

Supplemental Terms & Conditions for Standard Software* Support Services

– EVB-IT Pflege S-AGB –

1	Purpose of Standard Software* Support Contracts.....	2
2	Nature and scope of support services	2
3	Fault classification	5
4	Service, response and restoration times*	5
5	Documentation	5
6	The Contractor's notification obligations	6
7	Staff of the Contractor and subcontractors	6
8	Payment, fees	6
9	Performance delays	7
10	Cooperation by the Procurer.....	8
11	Procurer's rights in case of software support service-related deficiencies/defects	8
12	Third-party intellectual property rights.....	9
13	Breach of duty in rendering services	10
14	Limitation of liability.....	10
15	Contract term and termination.....	10
16	Changes to services after contract conclusion	11
17	Liability insurance	11
18	Data protection, confidentiality, security.....	11
19	Rights of retention.....	12
20	Text form	12
21	Choice of law	12
	Terms and definitions	13

Definitions of the terms marked with an asterisk (*) are provided at the end of the Supplemental Terms & Conditions for the Procurement of Standard Software Support Services (EVB-IT Pflege S-AGB).

Version 2.0 dated 7/16/2015

The English version of the terms of contract is only for your information.

The German version is legally binding.



Supplemental Terms & Conditions for Standard Software* Support Services**– EVB-IT Pflege S-AGB –****1 Purpose of Standard Software* Support Contracts**

- 1.1 Standard Software* Support Contracts are concluded individually within the framework of these Terms & Conditions to regulate the providing of support services for standard software* by the Contractor.
- 1.2 The support services of fault resolution and installation of new software versions* constitute work-contract services (*Werkleistungen*).
- 1.3 Except as otherwise agreed, the Contractor shall provide the support services applying the best available techniques as of the time of work performance.
- 1.4 The Contractor shall only be entitled to provide the contractual support 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 support 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 New software versions* to be licensed by the Contractor within the framework of the contract shall be free of malware*. At an appropriate time prior to delivery it must be verified via scanning software 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 new software versions* deliverable by the Contractor is free of functionalities which pose a risk to the integrity, confidentiality or availability of the standard software*, other software, hardware 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 and its manner of functioning, nor expressly authorized by the Procurer in a specific case ("opt-in").
- 1.6 Except as otherwise agreed, if software versions* require support from the software maker but the software maker no longer offers such general support, the Contractor shall not be obligated to provide support for those software versions.

2 Nature and scope of support services**2.1 Licensing of new software versions***

- 2.1.1 If the licensing of new software versions* has been agreed, these shall be licensed immediately when the software version* is made available. This requirement shall apply for all new software versions*, except as otherwise agreed.

Definitions of the terms marked with an asterisk (*) are provided at the end of the Supplemental Terms & Conditions for the Procurement of Standard Software Support Services (EVB-IT Pflege S-AGB).

Version 2.0 dated 7/16/2015

The English version of the terms of contract is only for your information.

The German version is legally binding.



- 2.1.2 If and as agreed, the Contractor shall be obligated to license software versions* on the terms outlined in the contract so as to ensure compliance with changes in applicable laws and technical standards governing proper usage of the standard software*. The contract may additionally provide for other circumstances requiring the licensing of new software versions*, including changes in administrative regulations, pricing structures or interfaces, for example. If unavailable, the Contractor must create such software versions* or have these created.

The Contractor shall provide the Procurer required software versions* promptly in advance of the effective date of the respective regulation or standard or the scheduled change or modification date. If the licensed versions are not provided by the applicable deadlines, the Contractor shall be obligated to provide the Procurer a temporary solution. If provision of the licensed software version* or temporary solution in question by the above deadlines is not reasonably possible for time reasons, such provision must still be completed within a reasonable period of time.

- 2.1.3 Without exception, the Contractor shall grant the Procurer the same rights regarding new software versions* as were granted for the previous standard software* release/version.

The Procurer is entitled to make a copy of new software versions* for backup purposes. If the Contractor is unable to provide the Procurer the same rights to a new version* of the standard software* licensed by the Contractor which the Procurer had for a previous software version*, for example because the standard software* maker has changed the terms of use for the new version offered, the Contractor shall be obligated to notify the Procurer in detail of any resulting usage limitations versus the previous software version*. If the Procurer informs the Contractor regarding the system environment in which the Procurer uses the standard software*, the Contractor shall outline the practical impact of usage in that specific environment. The same shall apply accordingly if the new software version* has less functionality than the previous software version*. The Contractor shall in such case propose an alternative solution to the Procurer, as long as such is reasonable for the Contractor and technically feasible, awaiting the Procurer's decision before taking any further steps. Further claims and rights accruing to the Procurer shall remain unaffected.

The copying of the software for its intended contractual use or for distribution as part of proper data backup* constitute intended contractual usages. When a new licensed software version* is provided, the Procurer is entitled to continue using the previous software version* in the contractually agreed scope instead of the new software version*, except as otherwise agreed. The parallel usage of new and old software versions* is only permissible however as long as the contractual license limitations are respected as a whole in doing so. An obligation on the part of the Contractor to provide a new licensed software version* shall be deemed fulfilled upon the provision thereof irrespective of whether the Procurer makes use of the new software version*.

If new software versions* are subject to export control regulations, the Contractor shall include an advisory thereof in the contract.

- 2.1.4 If the Contractor is obligated to install new software versions*, the Contractor must give the Procurer opportunity to first decide whether the Contractor should instead
- install the software version* in question at a later point within the contract term to be agreed by parties, or
 - install the software version in accordance with reasonable stipulations outlined by the Procurer (observing security regulations, for example).

2.2 Fault resolution (troubleshooting)

If fault resolution/troubleshooting is agreed as a service, the Contractor shall take the necessary measures involved. The Contractor is obligated in particular to provide a software version in which the fault* has been eliminated. If a program version* is not available in which the fault* does not occur, the

The Contractor must provide a workaround solution* and pressure the maker of the standard software* to release a software version* as soon as possible in which the fault has been resolved. The Contractor shall provide information regarding such efforts upon request.

The Procurer may not, in general, demand changes to the object or source code* of standard software* as part of the obligation to provide a workaround solution*.

- 2.2.1 Except as otherwise agreed, the Procurer must accept a new software version* which serves to resolve a fault. The Procurer is not obligated to accept a new software version* if doing so is unreasonable because the new software version* is significantly non-conforming with contractual specifications.

If the Procurer does not accept a new software version* for this reason, the Contractor shall upon request by the Procurer propose a different solution which is reasonable to implement, if possible.

When the Procurer accepts a new software version*, the following shall apply:

- If the new software version* has greater functionality than the software version* stated 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 software version* 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 compensation shall not be payable if provision of the new software version* is already required for performance pursuant to item 2.1.
- If usage of the new software version* 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 2.2.1 shall apply accordingly.

If after the completion of troubleshooting a previous fault reoccurs which stems from the same cause, the fault is deemed unresolved. If a flat fee has been agreed for software support services, the Contractor may demand an appropriate fee from the Procurer to resolve any fault caused by the Procurer either intentionally or through gross negligence.

2.3 Hotline

- 2.3.1 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 standard software*. 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 standard software* 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 2.2, 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.

- 2.3.2 Except as otherwise agreed, the hotline may be utilized by any trained user of the Procurer.
- 2.3.3 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.
- 2.3.4 Except as otherwise agreed, the Interactive Voice Response System (IVR) may only be utilized for initial call receipt and routing.
- 2.3.5 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.
- 2.3.6 The respective parties shall bear their own telecommunication costs. The Contractor is not entitled to offer value-added services, mobile phone numbers or international numbers via the hotline.

3 Fault classification

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

4 Service, response and restoration times*

- 4.1 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)*.
- 4.2 If no response times* have been agreed, provision of the software support 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 software support work must be completed within an appropriate period of time.
- 4.3 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.
- 4.4 For software support 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.

5 Documentation

The Contractor shall appropriately document the software support 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. This documentation includes keeping an updated overview all program versions provided

by the Contractor* and installed by the Contractor* as applicable. The Contractor is also to provide accompanying documentation such as license certificates and license keys.

6 The Contractor's notification obligations

6.1 Before providing new software versions* the Contractor is obligated to advise of any consequences resulting from the proper intended use of new software versions* of the standard software*. This includes any changes affecting usability.

6.2 The following applies regarding any contractually agreed troubleshooting services, installation of new software versions and other software support services:

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 in particular provide notification if existing licenses are insufficient for usage of new software versions*.

6.3 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 software support 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 software support services.

7 Staff of the Contractor and subcontractors

7.1 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.

7.2 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.

8 Payment, fees

8.1 If flat fees are 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.

8.2 The following shall apply if time-based billing for software support services rendered is contractually agreed:

8.2.1 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—Software Support Contract Billing Documentation.

- 8.2.2 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.
- 8.2.3 Except as otherwise agreed, for time-based billing for services rendered within the agreed response time*, the Contractor must present either an offer priced at a fixed flat fee or a binding cost estimate applying the contractually agreed prices, at the Procurer's discretion. 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.
- 8.2.4 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.
- 8.3 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 software support work results within a specific period set by the Contractor.
- 8.4 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.
- 8.5 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 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.
- 8.6 In transactions subject to sales tax, sales tax is charged extra on all stated prices at the applicable rate.
- 9 Performance delays**
- 9.1 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 software support 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 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.

- 9.2 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 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. Contractual penalty amounts are deductible from the amount of any damages claimed.
- 9.3 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.

10 Cooperation by the Procurer

- 10.1 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.
- 10.2 The Procurer must report any faults or defects, providing any known information of relevance for detection/identification of the issue in question. Unless other procedures for fault reporting have been agreed, such as phone reporting or a ticket system*, the Contractor shall as a rule utilize the fault reporting model document attached as Sample Form 1. 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.
- 10.3 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.
- 10.4 It is the Contractor's responsibility to ensure proper data backup.

11 Procurer's rights in case of software support service-related deficiencies/defects

- 11.1 Except as otherwise agreed, as a general rule the expiration of claims period for both product and title defect claims shall be 12 months. 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.
- 11.2 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 software support services* outside the EU and EFTA member states.

- 11.3 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.
- 11.4 The Contractor shall remedy a reported defect without delay either by way of repair/follow-up performance or by delivery of a new item at his discretion, observing an appropriate period to do so set by the Procurer. In case of defects affecting software versions*, the Contractor may provide a workaround solution* for as long as such is reasonably acceptable for the Procurer. The Contractor's obligation to remedy a defect within an appropriate period of time shall remain unaffected if and when such should not be reasonably acceptable. Item 12 supersedes in case of infringement of third-party rights. Pursuant to § 439 (2) and § 635 (2) of German Civil Code (BGB), the Contractor shall bear expenses necessary for remedial performance, including particularly transport, travel, labor and materials costs.
- 11.5 If the Contractor does not successfully conclude efforts to remedy a defect within an appropriate deadline set, the Procurer may
- —in case of software support services performed under a work contract—set a second grace period for the Contractor, declaring that the Procurer will remedy the defect otherwise 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.
 - set a further reasonable grace period—if the prerequisite legal conditions for such are met—after which, if unmet, the Procurer may then terminate the contract in whole or in part or reduce fees/compensation accordingly.

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

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 software support 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 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.

- 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 Breach of duty in rendering services

If software support 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.

14 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:

- 14.1 For slight negligence in breach of obligations, contractual liability shall be limited in all cases to the total contract value*. 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.
- 14.2 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.
- 14.3 Claims for lost profits are excluded, except as otherwise agreed.
- 14.4 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.

15 Contract term and termination

- 15.1 If a specific contract has no ending 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.
- 15.2 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 standard software*. 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 support services for the standard software* concerned in the termination for the remainder of the contract term. The parties may agree separately on other arrangements superseding the above clause.
- 15.3 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).

16 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).

17 Liability insurance

17.1 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.

17.2 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.

18 Data protection, confidentiality, security

18.1 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.

18.2 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.

18.3 The Procurer may terminate the contract wholly or in part for cause if the Contractor culpably fails to fulfill the obligations per items 18.1 and 18.2 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.

18.4 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

18.5 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 the 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.

18.6 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.

19 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.

20 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.

21 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 disapplied.

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.
Copying and usage restrictions	Measures limiting the ability to copy and/or use a software version*.
Incidental expenses	Expenditures of the Contractor which are necessary for the performance of services which are not travel costs.
Patch	Temporary measure to fix a defect or fault * in the standard software* that does not involve altering the source code*.
Fixed flat fee	Total, non-variable fee/compensation amount payable for software support services. This amount cannot be unilaterally adjusted and does not include other compensation separately agreed for specific performance elements, potentially including other flat fees. Materials costs, travel time compensation, travel costs and incidental expenses* 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*.
Source code	Coding of a software program in the respective programming language.
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 the contractual service hours* and runs exclusively during the contractual service hours*. For reports received outside of contractual service hours*, the response time* period starts running at the start of the next service hours* period.
Release/version	A new developmental stage of standard software* that exhibits significant differences vis-a-vis the previous release or version in terms of functionalities or data spectrum (e.g. from 4.5.7 up to 5.0.0).
Malware	Software* with undesirable functionalities to which the Procurer has not contractually agreed which intentionally undermines or compromises the availability of data, resources or services or the confidentiality or integrity of data. Examples 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.
Standard software	Software programs, program modules, tools etc. (including the associated documentation) developed by the Contractor to meet the needs of many different customers in the marketplace, rather than being specifically developed for the Procurer.
Fault	A circumstance compromising the usability of standard software* or the effectiveness of performed software support 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 where the IT system is operated.
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.
Workaround solution	A temporary solution for working around a defect or fault*.
Update	Issuance of an incremental new software version (e.g. from version 4.1.3 to 4.1.4) in which multiple faults are resolved and bugfixes are bundled together with minor functional improvements and/or adjustments to the standard software*.
Upgrade	Issuance of a non-incremental new software version (e.g. from version 4.1.3 to 4.2.0) in which multiple faults are resolved and bugfixes are bundled together with significant functional improvements and/or adjustments to the standard software*.
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 the contractual service hours* and runs exclusively during the contractual service hours*. For reports received outside of contractual service hours*, the restoration time* period starts running at the start of the next service hours* period.