Contract Terms of Audicon GmbH for the Lease of Software
("Standard Business Terms Software Lease")

I. Scope of Application

1.1 The below Contract Terms of Audicon GmbH („Audicon") governing the leasing of software („Software Lease") shall apply to all contract relationships with customers in connection with the permission of use of software programs for a limited period of time („Software Lease Contract") and shall be deemed to be an integral part of the contract unless otherwise agreed between Audicon and the Customer by an individual agreement in writing. The Standard Business Terms Software Lease shall be supplementary to the Standard General Business Terms Audicon („General Terms and Conditions") which shall, in addition to the Standard Business Terms Software Lease, constitute an integral part of the contract.

1.2 Any General Terms and Conditions of a customer differing from, being contrary or supplementary to these Standard Business Terms Software Lease, shall become part of the Contract if and to such extent as their validity shall be expressly approved in writing by Audicon. Such approval requirement shall be applicable in any case, specifically also when Audicon – being aware of the Customer's General Terms and Conditions– performs a supply or service to the latter without reserve.

II. Services to be performed by Audicon

2.1 Audicon grants to the Customer the permission to use the software program defined in the order confirmation („Contractual Software") for the duration of the respective Software Lease Contract on the conditions laid down in these Standard Business Terms Software Lease. Audicon shall transfer the Contractual Software in machine-readable form (Object Code) on a data carrier or by data telecommunication (e.g. by download from the internet. The Customer shall be provided with a printed and/or electronic user manual as well as with other documentation if existing (e.g operating manual, help files, other technical information and data). These Standard Business Terms Software Lease shall apply mutatis mutandis for the transfer of new program versions of the Contractual Software (e.g. patches, bugfixes, updates, upgrades. ect.). In the event that Audicon transfers the Contractual Software to the Customer via data telecommunication, Audicon shall endeavour to warrant the availability of the Contractual Software during regular business hours on a server for downloading by the Customer.

2.2 The user manual or other documentation of the Contractual Software shall describe in detail what functions and services can be performed by the Contractual Software if used as stipulated in the Contract („Performance Description"). Solely the respective Performance Description shall, to such extent, be binding for the quality of the Contractual Software and its intended application. Statements in public, recommendations or advertising shall not constitute any description of the quality of the Contractual Software.

2.3 The services to be performed by Audicon within the scope of lease of the Contractual Software shall not include the installation of the software nor customized adaptations („Customizing"), training or other consulting or company services going beyond the leasing of the Contractual Software.

2.4 Audicon shall, during the contractual period of the respective Software Lease Contract, maintain the contractually stipulated state of the Contractual Software, i.e. it will ensure the usability of the Contractual Software in conformity with the Performance Description. Under this obligation, Audicon shall make available to the Customer new program versions of the Contractual Software and shall provide First Level Support in accordance with the following provisions.

2.4.1 The permission to use new program versions shall be granted provided that they are currently marketed by Audicon and if available. Such obligation of a permission of use shall not apply to those extensions of the Contractual Software that are offered and marketed by Audicon separately as a new stand-alone product, and to new developments of the Contractual Software offering the same or similar functions on a different technological basis. Regarding the permission to use the new program versions, subsection 2.1 shall apply mutatis mutandis.

2.4.2 First Level Support shall in particular cover all inquiries about implementation and configuration problems and questions regarding applications in relation to the Contractual Software including a brief telephone consulting („Support"). When the Customer has acquired the Contractual Software via a sales partner of Audicon („Partner"), the Customer shall be free to query the so-called „First Level Support" of the respective partner. The partner who would then be responsible for providing First Level Support will be stated in the order confirmation.

III. Contracting Parties, Personal Requirements for Customers

The contracting parties to any Software Lease Contract shall be Audicon and the Customer. In the event that the Customer has obtained the Contractual Software via a partner of Audicon, the latter shall act only as an intermediary without becoming itself a party to the Software Lease Contract. This shall not affect the Customer's right to being provided with First Level Support by the partner.

IV. Lease Fee

4.1 The amount of remuneration payable for the lease of the Contractual Software („Lease Fee") shall result from the order confirmation. Unless otherwise provided for in such confirmation, the lease fee shall become due monthly in advance on or before the 5th working day of each month at the latest and shall be paid to Audicon no later than by that day.

4.2 Should the Customer fail to pay the Lease Fee to schedule, Audicon shall be entitled to claim interest in the amount of 8 per cent above the base interest rate according to Art. 247 Civil Code (BGB) as liquidated damages for the delayed performance, unless Audicon proves that the damage suffered by Audicon as a result of the delay is higher. Should the customer, however, prove that the default has caused a substantially smaller damage or no damage at all for Audicon, the Customer needs to only replace this smaller damage as liquidated damages for the delayed performance, or shall not be required to pay liquidated damages for the delay.

4.3 The Customer shall have the right of setoff when its counterclaim has been established by a declaratory judgment, recognized in a lawsuit as ready for decision, or has been accepted or is undisputed by Audicon. A right of retention can be exercised by the Customer only if its claim for which payment is retained, is based on the same contractual relationship and has been established by a declaratory judgment, recognized in a lawsuit as ready for decision, or has been accepted or is undisputed by Audicon.

4.4 Audicon shall be entitled to raise the lease fee for the first time after the lapse of twelve months after the conclusion of the contract by giving three months' notice in writing to the end of the month if and to the extent to which the material and labor costs incurred by Audicon for maintaining the contract-conforming state of the Contractual Software have increased. The Customer shall have the right to give notice of termination of the Software Lease Contract within a period of six weeks counted from receipt of the notification of raising of the lease fee.

V. Granting of Rights

5.1 Audicon grants the Customer the non-exclusive and non transferable right, limited in time to the duration of the corresponding Software Lease Contract, to use the Contractual Software in accordance with the provisions of these Standard Business Terms Software Lease.

5.2 The Customer is entitled to install and use the Contractual Software on one single computer in one place at a given time. The term „computer" shall refer to the hardware if it is a single computer system, or to the computer system with which the hardware is operating when the hardware is a component of a computer system. The Customer may use the Contractual Software on any hardware available to it. If it changes the hardware, it shall delete the software from the previously used hardware. Any simultaneous storing, keeping in stock or using on more than only one hardware unit shall be inadmissible. Using the Contractual Software inside a network or in any other multi-station computer system shall be permitted unless the possibility of simultaneous multiple use of the program is thereby created.

5.3 The Customer is allowed to copy the Contractual Software provided that such copying is necessary for using the Contractual Software. This includes installing the Contractual Software from the original data carrier into the mass memory of the hardware used and loading the Contractual Software into the main memory. In addition, the Customer is entitled to prepare a backup copy which is to be marked as such. It shall be used exclusively for filing purposes. A simultaneous use of the original and the backup copy is not permitted. No further copies must be made. This shall also include any copying by listing the program code. Only one printout or one copy of the User Manual or other documents respectively may be made. Any further copying of the Contractual Software and the User Manual or other documentation shall require the express approval of Audicon.

5.4 Audicon shall grant the Customer the rights of use of the new program versions transferred within the scope of the corresponding Software Lease Contract, and to the extent to which such rights are existing for the Contractual Software with which they are being used according to the terms of the Contract or which are to be replaced by it respectively. The above provision of this section V. shall apply mutatis mutandis. The right of use of any Contractual Software technically replaced by the new program versions shall extinguish within two weeks from the date when the Customer uses the supplied program versions productively, however no later than one calendar month after the Customer has received the supplied program versions. The Customer is entitled to make one copy each of the technically replaced software programs for filing purposes.

VI. Restrictions of the Right of Use, Overuse

6.1 The Customer is not entitled to process and/or copy the Contractual Software beyond the contractually stipulated use unless this is imperative for the purpose of eliminating defects and if Audicon is in default of eliminating the defect. In such case, the Customer is permitted to charge the elimination of defects only to a third party that is in no competitor relationship with Audicon, if it is to be feared that important program functions and working methods may be disclosed by the elimination of the defect. Modifications introduced by the Customer during the elimination of defects shall be recorded and notified to Audicon.

6.2 The Customer shall also be prohibited from analyzing, reassembling or in any way whatsoever processing or modifying the Contractual Software. A retranslation into other code forms („decompiling") an well as other kinds of reverse engineering of the different implementation stages of the Contractual Software shall not be permitted to the Customer subject to the following provision: The Customer shall be authorized to decompile the object code only if such decompiling is necessary for achieving interoperability with other software programs, if it has not been provided with the required data and/or information after a request in writing setting an adequate time limit and provided that the decompiling work is limited to those parts of the Contractual

Software that are necessary to establish interoperability with other software programs.

6.3 The Customer shall be prohibited from removing any property and copyright references, stickers, labels or trademarks of Audicon contained in the Contractual Software as well as in the User Manual or any other documentation respectively.

6.4 The commercial use of the Contractual Software for third parties by way of the so-called „Application Service Providing (ASP)" or „Software as a Service" (SaaS) shall not be allowed. Furthermore, any use of the Contractual Software beyond the limits herein stipulated, e.g. in case of non-approved simultaneous multiple use by more than one user, is a use not conforming to the contract. For any period of overuse not agreed in the Contract, the Customer undertakes to immediately pay the lease fee for the Contractual Software on basis of the actual scope of use according to the price list of Audicon with retroactive effect after Audicon has submitted a corresponding invoice. In the event that the Customer fails to give notice of such overuse and Audicon succeeds in otherwise discovering the overuse, the Customer shall pay Audicon a flat-rate compensation for such unauthorized overuse in the amount of three times the lease fee that would have been payable for an authorized use by the Customer according to the price list of Audicon. The Customer shall be free to prove that Audicon has suffered only a lower loss. For the period of non-agreed overuse, e.g. in case of non-approved simultaneous multiple use by more than one user, the Customer undertakes to pay a compensation for such overuse acc. to the price list of Audicon. In the event that the Customer fails to give notice of such overuse, a penalty in the amount of three times the price of the use made by the Customer and laid down in the price list shall become due.

VII. Resale or Re-Lease

7.1 Without the prior written approval of Audicon, the Customer shall not be entitled to transfer to a third party the copy of the Contractual Software delivered to it, nor the pertinent User Manual nor any other documentation, in particular to sell, lease or lend the material to third parties.

7.2 The dependable use of the Contractual Software by third parties which are subjected to the Customer's will regarding the kind and manner of use, i.e. in particular by employees of the Customer, shall be permitted. This does not affect the prohibition of simultaneous multiple use provided for in subsection 5.2 or 5.3 respectively.

VIII. Use of Software Protection Mechanisms

8.1 The Contractual Software shall be delivered with a technical protection mechanism in the form of a „hardware dongle" or an electronic license control.

8.2 Should the dongle have a functional defect, the Customer may request from Audicon a substitute dongle while returning the defective dongle. In case of theft or other loss of the dongle, the Customer shall have no right to claim a replacement delivery.

8.3 Any evasion of technical protection measures is a violation of the rights of Audicon and is, under certain circumstances, also a punishable offense. Especially the removal and/or evasion of the software protection program routine shall be inadmissible. Only in cases where the software protection impairs or prevents a trouble-free use of the program and Audicon, despite a corresponding notification together with a detailed description of the trouble occurred, is not able or willing to eliminate the trouble within an adequate period of time, the software protection may be removed or evaded in order to ensure the operability of the Contractual Software. The burden of proof of the impaired or prevented trouble-free usability shall lie with the Customer.

IX. Customers Obligations to Cooperate and Exercise Proper Care

9.1 The order confirmation or the User Manual respectively for the Contractual Software contains a binding description of the hardware and software environment (minimum cycle frequency of processor, memory space, operating system, etc.) required for a proper and trouble-free operation. It is the Customer's duty to timely provide for an appropriate hardware and software environment.

9.2 Prior to the startup of the Contractual Software, the Customer shall be bound to test all functions of the Contractual Software with the Customer's hardware and software environment. In the same manner, the Customer has to check the faultlessness of data carrier, user manuals and other documentation during handover. Any defects discovered by the Customer shall be notified to Audicon without delay. To this end, the Customer shall transmit to Audicon all information available to it and needed for eliminating the defect.

9.3 The Customer shall be required to prevent the unauthorized access to the Contractual Software and to the user manuals or other documentation respectively by making appropriate arrangements. The Customer shall keep in safe custody the original data carriers supplied as well as the data carriers with the copies prepared by it conformant to the contract. it shall also expressly instruct its employees, colleagues and vicarious agents, who use the Contractual Software in compliance with the provisions of these Standard Business Terms Software Lease, about the observation of these Standard Business Terms Software Lease and of the provisions of copyright.

X. Warranty

10.1 Audicon warrants that the Contractual Software, when used conformant to the contract, will comply with its performance description and does not contain defects by which the suitability of the Contractual Software for the contractually agreed application is affected more than insubstantially. Minor deviations from the performance description shall not be considered as defects. The Customer is aware that, according to the state of technology, software of the complex kind as submitted cannot possibly be developed absolutely free of defects.

10.2 The Customer shall be required to inform Audicon immediately in writing of any defects appearing, while stating and describing how the respective defect becomes noticeable, what are its effects and under what circumstances it appears. Warranty claims only exist when the reported defect is reproducible or can be shown by machine-generated prints.

10.3 In case of errors contained in the User Manual or in any other documentation, Audicon's warranty shall be such as to inform the Customer on how the incorrect text passages should read correctly.

10.4 The defect properly reported by the Customer shall be removed by Audicon by way of subsequent fulfillment, i.e by rectification or replacement. The right to choose in what form and manner a defect is removed by way of subsequent fulfillment shall at first be with Audicon. The right of Audicon to refuse the kind of subsequent fulfillment chosen under the legal requirements, shall remain unaffected. As far as can be reasonably expected from the Customer, Audicon shall, for the purposes of defect elimination, be entitled to provide the Customer with a new version of the Contractual Software (e. g. „Update", Maintenance Release/Patch"), which no longer contains or eliminates the defect complained of. A right of diminution in price shall only exist if uncontested or established by a court judgment. The right of diminution in price shall only cover the faulty functionality of the Contractual Software in the respective case.

10.5 Audicon shall not be held liable under a warranty if defects of the Contractual Software have occurred after changing the conditions of application and operation, after installation and operating faults unless attributable to errors in the User Manual, after interference with the Contractual Software such as modifications, adaptation linking with other programs, and/or after any use contrary to the contract, unless the Customer proves that the defects did already exist on handover of the Contractual Software or are in no causal relation with the aforementioned events. The above shall not apply if the Customer is entitled to change the Contractual Software, in particular when exercising the right of self-remedial action in case of defects pursuant to Art.536 a paragraph 2 Civil Code (BGB), and the changes are properly performed and comprehensibly recorded.

XI. Liability

11.1 The no-fault liability of the lessor pursuant to Art. 536 a para. 1 German Civil Code for defects already existing at the time of conclusion of the contract shall be expressly excluded. The liability of Audicon or a statutory representative or vicarious agent in the case of intent or gross negligence shall be governed by the legal regulations unless otherwise provided for in the following.

11.2 In other respects, Audicon shall be answerable also for ordinary negligence only in the following cases:

for loss or damage from death, injury to body or health,

in case of applicability of the regulations of the Product Liability Act,

upon breach of an essential contract obligation in which case, however, the liability of Audicon shall be limited to compensating the foreseeable damage typically occurring under a software lease contract.

11.3 A no-fault liability shall be excluded. This applies in particular to the no-fault liability of the lessor pursuant to Art. 536 a paragraph 1 BGB for defects of the Contractual Software already existing at the time of conclusion of the Contract.

XII. Duration of Lease, Termination of Contract

12.1 Unless otherwise provided for in the order confirmation, every software lease contract shall come into force upon its execution and shall be valid for an indefinite period of time.

12.2 The Software Lease Contract shall have a duration until the end of the year following the execution of the Contract and shall be extended from year to year for another year unless three months' notice of termination is given prior to the lapse of the year following the execution of the Contract or of the extended contract term.

12.3 Besides, either contracting party is entitled to give extraordinary notice of termination of the Software Lease Contract for important reason if it can no longer be reasonably expected to continue the contractual relationship. A termination by the Customer because of non-granting of the contract-conforming use according to Art. 543 paragraph 2 No. 1 Civil Code (BGB) shall be admissible only when Audicon has been given an adequate chance to eliminate the defects and this must considered as having failed. . Audicon shall terminate the Contract extraordinarily without notice when the Customer prepares pirate copies of the Contractual Software, passes the Contractual software to others without being authorized to do so, does not prevent the access by unauthorized persons, decompiles the Contractual Software without being entitled to do so, is in default of payment of the lease fee for more that two months or uses the Contractual Software continuously in breach of contract in spite of having received a cease-and-desist letter.

12.4 The notice to terminate the respective software lease contract shall require the written form by posted letter and the confirmation in writing by Audicon in order to be effective.

XIII. Obligations to return Contractual Software, Dongle

13.1 Upon termination of the Software Lease Contract, the Customer shall be required to return to Audicon the Contractual Software on the original data carrier, including the User Manual and all other documentation. Such return shall be at no charge for Audicon. Any copies made of the Contractual Software shall also be delivered to Audion or must be deleted if no delivery is possible. After being carried out, the deletions shall be confirmed to Audicon in writing by the Customer

13.2 Audicon may, instead of such return, also require the deletion of the Contractual Software transferred and of all copies made thereof, as well as the destruction of the User Manual transferred, and of all other documents of which the Customer shall be specifically notified in writing by Audicon. After its completion, the deletion or destruction shall be confirm in writing by the Customer to Audicon

13.3 Finally the Customer shall be required to return the dongle included in the delivery of the Contractual Software, to Audicon 5 days at the latest after termination of the Software Lease Contract. If mailed, the Dongle must be imperatively dispatched by registered mail

13.4 After termination of the Software Lease Contract, the Customer shall under no circumstances continue to use the Contractual Software and/or the dongle transferred.

XIV. Gratuitous transfer of software

14.1 To the extent that Audicon transfers any software programs to customers for gratuitous use (hereinafter „Freeware"), the provisions of this section XIV. shall apply on a supplementary basis. Furthermore, these provisions shall apply mutatis mutandis to the transfer of new program versions of such Freeware (e.g. patches, bugfixes, updates, upgrades, etc.) as well as to any user documentation of the Freeware made available for downloading on Audicon's homepage.

14.2 Audicon shall transfer the Freeware to the Customer in machine-readable form (Object Code) together with an electronic user manual as well as with other documentation if existing (e.g operating instructions, help files, other technical information and documentation). The transfer of the Freeware und the pertinent user documentation shall at the discretion of Audicon be realized by data telecommunication („download") or by transfer of a data carrier

14.3 The user manual or other documentation of the Freeware shall describe in detail what functions and services can be performed by the Freeware when used as stipulated in the Contract („Performance Description"). Solely the respective Performance Description shall, to such extent, be binding for the quality of the Freeware and its intended application. Statements in public, recommendations or advertising shall not constitute any description of the quality of the Freeware.

14.4 Audicon grants the Customer the non-exclusive right, unlimited in time, to use the Freeware supplied in the object code within the scope laid down in the provisions of these Contractual Terms.

14.5 The Customer shall not be entitled, without the prior consent in writing of Audicon, to transfer the copy of the Freeware provided to it and the pertinent user manual and other documentation for use to any third party and to sell, let or lend them to third parties. In particular, the Customer is not allowed to transfer the Freeware to third parties against payment of a charge, e.g. by way of the so-called „Application Service Providing (ASP)" or „Software as a Service" (SaaS). Otherwise the above provisions in sections 5.2, 5.3 and VI. for using the Contractual Software shall apply mutatis mutandis to the use of Freeware.

14.6 In connection with the transfer of Freeware, Audicon shall be liable only for intent and gross negligence. Any further claims for damage and compensation of expenses of the Customer for whatever legal reason, in particular on the grounds of violation of obligations from the relationship under the law of obligations and from tortuous acts shall be excluded.

14.7 Audicon shall be liable for material and legal defects of the Freeware only if Audicon has fraudulently concealed a material and/or legal defect. Any further liability or warranty for freedom from material or legal defects shall be excluded.

14.8 Unless no deviating regulations have been provided for in this section XIV., the provisions of these Standard Business Terms Software Lease shall apply to the lease of Freeware mutatis mutandis.

XV. Applicability of Standard Business Terms

Unless otherwise provided for in these Standard Business Terms Software Lease, the Standard General Business Terms of Audicon („General Terms and Conditions") shall apply on a supplementary basis.