Supplementary Terms of Contract for the Delivery of an IT System
– EVB-IT Standard Business Terms for System Delivery, EVB-IT System Delivery-AGB –

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1 Subject matter of the EVB-IT System Delivery Contract

1.1 The subject matter of the EVB-IT System Delivery Contract is the delivery* of a system on the basis of a purchase contract and, if stipulated, training and system service. The system is the result of the deliveries and services to be rendered by the Contractor pursuant to Sections 2.1 and 4 of the EVB-IT System Delivery Contract. The Contractor's services for delivery* of the system can include in particular:

- sale of hardware,
- permanent supplying of standard software* in exchange for one-off remuneration (sale),
- effecting of the operational readiness* of the system,
- documentation.

These services constitute a single factual, economic, and legal unit. The Principal-provided components* themselves are not part of the system, but must be incorporated into the system.

1.2 The acts of cooperation incumbent on the Principal are set forth in Section 13 of the EVB-IT System Delivery Contract and in Section 10 herein.

1.3 It is of essential importance to the Principal that the Contractor establishes the overall system functionality stipulated in the EVB-IT System Delivery Contract.

2 Type and scope of services

Unless otherwise agreed, the following provisions apply to the respective service components:

2.1 Sale of hardware

If the sale of hardware is stipulated, the Contractor installs the hardware in accordance with the stipulations and transfers ownership thereof to the Principal, in each case upon delivery*. The Contractor undertakes to dispose of the packaging and, after the end of use, to dispose of the hardware delivered by the Contractor, unless otherwise agreed in Sections 12.4 or 12.5 of the EVB-IT System Delivery Contract.

2.2 Permanent supplying of standard software*

If the permanent supplying of standard software* against one-off remuneration is stipulated, the Contractor supplies such standard software* to the Principal in accordance with the stipulations in the EVB-IT System Delivery Contract and makes it available to the Principal. If no other intended use is stipulated in the EVB-IT System Delivery Contract, the Contractor grants the Principal the right to use the standard software*, such right being

- nonexclusive,
- transferrable, subject to the restriction in Section 2.2.1,
- permanent, irrevocable, and non-terminable,
- unrestricted as to location,
- exercisable in any hardware and software environment,

in each instance upon delivery*. The right of use includes in particular the right to store and load it permanently or temporarily, to display it, and to run it. The same applies if reproductions are necessary for those purposes. The right to use the standard software* in any hardware and software environment does not affect the limitation of defect claims pursuant to Section 13.5.

2.2.1 If the Principal exercises its right to transfer the right of use, it must impose its contractual obligations with respect to the content and scope of the rights of use on the third party. Upon transfer to the third party, the Principal is no longer entitled to use the software. However, the Principal is entitled to retain and use one copy exclusively for testing purposes.

2.2.2 The Principal is entitled to produce a copy of the standard software* for security purposes. The reproductions of the standard software* made for the purpose of software distribution for the intended use or proper data security are part of the intended use.

2.2.3 If the rights of use are limited to a hardware and/or software environment defined in the EVB-IT System Delivery Contract, any other use requires the Contractor's consent. If a hardware and/or software environment defined in the EVB-IT System Delivery Contract is not functional, use in another environment is permitted until restoration even without the Contractor's consent.

2.2.4 The Principal agrees not to put the standard software* into a different code form or make changes in the code unless such action is permitted by statutory provisions.

2.2.5 At an appropriate time before being supplied, the software* delivered under the terms of the EVB-IT System Delivery Contract was checked for the presence of malicious software* using up-to-date scanning software. The Contractor declares that the check revealed no indication of malicious software*. This provision applies to all supplying, including preliminary and advance supplying, e.g., for testing purposes.

2.3 **Effecting of the operational readiness* of the system**

The Contractor is obliged to effect the operational readiness* of the system in accordance with the contractual provisions and to that end to deploy, install*, customize*, and integrate* the individual system components* owed by it as well as the Principal-provided components*. In each instance, this takes place in accordance with the description of services or, if not specified therein, to the extent necessary to effect the operational readiness* of the system and/or integrate* the Principal-provided components*. After successful completion of the work, the Contractor demonstrates the operational readiness* of the system on the stipulated date pursuant to Section 11.

2.3.1 **Scope of rights to services for effecting the operational readiness* of the system**

If no other intended use is stipulated in the EVB-IT System Delivery Contract, the Contractor grants the Principal the following rights to the work products produced through the aforementioned activities for the Principal, such rights being

- nonexclusive,
- unrestricted as to location,
- exercisable in any hardware and software environment,
- transferrable,
- permanent, irrevocable, and non-terminable,

in each instance upon delivery*:

- to use the work products in the original form or in modified, translated, adapted, or transformed form,

- to modify, translate, adapt, or in other ways transform the work products,
- for noncommercial purposes and in any known medium or any other way, to store, reproduce, display, or publish the work products or to disseminate them in physical or nonphysical form,
- to allow use by third parties for noncommercial purposes,
- to allow operation for the Principal,
- to use the work products not only for its own purposes, but also in order to render services for third parties,

If activities on standard software* take place, the Contractor grants the Principal rights to such work products only to the extent to which the Contractor itself is entitled to rights to the standard software*.

2.4 **Training sessions**

2.4.1 If training sessions are stipulated, the Contractor conducts them under its own responsibility and in particular in keeping with the stipulations in Section 5 of the EVB-IT System Delivery Contract. Unless otherwise agreed, all training sessions must be conducted in German. Training sessions take place on the Principal's premises, unless otherwise agreed. If training sessions do not take place on the Principal's premises, the Contractor is responsible for providing the space and the corresponding training infrastructure. A training day comprises eight 45-minute class hours and appropriate breaks. The training remuneration covers adequate preparations for training and the granting of the stipulated rights to use the training materials. The training materials must be presented in German. The stipulated reproductions become the property of the Principal. The training materials include the electronic presentation files.

2.4.2 With respect to training materials not produced for the Principal, the Contractor grants the Principal the nonexclusive, irrevocable, permanent, and transferrable right to use the training materials for the rights holder's own purposes, unless otherwise agreed.

2.4.3 If training materials or parts thereof were produced for the Principal, the Contractor grants the Principal the rights in accordance with Section 2.3.1 with respect to such training sessions and otherwise only for the rights holder's own purposes, unless otherwise agreed.

3 Defect classification

3.1 Unless otherwise agreed in the EVB-IT System Delivery Contract, a distinction is made between the following three defect categories for purposes of warranty and system service:

3.1.1 An operation-impeding defect is present if use of the system is impossible or severely limited.

3.1.2 An operation-hampering defect is present if use of the system is limited substantially.

3.1.3 A minor defect is present if use of the system is possible without limitation or with minor limitations.

3.2 An operation-hampering defect is also present if the minor defects together cause substantial limitation of use of the system.

4 System service

If the performance of system service is stipulated, the Contractor provides this in accordance with the stipulations in the EVB-IT System Delivery Contract and the following provisions:

4.1 Restoration of operational readiness* (fault elimination)

The restoration of operational readiness* includes all measures by the Contractor necessary for fault elimination, unless otherwise agreed. Examples of this include hardware repairs and standard software* maintenance to eliminate faults. The latter comprises, for example, the supplying of a program version* for the standard software* necessary for fault elimination. If fault elimination for standard software* is stipulated, the Contractor is obliged over the term of the contract to provide an available fault-eliminating program version*. If a fault-eliminating program version* is not available, the Contractor must make a workaround* available. This must not include any programming. If this is unreasonable, the Contractor must urge the manufacturer of the standard software* to supply, as soon as possible, a fault-eliminating program version*. The Contractor will provide information about this at the Principal's request. In connection with the duty to provide a workaround*, the Principal generally cannot demand intervention in the object or source code* of the standard software*.

The obligation to supply a program version* also includes the obligation to grant rights of use of the type and scope existing for the standard software* to be maintained.

4.1.1 Unless otherwise agreed, a new system component* must be adopted by the Principal if it serves to eliminate faults. The Principal is not obliged to adopt a new system component* if it cannot be reasonably expected to do so because the new system component* differs materially from the stipulated execution.

If the Principal does not adopt a new system component* for this reason, the Contractor will, at the Principal's request, propose a different solution, if that is possible and reasonable.

If the Principal adopts a new system component*, the following applies:

- If the new system component* contains more functionality than the system component* named in the EVB-IT System Delivery Contract ("additional performance"), the Principal is obliged to pay additional remuneration only if it intends to use such additional performance. This also applies to a case in which it uses the additional performance even though it could have used the new system component* in accordance with the agreement even without the additional performance, but not to a case in which it can use the previous functionality only together with the additional performance. No additional remuneration applies if the supplying of the new system component* is already the subject matter of the performance obligation pursuant to Section 4.3.
- If the Principal incurs higher costs than before through use of the new system component*, such costs are borne by the Contractor. This does not apply if such higher costs are due to the fact that the Principal intends to use existing additional performance. The second sentence of the first bullet item in this Section 4.1.1 applies *mutatis mutandis*.

4.1.2 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 place of performance), are considered the service times. If no response times* are stipulated, work on restoring operational readiness*

must begin without delay after receipt of the fault message within the service times. If no restoration times* are stipulated, the work on restoring operational readiness* must be completed within a reasonable period within the service times. If the Contractor does not adhere to stipulated response and/or restoration times*, it is in default when such deadlines are exceeded even without a warning, unless it bears no responsibility for the deadline being exceeded.

In the event of default, the Principal can demand compensation for the damage caused by delay. Moreover, it can cancel the stipulation on system service pursuant to Section 7 of the EVB-IT System Delivery Contract and/or demand damages in lieu of performance, if it has set a reasonable deadline for performance by the Contractor to no avail. If the same fault recurs after the declaration of operational readiness* and the fault is based on the same cause, it is not considered eliminated. If the Contractor proves that the Principal culpably caused the fault, the Contractor can demand reasonable remuneration from the Principal for the fault elimination.

4.2 **Maintenance of operational readiness* (preventive measures)**

Unless otherwise agreed, maintenance of operational readiness* comprises all measures by the Contractor performed on the system or on system components* to prevent future faults. This includes, for example, the regular replacement of wearing parts and the replacement of modules in a timely manner before the end of their life cycle. This also includes the supplying of fault-eliminating program versions* of the standard software*, to the extent that they are available to the Contractor for use by the Principal without the payment of license fees and are necessary for the maintenance of operational readiness*.

4.3 **Supplying of available program versions of the standard software***

If the Contractor is obliged to supply new program versions*, the Contractor must install and customize* them and integrate* them into the system, to the extent necessary for effecting operational readiness* and unless otherwise agreed. In each instance this takes place in accordance with the description of services or, if not specified therein, to the extent necessary to effect operational readiness*. The obligation to supply program versions* also includes the obligation to grant rights of use of the type and scope existing for the standard software* to be maintained.

4.4 **Declaration of operational readiness*/acceptance of the performance of system service**

After the performance of the system service on the system, the Contractor declares the successful completion of the respective work, and thus fault elimination, for example. If operational readiness* is not present despite this declaration, the performance of the system service is considered successful only if the Contractor proves that this is due neither to the performed system service nor to any underlying fault. In the case of successful elimination of a fault, the time of the declaration of operational readiness* is sufficient for deadline compliance when judging adherence to the stipulated restoration time*. Acceptance of the performance of system service can be stipulated in specific cases.

4.5 **Liability for defects with the performance of system service**

If the system service is carried out defectively, Section 13 applies *mutatis mutandis*. Withdrawal is replaced by the right to termination of the system service stipulation with regard to the respective service, unless the Principal cannot be reasonably expected to abide by the

system service stipulation as a whole. In that case, the Principal is entitled to terminate the system service stipulation as a whole.

4.6 **Documentation of the performance of system service**

The Contractor adequately documents the system service carried out, unless otherwise agreed.

The Contractor will incorporate into the documentation all adjustments and changes in the documentation necessitated by measures on system service pursuant to Section 4, unless otherwise agreed. If such incorporation is not legally possible for the Contractor, it will provide corresponding supplementation of the documentation.

4.7 **Term and termination**

Unless otherwise agreed, the system service begins with system delivery*.

4.7.1 If no end of the respective term is stipulated in the EVB-IT System Delivery Contract, the contractual provisions on system service can be terminated with notice of three months from the end of a calendar month, but no earlier than at the end of a minimum term of contract stipulated in the EVB-IT System Delivery Contract. A different notice period for termination can be stipulated in the EVB-IT System Delivery Contract.

4.7.2 Apart from this, the contractual provisions on system service can be terminated by either party only in the presence of good cause – without observance of a notice period – within a reasonable period from the time that the reason for termination becomes known. 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 parties' interests, can no longer be reasonably expected to continue the agreement. If the good cause consists of the breach of a contractual duty, termination is permitted only after a period set for remedial action has expired to no avail or a warning has been given to no avail, unless the setting of a period can be dispensed with pursuant to Section 323 (2) of the German Civil Code [*Bürgerliches Gesetzbuch*].

5 Documentation

5.1 The Contractor must deliver the system with documentation in accordance with Section 6 of the EVB-IT System Delivery Contract.

5.1.1 The documentation of the system components* must enable the personnel of the Principal deployed for use and administration to properly operate the respective system components* after completion of the stipulated training, provided that the personnel has adequate prior education and training.

5.1.2 The Contractor must moreover document the services pursuant to Section 2.3 on effecting operational readiness* in such a comprehensive manner that the integration* of the system components* with each other and with the Principal-provided components* is comprehensible to qualified personnel.

5.2 Unless otherwise agreed, the respective documentation must be delivered and turned over together with the system prior to the demonstration of operational readiness* pursuant to Section 11, written in German, and in printable or print form. The use of common English technical terms is permitted.

5.3 The Contractor documents the measures carried out in connection with the liability for defects pursuant to Section 13, unless otherwise agreed.

5.4 The Contractor will incorporate into the documentation all adjustments and changes in the documentation necessitated by measures in connection with the liability for defects pursuant to Section 13, unless otherwise agreed. If such incorporation is not legally possible for the Contractor, it will provide corresponding supplementation of the documentation.

5.5 The Contractor grants the Principal the rights to the documentation produced for the Principal in accordance with Section 2.3.1, unless otherwise agreed. For all other documentation, the Contractor grants the Principal the rights in accordance with Section 2.2, unless otherwise agreed. In the case of documentation for standard software*, the Contractor grants the Principal rights to such documentation only to the extent to which the Contractor itself is entitled to rights to the standard software*.

6 Contractor's reporting obligations

6.1 The Contractor is obliged to notify the Principal without delay if requirements of the Principal are, to a significant extent,

- deficient, incomplete, or contradictory,
- not executable as stipulated,

or if Principal-provided components* or the system environment* are not suited for effecting the operational readiness* of the system. With respect to Principal-provided components* and the system environment*, the Contractor is not liable for the nonfulfillment of this duty in the event of ordinary negligence. To the extent possible through reasonable efforts, the Contractor must at the same time notify the Principal of the foreseeable consequences and await the Principal's decision before taking further action. The Principal will communicate this decision without delay. The Contractor is obliged to examine and check the requirements, Principal-provided components*, and system environment* only to the extent necessary to effect the operational readiness* of the system.

6.2 If the Contractor recognizes that the Principal's data security measures are not in compliance with proper data security practices, then the Contractor must notify the Principal of this and of the foreseeable consequences without delay.

6.3 If the Principal's cooperation is not specified in schedules coordinated between the parties, the Contractor must call the Principal's attention to the cooperation to be provided in such a timely manner that the stipulated rendering of service is not jeopardized. If, in the Contractor's opinion, the Principal's cooperation is not provided, is not provided on time, or is not provided properly, and such cooperation is essential to the contractual performance, the Contractor will call the Principal's attention to this.

6.4 If it is determined in performance of the contract that the meeting of deadlines in accordance with the schedule and performance plan is jeopardized, the Contractor will inform the Principal of this without delay.

6.5 The Contractor informs the Principal of copy or usage protections* that could impede use of the system.

7 Contractor's personnel, subcontractors

7.1 The Contractor effects the operational readiness* of the system through personnel who are qualified in accordance with the contractual stipulations. Communication with the Principal takes place in German, unless otherwise agreed.

7.2 The Contractor may deploy subcontractors for essential services for which the rendering of service by the Contractor itself is stipulated only if the Principal expressly consents thereto. If subcontractors are stipulated, consent is required for changes in them in each instance. The Principal will not deny its consent without objective reasons; the reasons must be communicated. A new subcontractor undergoes initial training at the Contractor's expense.

8 Remuneration

8.1 The fixed all-inclusive price is the total remuneration, which cannot be unilaterally altered, that is owed for the service pursuant to Section 1.1, unless separate, possibly all-inclusive remuneration has been stipulated for specific services. Travel time, travel expenses, and incidental costs as well as the costs of materials are included in the fixed all-inclusive price. Additional charges by the Contractor are excluded as long as the parties do not stipulate any change in the services.

8.2 Any remuneration based on cost stipulated in the EVB-IT System Delivery Contract is compensation for the expenditure of time, unless otherwise agreed. Costs of materials, travel time, travel expenses, and incidental costs* are remunerated in accordance with the contractual stipulation. Waiting time for the Contractor for which the Principal bears responsibility is remunerated the same as working time. However, the Contractor must allow the deduction of savings achieved by not rendering its service, gains earned through the use of its services elsewhere, or gains that it maliciously neglects to earn. If a cap has been stipulated for remuneration based on cost, the Contractor is obliged to fully render the stipulated service even if that cap is exceeded. This does not apply if the Contractor does not bear responsibility for exceeding the cap. In such a case, however, the Contractor is obliged to fully render the stipulated service against additional remuneration based on cost at the stipulated rates, if the Principal so demands.

8.3 Payment of the remuneration is due after system delivery*, unless otherwise agreed in the payment schedule in Section 10 of the EVB-IT System Delivery Contract (e.g., for partial deliveries*). The remuneration for system service is due monthly in arrears, unless otherwise agreed. Section 8.4, sentence 2, is unaffected. In the case of stipulated remuneration based on cost, if acceptance has been stipulated for the performance of system service pursuant to the last sentence of Section 4.4, this is another condition for payment falling due.

8.4 Remuneration that has fallen due must be paid within 30 days after receipt of a verifiable invoice, unless otherwise agreed. In the case of remuneration based on cost, proof of performance and, if applicable, costs of materials signed by the Contractor must be submitted, e.g., in accordance with Sample 2 – System Delivery Contract Proof of Performance.

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

Breaks must be accounted for and are not compensated. If more than six hours are performed,

it is assumed that the Contractor took a half-hour break. This does not apply if the Contractor proves that no break was taken.

8.6 If a price adjustment is stipulated for performance of system service pursuant to Section 4 that is not included in the fixed all-inclusive price, the following applies unless a different arrangement has been provided for: An increase in the remuneration can be first announced 12 months after system delivery*, and further increases can be announced no earlier than 12 months after the effective date of the previous increase. An increase takes effect three months after the announcement. The increase must be reasonable and in line with market practice and may not exceed 3% of the remuneration for the performance of system service applicable at the time of announcement of the increase.

8.7 All prices are understood to be strictly net and, if subject to value-added tax, are quoted before statutory value-added tax.

9 Default

9.1 The deadlines for system delivery* and, if stipulated, partial deliveries* are set forth in the schedule and performance plan pursuant to Section 9 of the EVB-IT System Delivery Contract. Unless otherwise agreed, these dates are binding. In the event of delays for which the Contractor bears no responsibility, the delivery deadlines affected by the delay are postponed appropriately; the parties' statutory claims are unaffected by this.

9.2 If the Contractor does not meet a deadline for system delivery* or partial deliveries*, it is in default even without a warning. This does not apply if the Contractor bears no responsibility for the delay. In the event of default, the Principal can demand compensation for the damage caused by delay. In addition, the Principal can withdraw from the EVB-IT System Delivery Contract and demand damages in lieu of performance if it has set an adequate deadline for performance by the Contractor to no avail. Instead of damages in lieu of performance, the Principal can demand reimbursement of futile expenditures within the meaning of Section 284 of the German Civil Code. The setting of a period for performance may be dispensed with in the cases specified by law pursuant to Section 281 (2) and Section 323 (2) of the German Civil Code.

9.3 Furthermore, if the stipulated deadline for system delivery* is exceeded by more than seven calendar days, the Principal is entitled to demand a contractual penalty for each calendar day on which the Contractor is in default in the amount of 0.2% of the contract value*. The first sentence also applies to situations in which stipulated deadlines for partial deliveries* are not met. In such cases, the contractual penalty is calculated based on the share of the contract value* applicable to the partial delivery*. However, the total contractual penalties to be paid on the basis of this provision may not exceed 5% of the contract value*.

9.4 The respective contractual penalty can be asserted until full payment of the remuneration for the respective partial delivery* or system delivery*. This does not apply if the Principal, upon the respective delivery*, has not reserved the right to impose the contractual penalty despite prompting by the Contractor. Contractual penalties are set off against claims for damages.

10 Cooperation by the Principal

10.1 The Principal has the incidental obligation to perform the acts of cooperation named in Section 13 of the EVB-IT System Delivery Contract and to provide the Principal-provided components* pursuant to Section 3 of the EVB-IT System Delivery Contract and of making the stipulated system environment* available. The Principal will make the necessary information and documents from its sphere available to the Contractor. The Principal will grant the Contractor's

employees access to the Principal's premises and to the information technology infrastructure present there, to the extent this is necessary to render the service and the contractually stipulated personal conditions (e.g., security clearances in accordance with the German Security Screening Act [*Sicherheitsüberprüfungsgesetz*] – SÜG) are met.

If the Principal does not perform its acts of cooperation, does not do so in a timely manner, or does so incompletely, the Contractor can submit an offer to render these services on its own in the Principal's stead. Other claims by the Contractor are unaffected.

10.2 The Principal must report faults or defects, thereby including information known to it that is relevant to the detection thereof. If no other form of fault report is stipulated, the Principal will generally do so using the fault reporting form in accordance with Sample 1. At the Contractor's request, the Principal must make all reasonable efforts to take measures falling within its sphere that allow for identification and analysis of the fault or defect, e.g., providing specific technical information from its sphere that is necessary and that the Principal can provide through reasonable efforts.

10.3 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 teleservice stipulation.

10.4 Proper data security is incumbent on the Principal, to the extent that data security is not an element of the services to be rendered by the Contractor.

10.5 In the event of stipulated system service, the Principal is obliged to inform the Contractor in a timely manner of changes in the system components* not carried out or initiated by the Contractor, if they affect the rendering of the contractual services by the Contractor. This obligation applies regardless of whether the Principal is entitled to make such a change. The Principal is also obliged to inform the Contractor of changes in the system environment* or Principal-provided components* if they affect the contractual services by the Contractor. The Contractor will notify the Principal without delay of any detrimental effects of such changes of which the Contractor becomes aware. Either contracting party can demand that the agreement be adjusted in accordance with the changes.

10.6 If system components* or parts are to be replaced, the Principal will remove the data storage media from them, unless otherwise agreed.

11 System delivery*

11.1 System delivery* comprises the delivery of all stipulated system components* of the system, including the effecting and demonstration of the system's operational readiness* and any other services stipulated for system delivery*. The demonstration comprises demonstrating the system's operability as well as specific functionalities, to the extent expressly stipulated in the System Delivery Contract. The system is not delivered if the Principal justifiably refuses system delivery* pursuant to Section 11.4.

11.2 Unless otherwise agreed, the Principal makes necessary test data available and the demonstration of the system's operational readiness* takes place on the Principal's premises and during its business hours. The time of the demonstration must be coordinated with the Principal.

11.3 Partial deliveries* take place only if they are stipulated. Sections 11.1 and 11.2 apply *mutatis mutandis*. The demonstration of the operational readiness* of the last partial delivery must include a demonstration of interoperability with all earlier partial deliveries*, to the extent that such interoperability is required in order to effect the operational readiness* of the system.

11.4 The Principal can refuse the respective delivery* if operation-impeding defects within the meaning of Section 3.1.1 and/or operation-hampering defects within the meaning of Section 3.1.2 are identified prior to conclusion of the respective delivery*. The right of refusal also exists if the Contractor does not satisfy its duty to properly demonstrate the operational readiness* of the system.

11.5 The signing of a delivery note confirms only that system components* have been physically brought within the Principal's sphere, but not their completeness or freedom from defects or a system delivery* or partial delivery*.

12 Place of performance, passage of risk, shipment

12.1 The place of performance is on the Principal's premises, unless otherwise agreed.

12.2 The risk of accidental loss and of accidental deterioration passes upon system delivery* or the respective partial delivery*.

12.3 Unless otherwise agreed, the Contractor bears the shipping and packaging costs.

13 Principal's rights in the event of defects in the system (warranty [*Gewährleistung*])

13.1 The Contractor agrees to deliver the system free of defects of quality and of title. A defect of quality is also present in the system if the operational readiness* of the system has not been effected in accordance with the contract.

13.2 The limitation period for claims relating to defects of quality and of title is 24 months after the system delivery*, unless otherwise agreed. After the limitation period has run for 12 months, should the Contractor invoke this provision, a withdrawal from the EVB-IT System Delivery Contract with respect to the standard software* for any reason whatsoever is excluded. The right to withdrawal is unaffected with respect to all other services, even if the reason for the withdrawal lies in a defect in the standard software*. All claims relating to defects of quality and of title become statute-barred in the regular limitation period if the Contractor has maliciously concealed the defect. In that case, however, the limitation period does not end before the deadlines pursuant to the first and second sentences.

13.3 For all defects in partial deliveries*, the limitation period begins upon partial delivery*, but ends only at the end of the limitation period for defects in the system, no later than three years after the respective partial delivery*.

13.4 The defect claims do not extend to system components* that the Principal or a third party changes without the Contractor's consent. This does not apply if the Principal proves that this change was not the cause of the reported defect.

13.5 Moreover, the defect claims do not extend to standard software* that the Principal does not use in the stipulated system environment*, unless the Principal proves that such use did not cause the reported defect.

13.6 If the Principal reports defects before the end of the limitation period, and if the parties negotiate within the meaning of Section 203 of the German Civil Code, then the limitation

period is suspended until the Contractor or the Principal refuses to continue the negotiations. The claim becomes statute-barred no sooner than three months after the end of the suspension.

13.7 A new system component* must be adopted by the Principal if it serves the purpose of preventing or remedying defects and the Contractor also makes up for detrimental consequences for the Principal resulting from adoption, whereby Section 13.8 applies. The Principal is not obliged to adopt the new system component* if it cannot be reasonably expected to do so, e.g., because the new system component* differs materially from the stipulated execution or in respect of its operation. The Contractor grants the Principal rights to use new program versions* of the type and scope existing for the delivered standard software*.

13.8 If the Principal adopts a new system component*, the following applies:

- If the new system component* contains more functionality than the system component* named in the EVB-IT System Delivery Contract ("additional performance"), the Principal is obliged to pay additional remuneration only if it intends to use such additional performance. This also applies to a case in which it uses the additional performance even though it could have used the new system component* in accordance with the agreement even without the additional performance, but not to a case in which it can use the previous functionality only together with the additional performance.
- If the Principal incurs higher costs than before through use of the new system component*, such costs are borne by the Contractor. This does not apply if such higher costs are due to the fact that the Principal intends to use existing additional performance; the second sentence of the first bullet item in this Section 13.8 applies *mutatis mutandis*.

13.9 The Contractor must remedy defects known to it without delay, no later than within a reasonable period set by the Principal, either through repair or replacement, at the Contractor's option. In the case of a defect in the standard software*, the Contractor can provide a workaround* until a program version* remedying the defect is supplied, if and as long as this is reasonable for the Principal. The Contractor's obligation to remedy the defect without delay is unaffected. In cases of infringements of third-party property rights, Section 14 takes precedence. The Contractor must bear the costs required for the purpose of supplementary performance, in particular transport, travel, and labor costs as well as costs of materials. If supplementary performance takes place in the form of replacement, the Contractor's claim for surrender of use lapses.

13.10 If the Contractor fails to successfully complete the remedying of defects within a deadline set for it, the Principal can either set another reasonable grace period and, after it ends without satisfactory result, reduce the remuneration appropriately or withdraw in whole or in part from the EVB-IT System Delivery Contract. Withdrawal because of an insignificant defect is excluded, however.

13.11 If the statutory conditions are met, the Principal can moreover demand damages or reimbursement of expenditures pursuant to Section 437 no. 3 of the German Civil Code.

14 Third-party property rights*

If a third party asserts claims against the Principal owing to infringement of property rights* through use of the delivered system components* or other performance by the Contractor, and

if the use thereof is impeded or prohibited as a result, the Contractor is liable as follows, without prejudice to the Principal's rights pursuant to Section 13:

- Exercising its option pursuant to Section 13.9, the Contractor can, at its own expense, change or replace the performance in such a way that it does not infringe the property rights*, but still essentially corresponds to the stipulated functional and performance characteristics in a manner reasonable for the Principal, or the Contractor can indemnify the Principal against claims by the holder of the property rights.
- If subsequent performance is impossible for the Contractor or is possible only under disproportionate conditions, it has the right to take back the respective services against 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.

The Principal's other claims, e.g., to withdrawal, reduction, and damages, are unaffected.

14.2 The parties will notify each other of asserted third-party claims without delay. The Principal will not acknowledge the alleged infringement of property 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 reimburses 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.

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

15 Limitation of liability

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

15.1 In the case of breaches of duty owing to ordinary negligence, the liability for the contract overall is limited in principle to the contract value*.

- If the contract value* is less than EUR 25,000, the liability is limited to EUR 50,000.
- If the contract value* is EUR 25,000 or greater but less than EUR 100,000, the liability is limited to EUR 100,000.

15.2 The liability for default caused by ordinary negligence is limited overall to 50% of the liability cap pursuant to Section 15.1. In the event of other breaches of duty owing to ordinary negligence, however, the Contractor's liability for the contract does not exceed the liability caps stipulated in Section 15.1.

15.3 The liability cap for breaches of duty owing to ordinary negligence with regard to system service amounts overall to twice the remuneration owed for the first contract year of system service, not taking into account any stipulated reduction owing to defect claims.

15.4 In the event of data loss, the Contractor is liable only for the expense that would have been necessary for recovery 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.

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

15.5 Claims arising from lost profits are excluded, unless otherwise stipulated in Section 16.3 of the EVB-IT System Delivery Contract.

16 Deposit of source code with standard software*

16.1 If the deposit of the source code* for specific standard software* has been stipulated, this takes place at the stipulated depository in accordance with the deposit stipulation set forth in the EVB-IT System Delivery Contract. The deposit obligation applies to the version of the source code* for a supplied program version* as most recently modified by the Contractor on the basis of the EVB-IT System Delivery Contract, including debugging, unless otherwise agreed in the deposit stipulation. The Principal enjoys the right, conditional upon surrender, in respect of all versions of the source code* for standard software* to be deposited, to adapt it for the purpose of debugging and preserving usability, especially in the system, and to generate executable new program versions* from it to which the Principal in turn enjoys the same rights as to the originally supplied version of the standard software*.

16.2 The aforementioned rights are granted upon supply of the executable program versions*.

16.3 If the transfer of new program versions* is stipulated in Section 7.1.3 of the EVB-IT System Delivery Contract for the deposited standard software*, the deposit obligation also applies to the respective source code* of the supplied program versions*.

16.4 The costs of depositing are borne by the Principal.

17 Liability insurance

17.1 If stipulated, upon entering into the EVB-IT System Delivery Contract the Contractor presents proof to the Principal that the Contractor has industrial liability insurance in line with market practice in terms of coverage and scope or comparable insurance from an insurance company in a member state of the EU.

17.2 The Contractor will maintain this insurance coverage until the end of the EVB-IT System Delivery Contract, but at least until the defect claims become statute-barred. If the Contractor does not fulfill this obligation, the Principal is entitled, after setting a reasonable deadline to no avail, to withdraw from the EVB-IT System Delivery Contract if it can no longer be reasonably expected to continue the agreement. Further claims of the Principal, especially claims for damages, are unaffected by this. After system delivery, the right of withdrawal is replaced by the right to terminate the system service.

18 Indemnities

18.1 If the Principal is obliged to make a prepayment, the Contractor, concurrently against the prepayment, provides a directly enforceable guarantee provided by a financial institution operating in Germany or a member state of the EU in the amount of the stipulated prepayment or deposits the amount pursuant to Section 18 no. 5 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]. The indemnity serves as indemnity for the Principal's claims for repayment of the prepayment. The deed of guarantee for the prepayment must be returned without delay once the Contractor has rendered services equivalent to the value of the prepayment.

18.2 With a contract value* of EUR 50,000 or greater, an indemnity for liability for defects can be stipulated. If an indemnity for liability for defects is stipulated, the Contractor deposits the stipulated sum of money at the time of system delivery* or, if partial delivery* has been stipulated, at that time, pursuant to Section 18 no. 5 of the VOL/B or provides the Principal with a directly enforceable guarantee provided by a German financial institution or a comparable financial institution from a member state of the EU in the stipulated amount. The indemnity for liability for defects is 5% of the contract value*, and in the case of partial deliveries* 5% of the pro rata contract value*, unless otherwise agreed. The indemnity serves to safeguard all defect claims. It must be returned to the Contractor without delay after the end of the limitation periods for all defect claims and after satisfaction of the defect claims not yet statute-barred up to then.

19 Data protection, nondisclosure, and security

19.1 The Principal provides the Contractor with all relevant facts and circumstances above and beyond the provisions of law that the Contractor must know for reasons of data protection and nondisclosure.

19.2 Before providing a data storage medium to the Contractor, the Principal ensures that content meriting protection has been deleted, unless otherwise agreed.

19.3 The Contractor ensures that all persons entrusted with processing or performing the EVB-IT System Delivery Contract comply with provisions of law pertaining to data protection. The commitment to data secrecy required by data protection law must be effected no later than upon initial commencement of activity and must be confirmed to the Principal in writing upon demand.

19.4 The Principal can withdraw from the EVB-IT System Delivery Contract in whole or in part if the Contractor culpably fails to attend to its duties pursuant to Section 19.3 within a reasonable set period, with due consideration for the facts and circumstances pursuant to Section 19.1, or breaches data protection provisions with willful intent or gross negligence. If the aforesaid breaches of duty concern the system service exclusively, the right of withdrawal is replaced by the right to terminate the system service.

19.5 The Principal and the Contractor are obliged to treat all confidential information, business secrets, and trade secrets obtained by way of the contractual relationship as confidential, and in particular not to disclose them to third parties or use them for other than contractual purposes. The same applies to the exchange of experience within the public sector.

19.6 Information is considered confidential if a reasonable third party would regard it as meriting protection or 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 EVB-IT System Delivery 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 EVB-IT System Delivery Contract with no violation of a confidentiality obligation.

20 Rights of retention

The Contractor enjoys no rights of retention or right to refuse performance, unless the Principal does not contest the underlying counterclaims or such counterclaims have been recognized by enforceable final judgment.

21 Text form

Unless provided for otherwise, contractual communication and declarations must at least be made in text form. Registration in a ticket system is sufficient for notices of defects.

22 Applicable law

The laws of the Federal Republic of Germany apply, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG*).

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23 Definitions

Contract value	Offering price for system delivery* plus the remuneration for additional deliveries*. The contract value is used only to calculate contractual penalties, the liability caps, and the amount of the indemnity for liability for defects.
Principal-provided components	Principal-provided components are components outside the system environment* that the Principal makes available for integration*.
Operational readiness	The system or the partial delivery* is available to the Principal in accordance with the contract. With regard to the performance of system service, operational readiness relates only to the stipulated system components*, if system service is not stipulated for the entire system.
CISG	United Nations Convention on Contracts for the International Sales of Goods.
Customizing	Adaptation of system components* to the stipulated requirements for system delivery* or the maintenance of operational readiness* (e.g., configuration of system components* to effect operational readiness*)
Integration	The embedding of system components* into the stipulated system environment* or the connection of system components* and Principal-provided components* to each other.
Copy or usage protections	Measures to restrict the ability to copy and/or use a system component*.
Delivery	Umbrella term for system delivery* and partial delivery*.
Incidental costs	Expenditures by the Contractor that are necessary for the rendering of service but are neither travel expenses nor costs of materials.
Patch	Remedying of a defect and/or fault in the standard software* without intervening in the source code*.
Program version	Umbrella term for patch*, update*, upgrade*, and release/version*.

Source code	Code for a program in the programming language version.
Response time	Period within which the Contractor must begin work on eliminating faults and remedying defects. The period begins upon receipt of the fault or defect report within the stipulated service times and runs during the stipulated service times.
Release/version	New development stage of standard software* differing significantly from the previous release or version in terms of function and/or data (e.g., 4.5.7 → 5.0.0).
Malicious software	Software with a non-stipulated function not desired by the Principal that at least partly has the purpose of endangering or impeding the availability of data, resources, or services, data confidentiality, or data integrity, e.g., viruses, worms, Trojan horses, etc.
Standard software	Software programs, program modules, tools, etc., that were developed for the needs of a multitude of customers on the market and not specifically by the Contractor for the Principal, including the appurtenant documentation.
System component	Part of the system, e.g., hardware or standard software*. This includes the new program versions* supplied in accordance with the EVB-IT System Delivery Contract.
System delivery	Services by the Contractor pursuant to Section 11.1.
System environment	Technical, spatial, and professional-organizational environment into which the system to be delivered must be integrated.
Property rights	Industrial property rights, copyrights, and related property rights.
Partial delivery	Delivery of part of the system pursuant to Section 11.3 in conjunction with Section 11.1 and Section 11.2.
Teleservice	Performance using technical facilities for telecommunications from a location outside the place of deployment of the system.
Workaround	Temporary bridging of a defect and/or fault in the standard software*.

Update	Grouping of multiple remedies for defects and/or eliminations of faults and, if applicable, minor functional improvements and/or adjustments of the software* (e.g., 4.1.3 → 4.1.4).
Upgrade	Grouping of multiple remedies for defects and/or eliminations of faults and more than minor functional improvements and/or adjustments of the software* (e.g., 4.1.3 → 4.2.0).
Version/release	See Release/version*.
Restoration time	Period within which the Contractor must successfully complete work on eliminating faults and remedying defects. The period begins upon receipt of the fault or defect report and runs during the stipulated service times.
Additional delivery	Additional deliveries stipulated after the contract is entered into (e.g., exercise of option to additional hardware).

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