TERMS & CONDITIONS FOR SERVICES
Version 1.2

§1 SCOPE OF TERMS & CONDITIONS AND ACCEPTANCE OF OFFER

(1) These Terms & Conditions apply to the provision of services of Cmotion GmbH, Austria (hereinafter referred to as „CMOTION") with its Clients. Unless otherwise agreed in writing, these Terms and Conditions are integral part of the contractual relationship between CMOTION and its Clients ("Contract").

(2) General terms & conditions of Clients shall not apply to the Contract, whether or not Client has expressly objected to the applicability of such general terms and conditions in his offer, order, acceptance of offer or etc.

(3) CMOTION is bounded by its offer for duration of one month starting the issuance of the offer, unless any other timeframe is expressly stated in the offer documents.

(4) Any offers must be accepted in writing by CMOTION.

§2 SERVICES OF CMOTION

(1) CMOTION shall render all Services in conformity with these Terms and Conditions, the Contract and with information technology standards generally accepted in the industry. CMOTION is only obliged to comply with any other technology standards if expressly stated in the offer documents. Any delivery or service dates or periods terms stated by Client is only binding for CMOTION, in the event such dates or periods terms are explicitly agreed in writing as binding.

(2) CMOTION will make available the source code only if expressly agreed between the parties.

(3) The procurement and maintenance of standard software and hardware required is the sole responsibility of Client. This also applies to standard software required for the use of work results, program tools or utilities. Any exceptions should be defined in specific cases, and entitle CMOTION to additional compensation.

(4) CMOTION will perform all obligations under these Terms and Conditions and the Contract using professionally qualified and skilled personnel. CMOTION reserves the right to exchange any employees assigned to work on the Services, and which might be nominated in the offer or contract documents, with a similar and suitably qualified person after notification to Client.

(5) In case the specification of the Services contain unintended gaps or ambiguities CMOTION is entitled to adjust the relevant contents of the specifications in its reasonable discretion.

(6) CMOTION does not provide legal or tax advice. These tasks are not part of CMOTION´s Services under the Contract. CLIENT shall be responsible for obtaining independent legal or tax advice, as appropriate, and shall inform CMOTION of any relevant advice influencing the Services in time.

(7) CMOTION has the right to subcontract third parties for the provision of the Services.

§3 DUTIES OF CLIENT

(1) Client acknowledges that the performance of its obligations to cooperate is basic prerequisite for the provision of Services by CMOTION and represents a contractual obligation. Unless agreed otherwise, Client is obliged to provide for the performance of CMOTION necessary facilities, technical environments, system access, resource persons and documents at no cost to CMOTION. In addition, Client is obliged to make immediate decisions on project implementation and project content, communicate these to CMOTION as well as consider any changes proposed by CMOTION.

(2) Client shall, without request, inform CMOTION on industry- and company-specific requirements and procedures, as far as these are relevant for the provision of Services. Client shall make all technical and other documents timely available to CMOTION which are necessary for the successful implementation of the Project, without request of CMOTION. Client is responsible for obtaining all necessary approvals and authorisations in time. CMOTION has no duty to warn if the tender documents are unclear or incorrect.

(3) At the request of CMOTION, Client shall, in the course of the project, accept all necessary material interim results, which shall serve as a basis for future work in the Project. Any changes in specifications shall be subject to a written Change Request (as defined in § 4 of these Terms & Conditions).

(4) In the event that Client fails to perform any agreed obligations, which affects the proper performance of Services by CMOTION, the corresponding time lines will be postponed for the respective delay plus an additional time for the resumption of the Services. CMOTION has the right to additionally charge Client for any costs caused by the delay of Client, especially costs incurred to extend the provision of personnel and equipment, on the agreed rates.

§4 MODIFICATION OF SERVICES (CHANGE REQUEST)

(1) Each Party may at any time propose changes to the substance or scope of the agreed Services (hereinafter in each case referred to as a "Change Request"). Any Change Requests shall be made in writing and submitted to the other Party.

(2) Upon submission of any Change Request by Client, CMOTION shall notify Client of the anticipated efforts and time for reviewing the Change Request, and any additional compensation payable by Client. If Client orders review of the Change Request subject to the notified terms and conditions by CMOTION, CMOTION shall inform Client of the consequences of the provision of the Change Request. Under any other circumstances, CMOTION is not obliged to review the Change Request. The examination of any Change Request will be charged to Client on the agreed rates, even if Client is not finally ordering the Change Request from CMOTION.

(3) CMOTION will not reject any Change Request except for good cause. Good cause for rejection of a Change Request exists, for example, if implementation of the Change Request would, in the opinion of CMOTION, jeopardize the success of the Project or if the requested change falls outside the range of services offered by CMOTION. Client has the right to reject any Change Request by CMOTION without reason. In the event that Client rejects any Change Request of CMOTION against CMOTION's recommendation, Client shall be responsible for all resulting consequences. CMOTION's obligations under the Contract shall remain unaffected thereby.

(4) Any Change Requests shall not be valid unless and until a written agreement defining the terms and conditions for implementation of the Change Request (including, without limitation, the type and scope of services, scheduling, price) has been signed by both Parties. Only in case of emergency, CMOTION shall start implementation of the Change Request on the basis of the contract and agreed rates.

§5 ACCEPTANCE

(1) All Services, tangible products and other works to be produced or performed by CMOTION in accordance with these Terms & Conditions and the Contract are subject to acceptance by Client. The statement of Services may define interim results that are

subject to separate acceptance. Upon request of CMOTION, Client shall confirm acceptance in writing (acceptance certificate).

(2) CMOTION informs Clients when Services or products are ready for acceptance. Unless otherwise agreed, Client shall accept all Services within five (5) business days after being informed, provided that the products and Services do not contain any defects hindering acceptance.

(3) All defects hindering acceptance shall be included in the acceptance certificate, and entitle Client to reject acceptance of the products and Services, subject that the defect hindering hinders form using the Services or product. In the event of any immaterial defects – defects not hindering acceptance – CMOTION has the right to remedy the defect after acceptance, not resulting in any delay by on part of CMOTION.

(4) In the event of software development, software implementation or systems integration services, the Parties will agree on the process and scope of the respective acceptance tests. For the performance of the acceptance test Client provide necessary equipment, test data in the agreed quantity and quality and in machine-readable version and the documented results of the acceptance test by Client in the format presented by CMOTION. CMOTION has the right to participate in the acceptance tests and to inspect the results.

 (5) The Products and Services shall be deemed accepted when Client starts with the productive use of the Services or Client does not hand over the acceptance certificate in time, in which at least one defect hindering acceptance is listed.

§6 PRICE AND PAYMENT TERMS

(1) Unless otherwise agreed, CMOTION shall invoice for Services actually performed (effort) on a monthly basis.

(2) Provided that the remuneration for Services are calculated in "man days", "person days", etc., each such "day" corresponds each with up to eight full hours of an employee during a calendar day.

(3) In the event that extra costs incur to CMOTION because of gaps or ambiguities in the documents provided by Client, CMOTION is entitled to charge such extra costs on the basis of the agreed rates. This also applies to additional costs which stem from conflicting or erroneous information provided by Client.

(4) Any travel costs, expenses or other incidental costs, which are directly connected to the provision of Services from CMOTION will be charged as actually incurred in addition to the charges mentioned above.

(5) All prices are net prices in EURO, and exclude applicable VAT and any other applicable taxes, without any deductions, unless otherwise agreed.

(6) Invoices shall become due within 14 (fourteen) days after receipt. In case of doubt invoices shall be received not later than three (3) calendar days from the invoice date.

(7) In the event of Client's payment default and in case that CMOTION rescinds from the Contract as consequence of the payment default in accordance with these Terms and conditions, CMOTION has the right to either claim (i) compensation for actual damages or (ii) liquidated damages equal to the amount of compensation payable by Client for Services rendered prior to the demand, plus 40% of the remaining agreed or anticipated total amount of compensation. Any additional rights or claims of CMOTION shall remain unaffected thereby.

§7 PROPERTY AND USAGE RIGHTS

(1) CMOTION hereby grants to Client, effective as of acceptance and payment of the agreed price, a non-exclusive license to use the Service results and products (hereinafter collectively referred to as the "Service results") in the country of its origin for Client's internal business purposes.

(2) Until full payment of the contract price and acceptance of the Services, Client has the right to test the Services results to the extent of the agreed scope. Client loses its right to test the Service results in case of payment default for more than thirty (30) days provided however that CMOTION have given written notice to Client of such a payment default.

(3) The provisions of § 7 (1) shall not apply to any standard products included in the Services results. Standard products are distinct products or solutions of CMOTION or third parties, to which different separate license terms apply. Client´s rights in standard products are determined by the license terms agreed to with the licensor.

(4) Notwithstanding the provisions of § 7 (1), Client shall, for any Service results that include open source software or adaptations of such software, receive non-exclusive licenses in accordance with the license terms applicable to such software (e.g., "GNU General Public License"). The parties are obliged to comply with these license terms.

(5) The grant of license under § 7 (1) shall exclude any pre-existing materials or solutions of CMOTION including any modified versions or derivatives thereof (collectively, "CMOTION Assets"). CMOTION reserves all right, claim and interest in and to any CMOTION Assets. CMOTION hereby permits Client to use any CMOTION Assets included in the Service results, to the extent necessary for the agreed use of the Service results. An isolated usage of CMOTION Assets is impossible.

(6) CMOTION shall have the right, subject to the duties of confidentiality, to use, without limitation, all know-how acquired in the course of the Project, including without limitation, all concepts, procedures, methods, and material interim results, provided that no confidential information of Client are included in such Service results.

(7) As far as during the performance of Services by CMOTION results incur which are patentable or can be used as utility patent, CMOTION reserves the right to apply for such a copyright in its own name and for its own account. CMOTION grants Client the limited right to use such copyrights to the extent required for the use of the Service results. Any license in the copyrights is included in the agreed contract prices.

(8) Client hereby grants to CMOTION a non-exclusive and royalty free license to use intellectual property rights of Client to the extent required to provide the Services to Client.

§8 RIGHTS OF CLIENT IN CASE OF MATERIAL DEFECTS

The provisions of this section apply only to material defects in Services and Products delivered under this Contract.

(1) CLIENT has to report defects immediately in writing and specifically describe them. The warranty period is six (6) months after acceptance, unless CMOTION has concealed the defect maliciously. For partial performance, the warranty period begins with acceptance of the affected part performance. Any commercial obligation of Client to notify shall remain unaffected.

(2) CMOTION can determine the type of remedy at its own discretion. As a remedy, a reasonable possibility of defect avoidance provided by CMOTION to Client is also acceptable ("work around "). CMOTION may also request that Client installs new or updated parts of the program in case of Software. The timing of the remedy of defects not hindering the acceptance can be determined by CMOTION in its reasonable discretion.

CMOTION shall remedy the defect within reasonable agreed period, which will be determined on a case by case basis, in case of improvement or exchange of the defect.

(3) CLIENT shall provide CMOTION free of charge any requested documents and information required by CMOTION to analyze and remedy the defect. Furthermore, Client will assist CMOTION in the analysis and remedy of the defect to the extent reasonably requested by CMOTION, e.g. by provision of computer, jobs and telecommunications facilities.

(4) Client is entitled to reduce the agreed remuneration (price reduction) or to resign from the contract (cancellation) in case of defects hindering acceptance, provided that not only a minor defect incurred and the cure finally failed. In case of determination of the final failure the complexity and circumstances of the corrective action must be taken into account, but in any case a final failure shall not be assumed after a second failure of a subsequent repair of a deficiency. A self-performance of repair by Client or a third-party intervention is excluded. Client can claim damages only in the context of § 10.

(5) CMOTION is not liable for defects related to faulty or incomplete specifications or policies, specified by Client or approved by Client, or poor performance of Client or third party appointed by Client. Similarly, CMOTION is not liable for defects in case Services were changed by someone else than CMOTION, unless Client proves that the defect is not connected to or caused by the change.

(6) Client shall reimburse CMOTION for any costs incurred caused by unauthorized complaints, on the basis of the agreed rate, in addition to the agreed remuneration.

§9 RIGHTS OF CLIENT IN CASE OF DEFECTS IN TITLE

(1) CMOTION warrants that no third party rights will be infringed by the handover of the Services to Client, subject to contractual use by Client. This warranty requires that Client notifies in writing without delay of any third-party claims raised against him and that Client grants defence and any settlement negotiations to CMOTION. Client will support CMOTION free of charge to the reasonable extent, in particular Client will provide with any required information. Any commercial obligation to notify of Client shall remain unaffected.

(2) All rights mentioned in these Terms and Conditions are limited to those of third parties under Austrian law.

(3) In the event that a right of a third party affects the contractual use of a work result by Client, CMOTION can, at its option, either modify the Service in a that way that the rights of third parties is not infringed any more, or provide Client with the required authority to use the Service.

(4) Client can only claim for damages under § 10.

(5) Client has no right of any claims due to defects in title, in the event that the Services have been modified or changed by Client or any third party, unless Client can prove that the infringement was not caused by the modification or changes. Client's claims do not exist in case of an infringement of third party rights resulting from a combination of the work results of CMOTION with such services or products of third parties, which are no subcontractors of CMOTION.

(6) The warranty period for defects in title is six (6) months after acceptance, unless CMOTION has concealed the defect maliciously.

§10 LIMITATION OF LIABILITY

(1) CMOTION's liability is limited to any damage or loss of property and equipment and for bodily injury to or death of third parties caused by gross negligence or willful misconduct of CMOTION and its contractors, subcontractors and suppliers.

(2) Such liability is limited to all direct damages, which were foreseeable at the time the Contract is signed. No party has any right to claim for consequential damages, such as lost profits.

(3) The aforementioned liability limitation also applies to the legal representatives and employees of CMOTION and also in the case of contractual or tortuous liability.

(4) The liability of CMOTION for damages under the Product Liability Act remains unaffected thereof.

(5) In the case of data loss, the liability of CMOTION is limited to the replacement costs, which result for the restoration of electronic data from backup media. The obligation of Client for regular data backup according to the state of the art is not affected.

(6) The limitation period for claims for damages of Client against CMOTION is governed by the Austrian law.

§11 CONFIDENTIALITY AND DATA PROTECTION

(1) Each Party shall maintain all confidential information of the other Party received in connection with the Parties' cooperation strictly confidential. Specifically, each Party shall protect such information from access by any unauthorized third parties, using the same standard of care such Party uses with respect to its own information of like kind (but, in no event, less than a reasonable standard of care) in the exercise of reasonable business care. As used herein, any agents assigned by the Parties to work on the Project in accordance with these Terms and Conditions and the Contract and any other employees of CMOTION shall not be regarded as unauthorized third parties. The Parties agree that they shall require all employees or third parties assigned to work on the Project to comply with the duties of confidentiality provided for in these Terms and Conditions and the Contract.

(2) Confidential Information shall consist of any information of a Party -- in any shape or form – that has been designated as confidential in writing by a Party or the confidentiality of which is obvious from the nature of such information, and shall include, without limitation, any business and trade secrets.

(3) Confidential information shall exclude any information which the receiving Party can show (i) is or was generally accessible by the public, (ii) was acquired by the receiving Party prior to disclosure by the other Party without being subject to a duty of confidentiality, (iii) was developed independently and without using any confidential information of the other Party, or (iv) was acquired from a third party who was not subject to a duty of confidentiality.

(4) CMOTION reserves the right to retain a complete set of copies of all documentation and information for the Project for evidentiary purposes or for supplementing the know-how base of CMOTION.

(5) The above duties of confidentiality shall survive termination of the Contract.

§12 TERMINATION

(1) The Contract may be terminated by either Party upon two weeks prior written to the other Party to the end of the month, unless otherwise agreed. § 6 (7) shall apply mutandis mutatis.

(2) Without prejudice to any other rights of the Parties pursuant to these Terms and Conditions, both parties have the right to terminate the Contract with immediate effect for cause. The reasons which entitle a party to terminate the contract are in particular the following, regardless of culpability:

a) breaches of good faith (e.g. breach of confidentiality)

b) unable to fulfill its obligations in accordance with the contractual obligation by a party;

c) breach or repeated breach of an essential contractual obligation by a party

d) insolvency under any of the provisions of any applicable bankruptcy act of the other party or in the event the other party makes a voluntary assignment of its assets for the benefit of creditors or is adjudged bankrupt

e) any other reasons set out specifically in these terms and conditions.

In the event of termination for cause by CMOTION § 6 (7) shall apply mutatis mutandis. In the event of termination for cause by Client, CMOTION is entitled to the payment for Services rendered properly until the effectiveness of the termination.

$13 GENERAL PROVISIONS

(1) Any modifications or amendments to these Terms and Conditions, the Contract or to any prior modifications or amendments shall be invalid unless executed in writing and duly signed by both Parties. The aforementioned shall also apply to any waiver of this clause.

(2) If any provision of these terms and conditions is invalid or impracticable, the validity of the remaining provisions shall remain unaffected thereby. Any invalid or impracticable provision shall be replaced by such lawful provision as most closely reflects the commercial intent and purpose of the original provision. The foregoing shall apply if these Terms and Conditions contain any unintended gaps.

(3) CMOTION has cooperation relationships with third party product and services vendors. As part of many such relationships,

CMOTION is able to resell certain products and services to Client, and to broker the sale of or recommend products which are objectively suitable for purposes of a customer project. In this connection, CMOTION may receive compensation from vendors in the form of fees or other benefits in connection with the marketing, technical and other assistance provided by CMOTION. Client hereby acknowledges and agrees that such relationships may be beneficial to CMOTION and assist CMOTION with rendering Services to Client in accordance with these Terms and Conditions and the Contract. Client further agrees that any such benefits shall remain with CMOTION.

(4) CMOTION shall have the right to use the name and trademark of Client for reference purposes.

(5) The use of the name of CMOTION in public and in connection with a project performed by CMOTION requires the prior written consent of CMOTION.

(6) Neither party has the right to assign or to pledge the Contract or any rights under the Contract except with the prior written consent of the other Party.

(7) Client's right to offset any counterclaims is limited to final and comprehensive court judgements or which are undisputed.

(8) This relationship between the Parties shall be governed by and construed in accordance with the laws of Austria, with the exception of the UN Convention on Contracts for the International Sale of Goods.

(9) Any disputes arising from or in connection with the Contract shall be determined by a court of competent jurisdiction in Vienna, Austria.

$14 RIGHTS OF USE AND EXPLOITATION

Any components which are not returned/collected within 2 months after service/repair will be subject to a monthly storage and administration charge of €5. Additional utilization costs may also apply.

If components are not collected within 36 months, cmotion reserves the right to use or sell them. If a client makes a claim for serviced components, cmotion will return the components (if available) once all accumulated costs have been paid. If the items have been sold, after 3 years, cmotion will offer reimbursement calculated on the "sale price" (if between €500 and €5,000) minus any service, administration and storage costs incurred before the sale date.