

**Supplementary Terms of Contract for IT Services**  
**– EVB-IT Standard Business Terms for IT Services, EVB-IT IT Services-AGB –**

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**Supplementary Terms of Contract for IT Services****– EVB-IT IT Services-AGB –****1 Subject matter of the Contract**

- 1.1 The subject matter of the Contract are the Contractor's services agreed on therein. Contractual performance that would be provided under a contract for work and services is not a subject matter of the Contract.
- 1.2 The Contractor owes a duty of care in rendering the contractual performance, which, unless otherwise agreed, shall conform to the prevailing state of the art in the field of the commissioning. The performance shall be rendered in German, unless otherwise agreed. The Contractor shall be neutral in rendering the performance.
- 1.3 If the services are owed upon the Principal's call and no minimum purchasing quantity is stipulated, there shall be no entitlement to a call. If no minimum lead time is stipulated, the Contractor must commence the contractual performance promptly upon call.
- 1.4 The Contractor is not authorized to represent the Principal in legal transactions insofar as nothing to the contrary is expressly stipulated.
- 1.5 The Contractor is entitled to provide the stipulated services by means of automated processes only if it identifies the product to be used in the offer and at the same time warrants, in accordance with the facts, that such product has no communication function with third parties and no other functionality running counter to the Principal's interests. In particular, the product must not contain data espionage functionalities, must not transmit information about the Principal's IT systems, their data, their licensing, or the user behavior to third parties, and must not store data for purposes other than providing the services or in such a way that third parties can access the data. The replacement or the deployment of a new release of the product requires the express consent of the Principal in each specific case. The Principal will grant its consent if the Contractor has given the aforementioned warranty in respect of the newly to be deployed product. If adequate factual indications exist that the product does not meet the aforementioned requirements and the Contractor cannot remedy this situation, the Principal may prohibit the deployment of the product.
- 1.6 If the Contractor provides services on hardware and/or software (including firmware), those services shall neither jeopardize the integrity, confidentiality, and availability of the information and communications technology infrastructure, or any parts thereof, nor run counter to the Principal's confidentiality or security interests in result of any
- undesired transmission/transfer of data;
  - undesired modification/manipulation of data or of the process logic; or
  - undesired introduction of data or undesired expansions of functions.

A possible activity is undesired if the activity was neither required in that form by the Principal in the Principal's description of services or in connection with the contractual performance, nor offered by the Contractor with a concrete description of the activity and its functions, nor expressly authorized (by opt-in) by the Principal in the specific case.

**2 Cooperation of the contracting parties; exclusion of personnel leasing and bogus self-employment**

- 2.1 The contracting parties shall ensure through organizational measures that the Contractor's personnel deployed in connection with the contractual performance are exclusively subject to the Contractor's right to issue instructions and disciplinary powers. The Contractor's personnel deployed to render the contractual performance will not be integrated into the Principal's organization.
- 2.2 The parties shall each designate a responsible point of contact with respect to all matters related to the contract for services. The Principal will convey requirements concerning the performance to be rendered solely to the responsible point of contact designated by the Contractor and will issue no instructions to the

other persons deployed by the Contractor. The persons deployed by the Contractor are not entering into any employment relationship with the Principal, including insofar as they are providing services on the Principal's premises.

- 2.3 As a matter of principle, the Contractor alone determines the place and time of the performance. However, requirements in terms of time, place and expertise must be observed to the extent that they are specified in the description of services, or are contained in schedules or performance plans resulting from coordination by the parties, or are required in order to achieve the purpose of the commissioning. Unless otherwise agreed, the Contractor alone is responsible for any work equipment or materials needed for providing the services.
- 2.4 If the Contractor is an individual and is personally rendering the contractual performance, the following shall apply:
- The Contractor is acting in his or her own name and on his or her own account in his or her dealings with the Principal. The Contractor represents that he or she is legally and economically independent and works to a considerable extent for other contracting parties, in particular as an independent contractor. The Contractor shall notify the Principal promptly of any changes in this respect during the term of the contract for services.
  - The Contractor alone is responsible for his or her old-age and healthcare provisions.
  - The Contractor shall duly transfer to the tax office any value-added taxes owed as well as independently and duly pay any and all taxes due on remunerations.

### 3 Rights in the results of the services

- 3.1 Unless otherwise agreed in the Contract, the Contractor grants to the Principal, at the time when the contractual performance is rendered in each instance, the
- nonexclusive,
  - unrestricted as to location,
  - exercisable in any environment (including any system environment),
  - transferrable,
  - permanent, irrevocable, and non-terminable,
  - sublicensable for non-commercial purposes, [and]
  - sublicensable for commercial purposes to contracting entities as defined in Sections 99 to 101 of the German Act against Restraints of Competition [*Gesetz gegen Wettbewerbsbeschränkungen*; "GWB"]

right to:

- use, i.e., in particular, to store and load permanently or temporarily, to display, and to run, including insofar as reproductions are necessary for these purposes,
- modify, translate, adapt, and transform in other ways,
- store, duplicate, or display in any known medium or in any other way, in particular, play back non-publicly or publicly, including through transmissions or on video, audio and any other information media or through radio broadcasts, as well as make accessible publicly with the exception of any source code\*,
- use in databases, data networks, and online services, including the right to make the results of the services available to the users of the aforementioned databases, networks, and online services for research and for retrieval using tools chosen by the Principal, or for downloading,
- have used and adapted by third parties, or have adapted for the Principal, or to use not only for the Contractor's own purposes but also in order to provide services to third parties, [and]
- disseminate in tangible or intangible form, though commercially only to contracting entities as defined in Sections 99 to 101 of the GWB

the results of the services in their original or in a modified, translated, adapted, or transformed form.

With respect to software, the right of use also extends to its object code\* and source code\* and the related documentation.

- 3.2 If the Principal exercises, in whole or in part, its right to transfer the right of use in the results of the services, or if the Principal permits use by third parties under its rights of sublicensing or dissemination, then it must impose its contractual obligations with respect to the content and scope of the rights of use on the third party. Any liability of the Contractor to third parties in connection with any sublicensing or dissemination is excluded.

If the Principal has transferred its rights of use to the third party, the Principal is no longer entitled to the use. However, the Principal is entitled to retain and use one copy exclusively for testing and archival purposes.

- 3.3 The right of use relates to the results of the services in all developmental, intermediate, and final stages, as well as to any other materials necessary for the exercise of the rights of use such as, for example, analyses, service briefs, functional specifications, concepts, and descriptions.

- 3.4 The Contractor will integrate preexisting works that are subject to copyright (e.g., software components, templates, concepts or documentation) into the results of the services only if it has previously received approval from the Principal for this. With the integration of the preexisting works, the Principal shall receive the rights provided for in Section 3.1 hereof. The dissemination and sublicensing of preexisting works must be remunerated if the Contractor quantified the remuneration for the granting of such rights at the time when the Principal's approval was obtained. As long as the Principal does not exercise these rights in the preexisting works, the remuneration for their dissemination or sublicensing shall not be due.

If the preexisting work constitutes software, the right of adaptation shall be excluded for it if the following conditions are met:

- When obtaining the Principal's approval, the Contractor stated that, rather than the source code\* of the preexisting work, it would only supply the preexisting work's object code\* and the Contractor made the Principal aware that the latter would not be receiving any right of adaptation in it, and the Contractor does in fact supply only the object code\*.
- The Contractor puts the Principal in a position to generate the executable configured software with appropriately qualified personnel from the parts of the results of the services supplied in source code\* code and the preexisting works supplied only in object code\*.
- There is no statutory right to adapt. Section 3.5 hereof shall apply to the use of tools\*.

To the extent that software is involved, the dissemination and sublicensing of the preexisting works is permitted only together with the results of the services in the form as supplied or in a modified, translated, adapted, or transformed form.

- 3.5 If the Contractor has used or developed tools\* in creating the results of the services that are not available on the market and if, without those tools\*, adaptation and transformation of the results of the services is not possible or is possible only at unreasonable cost, the Contractor shall deliver to the Principal a reproduction of that tool\* by no later than when the rendering of the respective performance has ended and shall grant the Principal the

- nonexclusive,
- unrestricted as to location,
- exercisable in any environment (including any system environment),
- transferrable only together with those results of the services for the adaptation or transformation of which that tool is used,
- permanent, irrevocable, and non-terminable,

right to utilize the tool\* in the original form to adapt and transform the results of the services exclusively for the purpose of remedying defects and further development, and, to that end

- to use the tool\*, i.e., in particular to store and load it permanently or temporarily, to display it, and to run it, also insofar as reproductions are necessary to that end,
- to have third-parties use the tool\* or to have them operate it for the Principal, [and]
- to use the tool\* not only for the Principal's own purposes but also for providing services to third parties.

The Principal is entitled moreover to produce an additional copy and to disseminate it together with the respective results of the services and to grant the third party the rights arising from this Section 3.5, with the exception of the right to sublicense, disseminate, and reproduce.

Instead of the tool\* utilized by the Contractor, the Contractor may deliver a reduced version of that tool\* to the Principal and grant the Principal the rights thereto listed in this Section 3.5 if the results of the services can be adapted and transformed just as well with the reduced version.

The Contractor is not obliged to supply the tool\* if it can prove that the results of the services can be adapted and transformed just as well with a another tool\* available on the market as with the tool\* utilized by the Contractor and the Contractor identifies the procurement source to the Principal.

- 3.6 Unless otherwise agreed, the Contractor shall, in the event of development or adaptation of software, at the end of each day on which the software was modified, store the respective current version of this software, including the source code\*, in a source code depository provided by the Principal or, if no source code depository is stipulated, deliver the foregoing to the Principal on another appropriate medium. The source code\* shall include the professional commenting of the source code\* and the description of the necessary system parameters as well as other necessary information that will enable the Principal to adapt the source code\* with specialized personnel for the purpose of independent further development of the software created by the Contractor.
- 3.7 To the extent that the results of the services involve objects or results of the services are embodied in objects, the Contractor assigns the ownership to the results of the services to the Principal.

#### 4 Inventions

Unless otherwise agreed in the Contract, the following shall apply to inventions made in result of the performance of the Contract:

- The Contractor may freely dispose over the invention and the rights arising from and related to it and may register the invention as a patent or utility model. The Contractor hereby grants to the Principal, at no cost, a simple, nonexclusive, transferrable, and sublicensable right, with effect in rem, to use patents and utility models registered or issued at present or in the future in connection with the use of the results of the services affected by the invention. Insofar as the foregoing is inadequate in a specific case, the Contractor grants rights of use to the extent necessary for the Principal or an authorized third party to be able to exercise the rights in the results of the services as contractually agreed.
- The Contractor must ensure at its own expense that the exercise of the rights of use in the results of the services enjoyed by the Principal cannot be impaired by the Contractor, the inventor, or any legal successor. In particular, the Contractor shall for this purpose assert any and all claims to any employee inventions.

**5 Service times\* and response times\***

- 5.1 If no service times\* are stipulated, the periods from 8:00 a.m. to 5:00 p.m., Monday through Friday (with the exception of legal holidays at the stipulated location), are considered the service times\*.
- 5.2 If no response times\* are stipulated, the services must be commenced promptly upon receipt of the respective report or occurrence of the stipulated event within the stipulated service times\*.
- 5.3 If the Contractor does not adhere to stipulated response times\*, it falls into default when they are exceeded even without a warning, unless it bears no responsibility for the exceedance of the time limit.

**6 Documentation and reporting obligations**

- 6.1 The Contractor shall document the services performed in a timely and appropriate manner in German, unless otherwise agreed, in a standard electronic format and shall make the documentation available to the Principal upon concluding the service. The Contractor shall allow examination of the current status of the documentation at any time.
- 6.2 During the term of the Contract, the Contractor shall report to the Principal on the status of the services upon request.

**7 Contractor's reporting obligations**

- 7.1 The Contractor shall notify the Principal promptly if a requirement or request of the Principal or an action resulting from the Contractor's contractual duties is to a significant extent deficient, incomplete, contradictory, or not executable as stipulated, or if a solution that is more economical for the Principal exists. To the extent possible at reasonable cost, the Contractor must at the same time notify the Principal of the foreseeable consequences. However, the Contractor is not liable for nonfulfillment of these duties if it could not have been expected to recognize those circumstances when providing its services.

The Contractor is not obliged to undertake investigations and examinations that are not necessary for providing the services. The Contractor's duties under Section 241(2) of the German Civil Code shall otherwise remain unaffected.

- 7.2 As soon as it is evident to the Contractor that it cannot meet the stipulated deadlines or time periods for performance, it shall notify the Principal of this promptly.
- 7.3 The Contractor must call for the Principal's stipulated duties of cooperation in a timely manner.

**8 Contractor's personnel; subcontractors**

- 8.1 The persons deployed to provide the services must be qualified as stipulated, though irrespective of the foregoing, they must at a minimum possess qualifications appropriate for the purpose of the Contract and the assigned tasks. Irrespective of the foregoing, the Contractor shall ensure that the personnel intended for rendering the contractual performance at a minimum possess qualifications that conform to the Contractor's representations in this respect and to the Principal's requirements in the contract award procedure. If stipulated, the Contractor is obliged to deploy only such personnel for the performance of any services owed on site who are prepared to commit themselves under the German Act on the Formal Commitment of Non-civil Servants in Performing Public Duties [*Verpflichtungsgesetz*]. Communications with the Principal shall be in German, unless otherwise agreed.
- 8.2 The Contractor may deploy subcontractors for the rendering of the contractual performance or replace deployed subcontractors only if the Principal expressly consents to this. Such consent shall not be refused for improper reasons. Training of the new subcontractor shall be at the Contractor's expense. The Principal's consent is deemed granted for the subcontractors named in the Contractor's offer.
- 8.3 The Contractor may:

- Replace the persons deployed in stipulated key positions for purposes of performing the Contract only with the Principal's consent; the Principal shall declare its consent promptly if the removal is necessary for compelling reasons and the Contractor offers a qualified substitute person. The removal is necessary for compelling reasons if further deployment is impossible.
- replace persons who are not deployed in key positions for purposes of performing the Contract with a qualified substitute person also without the Principal's consent, though only upon giving appropriate consideration to the Principal's interests.

The substitute person is deemed to be qualified only if he or she has at least the contractually required aptitude. A substitute person with a higher level of qualifications does not create any entitlement to an increase of the remuneration. This shall apply especially also if the substitute person would to be assignable to a more expensive category. The costs resulting from the exchange and the training of the substitute person shall be borne by the Contractor.

- 8.4 The Principal may demand the replacement of a person deployed by the Contractor for purposes of performing the Contract with a statement of reasons if that person has breached contractual obligations more than insignificantly. In such cases, Section 8.3 hereof shall apply accordingly.

## **9 Remuneration**

- 9.1 The fixed all-inclusive price is the total remuneration, which cannot be unilaterally altered, that is owed for the contractual performance. Costs of materials, travel time, travel expenses and incidental costs\* are all included in the fixed all-inclusive price. Claims for additional compensation by the Contractor are excluded to the extent that the parties have not agreed to a modification of the contractual performance.

- 9.2 If remuneration based on cost is stipulated, the following shall apply:

- 9.2.1 Only the expenditure of time is remunerated. Travel time, travel expenses, costs of materials, and/or incidental costs\* will be remunerated in accordance with the contractual stipulation. Waiting times for the Contractor for which the Principal bears responsibility will be remunerated as working time. However, the Contractor must allow the deduction of savings achieved by not rendering its performance, of gains earned through the use of its services elsewhere, or of gains that it maliciously neglects to earn. Payment of remuneration based on cost requires documentation signed by the Contractor of the services rendered and of the other claimed costs, e.g., in accordance with the Sample 1 – Record of Services.

- 9.2.2 Only the categories stipulated or requested for the respective service will be remunerated. If no specific category is stipulated for a service, only those categories that are required for contractual performance will be remunerated. Sentences 1 and 2 shall apply even if the performance is rendered by a person who is assignable to a more expensive category than the required one.

- 9.2.3 If a cap is stipulated for remuneration based on cost, the Contractor shall notify the Principal, without being asked in each instance, of the state of progress of the work and the anticipated remaining cost when approximately 75% and 100% of the cap has been reached or if it becomes apparent that impediments are preventing completion of the contractual performance within the cap. Irrespective of the foregoing, the Contractor is obliged to fully render the stipulated performance even if the cap is exceeded. This does not apply if the Contractor does not bear responsibility for exceeding the cap. However, in such a case, the Contractor is obliged to fully render the stipulated performance in exchange for additional remuneration based on cost at the stipulated rates if the Principal so demands.

- 9.2.4 No amount greater than a daily rate will be remunerated per calendar day, unless otherwise agreed. A stipulated daily rate can be invoiced only if at least eight full hours were performed. If fewer than eight full hours per day are performed, they must be invoiced pro rata. If an hourly rate is stipulated, fractions of an hour will be remunerated pro rata.

Breaks must be accounted for and are not remunerated. If more than six full hours are performed, it is assumed that the Contractor took a half-hour break. This does not apply if the Contractor documents with

the record of services that no break was taken. Unless the Principal has expressly consented or it has been stipulated otherwise, services must be provided only during those times for which neither a surcharge nor any other increased remuneration rate has been stipulated. If the Contractor acts without such consent or stipulation, it cannot demand a surcharge or an increased remuneration rate.

- 9.3 Remuneration at a fixed all-inclusive price is due after the performance has been rendered. Payments on account may be stipulated in the Contract. Remuneration for services based on cost is due monthly in arrears, unless otherwise agreed.
- 9.4 Remuneration that has fallen due must be paid within 30 days after receipt of a verifiable invoice, unless otherwise agreed.
- 9.5 If a price adjustment is stipulated for the services, the following shall apply unless a different arrangement has been provided for: An increase in the remuneration can be announced for the first time 12 months after the start of the Contract, and further increases can be announced no earlier than 12 months in each instance after the effective date of the respective previous increase. Increases take effect three months after the announcement. The increase must be reasonable and not contrary to market trends relevant to the service, and it may not exceed 3% of the remuneration applicable at the time of announcement of the increase.
- 9.6 If subject to value-added tax, all prices are understood to be exclusive of the applicable statutory value-added tax.

#### **10 Default; response times\*; contractual penalties**

- 10.1 The schedule and the performance plan are specified in the Contract or may result from coordination between the parties after contract formation. Unless otherwise agreed, those deadlines are binding. In the event of delays for which the Contractor bears no responsibility, the time periods for performance that are affected by the delay are postponed appropriately; the statutory claims of the parties shall remain unaffected by this.
- 10.2 In the event of default, the Principal may demand compensation for the damage caused by delay. The Principal may also terminate the Contract in whole or in part in accordance with the provisions of law, i.e., in the case of partial termination, terminate only in respect of the service that is in default, if the Principal has provided the Contractor with a reasonable time limit for performance to no avail. In that case, the Contractor is obliged to compensate the Principal for the damages arising from the termination of the Contract. In lieu of the damages arising from the termination, the Principal may demand reimbursement of futile expenses as provided for in Section 284 of the German Civil Code. The setting of a deadline may be dispensed with in the cases specified by law pursuant to Section 281(2) and Section 323(2) of the German Civil Code. Sentences 4 and 5 of Section 15.2 hereof shall apply accordingly.
- 10.3 Furthermore, if a deadline stipulated in the Contract as being relevant as regards to contractual penalties is exceeded, the Principal is entitled to demand a contractual penalty in the amount of 0.2% of the contract value\* for each working day on which the Contractor is in default with meeting the deadline. However, the total contractual penalties to be paid on the basis of this provision may not exceed 5% of the contract value\* of the performance that is in default.
- 10.4 If stipulated response times\* are exceeded, the Principal is entitled, insofar as stipulated, to a contractual penalty of 0.1% of the annual remuneration for each 25% (or a fraction thereof) of exceedance of the response time\* within the service times\*, but only up to a maximum of 1% of the total annual remuneration per event of default. This does not apply if the Contractor does not bear responsibility for the exceedance. Overall, the total contractual penalty to be paid per contract year on the basis of this provision may not exceed 5% of the total annual remuneration per contract year.
- 10.5 Section 341(3) of the German Civil Code applies, subject to the proviso that the penalty can be claimed up to the end of a period of twelve months after its imposition. The sum total of all contractual penalties that are



to be paid may not exceed 5% of the contract value\*. Contractual penalties shall be set off against claims for damages.

## **11 Insufficient performance**

If any performance is not rendered as contractually agreed, the Principal is entitled to demand that the Contractor render the performance as contractually agreed within a reasonable time limit at no additional costs for the Principal. This does not apply if the Contractor does not bear responsibility for the breach of duty.

Any other claims of the Principal, in particular to compensation for damages or reimbursement of expenses, as well as its right to termination for good cause in accordance with Section 15.2 hereof, shall remain unaffected by this.

## **12 Protective rights of third parties**

12.1 If a third party asserts claims against the Principal owing to infringement of protective rights through the Contractor's services, and if the use of those services is impeded or prohibited as a result, the Contractor shall be liable as follows, without prejudice to the Principal's rights pursuant to Section 11 hereof:

- The Contractor may, at its option and at its own expense, either change or replace the services in such a way that they do not infringe the protective right, but still essentially correspond to the stipulated functional and performance characteristics in a manner reasonable for the Principal, or indemnify the Principal against claims by the holder of the protective rights.
- If change or replacement is impossible for the Contractor or is possible only under disproportionate conditions, it has the right to take back the respective services in exchange for restitution 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.

12.2 The parties will notify each other of any asserted third-party claims promptly. The Principal will not acknowledge the alleged infringement of protective rights and will either leave any dispute, including any out-of-court arrangements, up to the Contractor or will conduct them only in agreement with the Contractor. The Contractor shall reimburse the Principal for necessary defense costs and other losses if the appropriate defense measures and settlement negotiations are or must be conducted by the Principal for legal reasons. In that case, the Principal is entitled to an advance in the amount of the estimated defense costs.

12.3 If the Principal itself bears responsibility for the infringement of protective rights, claims against the Contractor are excluded.

## **13 Limitation of liability**

If no other contractual stipulation as to liability is made, the following provisions apply to any and all of the Principal's statutory and contractual claims for damages and reimbursement of expenditures:

13.1 In the case of breaches of duty owing to ordinary negligence, the liability as to the Contract is categorically limited overall to the contract value\*. If the contract value\* is less than EUR 50,000, the liability is limited to EUR 50,000. In cases of damage to property, the liability is limited to one million euros if the contract value\* is less than one million euros.

13.2 In the event of data loss, the Contractor shall be liable only for the expense that would have been necessary for restoration of the data if the Principal had engaged in proper and regular data security\*. This limitation does not apply if and to the extent that data security\* is a component of the services to be rendered by the Contractor.

13.3 Claims arising from lost profits are excluded, unless otherwise agreed.

- 13.4 The limitations of liability do not apply to claims owing to willful intent or gross negligence, or where there has been loss of life, bodily injury, or damage to a person's health, or in the case of malice to the extent that the German Product Liability Act [*Produkthaftungsgesetz*] applies, or in the case of a promise of guarantee, provided that no other provision has been made regarding the latter.

#### **14 Cooperation by the Principal**

- 14.1 The Principal will make the necessary information and documents under its purview available to the Contractor in a timely manner. The Principal will grant the Contractor's personnel access to the Principal's premises and to the information technology infrastructure present there in a timely manner and turn over documentation in its possession in a timely manner, in each instance to the extent that this is necessary to render the contractual performance, and provided that the statutory and stipulated personal prerequisites (e.g., security clearances in accordance with the German Security Screening Act [*Sicherheitsüberprüfungsgesetz*, "SÜG"] are satisfied. If, despite prompting by the Contractor, the Principal does not perform its duties of cooperation or does so in an untimely or incomplete manner, the Contractor may submit an offer to perform those duties itself in the Principal's stead. Other claims by the Contractor shall remain unaffected.
- 14.2 If teleservice\* is stipulated, the Principal will provide the necessary technical facilities on the Principal's premises and permit access to the system, in keeping with the specifications in a teleservices agreement.
- 14.3 Proper data security\* is incumbent on the Principal.

#### **15 Term and termination**

- 15.1 If the duration of the contract for services is neither stipulated by agreement nor apparent from the nature or purpose of the services, the Contract may be terminated in whole or in part by either party as of the end of a calendar month subject to a notice period of three months, though at the earliest as of the end of any minimum contractual term stipulated in the Contract. A different notice period for termination may be stipulated in the Contract.
- 15.2 Moreover, the Contract may be terminated by either party in whole or in part for good cause without observance of a notice period within a reasonable time upon gaining knowledge of the reason for termination. Good cause is present if facts exist on the basis of which the terminating party, taking into account all circumstances of the specific case and weighing the interests of the contracting parties, can no longer be reasonably expected to continue the Contract. If the good cause consists of the breach of a contractual duty, termination is permitted only after a grace period set for remedial action has expired to no avail or a warning has been given to no avail, insofar as the setting of a grace period cannot be dispensed with in accordance with Section 314 of the German Civil Code in conjunction with Section 323(2) of the German Civil Code. In the event of termination for good cause, the Contractor shall be entitled to remuneration for services rendered under the Contract up to the time when the termination takes effect. However, no remuneration is required for such services in regard to which the Principal shows that they are of no interest to it on account of the termination.

#### **16 Obligations after the end of the Contract**

- 16.1 Upon the end of the Contract, the Contractor shall, promptly and without being asked, surrender all documents, aids, materials or items that, in accordance with the terms of the Contract, were provided to the Contractor for purposes of performing the Contract and not on a permanent basis. This also applies to all copies. Furthermore, all results of services in any form shall be delivered to the Principal. Insofar as the granting of exclusive rights is stipulated, this shall include the copies that have been created.
- 16.2 The Principal is entitled to request secure deletion or destruction in lieu of surrender. This must be verified to the Principal upon request and at the Principal's discretion through a statement to this effect or by other means. Statutory duties of retention shall remain unaffected.

**17 Changes to the performance after contract formation**

After contract formation, the Principal may at any time request changes to the scope of the services, unless this is unreasonable for the Contractor. The change procedure must be documented on a form in accordance with Sample 2 - Change Procedure for Services - unless otherwise agreed. If the scope of the Contractor's stipulated services is changed, the Contractor may request that the Contract be adjusted accordingly. Notwithstanding the foregoing, Section 2 of the VOL/B [Vergabe- und Vertragsordnung für Leistungen, Teil B; Standard Contracting Terms for the Rendering of Services, Part B: Standard Terms of Business for the Execution of Services] (2003 version) shall apply.

**18 Liability insurance**

- 18.1 If stipulated, the Contractor shall, upon request, present proof to the Principal that the Contractor possesses industrial liability insurance as customary in the market in terms of coverage and scope, or comparable insurance, from a member state of the EU.
- 18.2 The Contractor shall maintain this insurance coverage until the end of the EVB-IT contract for services. If the Contractor does not fulfill this obligation, the Principal is entitled, after setting a reasonable deadline to no avail, to terminate the Contract if the Principal can no longer be reasonably expected to continue the Contract. Further claims of the Principal, especially claims for damages, shall remain unaffected by this.

**19 Data protection, secrecy, and security**

- 19.1 If personal data are collected, processed, or used by the Contractor on commission, the Contractor, upon demand by the Principal, will enter into an agreement on commissioned data processing that satisfies the statutory provisions.
- 19.2 The Contractor shall ensure that all persons entrusted with the processing or the performance of the Contract comply with the provisions of law pertaining to data protection. The commitment to data secrecy required by data protection law must be effectuated no later than prior to initial commencement of the work and must be confirmed to the Principal upon demand.
- 19.3 The Principal may terminate the Contract in whole or in part for cause if the Contractor culpably fails to attend to its duties according to Sections 19.1 and 19.2 hereof within a reasonable set grace period or if the Principal cannot be reasonably expected to continue the Contract because the Contractor has breached data protection provisions with willful intent or gross negligence.
- 19.4 The parties are obliged to treat all confidential information, business secrets, and trade secrets obtained in connection with the contractual relationship as confidential, and in particular not to disclose them to third parties or to exploit them in other ways than for contractual purposes. The Principal remains free to engage in an exchange of experience with and within the public sector as well as to fulfill its obligations under law. The duty of confidential treatment of business and trade secrets obtained on the basis of the Contract shall remain unaffected.
- 19.5 The Contractor is entitled to disclose confidential information only to such subcontractors to whose deployment the Principal has expressly consented, if and to the extent that such confidential information is needed for the rendering of the respective performance by the subcontractor (need-to-know principle). This applies only if the subcontractor has committed itself to confidentiality to the Contractor beforehand at least to the same extent as the Contractor has done to the Principal. In that regard, the disclosure of confidential information by the subcontractor must be excluded unless the Principal has in each instance expressly consented to such disclosure.
- 19.6 Information is considered confidential if a reasonable third party would regard it as meriting protection or if it is marked confidential; this may include information that becomes known during an oral presentation or discussion. Confidential information may be used exclusively for the purpose of fulfilling the obligations

arising from the Contract. The confidentiality obligation does not apply to information that is already legitimately known to the parties or that becomes known to them outside the Contract with no violation of a confidentiality obligation.

**20 Rights of retention**

The Contractor's rights of retention and to refuse performance are excluded unless the Principal does not contest the underlying counterclaims or these counterclaims have been ascertained with legal finality.

**21 Text form**

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

**22 Applicable law**

The law of the Federal Republic of Germany shall apply, to the exclusion of norms that refer to another legal system and to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG\*).

**Definitions**

<b>Contract value</b>	The contract value is the sum total of all remunerations under the Contract.
<b>CISG</b>	United Nations Convention on Contracts for the International Sales of Goods.
<b>Data security</b>	Data security encompasses all technical and organizational measures for ensuring the availability, integrity and consistence of the data and software stored on the IT system and used for processing purposes.
<b>Incidental costs</b>	Expenditures by the Contractor that are necessary for the rendering of contractual performance but are not travel expenses.
<b>Object code</b>	Intermediate result of a process to compile or translate the source code* for a program.
<b>Source code</b>	Code for a program in the programming language version.
<b>Response time</b>	Time period within which the Contractor must commence the contractual performance. The time period starts with the receipt of the corresponding report or the occurrence of the stipulated event within the stipulated service times* and runs exclusively during the stipulated service times*. If a report is received outside of the stipulated service times* or the stipulated event occurs outside of the service times*, the response time* starts upon the onset of the next service time*.
<b>Service time</b>	Times in which the Principal is entitled to contractually owed services by the Contractor.
<b>Teleservice</b>	Services using technical facilities for telecommunications from a location outside the place of deployment of the services.
<b>Tool</b>	Aid for the development and processing of the services.

**This document is a translation. The German version shall prevail. The English version is provided for information purposes only.**