General Terms and Conditions for the Procurement and Maintenance of Standard Software

A COMMON INTRODUCTORY PROVISIONS

1 Object and validity

1.1 The present General Terms and Conditions (GTC) govern the conclusion, content and execution of contracts concerning the procurement, use and maintenance of standard software. (1)

1.2 Anyone (the service provider) submitting an offer to the service procurer thereby accepts the present GTC, unless stated otherwise in the tender. Changes and amendments to the present GTC shall require written agreement.

1.3 Unless otherwise expressly provided in the contractual document, the provisions concerning delivery, acceptance and warranty in accordance with clause 26 shall apply separately and mutually independently to the licence contract and to the maintenance of the standard software. The warranty rights arising from the maintenance contract shall not affect those arising from the licence contract.

2 Offer

2.1 The offer including any demonstrations is free of charge unless stated otherwise in the tender.

2.2 The offer is prepared on the basis of the service procurer's tender. If the offer deviates from the tender or the GTC of the service procurer, the offer must indicate this expressly.

2.3 The service provider shall indicate the value added tax separately in the offer.

2.4 The offer remains binding during the time period indicated in the tender. If there is no such indication, a time period of three months after receipt of the offer shall apply.

3 Deployment of staff

3.1 For services rendered by staff of the service provider at the offices of the service procurer, the service provider shall deploy only carefully selected and appropriately trained staff. The service provider shall replace staff members who do not have sufficient expertise or otherwise interfere with or endanger performance of the contract. In particular, the service provider shall take account of the service procurer's interest in continuity.

3.2 For the rendering of services in accordance with clause 3.1, the service provider shall only deploy staff with the authorizations required for rendering of the services.

3.3 To the extent that the service provider renders services on site, it shall comply with the company regulations, in particular the house rules, of the service procurer. The service provider shall in any event comply with the relevant safety provisions. The service procurer shall communicate the necessary information in a timely manner. The service provider shall impose these obligations on its staff, subcontractors, subsuppliers, and engaged third parties.

3.4 The provisions set out in clause 3 shall also apply to other staff deployed by the service provider for the purpose of contract performance, especially also to freelance workers.

4 Engagement of third parties

4.1 For services rendered by staff of the service provider at the sites of the service procurer, the service provider may engage third parties (e.g. subsuppliers, subcontractors) for the rendering of its services only with prior written consent of the service procurer. The service provider shall remain liable for the rendering of contractual services by the engaged third parties.

4.2 Substitution is excluded, subject to express agreements to the contrary.

4.3 The parties shall impose the obligations set out in clause 3 (deployment of staff), 5 (observation of health and safety standards, conditions of employment, equal treatment of sexes in relation to salary), 24 (confidentiality) and 25 (data protection and data security) on the engaged third parties (e.g. subsuppliers, subcontractors, substitutes).

5 Observation of health and safety standards, conditions of employment, equal treatment of sexes in relation to salary

5.1 Service providers domiciled or established in Switzerland shall comply with the health and safety standards and conditions of employment applicable in Switzerland as well as the principle of equal treatment of sexes in relation to salary. Conditions of employment shall be deemed to encompass collective and normal employment contracts or, where no such contracts exist, the actual conditions of employment usual for the location and profession. Service providers domiciled in a foreign country shall comply with the relevant conditions applicable where the service is rendered abroad, but at least with the core conventions of the International Labour Organization. (2)

5.2 If the service provider seconds workers from a foreign country to Switzerland to render the service, the provisions of the Secondment Act of 8 October 1999 shall be complied with. (3)

5.3 **Should the service provider violate the obligations arising from clause 5, the service provider shall be liable to pay a penalty, unless the service provider proves that no fault is attributable to it. The penalty shall amount per case of violation to 10% of the annual remuneration, or of**

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1 For the production of individual software, the „General Terms and Conditions for IT Works Contracts and Contracts for the Maintenance of Individual Software" shall apply.
2 ILO conventions: No. 29 of 28 June 1930 concerning Forced or Compulsory Labour (SR 0.822.713.9), No. 87 of 9 July 1948 concerning Freedom of Association and Protection of the Right to Organise (SR 0.822.719.7), No. 98 of 1 July 1949 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (SR 0.822.719.9), No. 100 of 29 June 1951 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (SR 0.822.720.0), No. 105 of 25 June 1957 concerning the Abolition of Forced Labour (SR 0.822.720.5), No. 111 of 25 June 1958 concerning Discrimination in Respect of Employment and Occupation (SR 0.822.721.1), No. 138 of 26 June 1973 concerning Minimum Age for Admission to Employment (SR 0.822.723.8), No. 182 of 17. June 1999 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (SR 0.822.728.2).
3 SR 823.20

the entire remuneration if one-off remuneration has been agreed, though no more than CHF 50,000 in total.

6 Definitions

6.1 Contract: refers to the totality of documents belonging to the agreement (i.e. main document plus all associated components such as the GTC and other annexes).

6.2 Contractual document: refers to the main document belonging to the agreement (i.e. without additional associated components such as the GTC and other annexes).

6.3 Standard software: software manufactured for a large number of different clients, without taking account of requirements specified by the service procurer at the level of code.

6.4 Releases: further developments of the standard software, including firmware, which are termed minor versions (updates) or major versions (upgrades). New releases exhibit new functions, corrections of errors and/or improved performance.

6.5 Incident: a malfunction that limits or interferes with the contractually agreed usability or availability of the software. Incidents also include malfunctions caused by third parties, especially due to interactions with hardware or other software.

6.6 Patch: small changes to software, generally to remedy a bug or security problem of the software in question.

B PROCUREMENT OF STANDARD SOFTWARE

7 Manner and scope of use

7.1 The service provider grants the service procurer the right to use the service provider's standard software. The manner and scope of the use shall be governed by the individual agreement contained in the contract. Unless the parties agree otherwise in the contractual document, the use shall not be limited in time or space. It is not tied to any particular hardware.

7.2 For safety and archive purposes, the service procurer may make the necessary copies without additional remuneration, in order to use the copies on replacement hardware in the event that the original hardware breaks down.

7.3 The service procurer is authorized to parameterize the standard software in view of contractual use and, within the framework of applicable law, to make it interoperable with third-party software.

7.4 Within the framework of clauses 7.1 to 7.3, the standard software may be used within the same company or within the Federal Administration, as applicable. Additionally, the service procurer may, with the written consent of the service provider, transfer the right to use the standard software to a third party.

7.5 The service procurer is entitled to have the standard software operated in the data centre of an engaged third party, exclusively for the purposes of the service procurer (outsourced data centre); it must impose the obligations arising from these GTC on the engaged third party in writing.

8 Installation

Where agreed and against separate payment, the service provider carries out the installation of the standard software on the hardware designated by the service procurer.

9 Documentation

9.1 Together with the standard software, the service provider provides the service procurer with the relevant documentation (installation and user manual) in electronic or paper form in the agreed languages and number.

9.2 The service procurer may copy and use the documentation for the contractual purpose.

10 Instruction of the service procurer's staff

Where agreed and against separate payment, the service provider conducts an initial instruction to be determined according to scope and target audience.

11 Import requirements

The service provider guarantees compliance with any export restrictions and import regulations from the place of origin to the place of delivery in accordance with the contract. The service provider informs the service procurer in writing about any export restrictions of the country of origin.

C MAINTENANCE AND SUPPORT

12 Maintenance and support for standard software

12.1 Within the framework of the contractual agreement, the service provider maintains the standard software for the purpose of preserving its usability. Unless otherwise agreed in the contract or the service description of the offer, software maintenance shall encompass corrective (debugging), adaptive (adjustment to changed circumstances), perfective (expansion of functions) services and the delivery of new releases and patches.

12.2 Within the framework of the contractual agreement, the service provider provides support by advising and assisting the service procurer with respect to use of the software covered by the maintenance agreement.
Unless otherwise agreed, support shall encompass in particular (not exhaustively):
• determination of the cause of reported incidents;
• assistance in the installation of patches and releases by way of appropriate documentation;
• advice and assistance on site or remotely, under the conditions set out in the contractual document.

12.3 The service provider undertakes to ensure an efficient organization for maintenance and support; the service provider shall inform the service procurer immediately of the communication channels for inquiries and of the competent contact persons. The contract shall specify whether and how inquiries and reports may be transmitted in writing, by telephone or electronically.

13 Remote access

If the service provider renders services via remote access, it shall take all economically reasonable and technically and organizationally possible measures to protect data communications from unauthorized access by third parties and to comply with the obligations set out in clauses 24 and 25.

14 Instruction and information

14.1 By request of the service procurer, the service provider conducts an initial instruction to be determined according to scope and target audience in the event of new releases.

14.2 The parties mutually inform each other, immediately and in writing, of any facts or circumstances they have noted or that are recognizable to them that may interfere with or endanger maintenance or support.
The service provider regularly informs the service procurer of further developments of the software. It draws the attention of service procurers to any impact of the use of new releases on the hardware concerned and on any external interfaces.

15 Updating of documentation

The service provider updates the documentation of the software referred to in clause 9.1 above to the extent necessary.

16 Remedy of incidents caused by third parties

On request of the service procurer, the service provider shall participate in the search for the cause of incidents and the remediation thereof, even if an incident or several incidents may have been caused by the interaction of several systems or components. The parties determine in advance how these services are to be remunerated if it is proven that the malfunction was not caused by the software maintained by the service provider.

17 Standby, reaction and repair time

17.1 Standby time
During the standby time set out in the contract, the service provider receives incident reports and requests by way of the agreed communication channels. The manner and scope of the services to be provided during the standby time shall be agreed contractually.

17.2 Reaction time
The reaction time covers the period during which the service provider must begin to analyze and remedy an incident from the time the incident report has been received. The reaction time depends on the priority assigned to an incident and shall be agreed in the contract.

17.3 Repair time
The repair time covers the maximum period from receipt of an incident report by the service provider until the successful remedy of the incident. The repair time shall be determined in the contract.

17.4 The service provider notifies the service procurer that the incident has been remedied.

17.5 Failure to meet agreed deadlines
If the service provider fails to meet the deadlines referred to in clauses 17.1 through 17.3, the service provider shall be liable for a penalty, unless the service provider can prove that no fault is attributable to it. The amount of the penalty shall be set out in the contract on a case-by-case basis. In such cases, a penalty is also owed if the services were accepted subject to a relevant reservation. Payment of penalties does not release the parties from performance or compliance with contractual obligations; penalties are offset against any compensation for damages.

18 Scope of use of releases

18.1 Unless otherwise agreed by the parties in the contract, the use of releases shall be unlimited in time and space. Use is not tied to any particular hardware. For safety and archive purposes, the service procurer may make the necessary copies of the releases without additional remuneration.

18.2 Within the framework of clause 18.1, the releases may be used within the same company or within the Federal Administration, as applicable, and they may be used within the framework of clause 7.5.

19 Beginning and duration

19.1 The contract enters into effect with the signature of both parties, unless otherwise stated in the contractual document. The contract is concluded either for a definite or for an indefinite time period.

19.2 If a contract is concluded for an indefinite time period and unless otherwise agreed, it may be terminated in writing by the service procurer as of the end of a calendar month, by the service provider, however, only after a term of five years. The termination may also only relate to certain parts of the contract. Unless otherwise agreed, the term of notice is 12 months for the service provider and 3 months for the service procurer.

19.3 The right to termination without notice on important grounds remains reserved to both parties at all times. Important grounds include the following in particular:
• the occurrence of events or circumstances that make continuation of the contractual relationship unreasonable for the terminating party, especially the continuing or repeated breach of essential contractual duties;
• the official publication of an application for bankruptcy or of a moratorium granted to a party.

20 Consequences of termination

In the contract, the contracting parties shall specify which resources, data and documents made available within the framework of the contractual relationship must be returned to the other party or destroyed upon termination of the contractual relationship and within what time period.

D COMMON FINAL PROVISIONS

21 Place of performance and transfer of benefits and dangers

21.1 The place and time of performance shall be specified in the contract. Unless otherwise agreed, receipt of the data carrier at

the place of installation of the software shall be considered the time and place of performance in the case of delivery of the standard software on a data carrier; if the standard software is delivered online, the availability of the software for download by the service procurer on the server of the service provider shall be considered the time and place of delivery.

21.2 Benefits and dangers are transferred to the service procurer at the place and time of performance.

22 Default

22.1 If the parties fail to meet agreed deadlines (transactions for delivery by a fixed date), they are immediately considered in default, and in all other cases upon receiving a reminder.

22.2 **If the service provider is in default, the service provider shall be liable to pay a penalty, unless the service provider can prove that no fault is attributable to it. This penalty shall amount to 0.1% of the total contract for each day of delay, but at most 10% of the entire remuneration in the case of one-off payments or of the remuneration for 12 months in the case of recurring services. The penalty is also owed if the services were accepted subject to a relevant reservation. Payment of the penalty does not release the service provider from compliance with contractual obligations. Penalties are offset against any compensation for damages.**

23 Remuneration

23.1 The service provider renders services for a fixed price. The remuneration is either one-off or recurring.

23.2 The contractually agreed remuneration covers all work which is necessary for the proper performance of the contract. In particular, the remuneration covers the granting of all agreed rights of use, any agreed maintenance and support services, all documentation and insurance costs as well as fees and public dues (e.g. value added tax, customs). The individual cost elements must be listed separately in the offer. The agreement on remuneration may distinguish between development, test, integration and production systems.

23.3 The remuneration is due upon handover or installation of the standard software, subject to any contractually agreed payment plan. When the remuneration is due, the service provider submits the corresponding invoice. The due date of the remuneration and the billing frequency for maintenance shall be set out in the contract. Value added tax shall be indicated separately.

23.4 The service procurer shall make payments due within 30 days of receipt of the invoice.

23.5 Subject to other arrangements set out in the contract, the service provider may, with a three-month period of notice, demand a justified adjustment of the recurring remuneration as of the beginning of the next calendar year, but at most according to the development of the Swiss national index for consumer prices.

24 Confidentiality

24.1 The parties shall treat all facts and information confidentially that are neither obvious nor generally accessible. In cases of doubt, facts and information shall be treated confidentially. The parties undertake to take all economically reasonable and technically and organizationally possible measures to ensure

that confidential facts and information are effectively protected from access and knowledge by unauthorized parties.

24.2 The confidentiality obligation predates conclusion of the contract and persists after termination of the contractual relationship.

24.3 The confidentiality obligation shall not be considered breached if confidential information is transmitted by the service procurer within the service procurer's own company (or within the Federal Administration, as applicable) or to engaged third parties. This applies to the service provider to the extent the transmission is required to perform the contract or contractual provisions are transmitted within the company.

24.4 Without the written consent of the service procurer, the service provider may not advertise the fact that cooperation with the service procurer exists or existed, and the service provider may also not list the service procurer as a reference.

24.5 The parties shall impose the confidentiality obligation on their staff members, subcontractors, subsuppliers and other engaged third parties.

24.6 **Should one of the parties violate the confidentiality obligations above, it shall be liable to pay a penalty to the other party unless it proves that no fault is attributable to it. This penalty shall amount per case of violation to 10% of the annual remuneration, or of the entire remuneration if one-off remuneration has been agreed, though no more than CHF 50,000 in total. Payment of the penalty does not release the party from compliance with confidentiality obligations. Penalties are offset against any compensation for damages.**

25 Data protection and data security

25.1 The parties undertake to comply with the provisions of Swiss data protection legislation. They undertake to take the economically reasonable and technically and organizationally possible measures to ensure that data arising in the framework of execution of the contract are effectively protected against unauthorized knowledge by third parties.

25.2 Personal data may be processed only for the purpose and to the extent necessary for performance and execution of the contract. To that extent and for that purpose, personal data may also be transmitted to a company in Switzerland or abroad associated with one of the contracting parties, provided that the prerequisites set out in the provisions of Swiss data protection legislation are met.

25.3 The parties shall impose these obligations on their staff members, subcontractors, subsuppliers and other engaged third parties.

26 Warranty

26.1 The service provider guarantees that it hands over the standard software in good faith with all the agreed and assured characteristics required for the intended use and that the software complies with the relevant legal requirements. The service provider furthermore guarantees that the services rendered have all the agreed and assured characteristics as well as the characteristics that the service procurer may in good faith also expect without any special agreement. The service provider assumes a warranty of 12 months from the handover or installation of the standard software or from receipt of the fully rendered, contractually agreed services. During the warranty period,

defects may be claimed at any time. Even after expiry of the warranty period, the service provider is required to honour claims arising from the warranty rights of the service procurer set out below, provided that the defects were brought to the service provider's attention in writing during the warranty period.

26.2 The service provider guarantees that it is in possession of all the rights to render its services under the contract. In particular, it is entitled to grant the service procurer the rights to use the standard software according to the contractually agreed scope.

26.3 In the event of a defect, the service procurer has the option of demanding remediation of the defect or of deducting the value reduction from the remuneration. If there are substantial defects, the service procurer may withdraw from the contract. If the defect concerns the data carriers or documentation provided by the service provider, the service procurer additionally has the right to demand an error-free replacement delivery.

26.4 If the service procurer demands remediation of the defect or a replacement delivery, the service provider shall remedy the defects by the imposed deadline and bear the costs arising therefrom.

26.5 If the service provider fails to carry out the demanded remediation of the defect or replacement delivery or fails to do so successfully, the service procurer has the option
a. of deducting the value reduction from the remuneration; or
b. of withdrawing from the contract.

26.6 If damage has occurred due to the defect, then the service provider shall be additionally liable for compensation therefor in accordance with clause 29.

27 Intellectual property rights

The intellectual property rights pertaining to the standard software remain with the service provider or third parties. When exercising rights of use of the service procurer, these rights shall be respected in accordance with clause 7.

28 Breach of intellectual property rights

28.1 The service provider shall, at its own expense and risk and without delay, defend against claims by third parties concerning breach of intellectual property rights. Should a third party initiate proceedings against the service provider, the service provider shall without delay inform the service procurer in writing. If the third party asserts claims directly against the service procurer, the service provider shall, upon the first request of the service procurer and to the extent possible under the relevant code of procedure, participate in the lawsuit. The service provider undertakes to bear all costs (including compensation for damages) incurred by the service procurer due to the proceedings and any settlement of the lawsuit out of court. If the dispute is settled out of court, the service provider is only required to assume the agreed payment to the third party if the service provider agreed to the payment in advance.

28.2 If, pursuant to intellectual property rights asserted, the service procurer is unable to use the contractually owed standard software or to avail itself of services in whole or in part, then the service provider has the option of replacing the standard software by other standard software or of changing its services in such a way that they do not breach the rights of third parties but nonetheless comply with the contractually owed scope of services, or of obtaining a licence from the third party at its own

expense. If the service provider fails to implement any of these options within a reasonable period, the service procurer may withdraw from the contract with immediate effect. The service provider shall indemnify the service procurer within the framework of clause 29. To the extent that the service procurer is responsible for the breach of intellectual property rights, the claims against the service provider are excluded.

29 Liability

29.1 The parties are liable for all damages they cause to the other party, unless they can prove that no fault can be attributed to them. Liability for personal injuries is unrestricted. In any event, liability is limited to the effectively arising, proven damage. Unless the contract states otherwise, liability for slight negligence is at most CHF 1 million per contract. Liability for loss of profits is excluded.

29.2 In accordance with clause 29.1, the parties shall be liable for the conduct of their staff members and other auxiliary persons as well as third parties engaged for the purpose of performance of the contract (e.g. subsuppliers, subcontractors, substitutes) in the same way as for their own conduct.

30 Contract amendments, inconsistencies and partial invalidity

30.1 Changes and amendments to the contract as well as cancellation of the contract shall be in writing.

30.2 In the event of inconsistencies among the provisions, the following order of precedence applies: contractual document, GTC, tender, offer.

30.3 If individual provisions of the contract turn out to be invalid or unlawful, the validity of the contract is not affected. In such cases, the provision in question shall be replaced by an effective provision that is as equivalent as possible in economic terms.

31 Assignment and pledges

The service provider may not assign or pledge claims vis-à-vis the service procurer unless the service procurer has consented in writing in advance. The service procurer may refuse consent only in justified cases.

32 Applicable law and place of jurisdiction

32.1 Swiss law shall be applicable exclusively.

32.2 The exclusive place of jurisdiction shall be **Bern**.

33 Vienna Convention

Application of the provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (Vienna Convention) [4] is expressly excluded.

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4   RS 0.221.211.1