

# General Terms and Conditions (GTC) of the Undertakings of the APA Group

## 1 BASIS OF THE CONTRACT

- 1.1 The following contains the General Terms and Conditions (GTC), which shall apply to all services rendered by the undertakings of the APA Group listed below. Currently the APA Group includes APA – Austria Presse Agentur eG and its subsidiaries APA-DeFacto Datenbank & Contentmanagement GmbH, APA-IT Informations Technologie GmbH, APA-OTS Originaltext-Service GmbH. If reference is made to “APA” herein below, the provisions shall apply to the subsidiaries stated above and any subsidiaries that are not stated herein but will be added in the future.
- 1.2 Depending on the service, APA will render its services alone or may make use of its subsidiaries or cooperating third-party suppliers. If APA is the contracting party, APA is the solely authorised and obligated party vis-à-vis the contracting party. This shall apply even if, in a specific case, the invoice is issued by a subsidiary but where APA is the contracting party. If a subsidiary is the contracting party, this fact can clearly be seen from the contract concluded and the present GTC shall apply accordingly.
- 1.3 The relevant provisions of the GTC shall apply. In case of derogations from the mutually agreed text of the contract the provisions of the contract shall prevail. The present GTC shall apply to future business relationships with the contracting party even if they are not expressly agreed once again. General terms and conditions of the contracting party shall not apply.

## 2 COMMENCEMENT AND END OF THE CONTRACT

- 2.1 The contract shall commence on the relevant date agreed. If no such date is expressly stated in the contract, the time at which APA commences rendering the services shall be deemed the date of commencement of the contract. The contract shall be concluded for an indefinite period of time. It may be terminated by either party as of the end of any contract year by giving six months' notice by registered letter, for the first time as of the end of the first contract year, unless expressly agreed otherwise in the contract. The right to terminate the contract early with immediate effect for cause shall remain unaffected. Causes may include any unlawful conduct by the contracting party due to which the supply of APA is no longer possible under business policy aspects. In the case that the service concerned is discontinued or that material bases for producing the service concerned no longer exist APA shall be entitled to rescind the contract or the part of the contract concerned by the discontinuation.
- 2.2 If any of the contractually agreed services depends on contracts which APA concluded with third parties and if such contracts are terminated in whole or in part, APA shall be entitled by a unilateral declaration vis-à-vis the contracting party to terminate the relevant part of the contract and/or to discontinue delivery of such part. In such case APA shall only be obligated to refund the contracting party the pro-rata portion of the compensation already paid which is attributable to such terminated part if the contracting party has not received any consideration for the payment. Any further claims against APA shall be excluded. Such a case shall constitute no reason for early termination of the entire contract.
- 2.3 Hardware (hereinafter Hardware) and accessories which are provided by APA in the course of performance of the contract shall remain the property of APA and shall be returned to APA after termination of the contract in a working condition at the cost of the contracting party (dismantling, transport) and/or data lines shall be disconnected when the contract ends.
- 2.4 Hardware which is made available to APA by the contracting party during the term of the contract shall remain the property of the contracting party and shall be returned to the contracting party at its own cost in a working condition when the contract ends.
- 2.5 Software (hereinafter Software) shall no longer be used after termination of the contract and shall be removed from all systems of the contracting party and/or shall be treated in such a way as APA may reasonably require of the contracting party. Likewise any and all content of APA that has been provided shall, upon termination of the contract and within one month thereof, be removed from the medium concerned as well as from internal systems irrevocably and in a manner that can be proved in such a way that they can no longer be found via search aggregators or search engines.

## 3 RIGHT TO USE AND EXPLOIT APA SERVICES

### 3.1 General

- 3.1.1 APA services means data and information of any kind which is directly created and processed by APA or which is provided by cooperating third-party suppliers for further editorial processing and further exploitation and/or unchanged exploitation. These may, in particular, be texts, images, audio recordings and video recordings, graphics or numeric elements (stock exchange prices, ...). If images are mentioned, the same provisions shall apply to video recordings accordingly.
- 3.1.2 APA warrants that it holds the relevant rights to use and exploit the APA services being provided that are necessary as per the contract and shall indemnify and hold harmless the contracting party from and against third-party claims on the condition that the contracting party uses the same in compliance with the contract.
- 3.1.3 During the valid existence of the contract the contracting party shall be given a non-exclusive, non-transferable right to use the provided APA services in accordance with the contract. Any additional use shall be permitted only if expressly approved by APA in writing. The contracting party shall acquire no intellectual property rights or similar rights to the relevant services of APA.
- 3.1.4 Storing of the content of APA services shall be permitted for a maximum period of seven days. Storing shall in no case have a separate business significance. If further storing/archiving is permitted in writing, APA services shall be provably deleted immediately upon expiration of the agreed period or not later than at the end of the contract if no such period has been agreed.
- 3.1.5 With regard to the APA services made available APA expressly points out that the same do not constitute an invitation to purchase or sell rights, securities, etc. They shall be no substitute for expert advice either but shall exclusively serve the purpose of information. Reference is made to the limitation of liability as per Clause 8.
- 3.1.6 The contracting party shall take all necessary and reasonable measures in order to prevent any infringement of rights to use APA services by whomsoever. Moreover, the contracting party shall inform APA immediately upon receiving knowledge of infringements and shall reasonably cooperate with APA in order to prevent abuse.
- 3.1.7 In the case of an infringement of the agreed rights to use and exploit the services APA shall be entitled to demand payment of a contractual penalty not being subject to a judicial right of reduction up to the amount of one average gross annual fee to be paid by the contracting party and of not less than EUR 10,000 and not more than EUR 50,000 for each proved infringement if despite a warning the condition agreed in the contract is not immediately brought about. Assertion of any further claims or parallel claims for statutory and/or liquidated compensation or damages shall remain unaffected. In addition, APA may exercise the right to terminate the contract for cause with immediate effect. Irrespective thereof the contracting party shall indemnify and hold harmless APA from and against third-party claims arising from an infringement of the said rights to use and exploit APA services.

### 3.2 Internal Use

- 3.2.1 If APA services are provided for internal use, they shall serve the exclusive purpose of personal information of and personal use by the users of the contracting party authorised to do so and/or in the case of information providers the purpose of personal information of and personal use by the information provider's customer to be advised to APA (and/or the customer's authorised users). In the case of electronic utilisation personal use shall be defined by the number of authorised users the principal authorisation of whom shall normally be defined by username and password.

- 3.2.2 The contracting party shall not disclose to third parties content of APA services in whole or in part for free or for consideration on a regular or occasional basis in any form whatsoever. In particular, displaying content on the Internet or intranet (beyond the number of authorised users), via broadcasting channels, in newsletters or other email mailing lists or other similar forms of dissemination shall not be permitted without express consent.

### 3.3 Special provisions for images/video recordings

- 3.3.1 The warranty made by APA in paragraph 3.1.2. shall exclusively apply to images contained in APA services which have been produced by APA photographers (be they employed or self-employed) or which are provided on the basis of distribution cooperation agreements with image libraries or picture desks and bear a relevant photo credit. Images the text of which includes the information that for legal reasons they may only be used in connection with the stated purpose and for editorial purposes shall, therefore, be excluded from

- warranty. Here APA exclusively acts as a technical service provider. The approval granted by APA to use selected images or video recordings shall not include a representation to the effect that persons depicted thereon or shown therein or the holders of the rights to works of fine arts or applied arts depicted on the selected photos/videos or holders of trademarks or other proprietary rights have given their consent to public reproduction, in particular to use of the same in connection with advertising. APA exclusively grants non-exclusive rights to use the photos/videos and, in this context, warrants that it holds the photographic copyrights (rights of the photographer) to the selected photos/video recordings for use for the agreed purposes. The contracting party shall be responsible for obtaining the consents of third parties that may be necessary in specific cases. The contracting party itself shall, in particular, observe rights of personality, copyrights, trademark rights and other proprietary rights of depicted persons, works, items or marks with regard to the regulations of the country in which they are to be used; this shall also apply to agreements with performing rights societies that may be prescribed by law for music that may be contained in videos. This shall not apply if availability of the necessary consent and/or rights of APA has been expressly represented in writing and/or if these GTC provide otherwise.
- 3.3.2. If APA should delete content from its services, APA shall inform the contracting party. Depending on the agreed service this may be done by direct information in the service or by notice to an email address provided by the contracting party. The contracting party shall be responsible for keeping the email address up to date. Any use of services after transmission of a deletion note shall exclusively be on the contracting party's own responsibility. For the rest, the provisions of the contract and/or these GTC shall apply.
- 3.4. Other types of use**
- 3.4.1 In the event that the contracting party has been granted a right to use APA services not only for internal purposes, special terms of use shall be observed.
- 3.4.2 The contracting party shall in each case indicate the correct photo or other credit and/or use a credit that is already available. When displaying content in any medium whatsoever (print, Internet, ...) identification of the author and/or the source must be possible at any time. There must be no doubt about what content is attributable to which author and/or source.
- 3.4.3 The contracting party shall be prohibited from publishing the advance material which is subject to a blocking period prior to expiration of the blocking period. In general, the contracting party shall in any case observe blocking notes in the caption text or limited rights to use material by all means.
- 3.4.4 If an independent image selection from the provided image database was agreed, the following shall apply: APA holds different types of rights to use image sources, especially in case of photos of freelance photographers. In the case of a subsequent limitation of transferred rights APA reserves the right to modify the said rights also in relation to the contracting party.
- 3.4.5 Unless otherwise agreed, the content of APA services shall be used without changing the content. If prior editing on the part of the contracting party is agreed, the contracting party shall not make any changes to the relevant content which would contradict or blur the meaning. Editing or alienating the content of image, video or graphic material (photomontage, cutting out of objects disturbing the overall meaning, etc.) is generally prohibited.
- 3.4.6 The contracting party shall provably advise its users/customers of the rights and obligations stated herein. In particular, users of the contracting party may use APA content exclusively for their personal use. If these obligations to inform users/customers are not complied with, any infringements of rights to use resulting therefrom shall be considered infringements by the contracting party.
- 4 RIGHT TO USE AND EXPLOIT SOFTWARE**
- 4.1 For the term of the contract the contracting party shall be given a non-exclusive and non-transferable right to use the provided software in accordance with the contract. Any further use shall be permitted only in the form expressly approved by APA in writing. The contracting party shall not acquire any intellectual property rights or similar rights to the relevant services of APA.
- 4.2 If expressly agreed in the contract, an exclusive right to use individually developed software may be granted.
- 4.3 Through the contracting party's participation in the manufacturing of Software the contracting party shall acquire no rights going beyond the use agreed in the contract.
- 4.4 Software provided shall be used in an unchanged form. Except for the cases provided for by law it may neither be reproduced, sublicensed, altered, edited nor made available to third parties in whole or in part.
- 4.5 Any installation and/or implementation of the Software by APA and/or the contracting party shall only be made for the number of users authorised in the contract and/or in the case of Internet services exclusively for the defined appearance on the web. Any further use shall be prohibited.
- 4.6 Rights of other software manufacturers and/or rights of hardware manufacturers shall be observed.
- 5 TECHNICAL SERVICES**
- 5.1 If provided in the contract (e.g., in the case of server hosting), APA shall ensure ongoing provision of all necessary system resources (Hardware, Software, Operating and the like) which are necessary for full availability of the agreed services. APA reserves the right to make modifications and improvements to the services that are available if this is in line with technological progress and if no impairment of the services has to be expected. The contracting party shall be informed thereof in each case within a reasonable period of time.
- 5.2 If Hardware is provided and installed on the premises of the contracting party, the contracting party shall provide for internal cabling and securing of environment conditions and network connection suitable for the equipment in accordance with the guidelines mutually agreed with APA and/or third parties. To the extent that APA is the owner of the Hardware the contracting party shall fully indemnify and hold harmless APA from and against any loss or damage resulting from improper operation. The same shall apply to personal injuries caused by such Hardware to whomsoever.
- 5.3 APA shall ensure the necessary ordering of data lines from the relevant network operator or shall provide the necessary connection capacities within its corporate network (CN). The relevant network operator and APA and/or a company commissioned by it shall install such connections and shall charge one-off installation fees independent of recurring line charges.
- 5.4 Due to the contract the contracting party may be entitled to obtain the Hardware or telecommunication connections itself in accordance with the specifications provided by APA and to install the same in accordance with the agreed installation plan or to instruct APA to do so. If the deadlines of the installation plan are not observed by the contracting party, APA shall be entitled to prove functioning of the agreed services by means of its own hardware. Irrespective thereof the payment obligation of the contracting party shall commence at the time of agreed delivery even if delivery does not actually take place or cannot take place yet for reasons for which the contracting party is responsible.
- 5.5 If agreed in the contract the contracting party itself shall provide hardware. In such cases the services stated in the contract shall be provided by APA. In addition, APA shall take out appropriate liability insurance in the amount of the relevant replacement value.
- 5.6 The contracting party undertakes to purchase the services of APA exclusively via the Hardware and/or via the telecommunication lines stated in the contract.
- 5.7 If the contracting party is subject to cooperation duties as regards performance of the contract and if it does not fulfil the same at the agreed dates or to the agreed extent, the services provided by APA shall be deemed rendered despite limitations. Schedules shall be changed accordingly. Any additional costs resulting therefrom shall be paid for separately at the rates applicable from time to time.
- 5.8 If the contracting party is provided with memory as per the contract and if the memory quota is exceeded, APA shall limit access to the agreed volume and shall be entitled to block access upon prior information unless it is extended accordingly.
- 5.9 Special terms and conditions concerning Internet services**
- 5.9.1 The contracting party shall be entitled to freely design the content of its websites as well as to use them commercially. APA endeavours to maintain server operation but is unable to guarantee permanent availability.
- 5.9.2 The contracting party represents that all data published and/or made accessible is free of any third-party rights and does not violate any statutory provisions (including but not limited to copyrights, trademarks or criminal laws). It is put on record that links to websites of third parties may also lead to separate criminal liability of the creator of the link as defined by law.
- 5.9.3 If third-party claims are raised or if APA obtains knowledge of legally questionable content otherwise, APA shall be obliged and entitled to immediately block the content from third-party access until final clarification of the case. In general, APA shall, however, not be subject to an obligation to review content. The contracting

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- party shall be responsible for the content of its sites and shall indemnify APA against third-party claims and reimburse APA any and all necessary expenses related thereto.
- 5.9.4 APA does not guarantee that the virtual server is suited for a certain service or a certain software or that the virtual server will be permanently available. The service of APA shall be limited to provision of the virtual server/host. APA shall not be responsible for failures within the Internet. Likewise, APA shall not be responsible for any damage directly or indirectly caused by the virtual server/host.
- 5.9.5 If and to the extent that APA is commissioned to procure and maintain an Internet domain, APA shall merely act as an agent, i.e. the contracting party shall conclude a contract with the competent registration agency so that all claims concerning the relevant domain will be with the contracting party. APA has no influence on domain allocation and does therefore not warrant that the domains applied for for the contracting party are free from third-party rights or will exist forever. This shall also apply to sub-domains allocated under the domain. The contracting party shall indemnify APA against third-party claims based on unauthorised use of a domain. In the case of termination the domain will be released by the competent registration agency unless it is stated in connection with the termination that takeover of the domain by a different provider is planned.
- 5.9.6 Any liability or warranty of APA for allocation of domain names ordered shall be excluded.
- 5.9.7 Elements provided by the contracting party in connection with APA web design services (such as logos, texts or images) shall remain the property of the contracting party. APA shall only acquire the rights necessary for performance of the contract. In such cases the contracting party warrants that it holds all necessary rights to use and exploit the same and shall indemnify and hold harmless APA in this respect.
- 5.9.8 In such cases APA shall not be obliged to check elements provided, especially content, for their compliance with applicable statutory provisions. However, APA may refuse to disseminate such content if it suspects potential violations.
- ## 6 MAINTENANCE
- 6.1 APA or an undertaking commissioned by APA shall exclusively be responsible for maintenance of Hardware and/or Software being the property of APA and stated in the contract. This shall also apply to the Hardware and Software being the property of the contracting party and for which APA has agreed to render maintenance services.
- 6.2 In the case that the contracting party maintains Hardware and/or Software itself as permitted under the contract the contracting party undertakes to always keep the same in a working condition at its own cost.
- 6.3 Maintenance shall include repairs, i.e. troubleshooting to the extent that failures may occur during proper use or as a consequence of normal wear and tear, but shall not include work that becomes necessary for other reasons (e.g., line failures, construction work, lightning, humidity). The contracting party shall be liable without limitation for damage to Hardware provided by APA (including fire, water, explosion, theft or the like). Normal wear and tear in the course of proper use shall be excluded. Due to modern technology no preventive maintenance has been planned. Minor damage which does not impede functioning of the Hardware as well as damage by scratches or other damage to the surface („flaws“) shall be expressly excluded from maintenance. Consumables (e.g. ink cartridges) shall be excluded as well.
- 6.4 The contracting party shall immediately inform APA of failures that may have occurred. If maintenance work cannot be carried out at the location of the Hardware, APA shall, to the extent possible, provide a substitute device for the duration of the repair.
- 6.5 Maintenance shall be carried out during normal business hours of APA, currently Mondays to Thursdays from 8:00 a.m. to 5:00 p.m. and Fridays from 8:00 a.m. to 2:00 p.m. If the contracting party desires support after normal business hours, this shall be agreed separately on the maintenance sheet. APA or persons commissioned by APA shall always be granted access to the Hardware.
- 6.6 Maintenance fees shall cover the aforementioned troubleshooting including wages and travelling expenses.
- 6.7 Scheduled unavailability: the technical maintenance window of APA shall be on Wednesdays and Thursdays between 00:30 a.m. and 4:30 a.m.; any unavailability going beyond the aforementioned shall be announced by APA not later than on Monday of the relevant maintenance week.
- ## 7 DELIVERY DATES
- 7.1 Delivery dates and periods shall only apply if agreed in writing and shall commence not earlier than on the date the order is acknowledged by APA.
- 7.2 APA endeavours to observe the agreed performance dates as accurately as possible.
- 7.3 The envisaged dates can only be observed if the contracting party completely provides all necessary work, information and documents at the agreed dates and fulfils its duty to cooperate to the agreed and/or necessary extent.
- 7.4 APA shall not be responsible for delays in delivery and increases in costs arising from incorrect, incomplete or subsequently changed specifications or information. Any additional costs arising therefrom shall be borne by the contracting party.
- ## 8 WARRANTY AND LIABILITY
- 8.1 Unless otherwise agreed herein below, APA shall be liable for damage based on whatever legal ground only if such damage was caused by grossly negligent or wilful conduct. APA shall not be liable for loss of information or data, lost profit or any other consequential damage.
- 8.2 In the event of any liability of APA that has been established and proved by the contracting party based on whatever reason a resulting claim for damages shall be limited to a maximum amount of EUR 20,000 in case of proved pecuniary loss or damage to property. In the case of loss of or damage to data carrier material for which APA is responsible the obligation to pay damages shall not include expenses for data recovery. In that case liability shall be limited to typical recovery expenses which would have been incurred if backup copies had been duly made by the customer.
- 8.3 To the extent that warranty claims may apply to APA services, they shall be limited to a period of six months. Such claims shall, furthermore, be subject to the condition that the contracting party has without delay given detailed written notice of the defects that have occurred.
- 8.4 It is the express aim of APA to ensure accuracy of the content of its services. However, APA assumes no warranty or liability for the content of transmitted APA services. Use of APA content shall not excuse the contracting party from exercising its own journalistic due diligence in its capacity as the media owner for his own medium and he shall be responsible himself for presenting the content in his medium. Exemptions may apply only to content which has been created automatically by APA's editorial board and implemented directly in the contracting party's medium without the contracting party's contribution or knowledge; however, this shall be expressly agreed by contract. APA shall correct objectively wrong content immediately upon obtaining knowledge thereof, and such correction may also be made by indicating the source of the correct content.
- 8.5 In no event shall APA assume any warranty or liability for accuracy of data or information provided by third-party suppliers if the same is provided by APA only technically and/or no legally relevant editing takes place.
- 8.6 In any case the contracting party shall inform APA of defects of any kind or of the assertion of third-party claims immediately upon obtaining knowledge of the same in order to minimise damage, if any, and shall, if and when necessary, assign to APA the rights and/or duties to pursue and/or defend legal claims. In no case shall APA bear costs of legal counsel, unless APA has expressly promised to do so.
- ### 8.7 Provisions on Technical Services
- 8.7.1 In connection with its services APA warrants professional and timely rendering of the agreed services to its best will and ability.
- 8.7.2 Agreed services shall be deemed accepted upon completed installation and/or delivery unless the contracting party gives written notice of a defect within 30 days. For the rest, a warranty period of six months after delivery and/or acceptance shall apply.
- 8.7.3 Any promises made regarding properties shall be valid only if expressly confirmed by APA in writing.
- 8.7.4 Warranty claims shall be subject to the proviso that the contracting party gives detailed written notice of the defects that have occurred without delay (notice of defect). Notices of defect shall only be effective if they relate to reproducible (constantly repeatable) defects.
- 8.7.5 APA does not warrant that the Software and/or Hardware provided by APA meets all requirements of the contracting party unless this was made an express content of the contract. In addition, APA does not warrant that the delivered Software and/or Hardware is compatible with other programs of the contracting party and/or that the programs will run without interruption or error or that all software errors can

- be eliminated. Warranty shall be limited to reproducible (constantly repeatable) defects in the functioning of the program.
- 8.7.6 Warranty shall not include defects which result from layout or installation not caused by APA, insufficient configuration, non-observance of installation requirements or operating instructions, stressing beyond the load stated by APA, changes in APA systems (Hardware or Software), incorrect handling or use of unsuitable software or other materials.
- 8.7.7 Within the agreed warranty periods APA shall render subsequent improvement to the extent that notice of defect is given in a timely manner and it can be proved that APA is responsible for the defects. To the extent that defects for which APA is responsible cannot be repaired within a reasonable period of time, the contracting party shall be entitled to a reduction in the price according to the severity of the defect or to cancellation of the contract in the case of material defects.
- 8.7.8 With regard to Software and/or Hardware being the property of and provided by APA, APA assumes no responsibility for limited performance or damage (including loss of data) if it is caused by the fact that the contracting party connects or adds additional hardware or software not provided by APA or if it handles the Hardware or Software improperly or incorrectly.
- 8.7.9 APA assumes no liability for defects which are not within its direct sphere of control (e.g., receiver devices/networks of customers or public telecommunication lines or third-party data lines, failure of power supply or in cases of force majeure). These cases shall constitute no breach of contract.
- 8.7.10 In the case that defects occur the contracting party shall immediately inform APA in writing in order to minimise damage, if any. APA assumes no liability for the occurrence of damage if the contracting party does not give notice of defects immediately.
- 8.7.11 If hardware is provided by the contracting party, the contracting party shall be responsible for proper delivery, installation and for any damage, including possible consequential damage to Hardware belonging to APA.
- 8.7.12 Hardware provided by the contracting party shall be insured by APA if the Hardware is installed on the premises of APA. APA shall be liable vis-à-vis the contracting party for any loss or damage caused by improper handling. This shall not apply to direct or indirect consequential damages, lost profit or third-party claims.
- 8.7.13 For software which is subsequently modified by programmers of the contracting party or by third parties any responsibility on the part of APA shall be excluded.
- 8.7.14 If the present contract so provides, APA shall give the contracting party a personal code (username/password), which allows the contracting party to use the agreed services. The contracting party shall be responsible for allocation of and for keeping secret the relevant password(s), which shall be changed by the contracting party at least once a month for security reasons. The contracting party shall be liable for damages resulting from misuse.
- 9 DATA PROTECTION**
- 9.1 The contracting party is being advised of the fact that APA stores transaction data for billing purposes until expiration of the period within which the invoice can be contested under the law. For billing purposes APA shall also be entitled to transmit necessary data to third parties from which the contracting party purchases services. APA shall be entitled to collect and process personal data to the extent this is covered by the purpose of the contract, while interests of the contracting party worth protecting shall not be violated. Key data of the contracting party may be stored for a maximum of five years after termination of the contract for purposes of planning, marketing, cost accounting and internal statistics.
- 9.2 The parties undertake to treat as secret and confidential all facts and APA services related to the contract concluded, its content and performance of the same as well as the technical and other know-how which is necessary for performance and neither obvious nor state-of-the-art or in the public domain. This obligation shall survive termination of the contract.
- 9.3 To the extent that the contracting party transmits or keeps available data that is subject to statutory provisions on data protection it shall ensure that it may be used by APA in accordance with the purpose of the contract and shall indemnify and hold harmless APA from and against third-party claims.
- 10 FEE ADJUSTMENTS AND INDEXATION**
- 10.1 In connection with the exploitation of APA services APA shall be entitled to make fee adjustments based on changed ranges. Unless agreed otherwise in the contract, such adjustments may be carried out every half contract year or half calendar year. Depending on the type of use, fee adjustments shall be based on adequate statistics (ÖAK [Austrian Association of Audit of Circulations], ÖWA [Austrian Web Analysis], technical ranges, ...). The related details shall be agreed in the individual contract.
- 10.2 In the case of non-transmission of agreed hit statistics an estimate of potential use (e.g., on the basis of advertising statements) and a corresponding fee adjustment may be carried out by APA. APA may also make use of the right to terminate the contract for cause by giving one month's notice.
- 10.3 The fees stated in the contract shall be kept stable either in accordance with the Consumer Price Index 2010 published by Statistics Austria (basis=100) or an index replacing the same or according to the adjustments of the standard salaries of the Austrian Association of Newspapers (VÖZ) for the Collective Bargaining Agreement for Journalists; a value adjustment between those two alternative methods of adjustment may also be made. Adjustments shall always be made at the beginning of a calendar year and shall never lead to a reduction in the fees. The first adjustment is possible at the end of at least a twelve months duration of the contract. The basis for adjustments based on the CPI shall be the index figure for the month of October of the preceding year; in the case of adjustments according to adjustments of the standard salaries of VÖZ the basis shall be the applicable salary agreement of the preceding year. Derogations from the same may be agreed in the contract by consent.
- 10.4 For the term of the contract APA reserves the right to modify the price structure and to adjust the fees as a result thereof. Any such change shall be announced in writing not later than three months before entry into force. In the case of an actual materially adverse change to the detriment of the contracting party the contracting party shall have a right to rescind the contract for cause, which shall entitle the contracting party to terminate those parts affected by the price increase by giving two months' notice before the fee adjustment enters into force. If the contracting party does not exercise such right, the changed price shall be deemed agreed. Any agreed fixed price periods shall remain unaffected.
- 10.5 Fee increases that are implemented by the relevant network operator and are utilised by APA in connection with performance of the contract shall be passed on from the date of entry into force.
- 10.6 Fee increases made by cooperating third-party suppliers shall be advised to the contracting party in writing immediately after APA obtains knowledge thereof. The new fees shall apply from the date they enter into force.
- 11 TERMS OF PAYMENT**
- 11.1 The commencement date of billing shall be the date of commencement of the contract unless a different commencement date for payments is expressly agreed in the contract. Billing of APA services received and/or provided shall be made from the agreed commencement date onwards irrespective of actual use by the contracting party.
- 11.2 In the case of exclusively technical services the commencement date of billing shall be the commencement date of the services, unless a different commencement date for payments is expressly agreed in the contract. In such a case the minimum term of the contract shall begin as of the first month of billing (commencement date of billing).
- 11.3 Fixed prices shall be invoiced monthly, or at least quarterly, in advance; variable prices shall be invoiced monthly, or at least quarterly, in arrears and shall be paid by the contracting party within 10 days of receipt of the invoice. All prices stated shall be deemed exclusive of statutory VAT at the relevant rate and without deduction.
- 11.4 If receipt and/or provision of APA services by APA is not possible for reasons in the sphere of the contracting party or if they cannot be received or retrieved by the contracting party for the same reasons, the payment claim of APA shall continue to exist irrespective of the actual provision of services by APA. In such a case APA shall inform the contracting party in writing of its readiness to provide services. If within a period of two weeks no appropriate solution can be reached, APA may after such date issue invoices in accordance with the contract irrespective of delivery by APA and/or use by the contracting party.
- 11.5 The contracting party may not set off its own claims against claims of APA.
- 11.6 In the case of late payment APA shall be entitled to charge late payment interest of one per cent per month. The parties also agree that all necessary and legally accepted expenses for dunning and collection may be invoiced to the contracting party. If the contracting party fails to fulfil its payment obligations within 60 days of initial billing despite written reminders, APA shall be entitled to suspend

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services until full payment of all outstanding invoices or, as of that point in time, to render services only against advance payment. Suspension of services shall not release the contracting party from its duty to pay the contractually agreed fees. Furthermore APA may unilaterally terminate the contract with immediate effect by written notice to the contracting party. In the event that the contracting party becomes insolvent APA shall be entitled, to the extent permitted by law, to provide its agreed services exclusively against payment in advance.

- 11.7 Goods delivered shall remain the property of APA until full payment. APA shall have a right of retention to goods provided by the contracting party until settlement of all outstanding claims.

## 12 GENERAL

- 12.1 The contracting party agrees to be informed regularly or irregularly via email about products and services of APA. This consent may be revoked by the contracting party in writing at any time.
- 12.2 APA and its cooperating partners from time to time (e.g., international news agencies, stock exchange services) shall at any time be entitled to make changes to the form, content and selection of their services without notice to the contracting party unless a special obligation to supply services is agreed in the contract. However, the principal character of the services shall always remain the same.
- 12.3 If necessary, additional special terms and conditions may apply (e.g., OTS original text service, APA-PictureDesk, APA-IT). The contracting party shall be expressly informed thereof on a case-by-case basis.
- 12.4 Any and all notifications or agreements relevant to the contract (contract, termination, modifications, amendments, reminders, warnings, ...) shall be made in writing. If any provision of the contract should be ineffective, a provision shall apply in stead of the inapplicable provision which, with respect to content and meaning of the legally effective provisions of this contract, comes as close as possible to the will of the parties.
- 12.5 Both parties undertake to impose all rights and obligations under this contract to their legal successors, if any. Any transfer to other third parties by the contracting party shall only be permitted upon APA's express consent.
- 12.6 Austrian law except for UN Sales Law shall apply. The exclusive place of jurisdiction shall be the court having jurisdiction over commercial matters in Vienna.
- 12.7 APA shall be entitled to adapt the present GTC to changed conditions or requirements. In the case of modifications or amendments the new GTC shall enter into force three months after publication of the same on the website of APA at <http://www.apa.at>. In the case of modifications or amendments putting the contracting party under an obligation it shall, in addition, be informed in an appropriate form, e.g., by enclosing information with invoices. If the contracting party does not agree with the new GTC and the modified obligations contained therein it may terminate early those parts of the contract which are subject to a material detrimental modification by giving two months' written notice prior to the date the new GTC enter into force. If the material modifications concern a predominant part of the contract, the contracting party may terminate the entire contract by notice accordingly. In any of the cases mentioned in paragraph 12.7 or 10.4 APA reserves the right to make a written statement to the effect that it wants to maintain the old terms and conditions of the contract. In that case the notice of termination given by the contracting party shall be void.

Vienna, October 2017