

# General Terms and Conditions of Purchase for IT Services ("GTCP-IT") of Österreichische Rundfunksender GmbH & Co KG

(translation from the German original)

January 2020

## Chapter I Introductory Provisions

### 1. General

- 1.1 The following General Terms and Conditions of Purchase (hereinafter "**GTCP-IT**") shall apply to all deliveries and services, contractual relationships, orders and offers as well as business transactions of Österreichische Rundfunksender GmbH & Co KG, Hugo-Portisch-Gasse 1, 1136 Wien (hereinafter "**ORS**"), unless otherwise agreed in writing, in the case of purchasing software or IT services, these are all software deliveries of a supplier (as an independent product or as a component of delivered hardware, software parts (patches, fixes) as well as new versions or updates of software provided by the supplier under warranty or as part of software maintenance services), all IT services (software maintenance services, customising, parameterisation, development services and other IT services), as well as the procurement of hardware and hardware components, IT-assisted broadcast engineering and related services of a supplier (e.g. coordination services) (hereinafter collectively referred to as "**Services**"). With the submission of an offer, acceptance or performance of the order, the GTCP-IT shall become binding for a supplier of such software or IT services (hereinafter referred to as "**Contractor**"). In the event of permanent business relations, the GTCP-IT of ORS shall also apply without express reference or reference to them.
- 1.2 The GTCP-IT (including the listed appendices, if applicable) shall also form an integral part of any order form or special service contract which may be agreed separately in writing between the Contractor and ORS (the "**Order**"). The scope of Services applicable in each individual case (e.g. list prices, number of users, amount of fees, type of service packages, services, training, etc.) shall be specified between the Contractor and ORS with the Order. The GTCP-IT and the Order, including any documents referenced therein, together form the contract (the "**Contract**"). The GTCP-IT also apply without restriction to all additional Services or other adaptations or changes to an Order.
- 1.3 Where applicable, the mutual rights and obligations arise from the following documents in the order listed below: the Order together with enclosures, an individually concluded agreement together with enclosures, a data processing agreement in accordance with Art 28 GDPR, these GTCP-IT, other GTC of ORS, other documents to which reference is made in the Order or an individually concluded agreement and which are not attached as an enclosure, relevant and recognised technical standards and guidelines as the minimum standard to be observed in any case. In the event of contradictions between these principles or other ambiguities regarding the primacy of application or the interpretation of these principles and individual provisions thereof, the order stated shall apply.

- 1.4 ORS reserves the right to modify or amend the GTCP-IT at any time. The amended terms and conditions shall not apply to current contracts unless the parties agree in writing to the application of the new GTCP-IT to existing contractual relationships, whereby text form and therefore e-mail form shall suffice. Any contract extensions are subject to the GTCP-IT in the version valid at the time of extension.
- 1.5 General terms and conditions or other conditions of the Contractor shall not become part of the Contract without express agreement in the Contract. This applies in particular to any pre-printed or otherwise referenced terms and conditions of the Contractor on the Contractor's order or order forms.
- 1.6 The version of the GTCP-IT valid at the time the Contract is concluded shall be authoritative in each case. ORS concludes to these GTCP-IT only.

## **Chapter II Performance Object**

### **2. General**

- 2.1 The Contractor is obliged to offer the Services functional, complete and in accordance with the latest state-of-the-art in the market. The offer must include all components and other Services, in particular those required for the permanent operability of a system. The Contractor shall guarantee the completeness of the offer with regard to all Services, including products of other manufacturers (e.g. mixed hardware), within the interfaces to be defined by the Contractor for the system, as well as compatibility with the rest of the system. The Contractor assures the fulfilment of the promised properties and specifications.

### **3. Delivery of Standard Software**

- 3.1 The standard software is made available to the purchaser in "executable object code form" (object code). Standard software shall always be delivered to ORS with user documentation.
- 3.2 In case of an adaptive development owed, whereby this includes customising, scripting as well as parameterisation of the software, the following provisions of section 3 and the provisions for the development of software shall apply *mutatis mutandis*, unless the parties agree otherwise in individual cases.
- 3.3 Modifications to standard software and user-specific adaptations shall be made in such a way that
  - 3.3.1 the version capability is not lost, i.e. the change to the next versions of the standard software remains possible without any problems,
  - 3.3.2 simple business processes can be achieved, but the standard of the software is maintained,
  - 3.3.3 no enhancements are made by individual programs,
  - 3.3.4 the corresponding rules of the manufacturer of the standard software are observed,

- 3.3.5 all modifications and adjustments are documented clearly and comprehensibly for a third party expert. For this purpose, uniform guidelines for the documentation of the modification of standard software must be implemented across the organisation and at least the interface formats and data exchange formats must be documented,
- 3.3.6 there are no disruptions to ORS's operational or business processes, or at least only to the extent absolutely necessary, whereby such are to be announced in advance.

#### **4. Development of Custom Software**

- 4.1 The Contractor has to deliver and install the software in source code and machine code to ORS in accordance with the detailed description and concretisation in the functional specification document and in the specification as part of the user documentation on the dates specified in the time schedule.
- 4.2 At the same time, the development documentation must be transferred to ORS. The user documentation shall describe all functions of the software and explain the handling in such a way that ORS and its employees are able to operate the software. The aim of the user documentation is to enable independent working without further external support. The user documentation has to contain a simple and understandable introduction to the use of the software, a schematic representation of all functions and a list of frequently asked questions. The development documentation has to give an exact and fully annotated description of the development process of the programming, which is understandable and usable for an expert.
- 4.3 If the requirements analysis and functional specification document creation are part of the Contract, the Contractor warrants that (1) the requirements analysis examines all important IT-technically supported processes, (2) the functional specification document presents all IT-technically supported processes of ORS covered by the Contract in the actual state with their organisational and IT-technical weak points resulting from the analysis, as well as a target state in a continuous and, as far as necessary, graphic processing, (3) the contents of the functional specification document have been agreed with ORS, (4) the functional specification document records the necessary changes to the software in such a way that they are formulated and designed in a way that is comprehensible to ORS's specialist departments, but can also be used as a template for technical implementation without further processing, (5) the functional specification document and its specifications have been checked for logical consistency and feasibility, (6) the structure of the functional specification document is based on international standards (e.g. IEEE Std. 830-1993, IEEE Recommended Practice for Software Requirements Specifications), and covers at least the following areas: technical and functional specification, performance, interface connection, (7) unless otherwise agreed, the functional specification document is submitted to ORS for approval within two months after the Order is placed.
- 4.4 The entire documentation is delivered in German language in paper form, on data mediums, or via download link. ORS has the right to copy and use the documentation for the purposes of this Contract randomly.

#### **5. Enhancement of Standard Software**

- 5.1 Unless otherwise agreed, the Contractor shall be responsible for the enhancement of standard

software. With payment of the agreed remuneration, the following performances are therefore also covered:

- 5.1.1 Extensions within the framework of existing program modules,
- 5.1.2 Improvements to functions and general operation as well as additions to the instructions,
- 5.1.3 Programming, delivery and implementation of adaptations and improvements of the software,
- 5.1.4 Provision of the latest program version and transfer without charge of all modifications and corrections to ORS,
- 5.1.5 Submission of the latest documentation.

## **6. Trainings for Standard and Custom Software**

- 6.1 On separate request, the Contractor shall train the employees of ORS in such a way that they have the level of knowledge and skills necessary for the operation of the contractual software required for their task. The Contractor shall carry out the training measures in good time so that the employees of ORS can carry out the corresponding tasks independently if required. The Contractor shall provide ORS with any basic qualification required for such training in good time in the offer.
- 6.2 All training courses are held in Vienna in the premises of ORS or at a location designated by ORS. In particular, the Contractor shall provide company-owned training documents and shall also provide training documents such as printed matter, online manuals, videos, presentations, etc. for ORS's own training measures and shall grant ORS the right to reproduce these, provided that no rights of third parties are affected thereby.
- 6.3 Unless expressly agreed otherwise between the parties, no additional fee shall be charged for the performance of the training courses and for the training documents.

## **7. Hardware**

- 7.1 All hardware components supplied by the Contractor shall meet with all specifications in accordance with the requirements of ORS. Unless expressly agreed otherwise with ORS, the Contractor shall deliver brand-new standard hardware components that are common in the information technology sector and can be easily replaced or extended. In addition, the hardware to be supplied by the Contractor must comply with Austrian legal regulations and other generally recognised standards (in particular applicable ÖNORMEN, industry standards) with regard to mains supply, cabling and electromagnetic compatibility, but also with regard to employee protection.
- 7.2 As manufacturer, the Contractor warrants that the object of performance is designed and manufactured in accordance with the essential protection and safety requirements, that it carries out a conformity assessment procedure or has one carried out, draws up the technical documentation, issues an EU declaration of conformity, affixes the CE marking, ensures conformity in series production, marks the object of performance with a type, batch or serial number or, if this is not possible, affixes it to the packaging or accompanying documentation and attaches the instruction

handbook and safety information in German. Insofar as required by law or generally accepted standards, the object of performance must therefore display a CE conformity mark, ÖVE test mark, or an equivalent safety mark recognised by the EU. To verify these criteria, all relevant documents (e.g. EU declaration of conformity, test reports on health and safety protection, technical construction files and operating instructions with safety information) must be provided in German language within a period of 10 working days upon request by ORS.

- 7.3 If the object of performance does not have a safety mark that complies with Austrian legal regulations or EU legal provisions, the Contractor shall be obliged to have these tested at its own expense by a state-authorized testing institute in Austria or the country of origin, if this country is a member of the Agreement on the European Economic Area (EEA), in accordance with the regulations in question. In this case, the Contractor is obliged to provide confirmation of the inspection.

## **8. Maintenance and Support**

- 8.1 Maintenance includes all Services necessary for maintaining the operational readiness of the software and the components to be maintained. Maintenance Services are Services that consist of the provision of new versions, updates, upgrades, releases, fixes of security vulnerabilities and bug fixes, as well as the provision of help desk, first, second and third level support. For purposes of clarification it is noted that updates which have to be carried out by the Contractor due to security vulnerabilities which have not been caused by ORS must be delivered to ORS free of charge and must therefore be performed independently of commissioned maintenance Services and in any case as an integral part of the proper performance of the Services.

- 8.2 The Contractor guarantees the availability of maintenance Services and spare parts for delivered components (devices, software, ...) for their common operating life, beginning with flawless acceptance.

## **9. Guarantee of Completeness**

- 9.1 The description of the Services to be rendered in accordance with the Contract between ORS and the Contractor, including annexes, shall be complied with, but does not constitute an exhaustive list of the scope of Services to be rendered. Rather, the Contractor is obliged within the meaning of its warning obligation according to section 24 of this GTCP-IT to deliver, operate and maintain the Services to be rendered completely functional, free of defects and in compliance with all official regulations and technical specifications to be complied with, even where the performance description may be incomplete. The Contractor can therefore not appeal to the fact that individual Services or partial Services which are necessary to achieve the ordered Services are not expressly mentioned in the Contract or in other contractual bases. The Contract therefore covers all Deliveries and Services required to achieve the Services ordered by ORS in accordance with the project description or a similar document within the framework of the conclusion of the Contract, irrespective of their express reference in the Contract or in the other contractual bases. To this extent, the Contractor shall assume a guarantee of completeness to render the agreed Services in full at the agreed net total price in accordance with section 30.

## **10. Services of ORS**

- 10.1 ORS is only obliged to provide resources (hardware, software, premises, etc.) if this is expressly agreed in writing. The use of the premises, areas or other facilities of ORS by the Contractor - in

particular for the operation of systems - shall require a separate written user contract with ORS. The mere fact that contractual Services are performed in the premises or on the grounds of ORS does not mean that resources must be provided. Resources provided by ORS may only be used by Contractor and its employees and/or subcontractors to perform the contractual Services and may not be disclosed to third parties (e.g. passwords).

- 10.2 Services provided by ORS and/or third parties commissioned by ORS shall be specified in the Contract. Insofar as these services are defined on the basis of information provided by the Contractor, they shall only be owed by ORS to the extent that they are absolutely necessary for the defined scope of delivery/service and there are no safety concerns (risk of personal injury and/or material damage) preventing their provision.
- 10.3 If services by ORS and/or third parties commissioned by ORS are required as a result of defective, late or incomplete performance or information provided by the Contractor or as a result of other modifications, repairs, warranty or guarantee cases and the like for which ORS is not responsible, these shall be borne by the Contractor. The Contractor shall therefore indemnify and hold ORS harmless against all costs and other disadvantages arising therefrom.
- 10.4 Should the Contractor partially or completely waives a contractually agreed service provided by ORS and provides these itself, it shall not be entitled to any compensation therefore, in particular no reimbursement of expenses.
- 10.5 The use of all documents, hardware, software, equipment, aids and other services provided by ORS to the Contractor for the performance of the Services shall be at the risk of the Contractor. ORS shall therefore not be held responsible for any misconduct on the part of the operating personnel, even if ORS's personnel assigned for this purpose perform any operation/installation. The use shall be timely notified and planned by the Contractor in such a way that no overtime work is incurred for ORS's employees.

### **Chapter III Project Organisation**

This section shall apply to IT projects pursuant to these GTCP-IT, insofar as this is required by ORS in the Order, and the parties do not make any provisions to the contrary.

#### **11. Definitions and Tasks in the Project Organisation**

- 11.1 Project manager, if applicable, means the highest authority in the project process, coordination of the project and all persons involved, recording and documentation of all steps in the project. Unless expressly agreed otherwise, the Contractor shall take care of the project organisation and in particular also undertake the function of the project manager.
- 11.2 Working group, if applicable, is a body composed of members by both parties, which is authorised to take decisions in the project, or is equipped with the necessary authorisations by decision makers.
- 11.3 The working group shall have its constituent meeting on the day the Contract is concluded, for which each party shall send two persons as members. The task of this working group is (i) to

maintain communication between the parties involved in the project, to report to the project leader and to ensure an exchange of information, (ii) to monitor compliance with the Contract, performance of the respective Services by the parties, including deadlines, (iii) to examine and propose change requests, (iv) to hold regular meetings at least every three months and to record the results thereof in a protocol.

- 11.4 If no working group has been established, the parties will each appoint project coordinators who will take over the tasks assigned to the working group in these GTCP-IT and exchange all information with each other accordingly. Each party shall therefore appoint a project coordinator who shall be instructed and authorised by the respective party to make statements, receive statements, take action and otherwise take all necessary measures to advance the project in accordance with the Contract. It is the responsibility of the respective party that the project coordinator is assigned accordingly and that is therefore aware of which actions he may take under his own responsibility with effect for the respective party and for what purpose coordination with the person competent to take the decision must be induced. All actions and statements therefore made by the project coordinator shall be deemed to have been approved by the respective party and shall be fully attributed to it.
- 11.5 The project coordinators of the parties shall meet at regular intervals to discuss the content and performance of the Services and to exchange all information necessary for the performance of the Contract. Also in this case, the project manager plans, coordinates and monitors the performance of the Services according to the Contract with ultimate responsibility.

## **12. Phases in the Project**

- 12.1 In the planning phase, the working group shall determine the more detailed technical, commercial and temporal modalities of the project in a binding manner and conceive a project plan in accordance with the time table set. If ORS does not provide a product requirements document, this shall be created within the framework of the planning phase, in which case the Contractor shall be obliged to support ORS accordingly during the preparation and, in particular, to revise the correctness, completeness and suitability of the documents and other information of ORS as well as the information in the product requirements document, and the Contractor shall therefore bear the risk of the suitability of the product requirements document for the implementation of the project.
- 12.2 After completion of the planning phase, the definition phase, design phase and implementation phase follow - unless otherwise agreed by the parties in the project plan. In the definition phase, an analysis of the requirements of ORS is carried out with the aim of describing the Services to be provided in detail, completely, consistently and unambiguously. The result of this phase is a functional specification document summarising these requirements (section 4.3). In the design phase, a model of the software solution is developed and the architecture and individual components are defined. In the implementation phase, the software solution is then implemented and integrated into the IT system at ORS and prepared for testing and acceptance.
- 12.3 The project manager shall maintain standardised and continuously updated project documentation describing at least the following project control mechanisms: structure of the project; process organisation; change request management and implemented change requests; milestones and status of achievement. At the same time, the current status of the technical specifications and

other contractual bases, insofar as these are changed in the course of the project, must be documented and stored by the project manager accordingly.

- 12.4 The project manager must compile a summary report of each meeting in the format of the standard ORS word processing system and send it to all participants and the working group within one week from the date of the meeting.

## **Chapter IV**

### **Performance of Services**

#### **13. General Performance Obligations**

- 13.1 The Contractor performs the Services properly, in accordance with the principles of proper professional practice, in accordance with the current state of the art and in accordance with recognised technical and quality standards at the time of the conclusion of the Contract in such a way that the functionality and availability of the Services is ensured in accordance with the Contract.
- 13.2 The Contractor shall inform itself about the safety, accident prevention and regulatory provisions (in particular the General Technical Terms and Conditions (GTTC), regulations concerning electrical safety, procedures for work by external companies on ORS transmitters, ORF house rules; available under <https://www.ors.at/de/agb/>.) applicable at the place of performance (in particular in the premises or facilities of ORS or third parties used by it or its customers). The Contractor shall comply with these and ensure that these are taken note of and complied with by its employees and subcontractors commissioned by it.
- 13.3 The Contractor shall familiarise itself and confirm the specified safety requirements set by ORS with regard to information security, IT security and data protection prior commencing with the performance of the Services. These confirmed documents then become part of the respective conclusion of contract. The requirements shall be regularly updated by ORS; the Contractor shall be obliged to inform itself of these updates and to implement the amended requirements. In addition, the Contractor is obliged, at the request of ORS, to provide proof of compliance with the above requirements.
- 13.4 In providing the Services the Contractor shall comply with the current standard of information security, implement and comply with the requirements and measures of the security requirements specified in particular in section 13.3, as well as in particular secure ORS's IT systems against unauthorised access by third parties (e.g. hacker attacks) and against unwanted data transmission (e.g. spam) using state-of-the-art technology. If the Contractor becomes aware in particular of hazards or security vulnerabilities to data and information/system security, it must inform ORS immediately and initiate effective countermeasures via an order of ORS. If threats or security vulnerabilities to data and information/system security become public or become known to ORS, the Contractor has to eliminate them promptly. The elimination of threats and security vulnerabilities is free of charge.
- 13.5 The Contractor shall review the software and/or data mediums with an up-to-date anti-malware software program before handing them over to ORS and ensure that the software and/or data mediums do not contain any malware such as computer viruses, adware, spyware, worms, Trojans, backdoors, ransomware, rootkits, cryptominers or similar. The Contractor has to use current



software security tests to ensure that the software is safe before it is handed over and has to prove to ORS that the software does not contain any critical weak points that could damage the integrity, availability or confidentiality of the IT systems and data or those of connected third parties, in particular the employees and customers of ORS.

- 13.6 The Contractor ensures by diligent selection of the deployed employees (also in the case of exchange and/or training of employees) that they possess the personal suitability and expertise to perform the Services in the agreed quality.
- 13.7 The Contractor's main obligation is to document the contractual Services rendered in a comprehensible technical manner and to provide ORS with sufficient and precise information on the status of the Services upon request. ORS may at any time require the submission of results at the draft stage and as an interim result, without releasing the Contractor from its obligation under this section 13.
- 13.8 The Contractor is obliged to subject the product to a technical security analysis (penetration or vulnerability tests) before implementation of the software and further before delivery of an update and/or upgrade, in which the product is examined not only for known vulnerabilities but also for new vulnerabilities (e.g. through fuzzing tests). ORS has the right to carry out a technical security analysis itself at any time or to have it carried out by a third party commissioned by ORS.
- 13.9 The provision of materials, tools, machines and other aids shall be at the risk and expense of the Contractor only. Even if ORS provides storage areas or storage rooms for this purpose, ORS does not assume any liability for the items brought in. The Contractor shall evaluate the suitability of any aids (e.g. ladder) and materials provided by ORS prior to their use; the Contractor is solely responsible for the use of such items; it also bears the risk.
- 13.10 The Contractor shall leave the place of performance of the Service and other premises used by it clean and free of any objects brought in by it. If unavoidable or reusable packaging materials or other waste accumulate during the performance of the Service, the Contractor shall dispose of them at its own risk and expense in accordance with the applicable legal provisions.
- 13.11 Packaging used must be licensed in accordance with the Packaging Regulation 2014 (*Verpackungsverordnung*, BGBl. II No. 184/2014) in its current version. The Contractor has to declare in a legally binding manner that it itself or an upstream manufacturer or distributor participates in an approved collection or recycling system within the meaning of the above mentioned regulation (e.g. existence of an ARA licence). As a matter of principle, any waste produced by the Contractor during the performance of Services by the Contractor has to be properly disposed of by the Contractor at the Contractor's expense and risk.
- 13.12 At the request of ORS, the Contractor is obliged to prove the origin of the delivered products and to provide all documents and evidence required for this purpose.

#### **14. Third-Party-Software**

- 14.1 The Contractor is obliged, as far as the provision of Services in connection with standard software requires the use of third-party software products, to conclude the corresponding licenses in its own name or otherwise acquire the necessary rights of use in its own name, and to ensure that

the Services can still be provided without infringement of third-party rights. The Contractor is obliged to conclude the contracts for the use of the software of third parties in such a way that these third parties have no right to carry out license validations at ORS, its locations and the servers operated by it, and the Contractor alone is obliged to prove to the third parties that the use of the software complies with the contract and the law. The Contractor is liable to ORS for all damages resulting from the deficient performance of this obligation and has to indemnify and hold ORS harmless in this respect. Third-party-software should be able to be integrated into the patch or update process.

- 14.2 All license agreements for individual software that is not subject of the specification in the functional specification document (in which case section 14.1. shall apply mutatis mutandis) shall be concluded by ORS in its own name.

## **15. Open-Source Software**

- 15.1 The use of open-source software under a copyleft license is not permitted within the framework of performing Services to ORS; the use of open-source software requires the prior written consent of ORS. If the Contractor intends to use open-source software within the framework of the Services, the Contractor undertakes as an essential contractual obligation to immediately notify ORS in writing (i) which open-source software components are to be used, (ii) which license conditions are applicable and to hand these over to ORS in copy, and (iii) to confirm that no so-called copyleft effect is triggered as a result of which the software Service altogether would be classified as open-source software. To the extent that the use of open-source software is permissible in accordance with this provision, the Contractor is obliged to ensure that the use of the open-source software does not restrict the contractual or intended use of the Services by ORS.
- 15.2 If, contrary to this provision, the Contractor uses open-source software, the Contractor shall indemnify ORS against all third party claims and associated costs arising from the use of open-source software within the limitation period provided for defects in the software pursuant to section 34. of this GTCP-IT in terms of amount and without limitation.
- 15.3 Insofar as this is required under the respective terms of use and license, the Contractor has to hand over the source code of the open-source software to ORS at the latest on the agreed delivery date.
- 15.4 Upon request by ORS, the Contractor also has to demonstrate and document compliance with this provision by using code scanning tools. The detailed documentation of the code scanning is to be handed over with the respective Service.

## **16. Examination of Documents and Instructions of ORS**

- 16.1 The Contractor has to revise the documents and documentation provided by ORS for the performance of the Services for correctness, completeness and suitability prior to use. The Contractor is therefore solely responsible for the use of such documents; any reference to incorrect or incomplete documents by the Contractor is irrelevant. The same applies to materials provided or other objects, services provided by other contractors, regardless of whether these were called in by ORS or the Contractor, and in any event if, in the Contractor's opinion, circumstances exist which prevent performance in accordance with the Contract.

- 16.2 When performing the Services, the Contractor has always to observe the instructions of ORS. However, the Contractor is obliged to review the legality, expediency, correctness and technical feasibility of instructions and to notify ORS in writing of any objections to them without delay, but no later than within 5 working days, and at the same time to make a proposal for the improvement or correction of the instructions.
- 16.3 An infringement of these obligations leads to the Contractor's obligation to provide warranty and compensation within the meaning of section 34 and 35 for a deficient performance resulting therefrom, and the Contractor cannot – not even partially – release itself from this by the fact that the defect or loss resulting therefrom (loss caused by defects and consequential loss caused by defects) was caused by the Services provided in accordance with section 16.1 und 16.2.
- 16.4 The Contractor shall remain solely responsible for the flawless performance of the Services under the Contract even if ORS has approved or signed the plans, drawings, calculations and other execution documents submitted by the Contractor or has provided them with a note confirming inspection; this shall not relieve the Contractor from its warning obligation or its liability for the performance of the Services in accordance with the Contract (not even in part).

## 17. Dates, Delay and Penalty

- 17.1 The delivery and performance period commences on the day the Order is placed, as long as the commencement was not expressly agreed otherwise in the Contract. If no delivery and performance period has been agreed on, delivery shall be made immediately.
- 17.2 The delivery dates and delivery periods stated in the Order are binding and fixed dates. Fixed date means that the Delivery or Service must be complete and ready for use at the place of destination on the specified delivery date. For compliance with the fixed date in the case of deliveries of goods, the delivery of the flawless goods to ORS during normal business hours with the necessary shipping documents to the place specified in the Order (hereinafter "**Place of Destination**") is decisive (cf. section 8.3). If a delivery with assembly has been agreed, the delivery of the flawless Service after proper performance of the assembly is decisive for compliance with the fixed date. Insofar as acceptance is provided for by law or contractually agreed, the time of acceptance is decisive. Early Deliveries or Services and partial Deliveries or partial Services require the prior written consent of ORS.
- 17.3 Unless otherwise agreed, the delivery of the Service shall take place DDP Incoterms 2010 to ORS or to the location designated by ORS. Unless otherwise agreed, the delivery note in duplicate, packing slips, cleaning certificates and test certificates in accordance with the agreed specifications and other necessary documents have to be attached to the Service. Insofar as known, the order number, gross and net weight, number of packages and type of packaging (one-way/reusable), date of completion, Place of Destination (unloading point) and consignee must be stated in full in all shipping documents and - in the case of packaged goods - on the outer packaging.
- 17.4 In any case of a delay in delivery (e.g. if the supplier exceeds the delivery dates or performance deadlines, the deadlines set out in the project plan are not met, Services are not provided for release or acceptance in due time) or any other default in performance for which ORS is not responsible, ORS shall be entitled to insist that the Contract be adhered to and, at the same time, a penalty becomes due for payment from the date on which the default in performance and the

delay in delivery are determined.

- 17.5 The penalty shall be payable retroactively, which means from the agreed date or the occurrence of a default in performance. From the 1<sup>st</sup> calendar week onwards, the penalty shall amount to 1% of the total net price according to section 32 per calendar week commenced, but at least EUR 1,000.00 per calendar week. The penalty is limited to 10 % of the total net price per incident, which obliges to pay a penalty.
- 17.6 The penalty claim is not subject to the right of judicial moderation and is independent of any actual damage that has incurred to ORS. This shall not affect ORS's right to demand compensation for any additional damage caused by the default and/or delay in delivery, or otherwise assert the legal remedies available derived from the Contract (e.g. termination of the Contract or withdrawal from the Contract in accordance with § 918 Austrian Civil Code).
- 17.7 ORS reserves the right to refuse acceptance of the delivery at the expense of the Contractor or to invoice any expenditure accordingly in the event of over/under-deliveries of ordered quantities as well as in the event of premature delivery of the Deliveries and Services.
- 17.8 The Contractor has to notify ORS immediately of any noticeable failure to meet the fixed deadline, stating the reasons and the expected duration of the delay. The unconditional acceptance of a late delivery shall not constitute a waiver by ORS of its rights with respect to a late delivery.

## **18. Acceptance of the Service**

- 18.1 The delivery and acceptance is carried out in accordance with the following phases: (i) providing the Services for release, (ii) releasing the milestones, (iii) providing the Services for acceptance, and (iv) acceptance test and acceptance. Any agreed milestones in the Order, a project plan or any other document agreed between the parties shall be taken into account.
- 18.2 After providing the Services of a phase for release, ORS shall issue the release within a reasonable period of time. The release serves to review whether the Services to be rendered by the Contractor at a milestone date meet the essential requirements and allow the inception of the Services based on these. The release of a Service must be in writing and can in principle only take place if all requirements specified in the Contract including enclosures are fulfilled.
- 18.3 The provision of Services for acceptance covers the handover of the Contractor's complete Services for one phase, including documentation, to ORS no later than the dates agreed in the project plan. Prerequisite for the provision of the Services for acceptance is that all releases required pursuant to section 18.1 have been declared by ORS.
- 18.4 After the Services have been properly provided for acceptance, ORS shall perform an acceptance test within a period of time to be determined in each individual case after the Services have been provided, within the framework of an experimentally life operation, to verify whether the Services provided in a phase meet the requirements and promised functions of the Services in accordance with the Contract and the enclosures specified therein. An acceptance test regularly consists of a function test and a performance test. The acceptance test shall be carried out by the Contractor on behalf of ORS, whereby no additional fee has to be paid and any costs incurred by the Contractor are covered by the total net price.

- 18.5 Acceptance may be refused or declared with reservation by ORS according to the errors that have occurred and that are categorised in error classes. If no errors occur, full acceptance shall be declared in writing to the Contractor. The date of this written statement shall determine the commencement of the warranty period; however, this written statement shall not exclude ORS from any claims arising from errors not mentioned in the protocol. The error classes are defined in section 23 of the GTCP-IT. The assignment of an error to a specific error class is performed by ORS. However, the Contractor shall have the right to object to the correctness of the error class assignment on justified grounds. If the members of the working group are unable to agree on an error class allocation within two weeks, the managing directors of the parties have to attempt to reach an agreement within a further two weeks before one party is entitled to seek judicial assistance. In any case, however, the Contractor is obliged to take measures based on the classification by ORS until agreement has been reached in order to avoid any disadvantages for ORS.
- 18.6 In the event of acceptance of the performance after complaint of errors, the Contractor is obliged to remedy these errors within a reasonable period of grace to be agreed upon amicably between the parties. After the error correction has been carried out, the acceptance test has to be repeated.
- 18.7 The parties are free to agree in a separate agreement to make a binary comparison of the source code of the software in question (standard software and individual software). The source code to be deposited for this purpose shall be carried out in accordance with the provisions of section 29 of the GTCP-IT.

## **19. Change Requests**

- 19.1 ORS is entitled to change the Services at any time, even after the Contract has become legally effective, or to increase or decrease the scope of Services. The fee pursuant to section 32 is reduced if the change request results in reduced performance. The prerequisites for the remuneration of any additional services shall be carried out in accordance with the provisions of section 32.2.
- 19.2 ORS is entitled within the meaning of section 19.1 to propose changes to the Services to be provided by exchanging individual services or by requesting additional services. Change requests are reviewed by the project manager with regard to technical feasibility, cost-effectiveness and compliance with availability. In the event that, from the project manager's point of view, the proposed change is feasible, the Contractor has to submit the modified scope of Services to ORS. This change in the scope of Services shall not entitle the Contractor to any further claims for remuneration, provided that the change is still covered by the guarantee of completeness pursuant to section 9.1. If the change in Services results in such a change in the performance content that goes beyond the completeness guarantee, whereby the total net remuneration changes, the Contractor immediately prepares a new offer which ORS may accept within 14 days by written declaration.
- 19.3 Until the decision on the change request has been made, the Contractor performs its Services according to the previous specifications to the same extent. As far as ORS allows the time limit for acceptance of the new offer to elapse unused, the scope of Services shall remain unchanged in accordance with the previous specifications.

## **Chapter V**

### **Maintenance Performance Requirements**

#### **20. Scope of Maintenance Services**

- 20.1 During the agreed warranty period, the Contractor is obliged to maintain the Services according to the Contract without additional costs as part of the warranty obligation. After the warranty period has expired, ORS may claim maintenance as the main service obligation against remuneration. The maintenance Services to be performed by the Contractor include the following activities, irrespective of whether this is a warranty obligation or an agreed main performance obligation:
- 20.1.1 Preventive maintenance measures for certain maintenance windows announced in advance;
  - 20.1.2 Troubleshooting, error handling, corrections after the end of the warranty pursuant to section 34;
  - 20.1.3 Delivery of updates and upgrades to the software and its modules to maintain the operability of the software;
  - 20.1.4 Adaptation of services to new hardware and software options (e.g. new computer systems including operating systems);
  - 20.1.5 Technical consulting/support via online support, in particular via a hotline and a ticketing system.
- 20.2 The entire system with all its components, i.e. including extensions and improvements, must be patchable so that known security vulnerabilities can be eliminated. In addition to the operating system and firmware, this also includes applications and auxiliary components. The software/firmware status of the exchangeable components must be verifiable during operation. The Contractor has to provide updates as well as patches and bug fixes ("Update") which bring the software up to date in order to solve or circumvent errors and security deficiencies known to the Contractor, ORS or the public, and to adapt the software to changed market standards, e.g. with regard to compatibility requirements, or, if applicable, to a changed legal situation, thus enabling efficient use of the software. In addition, the Contractor has to, at its sole discretion, provide updates or upgrades to the software ("Upgrade") to optimize and improve the functionality. With respect to upgrades, it is at ORS's sole discretion to take over the upgrades. There are also enhancements to the software, which add new functionalities or modules to the software ("Enhancements"). Such Enhancements shall only be subject to this Contract via a change request.
- 20.3 Updates are to be designed in such a way that after installation of these updates the originally existing functions and compatibilities of the Services remain available and operate, and functionality and compatibility continue to exist as they did before installing the updates, and the operational and business processes of ORS are not disrupted or are disrupted only as slightly as possible to the extent that this is absolutely necessary from a technical point of view. The Contractor is also obliged to deliver updates in connection with security deficiencies only after these have been internally tested by the Contractor in its own test environment.
- 20.4 The Contractor has without having to commission a change request and/or without ORS paying an additional remuneration, to carry out further developments and necessary adaptations which are essential for the purchaser due to version changes in operating, database and carrier systems (new hardware versions, hardware extensions).

- 20.5 The Contractor shall regularly inform ORS about technical improvements and further developments of the software (download area or comparable) which may be of interest for operation. In particular, ORS shall be entitled to use and operate the Services in accordance with the state of the art. In particular, the Contractor is therefore obliged within the scope of all Services under this Contract to adapt the Services to technical progress and further development on an ongoing basis, taking into account the latest technical and scientific findings and in good time so that the Services can be offered in accordance with the latest state of the art, without a change request having to be commissioned and/or an additional remuneration having to be paid by ORS for this.
- 20.6 Hardware maintenance services also include the performance of repairs, the provision of the necessary spare and wear parts and the implementation of standard changes, including the corresponding adaptations and implementations, which may have an impact on compatibility.

## **21. Operation of a Hotline**

- 21.1 The Contractor shall define a telephone number that can be reached from Austria at the domestic tariff or free of charge and/or set up online support via e-mail or via a ticketing system where ORS can report faults and problems with the service content 24 hours a day, 7 days a week and obtain information.
- 21.2 In the course of this 1<sup>st</sup> level support, the Contractor receives requests and messages from ORS regarding the software and its operation and provide support and consulting services to ORS for the Services currently in use. The aim of the hotline is to enable ORS to properly solve and avoid specific problems in relation with the software. The Contractor provides remote support within the framework of the hotline and online support.
- 21.3 Each request to the 1<sup>st</sup> level support team shall be electronically documented and assigned a unique processing number. The 1<sup>st</sup> level support team member passes on the documented technical errors, if these cannot be bypassed by the proposed solutions, to the extent that the 2<sup>nd</sup> level support team needs them to obtain further details or assistance regarding the reported incidents.

## **22. Maintenance Readiness and Response Times**

- 22.1 Unless otherwise agreed, maintenance beyond 1<sup>st</sup> level support is carried out in the working hours Monday to Friday, between 7.00 am and 6.00 pm. The hotline must also be kept staffed and available during this period of maintenance readiness.
- 22.2 Preventive maintenance or a version change is to be carried out in agreement with ORS at certain maintenance windows, whereby such an intended date has to be announced by the Contractor at least 4 weeks prior to performance and needs to be coordinated with ORS.
- 22.3 The Contractor has to provide an initial response and targeted-oriented problem solution during the periods of maintenance readiness as follows (each period is measured from the initial notification of the problem and on the basis of the maintenance periods described in section 22.1). The following reaction and support times also apply correspondingly in the event of security vulnerabilities becoming known.

<b>Error Class</b>	<b>Response (Response Time)</b>	<b>Troubleshooting (Support Time)</b>
<i>Critical</i>	1 hour	2 hours
<i>Major</i>	2 hours	4 hours
<i>Minor</i>	6 hours	12 hours
<i>Trivial</i>	8 hours	after agreement between the parties or in the course of the next update

22.4 Hours are defined as business hours which commence upon the first notification of the problem to the Contractor. The response time is defined as the time period from receipt of the error message by the Contractor to the start of processing the error message. If the maintenance times end during the response times pursuant to section 22.3, the calculation of the response time is interrupted until the beginning of the next maintenance time. The response time is not the time limit for the correction of the reported error. The support time is the time period from the end of the reaction time until the time of the correction of the error. To clarify, it is stated that the specified support times do not include test and/or implementation times.

### **23. Error Classes and Service Levels**

23.1 The error classes listed below apply to the classification of errors:

23.1.1 Class 1 - "Critical": The appropriate use of the Services (even part of them) is not possible or unreasonably restricted. The error has serious influence on the business processing and/or data and/or information security. In particular, these are errors that exclude further processing. Function-related examples: system downtime without restart, data loss / data destruction, incorrect results with time-critical mass processing of data.

23.1.2 Class 2 - "Major": the appropriate use of the Services (even part of them) is seriously restricted. The error has a significant influence on the business processing and/or data and/or information security, but allows further work. Function-related examples: incorrect or inconsistent processing, noticeable shortfall of the agreed performance data of the IT system, accumulation of short-term disruptions of IT operations.

23.1.3 Class 3 - "Minor" The appropriate use of the Services (even part of them) is slightly restricted. The error has insignificant influence on the business processing and/or security, but allows further processing without restriction. Function-related examples: incorrect error message / a program goes into standby mode and can only be reactivated by pressing a key.

23.1.4 Class 4 - "trivial" The appropriate use of the Services is possible without restriction. The error has no or only minor influence on the business processing and/or security. These are, above all, blemishes or errors that can be bypassed by ORS employees themselves. Function-related examples: disturbing additional output on the screen, documentation errors / clerical errors.

23.2 In the case of Class 1 and Class 2 errors, the Contractor has to commence during the periods of readiness for maintenance, at the latest within the agreed reaction time, and in the case of Class 3 errors within a reasonable time period, in each case with the processing of the error and has to ensure at least a circumvention in short term and within the agreed recovery time for the correction



of the cause of the error, e.g. by replacement of hardware components, reconfiguration of software, rectification of software errors by patches. In the case of Class 4 errors, the Contractor has to take care of troubleshooting without special priority within the framework of planned preventive maintenance or the release policy.

- 23.3 The determination of whether there is an error at all or whether there is a need for a technical innovation, and further the assignment of errors to the error classes is performed by ORS; cf. the procedure in section 18.5. of the GTCP-IT for this purpose.

## **Section VI Other Obligations of the Contractor**

### **24. Warning Obligations of the Contractor**

- 24.1 The Contractor is obliged to examine the contractual bases, final planning documents, technical documentation (e.g. interface descriptions) and all other documents provided by ORS or other participating companies as well as the order-related instructions of ORS continuously during performance of the Services for their suitability to perform the Services owed pursuant to Chapter II of the GTCP. If the Contractor recognises that these are inadequate or contradictory with regard to the feasibility of the performance at certain points, the Contractor has to notify ORS of this in writing with a sufficiently precise description of the problem. Any expenses incurred for this inspection shall be included in the agreed total net price.
- 24.2 So far as a damage or a defect in the Services is due to the fact that the contractual basis, final planning documents, technical documentation (e.g. interface descriptions) and all other documents provided by ORS or other participating companies, as well as the order-related instructions of ORS are unsuitable for the provision of the Services pursuant to Chapter II of the GTCP, the Contractor is held liable in any case for this defect and any damage attributable thereto in the event of default of such notification. Furthermore, to this extent no objection can be raised to the sole or contributory fault of ORS.
- 24.3 So far as the Contractor is no longer capable of performing the Services assumed properly, it immediately notifies ORS in writing of the reasons for the hindrance and at what point the Service can be resumed. This does not affect ORS's claims in the event of default or defective performance. The mere knowledge of ORS of the notification referred to herein is not to be deemed as consent to the delay notified by the Contractor and the corresponding postponement of the agreed deadlines from the project plan.
- 24.4 In addition to personal data breaches within the meaning of Articles 33 and 34 GDPR, the Contractor is obliged, as far as this affects either ORS's data as data subject within the meaning of GDPR or ORS's data within the scope of processing on behalf of the controller or an effect on the Services cannot be excluded, to immediately report to ORS any serious disruptions to business processes (e.g. data loss, destruction or deletion of files, infestation by computer viruses, failure of all hardware components, failure of software as a result of programming errors and incorrect configuration), as well as generally in the event of suspicion of other violations against IT security regulations, and those concerning the protection of personal data or the suspicion of other irregularities in the handling of personal data as well as in the event of any kind of risk to the IT infrastructure.

24.5 Any warnings and notifications by the Contractor in accordance with the above provisions have to be made in writing via e-mail to ORS, describing the risk and at the same time submitting proposals for the prevention of the risk.

## **25. Spare Parts/Wear Parts**

25.1 To the extent that an appropriate supply of spare and wear parts is also necessary for the intended use of the ordered Deliveries and Services in ORS's operation, the Contractor shall upon request submit to ORS an appropriate offer for spare and wear parts and at least for the duration of the warranty period and up to 1 year after expiry thereof an sufficient offer for spare and wear parts. The price for the spare and wear parts for this period shall be the price valid at the time of the Order; thereafter the parties shall renegotiate the prices for the spare and wear parts.

25.2 Upon request by ORS, the Contractor has to provide ORS with the specifications required for ordering for the spare and wear parts, the designations by their manufacturer and, finally, their company and address, and, if required, with corresponding drawings, and shall grant ORS the rights to the drawings free of charge and irrevocably.

## **26. Subcontractors**

26.1 The commissioning to a subcontractor by the Contractor requires the prior written consent of ORS. The Contractor must prove the necessary suitability of the subcontractor. The complete transfer of the Contract or an Order is prohibited in any case.

26.2 If ORS gives its consent, the Contractor has to ensure that all subcontracts awarded under the contractual relationship with ORS are such that the Contractor fully complies with its obligations to ORS. In any case, the Contractor remains solely responsible for the performance of the contractual relationship with ORS and the compliance with all obligations arising from these GTCP-IT towards ORS.

## **27. Cooperation with Third Parties**

27.1 The Contractor acknowledges that ORS may also have engaged other third parties to perform services for ORS's IT infrastructure at the same time. The Contractor has to cooperate constructively with them and has to carry out its work in such a way that the other companies are not hindered thereby. The Contractor has, if necessary in cooperation with the third parties involved, to guarantee the technically correct design and documentation of the Services to be rendered and their flawless operation in every respect. In addition, the Contractor has to assist ORS in the operation of a system for which several suppliers are relevant. This provision applies in all cases in which hardware and/or software systems delivered by the Contractor cooperate or otherwise interact with hardware and/or software systems supplied by other manufacturers.

27.2 In order to achieve a properly workflow, the Contractor must, in all questions concerning the interaction of the individual hardware and/or software systems (schedules, software, etc.) of its Services with those provided by other third parties involved, come to an understanding in a timely and binding manner, exchange all necessary documents and comply with mutual specifications.

27.3 All determinations and measures have to be carried out in agreement with ORS and do not entitle the Contractor to any additional claims against ORS. In the event of dissenting opinions between the companies, ORS decides.

27.4 In the event of problems of any kind whatsoever, the project manager has to inform ORS immediately in writing, describing the facts and at the same time submit a proposal for a solution. ORS shall provide a binding solution within 14 days. If this causes a default, the legal consequences of section 17 applies, as far as the cause of the problems arising originates from the sphere of the Contractor.

## **28. Delivery of the Source Code**

28.1 Individual software and individually developed software adaptations (customising) have to be delivered by the Contractor to ORS in the original form of their creation (e.g. source code, XML representation) together with all related technical documentation and user documentation within 4 weeks prior to acceptance and in the event of development as a result of a defect or error within the warranty period or maintenance. The source code has to be transferred to ORS on a non-rewritable data medium or has to be stored in a repository which is either announced by ORS or made available by the Contractor.

28.2 Used programming tools and program libraries that are not freely available must be delivered by the Contractor free of charge.

28.3 The source code has to contain sufficient explanatory comments in a form that allows the generation of complete documentation.

## **29. Source Code Deposit**

29.1 If no source code within the meaning of section 28 is delivered, the following applies: The Contractor has to hand over the source code of all software created by the Contractor and licensed to ORS, including the relevant developer documentation (content and structure of the data medium, program and data flow diagrams, test procedures, error handling, etc.) and the applicable programming language in the respective current version within 14 days of delivery of the software (or any updates thereto) to a neutral body ("**trustee**"), e.g. an Austrian notary or a professional depositary agent. The deposit is made in accordance with the terms and conditions of a separate written agreement to be concluded between the Contractor, ORS and the Trustee by applying the provisions of this section 29. The costs for this are borne by the Contractor. The deposit requires that the trustee signs the list of software modules and the deposited data mediums (see section 29.2) to confirm that the contents of the deposited data mediums correspond to the module list.

29.2 Before depositing, the contracting parties shall identify the modules of the standard software or the software installed at ORS by name and version of the individual modules. The Contractor shall then compile a list of the corresponding source code modules and documentation, including the interface descriptions and interface conditions, which enables the source code and the documentation to be assigned to the individual object code programs and the respective data mediums (module list).

29.3 ORS shall be entitled, after giving at least 14 days' notice, to verify in the presence of the Contractor, whether the Contractor has complied with this obligation by opening the envelope.

29.4 ORS's right to use the source code and/or developer documentation to be provided is limited to the following cases:

- 29.4.1 if a liquidator, insolvency administrator or judicial administrator has been appointed in respect of the entire business, property, company or assets of the Contractor and such proceedings are not suspended within 90 days;
- 29.4.2 if the Contractor completely ceases its business activity, except that such business activity is transferred to a successor in title without interruption of the maintenance activity;
- 29.4.3 if the Contractor has discontinued or restricted support of the standard software contrary to the obligations agreed in the contract for work or in the maintenance contract to the extent that the intended use of the software by ORS is not possible;
- 29.4.4 if the Contract is terminated prematurely for reasons for which ORS is not responsible;
- 29.4.5 if the Contractor agrees to the delivery in writing;
- 29.4.6 if the trustee or the Contractor is ordered to the restitution by a legally binding court order.

### **30. Declarations of the Contractor**

- 30.1 The Contractor shall perform the Services owed in accordance with the relevant statutory provisions as amended from time to time and in accordance with the state of the art and current quality and market standards (e.g. compliance with EN ISO/IEC 27001 and 27002) with regard to information security and operation of an information security management system.
- 30.2 In particular, the Contractor shall without separate remuneration:
  - 30.2.1 obtain all official approvals, permits, certificates, licenses, etc. required for the provision of the Services and the agreed use of the Services;
  - 30.2.2 only use computer centres and IT systems certified in accordance with EN ISO/IEC 27001 or comparable standards for the performance of Services;
  - 30.2.3 continuously examine and test all IT systems, electronic devices (e.g. laptops, tablets), data mediums as well as software or (cloud) services, such as e-mail programs, document exchange platforms, used within the framework of the performance of Services, for malware and potential weak points by using current testing and analysis procedures, so that these run reliably and perform the desired functions properly;
  - 30.2.4 have a documented process to address security vulnerabilities. Within this process, it must be possible for all parties involved, but also for outsiders, to report actual or potential security vulnerabilities (responsible disclosure);
  - 30.2.5 implement and maintain in each case appropriate and state-of-the-art security measures within its IT systems and Services in accordance with EN ISO/IEC 27001 and 27002 or a comparable standard, to protect in the best possible way data and information as well as ORS's IT systems. Independent of this are the obligations according to section 40 of this GTCP-IT as controller or as processor according to Art 28 GDPR in conjunction with Art 32 GDPR. As a minimum requirement, the Contractor warrants that it has taken the technical and organisational measures for data

and information security listed in an annex to the Contract to ensure an appropriate level of security with regard to the confidentiality, integrity, availability and resilience of the IT systems, and that it will continuously evaluate and update these measures for their effectiveness. The Contractor assures that these measures guarantee an appropriate level of security to the Services owed under the Contract to protect against everyday threats, intentional infringements or any other attack to the IT systems and Services;

- 30.2.6 in the event of suspicion of information security events within the meaning of EN ISO/IEC 27002 or other security incidents (cf. section 24.4 of the GTCP-IT) (collectively "**Incidents**") promptly (i) notify ORS in writing and, upon request, provide ORS with complete documentation of the Incidents, (ii) take all necessary steps and assist ORS, upon request, in minimising and correcting the effects of the Incidents, and (iii) initiate a full and documented investigation of the backgrounds and causes and implement necessary, suitable and appropriate steps and measures to minimise such security vulnerabilities as far as possible in the future and satisfactorily demonstrate this to ORS. The obligations of the Contractor specified under (i) and (iii) include, at the request of ORS, in particular the monitoring (real-time or near real-time) of the effects of the Incidents and the processing and transmission of relevant data (e.g. log-in or activity data) for its own forensic handling by ORS or third parties commissioned by it. The obligations set out in (ii) includes in particular the designation of qualified contact persons of the Contractor and their cooperation with the contact persons of ORS or third parties designated by ORS;
- 30.2.7 implement and comply with further requirements, as appropriate, at the request of ORS, which shall be specified in each individual case in the Contract with the Contractor or in the annexes to the Contract.
- 30.3 If the Contractor or one of its employees or vicarious agents violates the obligations or declarations arising from this provision, ORS shall be entitled to demand a penalty in accordance with section 17.4 of the GTCP-IT. ORS also has the right to terminate the Contract immediately without notice if there is a risk to the security of ORS's IT systems or data and information. ORS expressly reserves the right to assert further claims for damages in any case.
- 30.4 The Contractor has to provide proof of the implementation of the technical and organisational measures required in accordance with this provision upon conclusion of the Contract, and thereafter once a year at the end of a contractual year by submitting corresponding expert opinions, certificates or test reports from independent auditors. If a violation of this provision is suspected, ORS shall have the right to inspect and control at any time the data processing equipment, IT systems, files and documents required for the performance of the Services in addition to the general right of inspection pursuant to section 41.1 of the GTCP-IT. In particular, ORS shall also be entitled to access the server premises (even if these are not the property of the Contractor), access the data processing facilities and perform other investigative actions. ORS is authorised to carry out these inspections itself or to have them carried out by an expert appointed by the purchaser (e.g. an IT forensic expert).

## **Chapter VII**

### **General Terms and Conditions**

## 31. Grant of Rights of Use

31.1 This applies to standard software:

31.1.1 The Contractor grants ORS a non-exclusive, transferable, sub-licensable, non-revocable and limited right to use the software within the scope of the Order and in accordance with section 3.1 of the GTCP-IT.

31.1.2 The right of use entitles ORS, within the scope of the license respectively agreed in the written order, to copy the software for the purpose of installation on hardware which is either made available to ORS via hosting, is the property of ORS or was rented or leased by ORS. The use of the software in virtual environments is covered by this. This use is not limited to a specific number of users or a specific IT infrastructure or number of servers, and includes the use by ORS customers and users of a customer's products.

31.1.3 ORS is also authorised to make one copy of the software for archival and backup purposes.

31.1.4 If the Contractor provides ORS with updates or upgrades to the software licensed under this Contract in the course of subsequent improvements, bug fixes or software maintenance, ORS shall also be entitled to use the software to the extent of this Contract, unless otherwise agreed in writing, whereby the terms and conditions of payment pursuant to section 30 of the GTCP-IT shall also remain unchanged and no additional or higher license fee shall become due.

31.2 This applies to individual software:

31.2.1 The Contractor grants ORS within the framework of the order and in accordance with section 4 of the GTCP-IT the exclusive and transferable right, exercisable in any hardware and software environment, to use the software, in modified, translated, edited or redesigned form, unrestrictedly, in particular spatially, objectively and temporally unrestrictedly, for any type of use known today and in the future and still unknown.

31.2.2 The Contractor refrains from any use and exploitation of the software and the source code or parts thereof, in particular also as a basis for other similar computer programs and software modules. In particular, the Contractor shall not use the software or the source code, nor individual work results from the Order placed by ORS, or documents and documentation of any kind whatsoever, when carrying out software orders for third parties.

31.2.3 ORS shall be entitled to transfer all or part of the rights granted in this Contract to third parties or to grant third parties rights to use (*Werknutzungsrechte*) or licenses to use (*Werknutzungsbevolligungen*).

## 32. Remuneration

32.1 The prices agreed in the Order apply. These prices are fixed prices and net prices within the meaning of § 11 Value Added Tax Act (*Umsatzsteuergesetz*). These fixed prices include, as far as applicable, a setup fee, the maintenance fee, license fees and all other expenses necessary for the technically flawless functioning of the owed Services within the meaning of the completeness guarantee according to section 9, even if these are not expressly mentioned in the Contract or the appendices thereto.

- 32.2 These fixed prices in accordance with section 32.1 cover all Services to be rendered by the Contractor under this Contract. In particular, all costs, fees and charges, as well as expenses of the Contractor, its employees or sub-contractors (e.g. overnight costs, travel time, etc.) in connection with the provision of the Services are included in the net total price.
- 32.3 By concluding the Contract, the Contractor declares that, due to the contract bases handed over to it, the Deliveries and Services required by it have been fully calculated in terms of performance, type and scope. The Contractor is not entitled to demand price increases if the calculation bases change for whatever reason, or if the assumptions made by it prove to be incorrect or if any transmission errors have occurred. In particular, therefore, neither updates or upgrades nor other cost increases, will lead to a change in the agreed remuneration. The Contractor is also not entitled to assert any claims arising from cancelled Services.
- 32.4 If the Contractor lowers any list prices for the Services to ORS, even only for parts thereof, between conclusion of the Contract and delivery, these price reductions shall apply to the Contract with ORS.

### **33. Accounting, Terms of Payment, Assignment**

- 33.1 Invoices and calculation bases have to be sent in digital form (pdf-file without digital signature and without password) with the invoice address "Österreichische Rundfunksender GmbH & Co KG, Hugo-Portisch-Gasse 1, A-1136 Wien" to the e-mail address [invoice@orf.at](mailto:invoice@orf.at) and all Services rendered up to the reporting date have to be listed separately by position, stating the individual price. However, foreign invoices with foreign VAT are only accepted if sent in the original form by post to "ORS comm GmbH & Co KG, Hugo-Portisch-Gasse 1, A-1136 Wien, c/o Scanpoint GmbH, ORF-Rechnungsstelle, Business Center 799, 1000 Wien". The invoice has to state the Services performed, including the value added tax identification number of ORS (ATU 612 929 88), the delivery note number, the account of a bank domiciled in the EEA, the data stated on the Order, such as the purchaser, order number, order item and the specified activity units. Each invoice must have the content prescribed by the Austrian Value Added Tax Act. As far as it concerns the delivery of hardware and hardware components, the delivery note must be enclosed with the invoice.
- 33.2 Invoicing by third parties or the assignment of claims against ORS is only permitted with the prior written consent of ORS.
- 33.3 The final (total) invoice has to show, in addition to the specifications under section 33.1, the total amount, increases and reductions of the original order value and the value added tax, if applicable by law, as well as all partial payments already made. With the final (total) invoice, the Contractor asserts all claims arising from the Order. The unconditional acceptance of the amount from the final invoice excludes additional claims by the Contractor.
- 33.4 The due date for payment of the invoices is given when all the aforementioned conditions have been fulfilled and after expiry of a payment period of 30 calendar days with a 3 % cash discount and/or 60 days from receipt of the invoice. If ORS has paid any invoices after rightfully deducting any cash discounts, such justified cash discounts shall remain unaffected by the fact of whether and to what extent the agreed terms of payment and/or cash discount periods are observed in connection with any subsequent payments. If the payment day is a public holiday (bank holiday),

the transfer is made on the following working day. The timeliness of the payment depends on the issue of the transfer order to the Contractor's bank. Payment periods begin to run when the Service has been provided and approved by ORS and ORS has received a correct (in accordance with the Contract and within the law) invoice. If ORS requests necessary documents for reviewing the invoice no later than 14 days before the end of the payment period, the payment period shall be extended so that ORS has at least seven days after receipt of the documents to review them. Payments are due only after expiration of these seven days and expiration of the payment deadline. ORS shall be in default only after prior reminder by the Contractor. Payments will not be deemed a waiver of asserting defects and claims for damages.

- 33.5 ORS reserves the right to offset due payments in whole or in part initially against the coverage of damages for which the Contractor is liable or against penalties.
- 33.6 The Contractor is not entitled to any claims due to delayed payment exceeding the statutory default interest and the statutory compensation for operating costs.
- 33.7 The Contractor confirms that it is an entrepreneur within the meaning of the Value Added Tax Act and will inform ORS of its valid VAT number when entering into the business relationship. Should its VAT status or VAT number change in the course of the business relationship, it will immediately notify ORS in writing.
- 33.8 The Contractor confirms that it shall transport or dispatch the items of a delivery or that it shall arrange the transport and that the transport or dispatch of the items to ORS shall commence at the place specified in the Contract as the Contractor's address. If this is not the case (e.g. delivery from another warehouse, delivery by subcontractors), the Contractor shall - in any event before invoicing - notify ORS immediately (via e-mail to [steuern@orf.at](mailto:steuern@orf.at) with the ORS order number) and, on request, submit further documents which are suitable for verifying the delivery route of the items and their transport commissioning (e.g. consignment note, documents concerning the assignment of the carrier).
- 33.9 A foreign Contractor confirms that it does not have a permanent establishment in Austria or that these Services cannot be allocated to this permanent establishment.
- 33.10 A Contractor that is not subject to unlimited tax liability in Austria will provide ORS with an original residence certificate in accordance with the DBA Exemption Regulation (*DBA-Entlastungsverordnung*) and confirmed by the foreign tax authority before payment is due. If ORS does not receive an original appropriate and confirmed certificate by the foreign tax office before the due date of payment, or if the certificate does not entitle ORS to pay withholding tax-free on the basis of statutory regulations, ORS is entitled to deduct the statutory withholding tax from the amount of compensation and pay it to the Austrian tax authority. The withholding tax is borne by the Contractor. The Contractor receives a tax certificate for the withholding tax. This tax deduction does not lead to a default.
- 33.11 If, in connection with the agreed Services, claims are asserted against ORS by the tax authorities which are based on an incorrect declaration content of the Contractor or its residence certificate or on false invoicing, the Contractor undertakes to indemnify and hold ORS harmless immediately against these claims. Indemnification also includes the costs of reasonable legal defence and ancillary fees.



## **34. Warranty**

- 34.1 The Contractor guarantees to render its Services in accordance with this Contract on the basis of the state of the art known to experts and making the best possible use of the state of the art. Furthermore, the Contractor warrants that the Deliveries and Services have the contractually stipulated and usually required qualities and are free from defects and that all defects which occur within the warranty period will be immediately remedied by it and comply with the generally accepted rules of technology; the Contractor also warrants compliance with all general and special standards applicable in Austria or equivalent relevant to the provision of the Service. The Contractor also warrants the operational readiness of the Services for the duration of the warranty period in accordance with the availability requirements.
- 34.2 The contractor holds all rights, including all copyrights and other intellectual property rights as well as exploitation rights, to all software components and all further developments, improvements and adaptations and is solely authorised to grant licenses thereto to third parties. The Contractor guarantees that the software is free of protective rights of third parties which exclude or restrict the contractual use of the software.
- 34.3 ORS reserves the right to decide at its discretion whether improvement, replacement of the article, price reduction or – unless the defect is not minor - conversion is required. If ORS demands improvement, the Contractor shall immediately remedy any defects occurring during the warranty period at its own risk and expense. At the request of ORS, the Contractor shall replace defective parts of the performance immediately at its own risk and expense against flawless ones and restore IT components or IT systems to an operational condition. The Contractor shall ensure that there are no disruptions to the operational and business processes at ORS. In urgent cases, ORS shall also be entitled, after notifying the Contractor, to remedy defects itself without setting a grace period at the Contractor's expense or to have them remedied by third parties without this affecting its claims due to these defects; if there is imminent danger, ORS may proceed in this manner without notifying the Contractor.
- 34.4 The warranty period commences on the day of delivery of the contractual performance or, if agreed, on the day of acceptance and ends 2 years after this date. If the Contractor offers a longer warranty period, this is decisive.
- 34.5 An out-of-the-court complaint of a defect by ORS extends the deadline for the judicial assertion of all claims in connection with the complained defect by one year in each case.
- 34.6 In the case of hidden defects, the warranty period does not commence until they can be detected. If the involvement of an expert is necessary to determine the existence of a defect, the costs incurred for this shall be borne by the Contractor regardless of fault.
- 34.7 The Contractor waives the objection of non-notification or invalid notification of defects in accordance with § 377 Austrian Commercial Code (*Unternehmensgesetzbuch*).

## **35. Liability and Product Liability**

- 35.1 The Contractor is liable for all damages resulting from the defective performance of the Contractor's obligations and has to indemnify and hold ORS harmless in this respect. The Contractor is

also be liable for all acts and omissions of its employees, assistants or other persons commissioned and consulted by it. In all other respects, the statutory liability regulations according to the Austrian Civil Code apply.

- 35.2 If claims are asserted against ORS by third parties due to defects, product defects or damages arising from or in connection with the Services, ORS shall be entitled in any case, regardless of the nature of the damages or the legal basis, to fully regress against the Contractor. The Contractor has to fully indemnify and hold ORS harmless in this respect and reimburse ORS for all court fees and attorneys' fees incurred in this respect. The Contractor is liable to the same extent and for as long as ORS is liable to customers and other third parties.
- 35.3 The Contractor undertakes to supply all documents, drawings, instructions and other documentation required for the intended use of the products delivered by it completely and unrequested. Upon request by ORS, the Contractor is also obliged to name the respective manufacturer, importer or pre-supplier with regard to the products delivered by it immediately, but at the latest within 2 weeks, and to hand over appropriate evidence in full. In the event of legal disputes in product liability cases, the Contractor has to support ORS to the best of its ability and reimburse ORS for the appropriate costs of such legal disputes.
- 35.4 Should the Contractor become aware of circumstances that could lead to product liability claims, it is obliged to report these to ORS immediately and to compensate ORS for all expenses and damages that ORS incurs in connection with any recall actions of the defective products or that ORS has to replace for third parties.
- 35.5 The Contractor is obliged to take out a product liability insurance at its own expense for the usually insurable liability risks for an appropriate order amount. Furthermore, the Contractor takes out a business liability insurance policy with an appropriate limit of liability for financial losses, personal injuries and damage to property at its own expense. The conclusion of the business liability insurance and the product liability insurance is to be proven to ORS unsolicited by sending a copy of the insurance policy at the latest before the commencement of performance of Services. Payments by ORS shall only be made after the insurance policies have been submitted. The Contractor is obliged to maintain the insurance policies until acceptance of the Deliveries or Services, which has to be proven by submission of an insurance confirmation at the request of ORS.

## 36. Transfer of Ownership and Tools

- 36.1 ORS shall become the owner of the deliveries upon their arrival at the Place of Destination without any further explanation or action being required. A simple retention of title at credit purchase shall be accepted by ORS if the Contractor proves that the retention of title is necessary for the purpose of commercial credit insurance. Any further retention of title is not to be recognised. The Contractor is obliged to immediately disclose to ORS the rights of third parties to the deliveries or parts thereof.
- 36.2 ORS retains ownership of the tools and materials (collectively "**Tools**") provided to the Contractor for the manufacture or inspection of the products ordered by ORS. Tools owned by ORS or shall become property of them shall be loaned to the Contractor until revoked at any time. The Contractor is obliged to handle the Tools owned by ORS with care.

- 36.3 Insofar as the Contractor undertakes to manufacture Tools, the Tools shall become the property of ORS after completion and payment of the manufacturing costs in the amount of at least 80%. The Tools have to be marked by the Contractor as the property of ORS and may only be used for the manufacture of products ordered by ORS.
- 36.4 The contractor is obliged to insure the Tools at replacement value against fire, water and theft at its own expense. At the same time, the Contractor hereby assigns all claims for compensation under this insurance. The Contractor is obliged to maintain the insurance until acceptance of the Deliveries or Services, which has to be proven by submission of an insurance confirmation at the request of ORS.
- 36.5 If Tools are the property of the Contractor, it has to bear the costs itself. If the Contractor culpably fails to do so, ORS is entitled to claim damages.
- 36.6 The contracting parties agree that the Contractor cannot assert any rights of retention - for whatever reason - on these Tools. Upon completion of delivery, the Contractor has to return the Tools to ORS immediately upon request.

### **37. Duration and Termination of the Contract**

- 37.1 The Contract ends upon expiry of the delivery or term stated in the Order, without the need for a separate termination. Insofar as no delivery or term has been agreed, the Contract shall be deemed concluded for an indefinite period.
- 37.2 ORS shall be entitled to terminate the Contract in writing - even with regard to individual components and individual parts of the Services - at any time without stating reasons and subject to a notice period of 2 months. The Contractor is entitled to terminate the Contract, if it is concluded for an indefinite period of time or for a period of more than 4 years, at the end of each month and subject to a notice period of 6 months.

### **38. Withdrawal from the Contract and Extraordinary Termination**

- 38.1 ORS may withdraw from the Contract or from individual Orders at any time until the contractual Service has been accepted. If the Service consists of partial services, ORS may withdraw at any time with regard to partial services not yet accepted. For the (partial) Services covered by the withdrawal, the Contractor is only be entitled to the remuneration to be determined in accordance with section 32 if these partial services are usable by ORS; further claims are excluded.
- 38.2 ORS is entitled, without prejudice to other rights and remedies under or in connection with a contract, to terminate extraordinarily the contractual relationship, even in part in respect of individual Orders, with immediate effect by means of written notice of termination, in particular for the reasons set out below:
- 38.2.1 if a change of control takes place in the Contractor's company, whereby the Contractor is obliged to notify ORS in good time of any forthcoming change of control,
- 38.2.2 if the legal requirements for ORS to provide the Services in accordance with this Contract cease

to apply; or

- 38.2.3 if there are reasons within the sphere of the Contractor - of a technical, economic or operational nature - which make it impossible or unreasonable for ORS to continue to provide the Services properly.

## **Chapter VIII Final Provisions**

### **39. Confidentiality**

- 39.1 The Contractor undertakes to keep all information and data, communications, documents, trade and business secrets, know-how etc ("**Confidential Information**") disclosed, transferred or consigned in the course of a contract, whether in writing, orally or by way of electronic data processing, or in any other way made known, confidential and undisclosed.
- 39.2 The Contractor undertakes to use this Confidential Information exclusively for the fulfilment of the Contract, not to communicate these on to third parties neither in its entirety nor in parts or in extracts, not to make it accessible to third parties in any other form, not to process it in any other way, and in particular not to use it for its own purposes or in any other way and exploit it.
- 39.3 The Contractor has to take all reasonable precautions to prevent unauthorised use of Confidential Information and/or to prevent third parties from accessing such Confidential Information. At the request of ORS, the Contractor is also obliged to sign a separate confidentiality agreement.
- 39.4 The Contractor must demonstrably oblige all persons who may have access to such Confidential Information under this Contract to observe all confidentiality obligations imposed on the Contractor, even after the termination of the activities of such persons for the Contractor's company or after the termination of the contractual relationship between ORS and the Contractor.
- 39.5 If third parties are commissioned by the Contractor to perform the Contract as subcontractor ("*Erfüllungsgehilfen*"), the written consent of ORS has to be required in advance and the confidentiality obligations have to be demonstrably contractually assigned to the subcontractors. If the Contractor fails to transfer the confidentiality obligations, the Contractor is liable for all damages.
- 39.6 The Contractor is obliged to immediately return to ORS, destroy or irretrievably delete the Confidential Information, including copies in paper form and electronic form and all documents in which reference is made to the Confidential Information, at any time, even after termination of the Contract, upon request of ORS. At the request of ORS, the deletion or destruction has to be confirmed by the Contractor in writing at any time in each individual case and documented by evidence.
- 39.7 If the Contractor, one of its employees or other subcontractors violate these confidentiality obligations, ORS is entitled to demand a contractual penalty of 10% of the total price, but at least EUR 15,000.00, irrespective of the amount of the damage. In the event of a breach of confidentiality obligations, ORS has also the right to terminate the Contract immediately without notice. ORS expressly reserves the right to assert further claims for damages in any case.

## 40. Data Protection

- 40.1 The Contractor guarantees the security and therefore confidentiality, integrity and availability of data in accordance with Art 5 para 1 lit f GDPR, Art 28 para 3 lit c and Art 32 GDPR, as far as data of ORS should come to its knowledge in the course of the Contract. Hence, the Contractor guarantees to take appropriate technical and organisational measures to protect against accidental or unlawful destruction, loss, unlawful use or access by unauthorised persons, and guarantees that the processing is carried out in accordance with the applicable legal provisions and that the protection of personal data is guaranteed, and in particular that a level of security is ensured which is appropriate to the risks arising from the processing and the nature of the data. ORS expressly reserves the right to examine these technical and organisational measures at the Contractor's premises prior to the conclusion of the Contract and also thereafter itself or by third parties and, if necessary, to demand corresponding changes/adjustments.
- 40.2 The Contractor confirms that it is aware of the relevant applicable data protection regulations, in particular the GDPR and the Austrian Data Protection Act (*Datenschutzgesetz*), and that it complies with them and has designed the internal organisation (including technical and organisational measures) in such a way that the respective legal requirements are met. In particular, the Contractor is obliged, in the course of data processing, to maintain the confidentiality of any data that comes to its knowledge, besides special statutory confidentiality obligations, in accordance with the provisions of this Contract. The Contractor also has to oblige all persons who may gain knowledge of data to maintain confidentiality within the meaning of Art 28 para 3 lit b GDPR and § 6 Austrian Data Protection Act before commencing activities under this Contract. The confidentiality obligation remains in force even after the termination of the activities of these persons and after leaving the Contractor.
- 40.3 Confidential data and information or other information to be specially treated (e.g. access data, passwords or personal data in accordance with the GDPR) may only be stored in encrypted form in the Contractor's IT system or transmitted in encrypted form to ORS. Only recognised encryption methods and minimum key lengths may be used, which are considered secure in the future according to the current state of the art. Self-developed encryption algorithms are not allowed. Secure keys must be generated during key generation. The secure storage of keys must be supported. The encryption procedures and the encryption libraries used as well as the algorithms by means of which the keys are generated have to be documented.
- 40.4 The Contractor is liable to ORS for all material damage, financial loss and personal injury caused by it or by the actions and omissions of its employees or assistants, or by persons otherwise commissioned and delegated by it, including loss of profit. In particular, the Contractor is liable for all disadvantages incurred by ORS due to violation of one of the provisions of this Contract or the applicable data protection regulations.
- 40.5 This does not affect ORS's right to demand a contractual penalty of 10 percent of the total price, but at least EUR 15,000.00, irrespective of the amount of the damage and the fault, in the event of a breach of data protection obligations as well as a breach of the obligation to contractually impose data protection obligations. In the event of a breach of confidentiality, ORS also has the right to terminate the Contract immediately without notice. ORS expressly reserves the right to assert further claims for damages in any case.
- 40.6 These provisions shall remain in force even after termination of the contractual relationship.

40.7 To the extent that ORS commissions the Contractor to process personal data as a processor within the meaning of Art 4 no 8 GDPR, the Contractor undertakes, at the same time as signing the Contract at the request of ORS, to conclude with ORS a processor agreement within the meaning of Art 28 para 3 GDPR submitted to it, as well as to make other additional declarations and provide documents and proofs within the meaning of Art 28 GDPR, also directly towards the data protection controller (e.g. if ORS itself acts as a contractor towards a customer who is responsible for data protection and commissions the Contractor).

#### **41. Rights of Review of ORS**

41.1 ORS is entitled to verify compliance with the provisions of a contract and these GTCP-IT by the Contractor and any subcontractors or to have such verification carried out by an independent auditor. Upon reasonable advance notice, ORS is also entitled to verify compliance with the terms and conditions of this Contract at any of the Contractor's premises and locations relevant to the Services in question.

#### **42. Publications and References**

42.1 The Contractor is only entitled, with prior written consent, to refer to ORS with name, brand and/or company logo as well as an existing or already terminated business relationship on advertising media, in particular electronic and non-electronic advertising media (e.g. company and product brochures), print media (e.g. newspapers, magazines), electronic media, online media and in particular on its own website, social media pages and via news services, or also on advertising events, in particular trade fairs and product presentations.

#### **43. Applicable Law**

43.1 The GTCP-IT shall be governed by the Austrian law excluding the private international law rules and the UN Convention on Contracts for the International Sale of Goods. The application of the Austrian International Private Law Act and other conflict of laws is expressly excluded.

#### **44. Place of Jurisdiction**

44.1 The parties agree that the Commercial Court of Vienna (*Handelsgericht Wien*) shall have exclusive jurisdiction for all disputes which may arise out of or in connection with these GTCP-IT or the Orders, especially also with regard to the question of the conclusion and validity.

#### **45. Severability Clause**

45.1 Should any provision of the GTCP-IT or the Contract be or become invalid or unenforceable in whole or in part, this shall not affect the validity or enforceability of the remaining provisions. The invalid or unenforceable provision shall be replaced by a valid or enforceable provision which comes as close as possible in its economic content to the invalid or unenforceable provision; the same shall apply mutatis mutandis to gaps in the GTCP-IT.

#### **46. Legal Succession, Transferability**

- 46.1 The GTCP-IT bind each of the parties and their legal successors in accordance with the provisions of the GTCP-IT. The Contractor is not entitled to assign or otherwise transfer, including by universal succession, the Contract or the rights and obligations arising under the Contract between the parties under this Contract to any third party without the prior written consent of ORS. However, ORS is entitled, without the Contractor's consent, to transfer the Services and the contractual relationship with the Contractor and the rights and obligations arising therefrom to other companies affiliated with ORS pursuant to § 189a para 1 no 8 in connection with § 244 Austrian Commercial Code. If ORS wishes to transfer the Services and the Contract to a third party, the Contractor has to be informed of this in advance and may object in writing to the transfer within 14 working days of sending this information for good cause, which must be so serious that it would justify extraordinary termination.

#### **47. Contract Language**

- 47.1 These GTCP-IT were originally established in German language. Hence, all versions in other languages are only translations therefrom, why the German version shall in all events prevail and be paramount in the event of any differences, questions or disputes concerning the meaning, form, validity, or interpretation of the GTCP-IT.

#### **48. Notifications**

- 48.1 All notices and statements under these GTCP-IT, including those otherwise made under the Contract, shall be made in writing and shall be made by an authorised representative of the respective party. It is clarified that in writing does not mean signature within the meaning of § 886 Austrian Civil Code (*Allgemeines Bürgerliches Gesetzbuch, ABGB*) and therefore the text form (e.g. e-mail) is sufficient, unless the written form is agreed in detail or required by law. In the case of delivery by e-mail, the notification shall be deemed to have been received on the day on which it was sent if it was sent on a working day during normal business hours and the sender did not receive an error message.
- 48.2 Any change of address, e-mail address or other contact information of any party to which notices are to be delivered shall be effective in relation to the other party upon receipt of such notice.