1 General Terms and Conditions for the Sale and Delivery of Organizational and Programming Services, Support subscription Services and Permission to Use Software Products - Proxmox Server Solutions GmbH 2021

1.1. Scope and Validity of Contract

1.1.1 PThis Agreement establishes a framework that will enable Proxmox to provide Software and Services to Client. "Software" means all Proxmox Software products including all modifications, additions or further enhancements delivered by Proxmox. The specific services (the "Services") and/or Software that Proxmox will provide to Client will be described in an Order Form, signed by the parties or otherwise accepted by Proxmox, which may consist of (a) one or more mutually agreed order forms, statements of work, work orders or similar transaction documents, or (b) an order placed by Client through Proxmox's online store accessible from a Proxmox website. The parties agree that the terms of this agreement will govern all purchases and use by Client of Software and Services unless otherwise agreed by the parties in writing. The terms and conditions of the buyer are invalid for the legal transaction which is the subject of this contract, as well as for the entirety of our business relations. All offers are subject to change without notice.

1.1.2 Business Partners: Proxmox has entered into agreements with other organizations ("Business Partners") to promote market and support certain Software and Services. When Client purchases Software and Services through a Business Partner, Proxmox confirms that it is responsible for providing the Software and Services to Client under the terms of this Agreement. Proxmox is not responsible for (a) the actions of Business Partners, (b) any additional obligations Business Partners have to Client, or (c) any products or services that Business Partners supply to Client under any separate agreements between a Business Partner and Client.

1.1.3 The subject of an order can be:

- Development of an organizational plan
- Macro- and micro-analyses
- Creation of custom-designed programs
- Delivery of library (standard) programs
- Acquisition of rights to use software products
- Acquisition of exclusive rights to use and to exploit software products
- Support at system start-up / support during system changeover
- Program maintenance
- Creation of program carriers
- Other services

1.1.4 Individual organizational plans and programs shall be elaborated in line with the type and scope of the information, documents and accessory aids which have been made available in to by the buyer. Included are customary test data as well as the opportunity to test to the necessary extent, which the buyer shall make available on a timely basis, during normal business hours, and at his expense. If the buyer has already been working in real time in an operating system that is being made available for testing, the responsibility for securing the real data lies with the buyer.

1.1.5 The basis for creating custom-designed programs shall be the written performance specifications that either are provided by the buyer or that the seller writes up, at charge to the buyer, on the basis of documentation and information provided to him by the buyer. This performance catalog is to be inspected by the buyer for correctness and completeness and is to be initialed by him as a sign of his assent. Requests for modifications which are made thereafter can result in separate deadline and price agreements.

1.1.6 For individually created software or program adaptations, it is required that each program be accepted by the buyer at the latest four weeks after delivery by the seller. This acceptance will be confirmed in a record of the transaction by the buyer (inspection for correctness and completeness in line with the performance specifications accepted by the seller on the basis of the test data made available to him, as described in § 2.2). Should the buyer allow four weeks to pass without accepting the program, the

delivered software shall be deemed to have been accepted as at the last day of the stated time period. If the buyer uses the software in real-time operations, the software is thereby deemed to have been accepted by the buyer. Possible defects – deviations from the written performance specifications – are to be reported to the seller with sufficient supporting documentation. The seller shall make efforts to correct the defects as quickly as possible. If there are serious defects that have been reported in writing, i.e., if real-time operations have not commenced or cannot be continued, a renewed acceptance of the work following correction of the deficiency is required. The buyer does not have the right to refuse software because of immaterial defects.

1.1.7   When library (standard) programs have been ordered, the buyer confirms by virtue of the order his knowledge of the scope of performance of the ordered program.

1.1.8   Should it prove in the course of the work to be impossible, actually or legally, to complete the order in line with the performance specifications, it is the responsibility of the seller immediately to inform the buyer thereof. If the buyer does not change the performance specifications accordingly or create the conditions to make completion of the order possible, the seller can reject performance of the order. If the impossibility of carrying out the order is due to an omission on the part of the buyer or to a later change by the buyer in the performance specifications, the seller is entitled to withdraw from the order. The buyer is to reimburse the seller's costs and fees that have come due for the work as well as any dismantling costs.

1.1.9   The shipment of program carriers, documentation, and performance specifications shall be at the expense and risk of the buyer. Should the buyer wish further training and elucidation, these will be billed separately. Insurance will be taken out only at the request of the buyer.

1.2. Performance and Inspection

1.2.1   Reporting: Client will notify Proxmox (or the Business Partner from whom Client purchased Software or Services) promptly if the actual number of Units of Software or Services utilized by Client exceeds the number of Units for which Client has paid the applicable Fees. In its notice,

Client will include the number of additional Units and the date(s) on which such Units were first utilized. Proxmox (or the Business Partner) will invoice Client for the applicable Services for such Units and Client will pay for such Services no later than thirty (30) days from the date of invoice.

1.3. Prices, Taxes and Fees

1.3.1   All prices are in Euro and do not include sales tax. They are valid only for the present order. The quoted prices are ex business domicile or branch office of the seller. The costs of program carriers (e.g., CD's, magnetic tapes, magnetic disks, floppy disks, streamer tapes, magnetic tape cassettes, etc.) as well as any contract fees shall be billed separately.

1.3.2   For library (standard) programs the valid prices are the list prices in effect on the day of delivery. All other services (organizational consultancy, programming, training, support during changeover) will be charged at the rates in effect on the day the services are performed. Deviations from the amount of time calculated as being required for the work (which serves as the basis for the price calculation) and for which the seller is not responsible, shall be charged according to the actual time spent.

1.3.3   The costs for travel, per diem, and overnight accommodation costs shall be invoiced separately to the buyer according to the valid respective rates. Transit time is to be considered as work time.

1.4. Delivery Dates

1.4.1   The seller is to endeavor to keep as closely as possible to the agreed dates for completion of the order.

1.4.2   The targeted completion dates can only then be met if 1) the buyer makes available to the seller in full, on the dates established by the seller, all the necessary preliminary work and documents, especially the performance specifications accepted by him in accordance with § 2.3 and if 2) the buyer fulfills his obligation to cooperate to the extent required. Delays in delivery and cost increases that result from incorrect, incomplete, or subsequently changed data and information or supporting documentation provided to the seller, are not the responsibility of the seller and cannot result in the seller's being in default of delivery. Additional costs so arising are to be borne by the buyer.

1.4.3 In the case of orders that encompass a number of units or programs, the seller is entitled to make partial deliveries and to submit partial invoices.

1.5. Payment

1.5.1 Where orders encompass a number of units (e.g., computer programs and/or training sessions, completion in stages), the seller is entitled to submit an invoice after the delivery of each unit or service.

1.5.2 Payment on the agreed-upon dates is an essential condition for delivery and for fulfillment of the contract by the seller. Failure on the part of the buyer to comply with the agreed payment schedule entitles the seller to discontinue current work and to withdraw from the contract. All costs connected therewith as well as loss of profit are to be borne by the buyer. In case of delayed payment, interest on payment in arrears will be charged at customary bank rates. In case two consecutive installments are not paid on time, the seller has the right to enforce non-compliance and to call accepted drafts.

1.5.3 The buyer is not entitled to withhold payment because of incomplete total delivery, guarantee or warranty claims, or complaints.

1.6. Copyright and Use

1.6.1 All delivered software packages include an end user license agreement and/or the license terms defining the right of use, distribution and modifications permissions. If no license is included in the software package, the following terms apply.

1.6.2 The seller or his licensors are entitled to all copyrights on the agreed services (programs, documentation, etc.). The buyer obtains only the right to use the software after payment of the agreed remuneration strictly for his own purposes, only with the hardware as specified in the contract, and, in accordance with the number of licenses acquired, simultaneously at different workplaces. By this contract the buyer acquires merely the authorization to use the software. Further distribution of the product by the buyer is not permitted, as per the copyright law. The buyer does not by virtue of participating in the production of the software acquire any rights beyond its use as set forth in this contract. Any infringement of the copyrights of the seller will

result in the right to claim damages, in which case the seller is entitled to full satisfaction.

1.6.3 The buyer is permitted to make copies for archival and data backup purposes only on condition that the software does not contain an express prohibition on the part of the licensor or a third party and that all notices of copyright and ownership are transferred unchanged into these copies.

1.6.4 Should the disclosure of the interfaces be necessary to produce the interoperability of the software covered by this contract, the seller is to request this of the buyer with remuneration of costs. If the seller does not comply with this stipulation and de-compilation follows in accordance with copyright law, the results are to be used exclusively for the production of interoperability. Misuse will result in claims for damages.

1.7. Right of Cancellation

1.7.1 Should the agreed-on date of a delivery be exceeded due solely to the fault or the unlawful conduct of the seller, the buyer is entitled to cancel the contract in question by registered letter if essential parts of the agreed service are not performed within a reasonable grace period and the buyer is in no way at fault.

1.7.2 Force majeure, work conflicts, natural catastrophes, and transportation stoppages, as well as other circumstances that cannot be influenced by the seller relieve the seller of the obligation to deliver or permit him to re-determine the agreed delivery period.

1.8. Representations and Warranties

1.8.1 Proxmox represents and warrants that: (a) it will use reasonable skill and care in providing the Services; (b) the Services will be performed in a professional and workmanlike manner by qualified personnel; (c) it has the authority to enter into this Agreement with Client; and (d) to knowledge of Proxmox, Proxmox-branded Software does not, at the time of delivery to Client, include malicious or hidden mechanisms or code for the purpose of damaging or corrupting the Software.

1.8.2 Disclaimer of Warranty: Except as expressly provided in section 8.1 or by a third party vendor directly to client under a separate agreement, the

services, software and representations, conditions or other terms of any kind and Proxmox excludes all implied warranties to the extent permissible by law (including, without limitation, those of merchantability, sale by description, sale by sample, satisfactory quality, non-infringement and fitness for a particular purpose).

1.8.3 Proxmox does not guarantee or warrant that the use of the services, software or hardware will be uninterrupted, comply with regulatory requirements, and be error free or that Proxmox will correct all software errors. For the breach of the warranties set forth in section 8.1, client´s exclusive remedy, and Proxmox's entire liability, will be the re-performance of deficient services, or if Proxmox cannot substantially correct a breach in a commercially reasonable manner, client may terminate the relevant services and receive a pro rate refund on the fee paid for the deficient services as of the effective date of termination.

1.8.4 The costs for support provided, diagnosis of errors, remedying defects and failures that are the responsibility of the buyer, as well as other corrections, revisions and additions are to be carried out by the seller and the costs charged to the buyer. This is also the case for the remedying of errors when program revisions, additions or other interventions have been carried out by the buyer himself or by a third party.

1.8.5 Without limiting the generality of the foregoing disclaimer, the Software, Services and any hardware provided are not specifically designed, manufactured or intended for use in (a) the planning, construction, maintenance, control, or direct operation of nuclear facilities, (b) aircraft navigation, control or communication systems, weapons systems, or (c) direct life support systems. Client agrees that it is solely responsible for the results obtained from the use of the Software and Services in such areas.

1.8.6 Furthermore, the seller assumes no warranty for defects, failures or damages that are due to improper use, altered components in the operating system, interfaces and parameters, the use of inappropriate organizational resources and data carriers, insofar as these are stipulated, unusual operating conditions (particularly deviations from the installation and storage provisions) or damage during shipment.

1.8.7 For programs that are subsequently altered by programmers of the buyer or by third parties, any existing warranty of the seller's is no longer applicable.

1.9. Limitation of Liability

1.9.1 For all events and circumstances, Proxmox and its affiliates aggregate and cumulative liability arising out of or relating to this agreement and all order forms, including without limitation on account of performance or nonperformance of obligations, regardless of the form of the cause of action, whether in contract, tort (including, without limitation, negligence), statute or otherwise will be limited to the amount that client paid (or is payable) to Proxmox under the applicable order form giving rise to liability during the twelve (12) months immediately preceding the first event giving arise to liability.

1.9.2 Disclaimer of Indirect Damages

And notwithstanding anything to the contrary contained in this agreement or any order form, in no event will Proxmox or its affiliates be liable to client or its affiliates for: any claim based upon a third party claim, any incidental, consequential, special, indirect exemplary or punitive damages, whether arising in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise; or of any damages arising out of or in connection with this agreement and/or any order forms falling within the following categories:
(1) Loss of data
(2) Loss of profit
(3) Loss of savings
(4) Loss or interruption of service
(5) Loss of business or anticipatory profit's
(6) Loss of use or downtime
(7) Loss of or corruption to data or other information or loss or damage to software even if Proxmox or its affiliates have been advised of the possibility of such a loss and/or damage

1.9.3 Disclaimer of Direct Damages

For the avoidance of doubt, the types of loss and/or damage specified in section 9.2 1 to 7 inclusive shall not constitute direct loss for the purposes of this agreement and/or any order form.

1.10. Export

Proxmox may supply Client with technical data that is subject to export control restrictions. Proxmox will not be responsible for compliance by Client with applicable export obligations or requirements for this technical data. Client agrees to comply with all applicable export control restrictions. If Client breaches this Section or the export provisions of an applicable end user license agreement for the Software, or any provision referencing these sections, Proxmox may terminate this Agreement and/or the applicable Order Form and its obligations thereunder without liability to Client. Client acknowledges and agrees that to provide the Services, it may be necessary for Client Information to be transferred between Proxmox, its Affiliates, Business Partners and/or subcontractors, which may be located worldwide.

1.11. Loyalty

The parties to the contract obligate themselves to reciprocal loyalty. They will not hire away staff or employ, including by way of third parties, staff of the other party to the contract who have worked on the realization of the projects, during the duration of the contract or for 12 months after the end of the contract. A party to the contract in violation of this clause is obliged to pay lump-sum damages in the amount of one annual salary of the employee.

1.12. Protection of Data Privacy, Nondisclosure

1.12.1 Confidentiality: During the term of this Agreement, both parties agree that (i) Confidential Information will be used only in accordance with the terms and conditions of this Agreement; (ii) each will use the same degree of care it utilizes to protect its own confidential information, but in no event less than reasonable care; and (iii) the Confidential Information may be disclosed only to employees, agents and contractors with a need to know, and to its auditors and legal counsel, in each case, who are under a written obligation to keep such information confidential using standards of confidentiality not less restrictive than those required by this Agreement. Both parties agree that obligations of confidentiality will exist for a period of two (2) years following initial disclosure of the particular Confidential Information. "Confidential Information" means all information disclosed by either Proxmox or Client ("Disclosing Party") to the other party ("Recipient") during the term of this Agreement that is either (i) marked confidential or (ii) disclosed orally and described as confidential at the time of disclosure and subsequently set forth in writing, marked confidential, and sent to the Recipient within thirty (30) days following the oral disclosure.

1.12.2 Exclusions: Confidential Information will not include information which: (i) is or later becomes publicly available without breach of this Agreement, or is disclosed by the Disclosing Party without obligation of confidentiality; (ii) is known to the Recipient at the time of disclosure by the Disclosing Party; (iii) is independently developed by the Recipient without use of the Confidential Information; (iv) becomes lawfully known or available to the Recipient without restriction from a source having the lawful right to disclose the information; (v) is generally known or easily ascertainable by parties of ordinary skill in the business of the Recipient; or (vi) is software code in either object code or source code form that is licensed under an open source license. The Recipient will not be prohibited from complying with disclosure mandated by applicable law if, where reasonably practicable and without breaching any legal or regulatory requirement; it gives the Disclosing Party advance notice of the disclosure requirement.

1.12.3 The seller obligates his employees to observe the provisions of Art. 2 §6 of the Austrian Data Privacy Law ("Datenschutzgesetz" (DSG)).

1.12.4 We are committed to protecting your privacy and keeping you informed of how your personal information is used. This Privacy Policy applies to personal information we collect through the proxmox.com website, and other websites which we operate and on which we post a link to this policy. We will only collect and use your personal information in accordance with the current EU General Data Protection Regulation 2018 (GDPR), the Austrian data protection law Datenschutzgesetz (DSG) and the Telekommunikationsgesetz (TKG).

1.13. Other

Should individual terms of this contract be or become inoperative, this will not affect the remaining terms of this contract. The parties to the contract will work in a spirit of partnership to find an arrangement that approximates as nearly as possible the inoperative terms. Each party agrees to give the other

a written description of any problem(s) that may arise and to make a good faith effort to amicably resolve any such problem before commencing any proceeding. Notwithstanding the foregoing, either party may take any action reasonably required to protect such party's rights. No claim or action, regardless of form, arising out of this Agreement or an Order Form may be brought by either party more than one (1) year after the cause of action has accrued.

1.14. Concluding Terms

Insofar as not otherwise agreed, the statutory regulations applicable to registered merchants are exclusively those in force under Austrian law. This is the case also when the order is carried out outside of Austria. In case of conflict, it is agreed that only the responsible local court in the seller's place of business has jurisdiction. For sales to consumers within the meaning of the consumer protection law, the above terms are valid only insofar as the consumer protection law does not insist on other conditions.

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