 31 December.

V. Fees, allowances, expenses, payment default

1. Fees to be paid by the Contracting Partner for the services provided by us shall be agreed in the respective Individual Contract. Unless stipulated otherwise, all agreed payments shall be tendered in Euro, plus value-added tax (*Umsatzsteuer*) and any costs for transportation and packaging. With regard to the calculation of down periods, the Article III Sect. 5 applies.

2. In calculating travel times and expenses for working nights, weekends, and Holidays, the following provisions shall apply:

   a) Surcharges: to the extent that the parties agree to fees on a "time and material" basis, the following surcharges shall be booked on the stipulated general fee rates, if, on our part, the order requires work at these times, which we shall decide using our reasonable discretion. Prior to beginning work in this period, we shall inform the Contracting Partner if we consider it necessary to work at these times, if such is possible for us by using the communications data, provided to us by the contact person of our Contracting Partner. In cases of particular urgency, such notification shall be dispensable. We shall not have to wait for any consent of the Contracting Partner to commence work.

      aa) For working on Saturdays (9:00 a.m. to 5:00 p.m.) 50%

      bb) For working on Sundays and Holidays, and for working at night: (Monday through Saturday before 9:00 a.m. and/or after 5:00 p.m.) 100%

   b) Travel times: such shall be invoiced at the general hourly rates.

   c) Expenses: to the extent that nothing otherwise contractually agreed, the following ancillary costs shall be charged:

      aa) travel costs using a personal automobile: € 0.80/km

      bb) parking fees, train fare, flight costs, taxis, rental cars, lodging, and other travel costs at cost, upon submission of respective invoice copies.

      cc) reimbursement of telecommunications expenses, to the extent that these are incurred in order to carry out work by data transmission.

3. All payment is to be settled by the Contracting Partner within fourteen (14) days of receipt of the respective invoice from us, by transfer to the bank account listed on the invoice. If the Contracting Partner is a merchant, we shall have the right to demand maturity interest ("*Fälligkeitszinsen*") in the amount of 5%. We shall be entitled to default interest ("*Verzugszinsen*") in the amount of nine (9) percentage points above the applicable base interest rate, in accordance with § 247 BGB, commencing as of the default date. In the event of default of payment, we may also invoice liquidated damages in the amount of € 40.00 pursuant to § 288 para. 5 sent. 1 to 3 BGB. Additional claims for compensatory damages shall remain unaffected.

4. If a Contracting Partner enters into default in payment of an invoice and fails to remedy such with complete payment, despite a reminder, within seven (7) days from delivery of the reminder, all of the liabilities already invoiced to it by us shall mature immediately.

5. Should it become clear to us, after entering into an Individual Contract, that our fee claim is being placed in jeopardy due to the inadequate ability of the Contracting Partner to perform payment, we shall be able to refuse provision of services, if the consideration is not effected or security for it is not posted. In addition, § 321 BGB shall apply.

VI. Counterclaims, assignment

1. Our Contracting Partner shall be able to offset against our claims only with undisputed counterclaims or counterclaims determined by a final court judgment. The Contracting Partner may exercise its retention right only to the extent that its counterclaim is based upon the same contractual relationship.

2. Our Contracting Partner shall be allowed to transfer to third parties the claims to which it is entitled from Individual Contracts with us only with our prior written consent, provided that monetary receivables claims are not at stake. If the Contracting Partner is not a merchant, it shall also be prohibited from assigning monetary claims.

VII. Acceptance

1. To the extent that, in accordance with an Individual Contract, we are to provide works within the meaning of §§ 631 *et seqq.* BGB, such shall require acceptance. This requirement shall not apply to ancillary services provided including, but not limited to, consulting and other supporting services.

2. Acceptance has to be effected in accordance with the following provisions:

   a) Acceptance has been effected when, as between the Contracting Partner and us, a formal acceptance has taken place; the specific details for such are agreed, as necessary, in the Individual Contract.

   b) In the event that no formal acceptance has taken place, the acceptance shall be deemed effected

      i) if we have installed the software for the Contracting Partner,

      ii) and have either

      - transferred the user information in physical or in electronically readable form to the Contracting Partner, or

      - instructed the Contracting Partner in the software by personally training employees selected by the Contracting Partner,

      iii) and if the Contracting Partner has subsequently used the program during a period of two (2) weeks and has not filed any defect complaints which would establish grounds for refusing acceptance. Statutory regulations under which acceptance is deemed effected following a reasonable deadline set by us, if the Contracting Partner has not accepted, although it would have been obliged to do so, remain unaffected.

3. To the extent that partial acceptances have been agreed and/or acceptances from partial performance take place, we have the right to withhold further partial performance as long as the Contracting Partner is in default with the acceptance of partial performance or with the payment for any accepted partial performances.

4. It is not permitted to decline acceptance due to non-material defects. Material defects are those that render impossible the practical, i.e. economic use of the works, or otherwise unreasonably restrict or hinder such use.

VIII. Warranties

1. If the Contracting Partner, in the event of entering into a purchase and sale contract or works contract, is entitled to warranty claims for defects of sold goods or in works, the limitation period for warranty claims shall amount to one (1) year from the delivery of the good in case of a purchase and sale contract for a new good, and one (1) year from acceptance in case of a works contract. The statutory limitation periods shall, however, not be affected for malicious non-disclosure of a defect, for assumption of a guarantee of quality, for injury to life, body, or health, and for gross negligence.

2. If, in an individual case, a used good is sold, all warranties shall be excluded. Article VIII. Sect. 1 sent. 2 shall apply *mutatis mutandis.*

3. If we are to provide warranties for a defect under a purchase and sale contract, we shall have the right provided by § 439 para. 1 BGB to elect whether to remedy the defect by subsequent repair ("*Nachbesserung*") or by delivering a defect-free article ("*Nachlieferung*").

4. To the extent that nothing otherwise is expressly stipulated in the respective Individual Contract, we do not provide any guarantee of durability or of quality within the meaning of § 443 BGB.

5. For purchase and sale contracts, there shall be an obligation to inspect and to file defect complaints, in accordance with § 377 of the *Handelsgesetzbuch* (the German Commercial Code, the "**HGB**"), if the Contracting Partner is a merchant within the meaning of the HGB. This obligation shall apply respectively to works contracts.

6. It is expressly declared that warranty claims of the Contracting Partner arising from an Individual Contract (e.g., for defects in the delivered hardware), shall not extend to any other Individual Contracts entered into in connection therewith (e.g., governing the licensing of standard software or governing the provision of professional services), unless expressly stipulated in the respective Individual Contract.

IX. Liability disclaimers

1. Claims against us and our legal representatives and vicarious agents for compensatory damages of any and all kinds shall be excluded, except for instances of malice, gross negligence, or the breach of a contractual core duty. If we have breached a contractual core duty (for this purpose, see the following paragraph) with slight negligence, liability shall exist; however, such shall be limited to the payment of typically foreseeable damages.

2. Contractual core duties, abstractly, are such duties whose accomplishment enables proper fulfillment of the respective contract in the first place and whose fulfillment a contractual party regularly may rely on.

3. Liability for gross negligence of our vicarious agents, to the extent that these are not executive employees, shall be, however, limited to the payment of typically foreseeable damages. This limitation of liability shall not apply for breach of contractual core duties within the meaning of the previous paragraph.

4. The preceding limitations on and exclusions of liability above shall not apply in cases of injury to life, body, or health or to liability under the *Produkthaftungsgesetz* (the Products Liability Act) or other laws which serve to implement the European Product Liability Directive (85/374/EC) into national law.

X. Non-Solicitation

If and to the extent that our services extend only to the delivery (and, as applicable, the licensing) of software or hardware, the Contracting Partner, during the term of the contract and within a year after the expiration of the respective individual project contract, shall be obliged to refrain from actively engaging in any soliciting of any of our employees, or from attempting to do so.

XI. Non-disclosure

1. Until the expiration of five (5) years following termination of any respective Individual Contract, the Contracting Partner shall be obligated to refrain from making any of our confidential information, which has been transmitted by us, either directly or indirectly accessible to third parties, and to refrain from using the confidential information for any purposes other than for executing the respective Individual Contract under which the Contracting Partner gained knowledge of our confidential information. Our 'confidential information' shall be all information (i) regarding the details of the respective Individual Contract (including the contents of the respective offer), (ii) all of our know-how and our technical information made accessible to the Contracting Partner within the scope of the Individual Contract, (iii) other information designated by us as being confidential, and (iv) our operational and business secrets, if and to the extent that such do not fall under (i) through (iii).

2. The non-disclosure obligations under the previous paragraph shall not apply to confidential information of ours (i) which was demonstrably known to the Contracting Partner prior to its being notified by us or prior to acquiring the knowledge and has not been disclosed through a breach of the non-disclosure obligation by a third party, (ii) which was known or generally accessible to the public before being disclosed to the Contracting Partner, (iii) which, after having been disclosed to the Contracting Partner, has become known or generally accessible to the public without collaboration or fault of the Contracting Partner, and/or (iv) which is to be disclosed within the scope of an official, judicial, or arbitration proceeding.

XII. Intellectual property/protection rights

1. To the extent not expressly stipulated in the respective Individual Contract or in these General Conditions, we and our suppliers shall retain, in relation to the Contracting Partner, all property rights in our registered trademarks, in the Standard Software (as defined in Part B, below), the respective documentation, all Updates (as defined in Part E, below), all Professional Services (as defined in Part C, below), all Support Services (as defined in Part F, below), and all other work results, and all intellectual property rights contained in the above elements or affiliated therewith. All rights not licensed expressly by us within an Individual Contract or within these General Conditions shall be reserved.

2. In relation to us, the Contracting Partner shall retain all property rights in any and all confidential information of the Contracting Partner and in all pre-existing intellectual property rights of the Contracting Partner.

XIII. Code of Conduct

inconso's employees are instructed to strictly comply with all applicable statutory regulations and the Values and Principles of Körber AG as set out in Körber AG's Code of Conduct (www.koerber.de/compliance). In particular, inconso's employees are not allowed to demand or to accept any inappropriate favors and donations, or to accept any promise hereof.

XIV. Final Provisions

General Conditions of Business of inconso GmbH

As of: January 2015

1. These General Conditions and all Individual Contracts shall be governed by the law of the Federal Republic of Germany with the exception of the United Nations Law on the Sales of Goods (CISG, United Nations Convention on Contracts for the International Sale of Goods, dated 11 April 1980) and the provisions on International Private Law.

2. Hamburg shall be the place of performance for all duties arising out of the contractual relationship with the Contracting Partner and the exclusive venue for any legal disputes.

Part B
Special terms and conditions for standard software licensing

I. Applicability

These special terms and conditions for standard software license agreements, Part B, shall apply as a complement to the provisions in the General Terms and Conditions, Part A, to the extent that the purpose of an Individual Contract is (also) the supplying and licensing of standard software (defined below), be it software issued by us or by a third party.

II. Service parameters, content and parameters of rights of use

1. The scope of service can encompass the delivery and licensing of standard software which was either issued by us as standard software or manufactured and sold by third parties as standard software (hereinafter, "*Standard Software*").

2. To the extent nothing otherwise has been stipulated, elements of the Standard Software shall be:

   a) the machine-readable object code

   and

   b) the documentation and/or function specification created either by us or by a third-party manufacturer

3. The following shall not be an element of the Standard Software: system software which, in connection with the delivery of hardware, is either already permanently installed on it, or after setup and/or installation of the hardware, has to be installed on it. **The terms and conditions contained in Part D shall apply as a complement to the system software.**

4. The Contracting Partner shall take notice that the Standard Software is protected under copyright law, and that the copyright use and exploitation rights belong either to us or to the respective manufacturer.

5. We shall grant the Contracting Partner the non-exclusive (simple), non-sub-licensable right, unrestricted as to time, to use the Standard Software manufactured by us for specific purposes described in the Individual Contract, at the installation locations stated therein.

6. The use right granted under Sect. 5 to the Contracting Partner shall be restricted to the number of users (named users) stipulated in the Individual Contract, and in terms of place, shall be limited to computer equipment located in its immediate possession and serving the purposes of use.

7. It is expressly declared that—to the extent that nothing else has been expressly stipulated in the underlying Individual Contract—a license shall be, in each instance, restricted to one (1) computer belonging to the Contracting Partner. The Contracting Partner shall not be entitled to transfer the Standard Software installed on its computer to additional computers without acquiring additional licenses. Such shall not cover cases in which a computer must be exchanged for technical reasons. In this case, the Contracting Partner shall, however, be obligated to completely delete the installed Standard Software from the earlier computer once the Standard Software has been transferred to the new computer.

8. The Contracting Partner may reproduce the Standard Software only if the respective reproduction is necessary to use the Standard Software. Necessary reproductions shall include, but not be limited to, installing the Standard Software from the original data carrier onto the bulk storage of the hardware being used and loading the Standard Software onto the main memory. Upon demand, the Contracting Partner shall be obligated to provide us with information as to the number of completed reproductions of the Standard Software.

9. The Contracting Partner shall be able to translate, alter, or decompile the Standard Software only in accordance with §§ 69e, 69f of the *Urheberrechtsgesetz* (the Copyright Act). It shall be possible to acquire from us the required interface information created by us for the purpose of producing interoperability between the Standard Software we have produced and an independently of created computer program.

10. The Contracting Partner is to inform us in writing anytime it intends to forward to third parties any copies handed to it.

11. Sharing the Standard Software with third parties shall generally be impermissible for the purposes of transferal to third parties, in part or for a limited time, in exchange for payment (rental), or in regions outside the European Economic Area.

12. Apart therefrom, every further use of the Standard Software shall necessitate our prior, express, and written consent, which we may make dependent upon commensurate consent of the manufacturer.

13. To the extent that the purpose of the contract is the delivery of the Standard Software manufactured by a third party, the Contracting Partner shall be obligated, in addition to the obligations in accordance with this provision, to adhere to the licensing conditions set forth by the respective manufacturer for this Standard Software including, but not limited to, the provision that this Standard Software shall not be reproduced contrary to the provisions of the respective third-party manufacturer and that a sufficient quantity of licenses shall always be available for the intended use—even in the case of a subsequent expansion of the use by the Contracting Partner.

III. Delivery

1. The Contracting Partner shall receive the number of copies of the Standard Software required for any granted license in machine-readable format, either stored on data carriers or provided as a download, at our discretion.

2. In addition, for each copy of the Standard Software, the Contracting Partner shall furnish a copy of the user documentation issued by us and/or created by a third-party manufacturer, and made available to us for providing to the Contracting Partner. We shall also be able to fulfill this obligation by furnishing electronic help embedded in the Standard Software or by making it possible to retrieve the user documentation directly from the Standard Software.

3. The Contracting Partner shall notify us in writing of each installation location of the licensed product(s) for us to forward this information to the manufacturers of any used third party products. Such shall also apply to changes in installation locations as well as for any sale of the licensed product(s).

IV. Service delimitations

The following of our services shall not fall within the scope of the licensing of Standard Software under these supplemental terms and conditions, Part B, and therefore shall not, in the absence of a divergent agreement, be included in the fees stipulated in the respective Individual Contracts:

   a) installation of the Standard Software at the Contracting Partner's premises;

   b) individual setting of variable parameters of the Standard Software to meet the demands of the Contracting Partner (customization);

   c) individual enhancement of the Standard Software for the Contracting Partner (individual modifications);

   d) adjustment of interfaces of the Standard Software to the requirements of the Contracting Partner;

   e) instruction and training of the Contracting Partner's program users; or

   f) maintenance and support for the Standard Software, particularly delivery of new program versions.

V. Payment terms

The fee shall be due as follows:

   a) 30% of the stipulated fee after entering into each Individual Contract.

   b) 70% of the fee after delivery of the Standard Software to the Contracting Partner as set forth in Part B, Article III.1.

   c) To the extent that, as agreed, delivery is performed in several parts, the second installment (70% in accordance with this Article V. b) shall be payable in the amount of the value of each partial performance following the provision of this partial performance.

   d) Any additionally accruing fees shall be payable following the provision of the underlying performance.

VI. Warranties—provisions complementary to Part A, Article VIII.

1. If claims are made by a third party against the Contracting Partner for defects of title ("Rechtsmängel"), the Contracting Partner, without undue delay, is to inform us of the claim being lodged. To the extent that, following review of the legal situation, we are of the view that no defects of title exist, the Contracting Partner shall, in consideration of a costs indemnification, authorize us to do everything in our discretion to defend the Contracting Partner, at our expense, against the third party which is asserting its rights. The Contracting Partner shall grant us—and, upon our demand, the manufacturer as well—full and complete powers of attorney and the authorization necessary to defend it against the third-party rights being asserted.

2. In the event defects of title do exist, we shall have the right, at our discretion—either ourselves or through the manufacturer:

   a) to clear by any means adequate the rights of the third parties or the assertion thereof, which rights are impairing the contractually appropriate use of the Standard Software

   or

   b) to modify or to replace the Standard Software in such a manner that it no longer infringes the rights of third parties, if and to the extent the warranted functionality of the Standard Software is not impaired.

3. Should the Standard Software have defects in quality ("Sachmängel"), the Contracting Partner shall be able to demand that we remedy that defect within a reasonable time period. If the defect does not impair the functionality of the Standard Software, or does so only insignificantly, we shall have the right, under exclusion of further warranty rights, to cure the defect by means of delivering a new version or an update within the parameters of the general version and update planning.

4. To the extent that the copies of the Standard Software and the respective documentation forwarded to the Contracting Partner by us are, when compared with the other copies and documentation of the software, not of average type and quality, the Contracting Partner shall be able to demand subsequent delivery only of units of average type and quality.

5. Costs incurred by us due to unjustified defect complaints by our Contracting Partner shall be reimbursed by the Contracting Partner if the Contracting Partner could have recognized, through application of the usual standard of care in business, that the defect complaint was unjustified.

Part C
Special terms and conditions for professional services

I. Applicability

These special terms and conditions for professional services, Part C, shall apply as a complement to the provisions in the General Terms and Conditions Part A, to the extent that the purpose of the Individual Contract is (also) the provision of professional services: i.e., in particular (i) the installation, individual customization/parameterizing and the bringing into service of the Standard Software and/or hardware sold by us, (ii) the individual customization effected for the Contracting Partner and/or enhancement of Standard Software and/or creation of independently operating software effected for the Contracting Partner (hereinafter collectively "Creation of Individual Software"), (iii) training or other support of the employees of the Contracting Partner, (iv) the migration of data or other software components, and (v) the provision of other consulting services. These special terms and conditions shall not apply to services provided as part of any software maintenance services or support services agreement.

II. Scope of services/use rights

1. The type and scope of the professional services to be provided including, but not limited to, any scheduled time frames, the services to be specifically provided by us (hereinafter, the "***Deliverables***") and any payment targets/milestones, shall be established in the respective Individual Contract.

2. The Contracting Partner shall be entitled to use the Deliverables and all other work results created by us as part of any professional services and provided to the Contracting Partner to the same extent as the Standard Software to which the work results relate. To the extent that the work results do not relate to Standard Software manufactured by us, we grant a non-exclusive (simple) and non-sub-licensable, unrestricted as to territory and time, right to use the work results for the purposes set forth in the respective Individual Contract.

3. To the extent that the Contracting Partner is granted an exclusive right to use the work results provided by us under this contract by reason of an individual agreement, we shall maintain the right to use, for the purpose of our own business operations, our own knowledge and the knowledge of our employees used for creating those work results and any tools, methods, and procedures used, which are designated or suitable for subsequent use in the context of other services. Such shall not apply to knowledge, which relates exclusively to particular features of the business operations of the Contracting Partner.

4. Source codes are not included in the scope of delivery, also with respect to cases of Creation of Individual Software.

III. Termination

1. The right to terminate, at any time, an Individual Contract for the provision of professional services as contemplated under § 649 BGB shall be precluded. The right of both parties to terminate such an Individual Contract for cause shall not be affected.

2. Cause shall include, but not be limited to, cases wherein:

   a) the Contracting Partner has ceased its business operations or has announced the cessation of its business operations;

   b) legal recourse for enforcement of receivables from the respective Individual Contract or from earlier Individual Contracts with the Contracting Partner has remained unsuccessful;

   c) the Contracting Partner breaches its duties to cooperate, and despite our written request, does not comply with its duties to cooperate within a reasonable time period, which must be at least fourteen (14) days.

3. Terminations shall require the written form. A termination or ending of one Individual Contract shall not affect the term and/or effectiveness of any remaining Individual Contract and/or any other agreement existing between the Contracting Partner and inconso.

IV. Payment terms

1. To the extent that fees have been stipulated upon a "time and material" basis, the respective fees shall be due and invoiced by us monthly.

2. To the extent that a fixed fee has been stipulated, its maturity shall be based upon payment targets fixed in the Individual Contract. To the extent that no provision has been stipulated in the Individual Contract, Part B, Article V shall apply *mutatis mutandis*.

V. Warranties—provisions complementing Part A, Article VIII.

As a supplement to the provisions in Part A, Article VIII, the provisions in Part B, Article VI, shall apply *mutatis mutandis* to professional services.

Part D
Special terms and conditions for the sale of hardware and corresponding system software

I. Applicability

These special terms and conditions of business for the sale of hardware and corresponding system software, Part D, shall apply as a complement to the provisions in the General Terms and Conditions of Business, Part A, insofar as the purpose of an Individual Contract is (also) the delivery of hardware components.

II. Scope of services

1. Our business activity does not encompass the manufacturing of hardware. Therefore, to the extent that delivery of hardware components is agreed in an Individual Contract, we expressly declare that we have not manufactured them.

2. The scope of services shall be based exclusively upon the contractual agreements. To the extent that upon delivery and/or installation it should result that additional hardware components are necessary, such are to be ordered separately and to be paid for or procured by the Contracting Partner itself.

3. The Contracting Partner shall be obligated to use the system software delivered for the hardware components, i.e.,

   a) the accompanying system software delivered, which has to be installed on the hardware after setting up and/or installing the hardware;

   b) software components already permanently integrated into the hardware;

   solely in accordance with the respective licensing conditions of each manufacturer of this software.

III. Payment terms

1. Unless agreed otherwise, payment for the hardware shall be due as follows:

   a) 30% after entering into the respective Individual Contract.

   b) 70% after delivery of the hardware.

2. To the extent that at the time of delivery of the hardware, the installation and/or customization of any software possibly ordered in tandem with the hardware has not yet occurred, such shall not prevent the maturity of the proportionate share of the purchase price for the hardware.

IV. Ownership proviso, current account proviso

1. The hardware delivered shall remain our property until complete payment of the share of the purchase price for the hardware.

2. Moreover, the delivered hardware shall remain our property until the final payment of all our receivables arising from the transaction connected with the acquisition of the hardware (acquisition and licensing of Standard Software and/or licensing and customization of Standard Software).

3. The Contracting Partner shall not be allowed to sell, to pledge, or to transfer to third parties as security the proviso goods standing as our sole or jointly held property. The Contracting Partner shall be prohibited from pledging, from transferring as security, or from assigning as security.

4. Should the effectiveness of the ownership proviso necessitate the cooperation of the Contracting Partner, e.g., with registrations necessary under the law of the buyer's country, the Contracting Partner is to perform actions of this type.

5. If objective prerequisites for the obligation to file for bankruptcy are satisfied with the Contracting Partner, it is to refrain from every disposal over the proviso goods, regardless of the nature thereof, and a corresponding request for such shall not be necessary. In such a case we shall, moreover, have the right to withdraw from the contract and to demand the surrender of the proviso goods.

V. Warranties—provisions complementing Part A, Article VIII.

1. Warranties of quality within the meaning of § 434 para. 1 sent. 1 BGB shall require express agreement.

2. To the extent that a defect in quality occurs in the system software installed on the hardware by the manufacturer, this defect in quality shall not justify enforcement of warranty claims for accompanying hardware sold, unless agreed otherwise in the respective Individual Contract.

Part E
Special terms and conditions for software maintenance

I. Applicability

These special terms and conditions for software maintenance contracts (hereinafter: "Maintenance Conditions") shall apply as a complement to the provisions in the General Conditions of Business, Part A, to the extent that maintenance services (as hereinafter defined) are (also) the object of an Individual Contract.

II. Purpose of the contract/preclusion of performance

1. The services provided by us in accordance with these Maintenance Conditions (hereinafter, "***Maintenance Services***") shall always relate to the Standard Software (including, as the case may be, any of its add-ons/enhancements) manufactured by us and specified as the maintained software under the Individual Contract at its location of installation as specified in such Individual Contract (hereinafter, the "***Maintained Software***"). The Maintenance Services shall encompass:

   a) preparation of updated program versions, which eliminate errors in the Maintained Software and/or enhance the Maintained Software with additional functions (hereinafter jointly, the "***Updates***") and, as necessary, the provision of descriptions of modifications for the Maintained Software;

   b) clarification of questions concerning new or modified functionality of the Maintained Software during the standby times stipulated in the Individual Contract, to the extent that the answers are not evident from the descriptions of modifications of the respective Update.

   To the extent not otherwise established in the Individual Contract, the Maintenance Services shall be provided by us electronically (e.g., via e-mail, remote data transmission and/or data carrier exchange).

2. The Contracting Partner shall have the right to use all work results which, in the course of the provision of Updates, are made accessible by us or otherwise furnished by us to the Contracting Partner to the same extent as the respective Maintained Software to which the Maintenance Services relate.

3. Any further services, including, but not limited to, operational support, implementation of Updates, and the customization of Standard Software to the demands of the Contracting Partner, e.g., by establishing or modifying logistical functions or utilizations, are not included in the Maintenance Services.

III. Cooperation of the Contracting Partner

The Contracting Partner shall have the responsibility of executing the measures recommended regarding the Maintenance Services for the Maintained Software installed at the Contracting Partner's premises. The Contracting Partner shall ensure that its employee entrusted with initiating and/or implementing the Maintenance Services possesses the technical qualifications to process the instructions received either electronically or by telephone with respect to the Maintained Software.

IV. Term, termination

1. The term of each Individual Contract shall commence at the time fixed in the Individual Contract as the start of the contract, and shall have an initial term of one (1) year (the "***Initial Term***").

2. Until the expiration of the Initial Term, the Individual Contract may be terminated by both parties with a notice period of three (3) months. If the Individual Contract is not terminated, it shall be tacitly extended for respective one-year periods. Each party shall have the right to terminate an Individual Contract in this manner by adhering to a termination period of three (3) months as of the end of each extension period.

3. The right to terminate an Individual Contract for cause remains unaffected. Cause, for us, shall include, but not be limited to, the following prerequisites:

    a) bankruptcy proceedings are initiated before a court against the assets of the Contracting Partner, or the court declines a petition to initiate them due to a lack of assets;

    b) the Contracting Partner has ceased its business operations;

    c) proceedings before a court against the Contracting Partner for enforcement of receivables arising from the respective Individual Contract or earlier Individual Contracts have remained unsuccessful.

4. Terminations shall require the written form. A termination or ending of one Individual Contract shall not affect the term and/or effectiveness of any remaining Individual Contract and/or any other agreement existing between the Contracting Partner and inconso.

V. Fees

1. The Contracting Partner shall pay a yearly fee to inconso for the Maintenance Services in the amount of 18% of the respective inconso list price (net) of the respective Maintained Software, at the time of Contracting Partner's acquisition of said Maintained Software.

2. The maintenance fee shall be paid annually in advance.

3. Insofar as the scope of service of the respective Maintained Software is enhanced by agreement with the Contracting Partner, the maintenance fee shall increase pursuant to Article V Sect. 1 as of the time at which the Maintained Software is first readied for operation for the Contracting Partner in the enhanced scope of service. Unless otherwise stipulated, the inconso maintenance fee shall increase by 18% of the inconso list price (net) for the enhanced Maintained Software at the time of its acquisition, unless the increase by this percentage rate does not comport with fair, equitable, and verifiable discretion. Until a legally binding decision is made, the Contracting Partner shall remain obligated to pay the increased fee. In the event of an enhancement of the Maintained Software within a one year period, such fee increase shall mature first at the time mentioned in Sent. 1; otherwise, it shall do so each year annually in advance, in accordance with Article V. Sect. 2.

4. Furthermore, the maintenance fee may be increased by us one time within each contractual year, initially upon expiration of the Initial Term, after at least thirty (30) days in advance of our written notification being effected, commensurate to the increase of the index of the average gross monthly earnings of full-time employees in Germany in the information technology services industry (currently published by the *Statistisches Bundesamt* (the Federal Statistical Office) (*Fachserie 16, Reihe 2.2., Gruppe J 62*) Special Series 16, Series 2.2, Group J 62).

Part F
Special terms and conditions for support services

I. Applicability

These special terms and conditions for support services (hereinafter, "Support Conditions") shall apply as a complement to the provisions in the General Conditions of Business, Part A, insofar as support services are (also) the purpose of an Individual Contract.

II. Purpose of the contract

1. The purpose of the services to be provided by us under these Support Conditions (hereinafter, "***Support Services***") shall be to secure disruption-free operation of the systems and/or system components, used by the Contracting Partner and to be supported by us, in the scope specified in the respective Individual Contract (hereinafter, "***Supported Component***"). The Supported Component may be both a) standard or individual software manufactured by us and b) also, *inter alia*, data bank software, data bank systems, operating system software, the hardware of the data bank server systems and the corresponding testing, archiving, and training systems as well as the Local Area Network (LAN) and/or the Wireless Local Area Network (WLAN) at the location of the respective Supported Component.

2. We shall provide the following Support Services in accordance with the agreement in the respective Individual Contract:

    a) Basic services
    - centralized intake for support queries during stipulated support times, keeping a support team ready,
    - opening/enhancement/documentation of support queries as tickets, controlling the ticket status, feedback to the Contracting Partner upon resolving the ticket,
    - self-monitoring to ensure adherence to the stipulated reaction times.

    b) Individual services (upon demand of the Contracting Partner)
    - identifying and addressing service disruption;
    - carrying out miscellaneous activities such as telephone support, obtaining information from third-party hardware and system software manufacturers, remote diagnosis;
    - preventive support and maintenance in order to carry out regularly scheduled work such as system monitoring and maintenance, reorganization of databanks, monitoring and optimization of disk usage,
    - carrying out modifications, enhancements, and other individual activities;
    - support for system maintenance work such as release Updates and configuration modifications;
    - concept creation and provision of consulting services,
    - on-site operations to carry out local support measures;
    - execution of readiness at hourly intervals to secure reaction-readiness to support an individual, customer-specific activity beyond the stipulated operating times.

    These individual services shall be provided upon demand of the Contracting Partner and invoiced on a "time and material" basis in accordance with our price list current at the time of the request.

3. Support Services shall generally be provided only during the stipulated operating times. To the extent not otherwise provided for in the Individual Contract, these operating times shall be every Monday through Friday (except for Holidays) from 9:00a.m. to 5:00p.m.

4. The Contracting Partner shall have the right to use all work results produced by us as part of our Support Services and provided to the Contracting Partner to the same extent as the respective Supported Component to which these Support Services relate. To the extent that the work result does not relate to a Supported Component manufactured by us, we grant the Contracting Partner a non-exclusive (simple) and non-sub-licensable, unrestricted as to territory and time, right to use such work results for the purposes set forth in the respective Individual Contract.

III. Organization of support services

1. Support for the Contracting Partner shall be provided by the Customer Service Center or a specialized department of inconso. The Support Services shall be carried out by inconso employees.

2. A project head shall be appointed by inconso as the primarily responsible point of contact for the coordination of all Support Services, for assigning employees with the readiness service, and for coordinating with the Contracting Partner (and/or its representatives).

3. The acceptance of a support query shall be conducted through a ticket system, by telephone or via e-mail. We note that, at peak times, the waiting time on hold can last up to ten (10) minutes. In such cases, if it is urgent, we ask to use other input media, such as the hotline answering machine or e-mail, and to expressly designate the support query as urgent.

4. Depending upon the support query, the Support Services shall be provided by telephone, through remote diagnosis or error remediation and/or by action taken on-site at the location of the Supported Component. The inconso employee working on the support query shall choose the appropriate means of Support Services in coordination with the Contracting Partner in such a manner that the ongoing operation of the Contracting Partner is impaired as little as possible and so that the error is remedied as rapidly as possible.

5. Without undue delay following determination of the error, the Contracting Partner is to report in advance by telephone—and upon our request, in writing via e-mail—in the German language, as follows: any occurring errors, using a comprehensible description of the error symptoms, and, to the extent possible, by providing completed written records, paper copies, or other documents illustrating the error. To the extent possible, when reporting the error, the Contracting Partner is also to transmit data which enable the error to be replicated. The Contracting Partner shall also report its own assessment of the classification of the disruption.

6. The provision of Support Services shall be organized in a three-stage, hierarchical competence system:

    a) First level
    First-level support shall be the first contact point for all inbound support queries. Our employees here shall be responsible for the complete compilation of the support query inclusive of all required additional information, and they shall process the support questions independently to the fullest extent of their knowledge. The objective shall be to process and to prioritize support queries and to quickly allocate the support queries within the support team.

    Support queries for which a solution description is already available shall be processed by first-level support acting independently. Support queries without any prescribed solution shall be processed in cooperation with second-level support. First-level support shall direct escalation management of critical problems.

    b) Second level
    Second-level support shall support first-level support, both through continuing education of the Contracting Partner's employees directly at the workplace and also by taking charge of the more complex support queries. If the clarification or implementation of the support query cannot be handled with the resources available at the second-level support, the support query shall be escalated to third-level support.

    c) Third level
    Third-level support shall comprise specialists of the individual Supported Components to be supported and thus shall ensure the highest level of support integrated with the Original Equipment Manufacturer ("*OEM*") to the extent that it pertains to issues relevant to the OEM.

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As of: January 2015

IV. Support query priorities

Inbound support queries shall be ordered and processed by us according to priority. The priority of support queries shall be based upon the damage which arises or could arise to the Contracting Partner from a malfunction of the Supported Component. The corresponding reaction times and remedy times shall be directed depending upon this priority. The priority of support queries shall be classified as follows:

a) Class 3: Preventive support, training, modifications
   Planning and setting appointment times for preventive support, of training measures and the realization of minor modifications shall be effected within a time period of three (3) to six (6) weeks.

b) Class 2: non-critical situations
   A 'non-critical situation' is a problem situation that does not impede or jeopardize the ongoing operation of the Contracting Partner in sustained fashion. A non-sustained impediment in this sense shall be present, e.g., if the respectively affected workflow of the Contracting Partner is not hindered and/or there are alternative possibilities to further process an order using the respective Supported Component.

   For non-critical situations, problem solution shall begin no later than during the course of the next business day (in accordance with the stipulated readiness period in the Individual Contract).

c) Class 1: critical situations
   A 'critical situation' is a problem situation which impairs or jeopardizes the ongoing operation of the Contracting Partner in sustained fashion. Sustained jeopardy in this sense is present if the trouble occurring with the Supported Component severely limits business operations of the Contracting Partner or forces them to a halt.

   The defined reaction time of a maximum of two (2) hours shall apply to critical situations. Reaction times deviating from this may be stipulated, as the case may be, in the Individual Contract.

V. Extended Support

1. It shall be possible for the Contracting Partner, in consideration of an additional fee, to customize to its own requirements the basic services mentioned in Article II Sect. 2 a) beyond the stipulated operating times over various windows of time for the Support Services (hereinafter: "*Extended Support*").

2. In addition, the "*Basic Extended Support*" shall comprise the following Support Services:

   - customer-specific operating times,
   - hotline during the extended operating times,
   - a maximal two (2) hours of reaction time during the entire operating times,
   - During the extended operating times, the Support Services shall, in addition, comprise:
     - initiating and carrying out measures with means of the respective Supported Component,
     - checking of data structures,
     - the starting and stopping of processes.

3. "*Prime Extended Support*" shall, in addition to the Basic Extended Support, comprise the following Support Services:

   - customer-specific customized standby time (only in a continuous time block);
   - a hotline, personalized for the Contracting Partner and entrusted with its specifications, also during the extended operating times;
   - upon specific reservation, a reaction time during the entire operating times of a maximum of one (1) hour;
   - no restriction of Support Services with respect to the applied equipment/techniques (in particular regarding the elimination of service disruptions).

4. Switching between various operating times shall have to be requested/ordered by the Contracting Partner in writing with an advance notice of three (3) months and shall require our express consent.

VI. Cooperation of the Contracting Partner

1. To the extent not otherwise stipulated in an Individual Contract, the Contracting Partner shall be responsible for carrying out the measures recommended under the Support Services regarding the Supported Component installed at the Contracting Partner's premises. The Contracting Partner shall ensure that its employee entrusted with initiating and/or implementing the Support Services possesses the technical qualifications to process the instructions received electronically or by telephone with respect to the Supported Component.

2. The Contracting Partner shall, for purposes of providing the Support Services, provide remote access to the respective Supported Component—i.e., a router connection or equivalent network access, connections and user authorizations for the Contracting Partner's system, on which the respective Supported Component is installed, shall be available and shall be set up.

3. The Contracting Partner may modify stored data only through the programs supported by and/or approved by inconso.

4. The Contracting Partner is to enter into support agreements with inconso or the respective supplier or other competent service companies for all of the hardware and software which are not the object of the Support Services but which are associated with the functionality of the Supported Component.

5. The Contracting Partner shall provide us with sufficient capacity either on the computer system on which the Supported Component is installed or on a separate server for furnishing and operating a separate testing system.

6. The Contracting Partner shall be responsible for ensuring that there is sufficient licensing for any SAP AG products being used and that a maintenance agreement has been entered into with SAP AG or with an authorized systems company of SAP AG for the used SAP products.

7. The Contracting Partner shall appoint a contact person to coordinate all processes resulting from the respective Individual Contract. The respective support and readiness plan shall be coordinated between this contact person and the inconso project head.

8. The Contracting Partner is to establish a working group comprised of persons having the right to place support queries with inconso. The working group shall be documented in an authorization list and placed with the inconso project head. The Contracting Partner is to keep the authorization list updated and shall indicate any changes to inconso without undue delay.

9. No modifications shall be performed on the Supported Component unless authorized by inconso. Direct interventions (e.g., modification of configuration data files of components delivered by us) or indirect interventions in the system (e.g., modification of system adjustments on the hardware being used) are to be coordinated with us beforehand. Such shall also include modifications of third party software components which possess interfaces to the Supported Component. If errors occur in third party software components, which errors could be assigned to a "critical situation" pursuant to Article IV c), the Contracting Partner, in these exceptional cases, may carry out the necessary modifications in the third party software components or have these modifications carried out without informing us thereof in advance. Following such intervention, the Contracting Partner shall be obligated to subsequently inform inconso.

VII. Preclusion of performance

1. Work which has not been stipulated in these Support Conditions and, as applicable, in the respective Individual Contract, shall not be an element of the Support Services and may be invoiced separately by inconso. Such shall include, but not be limited to, the diagnosis and elimination of disruptions to the extent that they are due to improper handling of the Supported Component by the Contracting Partner or by third parties not authorized by inconso, e.g., the operation of the respective system outside of the defined climatic conditions, any effects of violence, or other external effects, e.g., *force majeure* and/or modifications not authorized by inconso of the third party software components possessing interfaces with the Supported Component.

2. Work which does not fall into the category of Support Services pursuant to Article VII Sect. 1 shall be carried out by inconso only if such has been expressly ordered and/or stipulated. If, while service work is being carried out, it should emerge that the work does not pertain to Support Services to which inconso is obligated under an Individual Contract with the Contracting Partner, then the Contracting Partner shall bear the expenses incurred for the service work provided through such time.

VIII. Term, termination

1. The term of the respective Individual Contract shall begin at the time fixed in the Individual Contract as the beginning of the contract, and shall have an initial term of one (1) year ("*Initial Term*").

2. Up to the expiration of the Initial Term, the Individual Contract may be terminated by both parties with a notice period of three (3) months. If the Individual Contract is not terminated, it shall be tacitly extended for respective one-year periods. Each party shall have the right to terminate such an extended Individual Contract in compliance with a termination notice period of three (3) months to the end of each extension period.

3. The right to terminate an Individual Contract for cause shall remain unaffected. For us, cause shall include, but not be limited to, the following prerequisites:

   a) bankruptcy proceedings are initiated before a court against the assets of the Contracting Partner, or the court declines a petition to initiate them due to lack of assets;

   b) the Contracting Partner has ceased its business operations;

   c) proceedings before a court against the Contracting Partner for enforcement of receivables arising from the respective Individual Contract or earlier Individual Contracts have remained unsuccessful.

4. Terminations shall require the written form. A termination or ending of one Individual Contract shall not affect the term and/or effectiveness of any remaining Individual Contract and/or any other agreement existing between the Contracting Partner and inconso.

IX. Fees

1. The Contracting Partner shall pay to inconso a lump-sum fee for the basic services mentioned in Article II. Sect. 2 a) in the amount stipulated in the respective Individual Contract (the "*Lump-Sum Support Fee*"). The Lump-Sum Support Fee as well as additional fees for the individual services mentioned in and ordered under Article II Sect. 2 b) shall be invoiced monthly in arrears.

2. Costs incurred by inconso for the necessary technical equipment for providing Support Services by remote access (PCs, communication software) shall be borne by inconso; the Contracting Partner shall be responsible for the facilities necessary on its side and for the costs that it incurs.

3. To the extent that software is a Supported Component and inconso enhances it with modifications ("*Change Requests*"), the Lump-Sum Support Fee shall increase by 0.75% of the so-called "software share" of the net invoiced amount of the Change Requests at the time at which the Supported Component shall be prepared for the Contracting Partner with the enhanced service parameters—unless the increase by this percentage does not comport with fair, equitable, and verifiable discretion. The software share in the enhancement shall be calculated from the total services for IT design and for customizing and realization. Expressly not included therein shall be services arising out of testing, project management, implementation, and training. Any possibly provided goods (e.g., hardware, outside software components) shall also be excepted.

4. Furthermore, the fee for the Support Services can be increased by us once per contract year—for the first time, however, upon expiration of the Initial Term and after a written notice has been effected at least thirty (30) days in advance—commensurate to the increase of the index of the average gross monthly earnings of full-time employees in Germany in the information technology services industry (currently published by the *Statistisches Bundesamt* (the Federal Statistics Office), (*Fachserie 16, Reihe 2.2, Gruppe J 62*) Special Series 16, Series 2.2, Group J 62).