

1. Subject matter of agreement

1.1 These Terms and Conditions of Contract supplementally apply to the corresponding order (hereinafter collectively referred to as "**contractual terms**") for the provision of IT services (hereinafter referred to as "**Services**") by the Contractor to E.ON Business Services GmbH (hereinafter referred to as "**EBS**"). The contract does not include the performance of works and services under a contract for works and services.

1.2 If the Contractor confirms an order in a manner which deviates from EBS's contractual terms, then only EBS's Terms and Conditions shall nevertheless apply even if EBS does not object to the deviating or conflicting Terms and Conditions. Deviations from or additions to EBS's Terms and Conditions shall only apply to the extent EBS has expressly acknowledged them in writing.

1.3 If this English version conflicts with the German version, the German version shall be exclusively binding.

2. Type and scope of Services

2.1 The Contractor shall render the Services pursuant to the state of the art which is current at the time the contract is concluded and shall use such personnel to do so as is qualified to render the Services.

2.2 The Contractor shall alert EBS to relevant changes in the state of the art where such impacts the manner the Services are rendered.

3. Orders and confirmation

3.1 Orders (in these GT&C also called "**purchase orders**") shall only be deemed valid where they are placed in writing. Oral ancillary agreements to orders shall only be deemed binding when they are confirmed in writing. The foregoing shall also apply to any amendments and addenda to any agreement.

3.2 The Contractor shall notify EBS without delay and in writing in respect of changes to and/or extensions of the scope of Services which prove necessary in the course of execution of the Services. They shall require EBS's prior written consent.

4. Cooperation of the parties

4.1 The Contractor shall designate a competent official contact within its organisation who is able to provide the necessary information and render decisions on behalf of the Contractor. EBS shall exclusively communicate its instructions with respect to the Services to be rendered to this official contact.

4.2 All persons (including subcontractors commissioned by the Contractor of the and their employees) the Contractor deploys for rendering its Services to EBS (hereinafter referred to as "Service Providers") shall, in organisational terms, remain the employees of the Contractor or its sub-Contractors, irrespective of whether they are deployed at EBS for an extended period of time. The Contractor has the sole authority to instruct and direct its Service Providers, and shall manage its Service Providers independently. The Service Providers are not deemed to enter into an employment relationship with EBS, not even where they render Services at its premises. The Contractor is obligated to produce unbidden a permit for the supply of temporary workers before the services are commissioned.

4.3 Where Service Providers are deployed who are not nationals of an EU Member State, the Contractor must submit corresponding appropriate residence or work permits to EBS prior to their commencement of work.

5. Service delivery periods

5.1 The Contractor shall inform EBS without delay and in writing where circumstances arise or it becomes aware of any circumstances from which it appears that agreed deadlines cannot be met.

5.2 The Contractor may only rely on its failure to receive necessary documents to be supplied by EBS where it has not received such documents within a reasonable time despite a written demand therefor.

5.3 The public holidays deemed relevant to the provision of the Services are the statutory holidays of Lower Saxony (*Land Niedersachsen*).

6. Replacement of Service Providers

6.1 A Service Provider of this contract may only be replaced by another following EBS's prior written consent. If the replacement entails on-the-job training, then any such shall be for the account of the Contractor.

6.2 EBS may demand the replacement of a Service Provider if that Service Provider has repeatedly breached contractual obligations.

6.3 The costs arising as a result of the replacement of a Service Provider shall be for the account of the Contractor.

6.4 Reassignment of any deployed Service Providers to a higher qualification level is not permitted during the term of this Agreement.

7. Rights to the product of the Services

The Contractor hereby grants EBS the exclusive right, unlimited in geographical scope and time, transferable including by sub-license, to use the work product from the Services rendered in connection with this Agreement, such as, in particular, agreed interim work product, training documentation and work aids. The foregoing also includes the right on the part of EBS to pass provision of service to third parties by the grant of a right of use, which may be either gratuitous or for consideration and limited or unlimited in time.

8. Collaboration by EBS

8.1 Any collaborative contributions by EBS shall be agreed expressly and in writing.

8.2 Where the Contractor requires access to E.ON software or hardware in order to perform the agreed services, it may only use software or hardware by prior written agreement in accordance with the terms and conditions of EBS. In this respect, lead times must be taken into account.

9. Job recording and compensation

9.1 The agreed time/material remuneration for the services constitutes compensation for the time required to perform the services unless otherwise agreed, timekeeping and invoicing must be recorded on a quarter-hourly basis. No separate compensation is payable for materials used.

9.2 The Contractor's Services are invoiced in each case from the 16th of the previous month to the 15th of the current month (hereinafter referred to as "**Service Period**").

9.3 Invoicing is performed on the basis of job records, to be prepared each month on the basis of EBS's CATS job recording system. For this purpose, the contractor's Service Providers shall record and release at EBS CATS system, the hours worked by the 15th of the current month. Time must be entered on at least a weekly basis. When beginning work, the Service Provider will receive the relevant accounting rules from EBS project manager (hereinafter referred to as "**Project Manager**").

9.4 The hours recorded and released are subject to EBS's Project Manager's approval at the end of the Service Period.

9.5 On the basis of the approved hours, the Contractor shall prepare an invoice for the relevant Service Period within a four-week period, unless it is agreed that the Contractor will participate in EBS's credit procedures. Invoicing should be itemised broken down by project and shall quote the PSP project numbers/CS order numbers which

may be obtained from the Project Manager. The approved job records should be attached to the invoice.

No other type of job records will be accepted by EBS.

- 9.6 Every invoice must separately show VAT at the statutory rate. Original invoices must be sent in paper form to the administrative offices of EBS, Finanz- und Rechnungswegen, Humboldtstrasse 33, 30169 Hannover, quoting order numbers and attaching invoice documentation.
- 9.7 Incidental costs (net of deductible input tax) can only be reimbursed when this has been expressly agreed in the order and upon submission of the original invoices.
- 9.8 Where recorded and released hours are not approved by the Project Manager in accordance with clause 9.4 hereof, the Contractor must raise any objections without delay.
- 9.9 To the extent that a Service Provider does not meet the deadline for recording the hours served in the CATS system as specified in Section 9.3, the remuneration for the hours recorded late shall not due for payment.
- 10. Infringement of IP rights**
The Contractor hereby warrants that no intellectual property or copy rights of third parties will be infringed by the contractual Services. The Contractor hereby undertakes to indemnify and hold EBS harmless against any possible third party claims for infringement of such rights and otherwise also to indemnify EBS.
- 11. Liability**
The Contractor shall bear liability pursuant to the statutory requirements in the event of intentional acts or omissions and negligence [*Vorsatz und Fahrlässigkeit*]. It may not invoke § 831 (1) second sentence of the German Civil Code [*Bürgerliches Gesetzbuch - BGB*].
- 12. Subcontractors**
12.1 The Contractor may not assign its obligations under the contract, whether in whole or in part, to subcontractors without EBS's prior written consent, nor may it transfer Services assigned to it to subcontractors without such consent. Where EBS consents to the use of subcontractors, the Contractor must impose all of the obligations on the subcontractors which the Contractor itself has assumed *vis-à-vis* EBS, and ensure that they comply therewith.
- 12.2 The Contractor may not prevent its subcontractors from concluding agreements with EBS for other services.
- 12.3 If the Contractor deploys subcontractors without EBS's consent, EBS shall have the right to cancel and rescind the Agreement [*Rücktritt vom Vertrag*] and to demand compensatory damages in lieu of specific performance.
- 13. Performance of Services, health and safety**
13.1 In addition to EBS's corporate rules and policies, the Contractor must, in particular, also observe the generally recognised rules on health and safety and occupational health.
- 13.2 EBS keeps records of occupational accidents and accidents on the way to and from work of its own employees and third party Service Providers working for it. This record keeping is intended to improve occupational safety. If a Service Provider should have an accident on the way to or from the place of performance of the Services (accident on the way to or from work) or at the place the Services are rendered in connection with the agreed job (on the job accident), the Contractor shall inform EBS in writing thereof and provide further details thereof to the local health and safety officer of EBS. The foregoing accident notification to EBS shall, however, not relieve the Contractor of its existing statutory notification obligations, such as, in particular, the obligation to notify the *Berufsgenossenschaft*.

- 13.3 EBS attaches overriding importance to social consciousness in connection with its commercial activities, and for this reason is a participant in the "United Nations Global Compact" initiative. This initiative is based on ten fundamental principles intended to render the globalisation process more socially and economically compatible and to prevent corruption. The information sheet "E.ON Responsible Procurement Policy" refers to the UN Global Compact principles and can be downloaded from the Internet at <http://www.eon-einkauf.com/en/downloads.html>. The Contractor shall be obliged to observe those principles.

14. Insurance

The Contractor must maintain liability coverage upon terms and conditions customary in the sector (minimum sum assured of EURO 1.5 million per event of loss) for the duration of the contract. The Contractor must furnish evidence to EBS of its compliance with its obligation upon EBS's demand; any lower sums assured must be agreed in an individual case with EBS.

15. Assignment; right of retention

- 15.1 EBS is entitled to transfer the contractual rights and obligations in whole or in part. The Contractor will consent to such transfer, unless the transfer causes a deterioration of the Contractor's economic situation or the rights or obligations are to be transferred to a direct competitor of the Contractor.
- 15.2 Assignments as well as any other transfers of the rights and duties of the Contractor are hereby prohibited except where covered by the scope of § 354 a of the German Commercial Code [*Handelsgesetzbuch - HGB*]; any exceptions to the foregoing shall require EBS's written consent.
- 15.3 The Contractor may not enforce a right to withhold counter-performance under this contractual relationship, if such rights are based on other contractual relationships with EBS.

16. Confidentiality

- 16.1 The Contractor hereby undertakes to treat all information furnished to it by EBS in connection with the assignment as confidential without limitation, and to use the same exclusively for the performance of the contract. Confidential information within the meaning of this provision shall include documents, specifications, data as well as other information, which is either designated as such or is to be regarded as confidential by its nature.
- 16.2 Moreover, in so far as confidential information contains person-related data, the use thereof shall be governed by the stipulations under section 17. In the event of conflict between the provisions in this section 16 and the provisions in section 17, the provisions in section 17 shall take precedence in respect of person-related data.
- 16.3 The Contractor hereby undertakes to grant access to EBS's confidential information only to such Service Providers and third as are engaged with rendering Services under this Agreement and as to have themselves undertaken to maintain confidentiality in identical fashion. Upon EBS's demand, the Contractor shall furnish proof of its imposition of this requirement on the foregoing.
- 16.4 All information EBS may provide shall remain the property of EBS. The same shall also apply to any copies even where they are produced by the Contractor. The Contractor shall have no right to retain the information, copies or data carriers.
- 16.5 Upon implementation of the Agreement, the information provided by the EBS must be returned to EBS upon EBS's demand therefor, or, at EBS's option, destroyed in its entirety and unbidden, but in any event no later than at such time as the contract has been completely performed and the limitation period for the claims related to the breach

of contractual duties has expired, except where statutory duties of document retention otherwise require.

- 16.6 The Contractor shall inform EBS without undue delay in the event of any indications that any of the terms of this section have been breached.
- 16.7 The obligations under this section shall survive the termination of the contract.
- 17. Data Protection, Data Security, contract Data Processing**
- 17.1 The Contractor is obligated to comply with the statutory provisions on data protection (e.g., German Federal Data Protection Act, German Telecommunications Act) and to guarantee and monitor compliance with these provisions subject to the following provisions of this section 17.
- 17.2 The Contractor shall only collect, process and use personal data by way of contract data processing subject to instructions, pursuant to §§ 11 of the Federal Data Protection Act [BDSG] (hereinafter referred to as "**contract data processing**") on behalf of EBS to the extent that this is necessary to comply with the obligations of the Contractor resulting from the order. The scope of the order in this respect also includes all annexes and documents to which the order refers.
- 17.3 The type of data that are to be used by the Contractor as part of the contract data processing and the categories of data subjects are listed in the order or in an annex to the order (hereinafter referred to as "**personal data**").
- 17.4 Personal data for the purposes of these terms and conditions also include personal data that EBS itself processes on behalf of a third party and makes available to the Contractor, insofar as EBS makes use of the services of the Contractor to fulfill its obligations vis-à-vis the third party.
- 17.5 Even in the case of contract data processing, EBS shall remain in control and responsible for the personal data. The Contractor will not be entitled to withhold the personal data including the data carriers and documents that contain such data.
- 17.6 Contract data processing comprises the collection, processing and use of the personal data which are necessary for fulfilling the Contractor's obligations under the order and which are specified in the order. The access to data files and the right to contract data processing will be granted only if and to the extent that it is required to duly perform the above-referenced obligations. The Contractor shall not be permitted to use the data in any other way. In particular, the Contractor may not make any copies or duplicates of the data without the knowledge and approval of EBS.
- 17.7 The duration of the contract data processing is limited to the term of the services to be provided by the Contractor under the order.
- 17.8 EBS is entitled to issue instructions to the Contractor regarding the type, scope and procedures for processing data, and the data security measures to be put in place for this purpose. The Contractor is only entitled to engage in processing the personal data pursuant to the instructions issued by EBS. If the Contractor believes that an instruction issued by EBS violates statutory provisions regarding data protection, then it must notify EBS thereof without undue delay.
- 17.9 EBS's power to issue instructions and exercise control under the order and this section 17 may also be exercised by another person authorized by EBS.
- 17.10 The processing and use of the data takes place solely in the territory of the Federal Republic of Germany, in a Member State of the European Union or in another Contracting State of the Agreement on the European Economic Area. Each relocation to a third country requires the prior written consent of EBS and may only take place if the special requirements of §§ 4b, 4c of the

Federal Data Protection Act or of any applicable data protection provisions of other countries have been observed.

- 17.11 Changes to the subject matter, the scope, type, duration or of the purpose of the contract data processing, or of the category of data subjects, require a corresponding written agreement between the Contractor and EBS.
- 17.12 The provisions governing contract data processing continue to apply in the event that the Contractor performs reviews or maintenance on automated procedures or data processing facilities for EBS and access to personal data cannot be prevented during such a procedure.
- 17.13 The Contractor guarantees adequate data protection to ensure the confidentiality, availability and accuracy of the data and monitors compliance with the technical and organizational safety measures specified in the order or in an annex to the order within its area of responsibility. Furthermore, the Contractor warrants that personal data collected for different purposes will be capable of being processed separately. In addition, the Contractor warrants that the following data will be processed separately:
- the data of EBS,
 - the data of the Contractor, and
 - the data of the Contractor's other clients.
- Prior to the start of the contract data processing and subsequently in the intervals defined in the order or in an annex to the order, as well as at any time upon request of EBS, the Contractor shall provide written proof that it complies with the technical and organizational safety measures pursuant to the order or to an annex to the order. The Contractor is obligated to provide the proof by submitting to EBS in each case written documentation in a form which enables EBS to perform the monitoring obligations incumbent on EBS pursuant to § 11 of the Federal Data Protection Act.
- 17.14 Due to technical progress and the expected statutory developments, the need may arise to adapt the implemented technical and organizational measures to such technical progress and statutory developments. In this case, the Contractor is authorized to implement adequate alternative technical and organizational measures to make the adaptations to the technical progress. In doing so, the new measures may not drop below the safety level of the technical and organizational safety measures defined in the order or in an annex to the order. Essential changes must be documented and notified to EBS without undue delay. The Contractor must implement the necessary adaptations of the technical and organizational safety measures to the amended statutory requirements without undue delay. The essential adaptations must be documented and notified to EBS without undue delay.
- 17.15 EBS, or the controller (on behalf of whom EBS in turn acts as a contract data processor) as the case may be, is responsible for assessing the reliability of the data processing system as well as for safeguarding the rights of the data subjects under the relevant data protection legislation. In the event that EBS, or the controller (on behalf of whom EBS in turn acts as a contract data processor) as the case may be, instructs the Contractor to correct, delete or block personal data, the Contractor shall follow such instructions in full. If a data subject asserts rights vis-à-vis EBS, or vis-à-vis the controller (on behalf of whom EBS in turn acts as contract data processor) as the case may be, the Contractor shall perform all necessary acts to fulfill the obligations of EBS vis-à-vis the data subject without undue delay.
- 17.16 The Contractor shall appoint a data processing officer at the latest before the contract data processing starts in accordance with the provision of § 4f of the Federal Data Protection Act. The latter must provide proof of his or her

requisite professional competence and reliability and must endeavor to promote compliance with the provisions regarding data protection. The Contractor shall inform the data protection officer about the contract data processing.

- 17.17 The Contractor is obligated to ensure that it communicates the instructions issued by EBS to all employees who have access to the personal data in connection with the performance of the contractually agreed obligations of the Contractor pursuant to the order. Moreover, the Contractor is obligated to prohibit such employees – even for the period following their employment – from processing or otherwise using the personal data, in contravention of the instructions of EBS or for purposes other than those related to performing the contractual duties for EBS (data secrecy). The obligation to maintain data secrecy shall be imposed upon the employees before the contract data processing is commenced. The Contractor undertakes to prove in writing (upon request) vis-à-vis the data protection officer appointed by EBS that this obligation has in fact been imposed.
- 17.18 The Contractor may only commission subcontractors to the extent that the purchase order expressly allows for the same in keeping with Section 12 of these terms and conditions. The Contractor shall select the subcontractor with care and make sure before commissioning the subcontractor that the latter is able to meet all obligations defined for the Contractor in this section 17. The Contractor is also obligated to impose upon the respective sub-contractor those duties set forth in this section 17, subject to the condition that the sub-contractor will be deemed to have assumed the Contractor's contractual rights and duties. The Contractor must also contractually ensure that all rights memorialized in this agreement can be exercised — at the choice of EBS — either by the Contractor according to the instructions of the Client, or by the Client itself. In the event that the Contractor protects and enforces the rights at the instruction of EBS, the Contractor will be obligated to forward all information, specifically documentation and monitoring results, to EBS without undue delay. At the request of EBS, the Contractor will be obligated to prove to the EBS data processing agent in writing that the duties set forth in this subsection 17.18 have been satisfied.
- 17.19 The provisions of Section 17.18 apply with the necessary modifications also to the persons employed in the course of the obligations of the Contractor vis-à-vis EBS, who have access to personal data. The use of such persons is only permitted to the extent that the order makes express provision for it.
- 17.20 The obligations of the Contractor referred to in this section remain unaffected by the termination of the contractual relationship with EBS established by virtue of the order. The aforementioned applies, above all, to the obligation to maintain data secrecy. After the conclusion of the contract data processing, the Contractor may continue to save or otherwise retain the personal data provided to it, if such action is mandatory under the minimum statutory retention periods. In all other respects, the Contractor is obligated, upon termination of the contract data processing, to return without undue delay all personal data in its possession to EBS or — after consultation with EBS — to destroy the data in line with data protection regulations and to confirm the destruction of the data to EBS in writing. This also includes personal data which was created for data backup and logging. In the event of a return of the personal data to EBS, the Contractor must destroy without undue delay any data remaining in its possession, as well as any copies or duplicates of the data, in line with the data protection regulations and confirm the destruction of the data to EBS in writing.
- 17.21 The Contractor grants EBS, especially its data protection officer, the right to conduct unrestricted monitoring during

normal business hours to ensure the data is processed in keeping with data protection provisions, the terms and conditions of this Agreement and the instructions issued by EBS. The Contractor agrees to provide EBS with the requisite amount of support, above all to furnish the necessary information, to take any and all actions required and to grant the requisite physical access, systems access and data access rights. EBS is entitled to carry out the aforementioned monitoring also by relying on third parties (in particular third parties which are authorized to conduct such monitoring vis-à-vis EBS, e.g. the Client of EBS and regulatory authorities). In addition, the Contractor shall permit and support the documentation of the monitoring results before the start of and during the contact data processing.

- 17.22 EBS is entitled to have a safety inspection conducted on the Contractor's service providers in accordance with § 12b of the Atomic Energy Act [Atomgesetz], if such persons perform services that are connected with the handling or transport of radioactive materials or with the construction and operation of facilities within the meaning of §§ 7, 11 (1) no. 2 or § 9a (3) of the Atomic Energy Act. The Contractor agrees to furnish the service provider with data that is required for these purposes.
- 17.23 The Contractor shall inform EBS without undue delay in writing in the event of any indication of an infringement of data protection provisions or this section 17 or of instructions issued by EBS. The information duty shall apply in particular in the presence of indications for events pursuant to § 42a of the Federal Data Protection Act. If the security and confidentiality of the personal data held by the Contractor should be threatened by attachment or confiscation, by insolvency or composition proceedings or by other events or actions taken by third parties, then the Contractor must inform EBS thereof without undue delay and in writing. The Contractor shall without undue delay notify all responsible persons in this connection that EBS has dominion over and ownership of the information.
- 17.24 EBS reserves the right to disclose any Contractor data, which was furnished in connection with the order, to affiliated E.ON companies within the meaning of § 15 et seq. of the German Stock Corporation Act [AktG] for Group-wide procurement purposes and the right to save such information even after a contract ends, provided it is done in accordance with the applicable retention rules or for possible other orders..

18. Requirement of writing

Unless expressly provided otherwise herein, the contract and any amendments thereto as well as any declarations, notices and documentation requirements relevant under the contract must be in writing. The provision set forth in § 126 (3) of the German Civil Code shall be inapplicable as between the parties.

19. Publications, advertising

Any disclosure of the business relationship with EBS shall require EBS's prior written consent. The foregoing also applies to the publication of data related to this contractual relationship with EBS.

20. Jurisdiction and venue

Jurisdiction and venue for any disputes shall lie with the courts of Hannover.

21. Miscellaneous

- 21.1 The language of the contract is German.
- 21.2 Applicable law is German law, excluding application of the UN Convention on the International Sale of Goods dated 11 April 1980. Clauses customary in the trade shall be interpreted in accordance with the ICC Incoterms from time to time in effect.
- 21.3. If individual provisions of the Agreement should be or become invalid or impracticable, the remaining provisions as well as the contract as a whole shall nevertheless



**General Terms and Conditions of Contract for the
Provision of IT Services of E.ON Business Services GmbH
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remain in effect. The parties shall replace the invalid/impracticable provision from the time the invalidity/impracticability arises, taking their mutual interests in account, by a provision which is commercially as equivalent as possible. The foregoing shall also apply analogously in the case of any contractual gaps.