Supplementary Terms and Conditions of vitero GmbH for the Permanent Transfer of Standard Software (STC Purchase)

February 2020

§ 1 Scope

These Supplementary Terms and Conditions (STC Purchase) govern the legal relationship between the contract partner as licensee and vitero GmbH (vitero) for the permanent transfer of standard software (software) for carrying out virtual meetings and training sessions. The General Terms and Conditions (GTC) in the version valid at the time of signing the contract shall apply subordinately.

§ 2 Subject matter of the agreement

1. The agreement covers the following services of vitero, which may be contractually agreed with the contract partner:

   a) The permanent transfer of the current version of the software, in machine-readable object code, as the computer program named in the product description, including technical documentation and installation instructions for the contractually agreed purpose, and including the granting of the rights necessary for its contractual use in accordance with § 4.

   b) Provision of online services for conducting integrated telephone conferences.

2. vitero is not required to deliver the source code and the source code documentation.

3. The features and functionality of the software are conclusively defined by the product description and the contractual agreements. The details contained in the above constitute service descriptions rather than guarantees.

4. Installation and configuration services for the software (e.g., implementation, adaptations, supplementary features) are not covered by STC Purchase. In particular, support services and software maintenance are also not covered by STC Purchase. Where required, the contract parties shall conclude a maintenance agreement in accordance with STC Maintenance for the provision of software maintenance and support services. Installation and configuration services also require a separate agreement. In such cases, the contract partner shall, upon full payment of the contractually agreed remuneration, be granted the non-exclusive, unrestricted right to use the software to the contractually agreed extent. § 4 shall apply accordingly.

§ 3 Provision of services

1. The software, including technical documentation and instructions for installation in the contract partner's work environment, shall be provided via the internet (from the computer centre interface to the internet).

2. vitero or its vicarious agents shall make these services available to the contract partner 24/7, subject to the availability and quality of the transmission paths provided by information and telecommunication service provider (network operators). If maintenance work is necessary for the provision of the online services (e.g., security measures, troubleshooting), a maintenance window shall be designated, preferably during off-peak hours outside the regular business hours of vitero. The contract partner shall be informed as quickly as possible of any operational impairments caused by maintenance work. Such maintenance work shall not affect the contractually agreed provision of services unless due to the fault of vitero.

§ 4 Rights of use

1. Following full payment of the remuneration in accordance with § 8, Clause 1, the contract partner shall receive a non-exclusive, perpetual, transferable (pursuant to Clause 7) and non-sublicensable right to use the software (including product description) for their own purposes within the scope of the contract.

2. All data carriers and technical documentation are subject to retention of title until payment has been made in full.

3. The maximum number of natural persons to use the software simultaneously may not exceed the contractually agreed number. The number, type and scope of use shall be governed by the contractual agreements.

4. The contract partner may only duplicate the software if the respective duplication is necessary for the intended use of the software. Necessary duplications within the scope of contractual use include in particular the installation of the software on the server of the contract partner, the loading of the software into the working memory as well as the display and running of the software.

5. The contract partner may create a backup copy if this is necessary to secure future use and safe operation. The backup copy shall be stored securely and, where technically possible, marked with vitero's copyright notice. The technical documentation and other documents provided by vitero may only be copied for internal purposes, and only to the necessary extent.

6. The contract partner is not permitted to rent out or otherwise sub-license part or all of the software, including the technical documentation, or to publicly reproduce them or make them accessible to third parties by wire or wireless means, or to make them available to third parties against a fee or free of charge (e.g., by way of ASP or SaaS). However, use may be permitted to third parties who are not granted an independent right of use, and who must submit to the will of the contract partner with regard to the manner of use. In general, this will apply particularly to employees and co-workers of the contract partner. § 4, Clause 7 remains hereby unaffected.

7. The contract partner is entitled to permanently transfer the purchased copy of the software to a third party by handing over the product description and documentation. In this case, they shall give up the use of the program completely, remove all installed copies of the program from their computers and delete all copies on other data carriers or hand them over to vitero, unless legally obligated to store them for a longer period. At vitero's request, the contract partner shall confirm to vitero in writing that the above measures have been carried out in full or, if applicable, shall explain the reasons for the longer storage period. Further, the contract partner shall expressly obligate the third party to observe the scope of rights granted in accordance with their rights of use.

8. The contract partner may transfer claims against vitero to third parties only after obtaining written consent. § 4, Clause 7 remains hereby unaffected.

9. vitero is entitled to take appropriate technical precautions to protect against non-contractual use. Such measures shall not significantly impair the contractual use of the services.

10. If the contract partner uses the software to an extent which exceeds the acquired rights of use in qualitative terms (with regard to the type of permitted use) or quantitative terms (with regard to the number of authorised users), they shall without delay acquire the rights of use necessary to permit such use. Should they fail to do so, vitero shall assert its respective rights.

11. Copyright notices, serial numbers and other features which serve to identify the program must not be removed or changed under any circumstances. The same applies to the suppression of the on-screen display of corresponding features.

§ 5 Modifications to the program

1. Reverse translation of the object code provided, or translation of the interface information of the software into other types of code (decompilation), or other types of reverse engineering of the various stages of production of the software shall only be permitted in accordance with mandatory statutory provisions (in particular copyright law).

2. The contract partner shall only be entitled to do so if they inform vitero in writing of their planned project, requesting the provision of the necessary interface information, and if vitero fails to make this available within a reasonable period of time. Further, the program modification may only be carried out by actions that the contract partner is authorised to use. In particular, the object code shall not be directed as output to a printer.

§ 6 Inventions and industrial property rights

Unless expressly agreed otherwise in writing, all rights to the software shall remain with vitero. These include, but are not limited to, the object code, graphics, animations, layout, design, images, photographs, videos, audio, music and text contained in the software or backup copy. § 14 GTC shall apply accordingly.

§ 7 Obligations to cooperate/duties of the contract partner

1. The contract partner shall protect access rights, identification data and authentication information assigned to themselves or their authorised users against access by third parties, and shall not pass them on to unauthorised persons. The contract partner shall choose their password judiciously and/or change it regularly such that it cannot be guessed by trial and error or in any other way. The contract partner shall prevent unauthorised access by third parties to the software and technical documentation by taking appropriate measures and precautions. In particular, all copies of the software and the access data shall be kept in a secure place. The contract partner shall deploy the necessary IT security equipment (e.g., software, hardware, operating system) to prevent malware from being introduced or disseminated. Any damage caused by misuse of the access code, or by misuse of the identification and authentication information, shall remain the responsibility of the contract partner until vitero has been informed of the misuse by the contract partner and has been given the opportunity to block access within a reasonable period of time.

2. The contract partner shall provide qualified technical personnel for technical enquiries.

3. The contract partner shall expressly instruct authorised users to comply with these contractual terms and conditions and to observe the copyright of vitero. In particular, the contract partner shall instruct them not to request or make any unauthorised copies of the software or technical documentation.

4. The contract partner shall ensure the software is used correctly and shall protect the software from damage. To this end, the contract partner shall comply with the instructions and support provided by vitero (e.g., user manuals, technical documentation).

5. The contract partner shall take appropriate precautions in case the software does not work properly in whole or in part (e.g., data backup, documentation of software use, fault diagnosis, regular testing of the results, emergency planning). It is their responsibility to ensure that the work environment of the software functions properly.

6. At the request of vitero, the contract partner shall enable vitero to verify the proper use of the software. In particular, vitero will verify whether the contract partner's qualitative and quantitative use of the program corresponds to the number of authorised users they purchased. To this end, the contract partner shall disclose to vitero all necessary information, grant vitero access to relevant documents and records and enable vitero – or an auditing company designated by vitero and acceptable to the contract partner – to verify the respective hardware and software environment. The contract partner may not reject the proposed auditor without good reason. vitero may carry out the audit at the contract partner's premises during their regular business hours, or commission a third party who shall be bound to secrecy. vitero shall ensure that the business operations of the contract partner are disrupted as little as possible by its on-site activities. Should the inspection reveal that the purchase quantity has been exceeded by more than 5% (five percent), or reveal any other non-contractual use, the contract partner shall be held liable for the cost of the inspection.

7. If there are indications that the contract partner is in breach of contractual obligations, in particular, failure to comply with the above obligations to cooperate, or a breach of statutory provisions or the rights of third parties, vitero reserves the right to immediately block the contract partner from using the online service offered by vitero.

8. The contract partner hereby holds vitero harmless against all claims and demands of third parties arising from violations of rights or a negligent breach of the obligations detailed in § 7, resulting from unlawful use of the contractual object by the contract partner or by others with the consent of the contract partner. If the contract partner becomes aware of an infringement, or recognises that such an infringement is imminent, they shall inform vitero immediately.

9. If the contract partner or an authorised user violates one of the above obligations or a property right of vitero (e.g., copyright, trademark right, patent), the contract partner shall remedy the violation and/or cooperate to the best of their ability in clarifying the violation of the obligation or property right. In particular, they shall inform vitero immediately of the respective infringement(s). § 4, Clause 10 shall apply accordingly. § 8, Clause 2 and § 10, Clause 6c GTC shall apply accordingly. In addition, vitero reserves the right to assert further claims.

§ 8 Price, payment, due dates and default

1. The agreed price covers the purchase price for the purchase of the software. Software maintenance services are not included. § 9 GTC shall apply accordingly.

2. In deviation from § 9, Clause 2 GTC, payments are due as soon as the software is made available to the contract partner via the internet, unless agreed otherwise in the contract.

3. If the contract partner has booked online services for telephone conferences, additional costs (connection costs) may be incurred. These shall be invoiced on a monthly basis or, in case of low usage volume, as a collective invoice on a quarterly basis. Unless agreed otherwise, vitero reserves the right to adjust the connection prices for the use of online services at any time if the pricing factors that are not exclusively within vitero's sphere of influence (e.g., costs for the telecommunications services of vicarious agents) change after signing the agreement. Adjustments are permitted for each telecommunications service (e.g., for each access option: landline, mobile network and region). An adjustment shall take effect on the first day of the second calendar month after notice is given to the contract partner.

4. Adjustments shall be communicated to the contract partner in writing and a reason for the modification shall be given. At the written request of the contract partner, vitero shall furnish evidence for the stated reason for modification, insofar as vitero is legally entitled to do so and/or does not thereby violate its own contractual obligation towards a third party (e.g., a non-disclosure agreement).

5. Unless stipulated otherwise in the contract, both contract parties shall then have a special right of termination until

the end of the following calendar month, to take effect on the same date as the proposed increase, if the connection prices to be paid increase by more than five (5) percent as a result of the adjustment.

§ 9 Material defects and defects of title

1. vitero guarantees the agreed features upon transfer of risk, and also guarantees that the contract partner can use the software without infringing third-party rights.

2. vitero cannot be held liable for defects resulting from the failure of components in the system environment, for non-reproducible errors, for other software errors which the contract partner cannot verify, or for damages resulting from special circumstances which were not foreseeable in the contract. The above also applies in the event of subsequent modifications or repairs by the contract partner or third parties, unless these do not impede the analysis and elimination of a material defect.

3. The contract partner's rights in respect of defects require that they inspect the software immediately upon receipt for obvious defects and immediately notify vitero thereof in writing. Otherwise, a warranty for these defects will be excluded. The same shall apply if such a defect is discovered later. Sections 377, 381 of the German Commercial Code (HGB) shall apply.

4. § 10 and § 11 GTC shall apply additionally.

5. The limitation period begins after notification and activation of the access data for internet access. The regulations regarding vitero's liability apply to claims for damages and claims for reimbursement of wasted expenses.

6. If the contract parties have signed a software maintenance agreement, the period for remedying defects shall be governed primarily by the provisions agreed therein.

7. The contract partner is aware that vitero uses open source software for the development and provision of the software. Under the applicable licence terms of the relevant open source software, vitero is obligated to refer to these licence terms. However, vitero's liability and warranty towards the contract partner shall be governed by the provisions contained herein.

§ 10 Liability of vitero

1. The liability of vitero is detailed in § 12 GTC.

2. Liability in accordance with § 12, Clause 2 GTC shall, however, be limited – pursuant to § 12, Clause 3 – to twice the total purchase price in accordance with § 8, Clause 1, as well as to damages which are typically foreseeable in connection with the use of standard software. Any alternative limitations of liability shall be agreed individually.

3. vitero cannot be held liable for any further damages.

§ 11 Termination

1. The rights of the contract parties to terminate the contract with due cause shall remain unaffected. § 15, Clause 2 GTC shall apply accordingly. Due cause shall be deemed given if vitero cannot reasonably be expected to allow the software to remain with the contract partner permanently, taking all individual circumstances into account and weighing the interests of both parties. This shall apply in particular if the contract partner is in material breach of § 4 to 6.

2. In addition, § 15 GTC shall apply accordingly.

3. Notice of termination can only be given in writing.

§ 12 Obligations to return and delete

1. On expiry of the agreement, the contract partner shall return to vitero, without further request and within two (2) months, all documents, objects, other information and data relating to vitero's performance of services which were handed over to the contract partner by vitero for the execution of the agreement, or shall permanently and completely delete the above. In particular, the contract partner shall return to vitero all installed versions of the software and all copies of the software in their working memory, including all technical documentation as well as stored data and information, or delete (destroy) them permanently and completely. The contract partner shall confirm the deletion in writing at the request of vitero. Returns shall be delivered to vitero free of charge.

2. The contract partner is hereby expressly informed that they may not continue to use the software or technical documentation after expiry of the agreement. Non-compliance shall hereby be deemed an infringement of vitero's copyright and patent rights. § 7, Clause 8 shall apply accordingly to the period after expiry of the agreement.

§ 13 Miscellaneous

The contract parties are aware that the software may be subject to export and import restrictions. In particular, permit requirements may apply, or the use of the software or associated technology abroad may be subject to restrictions. The contract partner shall comply with the applicable export and import control regulations of the Federal Republic of Germany, the European Union and the United States of America as well as all other relevant regulations. The performance of the agreement by vitero is subject to the proviso that performance is not hindered by national or international export and import laws, or by any other statutory provisions.