IT Service-Terms

Supplementary Terms of Contract for IT Services
– EVB-IT IT Service-Terms –

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1 Subject Matter of the Contract

1.1 The subject matter of the contract is the Contractor's services agreed therein. Work-type services are not the subject matter of the contract.

1.2 The Contractor owes careful performance of the services in line with the state of the art applicable at the time the services are rendered in the field concerned by the engagement, unless otherwise agreed. The services shall be rendered in German unless otherwise agreed. The Contractor is obliged to remain neutral in rendering the services.

1.3 If the services are owed on call by the Principal and no minimum call-off volume has been agreed, there is no entitlement to call-off. If no minimum lead time has been agreed, the Contractor shall begin rendering the services without undue delay after call-off.

1.4 The Contractor is not authorized to legally represent the Principal unless expressly agreed otherwise.

1.5 The Contractor is only entitled to render the agreed services using automated procedures if, in its tender, it identifies the product to be used and at the same time warrants, in accordance with the facts, that this product has no communication functions to third parties and no other functionality that is contrary to the interests of the Principal. In particular, the product must not contain any functionalities for spying on data, transmit to third parties any information about the Principal's IT systems, their data, their licensing or user behavior, use such information for purposes other than rendering the services, or store it in such a way that third parties could gain access to it. Replacement or use of a new release of the product requires the Principal's express consent in each individual case. The Principal will grant consent if the Contractor has assumed the above warranty in relation to the new product to be used. If there are sufficient factual indications that the product does not comply with the above requirements and the Contractor is unable to dispel such concerns, the Principal may prohibit use of the product.

1.6 Insofar as the Contractor renders services on hardware and/or software (including firmware), those services must neither endanger the integrity, confidentiality and availability of the IT infrastructure or parts thereof, nor conflict with the Principal's confidentiality or security interests by

- undesired transmission/export of data,
- undesired alteration/manipulation of data or of the process logic, or
- undesired insertion of data or undesired functional extensions.

An activity is undesired if it was neither required by the Principal in its specification of services or in the course of performance, nor offered by the Contractor under a concrete description of the activity and its mode of operation, nor expressly authorized ("opt-in") by the Principal in the individual case.

2 Cooperation Between the Contracting Parties / Exclusion of Temporary Agency Work and Bogus Self-Employment

2.1 The contracting parties shall ensure by organizational measures that the Contractor's employees deployed in rendering the services are subject exclusively to the Contractor's right to issue instructions and disciplinary authority. The Contractor's employee deployed for rendering the services shall not be integrated into the Principal's organization.

2.2 Each party shall designate one responsible contact person with regard to all matters connected with the Service-Type Services Contract. The Principal shall communicate requirements regarding the services to be rendered exclusively to the responsible contact person designated by the Contractor and shall not issue instructions to the other persons deployed by the Contractor. The persons deployed by the Contractor shall not enter into an employment relationship with the Principal, even where they render services on the Principal's premises.

2.3 As a rule, the Contractor determines the place and time of performance itself. However, temporal, spatial and professional requirements shall be observed insofar as they arise from the specification of services, are contained in schedules or performance plans agreed between the parties, or are necessary in order to achieve the purpose of the engagement. The Contractor is itself responsible for the work equipment necessary to render the services, unless otherwise agreed.

2.4 If the Contractor is a natural person and renders the services personally, the following shall apply:

- The Contractor shall act towards the Principal in its own name and for its own account. It declares that it is legally and economically independent and, in particular, active as an entrepreneur to a substantial extent for other contractual partners. It undertakes to notify the Principal without undue delay of any changes in this respect during the term of the Service-Type Services Contract.
- The Contractor is itself responsible for its pension and health provision.
- The Contractor is obliged to properly remit any VAT due to the tax office and to independently and duly declare and tax its remuneration.

3 Rights in the Results of the Services

3.1 Unless otherwise agreed in the contract, the Contractor grants the Principal, in each case at the time the service is rendered, the

- non-exclusive,
- territorially unrestricted,
- right exercisable in any environment (including system environment),
- transferable,
- perpetual, irrevocable and non-terminable,
- sublicensable for non-commercial purposes,
- sublicensable for commercial purposes to contracting authorities as defined in Sections 99 to 101 GWB

right to use the results of the services, in original or in amended, translated, edited or otherwise adapted form, in particular

- to use them, meaning in particular to permanently or temporarily store and load them, display them and run them, including insofar as reproductions are necessary for this purpose,
- to amend, translate, edit or otherwise adapt them,
- to store them on any medium or in any other manner, to reproduce and exhibit them, and in particular to communicate them non-publicly or publicly, including by transmission, image, sound and other information carriers and broadcasting, and to make them available to the public, with the exception of Source Code*,
- to use them in databases, data networks and online services, including the right to make the results of the services available to users of the aforementioned databases, networks and online services for research and retrieval by means of tools chosen by the Principal and for download,
- to have them used and edited by third parties or operated for the Principal, to use them not only for the Principal’s own purposes but also for rendering services to third parties,
- to distribute them in tangible or intangible form, but commercially only to contracting authorities as defined in Sections 99 to 101 GWB.

With regard to software, the right of use also extends to its Object Code* and Source Code* and the associated documentation.

3.2 Insofar as it is agreed that the Contractor must provide the results of the services as Open Source Software*, the Contractor must ensure that the license under which the Open Source Software* is provided does not contain any conditions that prohibit the use and/or distribution of the Open Source Software* together with other software provided under this contract or together with other software

licensed to the Principal, as contemplated by the contract. The latter applies only insofar as joint use and/or distribution of the respective software has been contractually agreed. Any liability of the Contractor under this contract towards third parties in connection with distribution of the software is excluded.

3.3 Insofar as the results of the services are not provided as Open Source Software*, the following applies:

- If the Principal exercises, in whole or in part, its right to transfer the rights of use in results of the services, or permits third parties to use them within the scope of its right of sublicensing or distribution, it must impose on the third party its contractual obligations concerning the content and scope of the rights of use. Any liability of the Contractor under this contract towards third parties in connection with sublicensing or distribution is excluded.
- Insofar as the Principal has transferred its rights of use to a third party, it is no longer entitled to use them. However, the Principal is entitled to retain and use one copy exclusively for inspection and archiving purposes.

3.4 The rights of use relate to the results of the services in all development, interim and final stages and to other materials necessary for exercising the rights of use, such as analyses, requirements specifications, functional specifications, concepts and descriptions.

3.5 The Contractor shall integrate pre-existing works protected by copyright (e.g. software parts, templates, concepts or documentation) into the results of the services only if it has first obtained the Principal's consent. Unless otherwise agreed in this context, upon integration of the pre-existing works the Principal receives the rights pursuant to Section 3.1. If, in doing so, the Contractor uses or edits pre-existing Software Components of Open Source Software* that are available to it under several Open Source licenses, the Contractor must license the edits to those Software Components under all of those Open Source licenses and pass them on to the Principal. Independently of this, the Contractor may decide under which of those licenses it uses the Software Components in the result of the services.

Insofar as pre-existing works are integrated that are not Open Source Software*, the following applies:

- Distribution and sublicensing of pre-existing works shall be remunerated if, when obtaining the Principal's consent, the Contractor specified the remuneration for granting those rights. As long as the Principal does not exercise those rights in the pre-existing works, remuneration for their distribution or sublicensing shall not become due.
- Insofar as the pre-existing work is software, the right to edit it is excluded if the following requirements are met:
  - The Contractor informed the Principal, when obtaining the Principal's consent, that instead of the Source Code* of the pre-existing works it would provide only their Object Code* and pointed out that the Principal would thereby not receive any right to edit it, and the Contractor actually provides only the Object Code*.
  - The Contractor enables the Principal, using appropriately qualified personnel, to generate the executable Custom Software from the parts of the results of the services provided in Source Code* and the pre-existing works provided only in Object Code*.
  - There is no statutory right of editing.
- For the use of Tools*, Section 3.6 applies.[1]
- Insofar as software is concerned, distribution and sublicensing of the pre-existing works is permitted only together with the results of the services in the form supplied or in amended, translated, edited or otherwise adapted form.

3.6 In the event that the Contractor has used or developed Tools* not available on the market for creating the results of the services and, without those Tools*, editing and adapting the results of the services is impossible or possible only at unreasonable effort, it shall hand over to the Principal one copy of such Tool* no later than the end of performance of the relevant service and grant the Principal therein the

[1] Note: German original appears to contain an incorrect self-reference to Section 3.5; the correct reference should be Section 3.6.

- non-exclusive,
- territorially unrestricted,
- right exercisable in any environment (including system environment),
- transferable only together with the results of the services for the editing or adaptation of which it serves,
- perpetual, irrevocable and non-terminable

right to use the Tool* in original form exclusively for the purposes of correcting defects and further development in order to edit and adapt the results of the services and for that purpose

- to use it, meaning in particular to permanently or temporarily store and load it, display it and run it, including insofar as reproductions are necessary for this purpose,
- to have it used by third parties or operated for the Principal,
- to use it not only for the Principal's own purposes but also for rendering services to third parties.

In addition, the Principal is entitled to produce one further copy and to distribute it together with the respective results of the services and to grant the third party the rights under this Section 3.6, with the exception of the rights of sublicensing, distribution and reproduction.

Instead of the Tool* used by the Contractor, the Contractor may hand over to the Principal a reduced version of that Tool* and grant it the rights listed in this Section 3.6 therein if the results of the services can thereby be edited and adapted just as well.

The Contractor is not obliged to hand over the Tool* if it can prove that the results of the services can be edited and adapted just as well with another Tool* available on the market as with the Tool* used by it and if it identifies to the Principal the source from which it can be obtained.

The provisions in this Section 3.6 also generally apply in relation to tools that constitute Open Source Software*. In relation to those tools, however, the license terms specified by the respective rights holders apply, and the Contractor must hand over the tool to the Principal in compliance with the obligations applicable to Open Source Software*. In this case, the Contractor is, in particular, obliged to state the source from which it can be obtained.

3.7 Unless otherwise agreed, where the Contractor creates or edits Software*, it shall store the then-current version of that software, including the Source Code*, at the end of each day on which the software was changed, in a Source Code* repository made available by the Principal or, if no Source Code* repository has been agreed, hand it over to the Principal on another suitable medium. Source Code* includes proper commenting of the Source Code* and a description of the necessary system parameters as well as other necessary information enabling the Principal, using specialist personnel, to edit the Source Code* in order to independently further develop the software created by the Contractor.

3.8 Insofar as the results of the services are physical items or are embodied in physical items, the Contractor transfers ownership of the results of the services to the Principal.

4 Inventions

Unless otherwise agreed in the contract, the following applies to inventions of the Contractor made on the occasion of performing the contract:

- The Contractor may freely dispose of the invention and of the rights arising from and connected with it and may apply for the invention as a patent or utility model. The Contractor hereby grants the Principal, free of charge, a simple, non-exclusive, transferable, sublicensable right in rem to patents and utility models applied for now or in the future or granted in connection with the use of the results of the services affected by the invention. Insofar as this is not sufficient in the individual case, the Contractor shall grant rights of use to the extent necessary to enable the Principal or an authorized third party to exercise the rights in the results of the services in conformity with the contract.

- At its own expense, the Contractor must ensure that exercise of the rights of use in the results of the services to which the Principal is entitled cannot be impaired by the Contractor, the inventor or any legal successor. In particular, for this purpose it will claim any employee inventions.

5 Service Hours* and Response Times*

5.1 If no Service Hours* have been agreed, the periods from Monday to Friday from 8:00 a.m. to 5:00 p.m. (excluding statutory public holidays at the agreed place or, if no place has been agreed, at the Principal's premises) shall apply as Service Hours*.

5.2 If no Response Times* have been agreed, performance of the services must begin without undue delay after receipt of the relevant notification or occurrence of the agreed event within the agreed Service Hours*.

5.3 If the Contractor fails to comply with agreed Response Times*, it is in delay upon their expiration even without reminder, unless it is not responsible for exceeding the deadline.

6 Documentation and Reporting Obligations

6.1 The Contractor shall document the services performed in a timely and appropriate manner and, unless otherwise agreed, in German and in a customary electronic format, and make them accessible to the Principal upon completion of the service. The Contractor is obliged to grant access to the current state of the documentation at any time.

6.2 Upon request, the Contractor shall report to the Principal during the term of the contract on the state of the services.

7 Notification Obligations of the Contractor

7.1 The Contractor shall notify the Principal without undue delay if a specification or demand of the Principal, or an action arising from the Contractor's contractual obligations, is materially faulty, incomplete, contradictory or not executable as agreed, or if there is a more economical solution for the Principal. Insofar as possible at reasonable effort, it shall at the same time notify the Principal of the consequences apparent to it. However, it shall not be liable for failure to perform these obligations if it need not have recognized these circumstances in the course of rendering its services.

The Contractor is not obliged to conduct investigations and examinations that are not necessary for rendering the services. In all other respects, the Contractor's duties under Section 241(2) BGB remain unaffected.

7.2 As soon as it becomes apparent to the Contractor that it will not be able to meet the agreed dates or performance periods, it shall notify the Principal thereof without undue delay.

7.3 The Principal's agreed cooperation services must be requested by the Contractor in good time.

8 Contractor's Personnel, Subcontractors

8.1 The persons deployed for rendering the services must have the agreed qualifications and, irrespective of that, at least qualifications appropriate to the purpose of the contract and the task. Irrespective of that, the Contractor shall ensure that the employees intended for rendering the services possess qualifications that at least meet its relevant statements and the Principal's requirements in the procurement procedure. If agreed, the Contractor is obliged to deploy for any on-site services owed only persons willing to undertake a formal commitment under the Verpflichtungsgesetz. Communication with the Principal shall be in German unless otherwise agreed.

8.2 The Contractor may use subcontractors for rendering the services, or replace subcontractors already used, only if the Principal expressly consents. Consent may not be refused for improper reasons. Familiarization of the new subcontractor shall take place at the Contractor's expense. For subcontractors named in the Contractor's tender, the Principal's consent shall be deemed granted.

8.3 The Contractor may replace persons

- deployed for performance of the contract in agreed key positions only with the Principal's consent; the Principal will declare its consent without undue delay if the replacement is mandatory and the

Contractor offers a qualified substitute. Replacement is mandatory if further deployment is impossible.

- not deployed in key positions, even without the Principal's consent, but only with appropriate consideration of the Principal's interests, by a qualified substitute.

The substitute is deemed qualified only if it has at least the suitability required under the contract. A higher qualification of the substitute does not give rise to any entitlement to increased remuneration. This applies in particular also if the substitute would be assignable to a more expensive category. The costs arising from the replacement and familiarization of the substitute shall be borne by the Contractor.

8.4 The Principal may, giving reasons, demand replacement of a person deployed by the Contractor for performing the contract if that person has more than insignificantly breached contractual obligations. In such cases, Section 8.3 applies accordingly.

9 Remuneration

9.1 The fixed lump-sum price is the total remuneration owed for the service and cannot be changed unilaterally. Material costs, travel time, travel costs and Incidental Costs* are included in the fixed lump-sum price. Insofar as an agreed remuneration in relation to Open Source Software* conflicts with the license terms applicable thereto, the agreed remuneration does not include the granting of rights in such software; the Contractor's obligation to grant rights in such software remains unaffected. Additional claims by the Contractor are excluded unless the parties agree a change in the services.

9.2 If remuneration based on time and materials has been agreed, the following applies:

9.2.1 Only time spent shall be remunerated. Travel time, travel costs, material costs and/or Incidental Costs* shall be remunerated in accordance with the contractual agreement. Waiting times attributable to the Principal shall be remunerated as working time. However, the Contractor must allow to be credited what it saves by not rendering the service or acquires, or maliciously fails to acquire, by making other use of its services. Payment of remuneration based on time and materials presupposes records signed by the Contractor concerning the services and the other costs asserted, e.g. in accordance with Sample 1 – Performance Record for Services.

9.2.2 Only the categories agreed or called off for the respective service shall be remunerated. If no specific category has been agreed for a service, only the categories necessary for performance shall be remunerated. Sentences 1 and 2 also apply where the service is rendered by a person assignable to a more expensive category than the category required.

9.2.3 If a cap has been agreed for remuneration based on time and materials, the Contractor shall, without being asked, inform the Principal of the processing status and the estimated remaining effort when approximately 75% and 100% of the cap has been reached or when it becomes apparent that obstacles stand in the way of complete performance of the service within the cap. Irrespective of this, even if the cap is exceeded the Contractor remains obliged to fully render the agreed service. This does not apply if the Contractor is not responsible for the overrun. In that case, however, the Contractor is obliged to fully render the agreed service against additional remuneration based on time and materials at the agreed rates if the Principal so requests.

9.2.4 Not more than one daily rate shall be remunerated per calendar day unless otherwise agreed. An agreed daily rate may only be invoiced if at least eight working hours have been performed. If fewer than eight working hours are performed per day, they shall be invoiced pro rata. If an hourly rate is agreed, commenced hours shall be remunerated pro rata.

Breaks must be shown separately and shall not be remunerated. If more than six working hours are performed, it shall be presumed that the Contractor took a half-hour break. This does not apply if the Contractor proves by the service record that it took no break. Unless the Principal has expressly consented or otherwise agreed, services shall only be rendered during the times for which neither a surcharge nor another increased remuneration rate has been agreed. If the Contractor acts without such consent or agreement, it may demand neither a surcharge nor an increased remuneration rate.

9.3 Remuneration at the fixed lump-sum price becomes due after the service has been rendered. Interim payments may be agreed in the contract. Remuneration for services based on time and materials becomes due monthly in arrears unless otherwise agreed.

9.4 Due remuneration shall be paid within 30 days after receipt of a verifiable invoice unless otherwise agreed.

9.5 If a price adjustment has been agreed for the services, and unless otherwise provided, the following applies: An increase in remuneration may first be announced 12 months after the start of the contract; further increases may be announced at the earliest 12 months after the previous increase took effect. An increase becomes effective three months after announcement. The increase must be reasonable and may not run contrary to the market trend relevant for the service and may amount to no more than 3% of the remuneration applicable at the time the increase is announced.

9.6 All prices are exclusive of the applicable statutory VAT where VAT applies.

10 Default / Response Times* / Contractual Penalties

10.1 The schedule and performance plan is laid down in the contract or is agreed between the parties after conclusion of the contract. Unless otherwise agreed, such dates must be observed as binding. In the event of delays for which the Contractor is not responsible, the performance periods affected by the delay shall be extended appropriately; the parties' statutory claims remain unaffected.

10.2 In the event of default, the Principal may claim damages for delay. Furthermore, the Principal may terminate the contract in whole or in part in accordance with statutory provisions, meaning that in the case of partial termination only with regard to the service that is in delay, if it has unsuccessfully set the Contractor a reasonable period for performance. In that case, the Contractor is obliged to compensate the Principal for the damage caused by termination of the contract. Instead of the damage caused by termination, the Principal may claim compensation for futile expenses within the meaning of Section 284 BGB. Setting a time limit is unnecessary in the cases specified by law pursuant to Sections 281(2) and 323(2) BGB. Sentences 4 and 5 of Section 15.2 apply accordingly.

10.3 In addition, if a date agreed in the contract as relevant for contractual penalties is exceeded, the Principal is entitled to demand, for each working day on which the Contractor is in default in meeting the date, a contractual penalty amounting to 0.2% of the Contract Value* for the service in delay. However, the total contractual penalties payable under this provision may not exceed 5% of the Contract Value* for the service in delay.

10.4 If agreed, in the event of exceeding agreed Response Times*, the Principal is entitled to demand, for each commenced 25% exceedance of the Response Time* within the Service Hours*, a contractual penalty amounting to 0.1% of the annual remuneration, but not more than 1% of the annual total remuneration per case of delay. This does not apply if the Contractor is not responsible for the exceedance. However, the total contractual penalties payable under this provision per contractual year may not exceed 5% of the annual total remuneration per contractual year.

10.5 Section 341(3) BGB shall apply with the proviso that the penalty may be asserted until expiry of twelve months from the time it was incurred. The total of all contractual penalties payable may amount to no more than 5% of the Contract Value*. Contractual penalties shall be offset against claims for damages.

11 Defective Performance

If a service is not rendered in conformity with the contract, the Principal is entitled to require the Contractor to render the service in conformity with the contract within a reasonable period and at no additional cost to the Principal. This does not apply if the Contractor is not responsible for the breach of duty.

The Principal's other claims, in particular claims for damages or reimbursement of expenses and its right to terminate for good cause pursuant to Section 15.2, remain unaffected.

12 Third-Party Intellectual Property Rights

12.1 If a third party asserts claims against the Principal because the Contractor's services infringe intellectual property rights and use of those services is thereby impaired or prohibited, the Contractor shall be liable, without prejudice to the Principal's rights under Section 11, as follows:

At its option and expense, the Contractor may either modify or replace the services so that they do not infringe the intellectual property right but still correspond substantially to the agreed functional and performance characteristics in a manner acceptable to the Principal, or indemnify the Principal against claims by the holder of the intellectual property right.

If modification and replacement are impossible for the Contractor or only possible under disproportionate conditions, it has the right to take back the affected services against reimbursement of the remuneration paid. In doing so, the Contractor must grant the Principal a reasonable phase-out period unless that is possible only under unreasonable legal or other conditions.

The foregoing bullet points apply accordingly where further remuneration obligations towards third parties arise for the contractual exercise of the rights agreed in relation to the software, e.g. for patent licenses or the exercise of certain rights of use.

12.2 The parties shall notify each other without undue delay of claims asserted by third parties. The Principal shall not acknowledge the alleged infringement and shall either leave any dispute, including any out-of-court settlement, to the Contractor or conduct it only in agreement with the Contractor. The Contractor shall reimburse the Principal for necessary defense costs and other damage insofar as, for legal reasons, the Principal reserves or must reserve appropriate defensive measures and settlement negotiations. In that case, the Principal is entitled to an advance in the amount of the estimated defense costs.

12.3 Insofar as the Principal is itself responsible for the infringement of intellectual property rights, claims against the Contractor are excluded.

13 Limitation of Liability

Insofar as no other contractual liability agreement exists, the following provisions apply to all statutory and contractual claims of the Principal for damages and reimbursement of expenses:

13.1 In the event of breaches of duty caused by slight negligence, liability for the contract as a whole is generally limited to the Contract Value*. If the Contract Value* is less than EUR 50,000, liability is limited to EUR 50,000. In the event of property damage, liability is limited to one million euros if the Contract Value* is less than one million euros.

13.2 In the event of loss of data, the Contractor is liable only for the effort that would have been necessary to restore the data if the Principal had carried out proper and regular Data Backup*. This limitation does not apply if and insofar as Data Backup* forms part of the services to be rendered by the Contractor.

13.3 Claims for lost profit are excluded unless otherwise agreed.

13.4 The limitations of liability do not apply to claims arising from intent and gross negligence, death, personal injury or damage to health, fraudulent intent, insofar as the Product Liability Act applies, and guarantees, insofar as nothing else has been agreed in relation to the latter.

13.5 Limitations of liability and warranty contained in the licenses of Open Source Software* apply only for the benefit of the rights holders and not for the benefit of the Contractor. If the Contractor holds rights in such Open Source Software*, the limitations of liability and warranty contained in the license text likewise do not apply vis-à-vis the Principal.

14 Cooperation Duties of the Principal

14.1 The Principal shall provide the Contractor in due time with the necessary information and documents from its sphere. The Principal shall in due time grant the Contractor’s employees access to its premises and the information technology infrastructure available there and shall hand over the documentation available to it, in each case insofar as this is necessary for rendering the service and the statutory and agreed personal requirements (e.g. security screenings under the Security Screening Act – SÜG) are fulfilled. If, despite the Contractor’s request, the Principal does not perform, does not perform in due time or does not fully perform its cooperation duties, the Contractor may submit an offer to render those services itself instead of the Principal. Other claims of the Contractor remain unaffected.

14.2 Where Teleservice* has been agreed, the Principal shall, in accordance with the stipulations of a Teleservice agreement, provide the necessary technical facilities at the Principal's premises and enable access to the system.

14.3 Proper Data Backup* is the responsibility of the Principal.

15 Term and Termination

15.1 If the term of the Service-Type Services Contract has neither been agreed nor can be inferred from the nature or purpose of the services, either party may terminate it in whole or in part by giving three months' notice to the end of a calendar month, but not before the end of any minimum contractual term agreed in the contract. A different notice period may be agreed in the contract.

15.2 In addition, either contracting party may terminate the contract in whole or in part for good cause, without observing a notice period, within a reasonable period after obtaining knowledge of the reason for termination. Good cause exists if facts are given on the basis of which, taking into account all circumstances of the individual case and weighing the interests of the contracting parties, the terminating party cannot reasonably be expected to continue the contract. If the good cause consists in a breach of contractual duty, termination is only permissible after the unsuccessful expiry of a period set for remedial action or after an unsuccessful warning, unless setting a period is dispensable under Section 314 in conjunction with Section 323(2) BGB. In the event of termination for good cause, the Contractor is entitled to remuneration for the services rendered under the contract until termination becomes effective. However, remuneration shall not apply to those services for which the Principal shows that, as a result of the termination, they are of no interest to it.

16 Obligations After the End of the Contract

16.1 Upon the end of the contract, the Contractor shall, without undue delay and without being requested, return all documents, aids, materials or items received from the Principal which were not intended to be permanently transferred to it for the purpose of performing the contract. This also applies to all copies. Furthermore, all results of the services in any form shall be handed over to the Principal; insofar as the grant of exclusive rights has been agreed, this includes the copies made.

16.2 Instead of return, the Principal is entitled to require secure deletion or destruction in whole or in part. Upon request and at the Principal's option, the Contractor shall provide proof of such deletion or destruction by way of a corresponding declaration or otherwise. Statutory retention obligations remain unaffected.

17 Change of Performance after Conclusion of the Contract

After conclusion of the contract, the Principal may at any time demand changes to the scope of the services unless this is unreasonable for the Contractor. The change procedure shall be documented on a form in accordance with Sample 2 – Change Procedure for Services – unless otherwise agreed. If the scope of the Contractor's agreed services changes, the Contractor may demand a corresponding adjustment of the contract. Section 2 VOL/B (2003 version) remains unaffected.

18 Liability Insurance

18.1 If agreed, the Contractor shall, upon the Principal's request, prove that it has industrial liability insurance customary in the market in terms of type and scope, or comparable insurance from an EU Member State.

18.2 The Contractor shall maintain this insurance cover until the end of the EVB-IT Contract for IT Services. If the Contractor fails to comply with this obligation, the Principal is entitled, after an unsuccessful reasonable grace period, to terminate the contract if it can no longer reasonably be expected to adhere to it. Further claims of the Principal, especially damages claims, remain unaffected.

19 Data Protection, Confidentiality and Security

19.1 If the Contractor processes personal data on behalf of the Principal, the Contractor shall, at the Principal's request, conclude an agreement on processing on behalf of the controller in accordance with Article 28 GDPR that complies with applicable law.

19.2 The Contractor shall ensure that all persons entrusted by it with processing or performance of the contract observe the statutory data protection provisions. The confidentiality obligation required under

data protection law must be undertaken at the latest before the first commencement of the activity and proven to the Principal upon request.

19.3 The Principal may extraordinarily terminate the contract in whole or in part if the Contractor culpably fails, within a reasonable period set, to comply with its obligations under Sections 19.1 and 19.2 or if the Principal cannot reasonably be expected to continue the contract because the Contractor intentionally or with gross negligence violates data protection provisions.

19.4 The parties are obliged to treat as confidential all confidential information, trade secrets and business secrets obtained in the course of the contractual relationship, and in particular not to disclose them to third parties or exploit them for purposes other than contractual purposes. The Principal's exchange of experience with and within the public sector remains unaffected, as does the Principal's fulfilment of statutory obligations. The obligation to treat trade secrets and business secrets obtained on the basis of the contract confidentially remains unaffected.

19.5 The Contractor is entitled to pass confidential information only to such subcontractors whose deployment the Principal has expressly approved, and only insofar as such confidential information is necessary for rendering the respective services by the subcontractor ("need-to-know" principle). This applies only if the subcontractor has first undertaken towards the Contractor an obligation of confidentiality at least equivalent in scope to that owed by the Contractor towards the Principal. In this context, passing on the confidential information by the subcontractor must be excluded unless the Principal has in each case expressly consented in advance.

19.6 Confidential information is information that a reasonable third party would consider worthy of protection or that is marked as confidential; this may also include information that becomes known during an oral presentation or discussion. Confidential information may be used exclusively for the purpose of fulfilling obligations under the contract. The confidentiality obligation does not apply to information already lawfully known to the parties or becoming known outside the contract without breach of a confidentiality obligation.

20 Rights of Retention

The Contractor's rights of retention and refusal of performance are excluded unless the Principal does not dispute the underlying counterclaims or they have been finally adjudicated.

21 Text Form

Unless otherwise regulated, contractual communications and declarations must at least be made in text form.

22 Applicable Law

The law of the Federal Republic of Germany applies, excluding rules that refer to another legal system and excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

#

Definitions

Term	Definition
Contract Value	The Contract Value* is the sum of all remuneration under the contract.
CISG	United Nations Convention on Contracts for the International Sale of Goods.
Copyleft	A license term that, for the use, modification or distribution of the licensed Software* or Software Component, that the Software*, Software Component or derivative works be made

Term	Definition
	available free of charge and in Source Code* form under identical (copyleft) license terms.
Data Backup	Data Backup* comprises all technical and organizational measures to ensure the availability, integrity and consistency of the data and Software* stored on the IT system and used for processing purposes.
Incidental Costs	Expenditures of the Contractor necessary for rendering the service and not constituting travel costs.
Object Code	Intermediate result of a compiler or translation process of a program's Source Code*.
openCode	openCode is the joint platform of the public administration for the exchange of Open Source Software*.
Open Source Software	The Standard Software* or Software Component is made available in full in Source Code* form, and rights of use to the Standard Software* or Software Component are granted which permit any person, at any time, at any place and for any purpose, free of charge and without substantive restriction, to use and exploit the Standard Software* or Software Component in Object Code* and Source Code* form without any further terms, conditions or requirements, in particular to analyse, reproduce, whether permanently or temporarily, in unmodified or modified form, in whole or in part, translate, edit, arrange, modify or otherwise transform it, and to distribute and rent it in its original form or as copies in Source Code* or Object Code* form, to perform it publicly and to make it publicly available, without the need to obtain an additional license. Such Standard Software* or Software Components are commonly referred to as Open Source Software (OSS), Free Software or Free, Libre and Open Source Software (FLOSS). Notwithstanding the foregoing, the distribution, rental, public performance and making available to the public of such Standard Software* or Software Component may neither be restricted nor made subject to any terms, conditions or requirements other than the following: • provision of the license text; • prohibition of extending the license by additional terms; • copyleft* obligations; • distribution, rental, public communication and making available to the public free of

Term	Definition
	charge for the granting of rights of use (“license fees”); • further conditions for distribution under different license terms; • obligation to provide or otherwise make available the Source Code* and, where applicable, additional materials; • obligation to include copyright or trademark notices and similar notices or materials (e.g. NOTICE files); • obligation to indicate the use of the Standard Software* or Software Component in other software, e.g. in the documentation or within the software itself; • obligation to indicate modifications to the Standard Software* or Software Component; the license may require derivative works to use a different name or version number; • obligation to include or display a disclaimer of liability; • obligation to provide installation information* in certain cases; • where distributed together with third-party software: obligation to clarify in the license terms of the third-party software that the license terms of the Standard Software* or Software Component remain unaffected. The “Open Source License List” available at evb-it.gov.de contains licenses that meet this definition
Source Code	Code of a program in the form of the programming language.
Response Time	Period within which the Contractor must begin rendering the service. The period begins upon receipt of the relevant notification or occurrence of the agreed event during the agreed Service Hours* and runs exclusively during the agreed Service Hours*. If a notification is received outside the agreed Service Hours* or the agreed event occurs outside the Service Hours*, the Response Time* begins at the start of the next Service Hours*.
Service Hours	Times during which the Principal is entitled to contractually owed services by the Contractor.
Teleservice	Services rendered using technical means of remote communication from a location outside the place where the services are performed.
Tool	Auxiliary means for the development and editing of the services.

IT Service-Terms

This document is a translation. The German version shall prevail.