

1. Scope

- 1.1 All contracts concluded between the companies of the [Arvato Systems Group](#) ("Client") and the Contractor for the "**Provision and Maintenance of (Standard) Software**" shall be governed exclusively by these General Conditions of Purchase ("GCP").
- 1.2 Contradictory terms and conditions of the Contractor or terms and conditions of the Contractor that deviate from the user of these terms and conditions are expressly not recognized. General terms and conditions of the Contractor shall not become part of the contract even if the Client does not expressly object to them.
- 1.3 These GPC shall only apply to companies in the sense of § 14 para. 1 BGB (German Civil Code); they are also agreed for all future contracts with the Contractor.
- 1.4 Inclusion of the terms and conditions of the Contractor or third parties by conclusive action is excluded. In particular, the acceptance of deliveries or services as well as payment by the Client shall not make the Contractor's terms and conditions of business the subject of this agreement.
- 1.5 For the contractual services of the Contractor relating to the maintenance of software, §§ 631 et seq. BGB are applicable.

2. Object of the service

The subject matter of this Agreement is (a) the provision of standard software including the associated materials such as documentation (user manuals, etc.), concepts, drafts and the provision of other services by the Contractor in connection with the provision, whereby the intended use of the software results from the function and product description and (b) the provision of software maintenance services and other services in connection with the maintenance of software by the Contractor in accordance with the order.

3. Principles of service provision

- 3.1 The Contractor shall provide the services owed under the contract in accordance with the state of the art at the time the contract is concluded and by personnel qualified to provide the agreed services.
- 3.2 Contact persons of the contracting parties are exclusively the responsible contact persons named in the contract. Furthermore, the Client is entitled to make effective declarations with regard to the services to be rendered by the Contractor not only to the responsible contact person named by the Contractor but also to his representative.
- 3.3 The Client may demand the replacement of a person employed by the Contractor for the performance of the contract if this person has breached contractual obligations or does not possess the necessary technical qualifications. The costs arising from the replacement shall be borne by the Contractor.
- 3.4 The involvement of third parties as subContractors of the Contractor requires the prior consent of the Client in text form.
- 3.5 All deadlines specified by the Client are always binding.

4. Placing of orders

- 4.1 Only the content of the order is decisive for the provision of services. Verbal subsidiary agreements have

not been made and only become effective upon confirmation by the Client.

- 4.2 The Contractor is obliged to accept the order within a period of 14 days. The period begins with the receipt of the order signed in text form. An acceptance declared after the expiry of the period shall be deemed to be a new offer. This can only become legally effective if the Client does not object within 14 days.
- 4.3 Cost estimates, the preparation of quotations, the preparation of bills of quantities, project planning documents, plans, drawings and models or other related elaborations or similar are only liable to pay costs on the basis of a separate agreement.

5. Scope of services

- 5.1 Unless otherwise agreed, the provision of standard software includes in particular the following services:

5.1.1 Delivery:

- a) Contractor shall deliver to Client the software designated in the order together with the associated program and user documentation and other manuals (hereinafter referred to collectively as the "Software Product(s)").
- b) The software products shall be delivered free of defects and free of charge (including freight and customs duty) in customary packaging and on suitable data carriers to the delivery address specified in the order. If no delivery address is specified, delivery shall be made to the registered office of the Client. Alternatively, the software products can be made available to the Client for download free of charge via an encrypted Internet portal provided by the Contractor.
- c) The Software Products shall be delivered within the delivery time and on the delivery date specified in the Order. Deliveries are made without reservation of title.
- d) The transfer of risk shall take place upon faultless delivery of the software products at the place of delivery in accordance with letter b) or upon faultless storage of the software products on a data carrier of the Client.
- e) The Contractor shall be obliged to take out, at his own expense, any insurance necessary for transport to the contractually agreed place of delivery in accordance with point (b).
- f) In the event of a delay in delivery, the Client is entitled to the statutory claims. In addition, in the event of a delay in delivery by the Contractor, the Client shall be entitled to demand a contractual penalty of 0.5% of the total remuneration per commenced calendar day of delay.

If the Contractor exceeds an agreed delivery date by more than 7 calendar days, the Client is entitled to withdraw from the contract immediately.

A contractual penalty paid by the Contractor due to delay shall be set off against a further claim for damages.

Further claims of the Client in case of delay in delivery remain unaffected.

5.1.2 Backup copies / replacement:

- a) The Client is entitled to make copies of the software in machine-readable form for the purpose of proper data backup in the event of loss and/or damage to the software.
- b) The Contractor shall replace free of charge the last version of the software which is in productive use at the Client and its predecessor version in

- the event that the Client no longer has an executable version of the software due to loss, accidental deletion or similar events.
- 5.1.3 Implementation / test phase / briefing:
- a) Unless otherwise agreed in the order, the Contractor shall, in addition to providing the software, also install and configure it at the Client's premises and make it technically ready for operation (implementation).
 - b) For fast and effective implementation, the Contractor shall provide a sufficient number of employees to ensure that the Client's business operations are not unreasonably impaired.
 - c) When using the software for the first time, the Client is entitled to a test period of 14 calendar days from the completion of the activity mentioned in letter a). Within this period, the Client is entitled to withdraw from the purchase agreement at any time if the contractually agreed functions of the software are not completely fulfilled. If the Client has already tested the software free of charge before ordering, the above right does not apply.
 - d) The Contractor shall support and train the Client's personnel to the required extent and at its own expense so that the Client is able to use the software competently (instruction).
 - e) The work to be carried out by the Contractor under (a) shall be subject to acceptance by the contracting authority.
- 5.1.4 Documentation: The Contractor shall be obliged to provide printed or at least printable, detailed program and user documentation and other manuals in German or, if not available, in English. The documentation provided shall enable the Client to operate the software properly. The Contractor shall provide a replacement free of charge in the event that the Client no longer has an up-to-date version of the aforementioned documents as a result of loss, accidental deletion or similar events.
- 5.1.5 Security: The Contractor shall ensure that the software products do not contain any functionalities which make it possible to weaken, circumvent or disable security functions and which were not made known to the Client at least in text form prior to delivery. Furthermore, he shall ensure that the hardware and software do not allow unauthorized third parties to gain access to the Client's systems or data without the Client's consent.
- 5.1.6 Manufacturer's warranty: The Contractor shall transfer to the Client free of charge any claims arising from a manufacturer's warranty - insofar as the manufacturer offers such a warranty in general. As far as the Contractor himself is the manufacturer of the software, the Contractor will offer the Client a manufacturer's warranty customary in the industry free of charge.
- 5.1.7 Unless otherwise agreed, software maintenance includes in particular the following services:
- 5.1.8 Correction of defects: The Contractor assumes the elimination of defects of the software in the current and the respective previous version. If the Contractor offers the Client new software, in particular free patches, bug fixes, updates, upgrades, new releases, new versions, etc., in order to avoid or eliminate defects, the Client is obliged to accept these and install them on his hardware in accordance with the Contractor's installation instructions. The Client may reject the aforementioned form of remedy at least once without stating reasons, as well as the next time new software is installed if it does not have the same compatibility and functionality as the replaced software or if for other justified reasons the Client cannot reasonably be expected to use it. In the case of defects that can be easily and simply remedied directly by the user, the Contractor can support the Client by telephone in the form of instructions suitable for the user. If the Contractor provides the Client with a temporary workaround solution, the Contractor's obligation to remedy the defect permanently remains unaffected.
- 5.1.9 Software modification/improvement: The Contractor undertakes to provide the Client with existing, generally offered and released updates as well as new software versions free of charge in order to improve the software provided. In the case of software changes, the Contractor will, if necessary, instruct the Client's personnel in the new software version in good time without separate remuneration.
- 5.1.10 Further development: The Contractor shall further develop the software and make the further development available to the Client in the form of free updates, upgrades, releases or versions. The Client has the opportunity to make suggestions for possible further developments. The Contractor shall seriously examine these. A claim by the Client to the realization/implementation of these suggestions requires a separate order. Insofar as Client-specific adaptations have been made to the software, the Contractor will take these into account in the course of further development.
- 5.1.11 User support: The Contractor shall provide user support for the respective version of the software used by the Client and shall regularly inform the Client of general user instructions and other special instructions and information on important questions and problems in connection with the software. He will support the Client with regard to further application possibilities and problem solutions of the software and inform about new products.
- 5.1.12 Telephone service: During the agreed service hours, the Contractor shall provide telephone advice and (user) support by telephone in the event of defects, application problems, malfunctions or other difficulties arising in connection with software processes.
- 5.1.13 Remote diagnosis/troubleshooting: After prior consultation with the Client, the Contractor is entitled to carry out remote diagnosis and remote troubleshooting as follows: The Contractor is available to the Client during the agreed service times for diagnosis and processing of occurring defects, application problems, malfunctions or other difficulties in connection with the functioning of the software via remote access (VPN connection or remote desktop sharing).
- 5.1.14 Documentation: If the software is modified on the basis of this Agreement, e.g. if a defect is remedied or new software is delivered, the Contractor shall make a corresponding addition/update to the user manual and the installation instructions for the software ("Documentation") with an explanation of the resulting changes. The documentation shall be updated in type (paper or electronic form) and scope according to the ideas and requirements of the Client.
- 5.1.15 Adaptation to changed standards: If mandatory legal framework conditions (i.e. mandatory laws, legal ordinances, regulatory requirements) that are relevant to the intended use of the software change, the Contractor shall provide appropriate adaptations within a reasonable period of time free of charge within the scope of its operational and economic possibilities. This obligation shall not apply if the adaptation only involves unreasonable work for the Contractor and the Contractor has sufficiently explained the reasons for the unreasonable work to the Client. In such a

case, the adaptation can only be carried out against a corresponding additional remuneration if the Client has commissioned this in advance.

- 5.1.16 Service Level: The Service Level Agreement according to Appendix 1 applies.

- 5.1.17 Security: If software in the form of patches, bug fixes, updates, upgrades, new releases, new versions, etc. is handed over in the course of software maintenance, the Contractor shall ensure that the software does not contain any functionalities which make it possible to weaken, circumvent or disable security functions and which have not been made known to the Client at least in text form prior to handover. In particular, he shall ensure that this software does not enable unauthorized third parties to gain access to the Client's systems or data without the Client's consent.

6. Rights of use

- 6.1 The Contractor grants the Client all rights of use in the software products and the results of the software maintenance services at the time they are created, which are necessary for the purpose of the contract and which are required for the operation of the software.

Unless otherwise agreed in the order, Contractor shall grant Client the simple, irrevocable, transferable, sub-licensable, local, i.e. independent of location and computer, and unlimited in time right to use the software products for its own business purposes, including the use and transfer of use of the software products or parts thereof for and in the case of business transactions within the meaning of §§ 15 ff. AktG with Bertelsmann SE & Co KGaA group affiliated companies, Bertelsmann SE & Co KGaA itself or other third parties (e.g. end Clients). The Client receives the exclusive right of use for delimitable components of the software products which the Contractor must adapt to the Client's operational processes (e.g. customizing).

- 6.2 If the order limits the right to use the software to individual locations and/or computers, the Client is entitled to use the software temporarily at locations and/or computers other than those specified in the order without additional remuneration if the latter are temporarily not in an operational state.

If, in such a case, a change of location and/or computer within the Bertelsmann group becomes necessary due to organizational or technical changes, the Contractor will, upon request, authorize the Client to use the software products on the new computer and/or at the new location.

- 6.3 The Contractor is obliged to inform the Client about possible restrictions with regard to the usability, modifiability or further distribution of the delivered software, which result from license conditions of third parties applicable for this. This applies in particular in the case of software or software components that are subject to an open source license or a comparable license model.

7. Partial performance

- 7.1 Partial services will not be accepted as contractual services.
- 7.2 In the case of partial performance, the Client shall be entitled to compensation instead of the entire performance if the Client is not interested in the partial performance. The §§ 280 ff. BGB shall apply.
- 7.3 In the event of the purchase of hardware, the return shipment shall be at the expense of the Contractor. Until the return the goods shall be stored at the risk and expense of the Contractor.

8. Handover / functional test / acceptance

- 8.1 Before the actual handover of the provided software or the software maintenance services to the Client, the Contractor is obliged to first of all examine the services in detail himself and in particular to determine whether they meet the contractually required requirements, in particular whether they offer the functions specified in the detailed product description. If the cooperation of the Client is required for this purpose, the Contractor shall inform the Client of this in good time.

- 8.2 The services in accordance with the above clause are to be handed over to the Client at the contractually agreed time after implementation for the purpose of carrying out a functional test. A protocol, which can be drawn up in text form, shall be prepared, which records the performance of the functional test and its results. The protocol shall be signed by the Contractor and the employee nominated by the Client.

- 8.3 If no significant defects are found during the functional test, the Client is obliged to declare acceptance. The Contractor shall thereupon carry out the instruction at the contractually agreed time. Both the acceptance and the instruction that has taken place shall be confirmed in text form in accordance with the above provision.

- 8.4 If the functional test reveals significant functional impairments or complaints (defects, in particular those of defect class 1 and 2 according to Appendix 1), the Client is entitled to refuse acceptance. In this case, the Contractor shall be obliged to remedy the defects immediately, but at the latest within a reasonable period of time. Thereafter, a new function test shall be carried out in accordance with section 8.1 f. . If this is successful, section 8.3 shall apply accordingly.

- 8.5 If an extension of the functional test is necessary for reasons for which the Contractor is responsible and exceeds 7 calendar days, the Client is entitled to demand a contractual penalty of 0.5% of the total remuneration per commenced calendar day of delay. A contractual penalty paid by the Contractor shall be set off against any further claim for damages. Further claims of the Client remain unaffected in any case.

9. Principles of personnel deployment

- 9.1 The Contractor shall perform its services independently or with its own or third-party personnel (hereinafter referred to as "Personnel").

- 9.2 The Client is entitled to demand the replacement of the personnel employed by the Contractor with reasons, which may be given in writing, if the Contractor has repeatedly violated contractual obligations or if there is any other important reason in the personnel employed which prevents cooperation between the Client and the Contractor.

If the Contractor uses external personnel (such as freelancers or temporary workers), the Client may also demand the replacement of the external personnel with justification, if a further use is not reasonable for the Client. As the main contractual obligation to perform, the Contractor shall ensure and control on its own responsibility that any external specialists or subContractors it employs are deployed and controlled in accordance with the statutory regulations. At the request of the Client, the Contractor shall provide the Client with documentation of the controls carried out and confirm their correctness in text form. Inconsistencies or missing confirmation proofs entitle the Client to immediate extraordinary termination of the contractual relationship.

- The Contractor must comply with the Client's request for the replacement of personnel without delay. The additional expenditure arising from the expansion or change of personnel shall be borne by the Contractor.
- 9.3 In the individual contract, the Contractor designates its own project manager as central contact person. This person controls the entire project work on the Contractor's side. On the other hand, the Client provides its own project manager as the central contact person for the entire project management. This manager controls the entire project work on the part of the sold-to party.
- 9.4 Under no circumstances will the Contractor's personnel be integrated into the Client's business. The Contractor shall remain solely responsible for such personnel to the full extent. There shall be no division of labour between the staff of the contracting authority and the staff of the supplier. The personnel employed by the Contractor is not included in the internal holiday planning and representation regulations of the Client. Periods of deployment or service times are agreed exclusively with the project manager contractually appointed by the Contractor. The Contractor's personnel do not take part in internal meetings and events of the Client with company-specific content and events (e.g. presentation round, company party). The only possible participation is in project and technical meetings which are directly connected with the concretization of the contractual service, the provision of the service or the acceptance of the service. The Contractor as well as the personnel employed by him use his own operating resources, unless an objective reason makes the use of the Client's operating resources necessary (e.g. IT security, data protection).
- 9.5 No project-related coordination, instructions or comparable communication between the Contractor's personnel on duty and the Client's personnel takes place without the participation of the responsible project managers. The Contractor shall involve the Client's project manager for binding information and for all questions arising from the performance of the contract. The latter shall provide information and make or communicate decisions without delay. Decisions and information from other persons shall only be binding on the Contractor and his staff if they have been made or confirmed in writing by the Client's project manager.
- 9.6 In the event of any complaints about defects in the performance of the Contractor, the Contractor's project manager is the sole contact person for the Client's project manager. No complaints about the performance of the Contractor shall be made to the Contractor's other personnel.
- 9.7 The Contractor shall ensure that all personnel employed by it has taken note of the regulations regarding confidentiality, data protection, plant security, the information sheet on the Federal Data Protection Act, the flyer for emergencies and the Client's information security guidelines and complies with the regulations accordingly.
- 9.8 Upon request, the Contractor shall inform the Client at a reasonable distance about the status of the project and compliance with the contractual requirements and shall report interim results. In addition, the Client may request to inspect the relevant documents and extracts thereof.

10. Personnel deployment for end Clients

- 10.1 If the Contractor provides services to an end Client of the Client within the scope of this Agreement, the Contractor and the Client shall each remain solely responsible for their personnel. This means that neither the personnel of the Client nor the personnel of the Contractor will be integrated into the operation of the end

Client. Furthermore, there is also no cooperation based on the division of labour and no direct communication between the personnel of the Contractor, the Client and the end Client.

- 10.2 Every project-related coordination, instruction or comparable communication with the end Client is carried out solely by the responsible project manager of the Client. This person is the exclusive contact person for both the end Client and the Contractor's project manager with regard to the services provided at the Client's end Client under this agreement. In all other respects, the above provisions of Sections 9.3 to 9.6 apply mutatis mutandis.

11. Minimum wage

- 11.1 The Contractor is obliged to pay his employees the statutory minimum wage. At the request of the Client, the Contractor shall prove to the Client that this obligation has been fulfilled by submitting suitable documents (in particular documents pursuant to Section 17 (1) MiLoG, clearance certificate from the competent social security or holiday fund, etc.) within 14 days of termination of the present contractual relationship for the entire duration of the contract up to six months.
- 11.2 The Contractor shall indemnify the Client from all claims of third parties (in particular employees of the Contractor, Client's Clients, Federal Employment Agency) in connection with the violation of the obligation to pay the statutory minimum wage on first demand.
- 11.3 The Contractor is obliged to oblige any subContractor to pay the statutory minimum wage and release the Client from work to the same extent as the Contractor itself is obliged to do under Sections 11.1 and 11.2. If the subContractor in turn uses subContractors, the Contractor shall ensure that all subContractors are also obliged accordingly.
- 11.4 The Contractor is liable to the Client for all claims of third parties arising from the violation of the obligation to pay the statutory minimum wage by subContractors.

12. Compensation

- 12.1 All prices are quoted in €, exclusive indirect taxes and include all incidental expenses, in particular travel expenses, travel times, transport costs and customs duties.
- 12.2 In case of wrong, bad or partial deliveries, the Client is entitled to refuse payment until proper fulfilment.
- 12.3 Insofar as the Contractor is obliged to provide a warranty to the Client, the contractually owed services, in particular software maintenance services, shall be provided free of charge for the duration of the warranty period.
- 12.4 The agreed software maintenance services shall be remunerated by the monthly, quarterly, half-yearly or annual flat-rate maintenance fee specified in the order. Item 12.3 remains unaffected.
- 12.5 An increase of the respective maintenance fee is not possible before 24 months have expired. The Contractor must announce the increase at least three months before the increase takes effect in writing. The increase in the maintenance fee must be within the scope of what is customary in the industry; under no circumstances may it exceed 2% of the annual maintenance fee valid up to that point. In the event of an increase, the Client reserves the right to terminate the contract with two weeks' notice before the increase takes effect. The termination shall become effective at the time the increase takes effect.
- 12.6 Subject to a deviating regulation, the remuneration is due for payment 30 days after receipt of a verifiable

- invoice, but in principle only after acceptance of the services owed. The invoice must contain the order number of the Client as well as, if no lump-sum remuneration has been agreed, details of the service provision (including time, place, service provided).
- 12.7 In the event of payment within 14 days of receipt of the auditable invoice, the Contractor shall grant the Client a discount of 3% on the invoice amount.
- 12.8 The Contractor shall only be entitled to withhold payments or services and work results or to offset them against counterclaims if the claims asserted by the Contractor from the same legal relationship have either been acknowledged by the Client at least in text form or a legally binding decision has been made in legal proceedings. The assignment of claims of the Contractor against the Client to third parties is excluded.
- 12.9 If either party is required by applicable law to withhold taxes on the services received, this shall not constitute a breach of this Agreement and shall not relieve the parties of their obligations under this Agreement. Both parties shall each have the right and obligation to withhold and remit taxes in the amount required by law. The Parties shall provide each other with reasonable assistance in applying for an exemption based on the relevant DTA and in accordance with the regulations of the country.
- 13. Default**
- In the event of default, the Client is entitled to the statutory claims. In addition, in the event of default on the part of the Contractor, the Client shall be entitled to demand a contractual penalty of 0.5% of the total order value per commenced calendar day of default. If the Contractor exceeds an agreed delivery date by more than 7 calendar days, the Client is entitled to withdraw from the contract immediately. The contractual penalty can be claimed until the final payment of the remuneration. A contractual penalty paid by the Contractor due to delay shall be set off against any further claim for damages. Further claims of the Client in case of default remain unaffected.
- 14. Defects (notification of defects) / Warranty**
- 14.1 § Section 377 of the German Commercial Code (HGB) shall apply in such a way that the Client is obliged to give notice of defects within one week of acceptance, insofar as a defect was identifiable in the course of random checks of an appropriate scope. Visible transport damage shall be reported immediately, at the latest within one week. Payment of the remuneration does not constitute approval of the service.
- 14.2 The Client is entitled to the full statutory warranty claims.
- 14.3 During the warranty period, the Contractor shall remedy defects immediately.
- 14.4 The warranty period shall begin to run again if the defect is rectified.
- 15. Force majeure**
- If the Contractor is not able to provide the service in due time due to force majeure (war, riots, strikes, lock-outs, fire and floods), the Client may choose to withdraw from the contract instead of unilaterally extending the deadline for the contractual provision of the service.
- 16. Liability**
- 16.1 If the Client demands compensation for damages instead of performance, the claim to performance shall not lapse until the Contractor has paid the compensation.
- 16.2 In all other respects the statutory provisions shall apply.
- 17. Term and termination of software maintenance**
- Unless otherwise agreed in the order, the following applies:
- 17.1 The software maintenance agreement has a term of two years from productive use of the software.
- 17.2 The Contractor must inform the Client three months before the end of the contract at least by eIDAS-compliant text form about the end of the contract period.
- 17.3 Contractor may terminate the software maintenance agreement with a notice period of six months to any end of the month, but not earlier than the end of the second year. The Client can terminate the software maintenance agreement at any time with a notice period of three months to any end of the month.
- 17.4 The right to extraordinary termination for good cause remains unaffected.
- 18. third-party rights**
- 18.1 The Contractor shall be responsible, irrespective of fault, for the fact that he is entitled to grant the rights of use of the software products to the Client. He guarantees that the contractual use of the software (products) by the Client does not violate the rights of third parties.
- 18.2 Insofar as the software products or software maintenance services supplied by the Contractor violate the rights of third parties and this violation of rights is based on a service provided by the Contractor, at least through slight negligence, the Contractor undertakes to indemnify the Client on first demand from all claims made by third parties as a result and from all costs associated with the legal defence, including the costs for an adequate licence purchase.
- 19. Secrecy**
- 19.1 The Contractor undertakes to keep secret all information (e.g. business and trade secrets, data, technical and commercial information of any kind) which it has come to know about the Client and the order within the framework of this contractual relationship, whether verbally, in writing, in electronic or any other form, even beyond the duration of the contractual relationship, and to maintain secrecy about this information. The information must be stored in such a way that any misuse is excluded.
- 19.2 Furthermore, the Contractor warrants that its employees, consultants and other vicarious agents who are entrusted with the execution of the contract and who receive information pursuant to 19.1 are bound to secrecy in writing.
- 20. Data protection and security**
- 20.1 The Contractor shall ensure that all persons entrusted with the performance of this contract observe the statutory provisions on data protection and are demonstrably obliged to maintain data secrecy in accordance with the rules on data protection.
- 20.2 In the case of order processing, a separate agreement shall be concluded between the contracting parties.
- 20.3 The Client expressly does not give his consent to the use of the contact data for advertising purposes. Any disclosure, transmission or other use of the Client's contact data is expressly prohibited.

20.4 The Contractor undertakes to take all necessary measures to ensure information and operational safety and quality assurance at the Client's premises during the performance of the contract. The relevant guidelines and information sheets of the Client shall apply, which shall be made available to the Contractor at the latter's request.

20.5 The Contractor undertakes to report all security incidents relating to the agreed services to the Arvato Systems ServiceDesk at userhelpdesk@bertelsmann.de immediately, but at the latest within 24 hours of becoming aware of them. The report must contain a detailed description of the incident, the potential impact and the measures already taken.

20.6 The Contractor undertakes to develop, implement and regularly test a business continuity plan (BCP) to ensure the continuation of the contractual services even in the event of serious disruptions. This plan includes measures to restore services, system deployments and communication protocols in the event of a cyberattack or other emergencies. This obligation applies if the contractor provides services whose failure could have significant impacts on the client's business-critical processes. This includes, in particular, IT outsourcing, SaaS services and managed services

21. Insurance

- 21.1 The Contractor undertakes to maintain a business liability insurance throughout the entire duration of the contract, the scope and amount of which is appropriate to its liability risks under this contract.
- 21.2 Upon request of the Client, the Contractor shall provide evidence of the conclusion and existence of the insurance policy and the payment of the corresponding premiums.

22. Audit

- 22.1 The Client is entitled, either himself or through an appointed third party, to carry out an audit once a year, after prior notice and during business hours, at the Contractor's premises for the purpose of verifying the Contractor's compliance with the contractual obligations.
- 22.2 The confidentiality of the Contractor's information shall be maintained and appropriate security provisions shall be taken into account.

- 22.3 The Contractor is obliged to grant access to all systems, books, records, business processes and facilities that the Client requires in order to conduct a proper and thorough inspection. The Contractor shall provide the necessary cooperation in such an inspection.

23. Final provisions

- 23.1 This agreement can only be transferred to third parties with the consent of the other party in text form using an electronic signature (in accordance with eIDAS requirements). On the part of the Client, third parties within the meaning of this clause are not the companies affiliated with Bertelsmann SE & Co KGaA, Gütersloh, group companies (§§ 15 ff. AktG) and Bertelsmann SE & Co KGaA itself.
- 23.2 The Contractor is not entitled to name the Client, details of the order or the Client's end Client as a reference without the Client's express consent.
- 23.3 The contractual penalties referred to in these contractual conditions may not exceed 5% of the total contract value.
- 23.4 The Contractor acknowledges the provisions of the [Supplier Code of Conduct of Bertelsmann SE & Co KGaA](#) and undertakes to act in accordance with them.
- 23.5 Changes, additions and the cancellation of this contract require the text form by means of electronic signature (according to eIDAS requirements). This means that an e-mail format does not meet these requirements. The same applies to the cancellation of the written form requirement. All design rights must always be asserted with a signature variant that is at least eIDAS-compliant.
- 23.6 The existence of this contract shall not be affected by the invalidity of individual provisions or by loopholes in the provisions. An ineffective provision or a gap in the provisions shall be replaced or filled by a valid provision which corresponds as far as possible to the meaning and purpose of the omitted provision or the remaining provisions of this contract.
- 23.7 The law of the Federal Republic of Germany shall apply, excluding the UN Convention on Contracts for the International Sale of Goods. The place of jurisdiction for all disputes arising out of or in connection with this contract is the court that is competent for the Client in terms of subject matter and location.

Annex 1

Service Level Agreement

1. Service Level Table

	error class 1	error class 2	error class 3
Service time of the Contractor	24x7	Mon - Fri, 8.00 - 18.00 with the exception of national bank holidays ("public holidays"). These holidays are treated as Sundays.	
Acceptance of requests from the Client (incidents)	< 1 minute		
Response time	< 10 minutes	< 20 minutes	appropriate
Troubleshooting time	< 2 hours	< 4 hours	appropriate
Status report: Status of bug fixing	Every 60 minutes	Every 90 minutes	appropriate
Post mortem report	2 working days after error correction	5 working days after error correction	–
Maximum number of faults	3 per year	6 per year	12 per year

Penalties for non-compliance

	error class 1	error class 2	error class 3
Troubleshooting within the service hours	> 2 h: - 10 % > 4 h: - 30 % > 6 h: - 70 % > 8 h: - 100 % > each additional 4 hour period: each - 100	> 4 h: - 10 % > 6 h: - 25 % > 8 h: - 50 % > each additional 8 hour period: each - 100	–

The non-performance credits are calculated as a percentage of the average monthly remuneration to be paid during the basic term of the contract. Otherwise, Section 6.6 shall apply.

2. Hotline, error message

- 2.1. The Contractor accepts error messages from the Client by telephone, e-mail or fax at the service times defined in the service level table.
- 2.2. The Client can fix error messages - if necessary subsequently - at least in text form and assign the errors to a category according to section 3
- 2.3. The Client can summarize already reported and newly detected errors in open-point lists and send them to the Contractor. The following regulations apply accordingly to the errors contained in these lists.

3. Error categories

Defects are assigned by the Client to the following categories: operation-preventing defects (defect class 1), operation-impeding defects (defect class 2) and other defects (defect class 3). After an error has been adjusted / processed, the classified error category can be changed. The definition of the defect category is determined by the following classification:

- 3.1. **Error class 1:** An error preventing operation exists if the use of a maintained system/program is impossible or severely restricted, for example due to malfunctions, incorrect work results or response times. There are no functions available that can replace the faulty function ("workaround").
- 3.2. **Fault class 2:** A fault impairing operation exists if the use of a maintained system/program is partially impossible or seriously restricted, for example due to malfunctions, incorrect work results or response times, and there is a bypass solution of a type and scope that is reasonable for the Client and can be used temporarily.
- 3.3. **Error class 3:** Another error exists if the use of a maintained system/program is not and/or not significantly impaired. Example: Unfavourably defined basic settings, missing desirable functions/extensions ("Nice-to-have functions"), deficiencies in the documentation, impairment of the ease of use, in each case without impairment of functions.

4. Reaction times and troubleshooting

- 4.1. **Fault class 1:** In the case of operation-preventing faults, the Contractor shall begin to rectify the fault within the reaction time defined in the service level table after the fault has been reported by the Client - if necessary also on site - and shall continue to do so without interruption, i.e. 24 hours a day, 7 days a week, in consultation with the Client until the fault has been rectified. The Contractor undertakes to eliminate an operation-preventing fault within the fault elimination time defined in the service level table and will remain in constant contact with the Client during this phase.
- 4.2. **Fault class 2:** In the case of operation-obstructing faults, the Contractor begins to rectify the fault within the response time defined in the service level table after the fault has been reported by the Client - if necessary also on site - and continues to do so without interruption on the days defined in the service level table and within the support times defined in the service level table in consultation with the Client until the fault has been rectified. In the case of particularly serious errors that impede operation, the Client can demand uninterrupted troubleshooting during the support hours defined for the errors that impede operation (error class 1) in accordance with the service level table.
- 4.3. **Error class 3:** Other errors are eliminated in a reaction and elimination time appropriate to the severity of

the error, unless otherwise defined in the service level table.

- 4.4. **Troubleshooting measures:** The Contractor shall remedy any defects of which it becomes aware at its own discretion, in particular by one of the following measures:

- (i) Transmission of a patch/bugfix as well as, if requested by the Client, the execution of the installation.
- (ii) Transmission of a new program version which does not contain the defect. In the case of defects of defect class 1, a workaround that is reasonable for the Client shall be provided in advance within the time required to remedy the defect according to the service level table.
- (iii) Instructions to the Client to circumvent the defect (circumvention solution/workaround) or to eliminate the defect. The Client will implement these instructions as far as this is reasonable for him. The Client is free to accept the remedy of defects according to this section as final or only as a provisional remedy. If the Client informs the Contractor that the correction of errors is only provisional, the Contractor is obliged to achieve a final correction of errors within a reasonable period of time.

Troubleshooting also includes correcting the consequences of the error correction, for example in the data.

- 4.5. **Response time:** A response is considered to be any reasonable action taken by the Contractor to start searching for the cause of the fault. The reaction time is therefore the time from the time of the error message by the Client until the action is taken.
- 4.6. **Troubleshooting time:** The Contractor undertakes to remedy faults within the troubleshooting times specified in the service level table. Troubleshooting time is the time from the time of the error message by the Client until the Client confirms that the error has been corrected. Confirmation of the fault rectification by the Client is provided by signing the fault rectification protocol in accordance with Section 5.5.
- 4.7. **Status reports:** The Contractor shall inform the Client on an ongoing basis at intervals appropriate to the severity of the error by means of status reports issued by telephone, fax, e-mail or online reporting on the status of error analysis and elimination. The times defined in the service level table, within which status reports are to be delivered, are to be fulfilled at a minimum, regardless of the severity of the error. In individual cases, the parties may agree on a different sensible cycle.
- 4.8. **Early Warning:** If the Contractor has been notified by other Clients or by the manufacturer of an error of error class 1, the Contractor shall notify this error and the necessary or recommended measures to be taken to eliminate the error within the periods defined in the service level table and shall begin implementing the measures at the Client's premises. The error correction times defined in the service level table apply accordingly. The time limit starts from the successful troubleshooting of the Contractor at another Client or after notification by the manufacturer.
- 4.9. **Interfaces to other systems:** If the system/software is connected to other systems via interfaces and the Client detects errors in these or other systems to be connected in the future, which cannot be excluded that they may be caused by the system/software of the Contractor, the Contractor is obliged to proceed according to the regulations of this service level agreement until it is clearly established that the error was not caused by the system/software of the Contractor.
- 4.10. **Adjustment of the documentation:** In the case of program changes/improvements and

- 4.11. troubleshooting, the documentation is adjusted within the periods defined in the service level table. The periods begin to run at the time when the parties agree on the success of the error correction.
- 4.12. **Reimbursement of expenses:** If the Contractor determines that an error reported by the Client does not actually exist or is not attributable to the Contractor's system/software, the Contractor shall be entitled to charge the Client for the expenses incurred in connection with the analysis and other processing in accordance with the current price list, provided that the Client is guilty of intent or gross negligence when reporting the error.

5. Error Reporting

- 5.1. Together with the first status report in accordance with section 4.7 the Contractor shall send the Client an error report by fax or e-mail, which shall include the following points (i) Time of the first error message or error detection; (ii) Description of the error by the Contractor; (iii) Procedure for analysis and correction of the error by the Contractor; (iv) Estimated correction time.
- 5.2. If the fault rectification time stated by the Contractor is not acceptable to the Client, the Client may demand further measures. In this case, the Contractor is obliged to discuss the implementation of the further measures with the Client without delay and to reach agreement on the details of the further measures and their costs.
- 5.3. In cases in which the estimated or actual time required to rectify errors for errors that prevent or hinder operations leads to considerable impairment of business operations or if there are differences of opinion about the manner in which the errors can be rectified in a meaningful way, the Client can demand the involvement of a neutral expert third party in the error analysis. The Contractor is obliged to cooperate with the third party and to provide him with all information necessary for error analysis. If only the involvement of the third party makes it possible to eliminate the error or if his involvement leads to a considerable reduction in the time required to eliminate the error compared to the time period specified by the Contractor or if the impairments associated with the error can be considerably reduced, the Contractor shall bear the costs of the involvement of the third party. Instead of calling in an expert third party, the parties may also initially agree on an internal escalation. If no agreement is reached here, the expert third party can be called in immediately.
- 5.4. **Troubleshooting log:** After the respective error has been corrected, the Contractor sends the Client a troubleshooting report. The troubleshooting log contains the test measures to be carried out to check the troubleshooting. The Client shall immediately check the success of the troubleshooting measures taken. The error is only considered eliminated after the error correction has been checked and the error correction protocol has been signed by the Client.
- 5.5. **Post Mortem Report:** After the respective error has been corrected, the Contractor shall send the Client a detailed error correction protocol (Post Mortem Report) within the deadlines specified in the Service Level Table, which documents the cause of the error, the measures and changes made to correct the error and the test measures taken to verify the error correction.

6. Delays and other disruptions in performance / right of termination

- 6.1. The agreed response, fault rectification and performance times and deadlines are binding. Obstructions and delays must be reported immediately at least in text form with a precise description of the circumstances and with calculation of the additional time required.
- 6.2. After setting a reasonable period of grace, the Client shall be entitled to commission the work to another company and to charge the costs to the Contractor ("substitute performance"). In addition, the Client may assert its statutory rights.
- 6.3. Clause 6.2 apply accordingly if the Contractor repeatedly fails to comply with the response times and fault rectification times defined in the service level table or interrupts fault rectification before the fault has been rectified, fails to rectify faults within reasonable or contractually agreed periods and in the event of other significant breaches of duty.
- 6.4. If the Client makes use of his right to substitute performance as provided for in Section 6.2 and if the source code is not available to the Client, the Contractor shall immediately hand over the source code to the Client together with all related information and documents. The material to be deposited must be suitable for generating the version of the software/system that the Contractor last handed over to the Client.
- 6.5. The Contractor shall not be responsible for delays if the Client has changed the software without the Contractor's consent and the Contractor can prove that the changes have made it considerably more difficult or impossible to correct the error. This shall not apply if the Client carries out system parameterization measures according to the manual or has used defined interfaces (exits, API) according to the documentation. The Contractor guarantees that no defects will occur in these cases.
- 6.6. In the event that the fault rectification times defined in the service level table are exceeded, if the Contractor is unable to demonstrate its nonrepresentation, the Client may demand the non-performance credits defined in the service level table in addition to and without prejudice to its other rights. Unless otherwise provided in Section 0 the non-performance credits are calculated as a percentage of the average monthly remuneration payable during the basic term of the Agreement. The non-performance credits shall be offset against the next payment due for the care services owed and shall be shown accordingly on the invoices. The Client reserves the right to assert further claims.
- 6.7. **Maximum number of faults:** The Client is entitled to terminate the software maintenance contract in whole or in part with extraordinary notice of 10 working days if the maximum number of faults defined in the service level table has been exceeded and if the faults were caused by the Contractor. The notice of termination must be issued within 2 months after the maximum number of faults has been exceeded. If the remuneration for the services of the Contractor has already been paid (advance payment), it must be reimbursed proportionally. The Client reserves the right to assert further claims