

## General Terms and Conditions of Purchase and Payment for Software Maintenance (ABSP) of RWE 12/2018

### 1. Scope/conclusion of contract

The following terms and conditions shall apply to the provision of software maintenance. Purchase orders by an RWE-Company – hereinafter referred to as “Client” - shall be placed according to these terms and conditions as well as any supplementary terms and conditions named in the purchase order or in the functional/technical specifications.

Any deviating terms and conditions of the Contractor shall not become part of the contract even if the Client has not expressly rejected them in the individual case or the delivery (goods/services) has been accepted. Any confirmations made by the Contractor with reference to its terms and conditions of business shall be herewith contradicted.

### 2. Contract conclusion, supplement agreements and written form

This contract **comes** into existence as a result of the Contractor accepting an offer of the Client, i.e. a written order or an SAP purchase order of the Client. An SAP purchase order can be submitted electronically or in writing. The declaration of acceptance shall be in the form in which the offer was made.

Additional agreements, changes and additions to the contract (hereinafter referred to as supplement agreements) come into existence as a result of the Contractor accepting an offer of the Client, i.e. a written order or an SAP purchase order of the Client. An SAP purchase order can be submitted electronically or in writing. In the case of a written offer, the acceptance by the Contractor also has to be in writing. Furthermore an SAP purchase order shall be deemed accepted, if the Contractor does not object the SAP purchase order within 30 calendar days as of receipt and was informed of this legal consequence in the respective SAP purchase order or if the Contractor begins with the execution of the ordered goods and services within this period without raising objections.

Unilateral constitutive declarations (einseitige Gestaltungserklärungen) as well as the exercise of any service determination rights under this contract must be in writing. Writing for the purposes of this contract requires that the relevant document is signed by the issuer with his name in his own hand.

### 3. Subcontractors

If the Contractor would like to commission third parties to provide the services, this shall require the prior written consent of the Client. Correspondingly, this shall apply to the change of or the use of other subcontractors. The Client shall give its consent unless there are factual reasons for objecting to the use of specific subcontractors, or to any use of subcontractors, in a project. The Client explicitly reserves the right to award by itself any work to be awarded to subcontractors.

### 4. Observance of legal regulations for the protection of the employee

The Contractor shall comply with all legal regulations for the protection of the employee, in particular all regulations with regard to the payment of the minimum wage, and payment of holiday fund contributions pursuant to the German law on the secondment of workers (AEntG) and according to the German Act on minimum wages (MiLoG) as well as to comply with the agreed collective regulations concerning its business.

The Contractor shall ensure that its subcontractors meet these requirements and are contractually obliged to do so. Where doubt exists or arises the Contractor is obliged to actively seek compliance with the legal regulations. The Contractor's subcontractors are its immediate and all subordinate subcontractors.

The Contractor shall indemnify and hold the Client harmless in their internal relationship from all possible claims, which are made against the Client because of a non-compliance of the Contractor or one of its subcontractors against the German law on the secondment of workers (AEntG), the German Act on minimum wages (MiLoG) as well as further legal regulations giving rise to a possible liability. In particular the Contractor undertakes to support the Client with regard to the defence of alleged claims against the Client in the best possible way and to provide the latter for example with the necessary information.

The Contractor shall provide the Principal Client with a certificate of safety issued by an auditor, tax consultant or the applicable social security fund in accordance with the collective bargaining agreement (“Soka-Bau, Soka-Dach or Soka-Gerüstbau”), with a date of issue of the last 3 months. This is to confirm that the general minimum wage, or if it does not exist, the legal minimum wage, is adhered. If no general minimum wage is applicable, this must be mentioned in the certificate of safety.

Alternatively, the Client will also accept the contractor's current extract from the commercial central register (<https://www.fuehrungszeugnis.bund.de>), provided that it does not contain an entry for violations of the minimum wage law.

The contractor is obliged to ensure that all subcontractors are contractually bound by the contract. Corresponding evidence must be made available to the client within the framework of the proper application of subcontractors.

If the Contractor infringes the obligation to pay the minimum wage or if the Contractor of the obligation does not provide any evidence within a reasonable period set by Client, the Client shall be entitled to terminate the Contract without notice period for serious cause.

In the event of infringement of the obligation to pay the minimum wage by a subcontractor of the Contractor or the failure to provide any evidence the Client shall be entitled to terminate the Contract with the Contractor without notice period, unless the Contractor hasn't already immediately terminated the contractual relationship with the subcontractor.

In the event of termination for serious cause without notice period the Client shall be entitled to have the services, which have not been performed yet, carried out by a third party at the expense of the Contractor.

## 5. Code of Conduct

The Client expressly refers to RWE's Code of Conduct which applies within the RWE Group and may be viewed at the following web address: <https://supplier.rwe.com> (path: <https://www.group.rwe/en/the-group/responsibility/compliance/code-of-conduct>). The Client expects the Contractor to accept the principles of conduct included in the Code of Conduct as the basis for the partnership and, in particular, to commit itself to supporting and implementing the principles on human rights, labour relations, the environment and anti-corruption laid down under the Global Compact initiative of the United Nations ([www.unglobalcompact.org](http://www.unglobalcompact.org)).

## 6. Applicable provisions

In the event of contradictions, the following shall apply in the order of precedence shown:

- a) The provisions of the individual purchase order together with the specifications and any supplements,
- b) Any framework agreement with appendices
- c) The provisions of these terms and conditions as amended on conclusion of contract,
- d) The supplementary provisions to clause 18 of these terms and conditions – Supplementary Industrial Safety Conditions – as amended,
- e) The Security Policy of the RWE Group as amended on conclusion of contract.

## 7. Subject of performance

The Contractor shall guarantee the full operability of the software throughout the term of the contract.

### 7.1 Subject of performance

- a) The maintenance services of the Contractor shall include in particular:
  - remedying problems that are caused by errors in the program or by errors in the software environment or due to operating errors;
  - telephone support (hotline) in all matters relating to the use or application of the software ("user support");
  - further development of the software and delivery of the latest release of the standard version of the programme provided within the framework of the licence agreement (updates and upgrades);
  - adaptation to the compulsory administrative and legal provisions or requirements;
  - sending without need of request of new or adaptation of existing documentation (in German and English);
  - weekly reporting in writing (e.g. e-mail) with regard to all requests received in the last measuring period including processing status;
  - If the programme has been changed by the Contractor or by the Client with the Contractor's express approval, this programme version shall likewise be subject to the maintenance services.
- b) Moreover, the Contractor shall render the following services when commissioned separately by separate contract or written supplement to this Agreement:
  - conversion of the programme to another operating system, another hardware system or another programming language, provided a version is offered by the licensor for this purpose;
  - necessary adaptation work to the programme in the event of changes in existing operating systems or operating system components by the manufacturer;
  - additions and extensions to the programme in the scope designated by the Client, if realisable;
  - consultation in all questions of deployment and application of the programme, including the transfer of deployment and application experience from the entire user group;
  - conduct of subsequent training sessions that become necessary due to changes/improvements made or instigated by the provider.

### 7.2 Remote access via the Client's network to protected network areas for external companies (Remote)

Where maintenance services are provided by means of remote access, the following shall be observed:

- Dial-in connections are to be set up exclusively via a central Client dial-in point.
- In addition to identification by means of user ID and password, the user must authenticate himself/herself by using a one-time password generated by an identification card. If necessary, the identification card and the associated personal identification number (PIN) will be made available by the Client.
- The Contractor shall be responsible for ensuring that unauthorised use of the identification card is ruled out. Loss or destruction of the card shall be reported forthwith.
- The use and further organisational measures will be explained to the Contractor on issuance of the identification card. The Client reserves the right to change the procedure of the remote access according to the technical development.

### 7.3 Error remedy / user support

The Contractor shall render support in accordance with the following provisions for error remedies and user support (hereinafter uniformly referred to as "error remedies"). Error remedies shall also include error searches and diagnoses.

From Monday to Sunday from 8:00h to 17:00h with the exception of public holidays in NRW (hereinafter referred to as "service time") the Contractor shall be available for the processing of error messages and requests regarding user support (collectively referred to as "requests"). Any requests can be reported either by telephone, by e-mail or by a specific ticketing system that is provided by Contractor without further charges. In the event of errors of priority 1 as described below, error elimination work shall also be performed outside the aforementioned support times (24-hour service).

Errors shall be classified in four different priorities:

- Priority 1: The system is not usable at all (system shutdown) or important data cannot be run, or generate a data loss or data corruption.
- Priority 2: Use of the system is limited. Not all functions are available.
- Priority 3: All functions are usable but with minor restrictions.
- Priority 4: Despite problems occurring, the system is usable without restrictions.

All requests should - in the case of notification by telephone - immediately be remedied telephonically with the requesting employee. Incidentally, the following response times and resolution times apply:

Error Priority 1: reaction within 2 hours after report; Resolution time: not later than 8 hours after report  
Error Priority 2: reaction within 6 hours after report; Resolution time: not later than 48 hours after report  
Error Priority 3: reaction within 24 hours after report; Resolution time: not later than the 4th day after report  
Error Priority 4: reaction within 2 days after report; Resolution time: not later than the 6th day after report  
User support: reaction within 2 days after report; Resolution time: by arrangement in individual cases

If the error is reported outside the service time general support hours, it shall be considered as reported at the start of the next service time support hour. Insofar as the time period is calculated in days, the period shall end with the end of each service time of that day.

The categorisation of errors should in principle be taken by consensus between the Client and the Contractor. In the event that consensus can not be reached, the Client decides.

Within the response time, feedback shall include a well-qualified report on the measures taken to date, the current status of the error search or remedies and the next steps shall be carried out. If feasible, the length of the final error remedies is to be estimated in a non-binding fashion.

The deployment of error remedies shall take place by providing a fix or a patch (consisting of several corrections). If the Contractor cannot remedy reported errors prior to the end of the resolution time, the Contractor shall provide the Client with a circumvention or a comparable temporary solution ruling out that the error will appear and rendering the software further usable. This may also entail the provision of an older version of the software, provided such version does not have the error and can be operated on the existing system without any impairments or with less impairments than the defective version. The obligation of the Contractor to permanently correct the error remains unaffected, provided that there is a bug in the software of the Contractor.

If the Contractor fails to remedy the error within the above-mentioned resolution time, the Client shall be entitled to remedy the error itself without establishing any further grace period at the costs of the Contractor or to remedy the error by a third party. The right to claim further damage and to declare extraordinary termination shall not be affected by this.

#### **7.4 Contractual penalty**

If the aforementioned response times are not met, a contractual penalty shall be incurred in the amount of 0.3 % of the value of a net annual maintenance remuneration per working day, at maximum, however, 5 % of the value of a net annual maintenance remuneration. The penalty shall not be incurred if the Contractor documents that the Contractor is not responsible for the breach of duty. The Client is also entitled to assert a contractual penalty if it has not reserved this right upon acceptance of the relevant work/services. A contractual penalty claim may be asserted up to final payment. The right to assert further damage shall not be affected by this. However, the contractual penalty shall be offset against such claims.

#### **8. Contract duration/termination**

Except where otherwise agreed by contract, the maintenance agreement may be terminated by either party with notice of three months to the end of a calendar year, for the Contractor, however, insofar as it is the manufacturer of the software itself, only after the end of a minimum period of 5 years (investment protection). The maintenance contract may be terminated in its entirety or for a certain software product/component. Notice of termination shall be made in writing.

The right to extraordinary termination for serious reasons shall remain unaffected hereby. For the Client, a serious reason shall exist, in particular, when

- composition or insolvency proceedings covering the Contractor's assets have been filed or opened, or where such proceedings have been denied due to lack of assets,
- the Contractor is in serious breach of contractual agreements and has failed to redress the consequences of such breach, in particular financial losses, without delay and without specifically being called upon to do so, or where such consequences cannot be redressed because of their nature.

In the event of termination for serious reasons for which the Contractor is responsible, however, the latter shall receive only the portion of the remuneration which corresponds to the proportion of the service previously provided, and usable for the Client, measured against the total service to be provided. Any further claim to remuneration of the Contractor shall be excluded in this case. The Contractor shall be liable for compensation for loss incurred by the Client as a result of the termination, including any consequential loss.

In the event of a termination pursuant to section 648 German Civil Code (BGB) – with regard to the offsetting of expenses not incurred – the Contractor shall receive only the portion of the remuneration which corresponds to the proportion of the service so far provided measured against the total service to be provided, except where the Contractor can demonstrate that its savings related to the service not provided are lower. Paragraphs 2 and 3 shall remain unaffected.

In the event that the system on which the software is operated is fully shut down, the Client may terminate the maintenance agreement with notice of 4 weeks to the end of a month.

#### **9. Rescission/Termination in case of antitrust violations**

The Client shall be entitled to terminate or withdraw from the contract without notice if the Contractor has demonstrably been involved in unlawful restrictions of competition at the expense of the Client. In the event of termination without notice, the Contractor shall be entitled only to that portion of the agreed remuneration for goods and services already rendered without defects. In the event of rescission, the legal stipulations shall apply.

#### **10. Contractor's duties**

The Contractor shall provide the service on time and free of defects according to the specifications and the current state of technology and software development. It shall hand over to the Client all the services and documentation required of it under the contract (e.g. expert reports, organisation charts, drafts, drawings, listings and calculations, IT systems and programmes) and transfer title for them to the Client.

The Contractor shall employ qualified personnel for all services. At the request of the Client, the Contractor shall replace individual employees insofar as the Client puts forward objective reasons for it to do so. Any additional expense related to such employee substitution shall be for the account of the Contractor.

Even insofar as services are provided by the Client, the Contractor shall exclusively retain the powers to instruct the employees it deploys. The employees shall not be integrated into the operations of the Client.

#### **11. Collaboration requirements on the Client**

The Client shall support the Contractor's work to an appropriate extent. In particular, it shall grant to the Contractor and its deployed employees access to the information and premises necessary for their work.

#### **12. Deadlines**

The delivery times/deadlines of performance indicated in the purchase order shall be binding. The Contractor undertakes to notify the Client immediately if circumstances occur or are identified which indicate that the delivery time agreed upon or the deadline of performance agreed upon cannot be met.

#### **13. Right to information**

The Client shall be entitled at any time, following prior notice, to inform itself about the progress of the work. For this purpose, the Client shall be entitled at any time during normal business hours to visit the Contractor's premises to check adherence to the relevant rules and regulations.

Irrespective of the above, the Contractor shall be obliged to inform the Client about the work performed and the results achieved in regular intervals in writing. If no times are specified in the individual purchase order, including specifications, the Contractor shall be obliged to provide information on a monthly basis.

#### **14. Rights of use/industrial property rights/inventions**

The Contractor shall permanently grant the Client a temporally and geographically unrestricted, transferable, non-exclusive, irrevocable right of use regarding the subject of the delivery and performance as well as any protective rights related to these subjects of the delivery and performance. The Contractor shall entitle the Client and the IT service provider to make the right of use available to the Group companies - and thus also the services specified in the contract. Group Companies within the meaning of this contract are besides the Client all those companies, which pursuant to sections 15 et seq. of the German Stock Corporation Law (AktG) are affiliated with RWE AG (collectively referred to as „Group companies“).

The rights of use granted to the Client under this contract shall also apply to any new versions (e. g. updates, upgrades, releases, patches, bugfixes) of the subject of the delivery and performance and of any protective rights related to these subjects of the delivery and performance that are made available to the Client.

Insofar as work results eligible for patent/utility patent protection arise within the order, the Contractor shall grant the Client property thereto, including the right to file the patent application in his own name or by acting as an agent. The Contractor has to provide evidence if he pleads that the patent/utility patent has not been generated in connection with the order.

Insofar as work results eligible for other property right protection arise within the order, the Contractor shall transfer to the Client the exclusive, irrevocable, temporally and geographically unrestricted, sublicensable and transferable right of use. The Client shall have the right to use the work results in all types of use, including, but not limited to the right to reproduce, redesign and publish and exploit the work result. The Contractor has to provide evidence if he pleads that the work result has not been generated in connection with the order. For programming work, the Contractor shall be obliged to hand over to the Client the source code for the software created.

#### **15. Acceptance/transfer of risk**

Services provided under contracts for work and services shall be subject to formal acceptance. Acceptance of parts shall not be allowed. Formal acceptance shall be made after trial operation. A detailed procedure of the acceptance test (functional tests/utilisation of test or real data, etc.) shall result from the acceptance specifications that are agreed upon between the parties. The Contractor shall report readiness for acceptance with notice of at least 10 days to the acceptance date. The Client shall prepare an acceptance record in duplicate. The testing steps carried out and the test results shall be documented therein. Furthermore, all errors occurring during trial operation shall be recorded. The Client shall send the acceptance record to the Contractor for first signature. The second signature of the Client shall represent a binding declaration of acceptance. The Contractor then shall receive a copy for its files.

The use or commissioning of such services under contracts for work and services as part of test operation shall not be deemed acceptance. Acceptance shall be deemed to have taken place if the Client fails to perform the acceptance within six weeks, although the service was provided free of defects or only with insignificant defects. The notional acceptance regulated in § 640 subsection 2 BGB is only possible under the condition that the Contractor has already fulfilled all deliveries and services including the complete final documentation and has requested the Client to take acceptance giving a deadline of 14 days. Furthermore the Contractor is obliged to point out to the Client what the consequences are of not declaring acceptance or declining acceptance without naming the defect after such a written request for acceptance.

The risk of coincidental loss or coincidental deterioration shall also transfer to the Client when the Client delays the acceptance for reasons for which it is responsible. However, notwithstanding the provisions of para. 2, second sentence, a condition shall be that the Contractor has previously set a date appropriate to the circumstances by which the Client has failed to meet the relevant collaboration requirements.

## 16. Remuneration

The prices named in the purchase order shall be lump-sum, fixed prices, except where invoicing by time and materials at certain hourly rates has been agreed. All prices are net, VAT shall be added as applicable. Except where agreed otherwise, maintenance services shall be invoiced quarterly in arrears. Where no prices are stated, the Client reserves the right to recognition of the prices calculated subsequently.

Travel time and travel expenses for the Contractor and/or its employees to the regular place of deployment shall not be remunerated separately and shall be deemed reimbursed by the fixed price or hourly rates. Where the Contractor and/or its employees work outside the regular place of deployment, travel expenses shall be reimbursed at a flat rate of € 0.40 per km. Other expenses of the Contractor shall only be reimbursed when agreed in writing in advance.

## 17. Invoicing and payment

The invoice shall meet the requirements of sections 14 (Ausstellung von Rechnungen), 14a (Zusätzliche Pflichten bei der Ausstellung von Rechnungen in besonderen Fällen) of the German Value-Added Tax Act (UStG). The invoice shall be transmitted to the invoice receiver stated in the purchase order and to the correspondingly stated invoice address, separately indicating the value-added tax at the rate applicable at the time of delivery/performance.

Prepayments/progress payments made shall be shown individually in the invoice. Any contractor providing building services shall indicate on the invoice the tax number assigned to it by the Tax Office. In case of fixed prices, the Contractor shall require a confirmation of the Client regarding the performed services.

Any payments of the Client shall be based on the following requirements:

1. Proper and complete delivery/performance or acceptance,
2. Provision of the securities/guarantees as agreed in the individual contract,
3. Receipt of a proper invoice in accordance with these requirements,
4. Receipt of proof of quantity and quality (joint measurement, time sheet, certificate of compliance with the purchase order, certificates, acceptance reports, etc.), insofar as they belong to the scope of delivery.

If the aforementioned payment terms are fulfilled, then payment - subject to any agreed deviating payment terms - shall take place 14 days following receipt of the invoice less 3% discount, or 30 days following receipt of the invoice less 2% discount. However, the discount period shall only start after actual fulfilment of these requirements. Discounts can be deducted from progress payments as well as advance payments and final payments. If a discount has already been applied to an advance payment or progress payment, then the discount base amount included in the final invoice shall be reduced by the amount of such advance payment or progress payment and the discount shall only be applicable to the remaining amount. Payments shall always be made subject to adjustment in the event that objections should be made subsequently.

The Client shall be entitled to invoice to the Contractor or to deduct from the agreed payments a time penalty or percentages of such time penalty. The Client is not required to claim the time penalty on receipt of the deliveries and/or performance, but may do so until final payment.

In case of accounting of hourly rates, input tax shall be deducted from the travel expenses (fares, accommodation costs, etc.) in accordance with the applicable tax regulations. Place of arrival and return shall be stated for calculation of fares. Any receipts shall be properly and permanently legible.

## 18. Securities/guarantees

Securities and guarantees shall be arranged in the individual contract, unless such securities and guarantees can already be requested by the Client in accordance with applicable law.

## 19. Third-party property rights

The Contractor undertakes that all goods and services to be provided by it are unencumbered by third party rights. In the event of an infringement of property rights of third parties, the Contractor shall, at the discretion of the Client, procure for the Client the rights to use of the entire system or change the entire system in such a way that it is no longer encumbered by third party rights.

Furthermore, the Contractor shall indemnify the Client among themselves against all claims asserted by third parties with respect to infringements of property rights. Further claims and rights to which the Client is entitled under law in this respect shall remain unaffected. Such obligation of exemption shall remain in force for a period of 10 years after time of performance.

## 20. Liability

The Contractor shall be liable for any breach of duty and the resulting damage unless the Contractor proves that it is not responsible for such breach of duty. The Contractor shall be further obliged to release the Client from any claims for damages by third parties submitted to the Client by such third parties for reasons based on defective delivery (goods/services) by the Contractor, unless the Contractor can prove to the Client that the Contractor is not responsible for the circumstances that caused the loss. The foregoing provisions shall also apply if the Contractor employs a servant or vicarious agent.

## 21. Liability for cartel law offences (anti-trust law violations)

Should the Contractor in respect to the contractual services be demonstrably involved in an unlawful restraint of competition prior to this Contract and / or before or after this Contract act anticompetitively, it shall be required irrespective of the other liability rules to pay liquidated damages in the amount of 15% of the contract value, unless a damage has been accounted for in different height. This also applies if the Contract has been terminated or already been fulfilled. Other rights of the Client remain unaffected.

Unlawful restrictions of competition are in particular anti-competitive negotiations, recommendations or appointments with other bidders (tenderers) / applicants regarding

- submission or non-submission of bids (tender) including territorial agreements,
- pricing as well as profit arrangements or
- delivery quantities.

Such acts of the Contractor itself are equal to acts of persons appointed by it or working for it.

## 22. Insurance

The Contractor undertakes to maintain at its own expense an employer's liability insurance and a financial liability insurance for IT risks, each with a coverage of € 5 million per insured event, for the duration of this agreement including the period of limitation for material and legal deficiencies, as well as for the duration of any maintenance agreements.

The specific amount of insurance cover shall not constitute a limitation of liability.

The Contractor undertakes, on first written request, to submit to the Client a confirmation of coverage from its insurer covering the scope according to para. 1. It furthermore undertakes, on first written request, to prove to the Client that it has paid the respective premiums to the insurer.

## 23. Assignment of receivables/setoff

Without prejudice to an assignment of any financial claim per section 354a German Commercial Code (HGB), the Contractor shall not be entitled to assign receivables from the Client to third parties, or to have them collected by third parties, except with the prior written consent of the Client.

The Client shall be entitled to fully or partially offset any pecuniary claims that are due by the Contractor and asserted by the Group companies RWE AG, RWE Power Aktiengesellschaft (Essen), RWE Supply & Trading GmbH (Essen) and/or RWE Generation SE and/or GFV Gesellschaft für Vermögensverwaltung mbH against receivables of the Contractor.

## 24. Safety stipulations

In the course of contract execution and implementation, the Contractor undertakes to observe the applicable provisions and recognised engineering standards, especially with regard to occupational health and safety, as well as the provisions applicable under construction, trade and transport legislation (in particular, supervisory and road safety obligations on construction sites and in other working areas); this shall also apply to the applicable environmental protection and waste disposal regulations. Goods and services shall comply with the laws, regulations and directives prevailing at the time of the delivery and/or acceptance.

Machines covered by the German Machine Ordinance (Maschinenverordnung) or electrical equipment covered by the Low-Voltage Directive (Niederspannungsrichtlinie) shall be provided with a CE mark and supplied with operating instructions. The certificate of conformity and the operating instructions shall be delivered to the Client. Machines which are not ready for use shall be delivered with a manufacturer's certificate.

In addition to these provisions, the Supplementary Industrial Safety Conditions (ZB/A), as amended, shall also apply.

## 25. Confidentiality

The Contractor undertakes to treat as confidential all confidential information and business secrets of the Client obtained during fulfilment of the purchase order and to use such information only within the scope of order fulfilment. The services provided by the Contractor shall also be deemed business secrets of the Client.

The Contractor may make the object of a contract accessible to employees and other third parties only insofar as necessary to provide the service ordered; otherwise it shall treat all objects of contracts as confidential. It shall inform all persons to whom it grants access to the object of a contract in writing of the rights of the Client to such object and instruct them on the requirement for confidentiality. It shall also commit such persons in writing to compliance with the confidentiality requirements.

Other transmission of documents by the Contractor (reports, expert statements and the like) to a third party and any publications in connection with the results of the service provided shall require the written permission of the Client.

The obligation to confidentiality shall also apply after the end of the contractual term. It shall end ten years after the end of all business relations between the contractual partners based on this agreement.

## 26. Data protection

The Client and the service providers (data processors) are entitled to process contact and contract details obtained under the contractual relationship within the legal requirements of the applicable data protection and privacy laws in its respective latest valid version and – to the extent required in connection with the Contract and its implementation – to pass on such data to companies affiliated with RWE AG under sections 15 ff of the German Stock Corporation Act (AktG).

The Client has single tasks and services carried out by service providers, especially IT-service providers, who are carefully selected and engaged and have their seat outside the EU/EEA (third country). Therefore, a third country transfer of the personal data takes place. The third country transmission takes place in compliance with the EU data protection legislation and applicable national data protection legislation as valid at the time. Data protection provisions to establish an adequate level of data protection are defined in contracts with our contractual partners for this purpose in accordance with the applicable legal requirements, e.g. EU Model Clauses. On demand, we will provide you with a copy of these guarantees.

To safeguard operations and ensure that the security requirements of the Client are met, personal data will be collected, processed and used within the scope of order execution, having due regard to the EU data protection legislation and applicable national data protection legislation as valid at the time. In particular, this shall apply to data and images relating to security components (such as identification badges, identification management systems, time/access and video surveillance systems and the like), IT and telecommunications components, and the infrastructures related to these. The Contractor must ensure that identification badges supplied are not misused or supplied to third parties. They must be worn visibly on

Client's premises and the Client must be notified of any losses immediately. They have to be returned to the Client when leaving the premises. If necessary the equipment provided by the Client for information processing and / or telecommunication (e.g., personal computer, telephone, mobile phone, smartphone, software, internet access, email, etc.) are to be used solely in the context of order fulfilment; private use is prohibited. The Contractor shall ensure that the vicarious agents appointed by it (such as employees, temporary workers and the like) have been informed of and have undertaken to observe the above points before the services are provided. Furthermore, the vicarious agents must undertake to conduct themselves professionally and to observe the relevant Client's regulations. If subcontractors are engaged, the Contractor must also contractually impose these obligations on the subcontractor. Upon request, the Contractor must prove to the Client that these points have been implemented.

Insofar as personnel of the Contractor are deployed at locations of the Client, time tracking data (in and out times) for said personnel can be determined for specific persons from the access control system. Insofar as required, the time tracking data determined in this manner can be used by the Client for billing purposes. If subcontractors are engaged, the Contractor must also contractually notify the subcontractor accordingly. Upon request, the Contractor must prove to the Client that these points have been implemented.

Any details shared by the Client shall not be used for the purpose of advertising or market/opinion research unless written permission has been given for this purpose by the Client or the agreed service allows this explicitly.

**27. References/advertising/photography**

Without prior consent by the Client, the Contractor shall not be entitled to use information concerning intended or existing contractual cooperation for reference or marketing purposes. Photography in buildings, on the premises and/or construction sites of the Client, and any kind of publication in this respect, shall also be prohibited without the prior written consent of the Client.

**28. Place of performance/jurisdiction/choice of law**

Place of performance for goods and services provided by the Contractor shall be the delivery address/place of use indicated by the Client, or the agreed place of the provision of services.

Unless otherwise expressly provided for by law, the place of jurisdiction for any disputes arising under or in connection with the contract shall be Essen.

The laws of the Federal Republic of Germany shall apply exclusively. Application of the UN Convention on Contracts for the International Sale of Goods shall be precluded.