



Procurement Terms and Conditions of the Deutsche Telekom Group for ICT Projects (“Procurement Terms and Conditions for ICT Projects”)

1. Scope of Application

(1) The procurement terms and conditions set forth below shall apply to all ICT projects on the basis of work to be performed (*Werkleistungen*), such as devising ICT-based processes (planning services, detailed technical design) and creating software, including the provision of other directly related products, work and/or services, such as:

- Adjusting software which has been licensed or made available at the source-code level;
- Customizing software which has been licensed or made available;
- Creating and licensing customized software on a permanent basis; and
- Providing support, training, and documentation.

The procurement terms and conditions shall additionally apply to service level agreements concerning the operation of a complete system. The products, work and/or services provided by the Contractor within this context may particularly include:

- Restoring operability (troubleshooting);
- Maintaining operability (preventive measures);
- Licensing new program versions;
- Modifying or expanding the IT system; and
- Further services.

The products, work and/or services are described in detail in the service description/service requirements. The products, work and/or services may be ordered step by step, independently of each other.

- (2) The present procurement terms and conditions and any further procurement or purchasing terms and conditions indicated in the order shall apply exclusively. Conflicting or deviating terms and conditions of the Contractor shall not apply, even if the products, work and/or services provided by the Contractor are unconditionally accepted despite knowledge of such terms and conditions.
- (3) Only purchase orders, calls, contracts, etc. (hereinafter referred to as “Order”) and other declarations of intent which are placed or made in writing by a procurement unit of Deutsche Telekom AG (hereinafter referred to as “DTAG”) or a Group Company (hereinafter all referred to as “Customer”) shall be legally valid. The requirement of the written form in the above sense is also satisfied by communications sent electronically, by fax or e-mail or using special electronic communication methods provided by the Customer for handling purchasing transactions, including full integration, web-based applications or declarations transmitted via an order management tool. An electronic declaration of intent shall be deemed received on the day on which it is available for retrieval by the recipient under its electronic address during normal business hours; otherwise, it shall be deemed received on the next business day. In the event that a special electronic communications method is used which has been provided by the Customer for handling purchasing transactions, the terms and conditions of the Deutsche Telekom Group for electronic communications methods provided by it shall apply (NB e-commerce, under www.telekom.com/en/company/global-procurement) under “General Terms and Conditions for Purchasing”).
- (4) If the Customer and the Contractor have concluded a framework agreement that provides for the applicability of these EB ICT Projects DTAG and all companies in which DTAG is able to, directly or indirectly, exert more than 20% of the voting rights (hereinafter referred to as “Group Company”) shall be beneficiaries of the framework agreement and thus

entitled to place Orders. In the event of an Order, a corresponding contract under the terms and conditions of such framework agreement is concluded directly between the respective Group Company and the Contractor. There is no joint and several liability of DTAG and the Group Companies.

2. Parts of the Agreement

(1) Depending on their type and scope, the mutual obligations to be performed by the contracting parties are regulated in the following parts of the agreement:

- a. the Order;
- b. further parts of the agreements indicated in the Order (e.g., service description/service requirements),
- c. the framework agreement, of one exists
- d. these Procurement Terms and Conditions for ICT Projects;
- e. the Supplier Code of Conduct (DTAG Supplier Code of Conduct) in its most current version (hereinafter referred to as “Code of Conduct „under www.telekom.com/en/company/global-procurement)

(2) The above order of priority shall apply in the event of any discrepancies.

3. Contracting Parties' Obligations

(1) The Contractor is obligated to inform the Customer during the term of the agreement of any changes in the state of science and technology and, in connection with the design of the ICT-based process, in particular of any new products becoming known in the market which might affect the subject matter of the agreement.

(2) If the Contractor becomes aware that a service requirement cannot be fulfilled (e.g., because it is faulty, incomplete, ambiguous or unfeasible) or that the service description or the deadlines for completion need to be adjusted as a result of the progress of the work, the Contractor shall so advise the Customer without undue delay in writing and state the reasons for the adjustment and any consequences that can be foreseen by the Contractor.

(3) Notwithstanding Section 3(2) above, the Contractor shall have no right to demand that the agreed-upon execution periods will be extended.

(4) The Contractor shall provide a detailed written documentation of the results of its work. The requirements for and the form of such documentation are defined in the service description/service requirements.

(5) To the extent that documents contain the basis for decisions to be made by the Customer with respect to further stages of the work, such documents shall start with a summary of the information that is relevant for the decision.

(6) The Contractor shall appropriately document all alternative solutions worked out and their evaluations and present them to the Customer for its decision-making.

(7) Upon delivery of the documentation, the Contractor is obligated to thoroughly discuss it with the Customer.

(8) The Contractor is obligated to inform the Customer upon request of the status of the work and report any interim results. The service description/service requirements may already contain the dates for presentations, written interim reports and/or quality assurance reports. Moreover, the Customer may, at any time, after making an appointment with the Contractor, demand to see the relevant work records and, where appropriate, be provided with excerpts from such records.

- (9) The Contractor and the Customer shall each appoint a contact person for technical and financial issues who shall be responsible for providing binding information and for making arrangements which operate to change the agreement. Arrangements in relation to execution which do not operate to change the agreement shall only be binding if documented in minutes which have been signed by both contact persons. All changes to the agreement must be agreed upon in writing.
- (10) If a member of the Contractor’s staff who is deployed in the performance of the agreement needs to be replaced with another staff member, any additional costs incurred in connection with the replacement (e.g., cost of initial training) shall be borne by the Contractor.
- (11) The Customer may request that a member of the Contractor’s staff be replaced without undue delay if such member has violated any contractual obligations; the request shall be accompanied by a written statement of the reasons. The costs incurred as a result of the replacement shall be borne by the Contractor.
- (12) In the event that the Contractor deploys staff, vicarious agents and sub-contractors, the Contractor hereby assures that all the required official permits (such as work permit, residence permit) have been obtained. The Contractor shall indemnify and hold the Customer harmless from and against any and all legal consequences which result from failure to comply with this requirement.
- (13) To the extent that the performance of the task requires the provision of resources by the Customer, the type and amount of such resources and the time at which they are to be provided shall be agreed upon in the service description/service requirements.
- (14) If the assistance to be provided by the Customer needs to be changed for reasons for which the Contractor is responsible, the Contractor shall bear all additional expenses which the Customer incurs in this respect.
- (15) Unless otherwise agreed, the Contractor shall brief the staff designated by the Customer as users of the programs in a timely manner about how to handle the programs and the pertinent work equipment. The number of staff of the Customer expected to participate in such briefing shall be stated in the service description/service requirements if more than 10 persons are to participate.

4. Service Levels

If the service description does not contain any service hours, the service hours shall be Monday through Friday from 8:00am to 5:00pm (with the exception of public holidays at the place of performance). If no response times have been agreed upon, the work to restore the operability of the IT system shall be commenced without undue delay upon receipt of the fault report (ticket) during service hours. If no restoration period has been agreed upon, the work to restore the operability of the IT system shall be completed within a reasonable period of time during service hours. If the Contractor fails to meet any response and/or restoration times agreed upon, the Contractor shall be in default without a prior warning as soon as the respective deadline has been exceeded, unless the Contractor is not responsible for the failure to meet the deadline.

5. Quality Management, Protection of the Environment

- (1) The Contractor shall comply with the Customer’s requirements for quality management and environmental protection. To the extent stipulated in the specification, the Contractor must (i) document the application of a quality management system in accordance with DIN EN ISO 9001, TL 9000 or an equivalent quality management system and provide data with respect to the metrics described in the TL 9000 Quality Management System Measurements Handbook, or any other metrics that may be agreed upon, and (ii) document the application of an environmental management system in accordance with DIN EN ISO 14001 or the Eco-management and Audit Scheme and iii) an information security management system in accordance with ISO/IEC 27001 or comparable.
- (2) The Contractor agrees to comply with all applicable laws, regulations, decrees, directives, and other legal rules with respect to the products, work and/or services to be provided.

6. Integrity, Cooperation, Social Charter

- (1) DTAG has designed core principles and values which demonstrate the Customer’s willingness to share its business ethics, the social and environmental commitments with its contractors. Detailed information can be found in the SCoC.
- (2) The Contractor shall comply and shall oblige its sub-suppliers, subcontractors and any person under its control to comply with the SCoC. In case of any non-compliance with the principles and obligations of SCoC, the Customer is entitled to request a remedy of such non-compliance without undue delay, including but not limited to an alignment on action plans to remedy the non-compliance. Further, the Customer is entitled to suspend the contractual relationship and fulfillment until the non-compliance is remedied. Further contractual and statutory rights of the Customer shall remain unaffected.
- (3) The Contractor shall take all measures required to avoid and sanction any instance of active or passive corruption, both in the public and private sector.
- (4) The Contractor shall immediately inform the Customer in writing as soon as it becomes aware of indications suggesting that there might be problems regarding compliance with the Code of Conduct within its area of responsibility, and in particular, to avoid anything that might harm Deutsche Telekom’s Group brand image or endanger its security of supply.
- (5) The Contractor is obligated to comply with the security provisions of the Deutsche Telekom Group (under www.telekom.com/en/company/global-procurement) which apply to contractors and their vicarious agents, and to inform the persons and/or subcontractors deployed to provide the service and to obligate them to do the same.
- (6) If work is to be performed at the Customer’s security-sensitive sites, the Contractor shall ensure that only staff who have passed the security check are employed in accordance with the Sicherheitsüberprüfungsgesetz [Security Clearance Check Act] in Germany or a comparable security clearance check elsewhere.
- (7) The Contractor assures to comply with all the obligations of Mindestlohngesetz (minimum wage legislation) for himself and its subcontractors. In this sense and upon request by the Customer, he is among others-obliged to document respective minimum wage payments. The Contractor shall indemnify the Customer from any legal consequences (including fines) resulting from failure to comply with the minimum wage requirements. He shall further immediately inform the Customer as soon as any suspicion arises in case any of its subcontractors does not comply accordingly.

7. Changes to Products, Work and/or Services

- (1) During the term of the agreement, the Customer may request in writing that changes be made to the products, work and/or services stipulated in the service description/service requirements. If, within 21 calendar days of the receipt of the change request, the Contractor does not decline the change because it is unreasonable or unfeasible from an objective point of view or – if comprehensive examinations are required – submit an offer pursuant to Section 7(2) below or demand adjustments to the agreement pursuant to Section 7(3) below, the change shall become part of the agreement.
- (2) If comprehensive examinations are required to determine the terms on which the changes requested by the Customer can be carried out, the Contractor may submit an examination offer to the Customer, which shall contain at least the following information:
 - a. the duration of the examination;
 - b. detailed costs of the examination; and
 - c. the consequences for the existing agreement.

If the Customer agrees to this offer, a corresponding written examination order shall be issued.

- (3) If the Customer’s change request affects the existing agreement and, therefore, the agreement needs to be adjusted, the Contractor shall so advise the Customer in writing by providing a change offer that states the terms that need to be modified within the time period stipulated in Section 7(1) above or, in the case of an examination order, within the time period stipulated in Section 7(2)a above. Otherwise, the Contractor

will be obligated to carry out the requested changes as part of the existing agreement.

- (4) If, upon receipt of the contractor's change offer concerning the adjustment of the contractual provisions, the agreement is not adjusted within 21 calendar days, or within such other period of time as may be agreed upon between the contracting parties, the work shall be continued on the basis of the existing agreement unless the Customer terminates the existing agreement pursuant to Section 18 below.
- (5) The Customer may demand in writing that the work affected by the change to products, work and/or services be interrupted until the agreement has been adjusted. If the Customer does not interrupt the execution of the work and the Contractor realizes that the work to be carried out between the receipt of the change request and the adjustment of the agreement will be unusable in the event that the change is implemented, the Contractor shall so advise the Customer without undue delay in writing.
- (6) If the Customer has ordered in writing that the execution of the work be interrupted, the execution period shall be extended for the number of calendar days on which the execution of the work had to be interrupted because of the change request. In such case, the Contractor may additionally demand the agreed-upon remuneration for the time of the interruption and an according increase in the agreed-upon maximum remuneration or an according increase in the agreed-upon fixed price if and to the extent that the project staff deployed by the Contractor who are affected by the interruption cannot be deployed otherwise and the Customer is so advised without undue delay in writing. Where possible, the Customer may inform the Contractor of possible ways to otherwise deploy the project staff affected by the interruption.

8. Rights of Use

- (1) The Customer shall be entitled to the exclusive, irrevocable, transferable, and sub-licensable right to use all work products; this right shall be unlimited in time, geographic scope and content and be covered by the remuneration agreed upon. The right of use shall particularly include the right to exploit, to fully or partly publish, reproduce, modify, and process documents, which shall also include their further utilization for follow-up contracts with third parties. The source codes and documentation needed to use the products, work and/or services provided shall be made available to the Customer in an appropriate form, free of charge. The Customer's right of use shall also exist in the event that the agreement is terminated.
- (2) The Contractor shall inform the Customer of any intellectual property rights and copyrights that already exist, to the extent that such rights are necessary for the creation and use and/or exploitation of the work products. This shall include information about the group of persons entitled to dispose of such rights. The Customer shall be granted a non-exclusive, transferable right to use such intellectual property rights and copyrights owned by the Contractor. Any claim for remuneration in this respect shall be covered by the agreed-upon remuneration.
- (3) The Customer shall be granted a non-exclusive, irrevocable, and transferable right that is unlimited in time, geographic scope and content and covered by the remuneration agreed upon to use the knowledge contributed by the Contractor in the performance of its tasks and the insights gained by the Contractor.
- (4) All work products created during the performance of the contractual work and/or services by the Contractor or derived from such work and/or services shall be the Customer's property and solely the Customer shall have the right to have such work products registered worldwide as intellectual property rights. "Intellectual property rights" means copyrights, patents, utility models, trademarks, design patents, rights in databases and all similar rights, whether registered or not. The Contractor shall assist the Customer in applying for such intellectual property rights and provide all documents and approvals required for this purpose. The Contractor shall impose corresponding obligations on its staff and subcontractors.
- (5) The Contractor is obligated to notify the Customer without undue delay in writing if the plan exists to use open-source software in performing the work and/or services. If the Contractor provides open-source software (hereinafter referred to as "OSS") to the Customer as part of the perfor-

mance of its work and/or services, the Contractor shall, as early as possible and in any case when providing its work and/or services or when making the delivery, inform the Customer in writing of the OSS components and the respective applicable licensing terms. This shall not affect the provisions of Section 9 below.

9. Third-Party Rights

- (1) The Contractor guarantees that the products, work and/or services which are to be provided by the Contractor are free from any third-party rights, in particular, any third-party intellectual property rights that could restrict or exclude the contractual use of the products, work and/or services.
- (2) The parties shall notify each other without undue delay of any claims made or threatened with respect to any third-party rights and/or inform the respective other party without undue delay if they obtain knowledge of any infringements or alleged infringements of third-party rights in connection with the contractual products, work and/or services.
- (3) The Contractor shall, at the Customer's first written request, indemnify and hold the Customer harmless from and against any and all legal actions, demands, costs, charges, losses, claims, damages and expenses incurred by or asserted against the Customer as a result of an infringement or alleged infringement of third-party intellectual property rights. In addition to these obligations, the Contractor may, at its option and at its own expense, either:
 - a. modify or replace the products, work and/or services in such a manner as to prevent the infringement or alleged infringement of third-party intellectual property rights while ensuring that the products, work and/or services continue to meet the contractual requirements in every respect; or
 - b. procure the right for the Customer to (continue to) use the products, work and/or services as provided in the agreement.
- (4) If the Contractor fails to discontinue the infringement of third-party rights within a reasonable period of time, the Customer may, at its discretion, rescind the Order concerned and assert claims for damages or appropriately reduce the purchase price and/or the license fees.
- (5) The limitations of liability set forth in Section 21(2) below shall not apply to this Section 9.

10. Invoicing/Remuneration

- (1) The remuneration for the products, work and/or services shall be paid after the issuance of an invoice and acceptance. If any products, work and/or services are subsequently supplemented, the individual prices stipulated for the original Order shall apply. The fixed lump-sum price for the creation of software shall be the overall remuneration – which cannot be changed unilaterally – for the products, work and/or services to be provided under Section 1 above, unless separate – as the case may be, lump-sum – remuneration has been agreed upon for individual products, work and/or services. The cost of materials, of the services provided by subcontractors, if any, travel times, travel expenses, and incidental costs shall be included in the fixed lump-sum price. The Contractor shall have no right to make additional claims unless the parties agree on changes to the products, work and/or services. The remuneration for the products, work and/or services shall become due upon overall acceptance unless the payment schedule for the project contains an agreement on payment after partial acceptance (milestones). The Contractor shall only be entitled to down-payments to the extent that such payments have been agreed upon in the Order. However, this provision shall not affect the right to demand down-payments if the requirements stipulated in Section 632a German Civil Code (*Bürgerliches Gesetzbuch*) are met.
- (2) Unless otherwise agreed, the price shall include the cost of any installation, integration and transfer work that may be required, and which the Contractor shall perform without disrupting operations, if necessary, outside of normal business hours.
- (3) Operating, handling, usage, and service instructions or other documents that are relevant for use shall be provided in the national language of the respective contracting unit of the Customer and shall be included in the price. If not available in the national language, such documents shall be provided in English.

- (4) The fixed lump-sum price for a service level agreement shall be the overall remuneration – which cannot be changed unilaterally – that is owed for the products, work and/or services agreed upon in the service description unless separate – as the case may be, lump-sum – remuneration has been agreed upon for individual products, work and/or services. The cost of materials, travel times, travel expenses, incidental costs, and the cost of replacement items shall be included in the fixed lump-sum price. The Contractor shall have no right to make additional claims unless the parties agree on changes to the products, work and/or services or the price. The fixed lump-sum price agreed upon for recurring services shall become due upon expiry of the month in which the services were accepted. The same applies to any base flat rates that may have been agreed upon and other amounts of remuneration which are payable at regular intervals.
- (5) The Contractor shall offer its products, work and/or services to Deutsche Telekom AG and its Group Companies the most favorable terms and conditions which the Contractor grants to Deutsche Telekom itself and/or any of its Group Companies worldwide for products, work and/or services which are comparable in terms of quantity, quality and market conditions. Deutsche Telekom AG and its Group Companies reserve the right to exchange the respective information.

11. Invoice/Terms of Payment/Taxes

- (1) The invoice shall be issued after all products, work and/or services have been fully provided.
- (2) All invoices shall be sent exclusively to the billing address stated in the Order.
- (3) The Contractor shall submit a verifiable invoice for its products, work and/or services. For each Order a separate invoice is required. Collective invoices which refer to various Orders are not permitted. In particular, the invoice items must match the purchase order items. As a rule upfront and partial invoices are not allowed. If in an Order partial settlement is agreed, the upfront partial, partial final and final invoice are to be marked as such and shall be listed individually and numbered in sequence. The invoice shall contain the business unit placing the Order, the purchase order number and the place of receipt and in case of services the proof of performance. The invoice must additionally meet the requirements stipulated in §14 UStG (German Value-Added Tax Act). In the event that the invoice does not meet with the aforementioned requirements, the Customer reserves the right to return the outstanding invoice in order for it to be completed or corrected. In such case, the payment period shall not begin until after the completed or corrected invoice has been received by the Customer. Even if Customer does not make use of the above right, the Customer shall not be responsible for any delay in payment. The invoice with the billing address given in the Order shall not be issued before the day on which the services have been performed as agreed.
- (4) Amendments and supplements to the agreement are to be clearly indicated on the invoice and shall only be paid for if agreed upon in writing before being carried out.
- (5) The prices agreed upon are net prices. If applicable, value-added tax shall be charged additionally at the statutory rate.
- (6) The invoice shall not be paid before the products, work and/or services have been provided. The payment period shall be thirty (30) calendar days net. The payment period shall commence on the first day after the receipt of a verifiable invoice which meets the requirements stipulated in this section 13, but not before the performance/acceptance of the products, work and/or services.
- (7) Unconditional payment of the invoiced amount by the Customer does not constitute recognition of the Contractor’s performance as being as agreed.
- (8) If a credit note procedure has been agreed upon, the following provisions shall apply in deviation from, or in addition to, the provisions of this Section 13: The Customer shall make payment without the submission of invoices by the Contractor. The payment period shall commence after the Customer has finished entering the data, and in any case three working days after the delivery note/proof of performance has been submitted,

but not before the products, work and/or services have been provided/accepted.

The invoice for the products, work and/or services provided shall be issued on the basis of the delivery note/proof of performance. As evidence of the products, work and/or services recorded by the Customer by means of electronic data processing, the Customer shall provide the Contractor on a monthly basis, by the third working day of the respective following month, with a credit note advice. This credit note advice shall show the products, work and/or services by type and quantity, including the net prices, the amount of value-added tax, the value-added tax rate and the total amount, for each delivery note/proof of performance.

- (9) The liability for value-added tax shall pass to the Customer if the Contractor is not a German firm or businessperson and the work and materials (*Werklieferungen*) or services provided by the Contractor are taxable in Germany (§ 13b UStG (German Value-Added Tax Act)). In such case, the Contractor shall not state German value-added tax in the invoice. If the Contractor brings items from a third country to Germany for the provision of the aforementioned work and/or services and this results in import turnover tax being levied, such tax shall be borne by the Contractor.
- (10) The Customer shall have the right to withhold any tax at source/withholding tax from the price payable and transfer such tax to the tax office on behalf of the Contractor if the Contractor does not provide a valid exemption certificate.

12. Acceptance

- (1) The Contractor shall make the products, work and/or services that have been provided in accordance with the agreement available for acceptance on the agreed date. This applies correspondingly if performance in parts has been agreed upon in the contract.
- (2) After the products, work and/or services have been made available, the Customer shall carry out an acceptance test within a period of thirty (30) consecutive calendar days, unless a different acceptance period has been stipulated in the agreement. If this acceptance period does not suffice and this is due to reasons for which the Contractor is responsible, the acceptance period shall be extended for the period of delay. The default provisions shall apply to this period of delay.
- (3) Upon acceptance of the last part of the products, work and/or services, the products, work and/or services agreed upon in the agreement shall additionally be tested for their overall functionality, i.e., for the error-free interaction of the individual parts of the products, work and/or services.
- (4) If the products, work and/or services are as agreed, the Customer shall give notice of acceptance upon completion of the test. If the products, work and/or services are accepted even though defects have been identified, such defects shall be recorded in the notice of acceptance. Acceptance may not be refused because of an insignificant defect. However, several insignificant defects, when taken together, may justify the refusal of acceptance.

13. Default

- (1) In the event of default, the statutory provisions shall apply.
- (2) If the Contractor defaults on the provision of any products, work and/or services owed pursuant to the agreement, the Contractor shall, for each calendar day of default, pay the Customer 0.3% of the remuneration that is owed under the agreement for the products, work and/or services concerned. However, the total amount of the liquidated damages payable per event of default shall not exceed 5% of the remuneration owed. The claim for liquidated damages may be asserted until the final payment is made. The Customer shall have the right to claim liquidated damages in addition to the provision of the products, work and/or services owed.
- (3) If the Contractor fails to provide any products, work and/or services when due, or does not provide them as agreed, the Customer may set a reasonable period of time for performance, repair or replacement delivery by the Contractor. After this period of time has expired to no avail, the Customer may claim damages in lieu of performance in accordance with the statutory provisions and rescind the agreement. This shall not affect any further statutory claims. Any liquidated damages incurred shall be credited against such a claim for damages.
- (4) Moreover, if the agreed-upon response and/or completion times are exceeded, the Customer may claim liquidated damages in an amount equal

to 0.1% of the annual remuneration for each commenced 25% by which a response and/or completion time is exceeded during service hours, but not more than 1% of the annual remuneration in total per event of default. This does not apply if the Contractor is not responsible for exceeding the response and/or completion time. The total amount of the liquidated damages payable in a contract year on the basis of this clause must not exceed 5% of the annual remuneration per contract year. The liquidated damages shall be credited against any claims for damages. Section 341(3) German Civil Code (*Bürgerliches Gesetzbuch*) shall apply with the proviso that the liquidated damages may be claimed until the expiry of 12 months after they were incurred.

- (5) In order for the Customer to be in default, a prior written reminder from the Contractor shall be required, even if the obligation owed is a payment.

14. Staff Training, Application Support

- (1) To the extent agreed upon,
- the Contractor shall timely provide the Customer’s staff who are to use the software with the necessary training in how to apply and use of the software;
 - the Contractor shall support the Customer through appropriately qualified staff in using the software;
 - the Contractor shall support the Customer through appropriately qualified staff in remedying defects not covered by the Contractor’s liability for defects.
- (2) When providing the services set forth in Sections 14(1)a and 14(1)b above, the Contractor shall not be responsible for achieving a particular result, unless this has been expressly agreed upon in the particular case.

15. Subcontractors

- (1) Any engagement of subcontractors (which also includes external consultants and freelancers) shall require the Customer’s written approval. Any subcontractors whom the Contractor wishes to engage must be indicated in the offer along with the name of the consultant and the company details. The Contractor’s affiliated companies shall also be deemed subcontractors for the purposes of this Section 15.
- (2) If the Customer approves the engagement of a subcontractor, such approval does not include permission for the subcontractor to engage subcontractors itself. Any further, additional subcontracting stage shall again require the Customer’s explicit approval.
- (3) An Order does not constitute an employment contract between the Customer and any person employed by the Contractor or by a subcontractor. The Contractor and the Contractor’s subcontractors shall be responsible for all obligations imposed on them in their capacity as employers by public law, by a public authority on the basis of public law, or by a public authority on the basis of the execution of an Order and with regard to the Contractor’s taxable revenue. Moreover, the Customer shall not be liable to pay salaries, daily rates, personal taxes, social security contributions and insurance premiums for staff or consultants of the Contractor or of the Contractor’s subcontractors. The Contractor shall indemnify and hold the Customer harmless from and against any and all acts or omissions that constitute a violation of this obligation.
- (4) If the Customer grants its approval, the Contractor shall ensure that all subcontracts entered into as part of the respective Order are designed in such a manner as to ensure that the Contractor can perform its obligations to the Customer without restriction.
- (5) The engagement of subcontractors, the Customer’s information about the design of the subcontracts, and the Customer’s approval of such shall not affect the Contractor’s liability to the Customer.

16. Confidentiality, Data Protection

- (1) Both parties hereto agree to treat in confidence all information from the sphere of the respective other party of which they become aware as a result of the business relationship and which is not generally available, and to not use such information for their own purposes or for the purposes of a third party. This obligation of confidentiality shall not apply within the Deutsche Telekom Group.
- (2) The Contractor agrees to comply with telecommunications secrecy and data protection law and, in particular, to ensure the protection of personal data.

- (3) The Contractor shall be responsible for requiring all persons whom the Contractor deploys in the performance of its obligations to give a corresponding undertaking in writing.

- (4) The Contractor must obtain the Customer’s prior written approval before publishing or disclosing any work products created under this agreement, or any information about such work products, to a third party.

- (5) At the request of the Customer, or upon termination of this agreement, the Contractor shall deliver to the Customer all records obtained or created in the performance of this agreement, including all copies and reproductions thereof. Any copies of records in electronic media or on data storage media which cannot be handed over shall be deleted by the Contractor or made permanently unusable. This also applies in the event that the agreement is terminated. The Contractor shall have no right of retention, on whatever legal grounds.

- (6) The Contractor agrees to expressly inform – and ensure it can prove it has informed – all staff, vicarious agents and subcontractors whom it deploys that the Customer may collect and process the following personal data in relation to them for the purposes of ensuring compliance with the statutory requirements and safeguarding the Customer’s legitimate business interests: title, last name, first name, date of birth, street, postal code, city, and country. For those of the staff, vicarious agents and subcontractors deployed who need a work permit or residence permit under applicable German and European law to be able to take up work in Germany, the following information shall be collected additionally: term of validity of the work permit or residence permit, restriction of the weekly working hours as per the work permit, restriction of the place of deployment as per the work permit, restriction of activities/position as per the work permit.

- (7) The Contractor is not authorized to name the Customer for reference purposes without first obtaining the Customer’s express prior written approval. Such approval, if given, shall be valid until revoked. The Customer may revoke its approval at any time without prior notice and without giving a reason.

- (8) In the event that personal data is transferred to the Contractor by the Customer and processed by the Contractor as part of its services, the Contractor agrees that if so requested by the Customer, it will recognize the agreement provided by the Customer concerning the contractual processing of personal data on behalf of the Customer (*Verarbeitung personenbezogener Daten im Auftrag*).

- (9) The above obligations shall survive the termination of the agreement.

17. Independent Provision of Work and/or Services / Work Permit / Residence Permit

- (1) The Contractor shall perform the contractual work and/or services independently and on its own responsibility.

- (2) As a general rule, the Contractor shall be free to choose the place of performance for the provision of its work and/or services. However, if the project requires that any part of the work and/or services be provided in the Customer’s premises, the Contractor shall be prepared to provide its work and/or services to this extent in the relevant premises; the parties shall agree on the respective place of performance, taking the project requirements into account.

- (3) Only the Contractor shall have the right to issue instructions to its own employees and to any subcontractors who are deployed by the Contractor. The Contractor shall be free in determining how to organize the provision of its work and/or services and schedule its activities. However, to the extent that the project so requires, the Contractor shall coordinate its activities in consultation with the other parties involved in the project and adhere to any dates or deadlines agreed upon.

- (4) In the event that the Contractor deploys staff, vicarious agents and subcontractors, the Contractor hereby assures that all the required official permits (e.g., work permit, residence permit) have been obtained. The Contractor shall indemnify and hold the Customer harmless from and

against any and all legal consequences which result from non-compliance with this requirement by the Contractor.

- (5) The Contractor agrees in its capacity as an independent contractor to properly transfer any value-added tax received to the tax office, as well as to independently and properly pay tax on any remuneration received from the Customer.

18. Rescission and Termination

- (1) The Customer may, at any time and without prior notice, terminate the agreement in whole or in part in writing. In such case, the consequences of the termination shall be determined by Section 649 German Civil Code (*Bürgerliches Gesetzbuch*).
- (2) The parties hereto may agree on a clause which deviates from the preceding provisions.
- (3) Either party may rescind the agreement or terminate the agreement without notice for cause in particular if insolvency proceedings are instituted against the assets of the other party or a petition to institute such proceedings is received by the court, the institution of insolvency proceedings is refused for lack of sufficient assets to cover the cost of the proceedings, the other party suspends payments more than just temporarily, discontinues its business or such part of its business as is relevant for the contractual products, work and/or services, or a similar event occurs under the laws applicable at the place where the party concerned has its registered office.
- (4) The Customer shall additionally have the right to terminate the agreement without notice for cause if the Contractor (and/or any of the Contractor’s subcontractors) fails to comply with the requirements stipulated in the German Minimum Wage Act (*Mindestlohngesetz*).

19. Deployment Bans

- (1) The Customer expressly advises the Contractor that it is strictly forbidden for civil servants who have left the Deutsche Telekom Group by taking early retirement to directly or indirectly perform any further work for the Deutsche Telekom Group. As a rule, this also applies to former employees of the Deutsche Telekom Group for a period of 15 months from the termination of their employment if they have received severance pay in connection with the termination of their employment. Unless the Customer’s specialist unit concerned has approved an exemption from this rule already in advance in writing in the particular instance, a general deployment ban shall additionally exist – regardless of the nature of the underlying employment – for employees of the Deutsche Telekom Group who, directly or indirectly, work for the Contractor and have been borrowed or otherwise (e.g., by way of secondment, assignment or leave of absence) taken over or are employed by the Contractor or a third party exclusively or primarily for the purpose of being deployed in the provision of services to the Deutsche Telekom Group.
- (2) Against this background, the Contractor, in turn, agrees to ensure that none of the retired civil servants mentioned in Section 19(1) above and none of the staff mentioned in the third sentence of Section 19(1) above are deployed by the Contractor as employees or temporary workers, as subcontracted work or service providers, or in any other way in the provision of the Contractor’s services to the Customer, and that none of the former employees specified in Section 19(1) above are deployed as subcontracted work or service providers or leased to units of the Deutsche Telekom Group as temporary workers.
- (3) In the event of a violation of the provisions of this Section 19, the Customer shall have the right to terminate the agreement without notice for cause. In addition, the Customer expressly reserves the right to assert claims for damages in this respect.

20. Liability for Defects

- (1) If the Contractor provides its products, work and/or services in several parts, the overall functionality – i.e., the error-free interaction of the individual parts of the products, work and/or services – shall be tested upon acceptance of the last part of the products, work and/or services, where acceptance is required. The products, work and/or services shall only be deemed provided without defects if the individual parts of the products, work and/or services interact error-free and, therefore, overall functionality exists. The limitation period for claims for defects in respect

of the overall functionality shall commence upon acceptance of the last part of the products, work and/or services and shall be 36 months from such point in time. In all other cases, claims arising from the Contractor’s liability for defects shall become time-barred 36 months after the product, work and/or service was received at the place of receipt or after acceptance, where required.

- (2) The limitation period shall be suspended for the number of days on which the Customer could not use the contractual products, work and/or services due to a defect.
- (3) The Contractor is obligated to remedy all defects which occur during the limitation period without undue delay at the Customer’s option by making a replacement delivery, carrying out repairs, or producing the item concerned anew (all three measures hereinafter collectively referred to as “subsequent performance”).
- (4) If a defect cannot be remedied at short notice, the Contractor shall, to the extent feasible and reasonable with regard to the impact of the defect, provide a provisional solution.
- (5) If the defect is not remedied within a reasonable additional period of time set by the Customer for subsequent performance by the Contractor, the Customer shall have the right to reduce the price or rescind the agreement and, in both cases, additionally claim damages in accordance with the statutory provisions.
- (6) Software maintenance upon expiry of the Contractor’s liability for defects
At the request of the Customer, the Contractor shall undertake the maintenance of the software after the Contractor’s liability for defects has expired. This shall require a separate agreement. The Contractor shall be notified of this request timely before the Contractor’s liability for defects is due to expire.

21. Liability

- (1) The parties shall be liable without limitation in the event of willful misconduct or gross negligence, for damage or losses resulting from bodily injury, damage to health or death, under any guarantee given, and in all cases where unlimited liability is prescribed by mandatory law or has been expressly provided for in the agreement.
- (2) In all other cases where no unlimited liability pursuant to Section 21(1) above exists, the parties shall be liable for each damaging event up to an amount equal to 150% of the overall remuneration – excluding value-added tax – which is payable under the agreement, at minimum, however, up to the amount of EUR 3 million.

22. Foreign Trade Regulations

- (1) The Contractor shall be liable to ensure that it complies with all foreign trade regulations which apply in connection with a delivery and, in particular, that it obtains all licenses and permits which are required by export law on its own responsibility and at its own expense.
- (2) When supplying goods, the Contractor shall provide the Customer in particular with the following information:
 - a. the Statistical Commodity Code of the goods in accordance with the Harmonized System of the World Customs Organization (WCO);
 - b. the country of origin of the goods (where applicable, in accordance with the preferential agreements made by the EU); and
 - c. all foreign trade information and supporting documents relevant for a shipment (weight of the goods, customs number, VAT identification number).

The information set forth in Sections 22(2) and 22(2)b above shall be provided either separately ahead of the shipment or, at the latest, in a note on the Contractor’s invoices.

- (3) In the event that the Contractor supplies goods which are of US-American origin, or primarily of US-American origin, the Contractor agrees to state the Export Classification Number (ECCN) and to specify any “license regulations” or “license exemptions” that may apply in accordance with US-American re-export law.
- (4) To the extent that the Contractor has obtained the products or services in whole or in part from third parties, the Contractor guarantees that the products or services were obtained from reliable sources exported, imported or provided in compliance with the export laws and regulations of the country of manufacture/country of shipment.

23. Written Form

- (1) All changes and amendments to the agreement shall be made in writing and must be clearly identified as such. The cancellation of this requirement of the written form shall likewise require the written form.
- (2) Any oral agreements shall require a subsequent written confirmation by the contracting unit of the Customer in order to become legally valid.

24. Assignment of Claims

- (1) The Contractor's claims against the Customer may only be assigned with the express written consent of Customer's contracting unit. Section 354a German Commercial Code (*Handelsgesetzbuch*) shall apply if the transaction is a commercial transaction for both parties.
- (2) The Customer shall have the right to assign any or all of its rights and obligations under the agreement to any Group Company. The Contractor's consent shall not be required for this purpose.

25. Set-off

- (1) The Contractor shall have no rights of retention to the extent that they are based on counterclaims arising from other legal transactions with the Customer.

- (2) The Contractor may only set off claims which are undisputed or recognized by final and binding judgment.

26. Final Provisions

- (1) The place of performance shall be the place of destination of the products, work and/or services, as indicated by the Customer.
- (2) The agreement shall be governed by, and construed in accordance with, the laws of the Federal Republic of Germany, without regard to the United Nations Convention on Contracts for the International Sale of Goods and the provisions referring to other legal systems.
- (3) The parties submit to the jurisdiction of the court of competent jurisdiction for or at the Customer's place of business. However, the Customer shall also have the right to sue the Contractor instead in the court of competent jurisdiction for or at the Contractor's place of business.
- (4) Should one or more provisions of the agreement be invalid, in whole or in part, this shall not affect the validity of the remaining provisions of the agreement. This does not apply if adhering to the agreement would constitute an unreasonable hardship for one of the parties.

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