

**Supplemental Terms & Conditions for the Procurement
of IT Services**

– EVB-IT Dienstleistungs-AGB –

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1 Agreement purpose

- 1.1 The purpose of the contract is to regulate the services rendered by the Contractor as outlined therein. Services renderable under a production contract ("*Werkvertrag*") are not concerned under the contract.
- 1.2 The Contractor is responsible for performing services with due care, which shall mean observing the state of the art in the field concerned in the contract at the time of rendering of the respective service, except as otherwise agreed. Services are to be rendered in/using German as language, except as otherwise agreed. The Contractor is obligated to maintain neutrality in the performance of services.
- 1.3 If services are renderable on a call-off basis without contractual minimum purchasing provisions, the Procurer shall have no claim to receive services on a call-off basis. If no minimum advance notice period for service performance has been contractually agreed, the Contractor shall commence performing services immediately upon call-off.
- 1.4 The Contractor shall not be entitled to legally represent the Procurer in transactions, except as otherwise specifically agreed.
- 1.5 The Contractor shall only be entitled to provide the contractual services using automated processes if the product to be utilized is specified in the offer and warrants therein that said product has no functionalities for communication with third parties nor any other functionalities which run counter to the interests of the Procurer. In particular, the product may have no functionalities which enable unauthorized data disclosure or transmit information about the IT systems utilized by the Procurer to third parties, including system data and information on licensing or user behavior, for any purposes other than for provision of the services; furthermore the product may not save such data/information in a manner allowing it to be accessed by third parties. The express approval of the Procurer is required on a case-by-case basis for any product replacement or rollout of new product releases. The Procurer will approve such if the Contractor provides warranty regarding the new product to be rolled out per the above. The Procurer may prohibit usage of the product given adequate, concrete indications that the product does not conform with the requirements specified above if the Contractor is unable to demonstrate otherwise
- 1.6 Any services rendered by the Contractor in connection with hardware or software (including firmware) may not jeopardize the integrity, confidentiality or availability of ITC infrastructure or elements thereof, nor run counter to the Procurer's confidentiality or security interests, through/by
- the undesired storing or transferring of data
 - the undesired alteration/manipulation of data or process logic, or
 - the undesired inputting of data or expansion of functionalities
- Any activity is undesired which was neither required by the Procurer in the service specifications nor otherwise in connection with service performance, nor offered by the Contractor providing a specific description of the activity and its manner of functioning, nor expressly authorized by the Procurer in a specific case ("opt-in").

2 Cooperation between the contracting partners; Prohibition of temporary staff and false self-employment

- 2.1 The contracting parties shall implement organizational measures so as to ensure that all staff of the Contractor deployed for the provision of services are subject to direction and disciplinary oversight by the Contractor. The staff of the Contractor deployed for provision of the services shall not be integrated into the Procurer's organization.
- 2.2 The contracting parties shall each name a contact person to function as go-to for any matters relating to the service contract. The Procurer shall communicate requirements regarding the services to be provided exclusively to the contact person named by the Contractor and shall not issue any instructions to other individuals deployed by the Contractor. The individuals deployed by the Contractor shall not enter into any employment relationship with the Procurer, even in regard to services performed in the Procurer's facilities.
- 2.3 The Contractor determines the place and time of service provision independently, as a rule. Requirements pertaining to timing, location and technical matters must be met however pursuant to the service specifications or to timeliness or service schedules coordinated and agreed by the contracting parties, or as necessary for the purposes of the contract. The Contractor is responsible for any work resources necessary for provision of the services, except as otherwise agreed.
- 2.4 The following shall apply if the Contractor is a natural person who performs services personally:
- The Contractor shall act in his own name and for his own account vis-a-vis the Procurer. The Contractor declares being legally and economically independent, and in particular that the Contractor works under contracts for other customers as an entrepreneur to a significant degree. The Contractor agrees to notify the Procurer without delay of any changes in such status occurring during the term of the service contract.
 - The Contractor is responsible for any social security contributions and health insurance premiums due.
 - The Contractor is obligated to properly forward any sales tax due to the tax administration and to properly pay tax on pay received under his/her own supervision.

3 Rights to work results

- 3.1 Except as otherwise agreed in the contract, the Contractor grants the Procurer, at the respective point in time of service provision,
- a non-exclusive
 - geographically unlimited
 - license usable in any environment (system environment or other)
 - which is transferable
 - durable, irrevocable and non-terminable
 - sub-licensable for non-commercial purposes
 - sub-licensable to defined customers for commercial purposes in line with §§ 99 - 101 of the Competition Restraints Determent Act (GWB)

right to use the work results in original or altered, translated, edited or modified form,

- which includes in particular the right to store such and any necessary copies permanently or temporarily, and to load, display and playback such
- and to alter, translate, edit or otherwise modify such
- on any medium, or to otherwise store, reproduce or exhibit such, to render or broadcast such, in particular in non-public or public settings, by video, audio, on other information carriers or in radio broadcasts, and to make such publicly accessible – not including source code*
- to use such in databases, data networks and online services, including the right to make work results available to users of the aforesaid databases, networks and/or online services for research purposes, and to make available for retrieval or download via tools provided by the

Definitions of the terms marked with an asterisk (*) are provided at the end of the EVB-IT Dienstleistungs-AGB.
Version 2.1 dated 4/1/2018

The English version of the terms of contract is **only** for your information.
The German version is legally binding.

Procurer

- to allow use and processing thereof by third parties or operation thereof for the Procurer for both internal purposes and to provide services to third parties
- to distribute such physically or otherwise, commercial distribution being limited however to the defined customers per §§ 99 - 101 GWB.

For software, the license extends a right of use to the object and source code* and the associated documentation.

- 3.2 If the Procurer exercises the right to transfer his work results, wholly or in part, or allows third parties to use such under the Procurer's sublicensing or distribution rights, the Procurer shall contractually bind said third parties to fulfill the same obligations connected with the content and scope of the license. Liability on the part of the Contractor vis-a-vis third parties in connection with sublicensing or distribution is excluded.

The Procurer shall lose any usage rights transferred to a third party. The Procurer is entitled however to retain a copy exclusively for verification and archiving purposes.

- 3.3 The license grants rights of use to work results in all developmental, preliminary and final phases and to any materials necessary to exercise these rights of use, such as analyses, requirements and specifications documents, plans and descriptions.

- 3.4 The Contractor shall only integrate pre-existing created works protected by copyright (software components, original texts, plans/concepts, documentation, etc.) into work results with the prior consent of the Procurer. Upon integration of the above created works, rights accrue to the Procurer as per item 3.1. Compensation shall be due for the distribution and sublicensing of pre-existing created works if the Contractor stated a value for granting of the rights in obtaining the Procurer's consent. Compensation for the distribution or sublicensing of such works shall not be due until the Procurer exercises these rights to the pre-existing created works.

If software is concerned as a created work per the above, a right to editing the software is excluded if the following conditions are met:

- When obtaining the Procurer's consent the Contractor will be notified that only the object code* to the above created works is licensed rather than the source code* and advised that the license does not include editing rights and that the Contractor is actually only licensing the object code*.
- The Contractor shall enable the Procurer to generate the executable custom software through the agency of properly qualified staff from the licensed elements of the work results in the source code* and the pre-existing created works licensed solely in the object code*.
- No right to editing accrues by statutory law.

Item 3.5. applies regarding the usage of tools*.

If software is concerned, the distribution and sublicensing of pre-existing created works is only permissible together with the work results in the form as licensed or in modified, translated, edited or redesigned form.

- 3.5 If the Contractor utilizes or developed tools* that are unavailable on the market to generate the work results and editing and redesigning of the work results is not possible without use of such tools* or only possible with unreasonable effort/expense, the Contractor shall give the Procurer a reproduction of the tool/s* in question at or before completion of the corresponding work, granting the Procurer thereto

- a non-exclusive
- geographically unlimited
- license usable in any environment (system environment or other)
- strictly together with the work results which it is usable to edit or redesign, which is transferable,
- durable, irrevocable and non-terminable

to utilize the tool/s* in original form exclusively to edit and redesign the work results for purposes of error resolution and further development, and for such purposes to use the tool/s*,

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- to include in particular the permanent or temporary storing and loading thereof and the displaying and running thereof, along with any necessary copies
- to allow third-party usage and operation for the Procurer
- to use such for internal and non-internal purposes and to provide services to third parties.

The Procurer is furthermore entitled to produce another reproduction and distribute this together with the respective work results, and to grant third parties the rights pursuant to this item 3.5 with the exception of the sublicensing, distribution and reproduction rights.

Instead of the tool* utilized by the Contractor, the Contractor may give the Procurer a reduced version of the tool*, granting the Procurer the rights stated under this item 3.5 if the work results can be edited and redesigned just as well through the use of such.

The Contractor is not obligated to provide the tool* if the Contractor demonstrates that the work results can be edited and redesigned just as well using a different tool* available on the market as with the tool* utilized by the Contractor* and informs the Procurer where to source that different tool.

- 3.6 If the creation or editing of software is concerned, except as otherwise agreed the Contractor shall, at the end of any day when the software has been changed, deposit the respective software version including source code* in a source code repository provided by the Procurer, or provide it to the Procurer on another suitable medium if a source code repository has not been agreed. The source code* includes professional source code* comments and a description of the required system parameters and other necessary information enabling the Procurer's specialist staff to edit the source code* as independent further development of the software created by the Contractor.

- 3.7 If the work results concern or are manifest in produced items, the Contractor transfers ownership of the work results to the Procurer.

4 Inventions

Except as otherwise agreed, the provisions below govern inventions made by the Contractor in the course of contract fulfillment.

- The Contractor has free disposal over the invention and rights proceeding from or connected therewith, and file for a patent or utility patent for the invention. The Contractor hereby grants the Procurer at no charge a simple, non-exclusive, transferable, sublicensable in rem right of use to patents and utility patents filed for or granted in present or in future in connection with the usage of the work results which the invention concerns. For the event that the above is insufficient in a given case, the Contractor grants rights of use in the scope necessary for the Procurer or an entitled third party to exercise the rights to the work results as contractually provided.
- The Contractor shall at his own expense ensure that exercising of the rights of use to the work results accruing to the Procurer cannot be compromised by either the Contractor, the inventor or any legal successor.

To such end, the Contractor shall in particular claim any employee inventions.

5 Service hours and response times*

- 5.1 If no service hours* have been agreed, the service hours* shall be Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m. (except on public holidays at the agreed location, or at the Procurer's location if no other location has been agreed).
- 5.2 If no response times* have been agreed, provision of the services is to commence without delay upon receipt of the corresponding notification or upon occurrence of the contractual event within the contractual service hours*.
- 5.3 If the Contractor fails to adhere to the contractual response times*, the Contractor shall be deemed in delay upon missing the deadline in question without issuance of any warning unless not at fault for missing the deadline.

6 Documentation and reporting obligations

- 6.1 The Contractor shall appropriately document the work performed in a timely manner. Except as otherwise agreed, such documentation shall be recorded in German in a commonly used electronic format and make the documentation accessible to the Procurer upon completion of the work. The Contractor is obligated to allow the latest updated documentation to be reviewed at any time.
- 6.2 Upon request during the term of the contract, the Contractor shall report to the Procurer on the status of work.

7 The Contractor's notification obligations

- 7.1 The Contractor shall notify the Procurer without delay if a specification or requirement of the Procurer or an activity necessary to fulfill the Contractor's contractual obligations is materially deficient, incomplete, contradictory and/or unperformable as outlined/agreed, or if a solution more economical for the Procurer exists. The Contractor shall simultaneously notify the Procurer of any apparent consequences thereof, to the extent possible with reasonable effort. The Contractor shall be liable for non-fulfillment of these obligations unless it is not reasonably expectable that the Contractor would become aware of the circumstances in question in the course of providing services.
- The Contractor is not obligated to conduct investigations or checks that are not necessary for performance of the services. The Contractor's obligations pursuant to § 241 para. 2 of the German Civil Code (BGB) furthermore remain unaffected.
- 7.2 The Contractor shall notify the Procurer without delay immediately upon becoming aware of being unable to meet contractual deadlines or work milestones.
- 7.3 The Contractor must promptly request performance of the contractual cooperative actions required on the part of the Procurer.

8 Staff of the Contractor and subcontractors

- 8.1 Individuals deployed to perform services must be properly qualified as agreed and in any case as necessary to fulfill the contractual purposes and complete the required tasks. Irrespective thereof, the Contractor shall ensure that staff to be deployed for performance of the services have the minimum qualifications required to fulfill the Contractor's offer in this regard and meet the Procurer's requirements per the tender invitation. Except as otherwise agreed, the Contractor is obligated to exclusively deploy individuals to provide any on-site services required who are willing to sign a confidentiality agreement in accordance with the Act on Confidentiality Agreements for Private Contractors of Public Procurers (*Verpflichtungsgesetz*). The language of communication with the Procurer shall be German unless otherwise agreed.
- 8.2 The Contractor may only deploy subcontractors or replace deployed subcontractors with the express permission of the Procurer. Permission may not be withheld without due cause. The Contractor shall bear costs for training a subsequently deployed subcontractor. Permission shall be deemed granted for the subcontractors stated in the Contractor's offer.
- 8.3 The Contractor may only replace individuals deployed for contract fulfillment
- who hold contractually agreed key positions with the Procurer's approval. The Procurer shall grant such approval without delay if such replacement is absolutely necessary and the Contractor makes a qualified replacement individual available. Such replacement is mandatory if further deployment is no longer possible.
 - The Procurer's approval is not required for the Contractor to replace individuals deployed for contract fulfillment who are not deployed in key positions with a qualified substitute, but in doing so must appropriately consider the Procurer's interests.

The replacement individual shall only be deemed qualified in such case if the individual meets the contractual minimum suitability requirements. Increased compensation shall not be payable due to the

replacement individual holding greater qualifications. In particular, this shall still apply if the replacement individual falls within a higher-priced category. The Contractor shall bear costs accruing for the replacement and training of replacement individuals.

- 8.4 The Procurer may demand the replacement of an individual deployed by the Contractor for cause if said individual is culpable of a significant breach of contractual obligations. Item 8.3 applies accordingly in such cases.

9 Payment, fees

- 9.1 The fixed flat fee represents the total compensation payable for work/service, the amount of which cannot be unilaterally adjusted. Materials costs, travel time, travel costs and incidental expenses* are included in the fixed flat fee. No other/further amounts shall be billable by the Contractor unless the contracting parties agree to a change in the services renderable.
- 9.2 The following shall apply if time-based billing is agreed:
- 9.2.1 Payment shall be due exclusively for time worked. Travel times, travel costs, materials costs and/or incidental expenses* shall be payable/reimbursable as contractually agreed. Waiting periods affecting the Contractor for which the Procurer is responsible shall be compensated as work time. However, any cost savings realized by the Contractor by virtue of non-performance of work/services shall be deductible therefrom as well as any earnings from resulting redeployment of resources, and/or potential earnings missed through intentional non-redeployment. To receive compensation for work billable on a time basis the Contractor must provide signed work timesheets and documentation of other claimed costs, optionally using the Form 1 – Documentation for Service Billing.
- 9.2.2 Compensation shall only be paid applying the categories agreed for the respective services performed. If a specific category has not been agreed for a service, only the categories of services necessary for fulfillment shall be applied. Sentences 1 and 2 shall also apply if the service in question is provided by an individual assigned to a higher-priced category than the category for the work necessary.
- 9.2.3 If a contractual cap has been implemented for work billed on a time basis, the Contractor shall, without waiting for instruction to do so on any occasion, notify the Procurer of the work status and the estimated work amount still outstanding once the work performed reaches approximately 75% of the cap level, and again when 100% is reached, and if circumstances should appear evident which render completion of the services in full impossible within the cap limit. Irrespective thereof, the Contractor shall still be obligated to render the contractual services in full despite exceeding the limit. This shall not apply if the Contractor is not at fault for exceeding of the cap limit. The Contractor is obligated however in such case to render the contractual services in full for additional compensation billable on a time basis applying the contractual rates if the Procurer requests such.
- 9.2.4 The per-day rate applies as the compensation maximum per calendar day, unless otherwise agreed. A contractual full-day rate may only be billed if a minimum of eight billable hours were worked. If less than eight billable hours were worked, the hours worked are to be billed accordingly as a fraction of the full-day rate. If an hourly rate is agreed, compensation shall be payable pro rate for every hour commenced. Break times must be reported and are unpaid. A half-hour break will be presumed taken for any time period exceeding six hours in duration worked by the Contractor's staff. This shall not apply if the Contractor demonstrates in the timesheets/work documentation that a break was not taken. Services shall only be rendered during times for which no surcharge or other increased pay rate has been agreed unless the Procurer has expressly approved such or other arrangements have been agreed. A surcharge or increased payment rate may not be charged for work which the Contractor performs without such approval or such a contractual arrangement.
- 9.3 Payment of the fixed flat fee shall be due after rendering of the services. Installment payments may be contractually agreed. Payment for services billable on a time basis shall be due monthly in arrears unless otherwise agreed.
- 9.4 Compensation owed shall be due for payment 30 days after receipt of a verifiable invoice, except as

otherwise agreed.

- 9.5 If price/rate adjustments have been agreed for services, the following shall apply unless other provisions have been agreed. An initial price/rate increase may only be implemented 12 months after the contract start date, and subsequent increases may be implemented no earlier than 12 months after the effective date of the last price/rate increase. Any increase becomes effective three months after the date of announcement thereof. Any increase must be appropriate in amount and may not be out of line with the relevant market trend for the services. The maximum increase is 3% on the fee/compensation level applicable at the time of announcement of the increase.
- 9.6 In transactions subject to sales tax, sales tax is charged extra on all stated prices at the applicable rate.

10 Delays, response times*, contractual penalties

- 10.1 The timeline and performance schedule is either defined in the contract or to be coordinated between the parties after contract conclusion. Dates and deadlines stated therein shall be binding unless otherwise agreed. In case of delays for which the Contractor is not responsible, the affected work deadlines are to be moved back appropriately. Claims accruing to the parties under statutory law are thereby unaffected.
- 10.2 The Procurer may assert delay damages in case of delay. The Procurer may furthermore terminate the contract wholly or in part as allowed by law, partial termination meaning that termination only applies to the services which are delayed upon the fruitless elapse of a performance grace period set for the Contractor. The Contractor in such case shall owe the Procurer compensation for damages incurred due to termination of the contract. As an alternative to claiming damages incurred due to termination the Procurer may claim reimbursement of fruitless expenditures in accordance with § 284 of the German Civil Code (BGB). In the cases cited in the statutes § 281 para. 2 and § 323 para. 2 BGB, a grace period does not have to be given. Sentences 4 and 5 of item 15.2 apply mutatis mutandis.
- 10.3 If a deadline stipulated in the contract as subject to contractual penalty is missed, the Procurer is furthermore entitled to charge a contractual penalty at a rate of 0.2% of the contract value* of the services affected by delay for every work day in which the Contractor is in delay of performance of the services in question. The total contractual penalty amount payable pursuant to this clause is capped however at 5% of the contract value* of the services affected by delay.
- 10.4 In case of non-conformity with the contractual response times*, per instance of delay in which the response time* has been exceeded by 25% during service hours*, the Procurer shall be entitled, if and as agreed, to charge a contractual penalty at a rate of 0.1% of the annual fees/compensation due, capped at 1% of the total annual fees/compensation due. This shall not apply if the Contractor is not at fault for the delay. The total contractual penalty payable for a given contract year pursuant to this clause is capped at 5% of the total fees/compensation due for that contract year.
- 10.5 Section 341 para. 3 of the German Civil Code (BGB) applies with the limitation that the penalty may only be claimed during the twelve-month period following triggering of the penalty. In aggregate, the sum total of contractual penalties payable is capped at 5% of contract value*. Contractual penalty amounts are deductible from the amount of any damages claimed.

11 Performance deficiencies

If services are performed in a non-contractually conforming manner, the Procurer is entitled to demand that the Contractor perform the services in a contractually conforming manner within an appropriate grace period at no additional expense for the Procurer. This shall not apply if the Contractor is not at fault for the breach of obligations.

Other rights/claims accruing to the Procurer shall remain thereby unaffected, including particularly for damages and reimbursement of expenses, and the Procurer's right to termination for cause per item 15.2.

12 Third-party intellectual property rights

12.1 If a third party asserts a claim for infringement of intellectual property rights against the Procurer due to usage of the Contractor's services, thereby compromising or prohibiting the usability thereof, the Contractor shall have liability as set forth below, irrespective of the rights accruing to the Procurer as per item 11:

- The Contractor may at his discretion and at his own expense either alter or replace the performance elements so that intellectual property rights are no longer infringed but they still essentially correspond to the contractual functionalities and performance characteristics in a manner reasonable for the Procurer's purposes or indemnify the Procurer for and from infringement claims by intellectual property rights holders.
- If alteration or replacement are not possible for the Contractor or only possible under unreasonable conditions, the Contractor shall be entitled to withdraw from provision of the services in question, refunding the fees/compensation paid for such. The Contractor must grant the Procurer an appropriate run-out period, unless such is unreasonable from a legal standpoint or on other grounds.

12.2 The parties shall notify each other respectively without delay of any third-party claims asserted. The Procurer will not recognize any rights asserted for an alleged infringement, and will either leave all litigation and out-of-court settlement negotiations exclusively up to the Contractor or conduct such in coordination with the Contractor. The Contractor shall reimburse the Procurer for expenditures necessary to defend against claims and for other losses incurred if the Procurer conducts or has to conduct defense measures and/or settlement negotiations for legal reasons. In such case the Procurer is entitled to receive an advance in the amount of the estimated defense costs.

12.3 If the Procurer is at fault for the rights infringement, claims against the Contractor are excluded.

13 Limitation of liability

Unless liable under other contractual clauses, the following shall apply for all statutory and contractual claims for damages and expense reimbursement accruing to the Procurer:

13.1 For slight negligence in breach of obligations, contractual liability shall be limited in all cases to the total contract value*. If the contract value* is less than € 50,000.00, the liability limit is € 50,000.00. Liability for property damage is limited to one million euros if the contract value* is less than one million euros.

13.2 The Contractor has liability for data losses only in the amount of expense that would have been necessary to restore the data if the Procurer had regularly and properly backed up the data. This limitation shall not apply if and to the extent data backup* is part of the services to be provided by the Contractor.

13.3 Claims for lost profits are excluded, except as otherwise agreed.

13.4 The liability limitations do not apply to claims in cases of malice, intent, gross negligence, loss of life or bodily injury/harm, to cases falling within the scope of the Product Liability Act or warranty cases unless provided otherwise under a warranty agreement.

14 Cooperation by the Procurer

14.1 The Procurer shall promptly provide necessary information and documents in the Procurer's possession

to the Contractor. The Procurer shall promptly give the Contractor's staff access to the former's facilities and IT infrastructure maintained therein and promptly hand over documentation on file as necessary for provision of the services and to fulfill the legal and contractual requirements pertaining to individual personnel (such as security clearance procedures per the Security Clearance Act – SÜG). If the Procurer fails to promptly and fully perform cooperative services despite being instructed by the Contractor to do so, the Contractor may prepare an offer to perform the cooperative services for and instead of the Procurer. Other claims accruing to the Contractor remain unaffected.

- 14.2 If teleservice* has been contractually agreed, the Procurer shall provide the necessary technical facilities/equipment which the Procurer is to provide under the teleservice agreement and allow access to the system.
- 14.3 It is the Contractor's responsibility to ensure proper data backup*.

15 Contract term and termination

- 15.1 If the term of the service contract has not been agreed and is not evident based on the nature or purpose of the services, either party may terminate the agreement wholly or in part with three months' notice effective at the latter of calendar month-end or the end of any minimum contract term provided for in the contract. The contract may provide for a different termination notice period.
- 15.2 Furthermore, either contracting party may terminate the contract wholly or in part for cause – without observing a termination notice period – within an appropriate period of time after having become aware of the grounds for termination. Cause shall be in evidence when circumstances are in place due to which continuation of the contract is no longer reasonable for the terminating party in view of the overall situation in the given case at hand and of the interests of the contracting parties. If cause is in evidence due to breach of a contractual obligation, termination shall only be permissible if compliance has not been restored by the elapse of a statutory grace period or period set by warning letter, unless a grace period is not required pursuant to § 314 in conjunction with § 323 paragraph 2 of the German Civil Code (BGB). In case of termination for cause, the Contractor is entitled to payment for the services rendered under the contract up until termination becomes effective. Payment shall not be due however if the Procurer demonstrates that specific services are no longer of interest because of termination.

16 Obligations after ending of the contract

- 16.1 Upon ending of the contract the Contractor shall voluntarily hand over all documents, resources, materials and items received from the Procurer without delay which were provided on a temporary basis according to contract for the purpose of contract performance. This applies as well to any copies. Furthermore, all work results in any form shall be handed over to the Procurer, including any copies made if exclusive rights have been contractually granted.
- 16.2 The Procurer is entitled to demand unrestorable erasure or destruction instead of handover, wholly or in part. Documentation of such shall be given to the Procurer upon demand and a corresponding declaration issued or other proof given as requested. Statutory retention requirements remain unaffected.

17 Changes to services after contract conclusion

The Procurer may at any time after contract conclusion require changes in the scope of services which are reasonable for the Contractor to implement. Except as otherwise agreed, the change procedure is to be documented using a form as per Model Document 2 - Service Change Procedure. If the scope of contractual services to be rendered by the Contractor changes, the Contractor may demand that the contract be amended accordingly. Irrespective thereof, § 2 of the General Contract Terms for Rendering Performance (VOL/B, as amended 2003) applies.

18 Liability insurance

- 18.1 If and as agreed, the Contractor shall, upon demand by the Procurer, provide documentation of holding industrial liability insurance that is market-typical in terms of limits and scope, or a comparable insurance policy issued in an EU member state.
- 18.2 The Contractor shall maintain this insurance coverage until ending of the IT Services Procurement Contract. If the Contractor fails to meet this obligation, the Procurer shall be entitled, given continuing non-compliance after elapse of an appropriate grace period, to terminate the contract if continuing the contract is no longer reasonable. Further claims accruing to the Procurer, including damage claims in particular, shall remain thereby unaffected.

19 Data protection, confidentiality, security

- 19.1 If the Contractor collects, processes or uses personal data under a contract, the Contractor shall upon demand by the Procurer conclude a data processing agreement that conforms with applicable laws.
- 19.2 The Contractor shall ensure that all individuals the Contractor deploys for processing or contract fulfillment act in compliance with applicable data protection laws. The signed agreements to uphold data privacy required under data protection law must be obtained no later than the point of initial commencement of work, and documentation thereof must be provided to the Procurer upon request.
- 19.3 The Procurer may terminate the contract wholly or in part for cause if the Contractor culpably fails to fulfill the obligations per items 19.1 and 19.2 within an appropriate grace period set, or if leaving the contract in place is no longer reasonable for the Procurer due to an intentional or grossly negligent breach of data protection laws by the Contractor.
- 19.4 The parties are obligated to uphold confidentiality regarding all confidential information and business and operational secrets which they receive in connection with the contractual relationship, and shall not in particular disclose such to third parties or utilize such for any purposes other than the contractual purposes. The sharing of information on the experiences the Procurer has had with and between organizations in the public sector remains unaffected, as well as information necessary to fulfill the Procurer's statutory obligations. The obligation to uphold confidentiality regarding business and operational secrets disclosed on the basis of the contract remains unaffected.
- 19.5 The Contractor is only authorized to disclose confidential information to subcontractors when the Procurer has expressly approved the use of those subcontractors, and only if the confidential information concerned is necessary for the provision of the respective performance elements by the subcontractor ("need-to-know" basis). This only applies if the subcontractor has first signed an agreement with Contractor to uphold confidentiality to at least the same extent as the Contractor has agreed to uphold confidentiality vis-a-vis the Procurer. In that agreement, the subcontractor must be barred from disclosing confidential information unless the Procurer has expressly agreed to its disclosure in advance.

19.6 Confidential information is information which a reasonable third party would deem worthy of protecting or is designated as confidential. This may include information which became known during a verbal presentation or discussion. Confidential information is exclusively to be used to fulfill obligations under the contract. Confidentiality obligations do not apply to information previously and legally known to the parties or which becomes known outside the contractual framework without breach of a

confidentiality obligation.

20 Rights of retention

The Contractor shall have no rights of retention nor rights to refuse performance unless the underlying counterclaims are undisputed by the Procurer or have been upheld by legal judgment.

21 Text form

Except as otherwise provided, communications and declarations relating to the contract must be made in text form, at a minimum.

22 Choice of law

The law of the Federal Republic of Germany shall govern. Conflict of laws conventions providing for applicability of a differing body of law and the United Nations convention on Contracts for the International Sale of Goods (CISG*) are disappplied.

Terms and definitions

Contract value	The contract value is the total amount of fees/compensation due under the contract.
CISG	United Nations Convention on Contracts for the International Sale of Goods
Data backup	Data backup includes all technical and organizational measures taken to ensure the availability, integrity and consistency of data and software stored on the IT system which is used for processing purposes.
Incidental expenses	Expenditures of the Contractor which are necessary for the performance of services which are not travel costs.
Object code	The intermediate output of a source code* compiler or translation procedure executed by a software program.
Source code	Coding of a software program in the respective programming language.
Response time	Period of time within which the Contractor must commence performing services. This period begins upon receipt of a corresponding notification or occurrence of a contractual event during the contractual service hours* and runs exclusively during the contractual service hours*. If a notification is received outside of the contractual service hours* or the contractual event occurs outside of service hours*, the response time* period starts upon commencement of the next service hours* period following thereupon.
Service hours	The hours within which the Procurer is entitled to provision of the services the Contractor has contractually agreed to perform.
Teleservice	Service provided via technical telecommunications equipment from a location outside the place of service utilization.
Tools	Aids useful for structuring and executing the services.