

General Terms and Conditions for the UPU-TechCert certification

1 Applicability and legal status of the parties

- 1.1 The Universal Postal Union, an intergovernmental organization and specialized agency of the United Nations with headquarters at Weltpoststrasse 4, 3015 Berne, Switzerland (hereinafter the “UPU”), and the Vendor as defined in article 2.11, may also be individually referred to hereunder as “Party” or collectively as “Parties”.
- 1.2 By applying for UPU-TechCert certification (as further defined hereunder), the Vendor acknowledges and agrees to these General Terms and Conditions (hereinafter “GTC”).
- 1.3 The UPU may unilaterally amend these GTC and the applicable fees with binding effect for all Vendors. The amended version shall enter into force on the date notified in writing to the Vendor, which date shall be notified at least 90 calendar days in advance.
- 1.4 Vendors may be granted a UPU-TechCert certification by the UPU under the conditions provided for in these GTC. Such certification does not imply or otherwise suggest approval or recommendation of the certified Vendor Product, or that the certified Vendor may act as an agent or representative of the UPU. The UPU shall not be responsible for the effects or consequences of the certified Vendor Product(s) on its users.
- 1.5 The UPU-TechCert label is developed and owned by the UPU. It may not be used in any way other than as provided for in these GTC.
- 1.6 Pursuant, *inter alia*, to the UPU Constitution, the Convention on Privileges and Immunities of the Specialized Agencies, the Agreement on Privileges and Immunities of the United Nations concluded by the Swiss Federal Council and the Secretary General of the United Nations – RS 0.192.120.1 (on Swiss territory), as well as any other conventions and laws granting to and/or recognizing for the UPU and its officials such privileges, immunities and facilities, the UPU has full juridical personality and enjoys such privileges and immunities as are necessary for the independent fulfilment of its purposes.
- 1.7 These GTC shall not confer any third-party beneficiary rights. All of the UPU’s rights and obligations under these GTC shall be freely assignable by the UPU in accordance with the relevant decisions of its bodies. For the avoidance of doubt, nothing in these GTC shall confer a third-party beneficiary right upon any party with respect to any provisions or agreements incorporated by reference, or that may be referenced without incorporation, in these GTC.

2 Definitions

Capitalized terms used in these GTC shall have the meaning defined below:

2.1 *API*

Means an application programming interface through which two computer programs can interact automatically.

2.2 *Certification Application Form*

Means the questionnaire to be filled in by the Vendor applying for the UPU-TechCert certification of one or more of its Vendor Products.

2.3 *Certification Domain*

Means a specific information technology solution line owned by the UPU.

2.4 *Certification Scope*

Means any API or group of APIs within a particular Certification Domain which constitute a specific area of certification within the UPU-TechCert programme.

2.5 *Data*

Means any information supplied by the Vendor or provided by the UPU for and throughout the UPU-TechCert certification procedure.

2.6 *Effective Date*

Means the date on which the Vendor has submitted to the UPU the Certification Application Form and signed or manifested its express acceptance, in writing, of these GTC.

2.7 *Score Card*

Means the list of technical tests and other questions that must be successfully passed or answered in order for the UPU-TechCert certification to be granted.

2.8 *UPU Software*

Means software developed and owned by the UPU (providing one or more publicly available interfaces through APIs), and which forms the Certification Scope of each UPU-TechCert certification.

2.9 *UPU-TechCert*

Means the name of the UPU technical certification programme, governed by the present GTC. It shall also mean the certification label granted to the Vendor specifying one or more of its Vendor Products which have been successfully certified.

2.10 *UPU-TechCert Documentation*

Means any conditions, policies, operating manuals, instructions and other related material regarding the UPU-TechCert certification and provided to the Vendor, in a format defined at the sole discretion of the UPU.

2.11 *Vendor*

Means an entity provider of information technology and owner of one or more Vendor Products as defined in article 2.12.

2.12 *Vendor Product*

Means hardware or software owned by the Vendor and interfaced with at least one UPU Software.

3 Scope and certification process

3.1 UPU-TechCert certifications are open to any Vendor which is the owner of a Vendor Product as defined in article 2.12.

3.2 The UPU shall provide the Vendor with the UPU-TechCert Documentation, which shall serve as the basis for the certification process. In case of any discrepancy between the UPU-TechCert Documentation and these GTC, the GTC shall prevail.

3.3 The UPU shall publish the list of available UPU-TechCert certifications through its website at www.upu.int/UPU-TechCert, including the Certification Domains and Scopes for which the Vendor may apply for certification of its associated Vendor Product(s).

- 3.4 The Vendor shall submit a Certification Application Form for review by the UPU, in accordance with the applicable process of the UPU-TechCert Documentation and these GTC. The UPU shall assess the eligibility of the Vendor, and the Vendor Product for certification, including whether it falls under an available Certification Domain and Scope, based on the information provided on the Certification Application Form.
- 3.5 Following confirmation by the UPU of the eligibility for certification of one or more of the concerned Vendor Products, the Vendor shall pay the full price of the certification with a view to starting the certification auditing. This amount cannot be refunded, regardless of the final outcome of the certification procedure, including where the procedure is abandoned by the Vendor, for any reason, or where the UPU does not certify the concerned Vendor Product(s), for any reason.
- 3.6 The UPU shall provide the Vendor with the Score Card used for evaluating the certification of the Vendor Product(s).
- 3.7 The Vendor shall use the Score Card as guidance for the technical tests which shall be successfully performed for the certification process of the concerned Vendor Product(s), as well as to provide the requested evidence and answer associated questions posed by the UPU.
- 3.8 In accordance with article 3.5, the UPU may promptly suspend or cancel the certification procedure at any time in the event that it has, when parsing the Score Card, identified: i) a substantial number of defects, ii) critical defects, or iii) a significant lack of maturity of the Vendor Product and its interface with UPU Software.
- 3.9 The UPU shall provide the relevant UPU-TechCert certification concerning the Vendor Product(s) in respect of which all mandatory tests indicated in the Score Card have been successfully passed.
- 3.10 Without prejudice to the specific provisions governing the use of the UPU's emblem, name and initials, the Vendor shall be authorized to display its UPU-TechCert certification and its own logo inasmuch as it relates to relevant public communication regarding the certified Vendor Product(s). Such communication shall strictly respect the limitations specified in articles 1.4 and 13.
- 3.11 UPU-TechCert certifications shall be valid for two years from the date they are provided. The Vendor may apply for certification renewal six months before expiration of the current certification.

4 Granting and use of the UPU-TechCert certification

- 4.1 UPU's responsibilities
 - 4.1.1 The UPU-TechCert certification is a formal document, signed by the UPU and provided to the Vendor in relation to one or more concerned Vendor Products if the conditions listed in article 3.9 are met.
 - 4.1.2 The UPU-TechCert certification shall clearly indicate:
 - 4.1.2.1 The name of the Vendor;
 - 4.1.2.2 The place of registration of the Vendor;
 - 4.1.2.3 The name of the concerned Vendor Product(s);
 - 4.1.2.4 The Certification Domain and the Certification Scope.
 - 4.1.3 The UPU shall inform the Vendor, through its website or any communication channel deemed appropriate, of any:
 - 4.1.3.1 Change in the UPU Software that may impact the certified Vendor Product. Such a change shall not impact the validity of any existing UPU-TechCert certification previously granted, but shall be taken into consideration by the Vendor when requesting a certification renewal;
 - 4.1.3.2 Discontinuation of the UPU Software. While the UPU will aim to provide reasonable advance notice, this is without prejudice to discontinuation which may come into force with immediate effect;
 - 4.1.3.3 Change in the UPU-TechCert programme and its GTC. Such changes may come into force immediately.

4.2 Vendor's responsibilities

4.2.1 The Vendor shall inform the UPU, through the relevant electronic mail address(es) informed by the latter, of any:

4.2.1.1 Change to the information specified in article 4.1.2.1, 4.1.2.2 or 4.1.2.3;

4.2.1.2 Technical change in the certified Vendor Product(s) that may impact the Certification Domain or the Certification Scope;

4.2.1.3 Discontinuation of the certified Vendor Product(s).

5 Data protection and security

5.1 Data exchanged by the Parties during the course of the UPU-TechCert certification procedure shall be treated confidentially. Advanced security technology is employed by the UPU to protect such Data from unauthorized transmission or access.

5.2 Data shall only be used for the purpose of conducting the UPU-TechCert certification process, as defined in article 1.4.

5.3 Whenever the processing or storage of Data occurs within the UPU Software, or any other facility controlled or owned by the UPU, the treatment of such Data, including any mandatory data retention terms, shall be regulated by the applicable law defined in article 15.2.

6 Fees and charges

6.1 The conducting of the UPU-TechCert certification process is conditional upon the due and timely payment of the concerned fees, as agreed between the UPU and the Vendor and stipulated in article 3.5.

6.2 The Vendor shall be solely responsible for all of its own costs incurred in relation to the UPU-TechCert certification process.

7 Tax exemption

Pursuant to the Agreement on Privileges and Immunities of the United Nations concluded by the Swiss Federal Council and the Secretary General of the United Nations – RS 0.192.120.1 (on Swiss territory), the Convention on the Privileges and Immunities of the Specialized Agencies, as well as other domestic statutes, the UPU is exempt from all direct taxes and from customs restrictions, duties and charges of a similar nature in respect of articles imported or exported for its official use.

8 Warranty

The UPU provides the UPU Software and UPU-TechCert test platform on an "as is" and "as available" basis without any express or implied warranties, including without limitation warranties of merchantability, fitness for a particular purpose, title, noninfringement, and freedom from computer virus or other harmful code. Moreover, the UPU does not warrant that any information provided by the UPU will be accurate, complete or useful; that the UPU Software and UPU-TechCert test platform will always be operational, error-free, secure or safe; or that the UPU Software and UPU-TechCert test platform will function without disruptions, delays or imperfections.

9 Liability

9.1 In no event shall a Party be liable for consequential, incidental, indirect, punitive or special damages, including without limitation damages related to loss of profits, loss or delay of data, business interruptions or any commercial damages or losses, loss of goodwill or anticipated savings, claims from third parties or losses due to viruses, any other harmful components, or any unauthorized access to or modification of transmissions of data. The above limitations shall not apply to events caused intentionally or by the gross negligence of a Party or its employees, agents, representatives or subsidiaries.

- 9.2 The UPU shall not be held liable for decisions taken by the Vendor or by any third party appointed by the Vendor.
- 9.3 In no event shall the UPU's total liability to the Vendor for the aforementioned damages exceed the total amount paid by the Vendor in accordance with article 6.1.

10 Assignment and sublicensing

- 10.1 The Vendor shall not assign, sublicense, subcontract, pledge or otherwise transfer or dispose of the GTC, or any of the rights and obligations under it, without the prior written consent of the UPU.
- 10.2 Furthermore, the UPU shall be entitled to subcontract all or part of its obligations under the GTC. Such subcontracting shall not relieve the UPU of any of its obligations under the GTC or from its responsibility for any related activities performed by the subcontractor.

11 Property rights

- 11.1 The Vendor hereby acknowledges and agrees that the UPU Software, the UPU-TechCert certification programme and its Documentation are proprietary and protected by law and that all rights thereto, including without limitation copyrights, patents, trademarks, domains, logos, trade dress, trade secrets, and other intellectual property rights, are owned by or vested in the UPU or its third-party licensors. The Vendor shall have no rights herein, with the exception of the rights of use expressly granted by the GTC. All rights not expressly granted herein shall be reserved to the UPU.
- 11.2 The Vendor shall not modify or remove any copyright or proprietary notices on the UPU Software or the UPU-TechCert programme and its Documentation.
- 11.3 These obligations shall survive the termination of the GTC between the Vendor and the UPU.

12 Termination and effects of termination

- 12.1 These GTC between the UPU and the Vendor shall enter into force on the Effective Date.
- 12.2 Any breach of any provision of these GTC shall be deemed as grounds for immediate termination by the UPU of the UPU-TechCert certification process, or withdrawal of a previously granted certification.
- 12.3 The UPU may also terminate the UPU-TechCert certification without cause upon notice of 30 days communicated to the Vendor.
- 12.4 In case of termination, the Vendor shall not be entitled to a refund of fees specified in article 6.1.
- 12.5 Upon termination of these GTC, all rights granted to the Vendor and specifically those specified in articles 1.4 and 3.10 shall cease, and the Vendor shall cease all activities authorized under these GTC, without prejudice to articles 11.1, 11.2, 11.3 and 13.

13 Use of emblem, name or initials of the UPU

Without prejudice to the specific provisions of article 3.10, the Vendor shall not use the emblem, name or initials of the UPU in connection with its activities for purposes of commercial advantage or goodwill. The Vendor shall take all reasonable measures to ensure compliance with this provision. This obligation shall survive the termination of the contractual relationship with the UPU.

14 Settlement of disputes

- 14.1 *Amicable settlement:* The Parties shall use their best efforts to amicably settle any dispute, controversy or claim arising out of these GTC or the breach, termination, expiration or invalidity thereof. Where the Parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the Conciliation Rules then obtaining of the United Nations Commission on

International Trade Law (UNCITRAL), or according to such other procedure as may be agreed between the Parties in writing.

- 14.2 *Arbitration:* Any dispute, controversy or claim between the Parties arising out of these GTC or the breach, termination, expiration or invalidity thereof, unless settled amicably under article 14.1 above, within 60 days after receipt by one Party of the other Party's written request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining.
- 14.3 The number of arbitrators shall be one. If the Parties are unable to designate an arbitrator within 30 days of receipt of the notification of a request for arbitration, the arbitrator shall, at the request of one of the Parties, be appointed by the President of the Permanent Court of Arbitration in The Hague, Netherlands.
- 14.4 The arbitrator's ruling shall be final and binding, and no appeal to a court or any other jurisdiction shall be allowed.
- 14.5 The place of arbitration shall be Berne, Switzerland, and the language of arbitration shall be English or French.

15 Miscellaneous

- 15.1 *Entire agreement:* These GTC shall constitute the entire agreement between the Parties and shall supersede any and all other previous agreements, arrangements and/or understandings, whether written or oral, between the Parties. In addition, nothing in these GTC shall be construed to create an expectation that a particular Vendor Product will be successfully certified under the UPU-TechCert certification programme.
- 15.2 *Applicable law:* These GTC and any annex, appendix or document related thereto shall be governed by general principles of law to the exclusion of any single national system of law. Such general principles of law shall include the UNIDROIT General Principles of International Commercial Contracts (2010).
- 15.3 *Waiver:* Nothing relating to the access or use of the UPU-TechCert certification by the Vendor shall constitute a waiver, explicit or implied, of any of the privileges and immunities of the UPU.
- 15.4 *Severability:* Should any provision be invalid or prohibited, such provision shall not invalidate the remainder of such provision or the remaining provisions.