Supplemental Terms & Conditions for the Procurement of an Integrated Custom Solution IT System
– EVB-IT System-AGB –

Definitions of the terms marked with an asterisk (*) are provided at the end of the EVB-IT System-AGB.

Version 2.0 dated 9/19/2012

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1 Purpose of the Custom Solution IT System Procurement Contract

1.1 The Custom Solution IT System Procurement Contract regulates the procurement of an integrated system built on the basis of a production contract ("Werkvertrag"), as well as system maintenance after acceptance and/or further development and modification of the integrated system if and as agreed.

The integrated system is to be created from the performance elements to be provided by the Contractor per points 2 and 4 of the Custom Solution IT System Procurement Contract, including the system components to be provided by the Procurer*. The performance elements involved in the building of an integrated system may include in particular:

- the sale of hardware
- the leasing of hardware
- the permanent licensing of standard software* for a one-time fee
- the temporary licensing of standard software*
- the creation and permanent licensing of custom software*
- building of an integrated system, ensuring operational readiness*
- providing training
- providing documentation

The performance elements required for the building of an integrated system comprise a single unit from technical, economic and legal standpoints.

1.2 The cooperation obligations of the Procurer are as outlined under point 12 of the Custom Solution IT System Procurement Contract and item 11 of these Terms & Conditions.

1.3 It is of essential contractual importance to the Procurer that the Contractor ensures that contractual overall functionality is given as per the Custom Solution IT System Procurement Contract.

1.4 The Contractor manages the project and bears responsibility for the successful rendering of the contractual performance elements. The Contractor is liable for the performance of any subcontractors as for his firm's own performance.

2 Nature and scope of the performance elements for building of an integrated system

Except as otherwise agreed in the Custom Solution IT System Procurement Contract, the Contractor grants the Procurer contractual rights, upon delivery or licensing, to the contractual performance elements both individually and as a whole, contingent upon

- rendering of the installment, partial or final payment due for the respective delivery or lease/license
- acceptance of the performance elements concerned, both individually and as a whole, or
- termination by the Procurer for cause pursuant to item 16.3. The provisions

below apply to the respective individual performance elements:

2.1 Sale of hardware

If sales of hardware are agreed, the Contractor shall deliver the hardware, set it up in accordance with the IT System Procurement Contract and transfer ownership thereof to the Procurer.

Except as otherwise agreed under points 11.5 and 11.6 of the Custom Solution IT System Procurement Contract, the Contractor shall be responsible for the disposal of packaging and for disposal of the delivered hardware when no longer used.

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2.2 Leasing of hardware

If the leasing of hardware is agreed, the Contractor shall set up the hardware as agreed in the Custom Solution IT System Procurement Contract and provide it to the Procurer for use, maintaining it in proper contractual condition during the lease term. The Contractor shall take back the packaging.

2.3 Licensing of software*

If the licensing of software* is agreed, the following applies:

The software* is licensed to the Procurer for its intended contractual use in accordance with the Custom Solution IT System Procurement Contract in conjunction with these Terms & Conditions.

The Procurer is entitled to make a copy of the software* for backup purposes. The copying of the software* for its intended contractual use or for distribution of the software* for the purpose of proper data backup constitute intended contractual usages. If licenses applicable to a hardware and/or software environment defined in the Custom Solution IT System Procurement Contract contain limitations, any usage deviating therefrom requires the Contractor's approval. If a hardware and/or software environment defined in the Custom Solution IT System Procurement Contract is non-functioning, until functioning is restored, its usage in a different environment is allowed even without the Contractor's approval.

The software* delivered or created under the Custom Solution IT System Procurement Contract has been scanned at an appropriate point in time prior to its provision using up-to-date scanning software so as to identify the presence of any malware*. 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.

If the software* is subject to export control regulations, the Contractor shall include an advisory thereof in the Custom Solution IT System Procurement Contract.

2.3.1 Licensing of standard software*

If the licensing of standard software* is agreed, the following shall apply in supplement:

2.3.1.1 Permanent licensing

If the permanent licensing of standard software* for a one-time fee has been agreed, the Contractor shall license and provide this standard software* to the Procurer in accordance with the terms of the Custom Solution IT System Procurement Contract. Unless other intended contractual usages have been agreed in the Custom Solution IT System Procurement Contract, at the point in time of delivery

- a non-exclusive license that is
- transferable, applying the limitations per the last paragraph under this item 2.3.1.1,
- non-expiring, irrevocable and non-terminable
- geographically unlimited
- and usable in any hardware or software environment

to the Procurer to use the standard software*, which includes in particular the permanent or temporary storage thereof and the loading, displaying and running of the software. This shall also apply regarding any necessary copies.

If the Procurer exercises his right to transfer the license, the Procurer must bind the third party in question to uphold the Procurer's contractual obligations regarding the content and scope of rights of use. Upon such transfer to a third party, the Procurer shall no longer have rights of use, irrespective of the rights per item 2.3.1.4, last sentence.

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2.3.1.2 **Temporary licensing**

If the temporary licensing of standard software* has been agreed, the Contractor licenses the standard software* to the Procurer, maintaining it in proper contractual condition during the contractual license period. Barring other intended usages agreed in the Custom Solution IT System Procurement Contract, the Contractor grants the Procurer, upon commencement of the contractual license period,

- a non-exclusive license that is
- temporary, expiring at the end of the contractual usage period, contractually conforming and only terminable for cause,
- geographically unlimited,
- usable in any hardware or software environment and
- non-transferable

to use the standard software*, including in particular the storage thereof and the loading, displaying and running of the software both during the specific contractual usage period and on a temporary basis. This shall also apply regarding any necessary copies.

2.3.1.3 **Standard software with modification on the source code level**

If modifications are made to the standard software* on the source code level, the Contractor shall provide notification by or before the time of offer submission of whether the modifications will be included as standard. If the Contractor declares that this will be the case, the Contractor is obligated to integrate the modifications into the version* of the standard software* released following such declaration. If such is not declared or the modifications are not integrated as standard, the Contractor is obligated to hand over the modifications on the source code level in the source code* and the unmodified elements of the standard software* in the object code* in a manner enabling the Procurer to produce the modified standard software* through the agency of properly qualified staff. The Procurer receives rights to the source code* to be handed over for custom software*.

2.3.1.4 **Further rights of use provisions**

The Contractor agrees not to convert the standard software* into different code or change the code unless doing so is permitted by law. If rights of use to the standard software* expire according to contractual provisions, the Procurer is obligated to destroy/permanently delete any copies made. The Procurer is entitled however to retain a copy exclusively for verification and archiving purposes.

2.3.2 **Creation and licensing of custom software***

If the creation and licensing of custom software* is agreed, the Contractor shall create and provide the custom software* per the contractual provisions, including particularly points 2 and 4 of the Custom Solution IT System Procurement Contract.

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2.3.2.1 **Scope of rights to custom software***

Barring other intended contractual usages agreed in the Custom Solution IT System Procurement Contract, for the respective individual custom software* created

- a non-exclusive license is granted which is
- sublicensable for non-commercial purposes,
- geographically unlimited
- usable in any hardware or software environment,
- transferable
- non-expiring, irrevocable and non-terminable

to the Procurer to use the custom software* in original or altered, translated, edited or modified form,

- to include in particular the permanent or temporary storing and loading thereof and the displaying and running thereof, along with any necessary copies
- and to alter, translate, edit or otherwise modify such
- for non-commercial purposes on any known medium, or to in any other manner save, reproduce, display, publish or distribute in physical or intangible form, including non-publicly in particular, and with the exception of the source code* to publicly playback/render, including through the use of audio, video or other information media
- in databases, data networks and online services, including the right to provide the custom software*, but not the source code*, to users of the aforesaid databases, networks and online services for research purposes and for retrieval via tools selected by the Procurer, and to provide such for download for non-commercial purposes
- 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
- to distribute such for non-commercial purposes.

The license grants rights of use to the custom software*, including particularly its object and source code* in all developmental, intermediate and final stages and to the related documentation and any other materials necessary to exercise the rights of use, such as analyses, specifications and requirements documents, plans and descriptions.

If the Procurer exercises the right to transfer the rights of use to the custom software*, wholly or in part, or allows third parties to use such under the Procurer's reproduction, 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 further distribution is excluded. This also applies to defect claims as well as to any claims asserted by the Procurer against the Contractor in consequence of claims over the custom software* asserted against the Procurer by third parties.

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.

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2.3.2.2 **Rights to pre-existing elements*, the Contractor's notification obligations**

Item 2.3.2.1 categorically applies as well to pre-existing elements*, to which however exclusive rights of use are under no circumstances granted.

Payment shall be due for the distribution and sublicensing of pre-existing elements* if the Contractor provides notification of the usage thereof in the offer stating the fee amount for granting of these rights, and the Procurer accepts that offer as stated. Compensation for the distribution or sublicensing of such pre-existing elements* shall not be due until the Procurer exercises these rights to the pre-existing elements*.

The right to edit pre-existing elements* is excluded if the following conditions are met:

- The Contractor stated in the offer accepted that only the object code* is licensed instead of the source code* to the pre-existing elements* and exercises this right.

- 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 custom software* in the source code* and the licensed elements* pre-existing solely in the object code*.

- No right to editing accrues by statutory law. Item

2.3.2.4 applies regarding the usage of tools*.

The distribution and sublicensing of the pre-existing elements* is only allowed in connection with the custom software* in the form as licensed or as modified, translated, edited or redesigned.

2.3.2.3 **Rebates**

If rebates to the Procurer are agreed under point 4.5.4 of the Custom Solution IT System Procurement Contract for the granting of rights to the custom software* or elements of the custom software* to third parties, the following reporting requirement and accounting audit clause shall apply:

- The Contractor agrees to send the Procurer an updated overview report (statement) in text form of which rights of use to be granted have been and/or have not yet been granted within one month of being instructed to do so. Except as agreed otherwise, the Contractor shall be obligated to send two such statements per contract year.

- The Contractor is obligated to allow a third party hired by the Procurer which/who is subject to professional confidentiality obligations to review rebate-relevant documentation once annually during the Contractor's office hours in order to audit the statements. The Procurer shall announce such an intention in text form with a minimum five days' advance notice.

2.3.2.4 **Rights to tools***

If the Contractor does not utilize tools* available on the market to generate the custom software* or has not developed such and editing and redesigning of the custom software 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 until operational readiness is declared, granting the Procurer thereto

- a non-exclusive license that is

- geographically unlimited,

- usable in any hardware or software environment,

- strictly together with the custom software which it is usable to edit or redesign, and is transferable,

- non-expiring, irrevocable and non-terminable

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

- 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 purposes and to provide services to third parties.

The Procurer is furthermore entitled to produce another reproduction and distribute this together with the respective custom software, and to grant third parties the rights pursuant to this item 2.3.3.4 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 2.3.2.4 if the custom software 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 custom software 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.

2.3.2.5 **Rights to inventions**

Except as otherwise provided in the Custom Solution IT System Procurement Contract, the provisions below govern inventions made 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 system components* 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 system components* as contractually provided.

- The Contractor shall at his own expense ensure that exercising of the rights of use to the system components *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.

2.4 **Building of an integrated system, ensuring operational readiness***

The Contractor is obligated to build the integrated system in accordance with the contractual provisions and to ensure its operational readiness*.

To ensure such, the Contractor must set up, install*, customize* and integrate* the individual system components* which the Contractor is to supply or produce as well as as any system components* to be provided by the Procurer. These services are to be performed in accordance with the respective service description, and as otherwise necessary to ensure operational readiness* of the integrated system.

The Contractor grants the Procurer the rights pursuant to items 2.3.2.1 and 2.3.2.4 to the work results produced through the aforementioned activities conducted for the Procurer, including particularly to the results of installation*, customizing* and integration* and to logs and other related materials, database works and databases. The Procurer shall not have editing or sublicensing rights however to any copyrighted pre-existing materials, such as templates, plans or documentation, unless these exclusions are respectively prohibited by law.

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2.5 **Training**

If training services have been agreed, the Contractor shall conduct such under his own responsibility and in particular in accordance with the provisions per points 2 and 4 of the Custom Solution IT System Procurement Contract. Except as otherwise agreed, training is to be conducted in German. Training is to be conducted at the Procurer's facilities, except as otherwise agreed. If training is not conducted at the Procurer's facilities, the Contractor is responsible for providing the facilities and related instruction/seminar infrastructure. A training day consists of eight instructional hours of 45 minutes' duration plus breaks of appropriate length. Fees for training include payment for appropriate preparations for training seminars and for granting contractual rights of use to the training documents. Training documents must be provided in German. Copies provided as agreed become the property of the Procurer. Electronic presentation files count as training documents.

Except as otherwise agreed, the Contractor grants the Procurer a non-exclusive, irrevocable, non-expiring and transferable right to utilize the training documents produced for the Procurer for the Procurer's own internal purposes as rights holder.

The Contractor grants the Procurer the right to utilize any training documents or portions thereof produced for the Procurer for training purposes, and otherwise solely for internal purposes as the rights holder per item 2.3.2.1 in connection with point 4.5.3 of the Custom Solution IT System Procurement Contract, except as otherwise agreed.

3 **Defect classification**

3.1 Except as otherwise agreed under the Custom Solution IT System Procurement Contract, including particularly points 5.1.1.2, 13.5 or 14.4.1 thereunder, the following three defect classifications shall be recognized:

3.1.1 A critical defect (operation-preventing defect) is in evidence when usage of the integrated system is not possible or only possible with major limitations.

3.1.2 A major defect (operation-impeding defect) is in evidence when usability of the integrated system is substantially limited.

3.1.3 A minor defect is in evidence when usage of the integrated system is unaffected or only slightly limited.

3.2 A major defect is furthermore in evidence when a minor defect ultimately leads to a substantial limitation of usability of the integrated system.

4 **System maintenance after acceptance**

If system maintenance services have been agreed, the Contractor shall perform these in accordance with the Custom Solution IT System Procurement Contract and with the provisions following.

4.1 **Restoration of operational readiness***

If restoration of the operational readiness* of the integrated system or of system components* is/are agreed, this services includes all measures required for the Contractor to resolve the fault. Such fault resolution measures include for example repairing hardware and providing software* maintenance. The latter include for example the creation and licensing of an error-free version of the custom software* and the licensing of an error-free version* of standard software*.

If the standard software* is affected by a fault and standard software* fault resolution has been agreed as a service, the following shall apply:

- The Contractor is obligated for the term of the contract to provide an available version of the software in which the fault has been eliminated*.

- If a version* of the software in which the fault has been eliminated is not available, the Contractor shall provide a workaround solution.

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- If this cannot be reasonably done, the Contractor must 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*.

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

If the Procurer does not accept a new system component* 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 system component*, the following shall apply:

- If the new system component* has greater functionality than the system component listed in the Custom Solution IT System Procurement Contract (upgrade), the Procurer is only obligated to pay additional compensation if the Procurer wishes to make use of the upgrade. This still applies if the Procurer makes use of the upgrade even though the Procurer could use the new system component* 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 system component* is already required for performance pursuant to item 4.2.

- If usage of the new system component* 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 4.1.1 shall apply accordingly.

4.1.2 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). If response times* have not been agreed, work to restore operational readiness* of the integrated systems shall commence without delay upon receipt of a fault notification within service hours. If restoration times* have not been agreed, work to restore operational readiness* of the integrated system shall be concluded within an appropriate period of time, within service hours. 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.

The Procurer may claim damages to compensate for losses incurred due to delays. The Procurer may furthermore terminate the system maintenance agreement per point 5 of the Custom Solution IT System Procurement Contract, as well as the Integrated System Further Development and Modification Agreement per point 6 of the Custom Solution IT System Procurement Contract if and as agreed, and/or claim damages in lieu of performance if the Contractor fails to meet an appropriate grace period for performance set by the Procurer. If a previous fault reoccurs stemming from the same cause after operational readiness* has been declared restored, the fault is deemed unresolved. If a flat fee has been agreed for system 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.

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4.2　**Maintaining operational readiness***

If the maintaining of operational readiness* of the integrated system has been agreed as a service, this service may include maintaining of the integrated system or of system components* and/or the licensing of new versions* of the standard software* used as part of the integrated system, depending on what provisions are agreed.

4.2.1　**Maintenance of the integrated system**

If maintenance of the integrated system (system maintenance) has been agreed as a service, the functional capabilities of the integrated system or of system components* shall be ensured in the contractually agreed scope, to include in particular preventive maintenance.

4.2.2　**Licensing of new software versions***

If the Contractor is obligated to license new software versions* released, the Contractor must install*, customize* and integrate* these into the integrated system, except as otherwise agreed. If the standard software* has been modified for the Procurer as per item 2.3.1.3, the foregoing shall include implementation of said modifications in the new software version* for the Procurer. If new software versions* contain significant new functionalities, customizing* and integration* for these functionalities are only included services if and as necessary for operational readiness*. If requested by the Procurer however, the Contractor is obligated to additionally provide customizing* and integration* for those functionalities. In such case, item 17 applies. Furthermore, customizing* may not impair the usability of new functionalities. The obligation to license released software updates* includes an obligation to grant rights of use of the same type and scope as for the standard software* to be maintained.

4.3　**Acceptance of system maintenance services**

After performing system maintenance the Contractor declares the integrated system or agreed system component* to be operationally ready*. System maintenance services performed by the Contractor which involve substantial changes to the integrated system are subject to acceptance. Acceptance is not required for minor changes, for which a declaration of operational readiness* suffices. The declaration substitutes for acceptance in such case. When changes are subject to acceptance, the Procurer has the right to have the integrated system or contractual system component* functionally tested within an appropriate period of time following receipt of the declaration of operational readiness. When a fault is successfully resolved, the point in time of the declaration of operational readiness applies for determining adherence with the contractual restoration time*.

4.4　**Liability for deficient system maintenance**

Item 13 shall apply mutatis mutandis in case of deficient system maintenance services. The right of withdrawal pursuant to item 13.11 is replaced by the right to terminate the system maintenance agreement per point 5 of the Custom Solution IT System Procurement Contract with respect to the services in question unless continuing the system maintenance agreement is no longer reasonable for the Procurer on the whole. In such case the Procurer shall be entitled to terminate the system maintenance agreement as a whole. Documentation for system maintenance services

The Contractor shall appropriately document the system maintenance services performed, except as otherwise agreed.

The Contractor shall implement any revisions and changes to the documentation which are necessary pursuant to system maintenance work performed per item 4, except as otherwise agreed. If the Contractor is not legally empowered to implement such, the Contractor shall provide a corresponding supplement to the documentation.

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5   **Documentation**

5.1   The Contractor is obligated to provide documentation for the integrated system.

5.2   The documentation for the integrated system shall include in particular application documentation (user advisories, instructions, FAQs, etc.), hardware and software* user manuals and procedural outlines.

The documentation must enable the Procurer's user and administrative staff to properly operate the integrated system after conducting the contractual training, contingent upon the staff in question having adequate prior knowledge and training.

The documentation must furthermore describe the technical setup and processes of the integrated system in detail so as to allow the Procurer's adequately knowledgeable and trained staff to make use of the documents without having to contact the Contractor, including in particular the ability to independently run the integrated system and to further develop it to the extent the granting of corresponding rights has been agreed.

5.3   Except as otherwise agreed, the documentation, in German, must be handed over simultaneous with or before the declaration of operational readiness*, either in duplicate at a minimum or in a form allowing printout. Usage of commonly used industry terminology in English is allowed.

5.4   The Contractor shall document measures performed in connection with defect liability as per item 13, except as otherwise agreed.

5.5   The Contractor shall implement any revisions and changes to the documentation which become necessary in connection with warranty for defects as per item 13, except as otherwise agreed. If the Contractor is not legally empowered to implement such, the Contractor shall provide a corresponding supplement to the documentation.

5.6   The Contractor grants the Procurer rights to the documentation produced in accordance with item 2.3.2.1 in conjunction with point 4.5.3 of the Custom Solution IT System Procurement Contract, except as otherwise agreed. The Contractor grants the Procurer the rights to all other documentation as per item.3.1.1, and the rights to any leased documentation as per item 2.3.1.2, except as otherwise agreed.

6   **The Contractor's notification obligations**

6.1   The Contractor shall notify the Procurer without delay upon noticing that the Procurer's specifications are significantly erroneous, incomplete, contradictory or objectively unrealizable, and if system components* to be provided by the procurer are not contractually conforming, and this obligation still applies if such would have to have been noticed. The Contractor shall at the same time notify the Procurer of any apparent consequences of such, to the extent possible with reasonable effort, and await a decision before proceeding. The Procurer shall provide notification of such decision without delay. The Contractor is not obligated however to further check and review the specifications or resources provided by the Procurer other than as necessary for building of the integrated system.

6.2   The Contractor must notify the Procurer without delay in writing if the Contractor finds that data backup as conducted by the Procurer does not meet standards for proper data backup, outlining the evident consequences thereof.

6.3   The Contractor shall notify the Procurer in text form within an appropriate period of time in case of changes to standards (EN, DIN, ISO, etc.) which significantly impact the performance obligations of the Contractor, or to standards expressly agreed as applicable for performance, outlining the evident consequences thereof.

6.4   The Contractor shall notify the Procurer within an appropriate period of time when requested by the latter, and in no case later than the point of issuance of the declaration of acceptance, of any necessary tools* used or developed for editing and redesigning of the custom software*.

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6.5   The Contractor shall notify the Procurer promptly of any cooperation required which is not already scheduled into the parties' coordinated planning so as to avoid compromising performance of contract.The Contractor shall notify the Procurer if the Contractor should find that the Procurer has not promptly or properly cooperated on a matter of significant importance for project success.

6.6   The Contractor shall notify the Procurer of any copying or usage restrictions* that could compromise proper contractual usage of the integrated system. This does not apply regarding system components* provided by the Procurer.

6.7   The Contractor shall notify the Procurer upon inquiry by the latter of the status of building of the integrated system. To this end the Procurer may, with prompt advance notice, demand opportunity to review, during regular business hours, all project-related documents of the Contractor of a specialist or technical nature which are necessary for evaluating the project status. The Procurer may commission a third party for such review. The Procurer shall endeavor in such case to commission a third party which is not a competitor of the Contractor, to the extent reasonable and allowed by law. The Procurer is obligated to uphold confidentiality, and shall bind commissioned third parties to uphold confidentiality accordingly. The location for such review shall be decided by mutual agreement. The parties shall bear their own respective costs thereby accruing.

6.8   The Contractor shall notify the Procurer without delay if a project status review indicates that deadlines per the timeline and performance schedule may not be met.

7   Staff of the Contractor and subcontractors

7.1   The Contractor shall render contractual performance through the agency of staff who are qualified to do so in accordance with the contractual provisions. The language of communication with the Procurer shall be German unless otherwise agreed.

7.2   The Contractor may only utilize subcontractors for performance elements which are materially significant for the integrated system from a qualitative or quantitative standpoint, or replace such deployed subcontractors, with the Procurer's express consent. The Procurer shall grant consent without delay as long as the procurement contract awarding decision would not have been different with the new subcontractor than with the prior one. The Contractor shall bear costs for training a replacement subcontractor. Permission shall be deemed granted for the subcontractors stated in the Contractor's offer.

7.3   The Procurer and the Contractor shall implement organizational measures ensuring that the staff they respectively deploy for building of the integrated system are subject to the exclusive direction and disciplinary authority of their respective employer. Instructions shall be given exclusively within the framework of the contractual specification of duties.

7.4   The Contractor may only replace individuals in contractually agreed key positions with the Procurer's consent. The Procurer shall declare such consent without delay if such replacement is absolutely necessary and the Contractor proposes a qualified replacement individual. Such replacement is mandatory if further deployment is no longer possible. The Contractor may replace staff in non-key positions without the Procurer's consent if the replacement staff have the contractually required qualifications. The Contractor shall bear costs for training replacement staff.

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8   Payment, fees

8.1   The fixed flat fee* is a non-adjustable amount that represents the total compensation payable for contractual performance as per item 1.1, except for any separate compensation, including potentially a separate flat fee, which may be contractually agreed for specific performance elements. 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.

8.2   Except as otherwise agreed, time-based billing agreed in the Custom Solution IT System Procurement Contract is based on time required to render these services. Material costs, 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. 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.

8.3   Compensation for building of the integrated system shall be due for payment after overall acceptance of all elements unless partial acceptance procedures have been agreed in the payment schedule per point 9 of the Custom Solution IT System Procurement Contract. The Contractor shall only be entitled to down payments and/or installment payments* as agreed within the Custom Solution IT System Procurement Contract. The right to demand installment payments* if the conditions per § 632a of the German Civil Code (BGB) are met remains unaffected.

8.4   Compensation owed shall be due for payment 30 days after receipt of a verifiable invoice, except as otherwise agreed. For time-based billing, work timesheets signed by the Contractor and documentation of other claimed costs, optionally using Form 2 – Work Documentation for Custom Solution IT System Procurement Contracts – are to be attached to the invoice. If time-based billing is agreed for system maintenance per item 4, acceptance of the respective performance element in question may be additionally agreed as a condition for billed work being due for payment.

8.5   The per-day rate applies as the compensation maximum per person 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 8 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 provides documentation indicating that breaks were not taken.

8.6   If price/rate adjustments have been agreed for work/services, the following shall apply unless other provisions have been agreed. An initial price/rate increase may only be implemented 12 months after acceptance of the integrated system, 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. The increase must be appropriate and aligned with market rates, capped at 3% of compensation payable at the time of announcement of the increase.

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8.7   All stated prices do not include sales tax, which is charged extra at the applicable statutory rate.

9   Performance delays

9.1   The contract fulfillment deadline*, any partial acceptance deadlines agreed and individual milestones shall be documented in the timeline and performance schedule under point 8 of the Custom Solution IT System Procurement Contract. 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 in the timeline and performance schedule are to be moved back appropriately. Claims accruing to the parties under statutory law are thereby unaffected.

9.2   The Contractor shall be in default of performance if the contract fulfillment deadline* or a partial acceptance deadline are not met. This shall not apply if the Contractor is not at fault for the delay. The Procurer may assert delay damages in case of delay. The Procurer may furthermore withdraw from the Custom Solution IT System Procurement Contract and claim damages in lieu of performance if the Contractor fails to meet a grace period then set by the Procurer. 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.

9.3   Furthermore, if the agreed contract fulfillment deadline is missed by more than seven calendar days, the Procurer is entitled to charge a contractual penalty at a rate of 0.2% of the contract value* for every calendar day of overrun of the contract fulfillment date*. Sentence 1 applies regarding missed partial performance deadlines as well. In such case the contractual penalty amount is calculated by applying the percentage to the portion of the contract value*. The total contractual penalty due pursuant to this clause is capped at 5% of contract value*.

9.4   Section 341 para. 3 of the German Civil Code (BGB) applies with the superseding provision that the penalty may be claimed up until the final payment is made. This shall not apply if the Procurer has not reserved the right at acceptance to claim contractual penalties despite being prompted by the Contractor to do so. Contractual penalty amounts are deductible from the amount of any damages claimed.

10   Project management

10.1   The agreed procedural model is as outlined under point 2.3 of the Custom Solution IT System Procurement Contract. Except as otherwise provided thereunder, the Contractor shall be responsible for

- project planning, management and controlling for adherence with time and quality factors as well as budget unless a fixed fee is agreed
- defining the framework conditions for project organization
- controlling and conformity with contractual agreements
- structuring and documenting any change procedures
- problem and conflict resolution in project planning, project execution and project conclusion
- monitoring of project progress, introduction of any crisis measures necessary
- ensuring proper project reporting and communication
- reporting to the Procurer on the project status.

10.2   Under point 10 of the Custom Solution IT System Procurement Contract, each contracting party shall name one or more contact persons (project leader, project manager, etc.), the list of whom is attached, who are authorized to either make necessary project decisions personally or obtain such decisions. If a contracting party has not named a project leader, the project manager shall fulfill this role.

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10.3   If time-based billing is agreed, times for project-related internal coordination by the Contractor and for training and skills acquisition of/by the Contractor's staff are not billable.

11   Cooperation by the Procurer

11.1   As part of the Procurer's performance obligations the Procurer must cooperate as outlined under point 12 of the Custom Solution IT System Procurement Contract and provide resources as agreed under point 3 of the Custom Solution IT System Procurement Contract. The Procurer shall 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 there as necessary for rendering of the performance elements, subject to the fulfillment of personnel-related contractual requirements (such as security clearance procedures per the Security Clearance Act - SÜG). If the Procurer fails to promptly and fully cooperate despite being instructed by the Contractor to do so, the Contractor may prepare an offer to perform the cooperative services on the Procurer's behalf. (2) Further claims of the Contractor remain unaffected.

11.2   If the Contractor requests cooperation by the Procurer beyond the scope of the Procurer's obligations, the Procurer may accept such as a further cooperative obligation instead of requiring the Contractor to perform such and reduce the fees payable for building of the integrated system correspondingly. The Contractor is obligated however to check the Procurer's work and make corrections as necessary for integration into the integrated system*. Contractual and statutory claims accruing to the Procurer remain unaffected.

11.3   The Procurer must report any faults or defects, providing any known information of relevance for detection/identification of the issue in question. Unless other fault reporting procedures are agreed, the Procurer shall use Form 1 as standard procedure for fault reporting. Upon request by the Contractor, the Procurer shall implement reasonable, specific measures within the latter's control to enable the identification and analysis of the fault/defect, such as providing specific required technical information pertinent to the Procurers sphere which is obtainable with reasonable effort.

11.4   The Procurer is responsible for notifying the Contractor of any changes to the system environment* implemented by the former and of any provided resources which affect the contractual performance of the Contractor. If system maintenance is agreed, it is the Procurer's responsibility to promptly notify the Contractor of any changes to the system components* implemented or initiated which affect contractual performance by the Contractor. This obligation shall apply irrespective of whether the Procurer is entitled to make such changes. The Contractor shall notify the Procurer without delay of any known detrimental effects of such changes. Either contracting party may demand that the contract be amended accordingly to reflect the changes made

11.5   If the replacement of system components* or elements thereof is involved, the Procurer shall remove data carriers from these unless otherwise agreed.

11.6   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.

11.7   Ensuring proper data backup is the responsibility of the Procurer except to the extent data backup is part of the services to be provided by the Contractor.

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12   Acceptance

12.1   The acceptance procedures concern the integrated system and any contractually agreed partial performance elements.

12.2   The Contractor must declare operational readiness* of the integrated system by the contractually agreed date and provide the integrated system for functional testing. If a date for such is not stated in the Custom Solution IT System Procurement Contract, acceptance shall be conducted promptly ahead of the contractual fulfillment date* to at a minimum afford the Procurer time for the contractual functional testing ahead of the contract fulfillment date*. In order to declare operational readiness* the Contractor must have produced the integrated system in conformance with contract and conducted the training necessary to perform functional testing as contractually agreed. Superseding the above, the Contractor may also declare operational readiness* without conducting training in advance if the Procurer fails to grant the Contractor adequate opportunity to do so despite a specific request by the latter.

12.3   Except as otherwise agreed, the Procurer has the right to conduct functional testing on the integrated system within 30 days of receipt of the declaration of operational readiness (functional testing period). Except as otherwise agreed, the functional testing period for partial performance elements subject to acceptance shall be 14 days.

12.4   Following the declaration of operational readiness*, functional testing shall be conducted in the contractual system environment* at the Procurer's facilities, except as otherwise agreed. Functional testing involves the testing of the integrated system or partial performance elements subject to acceptance to verify that they are free of any defects. The Contractor shall appropriately assist the Procurer with preparations for and conducting of functional testing.

12.5   The Procurer may stop functional testing if defects are identified which are classifiable as critical or major. If identified defects are classifiable no higher than major, the Procurer may only stop functional testing if continuing testing no longer appears practical in view of the defect/s in question. Upon conclusion of functional testing or stopping functional testing, the Procurer shall notify the Contractor of the defects thereby identified, stating the relevant defect classification per the contract terms.

12.6   If the Procurer stops functional testing as per item 12.5 sentence 1, the Procurer shall set an appropriate grace period for the Contractor to remedy the defects. When such are remedied, the Contractor shall again declare operational readiness* of the integrated system or of the partial performance elements subject to acceptance. The Procurer has the right to require another round of functional testing. Except as otherwise agreed, the period of time for such shall be 14 days.

12.7   Item 12.6 shall also apply if functional testing is completed despite the identification of critical or major defects.

12.8   Upon conclusion of the functional testing period the Procurer shall declare acceptance of the integrated system if only minor system defects are identified which do not together constitute an major defect per item 3.2. The Contractor shall document these as defects in the declaration of acceptance and shall remedy these without delay under warranty for product and title defects as per items 13 and 14, unless a specific period for remedying such is agreed.

12.9   Partial acceptance shall only be conducted as expressly agreed, in which case the declaration of operational readiness* given applies to the contractually agreed individual elements of the integrated system. Except as otherwise agreed, partial acceptance procedures solely concern the partial performance element/s in question. Accordingly, such procedures do not concern system-wide functionalities or the interoperability of partial performance elements with other elements of the integrated system. System-wide functionalities and interoperability of partial performance elements are however concerned in partial acceptance to the extent the usage of

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the partial performance elements prior to overall acceptance has been agreed and such usage requires interoperability, in accordance with the contract. Overall acceptance occurs after the declaration of acceptance of the last partial performance element. In particular, overall acceptance involves the checking/verification of system-wide functionalities and of the interoperability of all elements of the integrated system. A declaration of overall acceptance is still required. Whether the Custom Solution IT System Procurement Contract is fulfilled is determined exclusively on the basis of whether the integrated system as a whole is in acceptable condition as contractually agreed, in accordance with item 12.8. The Contractor remains responsible for providing relevant documentation. The provisions regulating acceptance of the integrated system apply accordingly.

12.10 If the Contractor is unable to hand over an integrated system in acceptable condition by the contract fulfillment date*, the Contractor is in performance delay of fulfillment of the Custom Solution IT System Procurement Contract. Item 9 applies. The preceding sentences shall not apply if the Contractor is not at fault for the delay.

12.11 A formal acceptance procedure must be conducted. Acceptance shall be deemed given however if the Procurer fails to meet the obligation of accepting the integrated system within a specific period set by the Contractor.

13   Procurer's rights in case of defects to the integrated system (warranty)

13.1 The Contractor agrees to deliver the integrated system free of either product or title defects.

13.2 The right to assert defect claims shall be deemed reserved for unremedied defects known to both parties at the time of acceptance.

13.3 Except as otherwise agreed the expiration of claims period for product and title defects shall be 24 months, but for title defects to custom software* this period shall be 36 months – in either case starting on the date of overall acceptance. Upon the elapse of the first 12 months of the expiration of claims period, the Contractor may no longer withdraw from the contract within the Custom Solution IT System Procurement Contract with respect to standard software* on any grounds. The right to withdrawal with respect to any other performance elements remains unaffected, even if the reason for withdrawal is a standard software* defect. Superseding sentences 1 and 2, the regular expiration of claims period shall apply in case of malicious concealment on the part of the Contractor. The claims expiration period shall not in such case elapse prior to the end of the periods per sentences 1 and 2.

13.4 The expiration of claims period for any performance elements subject to partial acceptance shall run for a period of two years starting on the respective partial acceptance date, and shall in no case elapse earlier than nine months after the date of overall acceptance. If overall acceptance is delayed for reasons for which the Procurer is responsible, the nine month period shall commence as of the date on which overall acceptance would have occurred without the delay.

The expiration of claims period for any defects affecting accepted partial performance elements which affect the integrated system as a whole shall commence as of the partial acceptance date and elapse simultaneously with the claims expiration period for defects affecting the integrated system as a whole.

13.5 Warranty claims do not accrue for system components* provided by the Procurer and system components* which have been modified by the Procurer or a third party without the Contractor's approval. This shall not apply if the Procurer demonstrates that the modification did not cause the reported defect or that the defect resulted from previous unapproved intervention as per item 13.11. Warranty claims furthermore do not accrue for software* which the Procurer does not use within the contractual system environment* unless the Procurer demonstrates that such use did not cause the reported defect.

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13.6   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 usage of system components* outside the EU and EFTA member states.

13.7   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.

13.8   The Procurer must accept a new system component* which serves to avoid or eliminate defects if the Contractor compensates the Procurer for any detriment resulting from the acceptance thereof, subject to the provisions per item 13.9. The Procurer is not obligated to accept a new system component* if doing so is unreasonable, because, for example, the new system component is significantly non-conforming with contractual specifications or in terms of its operation. The Contractor grants the Procurer license to new software versions* of an identical type and scope as for the delivered software*.

13.9   When the Procurer accepts a new system component*, the following shall apply:
   - If the new system component* has greater functionality than the system component listed in the Custom Solution IT System Procurement Contract (upgrade), the Procurer is only obligated to pay extra if the Procurer wishes to make use of the upgrade. This still applies if the Procurer makes use of the upgrade even though the Procurer could use the new system component* 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.

   - If usage of the new system component* 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 13.9 applies accordingly.

13.10 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 his discretion, observing an appropriate period to do so set by the Procurer. If the defect concerned affects standard software*, the Contractor may provide a workaround solution* until licensing of a software version* in which the defect is eliminated as long as this solution is reasonable for the Procurer. The Contractor's obligation to remedy defects without delay remains unaffected. Item 14 supersedes in case of infringement of third-party rights. The Contractor bears costs necessary for follow-up performance, including particularly transport, transport-related, labor and materials costs. If follow-up performance is rendered by way of production or delivery of a new item, no claim for compensation for usage accrues to the Contractor.

13.11 If the Contractor does not successfully conclude efforts to remedy a defect within an appropriate deadline set, the Procurer may either

   - set another appropriate grace period for the Contractor, announcing that the former will remedy the defect independently if the deadline is not met, If this deadline is not met, the Procurer is entitled to eliminate the defect independently and claim reimbursement of the expenditures necessary for such.

   - or set another appropriate grace period and if that deadline is not met either reduce payment accordingly or withdraw from the Custom Solution IT System Procurement Contract, wholly or in part. Withdrawal from the contract on the basis of a non-significant defect is excluded, however.

13.12 The Procurer may additionally claim damages or reimbursement of expenditures if the conditions per § 634 no. 4 of the German Civil Code (BGB) are met, within the scope as per item 15.

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14   **Third-party intellectual property rights**

If a third party asserts a claim for infringement of intellectual property rights against the Procurer due to infringement of intellectual property rights through usage of the integrated system built, 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:

14.1   The Contractor may choose as per item 13.10, at his own expense, to either alter or replace the performance elements so that intellectual property rights are no longer infringed but still essentially correspond to the contractual functionalities and performance characteristics in a manner reasonable for the Procurer's purposes, or to indemnify the Procurer for and from infringement claims by intellectual property rights holders.

14.2   If the Contractor is unable to render follow-up performance 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 notify the Procurer appropriately in advance of any product discontinuation unless doing so is unreasonable from a legal standpoint or on other grounds. Other rights accruing to the Procurer, such as to contract withdrawal or to reduce payment or claim damages, remain unaffected.

14.3   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 of intellectual property rights and will either leave all litigation and out-of-court settlement negotiations exclusively up to the Contractor or conduct such strictly 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.

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

15   **Limitation of liability**

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

15.1   For slight negligence in breach of obligations, contractual liability shall be limited in all cases to the total contract value*. Superseding the above, the following shall apply:

- If the contract value* is less than € 25,000.00, the liability limit is € 50,000.00.
- If the contract value* is more than € 25,000.00 but less than € 100,000.00, the liability limit shall be € 100,000.00.

15.2   For slight negligence in breach of obligations in providing system maintenance, liability is limited to the total amount of fees payable for system maintenance over the agreement term, further capped at four times the amount of the fees payable for the first year of the system maintenance agreement and subject to a minimum amount of twice said amount.
Any agreed reduction for warranty claims shall not be factored into the above calculation of fee amounts.

15.3   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.

15.4   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.

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15.5 Claims for lost profits are excluded, except as otherwise agreed under point 15.4 of the Custom Solution IT System Procurement Contract.

16   Agreement term and termination

16.1 Except as otherwise agreed, contractual provisions governing ongoing obligations (the performance elements of leasing hardware, temporary licensing of standard software*, system maintenance, further development and adaptation of the integrated system) shall go into effect upon declaration of acceptance of the integrated system.

16.1.1 For ongoing obligations that have no agreed end date per the Custom Solution IT System Procurement Contract, the respective performance element may be terminated with three months' notice effective at the later of calendar month-end or the end of any minimum contract term agreed per the Custom Solution IT System Procurement Contract. A different termination notice period may be agreed in the Custom Solution IT System Procurement Contract.

16.1.2 Termination per items 16.2 or 16.3 shall also apply to the ongoing obligations. The Procurer is entitled however to except some or all ongoing obligations from termination. The Custom Solution IT System Procurement Contract shall continue to govern the ongoing obligations which are excepted. The parties may however instead agree to apply, for the remaining contract term, the respectively relevant EVB-IT or BVB provisions.

16.1.3 An ongoing contractual obligation in the form of temporary licensing of standard software* may be terminated for cause by the Contractor for a continuing serious infringement of the rights of the rights owner by the Procurer despite issuance of a written warning. The right to termination without such issuance of a written warning per § 543 para. 3 sentence 2 of the German Civil Code (BGB) remains unaffected in the cases cited thereunder.

16.2 The Procurer has the right to terminate the Custom Solution IT System Procurement Contract in line with § 649 BGB. Except as otherwise agreed, the Contractor's rights shall be as per statutory law in case of termination per the above, but the Contractor is obligated to present transparent accounting outlining the fee amount the Contractor claims factoring in expenditures saved by virtue of termination. The Contractor is furthermore obligated to state what system component/s* the Contractor deems completed and started respectively and what system component/s* the Contractor has already purchased from third parties.

For appropriate compensation the Contractor shall appropriately assist the Procurer when requested to allow the Procurer or a third party to complete the integrated system agreed under the Custom Solution IT System Procurement Contract, to the extent doing so is reasonable for the Contractor. Providing such assistance shall be deemed a service under a termination-compensating contract ("*Füllauftrag*") within the meaning of § 649 BGB, to the extent such is reasonable for the Contractor.

16.3 The contracting parties may only terminate the Custom Solution IT System Procurement Contract for cause, without observing a notice period, within an appropriate period of time after becoming aware of grounds for termination being in evidence. 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 § 323 paragraph 2 of the German Civil Code (BGB).

16.3.1 If the Contractor was at fault for the termination, accounts shall be settled for the performance elements actually completed and/or started to the extent the Procurer has use for such. The Contractor shall deliver/render these performance elements if outstanding, transferring to the Procurer the contractual licenses and ownership rights thereto. The agreed prices/rates shall

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apply for billing on a pro rata basis. Unusable performance elements shall be returned to the Contractor at the Contractor's expense. Any other statutory rights and claims remain unaffected.

16.3.2 In the case per item 16.3.1, the Contractor shall appropriately assist the Procurer when requested to allow the Procurer or a third party to complete the integrated system agreed under the Custom Solution IT System Procurement Contract, to the extent doing so is reasonable for the Contractor.

17   Changes to performance elements after contract conclusion

17.1   At any time after contract conclusion the Procurer may request that the Contractor implement changes to the performance elements required for the integrated system if and as reasonable for the Contractor and within the Contractor's capability. Except as otherwise agreed, the change procedure is to be documented using a form as per Model Document 3 - Change Procedure for Custom Solution IT System Procurement Contract.

17.2   The Contractor shall review changes proposed by the Procurer and notify the Procurer within a period of time which is appropriate, particularly in view of the nature and scope of requested changes, of whether such are reasonable and of the reasons why if not reasonable.

17.3   If a reasonable change request will not impact contractual fees/compensation due or contractual deadlines, the Contractor shall commence implementing the requested changes without delay, notifying the Procurer thereof accordingly.

17.4   If a reasonable change request will impact contractual fees/compensation due or contractual deadlines, the Contractor shall prepare a change implementation offer specifying dates and the impact on contractual fees/compensation. The Procurer must either accept or reject the Contractor's change implementation offer within an appropriate period of time.

17.5   If substantial technical planning is required to prepare a change implementation offer, the Contractor may require an appropriate fee for doing so. In such case the Contractor shall prepare a corresponding offer for planning services, stating the fee. The Procurer must either accept or reject the Contractor's planning services offer within an appropriate period of time.

17.6   If agreement is reached regarding a change to performance elements, the Custom Solution IT System Procurement Contract is to be amended accordingly, including particularly the performance description. If agreement is not reached, work shall continue on the basis of the governing Custom Solution IT System Procurement Contract in place If a change request is reasonable for the Contractor but agreement is not reached because the parties are unable to agree on the adjustment of fees/compensation, the Procurer may demand that the change be implemented regardless. The fees/compensation payable shall be adjusted appropriately in such case. If agreement is not reached because the contracting parties are unable to agree on the adjusting of the timeline and performance schedule due to the additional work, the Procurer may demand that the change be implemented regardless. In such case the affected completion dates per the timeline and performance schedule shall be moved back appropriately.

18   Source code handover and escrowing

18.1   Except as otherwise agreed, the Contractor must hand over to the Procurer the latest updated version of the source code* of the respective custom software* and any modifications to standard software* on the source code level as per item 2.3.1.3 upon acceptance of the integrated system, and after acceptance upon delivery of every new software version* of custom software* or of the standard software* in question. This shall not apply if the Contractor declares per item 2.3.1.3 that the modifications will be integrated as standard and implements this in accordance with contract. The source code* includes appropriate code comments and a description of the required system parameters and other necessary information enabling the

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Procurer's specialist staff to edit the source code* as independent further development of the custom software* and/or modify standard software* on the source code level. Source code is to be handed over in electronic form on a data carrier in a documented process. The Procurer shall receive a license to all versions of the source code* and to the documentation at the time of their respective production as per item 2.3.2.1. The Procurer shall handle the source code* as confidential internal information and only permit accessing by third parties within the limits of proper usage, binding such third parties accordingly to uphold confidentiality.

18.2   If escrowing of the source code* to specific software* is agreed, this shall be done with the escrow agent agreed in accordance with the escrowing clauses of the Custom Solution IT System Procurement Contract. The escrowing requirement applies to the last changed version of the source code* for a software version licensed by the Contractor under the Custom Solution IT System Procurement Contract, including patches/bugfixes. The Procurer's rights to all versions of the source code* to custom software* are as per item 2.3.2.1. The Procurer has the right regarding all versions of the source code* of standard software to be escrowed, contingent upon handover, to utilize these for purposes of bug fixing/troubleshooting and maintaining usability, including particularly the right to edit such within the integrated system and produce new executable software versions* out of such, to which the Procurer is in turn entitled to the same rights as to the originally licensed version of the standard software*. Rights per the above to the source code* of custom software* are granted upon the creation of the respective software program; rights to the source code* of standard software* are granted upon licensing of an executable software version*.

18.3   If the provision of new software versions* is agreed for the escrowed standard software* under point 5.1.3 of the contract within the Custom Solution IT System Procurement Contract, the escrowing obligation pertains to the source code* of the respective software versions licensed*.

18.4   The Procurer shall bear escrowing costs.

19   **Liability insurance**

19.1   If and as agreed, upon conclusion of the Custom Solution IT System Procurement Contract 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 latter of ending of the Custom Solution IT System Procurement Contract or expiration of warranty claims. 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 withdraw from the Custom Solution IT System Procurement Contract if continuing the Contract is no longer reasonable. Further claims accruing to the Procurer, including damage claims in particular, shall remain thereby unaffected. Upon overall acceptance, right of withdrawal is replaced by the right to terminate the system maintenance agreement.

20   **Advance payment bond, contract fulfillment and defect liability bond**

20.1   If surety bonds are agreed in the Custom Solution IT System Procurement Contract, the following shall apply:

20.1.1 If the Procurer is obligated to make a payment advance upon conclusion of Custom Solution IT System Procurement Contract, such payment shall be made in return for the simultaneous handover to the Procurer of a non-expiring bond from a German bank or comparable credit institution of an EU member state, in the amount of the contractual payment advance. The option of the Contractor segregating the funds paid for the Procurer as a security deposit is prohibited. The bond serves as a guarantee securing the Procurer's potential claims to refunding of the advance. The advance payment bond document is to be returned without

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delay once the Contractor has rendered performance in the value of the payment advance.

20.1.2 If posting of a contract fulfillment bond has been agreed, the Contractor shall upon conclusion of the Custom Solution IT System Procurement Contract deposit an agreed amount as security per § 18 no. 5 of the General Contract Terms for Rendering Performance (VOL/B) or hand over to the Procurer a non-expiring bond for the agreed amount from a German bank or comparable credit institution from an EU member state. The bond serves to secure any claims accruing to the Procurer in connection with building of the integrated system up until acceptance, including particularly claims for breach of obligations by the Contractor, for contractual penalties and for unjust enrichment. Unless otherwise agreed, the amount of the contract fulfillment bond shall be 10% of the completion price (*Erstellungspreis*)*. The Procurer may demand that this amount be adjusted if the contract value* increases versus the completion price*. An initial adjustment may be made at an increase of 10%, and in appropriate steps thereafter. The contract fulfillment bond shall be returned immediately once the Contractor has completed the integrated system in accordance with contract, any agreed bond securing the fulfillment of warranty claims has been posted and claims asserted up to that time for damages or for the reimbursement of overpayments have been settled. The contract fulfillment bond can be partially returned if partial acceptance procedures have been conducted.

20.1.3 If posting a defect liability bond has been agreed, at overall acceptance the Contractor shall deposit the contractual amount of funds per § 18 no. 5 VOL/B or hand over to the Procurer a non-expiring bond for the agreed amount from a German bank or comparable credit institution from an EU member state. Unless otherwise agreed the amount of the defect liability bond shall be 5% of the contract value*. The bond secures all defect liability (warranty) claims connected with building of the integrated system. The bond to be posted at overall acceptance is to be returned to the Contractor without delay upon the elapse of the expiration of claims periods for warranty claims for the integrated system and the fulfillment of warranty claims asserted up to that point in time.

20.1.4 If the posting of a combined contract fulfillment and defect liability bond has been agreed, the Contractor shall upon conclusion of the Custom Solution IT System Procurement Contract deposit an agreed amount as security per § 18 no. 5 of the General Contract Terms for Rendering Performance (VOL/B) or hand over to the Procurer a non-expiring bond for the agreed amount from a German bank or comparable credit institution from an EU member state. The amount of the combined contract fulfillment and defect liability bond shall be as follows: for contract fulfillment 10% and for defect liability 5% of the completion price*, except as otherwise agreed. The Procurer may demand that this amount be adjusted if the contract value* increases versus the completion price*. An initial adjustment may be made at an increase of 10%, and in appropriate steps thereafter. The bond serves to secure any contract fulfillment claims accruing to the Procurer in connection with building of the integrated system up until acceptance, including particularly claims for breach of obligations by the Contractor, for contractual penalties and for unjust enrichment. When partial acceptance procedures or overall acceptance are conducted, the bond additionally serves to secure all defect liability claims connected with building of the integrated system. The bond shall be returned to the Contractor without delay upon the elapse of the expiration of claims periods for defect claims for the integrated system and the fulfillment of claims asserted up to that time for damages or for the reimbursement of overpayments.

20.2 Bonds may be issued by guarantors other than German banks and comparable credit institutions of EU member states if the Procurer accepts the validity of such bonds in advance.

21 **Data protection, confidentiality, security**

21.1 The Procurer shall inform the Contractor of all relevant matters, beyond the scope of the statutory provisions, which the Contractor needs to know for data protection or confidentiality

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reasons.

21.2 Except as otherwise provided, prior to handing over any data carrier to the Contractor the Procurer shall ensure that sensitive content thereupon is deleted.

21.3 The Contractor shall ensure that all individuals the Contractor deploys for processing or fulfillment of the Custom Solution IT System Procurement Contract 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 written confirmation thereof must be provided to the Procurer upon request.

21.4 The Procurer may terminate the Custom Solution IT System Procurement Contract wholly or in part if the Contractor culpably fails to fulfill the obligations per item 21.3 with reference to the matters per item 21.1 within an appropriate grace period to be set, or violates data protection regulations with intent or gross negligence. If non-fulfillment of obligations per the above exclusively concerns system maintenance, right of withdrawal is replaced by the right to terminate the system maintenance agreement.

21.5 The Procurer and Contractor 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. This shall also apply to the sharing of information on past experiences between and among public-sector organizations.

21.6 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 Custom Solution IT System Procurement Contract. Confidentiality obligations do not apply to information previously and legally known to the parties or which becomes known outside the Custom Solution IT System Procurement Contract without breach of a confidentiality obligation.

22   Rights of retention

The Contractor shall have neither 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   Arbitration

The contracting parties may agree that any unresolvable disputes arising in the course of or in connection with contract fulfillment shall be brought before an arbitration tribunal with the aim of achieving a full or partial and temporary or permanent resolution in accordance with the panel's rules of arbitration. The parties to the Custom Solution IT System Procurement Contract can only validly agree to arbitration if the arbitration tribunal in question is specifically named and is actually active in arbitrating such disputes. To allow arbitration the contracting parties mutually waive the right to invoke expiration of claims regarding any claims connected with the matter in dispute during a period running from the date of arbitration filing until one month after ending of the arbitration proceedings. The expiration of claims period shall be suspended during this period of waiver.

24   Text form

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

25   Choice of law

The law of the Federal Republic of Germany shall govern; the UN Convention on Contracts for the International Sale of Goods (CISG*) is disapplied.

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Terms and definitions

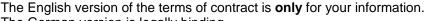|	
Installment payments	Partial payments toward the total fee/compensation prior to the due date thereof. Entitlement to render payment in installments may be agreed in the Custom Solution IT System Procurement Contract.
Offer price	Price referenced to determine the most economical offer for individual contract performance elements such as system maintenance or further development of the integrated system.
Contract value	The completion price* plus all contractually agreed fee/compensation increases or decreases which are implemented any at point in the project up until overall acceptance, pursuant to change requests in particular.System components to be provided by the Procurer. The integrated system is to be built from system components* to be provided by the Procurer in combination with system components* to be supplied and/or manufactured by the Contractor. System components* to be provided by the Procurer may include elements of the system environment* pre-existing at the Procurer's facility at the time of contract conclusion and components added at a later point in time which the Procurer has procured or produced in fulfillment of his contractual cooperation obligations.
Operational readiness	The state the integrated system is in when it has been built in accordance with contract.
CISG	United Nations Convention on Contracts for the International Sale of Goods.
Customizing	The tailoring of system components* to meet the Procurer's requirements for building of the integrated system and bring about operational readiness* – not implemented on the source code level.
Completion price	The offer price* for building of the integrated system.
Total offer price	Price referenced to determine the most economical offer representing the sum of all offer prices* which are agreed or are payable on a call-off order basis.
Custom software	Software programs, program modules, tools etc. plus related documentation created by the Contractor to meet the requirements of the Procurer in fulfillment of contract. This includes modifications to standard or custom software* on the source code level. This does not however include customizing* or modifications to standard software* adopted as standard in accordance with item 2.3.1.3.
Installation	All activities required to install the software* in the agreed system environment* and render the software* executable as agreed, including all testing and checks necessary in building the integrated system and ensuring operational readiness*.
Integration	The embedding of hardware and/or software* within the integrated system inside the contractual system environment* for the purpose of building the integrated system and ensuring operational readiness*.

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Copying and usage restrictions
Measures limiting the ability to copy and/or use a system component*.

Incidental expenses	Expenditures by the Contractor which are necessary for performance and are neither travel nor materials costs.
Object code	The intermediate output of a compiler/translation of the source code* of a software program.
Patch	Measure to fix a defect or fault in the standard software* that does not involve altering the source code*.
Fixed flat fee	Fee comprised of the completion price*, the offer price* for system maintenance services, the offer price* for the further development and adaptation of the integrated system and the offer price* for other products/services agreed as included in the fixed price.
Software version	Term used herein to refer to separate releases/versions* of software as well as related patches*, updates* and upgrades*.
Source code	The code of a software program as written in the respective programming language.
Response time	Period within which the Contractor must commence work to remedy a defect. This period starts upon receipt of a fault or defect notification during the contractual service hours and runs during the contractual service hours.
Release/version	A new developmental stage of a software* program which exhibits significant differences vis-a-vis the previous release or version in terms of functionalities or data data spectrum (e.g. from 4.5.7 to 5.0.0).
Malware	Software which has undesired functionalities not agreed with the Procurer which is designed at a minimum to jeopardize or compromise the availability of data, resources, services or the confidentiality or integrity of data, such as viruses, worms and Trojan horses.
Software	Computer programs in general, which may be standard software* or custom software*.
Standard software	Software (program modules, tools etc. – including documentation) developed to meet the needs of many different customers in the marketplace rather than specifically developed for the Procurer by the Contractor.
System component	An element of the integrated system, such as hardware or software*. New software versions* licensed under the terms of the Custom Solution IT System Procurement Contract*.
System environment	Technical, spatial and operational/organizational environment within which the system to be supplied is integrated.
Teleservice	Services utilizing technical telecommunications equipment located outside of the place of deployment of the integrated system.
Workaround solution	A temporary solution for working around a software defect or fault*.

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Update	Multiple bug fixes of defects and/or faults bundled within a single release, potentially including minor functional optimizations and/or software* modifications (e.g. from 4.1.3 to 4.1.4).
Upgrade	Multiple bug fixes of defects and/or faults bundled within a single release, potentially including non-minor functional optimizations and/or software* modifications (e.g. from 4.1.3 to 4.2.0).
Version/Release	see Release/Version.
Contract fulfillment date	Date by which the Contractor must have completed all steps enabling the Procurer to declare acceptance. This includes in particular the Contractor providing the integrated system in a contractually conforming state free of significant defects already on the date when operational readiness* is to be declared to allow the Procurer to conduct functional testing during the period up until the contract fulfillment date.
Pre-existing elements	All elements • of custom software* and • modifications to standard software* made on the source code level which are not however adopted as standard as per item 2.3.1.3 which the Contractor or a third party has developed independent of this contract.
V-Modell XT	V-Modell XT is a model procedure for project planning and execution. For details see www.cio.bund.de.
Tools	An aid useful for software* development, editing and maintenance.
Restoration time	The period of time required for the Contractor to successfully conclude work to resolve faults and/or defects. This period starts upon receipt of a fault or defect notification and runs exclusively during the contractual service hours.

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