Digitale Verwaltung Schweiz
Administration numérique suisse
Amministrazione digitale Svizzera

General terms and conditions for ICT goods/services
March 2025 edition

This document is a translation of the original German document. The German texts in «Allgemeine Geschäftsbedingungen für IKT-Leistungen, Ausgabe 2025» are binding in case of disputes.

A   General provisions

1.   Scope and validity
1.1.   These General terms and conditions (hereinafter referred to as 'TC') govern the conclusion, content and execution of contracts between the 'service procurer' and the 'provider', hereinafter referred to as 'ontracting parties', for all types of services and products in the area of information and communication technology (hereinafter referred to collectively as 'CT goods/services'), including the operation of infrastructure or software by a provider (e.g. cloud services, outsourcing services).
1.2.   The service procurer is to refer to these GTC in requests for quotation and in the tender documentation (hereinafter both referred to as 'FQ'). By submitting a written quote or, in the absence thereof, at the latest by accepting an order, the provider acknowledges the applicability of these GTC. The general terms and conditions or delivery conditions of the provider and any subcontractors shall not apply, unless they were expressly declared to be a contract component.
1.3.   Deviations from these GTC must be expressly designated as such in the RFQ or in the quote. They must be mentioned in the contract document in order to be valid.

2.   Contract components and order of precedence
2.1.   In the event of discrepancies in the contents of the contract components, the following order of precedence shall apply:
a. Contract document, including all appendices (hereinafter referred to as the 'ontract document')
b. These GTC
c. Quote
d. RFQ
Deviating agreements between the contracting parties in the contract document remain reserved.

3.   Quote
3.1.   The quote, including any presentations, is provided free of charge.
3.2.   By signing the contract document, the provider confirms compliance with the requirements set out in the RFQ and the applicable statutory requirements (e.g. compliance with the participation conditions under public procurement law regarding workplace health and safety, employment conditions, equal pay for men and women and environmental law). If these requirements are not or are no longer met, the contract may be terminated by the service procurer.
3.3.   If the quote differs from the service procurer's RFQ, the tenderer must expressly state this.

3.4.   Unless otherwise specified in the RFQ, the provider will remain bound by the quote for three months from the date of submission.
3.5.   The contracting parties may withdraw from contract negotiations without any financial consequences until the contract document is signed or the order is accepted by the service procurer. The provider nevertheless remains bound by its quote in accordance with section 3.4.

4.   ICT goods/services
4.1.   The type, scope and features of the ICT goods/services are set out in the contract document, which may contain references to further documents. Insofar as the ICT goods/services require personal data processing, the processed personal data or data categories and the purpose of their processing are to be set out in the contract document or in an appendix thereto.
4.2.   Benefits and risks are transferred upon delivery or receipt of the goods/services by the service procurer at the place of performance (section 6).

5.   Performance
5.1.   The contracting parties are to notify each other immediately of any circumstances in their respective areas that jeopardise or could jeopardise performance in accordance with the contract.
5.2.   The ICT goods/services are to be provided using recognised methods, applying current standards and in compliance with the instructions issued by the service procurer in accordance with the contract (e.g. instructions on the handling and protection of personal data and information of the service procurer).
5.3.   The provider is to regularly inform the service procurer about the progress made and request any necessary instructions from the service procurer if anything is unclear.

6.   Place of performance
6.1.   The place of performance for the ICT goods/services is the place agreed in the contract document or, in the absence thereof, the address of the service procurer.

7.   Place of data processing
7.1.   Unless stipulated otherwise in the contract document, the personal data processing performed by the provider or subcontractors on behalf of the service procurer must be carried out in Switzerland in accordance with Swiss law or in a country that has an appropriate level of data protection in accordance with the applicable statutory provisions.
7.2.   The personal data of the service procurer may be processed outside the geographical area described in section 7.1 if this was explicitly agreed by the contracting parties in the contract document and the necessary additional protective measures were defined.

8. Employee deployment

8.1. The tenderer is to deploy only trustworthy, carefully selected, well-trained and appropriately supervised staff to provide the ICT goods/services under the contract, including in the case of ancillary goods/service. At the service procurer's request, the provider shall, within a reasonable timeframe, replace employees who, in the service procurer's view, do not have the requisite expertise and skills or who otherwise interfere with performance of the contract.

8.2. The contracting parties will agree on the project organisation and designate the persons responsible in such organisation.

8.3. Where the service procurer deems that increased protection is needed, it may require the provider to provide documentation concerning the trustworthiness of the staff deployed or to carry out further checks in this regard (e.g. obtaining an extract from the register of convictions or the debt collection register). The details are set out in the contract document.

8.4. The provider undertakes to ensure that it and its employees comply with the operational, technical and security-related regulations of the service procurer (in particular regarding access to premises and systems, etc.), provided that these are communicated to the provider in writing before the contract is concluded or are subsequently agreed. If the provider receives from the service procurer authentication means for system access and/or physical means (such as ID cards, access badges, access codes, safe keys) to access the service procurer's resources, it must ensure that its staff treat these means confidentially and with due care and, in particular, protect them from unauthorised access by third parties.

8.5. The provider must ensure that all resources made available to it by the service procurer for the purpose of providing the goods/services (such as premises, infrastructure, hardware or energy) are treated appropriately and with the requisite care by the staff deployed. Normal wear and tear of these resources will be borne by the service procurer.

9. Involvement of subcontractors

9.1. The provider may use subcontractors only with the prior written consent of the service procurer. The service procurer may not refuse consent without good reason (which may arise in particular from the need to protect the processed data and/or heightened risks resulting from outsourcing to the subcontractor), whereby it does not have to disclose reasons subject to official secrecy. The provider remains responsible for providing the ICT goods/services to the service procurer.

9.2. The provider must contractually impose on subcontractors all obligations regarding confidentiality, information security and data protection and the related documentation obligations, as well as other obligations arising from procurement law or other legal provisions.

10. Documentation

10.1. Provided a joint inspection is contractually provided for, the provider shall supply the service procurer with the copyable installation and operating instructions that are necessary for the fulfilment of the contract and for operation, in a form that is legible and editable for the service procurer. The service procurer can specify in the RFQ that the documentation for technical maintenance be supplied. The documentation shall be provided in the contractual language or in English, unless otherwise specified in the contract document.

10.2. The service procurer may copy and use the documentation for use in accordance with the contract.

10.3. If the provider has to rectify deficiencies, it shall, where necessary and within a reasonable period set by the service procurer, reissue the documentation at no additional cost.

11. Instruction

11.1. The provider shall train the service procurer's staff to the agreed extent at no additional cost and shall also ensure that training is provided as part of the warranty.

12. Cooperation by the service procurer

12.1. The service procurer shall communicate its requirements for performing the contract to the provider, at the latest upon conclusion of the contract.

12.2. The service procurer shall grant the provider the necessary access to its premises and, if an agreement to this effect is concluded, shall provide the infrastructure necessary for contract performance.

12.3. Any other form of cooperation on the part of the service procurer is specifically agreed in the contract document.

13. Remuneration

13.1. The provider will supply the ICT goods/services at fixed prices or on a time and material basis with an upper limit on remuneration (cost ceiling).

13.2. If the provider supplies ICT goods/services on a time and material basis, it shall provide a report signed off by the service procurer's responsible person together with the invoice. The report specifies the goods/services provided and the time worked by each person deployed each day. If it becomes apparent that an agreed cost ceiling will be exceeded, the provider must inform the service procurer immediately in writing, stating the reasons. The provider remains bound by the cost ceiling.

13.3. The remuneration covers all ICT goods/services which are necessary for proper performance of the contract. The remuneration covers in particular the installation and documentation costs, the costs of instruction, expenses, licence fees, packaging, transport and insurance, as well as the public taxes (e.g. VAT) applicable at the time of signing the contract, and the advance recycling fee.

13.4. Invoices are issued after the ICT goods/services have been provided or, if contractually agreed, after acceptance. Invoices are to be paid within 30 days of receipt or in accordance with an agreed payment plan.

13.5. If the service procurer is required by contract to make advance payments (e.g. in the form of prepayments or payments on account), the service procurer may require the provider to supply suitable security for the prepaid amount (e.g. by means of a bank guarantee).

13.6. During the term of the contract, the remuneration, namely fixed prices, expense rates and cost ceilings, will be adjusted only if such price adjustment mechanisms (such as an index clause) have been agreed in the contract document.

14. Changes to contractual specifications

14.1. The provider shall inform the service procurer of improvements and developments that make a change to goods/services appear advisable for technical or economic reasons or for safety considerations. Furthermore, it shall inform the service procurer of the consequences, of which it is aware, that a change to ICT goods/services will have on the service procurer's ICT resources.

14.2. The provider shall inform the service procurer in good time in advance of any plans to make changes to the provision of ICT goods/services or to discontinue them, in particular if the changes will not take effect until after the next possible termination date.

14.3. Both contracting parties may request changes to the agreed ICT goods/services in writing through the people responsible (see section 8.2). If changes are expected to impact costs or deadlines, the changes to goods/services are to be offered within a timeframe to be agreed between the contracting parties and within the framework of public procurement law. This offer includes a feasibility assessment, a description of the necessary additional goods/services and the consequences for the ICT goods/services, in particular with regard to costs and deadlines. It also indicates whether the supply of goods/services should be partially or fully suspended until a decision has been made regarding the implementation of the change, and how such a suspension would affect the remuneration and deadlines. The provider shall receive remuneration for such offers only if this has been expressly agreed.

14.4. Unless otherwise agreed, the provider must continue its work in accordance with the contract while the proposed changes are being reviewed.

14.5. Changes to goods/services and any adjustments to remuneration, deadlines and other contractual points are set out in writing in an addendum to the contract document prior to execution. For the purposes of agreeing changes to goods/services that have no effect on costs, deadlines or quality, it is sufficient for the service procurer's and provider's responsible persons to sign a change log.

15.   Confidentiality

15.1. The contracting parties undertake to maintain the confidentiality of personal data and information that are neither common knowledge nor accessible to the general public. This obligation shall also be imposed on any third parties involved in accordance with section 9.2. In case of doubt, personal data and information must be treated confidentially and used only in connection with the execution of the contract and the ICT goods/services agreed therein. The confidentiality obligations shall apply even before the contract is concluded and even after the contractual relationship has ended or after the agreed goods/services have been provided. The right is reserved to fulfil legal obligations regarding provision of clarification and information.

15.2. The provider is aware in particular that it and persons acting on its behalf are classified as auxiliary agents of an authority and are therefore subject to official secrecy and criminal liability in accordance with Article 320 of the Swiss Criminal Code (official secrecy) and Article 321 of the Swiss Criminal Code (professional confidentiality).

15.3. The provider may disclose the fact and the essential content of the RFQ to potential subcontractors, but must otherwise treat the RFQ as confidential.

15.4. Advertising and publications about project-specific ICT goods/services require the prior written consent of the other contracting party, as does the naming of the other contracting party as a reference.

16.   Information security and data protection

16.1. The service procurer remains responsible for the security of the personal data and information processed by the provider on behalf of the service procurer, and retains sole power of disposal and authority to issue instructions. In particular, it may at any time prohibit or restrict processing and demand the deletion, destruction or surrender of personal data and information.

16.2. Insofar as the provider processes personal data and information on behalf of others, it is obliged to:

a. process personal data and information only in accordance with the agreed scope of goods/services and the instructions of the service procurer. Use or processing for one's own or third-party purposes is not permitted;

b. use subcontractors to process personal data and information only in accordance with section 9;

c. allow personal data and information to be processed abroad only in accordance with the provisions of section 7;

d. support the service procurer in complying with its obligations under data protection law (e.g. support with requests for information from individuals);

e. return the personal data and information upon termination of the contract in accordance with the provisions of section 24.2 or delete or destroy it, respectively;

f. reasonably enable the service procurer to verify compliance with the requirements for information security and data protection in accordance with the provisions of section 17;

g. take all measures available under the applicable law to defend itself against requests for inspection and surrender from foreign authorities and inform the service procurer immediately of such requests, provided this is permitted under the applicable law.

16.3. The provider undertakes:

a. to take appropriate technical and organisational measures to protect the confidentiality, integrity, availability, accountability and traceability of the service procurer's personal data and information that have been made available or created in the course of fulfilling the contract; and

b. to comply with the relevant provisions in the contract document, in particular service-specific specifications regarding information security and data protection.

The type and extent of the measures to be taken are based on the specific protection requirements of the personal data and information, as well as on the purpose, scope and type of processing.

16.4. The provider regularly reviews the measures in accordance with section 16.3 and adjusts the measures to account for the state of the art and in the event of current specific threats. The provider continuously documents the security measures taken and provides the service procurer with the corresponding documentation upon request.

16.5. The provider is obliged to inform the service procurer without delay if it becomes aware or suspects that the confidentiality, integrity, availability, accountability and/or traceability of personal data or information that it processes for the service procurer is or could be at risk, or that personal data or information has been or could be processed in a manner that is otherwise unlawful or in breach of the contract. The provider must also immediately take the necessary emergency measures to secure the affected personal data or information, inform people about it as appropriate, provide documentation and prevent or minimise any possible adverse consequences.

17.   Inspection rights

17.1. The service procurer and its legal supervisory bodies may at any time, upon notification, check that the goods/services are being provided lawfully and in accordance with the contract. The provider is obliged to cooperate at its own expense, to provide the information requested and to allow inspection of the ICT resources and documents. On request, an onsite inspection of the provider's premises can also be carried out.

17.2. For applications that relate to accounting or that must be audit-compliant for other reasons, the service procurer's auditors must be granted access to the system documentation.

17.3. If the effort required of the provider for an inspection exceeds the scope of the ordinary contractual reporting and accountability obligations, the provider shall be entitled to reasonable compensation for its cooperation.

17.4. The service procurer generally bears the costs it incurs for the inspection. However, should the inspection reveal that the provider has violated the law or the contract, it is obliged to bear the costs, and the claim for compensation according to section 17.3 is no longer applicable.

17.5. The provider is also obliged to rectify any illegal or non-contractual conditions that fall within its area of responsibility and that are identified during an inspection, in accordance with the service procurer's requirements and at its own expense.

18.   Default

18.1. The contracting parties shall be immediately in default if they fail to meet the deadlines agreed in the contract document as constituting default; in the case of other deadlines, they shall be in default after a reminder has been issued and a reasonable period of grace has been granted.

18.2. If the provider is in default, the service procurer can, at its discretion, and after the unsuccessful expiry of a reasonable extension granted to the provider:

a. insist on subsequent performance by the provider and, if the provider is at fault, claim compensation for the damage resulting from the non-contractual performance; or

b. in the case of ICT goods/services under a work contract, carry out a substitute performance at the provider's expense, by themselves or with the help of a third party, whereby the provider shall surrender to the service procurer those documents and materials (including the source code) that were developed specifically for the service procurer in accordance with the contract or for which surrender has been specifically agreed (e.g. as part of an escrow arrangement); or

c. waive subsequent fulfilment of the contract and, if the provider is at fault, claim compensation for the damage resulting from the non-fulfilment; or

d. waive subsequent fulfilment of the contract and rescind the contract in full or in part with retroactive effect to the time of the conclusion of the contract, reversing those previously mutually provided goods/services affected by the rescission, and, in the event of fault on the part of the provider, claim compensation for the damage incurred by the service procurer as a result of the contract lapsing. In the case of long-term contracts, the retroactive rescission of the contract is replaced by the extraordinary termination of the contract with immediate effect.

18.3. If the service procurer is in default of payment, the provider is not entitled to suspend and/or withhold its goods/services or to assert rights of retention of any kind. However, it is entitled to statutory interest on arrears.

19.   Warranty of title

19.1. The provider guarantees that its quote and its ICT goods/services (or their respective contractual and intended use by the service procurer) do not infringe any third-party property rights. The service procurer guarantees that it shall not infringe any third-party property rights with the resources it supplies to the provider for the sole purpose of fulfilling the contract.

19.2. The provider shall, at its own expense and risk, defend against claims by third parties concerning a breach of property rights. The service procurer shall notify the provider of such claims in writing and without delay and, as far as possible under the applicable procedural law, shall authorise any possible legal proceedings to be conducted, and appropriate and reasonable measures to be taken for the judicial or extrajudicial settlement of the dispute. Under these conditions, the provider shall assume the court, legal and other reasonable costs and any licensing fees, damages or compensation incurred by the service procurer in connection with the legal dispute, provided that the infringement of the property rights is not

due to the provider's ICT goods/services being used by the service procurer in a manner that is in breach of the contract.

19.3. If an application for an action is filed for infringement of property rights or an interim measure is requested, the provider may, at its own expense and at its own discretion, either procure the right for the service procurer to use the ICT goods/services free from any liability for infringement of property rights or adapt the ICT goods/services or replace them with others that meet the contractual requirements equally well. If these options are not available, the provider will refund the remuneration paid for the unusable goods/services, deducting a proportional amount for the use of the goods/services already made in relation to the total term (of the service) or the usual use (of the product). If the service procurer cannot reasonably be expected to use the remaining ICT goods/services that are not affected by the third-party property rights, it may request a refund for all goods/services and terminate the contractual relationship in its entirety. Furthermore, the provider's liability for any damages remains reserved in accordance with section 21.

20.   Material warranty

20.1. The provider guarantees that the ICT goods/services it provides have both the agreed characteristics and those that the service procurer may assume, even without special agreement, are state of the art at the time of the conclusion of the contract and in good faith.

20.2. If there is a fault, the service procurer can initially request that the provider rectify the fault free of charge. The provider shall rectify the fault within the reasonable period set by the service procurer and shall bear all costs incurred as a result.

20.3. If the provider has not rectified the defect as requested, or has not done so successfully or in good time, or if its rectification is objectively not expedient from the outset, the service procurer may reduce the remuneration according to the reduction in value. Or, in the event of a significant defect, it may proceed in accordance with section 18.2 instead.

20.4. Defects must be reported within 60 days of discovery. Warranty rights shall lapse one year after delivery or acceptance. Once reported defects have been rectified, the time limits for replacement parts shall restart. Claims for fraudulently concealed defects may be asserted for a period of ten years from delivery or acceptance.

20.5. Rectification of defects after the expiry of the warranty period is subject to a charge and is settled in accordance with the conditions agreed in the contract document or, in their absence, at market rates.

20.6. Any differing warranty provisions, such as warranties for third-party products or the agreement of service levels (e.g. for operating, response and resolution times and/or regarding availability in connection with maintenance, care, support, outsourcing, online services or communication services) and the consequences of non-compliance with these (e.g. contract penalties/credit notes, extraordinary termination) are to be regulated in the contract document or in supplementary documents (section 4.1).

21.   Liability

21.1. The provider is liable for any damage caused by it, its auxiliary agents and any subcontractors it engages in connection with the contractual relationship, unless it can prove that neither it nor its agents or subcontractors are at fault. Unless otherwise agreed in the contract document, liability for simple negligence shall be restricted to a maximum of CHF 1 million per contract.

21.2. Liability for loss of profits is excluded to the extent permitted by law.

22. Contract penalties

22.1. If the provider or a subcontractor it engages violates the obligations under sections 15 (confidentiality), 16 (information security and data protection) or 18 (default), the provider shall owe the service procurer a contract penalty, unless it proves that neither it nor a subcontractor is at fault.

22.2. For cases relating to sections 15 and 16, the contract penalty per violation shall amount to 10 % of the agreed maximum total remuneration, including optional goods/services. For long-term contracts, the contract penalty shall be 10 % of the agreed remuneration for the ensuing 12 months. Where the remaining duration of the contract is lower, the contract penalty shall be 10 % of the remuneration for the preceding 12 months. In general, however, it shall not exceed CHF 50,000 per case.

22.3. The contract penalty in the event of default under section 18 shall be 0.1 % of the total remuneration per default and per day of delay, up to a maximum of 10 % of the total remuneration for the corresponding contract for non-recurring goods/services, or 10 % per contractual year of the annual remuneration for recurring ICT goods/services. The penalty for breach of contract shall also be due if the ICT goods/services are provided after the default and accepted without reservation or if the service procurer makes use of the legal remedies under section 18.2.

22.4. Payment of a contract penalty agreed in these GTC or in the contract document does not release the provider from its contractual obligations. The service procurer's claim for performance remains in force. The service procurer reserves the right to claim damages in accordance with section 21, whereby the contract penalty will be offset against any damages to be paid.

23. Replacements and maintenance

23.1. The provider assures the service procurer that it will supply spare parts or products for hardware for at least five years from the date of delivery or acceptance of the first delivery. Any alternative period must be specified in the contract document.

23.2. The provider offers to continue to maintain the hardware and software supplied for at least four years beyond the one-year warranty period of the initial delivery. Any maintenance will be regulated by contract according to the service procurer's needs and at market conditions.

23.3. In the absence of any agreement to the contrary, the provider offers to provide and support other recurring services (e.g. outsourcing and online services) to the service purchaser for at least five years from the contractually agreed start of operations. Such recurring services will be regulated by contract according to market conditions and the service procurer's needs.

24. Consequences of termination of the contractual relationship

24.1. The contracting parties shall specify in the contract document which operating resources, personal data, information and documentation made available to the other contracting party within the framework of the contractual relationship must be returned to the other contracting party or be deleted or destroyed upon termination of the contractual relationship, and the timeframe for doing so.

24.2. If the provider is given personal data and information about the service procurer in order to fulfil the contract, the provider is obliged to return this to the service procurer at the end of the contract in the agreed electronic format, or, in the absence of an agreement, in a common electronic format. In addition, the provider is obliged to delete or destroy the personal data and information on both primary and secondary media (test or back-up media, etc.) in such a way that it cannot be recovered. The deletion or destruction is to be carried out in accordance with the currently recognised state of the art and must be confirmed to the service procurer in writing upon request.

24.3. Unless otherwise agreed, the personal data and information must be returned, deleted or destroyed within 30 days after contract termination. If the data on backup media cannot be deleted within this timeframe, the backups must be protected in accordance with the recognised state of the art and must be deleted or destroyed within 6 months at the latest. If the provider is subject to a statutory retention obligation, the data must be returned at the end of the contract, but the deletion or destruction of the personal data and information affected by the retention obligation must not take place until 30 days after the expiry of the contract.

24.4. Upon termination of the contract, for whatever legal reason, the provider shall support the service procurer, to the extent necessary and in return for appropriate remuneration, in returning or transferring the ICT goods/services or parts thereof to the service procurer or to a new provider named by the service procurer. Such support shall include:

a. instruction, knowledge transfer and training;

b. support with the return or transfer of the personal data and information that the provider has processed for the service procurer either to the service procurer or to a new provider (in a format in accordance with section 24.2); and

c. return or transfer of the hardware and software that the provider has operated for the service procurer, including the transfer of the documentation created by the provider in this context in a current, complete and electronically processable version in accordance with the contract.

25. Assignment, transfer and pledging

25.1. Rights and obligations arising from the contractual relationship may not be assigned, transferred or pledged to third parties without the prior written consent of the other party. The service procurer shall refuse to consent to the assignment and pledging of claims by the provider only in justified cases.

25.2. Upon delivery, the provider shall assume the obligations of the service procurer arising from import certificates, if and to the extent that this is contractually regulated.

26. Applicable law and place of jurisdiction

26.1. Swiss law shall apply to the contractual relationship.

26.2. The provisions of the Vienna Convention (United Nations Convention on Contracts for the International Sale of Goods, signed in Vienna on 11 April 1980) do not apply.

26.3. The place of jurisdiction is the registered office of the service procurer.

B   Special provisions

27.   Intellectual property rights

27.1.   Service procurer's pre-existing rights

27.1.1. The service procurer's pre-existing rights to all resources (including software code) which it makes available to the provider in the course of providing the goods/services shall remain with the service procurer. With regard to such pre-existing resources, the service procurer grants the provider a non-exclusive, non-transferable right to use, limited in terms of subject matter and time for the purposes of providing the goods/services. Such resources are also subject to confidentiality in accordance with section 15.

27.2.   Rights to the results of work

27.2.1. The rights to the results of the work created by the provider in fulfilling the contract are transferred to the service procurer upon creation. This includes, in particular, concepts, documents, evaluations, etc. created by the provider within the framework of a contractual relationship. Both contracting parties are entitled to use and dispose of any legally unprotected ideas, processes and methods on which the results of the work are based.

27.2.2. Third-party products and the provider's pre-existing rights remain unaffected by this regulation, unless they are an inseparable part of the result of the work which has been created. In such a case, the provider grants the service procurer a perpetual, non-exclusive, transferable right to use the pre-existing rights for its own purposes. Contractual provisions to the contrary remain reserved.

27.3.   Rights to customised software

27.3.1. The exclusive rights to the customised software developed by the provider specifically for the service procurer, including the source code, programme descriptions and documentation, regardless of whether these are available in written or machine-readable form, shall pass to the service procurer as soon as they emerge. Both contracting parties retain the right to use and dispose of ideas, processes and methods that are not legally protected. The software documentation (in particular the documented source code including an overview, data and function model and a functional description) and the other documents shall be handed over to the service procurer before acceptance and, upon request, before any partial payments.

27.4.   Patent rights

27.4.1. Patent rights to inventions that have arisen during the fulfilment of the contract belong

a. to the service procurer if the inventions were made by its staff;

b. the provider if the inventions were made by its staff or third parties with whom it consulted;

c. the service procurer and the provider if the inventions were made jointly by the service procurer's and the provider's personnel or by third parties with whom they consulted. The contracting parties shall mutually waive the collection of licence fees. They may transfer their rights to third parties or grant third parties rights of use without the consent of the other contracting party.

27.5.   Rights to standard software

27.5.1. The property rights pertaining to standard software shall remain with the provider or third parties. Insofar as third parties are entitled to rights, the provider guarantees that it has the necessary rights of use and distribution.

27.5.2. The service procurer acquires the non-exclusive right to use and utilise the standard software to the extent agreed in the contract document.

27.5.3. The right to use the standard software is granted for either a definite or indefinite period (until cancelled), depending on the agreement. If the right to use is not limited in time, it is also transferable.

27.5.4. The service procurer may make copies of the standard software for security and archiving purposes.

27.5.5. During a hardware failure, the service procurer shall be entitled to use the standard software on a replacement hardware without additional compensation.

27.5.6. The manufacturer's licence and usage conditions apply if:

a. they relate to the regulation of the rights (including the granting of rights of use and utilisation) to the software, including the consequences of any violations of the granted rights of use and utilisation;

b. they are explicitly mentioned in the provider's quote and are attached to it in full and then explicitly adopted by the contracting parties in the contract document as an integral part of the contract;

c. they do not conflict with mandatory provisions of Swiss law, the RFQ, the contract document or the other integral parts of the contract in accordance with section 2.1. This applies in particular with regard to subordination to Swiss law and the place of jurisdiction according to section 26;

d. the contract is performed exclusively in direct dealings between the provider and the service procurer in accordance with the commercial and legal terms agreed between the parties; and

e. direct claims by the manufacturer against the service procurer are excluded.

27.5.7. If the provider's ICT goods/services include open source software, it must explicitly state this in the quote, indicating the licence conditions under which the open source software is made available to the service procurer. The provider is also obliged to:

a. render correctly all prescribed licence and copyright information in relation to the open source components used;

b. ensure that no open source components are used that, according to the applicable licence, could have an undesired extension of the licence to the proprietary parts of the software or other programs if the service procurer uses the software for its intended purpose.

27.5.8. Even if components used together with the software could be subject to the licence and usage conditions of third parties in accordance with sections 27.5.6 and 27.5.7, the provider remains responsible to the service procurer for the correct integration of such components and thus for the contractual functionality of the software as a whole. Third-party components added at a later date must be disclosed to the service procurer as changes to goods/services in accordance with the provisions of sections 27.5.6 and 27.5.7.

27.5.9. The provisions of sections 27.5.1, 27.5.2, 27.5.6, 27.5.7 and 27.5.8 shall also apply mutatis mutandis to software that the service procurer accesses online because it is not operated on the service procurer's own infrastructure or that of a third party engaged by it. In such cases, the right to use the standard software is granted for a definite or indefinite period (until termination).

28.   Inspection and acceptance of deliveries and services

28.1.   The provider is obliged to only provide objects for inspection that are ready for inspection, i.e. fully completed and tested according to the state of the art, such as complete systems, hardware, software, work results from services, concepts and documents. The service procurer may demand to see the test logs.

28.2.   The parties to the contract agree on the framework conditions for the inspection, which define at least the following:

a. date(s) of inspection(s);

b. schedule for the inspection(s);

c. inspection method;

d. inspection criteria such as functions, availability, performance characteristics;

e. defect classification; and

f. the service procurer's obligations to cooperate.

28.3. The provider shall notify the service procurer in good time of its readiness for the inspection. A record of the test and its outcome is to be drawn up and signed by both contracting parties.

28.4. Partial inspection for partial supplies is possible by mutual agreement, but does not replace the successful inspection of the overall supply.

28.5. If no defects are found during inspection, the goods/services are deemed to be successful and are signed off in the work contract once the inspection record is signed.

28.6. If the inspection reveals only minor defects, the goods/services are nevertheless deemed to have been successfully inspected and are signed off in the work contract when the inspection record is signed, unless otherwise specified in the contract document. The provider shall rectify the identified defects free of charge within a reasonable period of time, which is to be agreed jointly.

28.7. Unless the parties agree otherwise (section 28.2), defects shall be deemed minor if the use or security of the ICT goods/services being inspected is not significantly affected.

28.8. If there is at least one significant defect, the inspection is deemed to have been unsuccessful. The provider shall immediately remedy the defects noted and shall invite the service procurer to a new inspection in a timely manner. If this inspection also reveals significant defects, proceed as per section 18.2.

28.9. Unless the parties agree otherwise (section 28.2), a defect shall be deemed significant if it results in a significant impairment of the use or the information or data security of the ICT goods/services concerned.

28.10. If the service procurer refuses to participate in the inspection despite the conditions for doing so being met (see sections 28.1 and 28.3), despite a reminder and a reasonable grace period, the goods/services shall be deemed to have been successfully inspected and accepted in the work contracts.

29. Purchase of hardware

29.1. Purchased hardware is deemed to have been delivered when the delivery note is signed by the receiving body specified by the service procurer at the agreed location.

29.2. The provider installs the purchased item (including operating software and firmware) at the agreed location in accordance with the installation instructions and puts it into operation, unless otherwise expressly agreed in the contract document.

30. Maintenance of hardware

30.1. Hardware maintenance includes corrective action (rectifying faults and errors to restore functionality) by replacing devices or repairing and replacing defective parts, and installing technical improvements. Servicing (preventive maintenance to ensure operational reliability) is carried out as indicated by the manufacturer's instructions and the state of the art.

30.2. In the absence of any agreement to the contrary, the provider shall only use and install original spare parts and consumables, or at least parts and consumables recommended and approved by the manufacturer, in the event of warranty or guarantee claims or in the course of providing maintenance services for the purpose of repairs. The defective and replaced parts become the property of the provider, unless this is not permitted due to the service procurer's information security and data protection policies. In such a case, the defective and replaced parts remain the property of the service procurer at no cost.

30.3. If faults occur, the provider shall, at the request of the service procurer, help to find the cause of the fault, even if the fault occurs when several systems or components interact. If the provider can show that the fault was not caused by the hardware it maintains, these services will be paid for separately.

31. Additional warranty for software

31.1. The provider warrants that software is delivered free of potentially damaging software routines and that it has carried out a quality control check in a manner customary in the market before delivery. Upon request, the provider shall supply a corresponding inspection record to the service procurer.

31.2. The provider also warrants that the software it provides is free of features that endanger data and information security or the operability and availability of other software and infrastructure, such as:

a. features which cause unwanted distribution or re-routing of personal data and information;

b. features which cause unwanted change or manipulation of personal data and information or the processing logic; or

c. features which cause the unwanted introduction of personal data and information or unwanted functional enhancements. A feature is deemed unwanted if it has not been requested by the service procurer, offered by the provider with a specific description of the feature, or expressly authorised (opt-in) by the service procurer on an individual basis.

31.3. The above requirements shall apply regardless of whether the software is standard or customised and regardless of the way in which the service procurer's software is provided. They also apply to the temporary or short-term provision of software, e.g. for testing purposes.

32. Software maintenance

32.1. Software maintenance includes closing security vulnerabilities, correcting other errors, adapting and developing the programs, and delivering new releases and patches. Functional enhancements are subject to a separate charge if this is contractually agreed by the parties.

32.2. If faults occur, the provider shall, at the request of the service procurer, help to find the cause of the fault, even if the fault occurs when several systems or components interact. If the provider can show that the fault was not caused by the software it maintains or supports, these services will be paid for separately.

32.3. To the extent possible, the provider shall, at the request of the service procurer and in return for a fee that is to be agreed in advance, also rectify faults that are due to circumstances for which the service procurer or third parties are responsible.

32.4. The service procurer is not obliged to upgrade to every new software version. In this case, the provider is entitled to discontinue maintenance services for earlier software versions after an appropriate transition period. Unless otherwise agreed, this period is 12 months.

33. Operating, reaction and repair time, availability

33.1. During operating hours, the provider shall accept fault reports from the service procurer and provide its services (e.g. maintenance, support, system monitoring). The response time is defined as the period between receipt of the fault report and the start of the repair work, during operating hours. The fault resolution time is the period from receipt of the fault report until completion of the repair.

33.2. Unless otherwise agreed, the following shall apply:

a. as operating hours: Monday to Friday from 8am to 5pm Central European Time or Central European Summer Time (excluding statutory and local public holidays at the place of performance);

b. as response time: four hours.

33.3. The provider shall begin to rectify the fault within the response time and shall complete the rectification within a fault resolution time which, where required, is to be agreed upon in accordance with a fault classification specified in the contract document.

33.4. At the request of the service procurer, the provider shall also render its services outside of operating hours in return for separate remuneration.

33.5. The availability of ICT goods/services is regulated in the contract document. Otherwise, goods/services that are provided automatically via a network must demonstrate an availability of at least 99.80% per quarter, 24 hours a day. This means that they may not be unavailable for more than 4.4 hours per quarter, including any foreseeable interruptions for maintenance. The provider shall schedule foreseeable maintenance interruptions outside of operating hours and shall notify the service procurer of them as early as possible.

34. Termination

34.1. If a contract (e.g. for maintenance, support, outsourcing, online services, communication services) has been concluded for an indefinite period, the following shall apply, subject to any agreed minimum contract term or differing cancellation terms: the contract can be terminated at any time; the notice period for the provider is twelve months and for the service procurer three months.

The termination may also extend only to individual parts of the contract, subject to an agreement on the adjustment of the remuneration.

34.2. Prepayments are reimbursed pro rata.

34.3. Contracts concluded for a definite or indefinite period of time may be terminated at any time without notice in the event of a material breach of contract by the other party. In this case, the remuneration is calculated pro rata; if the remuneration is paid as a lump sum, it is calculated pro rata on the basis of 60 months of service. This is without prejudice to claims for damages.

34.4. Additional termination arrangements are to be agreed as necessary.

35. Secondment of staff, contracts awarded to private individuals

35.1. The secondment of staff by the provider is subject to the Federal Act on Recruitment and the Hiring of Services (Recruitment Act, RecA; SR 823.11) if carried out on a commercial basis. The provider is responsible for obtaining the necessary permits and contracts for the secondees.

It is responsible for the required registrations with social insurance providers and submits the corresponding evidence at the request of the service procurer.

35.2. Where staff are seconded, the provider is liable for the faithful and careful selection and examination (professional and personal suitability) of the people seconded to the service procurer. The service procurer is responsible for the accuracy and appropriateness of the orders issued to the seconded staff, as well as for the monitoring and control of the goods/services to be provided.

35.3. If the provider is an individual, they must provide evidence that they are affiliated to a compensation fund as a self-employed person when submitting the quote. The service procurer shall not be liable for any social security contributions (old-age and survivors', disability and unemployment insurance, etc.) or other compensation, in particular in the event of accident, illness, disability or death.

35.4. Other gainful employment of the seconded staff or of individuals commissioned with a mandate that could influence the fulfilment of the contract requires the prior consent of the service procurer. The service procurer must be notified immediately of any foreseeable absences.