

# General Terms and Conditions for Partner Agreement for Reseller

(Status: March 2018)

## 1. Nomination as partner, scope

1.1 **General.** These General terms and conditions for the Partner Agreement for Resellers within the Atos Unify Partner Program (hereinafter referred to as the "**Agreement**") shall apply to all services provided by Atos Unify to the Partner. General terms and conditions of Partner conflicting with or deviating from these General Terms and Conditions for the Agreement do not apply, even Atos Unify does not expressly object to them or if Atos Unify effects delivery to the Partner or Partner's customers unconditionally in the knowledge of such terms and conditions. Atos Unify shall be entitled to modify or supplement these General terms and conditions at any time subject to giving reasonable notice. The Partner shall be notified of any modifications or supplements via e-mail, fax or in any other suitable form.

1.2 **Conclusion of Agreement** By transferring data for the Online Registration for Partners (click and accept), the Partner shall submit an offer for the conclusion of this Agreement. This offer shall be binding for the Partner for a period of six (6) weeks from online registration or the transfer of data to Atos Unify. Within these six (6) weeks, the Partner shall receive via e-mail a message from Atos Unify stating whether or not Atos Unify accepts the offer. In the event that Atos Unify accepts the Partner's offer, the Agreement concluded shall come into force under the condition that the partner can provide evidence of the relevant certification within six months after registration (cf. Section 3.2). Once the Partner provides evidence of the relevant certification, the Partner shall receive final confirmation of the conclusion of the Agreement and the relevant specialization level. If the partner is unable to provide evidence of its certification, no contract shall come into force. The same shall apply if the partner does not receive a message from Atos Unify confirming acceptance of the offer within six (6) weeks of registering online.

1.3 **Appointment.** Atos Unify appoints Partner as its non-exclusive reseller in the country defined below (hereinafter referred to as the "**Territory**") for the marketing and sale of Atos Unify products according to the respective specialization level including systems and services (hereinafter referred to as the "**Contractual**

**Products**") to end customers for the term ("**Contractual Term**") of this Agreement. As a reseller, the Partner shall refrain from selling the Contractual Products to unauthorized resellers or distributors. The Partner agrees to market and sell the Contractual Products in accordance with the provisions of this Agreement. The Partner agrees only to source the Contractual Products from distributors authorized by Atos Unify. The Partner shall have the opportunity to view the distributors authorized by Atos Unify via the Partner Locator on the website "www.Atos Unify.com". Partner accepts such appointment as reseller. Atos Unify expressly reserves the right to appoint other resellers or distributors in the Territory or to sell the Contractual Products itself directly to end customers.

1.4 **Territory:** The term Territory designates the relevant country in which the Partner is legally located. If the Partner has affiliates in a number of countries and if Partner intends to market and sell Contractual Products in those countries the Partner shall register for each country separately.

1.5 **Amendment of Territory:** In the event of objectively justified cause, Atos Unify reserves its right to change, also to make smaller, the Territory, especially in the event substantial improvement of the distribution activities for the Contractual Products is expected by such change. Any change of the Territory requires the prior consulting of the Partner and can be effected at the earliest at the end of the calendar quarter after next. If, when this right is exercised, the Partner loses his opportunity to continue business relationships with regular customers solicited by him or with whom he has substantially intensified existing business, Partner is entitled to claim a reasonable compensation.

1.6 **No employee relationship, no power of representation:** The Partner is a legally autonomous enterprise. The Partner shall market and sell the Contractual Products on its own behalf and on its own account. The Partner shall not be entitled to present himself as acting on Atos Unify's behalf or to undertake any commitments on Atos Unify's behalf or for Atos Unify's account or to assume any liability or give warranties or make other declarations in Atos Unify's name unless Atos Unify has given Partner express written power of attorney to do so. The Agreement establishes neither an employer/employee relationship nor a shareholder or commercial agency relationship between Partner and Atos Unify.

## 2. General distribution obligations of Partner

2.1 **Best endeavours.** Partner will at its own expense

make best endeavours to promote, extend and develop the marketing and sale of the Contractual Products, and will maintain and support an organization necessary for this, including qualified personnel for sales, installation and service. Partner must not take any action directly or indirectly which does or might hinder, or interfere with, any marketing or sales of the Contractual Products.

- 2.2 **No modifications of Contractual Products.** Unless Atos Unify has agreed in writing in individual cases, Partner must not make any modifications to the Contractual Products, to arrange for such modifications to be made, or to fabricate copies of the Contractual Products.
- 2.3 **Marketing of approved Contractual Products only:** The Partner agrees only to sell those Contractual Products for which the Partner has the relevant specialization and for which Atos Unify has issued sales approvals in the relevant regions. The relevant sales approvals can be viewed by the Partner in the Atos Unify Partner Portal.
- 2.4 **Product designations.** Partner will offer the Contractual Products using only their specified product designations, including brand labels and references to proprietary rights, and will provide or make available to its customers all the information and documentation required to use them.
- 3. **Atos Unify Partner Program**
  - 3.1 **Participation is mandatory.** Partner will participate in the Partner Program described in **Enclosure 1** to the Agreement ("**Partner Program**").
  - 3.2 **Specialization:** The Partner shall qualify as a partner for the Partner Program by obtaining the relevant certifications. The Partner shall obtain the relevant certification after completing the certification test of the Atos Unify Academy in accordance with the regulations of the Partner Program. Partners who already have valid certificates issued by Atos Unify for the relevant qualification shall receive confirmation of their relevant specialization level. The Partner agrees to comply with the requirements set out in the Partner Program for the entire Contractual Term.
  - 3.3 **Program Services.** Upon qualification for the Partner Program, Atos Unify will make available to Partner the benefits and services described in **Enclosure 1** to the Agreement ("**Program Services**"). Atos Unify reserves the right to change the Program Services at any time with reasonable advance notice of at least four (4) weeks' notice.

3.4 **Distribution of products requiring detailed individual configuration.** The Partner Program Guide which is available on the Partner Portal identifies Contractual Products which require a detailed individual configuration to function properly. Partner will market such Contractual Products only after Partner has demonstrated to Atos Unify that he possesses an adequate level of competence in accordance with the Partner Program Guide. Atos Unify will provide Partner with configuration support as defined in the Partner Program Guide. The Partner Portal is accessible via Atos Unify's website at [www.unify.com](http://www.unify.com).

3.5 **Limited liability for goods and services provided at no cost.** Insofar as any information, software or documentation is made available at no cost, any liability for defects as to quality or title of the information, software or documentation especially in relation to the correctness or absence of defects or the absence of claims or third party rights or in relation to completeness and/or fitness for the purpose of the recipient and/or any damages related to the proper functioning of any software application developed by Partner on the basis of this interfaces are excluded except for cases involving willful acts or fraud as well as personal injury or death.

3.6 **Warranty.** Atos Unify makes no warranty to any of Partner's end user customers. Partner agrees to provide to its end user customer, at a minimum, the warranties Partner receives from Atos Unify. Partner is not authorized to make any warranty, representation or any other obligated commitment on Atos Unify's behalf. **ATOS UNIFY PROVIDES THE SERVICES UNDER THIS AGREEMENT TO PARTNER "AS IS" AND WITH NO WARRANTY, AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, STATUTORY OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.**

#### 4. Internet-based tools and platforms

4.1 **Access keys.** Atos Unify will provide Partner with an access key consisting of a user ID and password to access internet based tools and platforms of Atos Unify (e.g. the Partner Portal). Partner shall keep the access key strictly confidential.

4.2 **Registration.** Atos Unify only grants registered users access to internet based tools and platforms. The Partner shall be fully responsible for activities and knowledge of any of his employees and/or third parties for whom the Partner has applied for registration

and/or which Partner has registered (referred to hereafter individually or jointly as "**Employees**"), and shall only apply for registration for, or register, Employees whom Partner has granted unlimited power of representation regarding all statements which can be made via internet based tools and platforms of Atos Unify. Atos Unify reserves the right to reject or terminate the registration of individual users.

- 4.3 **Accuracy of information.** The Partner shall ensure that all information supplied by any Employee via internet based tools and platforms are true and Partner shall block any Employee's access to internet based tools and platforms immediately if the power of representation of any Employee has expired or is about to expire.
- 4.4 **Terms of use.** The use of internet based tools and platforms is subject to the separate terms of use, the latest version of which can be viewed prior to each login (cf. [www.unify.com](http://www.unify.com)). By logging in, Partner's Employees acknowledge these terms and conditions of use in the name and on behalf of Partner.
- 4.5 **Safety of IT systems.** The parties undertake to safeguard their communications equipment in accordance with the IT industry standards against unauthorized third-party access, unauthorized message transmission or comparable misuse, and loss of input or output data following message transmission or message retrieval.
- 4.6 **Indemnification regarding content.** Atos Unify accepts no responsibility for content entered into internet based tools and platforms of Atos Unify by the Partner. The Partner shall indemnify Atos Unify against all claims by third parties on first request that third parties make against Atos Unify because of content entered into Atos Unify internet based tools and platforms by the Partner or Partner's Employees.

## 5. Sale of software

- 5.1 **Sale of software:** To the extent that the Contractual Products include software, whether it be software developed or acquired by Atos Unify itself ("**Atos Unify Software**") or software sold to an authorized dealer by Atos Unify which is not Atos Unify Software ("**Third-Party Software**"), the Partner shall be entitled to grant to end customers a non-exclusive, non-transferable and non-sub licensable right to use copies of the software products (hereinafter referred to as "**Contractual Software**") in accordance with the licensing conditions for the relevant Contractual Software and the provisions of the Agreement, in particular Section 5.3, for exclusive use in their business

operations.

- 5.2 **No right of the Partner to use Contractual Software:** This Agreement shall not entitle the Partner to use the Contractual Software itself.
- 5.3 **Supplementary licensing conditions for Third-Party Software:** The Partner shall sell Third-Party Software only to end customers who have agreed, prior to obtaining Third Party Software, to the license conditions for the Third Party Software.
- 5.4 **Decompilation, reverse engineering.** The Partner is not entitled to decompile or reverse engineer the Contract Software, to remove parts of it or to take other measures which may result in the acquisition of the source code. Furthermore, the Partner is neither entitled to remove trademarks, emblems, copyright marks or other labels attached to the Contract Software or to its data carriers, nor to copy the Contract Software.
- 5.5 **Codes.** If Atos Unify provides activation codes or license codes under this Agreement, the Partner shall provide these to the respective end customer in conjunction with the associated copies of the Contract Software only.
- 5.6 **Records.** The Partner shall maintain detailed records and a documentary archive enabling Atos Unify to verify Partner's compliance with the terms and conditions of this Agreement and track the grant of licenses to the Contract Software and the distribution of activation codes and license codes. Atos Unify shall be entitled, during the term of the Agreement and for up to five years thereafter, to inspect the documentation, data and files relating to the use and licensing of the Contract Software and to copy same for purposes of preservation of evidence.

## 6. Confidentiality requirement

Each party shall use any documents, information or data of the other party which it obtains in connection with this Agreement solely for the purpose for which they were obtained. The parties shall furthermore treat such documents, information or data as confidential unless they have become general knowledge or the other party has consented to their being disclosed or the documents have been verifiably drafted independently or otherwise obtained by legal means. This also applies to the period following the termination of this Agreement.

## 7. Term and termination

- 7.1 **Term:** This Agreement shall come into force upon the

sending of the final confirmation of conclusion of the Agreement as described in Section 1.2. During the first five (5) years of the Contractual Term, each party may terminate the Agreement in text form at the end of a calendar month subject to giving three (3) months' notice. After these five years, each party may terminate the Agreement in text form at the end of a calendar month subject to giving six (6) months' notice. In addition, Atos Unify may terminate this Agreement with immediate effect, at its discretion, if the Partner has not submitted any purchase order with an authorized Distributor under this Agreement for a period of consecutive 12 months.

7.2 **Termination for cause.** Each Party is entitled to terminate this Agreement for cause with immediate effect. Without limiting in any way the right of either Party to terminate this Agreement for cause the following list sets out exemplary events that will constitute an important reason for the purposes of this Agreement:

- force majeure or other circumstances beyond the reasonable control of either party prevents a party from fulfilling this Agreement for a period of more than six (6) months;
- one or more third parties acquiring sole or joint control of, or sole or joint shareholdings exceeding 25% in the Partner;
- an application is made to institute insolvency or bankruptcy proceedings against either party;
- if major changes take place in the Partner's legal status, participation relationships or corporate management personnel which are such that the company can no longer be reasonably expected to adhere to this Agreement;
- the Partner loses the qualification on which his authorization is based and fails to re-qualify despite being requested to do so;
- the Partner is in breach of a material provision of this Agreement;
- the Partner uses the Partner Emblem without permission or not in accordance with the provisions of the current version of the Partner-style guide stored in Atos Unify Partner Portal.

## 8. Enclosures to the Agreement

The provisions in the following Enclosures which form part of this Agreement and should be read and interpreted as such shall apply:

- Enclosure 1 - Partner Program – description of the program

## 9. Miscellaneous

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9.1 **Modifications:** Atos Unify reserves the right to modify or supplement the Agreement at any time subject to giving the Partner reasonable notice. Atos Unify will use the contact address (usually e-mail) specified by the Partner to notify the Partner of any modifications or supplements. If the Partner does not object to the modified Agreement within four weeks of receiving the notification of modification or supplement, the modifications or supplements shall become effective in accordance with the notification. If the Partner objects within the set period, the Agreement shall continue under the then-current applicable terms and conditions. Atos Unify shall make reference to this in the notification. If due to compelling legal reasons Atos Unify determined that the modifications or supplements are essential, the notification requirement and the Partner's right to object shall no longer apply. Modifications and supplements made by Atos Unify due to such compelling legal reasons shall not provide Partner with a basis for any claim for compensation from Atos Unify.

9.2 **Replacing old contracts with this Agreement:** If a contract regarding the marketing of Atos Unify products (including the Contractual Products) already exists between the Partner and Atos Unify, this Agreement shall replace and supersede all existing contracts including all side-letters and further agreements between the parties entirely.

9.3 **Legally ineffective provisions.** The effectiveness of the remainder of the Agreement will not be affected in the event that individual terms or conditions therein are legally inoperative or unenforceable for legal reasons. In this case the parties undertake to replace the ineffective term or condition with one approximating as closely as possible in terms of commercial effect to the original.

9.4 **Transfer of contractual rights and obligations.** Atos Unify can transfer the rights and obligations from this Agreement to a third party. Transfer will not be effective if the Partner objects to this in writing within 4 weeks of receiving relevant notification; Atos Unify will draw special attention to this in the notification.

9.5 **Applicable law:** This Agreement shall be governed by the substantive law of the State of Florida without regard to its conflicts of law provisions and without taking into account private international law. The United Nations Convention on Contracts for the International Sale of Goods dated April 11, 1980 (CISG) shall not apply.

9.6 **Place of jurisdiction:** The courts of the State of Florida shall have exclusive jurisdiction for all disputes relating to, or in connection with the Agreement.

## Enclosure 1

### to Partner Agreement

## Atos Unify Partner Program

(January 2018)

### 1. Introduction

The "**Atos Unify Partner Program**" is an element of the Partner Agreement and is the global Partner Program for Partners of Atos Unify who sell Atos Unify's products and services to end customers. This enclosure contains the regulations and guidelines for Reseller/Service Provider ("**Partner(s)**") on which the Partner Program is based. Further details of the Partner Program are provided in the Atos Unify Partner Program Guide and can be obtained from the Atos Unify Partner Portal. The applicable current version of the Partner Program Guide ("Program Guide") applies and shall be an element of the Partner Agreement with Atos Unify. The Partner Program offers Partners various services and features, depending on the relevant Specialization-level.

### 2. Specializations

2.1 Specializations and the requirements for them are described in the Program Guide.

22 With the means of Specializations Partners can document their expertise and qualifications for a specific solution offering to end customers.

23 Specializations are a subject matter of the yearly Approval Audit. The Partner must furnish proof that it meets all the requirements for the selected Specialization.

24 The Partner shall be authorized to use the emblem for the Specialization achieved in conjunction with the Partner Emblem in compliance with the style guide.

### 3. Specialization-levels

The Partner Program has three different Specialization-levels that Partners can attain for each portfolio element depending on how much they invest in the partnership with Atos Unify.

The three Specialization-levels are:

- Master (= highest level possible)
- Professional (=medium level)
- Authorized (= initial level)

The Specializations for Service Providers are defined in the Atos Unify Partner Program for Service Providers.

### 4. Partner Approval

4.1 The Approval Audit examines whether a Partner meets the criteria and requirements for Specialization in the Partner Program and whether they attain the Master, Professional or Authorized Specialization level. Criteria and requirements for each Specialization-level can be found in the Program Guide.

4.2 The approval is valid for one year after a successful Approval Audit. The date specified in Section 4.3 d) shall determine the approval date. The Approval Audit for each subsequent year must be completed successfully latest

within the final quarter of the preceding audited year.

4.3 The Approval Audit shall be subject to the following regulations:

- a) Atos Unify shall be responsible for conducting the Approval Audit.
- b) The Partner shall bear any costs incurred in preparing for the Approval Audit.
- c) The Partner must furnish appropriate proof as requested, such as service descriptions as evidence that he meets the criteria. Copies of all proof in support of the Approval Audit must be provided to the Partner Manager.
- d) The date of the confirmation or the rejection of the Approval Audit by Atos Unify shall be the date of approval or non-approval. Atos Unify shall send the Partner the confirmation or notification of a negative Approval Audit within two weeks of completion of the Approval Audit. Atos Unify will implement the changes at the next possible date.
- e) If the Partner can no longer meet the criteria for attaining his existing Specialization-level (e.g. employee fluctuation) in the period of time between two Approval Audits, the Partner must inform Atos Unify immediately so that both parties can take measures to compensate for the resulted deficit. If this deficit cannot be compensated within 90 days, the Partner shall be re-accredited and his Specialization-level will change accordingly.
- f) In the case of Partners with multiple branch offices (own legal entities) in different countries the Approval Audit shall be conducted for each country. As soon as the respective Specialization-level has been confirmed by the Approval Audit, the Partner must ensure that he can meet the requirements demanded for its level in the long term.
- g) Documents delivered as evidence of the Approval Audit must be treated confidentially. The documents shall be made available only to the Partner Manager of Atos Unify; his/her line managers and selected employees at Atos Unify's headquarters who are tasked with handling the Partner Program.
- h) Atos Unify shall be authorized to use data from the Approval Audit for internal, anonymous reports.
- i) All escalation shall be addressed to the respective line-manager of the Partner Manager at Atos Unify. He/she shall be responsible for making a final decision in the event of escalation.
- j) If a Partner does not pass the audit (negative Approval Audit), Atos Unify can give him an additional period of time to implement the measures required to meet the Partner Program criteria. Atos Unify is not obligated to do so.

## 5. Atos Unify Partner Emblem

- 5.1 Partners who have successfully completed the approval process shall be entitled to the associated Specialization-level. After successfully completing the approval, the Partner shall have a nonexclusive, non-transferable, not sublicenseable and revocable right to use the Atos Unify Partner Emblem, stating the Specialization he has achieved. The Partner Emblem may be used solely in compliance with the Style Guide (the "Style Guide"), and solely with regard to the Contractual Products in the Territory. The Style Guide is available on the Partner Portal.
- 5.2 The Partner Emblem may be used only with express reference to the company of the program participant. The Partner is obliged to observe and comply with the applicable instructions and design guidelines of the Style Guide in relation to use of the Partner Emblem. The Style Guide for using the Partner Emblem is available on the Atos Unify Partner Portal.
- 5.3. The Partner must not use the Partner Emblem, unless expressly allowed in the Style Guide.
- 5.4. Atos Unify reserves the right to change the Partner Emblem, the Style Guide and the terms of use at any time.

Atos Unify will announce these changes to the Partner well in advance via the Atos Unify Partner Portal. Changes to the

Partner Emblem, the Style Guide and the terms of use shall not require the consent of The Partner and shall become effective upon being published in the Partner Portal.

- 5.5. The right of the Partner to use the Partner Emblem shall expire at the earliest when the Partner can no longer furnish proof that he fulfills the requirements, but at the latest when the Partner Agreement ends.
- 5.6. Atos Unify is unilaterally entitled at any time to revoke the right to use the Partner Emblem with immediate effect if circumstances arise which make it impossible for Atos Unify to maintain the granted rights of use. In particular, Atos Unify may revoke the right if
  - a) the Partner is in breach of the provisions of this Section 6 and the infringement is either not able to be remedied or the infringement, if it can be remedied, is not resolved by the Partner within 30 days after receipt of written notice of the infringement,
  - b) for legal reasons Atos Unify may no longer grant the right,
  - c) Atos Unify changes its name, or
  - d) Atos Unify has legitimate reasons to assume that the Partner damages the reputation and the prestige of Atos Unify.

## **6. Program Features**

- 6.1 The features offered by the Atos Unify Partner Program depend on the highest achieved Specialization-level.
- 6.2 All the provided features shall relate to the respective Specialization-level and are contingent on the catalogue of criteria being met. If the criteria for a Specialization-level are not met, the Partner shall be reclassified in the lower level. If the Partner does not achieve the requirements for attaining the lowest level, he shall not be entitled to features from the Program under this Agreement.
- 6.3 The catalogue of features can be viewed in the Atos Unify Partner Program Guide.

## **7. Partner Fund**

Atos Unify provides Marketing Development Funds (MDF) in line with the Atos Unify Partner Program Guide.