TERMS AND CONDITIONS OF TRANSFER OF SOFTWARE

(AÜS, Stand January 2013)

1 Subject Matter of Contract

The customer acquires the software configuration (thereinafter referred to as software), which is described in the Software Transfer Contract for utilisation as stated thereinafter and the scope of utilisation under the following provisions. Deviating or supplementary terms and conditions or regulations to the contrary by
the customer are not an integral part of the contract; the provisions by Peak Solution stated therein exclusively apply.

2 Delivery

2.1 Content of delivery
Software shall only be delivered in executable form, in combination with user documentation only in form of an online-help to the place of delivery stated in the Software Transfer Contract.

2.2 Type of delivery
Delivery is effected by providing the customer with the type of data carrier that has been described in the Software Transfer Contract.

2.3 Installation
The installation of software is not object of this contract, but can be agreed on separately.

3 Licence for utilisation

3.1 Type of licence
Peak Solution grants a non-exclusive, nontransferable and open-ended licence to the customer.

3.2 Scope of utilization
The customer is authorised to use the software within the scope of utilisation that is described in the Software Transfer Contract. This includes installation, loading and running of the software as stated therein. The customer's licence for utilization is in particular limited to the database licences and client licenses granted in the SoftwareTransfer Contract

3.3 Changes in the scope of utilisation

In case a customer extends the contractual utlilisation of the software with regard to the criteria stated in the Software Transfer Contract, the customer is obligated to instantly notify Peak Solution about the extension. The customer is charged a fee for the additional use of the software in accordance with Peak Solution's price lists.

3.4 Modifications an adjustments

In case defects of the software are detected or information on the development of interfaces is required, the customer is obligated to first consult Peak Solution for the remedy of defects or for the transfer of the data required. In case Peak Solution is neither willing nor in the position to deliver the required performance – not even against a fee – the customer shall be entitled to execute changes and modifications of the programming for the deletion of errors and for the development of further interfaces exclusively in line with the requirements and to the extent stipulated in §§ 69 d and e, Copyright Law. Any other modification or adjustment of Peak Solution software products is not allowed.

3.5 Backup copies and reproduction

The customer is entitled to generate backup copies if necessary for normal contractual use. Except for the cases stated therein, none of the software may be copied, reproduced or distributed.

3.6 Conveyance

Transfers of software licences in accordance with the Contract of Software Transfer are subject to the express, prior and written consent of Peak Solution. The licence for utilisation may only be transferred under the provisions declared therein or in the Contract of Software Transfer and in full. In case of conveyance or transfer of software programs, the customer is obligated to hand over every copy made by the customer to the buyer or recipient and to delete all copies that are not transferred.

3.7 Source code

Software shall only be delivered in executable form (object code), unless agreed on otherwise. In case Peak Solution delivers the source code in compliance with a separate agreement, the customer is granted a licence for utilisation exclusively for the development of interfaces and the deletion of program errors.

4 Payment and terms of payment

4.1 Costs

The customers is charged a once-only payment for the software and the granted scope of utilisation. The amount of the once-only payment is stated in the Contract of Software Transfer. Prices are exclusive of value-added tax.

4.2 Settlement date

The account is due to be settled at delivery and with the issue of an invoice.

4.3 Delay in payment

In case of delay in payment, Peak Solution invoices interest rates of eight percentage points above the base rate for the period of delay. The right to claim compensation of damage caused by delay remains unaffected.

4.4 Payment for excessive utilisation

In case a customer exceeds the contractual scope of utilisation as defined in subsection 3.2 without instant notification of Peak Solution, Peak Solution shall be entitled to claim twice the amount which would have been payable in accordance with the price list of Peak Solution, irrespective of other rights. Amounts already paid for the utilisation of software are credited against the payment for excessive use. Peak Solution's limitation of claim starts with the day of notice.

5 Legal reservation

Peak Solution reserves itself the right on the objects of the contract until full payment is received. Until full payment has been received, Peak Solution shall have the right to suspend the licence for the utilisation of the software. Peak Solution is furthermore entitled to claim back every single copy from the customer or – if impossible – the deletion of any copy in case the customer is late in payment and Peak Solution withdrew from the contract. The customer is obligated to instantly inform Peak Solution in writing in case a third party is given access subject to Peak Solution's retention of title and to inform the third party about the property rights of Peak Solution.

6 Warranty

6.1 Material defects or defects of title

Peak Solution delivers the respective, outstanding software free of material defects or defects of title. A material defect is given if software does not exhibit the contractual and customary characteristics or if a software is not suitable for normal use.

6.2 Exclusion of warranty

To execute warranty, it is required that the customer has neither modified the result nor used it in a different environment as intended. In case the customer has used or uses the product in combination with products not authorised by Peak Solution or has modified the product himself or had it modified by third parties, Peak Solution's warranty liability is not applicable anymore, except for the customer proving that any errors, which have occurred, were not caused by such conduct and that Peak Solution's defect analysis and remedy is not affected thereby.

6.3 Statute of Limitation

Warranty claims expire regularly after a period of twelve months. In case of fraudulent intent or acceptance of a guarantee, the statutory provisions apply.

6.4 Notification of defects

Defects detected by the customer shall be clearly documented and reported timely after their discovery to Peak Solution.

6.5 Remedy

6.5.1 In case defects are reported to Peak Solution within the statutory limitation, Peak Solution shall remedy the defects either by way of correction or by way of substitute. The remedy of defects may also be effected by providing the customer with instructions by telephone or written instructions via electronic data transfer or via data carriers holding the required correction software. In such cases, the customer is obligated to implement the instructions given if it can be considered to be reasonable that the customer makes electronic data transfer possible and imports the correction software immediately upon receipt. Technical avoidance is also regarded as remedy of the defect, as long as the service remains suitable for normal use as defined by contract.

6.5.2 The following response times from the time of notification apply at Peak Solution:

Category A - 8 hours: program defects that cause a breakdown of key processes

Category B - 16 hours: other defects Response time is calculated during the normal-business hours at Peak Solution, Monday to Friday from 8 a.m. to 5 p.m. except from bank holidays in Nuremberg. Repair services are also rendered exclusively during these hours, unless agreed on otherwise. Peak Solution is not obligated to fully remedy the defect within the response time limit. The remedy of defects will be carried out in reasonable time referring to the gravity of the defect.

6.5.3 Peak Solution is entitled to commission third parties for rendering a service. Peak Solution's responsibility for the protection of data and system security remains unaffected.

6.5.4 The customer bears additional costs and expenses arising from a performance delivered at a location other than stipulated in the Contract of Software Transfer.

6.5.5 In case a defect notified by the customer cannot be traced back to a defect of the contractual product, Peak Solution shall be entitled to invoice any costs and expenses that incur for error analysis and remedy in case of intent or gross negligence on the customer's part.

6.6 Other provisions

In case Peak Solution fails to remedy the defect within the time limit set by the customer, the customer shall be entitled to terminate the contract, to lower the purchase price and to claim damages instead of service or substitute. The statutory provisions apply.

6.7 Withdrawal and Redhibition

In case of a withdrawal, Peak Solution is entitled to claim a reasonable compensation for any benefit from the service on the customer's part until the re-installation has

been carried out completely. The amount of compensation is calculated on the basis of the four-year total period of use by deducting a discount according to the extent the defect limited the use.

7   Liability

Peak Solution's liability - no matter for what legal cause outside of warranty - applies exclusively under the following provisions:

7.1   <u>Unlimited Liability</u>
Peak Solution is fully liable

7.1.1   in case of intent, gross negligence and gross organisational negligence.

7.1.2   in cases of damage from injury to life, body and health, regardless of gravity of fault.

7.1.3   in cases where Peak Solution has assumed a guarantee

7.2   <u>Contract-typical. Foreseeable damage</u>
Peak Solution's liability for damage arising from infringement of essential contractual obligations is limited to contract-typical, foreseeable damage if no case covered by subsection 7.1 exists.

7.3   <u>Other cases</u>
In any other case, Peak Solution's liability is limited to the contractual compensation per damage event. Liability without fault by Peak Solution is excluded.

7.4   <u>Contributory negligence and data backup</u>
In case a damage is attributable to negligence on Peak Solution's part as well as the customer's part, the customer's contributory negligence is taken into account. The customer is bound to create regular back-up copies of his data. In case of loss of data for which Peak Solution is responsible, Peak Solution can only be hold liable for covering the costs of the reproduction of data from the backup copies, which the customer shall provide, and the reconstruction of data which would have also been lost in the course of the creation of regular backup copies in adequate intervals.

7.5   <u>Product Liability Law</u>
The liability under Product Liability Law remains unaffected.

7.6   <u>Third party property rights</u>
In case a service rendered by Peak Solution violates the copyrights or any other property rights of third parties, Peak Solution indemnifies the customer against any claim or demand arising from property right infringements, provided that the customer immediately informs Peak Solution about any claims or demands arising from property right infringements and actively includes Peak Solution in the negotiations with the

third party, entrusts Peak Solution with the negotiations as far as possible and supports Peak Solution to a reasonable extent.

8   Other Provisions

8.1.   <u>Setoffs</u>
The customer shall not be allowed to make setoffs with counter-demands or to exercise the right of retention, except for the case demands are not contested by Peak Solution or demands are recognised by declaratory judgement.

8.2   <u>Applicable law</u>
This contract is subject to German law. UN Sales Law does not apply.

8.3   <u>Place of performance / Place of jurisdiction</u>
Place of performance is the domicile of Peak Solution. Place of jurisdiction is Nuremberg.

8.4   <u>Ineffective provisions and loopholes</u>
If a provision or part thereof in this contract is or becomes fully or partially ineffective or invalid, the validity and effectiveness of any other term and condition stipulated therein remains unaffected. This is also valid for loopholes. The ineffective or invalid provision shall be replaced with a new provision which comes as close as possible to the legal and economic content of what the contracting parties would have intended at the conclusion of the contract. Loopholes shall be treated in a similar manner.

As at: January 2013