

Supplemental Terms & Conditions for Hardware Maintenance

– Supplemental Terms & Conditions for Hardware Maintenance (EVB-IT Instandhaltungs-AGB)–

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Definitions of the terms marked with an asterisk (*) are provided at the end of the Supplemental Terms & Conditions for Hardware Maintenance* (EVB-IT Instandhaltungs-AGB).

Version 2.0 dated 3/17/2016

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The German version is legally binding.



Supplemental Terms & Conditions for Hardware Maintenance**– Supplemental Terms &
Conditions for Hardware
Maintenance (EVB-IT
Instandhaltungs-AGB)–****1 Purpose of Hardware Maintenance Contracts**

- 1.1 Hardware Maintenance Contracts are concluded individually within the framework of these Terms & Conditions for the purpose of regulating the providing of maintenance services by the Contractor for the contractually agreed hardware.
- 1.2 Maintenance services are generally performable under a work contract (*Werkleistungen*).
- 1.3 Except as otherwise agreed, the Contractor shall provide the maintenance services applying the best available techniques as of the time of service performance.
- 1.4 The Contractor shall only be entitled to provide the contractual maintenance 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 to third parties, including system data and information on licensing or user behavior, for any purposes other than for provision of the maintenance 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
- 1.5 Any hardware or software or elements thereof provided by the Contractor as part of maintenance may not contain malware *, hidden for example in the firmware. Appropriate scanning must be conducted at an appropriate time prior to delivery to verify that this is the case. The Contractor declares that such scanning yielded no indications of malware* being present. This provision shall apply to all hardware provided, even if provided on a temporary or advance basis, such as for testing purposes.
The Contractor shall furthermore ensure that hardware and/or software deliverable by the Contractor is free of functionalities which pose a risk to the integrity, confidentiality or availability of the hardware, other hardware or software or data, thereby breaching the confidentiality or security interests of the Procurer, such as:
- 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 or manner of functionality, nor expressly authorized by the Procurer in a specific case ("opt-in").
- 1.6 Except as otherwise agreed, the Contractor shall not obligated to provide maintenance services for hardware which requires manufacturer support but the manufacturer no longer offers such support and the Contractor is not otherwise reasonably able to provide the services in question for reasons beyond the Contractor's control.

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2 Nature and scope of maintenance services

2.1 Restoration of operational readiness (troubleshooting, fault resolution)

If troubleshooting is agreed as a service, the Contractor shall take the necessary measures involved.

The Contractor declares the serviced hardware operationally ready, providing sufficient proof thereof to the Procurer upon request, to the extent technically possible.

If a previous fault stemming from the same cause reoccurs within seven days of operational readiness* being declared restored, the fault shall be deemed unresolved. If a flat fee has been agreed for maintenance, the Contractor may demand an appropriate fee from the Procurer to resolve any fault caused by the Procurer either intentionally or through gross negligence.

2.2 Maintaining operational readiness (preventive measures)

Maintaining operational readiness for hardware includes all measures taken by the Contractor to avoid future faults*, such as the activities agreed under a maintenance plan. This includes for example regularly replacing wearing parts* and hardware parts promptly in advance of the end of their useful life. The provision and installation of new program versions* of software for the hardware, e.g. firmware, microcodes and drivers, are also included, to the extent these are respectively required to maintain operational readiness.

2.3 Acceptance of replacement hardware* and replacement parts*

Except as otherwise agreed, the Procurer must accept replacement hardware* and replacement parts* which serve to resolve a fault. The Contractor shall not be obligated to accept replacement hardware* or replacement parts* which require additional payment or if acceptance thereof is unreasonable, due for example to significant differences versus the hardware to be replaced.

If the Procurer does not accept new hardware for such reasons, the Contractor shall, upon request by the Procurer, propose a different solution which is feasible and reasonable to implement.

When the Procurer accepts new hardware, the following shall apply:

- If the new hardware has greater functionality than the system component listed in the contract (representing an "upgrade"), the Procurer is only obligated to pay additional compensation if the Procurer wishes to make use of the greater functionality constituting the upgrade. This still applies if the Procurer makes use of the upgrade even though the Procurer could use the new hardware in contractually conforming fashion without utilizing the upgrade, but does not apply if the Procurer is only able to make use of previous functionalities in connection with the upgrade. Additional payment shall not be due if provision of the new hardware is already required as a performance obligation per item 2.1.
- If usage of the new hardware results in increased cost, the cost difference shall be borne by the Contractor. This does not apply to increased cost resulting from the Procurer's intended usage of the upgrade/s. Sentence 2 of the first listed point under this item 2.3 shall apply accordingly.

2.4 Hotline

- 2.4.1 If hotline services have been agreed, except as otherwise provided in the contract the Contractor shall accept fault notification by phone if troubleshooting is agreed as a service, and shall record any questions regarding usage of the hardware. The Contractor shall resolve the reported fault*, if possible, by providing instructions by phone, or by providing teleservice* during the phone call if agreed, and shall respond to questions about usage of the hardware if such is agreed. If these efforts do not prove successful within a reasonable period of time, the Contractor shall be obligated to

- resolve usage-related questions otherwise, relaying responses by phone or e-mail
- escalate the reported issue internally within Support for resolution. If troubleshooting is not an agreed service per item 2.1, the Contractor shall submit an offer for fault resolution to the Procurer applying the contractually agreed fee schedules, or on other reasonable terms if such have not been agreed.

If usage of a ticket system* has been agreed, the Contractor is obligated to record the reported issue in a trouble ticket along with explanatory information, irrespective of whether the issue has already been resolved by phone.

- 2.4.2 Except as otherwise agreed, the hotline may be utilized by any trained user of the Procurer.
- 2.4.3 All staff deployed by the Contractor to work the hotline must be properly trained in recording reported faults and providing first-level support. The hotline must be staffed by German-speaking personnel, unless otherwise agreed.
- 2.4.4 Except as otherwise agreed, the Interactive Voice Response System (IVR) may only be utilized for initial call receipt and routing.
- 2.4.5 The Contractor is obligated to staff the hotline and deploy adequate technology to afford availability at all times within the agreed service hours*, taking into account the projected volume of usage-related inquiries and fault reports so as to ensure that such phone inquiries and reports can be handled in parallel. If it is not possible for the addressing of a fault* or answering of a complex user question to be handled by a single employee of the Contractor up until its successful resolution, the resolution process and progress must be logged in such fashion as to ensure that no significant delays are caused by the change in staff.
- 2.4.6 The respective parties shall bear their own telecommunication costs. The Contractor is not entitled to provide the hotline via a value-added service, mobile phone number, international number or other number which result in additional cost versus use of the domestic landline network.

3 Hardware relocation and modification by the Procurer

The Procurer is entitled to relocate hardware to a different site than the contractually agreed location and to modify the hardware. The Procurer shall notify the Contractor of such plans promptly in advance, specifying details. Either contracting party may request amendment of the contract with respect to the rights and obligations of the contracting parties to reflect accordingly changes resulting from the relocation or modification of the hardware. If the parties are unable to mutually agree on such amendments,

- the Procurer shall bear the consequences of any resulting limitations of the contractor's or manufacturer's warranty obligations
- the Procurer shall bear the burden of proof that any faults subsequently occurring are not the result of the modifications made.

4 Fault classification

- 4.1 Except as otherwise agreed in the contract, three separate fault classes shall be recognized, as follows:
- 4.1.1 A critical fault* (operation-preventing fault) is in evidence when usage of the hardware is not possible or only possible with major limitations.
- 4.1.2 A major fault* (operation-impeding defect) is in evidence when usability of the hardware is substantially limited. A major defect* is furthermore in evidence when a minor fault ultimately leads to a substantial limitation of usability of the hardware.
- 4.1.3 A minor defect* is in evidence when usage of the hardware is unaffected or only slightly limited.

5 Service, response and restoration times*

- 5.1 If there are no agreed service hours, the service hours shall be Monday to Friday from 8:00 a.m. to 5:00 p.m. (excluding official holidays at the place of fulfillment)*.
- 5.2 If no response times* have been agreed, provision of the maintenance services is to commence without delay upon receipt of the corresponding notification or upon occurrence of the contractual event within the contractual service hours*. If restoration times* have not been agreed, the maintenance work must be completed within an appropriate period of time.
- 5.3 If the Contractor fails to adhere to the contractual response or restoration 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.
- 5.4 For maintenance work performed under a work contract, to document successful completion by the applicable deadline it suffices to issue notification of restoration, such as by declaring operational readiness in case of a fault*, for example.

6 Replacement items*

- 6.1 Replacement items* must be of the same or better quality and in like-new condition at the time of replacement.
- 6.2 Replacement items* may only be used if necessary to eliminate a fault* or to maintain operational readiness* as contractually stipulated and it is reasonable for the Procurer to use these. Item 10.4. applies regarding any replacement items* requiring payment by the Procurer
- 6.3 The Contractor transfers ownership to the Procurer of any replacement items* utilized in performing maintenance work as of the point in time of their usage. The Contractor shall provide to the Procurer the information necessary to update the inventory schedule. This information includes particularly the device names and the serial numbers of both the replacement items* and the items replaced.
- 6.4 Upon request by the Procurer the Contractor shall dispose of or recycle the replaced items in compliance with legal requirements free of charge. This also applies to packaging of replacement items*. Replacement items must be properly disposed of or properly recycled, at the Contractor's discretion.
- 6.5 The Contractor must specifically notify the Procurer in the event any items to be disposed of contain data carriers when they are replaced, offering to hand over these data carriers prior to their removal. If the Procurer declines this offer, the Contractor must dispose of the data carriers in such manner as to ensure that the data stored are neither readable nor reconstructable.
- 6.6 The Procurer is entitled to remove elements of items prior to their removal.

7 Documentation

The Contractor shall appropriately document the maintenance services rendered in a timely manner. Except as otherwise agreed, such documentation shall be recorded in German in a commonly used electronic format and the Contractor make the documentation accessible to the Procurer. As part of the documentation a schedule must be kept of the usage of replacement items* and new versions* of hardware-related software. The Contractor shall additionally hand over a list of the relevant serial numbers, accompanying papers and manuals and documentation for the replacement items* provided by the manufacturer.

8 The Contractor's notification obligations

- 8.1 The Contractor shall notify the Procurer without delay in text form 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 furthermore provide notification in the event the hardware and/or its operating environment do not or no longer represent the state of the art or meet IT security requirements.

8.2 The Contract 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 the maintenance services. The Contractor shall simultaneously notify the Procurer in text form of any apparent consequences thereof, to the extent possible with reasonable effort. The Contractor is not obligated to conduct investigations or checks that are not necessary for performance of the maintenance services.

9 Staff of the Contractor and subcontractors

- 9.1 To provide delivery and any services, the contractor shall utilize staff who are qualified in accordance with applicable contractual provisions. Except as otherwise agreed, the Contractor is obligated to exclusively deploy staff 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.
- 9.2 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 replacement subcontractor. Permission shall be deemed granted for the subcontractors stated in the Contractor's offer.

10 Payment, fees

- 10.1 Any agreed flat fees are fixed flat fees*, except as otherwise agreed. No other/further amounts shall be billable by the Contractor unless the contracting parties agree to a change in the services renderable or a price change.
- 10.2 The following shall apply if time-based billing for services rendered is contractually agreed:
- 10.2.1 Except as otherwise agreed, time-based billing agreed is based on time required to render the services. Travel times, travel costs and 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 2—Maintenance Contract Billing Documentation.
- 10.2.2 If a cap is agreed as maximum compensation billable on a time basis, the Contractor remains obligated to render performance in full regardless of whether the maximum has been reached. 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 contractual performance in full for additional compensation billable on a time basis applying the contractual rates if the Procurer requests such.
- 10.2.3 Except as otherwise agreed, in case of time-based billing the Contractor must present, at the Procurer's discretion, either an offer priced at a fixed flat fee or a binding cost estimate applying the contractually agreed prices within the agreed response time*. The type and scope/volume of the services and binding performance deadlines must furthermore be specified. A fee may not be charged for preparation of the cost estimate or offer. The Procurer must either accept or reject the offer without delay.

- 10.2.4 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 indicates in the billing documentation that breaks were 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.
- 10.3 Except as otherwise agreed, contractual flat fees for recurring services and other fees regularly payable shall be due on the 15th of the month after the month in which services were provided. Payment for services billable on a time basis shall be due monthly in arrears unless otherwise agreed. It may furthermore be agreed that payment for services under a work contract shall only be due upon acceptance of the respective work. Acceptance shall be deemed given if the Procurer fails to meet the obligation of accepting the maintenance work results within a specific period set by the Contractor.
- 10.4 The Contractor must notify the Procurer if separate payment will be due for replacement items* and of the amounts in question on the basis of any existing pricing agreements, requesting that the Procurer place a corresponding order before providing such. If specific fees, prices or rates as payment calculation basis have not been agreed, the Contractor may only charge market-typical fees/prices/rates, factoring in any customary discounts.
- Irrespective thereof, the Procurer is entitled to refuse to use replacement items*, to supply replacement items of adequate quality on his own in consultation with the Contractor, and to require the Contractor to propose an alternative solution that is reasonably feasible. Except as otherwise agreed, payment for replacement items* shall be due at the end of the month in which they are installed/first used.
- 10.5 Compensation owed shall be due for payment 30 days after receipt of a verifiable invoice, except as otherwise agreed. For payments due on a recurring basis, it suffices to send a one-time, verifiable invoice for recurring billing as long as the fee payable does not change.
- 10.6 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 commencement of service provision under the contract, 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.
- 10.7 In transactions subject to sales tax, sales tax is charged extra on all stated prices at the applicable rate.

11 Performance delays

- 11.1 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 maintenance services which are delayed. The Procurer may then set an appropriate performance grace period for the Contractor and claim damages in lieu of performance if this grace period elapses unfulfilled. In the event of a partial performance delay, the Procurer may only withdraw

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from the contract entirely if the partial performance element in question is no longer of interest. As an alternative to asserting damages, 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.

- 11.2 In case of non-conformity with contractual response and/or restoration times* the Procurer shall furthermore be entitled to charge a contractual penalty at a rate of 0.1% of the annual fees/compensation due per respective instance of delay in which the response and/or restoration times* are exceeded by 25% or more during service hours*, 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 penalties payable for a given contract year pursuant to this clause is capped at 5% of the total fees/compensation due for that contract year. Contractual penalty amounts are deductible from the amount of any damages claimed.
- 11.3 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.

12 Cooperation by the Procurer

- 12.1 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. Further claims of the Contractor remain unaffected.
- 12.2 The Procurer must report any faults or defects, providing any known information of relevance for detection/identification of the issue in question. Unless differing procedures should be agreed for problem reporting, such as reporting by phone or opening of a trouble ticket in a ticket system*, the Procurer shall as a rule utilize the problem reporting form (see Sample Form 1). If, in an exceptional case, a problem is reported only by phone or verbally without advance agreement thereupon, the Procurer must document the problem subsequently using the form. The Contractor must take any reasonable measures to enable fault* or defect localization and analysis, such as by promptly providing technical information at his disposal.
- 12.3 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.
- 12.4 It is the Contractor's responsibility to ensure proper data backup.

13 Procurer's rights in case of maintenance-related defects

- 13.1 Except as otherwise agreed, the expiration of claims period for both product and title defect claims shall be 24 months for replacement items and 12 months for all other items. Superseding the above, the statutory expiration of claims period shall apply in case of malicious concealment of defects by the Contractor. The claims expiration period shall not in such case elapse prior to the end of the periods per sentence 1.
- 13.2 Liability for defects of title does not extend to claims for patent or utility model violations under German law asserted against the Procurer by third parties for the Procurer's utilization of maintenance services outside the EU and EFTA member states.

- 13.3 If the Procurer reports a defect prior to elapse of the claims expiration deadline and the parties enter into negotiations as per § 203 BGB, elapse of the claim expiration period is suspended until the Contractor or Procurer should refuse to continue such negotiations. Claims shall expire no earlier than three months after the date of ending of suspension.

13.4 The Contractor shall remedy a defect without delay upon notification thereof either by way of repair/follow-up performance or by delivery of a new item at the discretion of the Contractor, observing an appropriate period to do so set by the Procurer. Item 14 supersedes in case of infringement of third-party rights. Pursuant to § 439 para. 2 and § 635 para. 2 BGB, the Contractor bears costs necessary for subsequent performance, including particularly transport, transport-related, labor and materials costs. If subsequent performance is rendered by way of replacement delivery, the Contractor's claim to compensation for usufruct from the original item is disappplied. If the Contractor does not successfully finish work to remedy the defect within an appropriate grace period set, if the applicable statutory requirements allow the Procurer may thereafter set a second appropriate grace period for the Contractor. If this second grace period elapses unfulfilled the Procurer may reduce payment appropriately or withdraw from the contract, wholly or in part. For maintenance services performed under a work contract, the Procurer may set the second grace period in advance and declare that the Procurer will remedy the defect independently if the deadline is not met. If that deadline is then not met, the Procurer is entitled to eliminate the defect independently and claim reimbursement of the expenditures necessary for such.

The Procurer may additionally claim damages or reimbursement of expenditures if the conditions under statutory law are met.

14 Third-party intellectual property rights

- 14.1 If a third party asserts a claim for infringement of intellectual property rights against the Procurer due to usage of the Contractor's maintenance 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 13:

- 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 the Contractor is unable to perform alteration or replacement or can only do so on unreasonable terms, the Contractor shall be entitled to take repossession of the performance elements, refunding payment rendered 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.

Other rights accruing to the Procurer, such as to contract withdrawal, termination, payment reduction and claim damages, remain unaffected.

- 14.2 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.
- 14.3 If the Procurer is at fault for the rights infringement, claims against the Contractor are excluded.

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15 Breach of duty in rendering services

If maintenance work which constitutes a service (*Dienstleistung*—such as hotline support) is performed in a non-contractually conforming manner, the Procurer is entitled to demand that the Contractor perform the service in a contractually conforming manner within an appropriate grace period at no additional expense for the Procurer. Other rights accruing to the Procurer remain thereby unaffected, including particularly the rights to claim damages and to termination.

16 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:

- 16.1 For slight negligence in breach of obligations, amounts due shall be limited in total to the contract value* in all cases. In such case however liability shall be capped at twice the amount of fee/compensation payable for the first contract year. Any agreed reduction for warranty claims shall not be factored into the above calculation of fee amounts. A liability limit of € 25,000 shall still apply however even if pursuant to the above clause the liability limit would be calculated at less than € 25,000. For property damage resulting from slight negligence, superseding sentences 1 and 3 the Contractor's liability shall be limited to contract value, subject to the minimums of € 500,000.00 per loss event and € 1,000,000.00 in aggregate.
- 16.2 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.
- 16.3 Claims for lost profits are excluded, except as otherwise agreed.
- 16.4 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.

17 Contract term and termination

- 17.1 If a specific contract has no expiration date, that contract may be terminated, wholly or in part, with six months' notice effective at calendar month-end, subject in all cases to any minimum contract term provided for in the contract. The contract may provide for a different termination notice period.
- 17.2 If a specific contract does have an expiration date, the Procurer is only entitled to early termination, wholly or in part, to the extent the Procurer permanently discontinues operation of the hardware. Termination is then effective at the end of the calendar month in which the midpoint date of the remaining contract term falls. The Contractor is then released from obligation to perform maintenance for the hardware concerned in the termination for the remainder of the contract term. The parties may agree separately on other arrangements superseding the above clause.
- 17.3 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 agreement 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).

18 Changes to services after contract conclusion

Changes to services after contract conclusion are governed by § 2 of The General Contract Terms for Rendering Performance (VOL/B as amended 2003).

19 Liability insurance

- 19.1 If and as agreed, at contract conclusion the Contractor shall provide documentation to the Procurer 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.
- 19.2 The Contractor shall maintain such insurance coverage until the contract has ended and all defect liability claims have expired. 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.

20 Data protection, confidentiality, security

- 20.1 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.
- 20.2 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.
- 20.3 The Procurer may terminate the contract wholly or in part for cause if the Contractor culpably fails to fulfill the obligations per items 20.1 and 20.2 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.
- 20.4 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.
- 20.5 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.
- 20.6 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.

21 Place of performance

The place of fulfillment shall be that of the Procurer's location, except as otherwise agreed.

22 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.

23 Text form

Except as otherwise provided, communications and declarations relating to the contract must be made in text form, at a minimum. For fault reports and complaints, entry in a ticket system suffices.

24 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 all payable fees/compensation.
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.
Replacement item	General term referring to replacement hardware*, replacement parts*, wearing parts* and consumables*
Replacement hardware	New hardware in replacement of defective hardware.
Replacement part	A part installed in replacement of a defective hardware part to restore hardware functionality.
Incidental expenses	Expenditures of the Contractor which are necessary for the performance of services which are not travel costs.
Fixed flat fee	The total fee/compensation payable for maintenance work/services. This amount cannot be unilaterally adjusted and does not include other compensation, including potentially flat fees separately agreed for specific performance elements. Travel time compensation, incidental expenses* and costs for travel, materials and replacement items* are included in a fixed flat fee*.
Software version	Term used herein to refer to separate releases/versions* of software as well as related patches, updates and upgrades.
Response time	Period within which the Contractor must commence work to resolve a fault. This period starts running upon receipt of the corresponding report within service hours* and runs exclusively during service hours*. For reports received outside of service hours*, the response time* period starts running at the start of the next service hours* period.
Release	A new stage of software development in which the software is significantly different from the release* prior in terms of functionality and/or data spectrum (example: version number change from 4.5.7 to 5.0.0).

Malware	Software which has undesirable functionalities to which the Procurer has not agreed and at a minimum has the purpose of jeopardizing or compromising the availability of data, resources or services or the confidentiality or integrity of data. Examples of malware include viruses, worms and trojans.
Service hours	The hours within which the Procurer is entitled to provision of the services the Contractor has contractually agreed to perform.
Fault	A circumstance compromising the usability of hardware or effectiveness of performed maintenance for the contractually agreed purposes, or for the intended or otherwise customary purposes in the absence of such agreement. The existence of a fault is irrespective of statutory liability accruing to any party and of whether the compromising circumstance was already in evidence at contract conclusion.
Teleservice	Service provided via technical telecommunications equipment from a location outside the place of hardware utilization.
Ticket system	A trouble ticket or ticket system is an IT system for handling incident reports and inquiries. These are categorized, confirmed by opening of a ticket and processed to answering the question or resolve the issue concerned. Processing status can be followed and monitored. The ticket system confirms receipt of incoming reports, repeating back message content.
Consumables	Hardware elements which in the course of proper usage are used up and consumed as a material within the useful life of the hardware.
Wearing parts	Hardware parts which in the course of proper usage lose their functionality within the useful life of the hardware. A defect is only in evidence if a wearing part loses its functionality before the end of its own useful life.
Restoration time	Period of time within which the Contractor must successfully conclude work to resolve a fault. This period starts running upon receipt of the corresponding report within service hours* and runs exclusively during service hours*. For reports received outside of service hours*, the restoration time* period starts running at the start of the next service hours* period.