



CORPORATE PROCUREMENT & IT

GENERAL TERMS AND CONDITIONS OF CONTRACT
of
Österreichische Post AG
for
IT standard software and adaptations
(Version: 01.04.2022)

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1. Scope

1.1. These General Terms and Conditions of Contract (herein "GCC") apply to the contractual legal relationships governing the provision of IT standard software and the corresponding custom software/adaptations between Österreichische Post AG (herein "Post" or "Principal") and the contractor (herein "Contractor") and to future offers/contracts between the Contracting Parties.

In particular, the GCC are appended to offers, orders and contracts and are legally effective as an integral part of the contract between the Contracting Parties, whereas any contractual provisions deviating from these GCC take precedence.

1.2. "Standard software" means a software system that covers a clearly defined area of application and that can be purchased on the market as a product or standard solution; software components within the meaning of these GCC are elements of the software; hereinafter, the term "standard software" includes the software components.

1.3. "Custom software" means a software solution developed specially for the Principal in accordance with its specifications (among other things, on the basis of requirements [= performance specifications] and functional specifications).

1.4. "IT developments and services" means, above all, programming services, maintenance services, ASP, consulting services, and training services.

1.5. Third-party general terms and conditions of business/contract and/or industry-standard terms and conditions are expressly excluded. This also applies if the Contractor refers to them in their offer, correspondence or other documents.

2. Secrecy / Confidentiality / Data protection

2.1. The Contractor undertakes to keep secret all data, information, business secrets and knowhow of which they become aware, unless Post releases them from this obligation in writing in a specific case.

2.2. The Contractor undertakes to take all appropriate measures to ensure secrecy and prevent the disclosure and unauthorised use of information; i.e. in particular, they must

- use this information exclusively for the purpose of fulfilling the orders placed with the Contractor by Post to the required extent;
- limit access to this information to employees who are indispensable in fulfilling the performance object and contractually impose on them the non-disclosure obligations set out herein;
- keep secret and confidential all information provided to the Contractor by Post in connection with the performance object and/or information obtained in connection with the fulfilment of the Contractor's contractual obligations;
- if the Contractor engages third parties to fulfil the performance object, impose on them in a legally binding and demonstrable way the obligations of secrecy before disclosing this information – in the case of other liability for damages – and to support Post in every way in asserting its claims against them;
- refrain from passing on, processing or exploiting that information in any other way without the written permission of Post.

2.3. The non-disclosure obligation does not apply if and to the extent that

- disclosure is necessary within the scope of the fulfilment and performance of the contract, or due to rulings passed by courts or administrative authorities, a valid legal stipulation, or a legally binding order rendered by an official body;
- the information is publicly known, and its disclosure is not attributable to a violation of this obligation of secrecy by the Contractor or by third parties attributable to the Contractor;
- the information was already known to the Contractor prior to conclusion of the contract;
- the information was passed on to the Contractor by a third party without violating



- contractual or legal obligations;
 - the information in question was developed autonomously and independently by the Contractor themself.
- 2.4. The Contractor undertakes to comply with the statutory provisions on data protection, such as the Austrian Federal Act concerning the Protection of Personal Data (*Datenschutzgesetz – DSG*, BGBl. I 120/2017 as amended), in particular the provision of Sec 6 *DSG*, and the EU General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data – GDPR) and the Austrian Telecommunications Act 2021 (*Telekommunikationsgesetz – TKG*, BGBl. I № 190/2021 as amended) or any statutory regulations replacing it. In the event that personal data are processed on behalf of the Principal, the Contracting Parties must conclude a data processing contract within the meaning of Article 28 GDPR as per Annex./2 as an integral part of the contract.
- 2.5. The obligation of secrecy and data protection continues to apply even after full performance by the Contractor or after end of contract.
- 2.6. In each case of a breach of these obligations and of the obligation to impose the non-disclosure obligation on all relevant parties, the Contractor must pay a contractual penalty in the amount of EUR 10,000.00 (ten thousand euros) to Post for each individual violation, irrespective of fault... The penalty is not subject to judicial mitigation. Post retains the right to claim damages in excess of this amount. Payment of the contractual penalty does not release the Contractor from their obligation to fulfil the contractual obligations.
- 3. Offers / Cost estimates**
- 3.1. The Contractor bears the costs relating to all offers, including any contract establishment costs and cost estimates; the accuracy of any cost estimate submitted by the Contractor is deemed guaranteed (Sec 1170a of the Austrian Civil Code (*Allgemeines bürgerliches Gesetzbuch – ABGB*)).
- 3.2. The Contractor guarantees that they will prepare for Post the cost estimate and the offer from the point of view of full operability and suitability based on the requirements of Post (concept, requirements, functional specifications, etc.); in particular, the Contractor may not omit any elements, components or ancillary services that are necessary for the proper and defect-free functionality as usually assumed or contractually agreed upon, even if they were not expressly mentioned in the tender or contract.
- 3.3. If elements, components or ancillary services are omitted, these must be provided by the Contractor free of charge; and, in the event that the maintenance of such is part of the contract, this must also be carried out within the framework of the agreed maintenance services. Warranty and compensation claims remain unaffected.
- 3.4. If the work is to be provided in parts, the Contractor must perform the work in such a way that the individual partial services can be with the specified interfaces without interruption and with full functionality.
- 4. Delivery schedule / Delivery**
- 4.1. The Contractor has assessed the requirements of Post (with regard to concept, requirements, technical specifications, etc.).
- 4.2. Unless expressly excluded, the Contractor is obliged to document the technical specifications made together with Post upon award of contract, on the basis of the requirements of Post.
- 4.3. Based on the requirements of Post (with regard to concept, requirements, technical specifications, etc.), the Contractor will deliver a complete and functional software or perform a



service that corresponds with the state of the art, where particular attention must be paid to the appropriate dimensions.

4.4. The delivery of the software will be effected DDP in accordance with INCOTERMS 2020 to the place of assembly/installation, whereby all ancillary services, in particular transport, connection, installation, startup operations, etc., are included therein, at the points in time previously specified in the delivery schedule. The place of assembly/installation is deemed the place of performance. The Contractor declares in a legally binding manner that all packaging or all contractual packaging purchased with packaged goods is fully licensed or exempted from licensing and has been approved by a collection and recycling system in Austria that is registered in the EDM portal of the Federal Environment Agency. The Contractor confirms that all electrical and electronic equipment to be supplied, to the extent that the object of the contract so requires, complies in particular with the provisions of Directive 2011/65/EC, as amended from time to time, on the restriction of the use of certain hazardous substances in electrical equipment and electronic waste or the provisions of the Austrian Waste Electrical Equipment Ordinance (*Elektroaltgeräteverordnung – EAG-VO*).

4.5. The delivery schedule also includes the date of delivery as per Section 8.

5. Test run (IF PART OF THE AGREEMENT)

5.1. If the employees of the Principal will perform a test run (in a test environment) before commencing trial operations (in the production environment), the conditions stated here apply, unless agreed otherwise. The start and end times of the test run will be mutually agreed between the Contractor and the Principal.

5.2. The Principal will nominate a test manager; this person will plan and coordinate all testing activities of the Principal and is also the primary contact person for the Contractor for all testing activities planned by the Principal.

5.3. The test run will take place in a test environment that is separate from the development environment.

5.4. The following definition of ready applies for the test run:

- The Contractor provides proof of the successful execution of the component tests and component integration tests (on the test system of the Contractor);
- The Contractor's approval of the release;
- Handover of the release notes (list of the new/changed functionalities, list of the remedied defects of a previous version, list of the anomalies in the startup operations and the smoke test) by the Contractor;
- Successful installation and startup operations of the software on the test system by the Contractor;
- A short handover meeting including a brief presentation of the release contents by the Contractor for the employees of the Principal who will carry out the tests;
- Successfully executed smoke test (test of testability). This test is defined and executed by the Principal. The running time for a fully successful execution may not be longer than three hours.

5.5. During the ongoing test run, changes to the software status of the test environment may only be made upon prior approval by the test manager.

5.6. The following defect classification applies to any defects found:



Classification	Meaning
Critical	The functional use of a significant part of the system is not possible or limited to an unreasonable extent. The defect has a serious impact on business and/or security. Examples: System shutdown that cannot be remedied by rebooting; loss or destruction of data; time-critical mass processing of data yields incorrect results.
High	The functional use of a significant part of the system is greatly limited. The defect has an impact on business and/or security. Examples: Wrong or inconsistent processing that subsequently leads to restrictions in ongoing operations but has no long-term consequences (e.g. data cleansing through batches is possible).
Medium	The functional use of a significant part of the system is slightly limited. The defect has an insignificant impact on business and/or security. Example: User notifications that are logically wrong (e.g. error notifications)
Low	The functional use of the system is unlimited. Example: The graphic representation of contents is in need of improvement

- 5.7. The test run is only deemed completed if (at least) the following criteria are met:
- 100% of all planned test cases were executed;
 - There are no open defects in the “critical” or “high” defect classes (all remedied and retested);
 - A detailed list can be included in a test concept. However, the minimum is 2 demonstrably executed test cases per new functionality;
 - The Contractor will be provided with the Post software quality guidelines as amended and is obliged to comply with them.

- 5.8. The achievement of the exit criteria specified in Section 5.7 at the agreed end time of the test is a prerequisite if trial operations are to be carried out. An additional deadline for the removal of defects and subsequent retesting can be agreed; in any case, however, the decision regarding an extension of the test run and/or start of the trial operations lies with the Principal.

6. Trial operations (IF PART OF THE AGREEMENT)

- 6.1. If expressly agreed, following installation, startup operations and functional testing are to be performed by the agreed starting date of trial operations; Post must be notified when the startup operations and functional testing have been successfully carried out.
- 6.2. The Contractor must provide the documents for trial operations, in particular the operating instructions, in good time, but no later than one (1) week prior to the start of the trial operations, and submit them to Post.
- 6.3. The Contractor is responsible for performing the trial operations. Unless otherwise agreed, the Contractor must provide the technical personnel and the equipment for the trial operations under the Contractor’s responsibility.
- 6.4.
- 6.5. The Contractor will rectify defects in accordance with the operational time requirements upon prior agreement with Post.
- 6.6. The defects found during the trial operation will be classified as per Section 5.6.



- 6.7. The reaction, defect removal and retesting times specified in the respective applicable SLA apply for the removal of defects.
- 6.8. In the event that impairments, defects, delays, etc., arise during trial operations and significantly interfere with the latter, at the request of Post the Contractor must perform the trial operations again after rectifying the impairment, in such a way that the overall duration of the defect-free trial operation corresponds to the originally planned time for the trial operation.

7. Acceptance

- 7.1. The acceptance test will take place after submission of a written readiness report following completion of any trial operations and rectification of any defects that occurred during the trial operation, where the Contractor must rectify the defects in accordance with the operational time requirements upon prior agreement with Post.
- 7.2. Acceptance serves to establish that the software or software components are free of defects and consists of a functional test, a performance test and trial live operations; it is carried out on the basis of the functional/performance specifications.
- Functional test: Testing whether the work features the functions as typically expected as well as the functions stipulated in the functional/performance specifications and contained in the offer;
 - Performance test: Testing whether the standard software or software components meet the defined performance requirements with regard to response times and throughput in the required quality under the defined or, in the absence of a definition, the customary load conditions;
 - Trial live operations: Testing of reliability in live operation; it is considered successfully completed if the availability over a period of 10 consecutive calendar days (0:00 to 24:00 h) or during the agreed period – this period can also already be started in trial operation – reaches at least the customary values or percentages specified in the manufacturer's announcements or otherwise agreed, while simultaneously complying with all other quality criteria.
- 7.3. Before the acceptance test, the Contractor must inform Post in writing of the completion of the software or parts thereof without delay and invite Post to carry out the acceptance; the acceptance test must be carried out no later than the agreed takeover date as specified in the schedule.
- 7.4. The defects found during the acceptance test will be classified as per Section 5.6.
- 7.5. The reaction, defect removal and retesting times specified in the respective applicable SLA apply for the removal of defects.
- 7.6. In the event that a serious defect is discovered ("critical" or "high" defect class), Post may refuse acceptance and the Contractor must, within 2 weeks, rectify the defect notified in writing and again present the work for acceptance. If this is not the case, Post will demand a penalty in accordance with Section 19. Insignificant defects ("medium" or "low" defect classes) do not hinder acceptance, but must be remedied within a reasonable time.
- 7.7. The Contractor participates in the acceptance test – with the exception of the trial live operations – at their own cost. An acceptance report about the successful acceptance must be written and signed by Post and the Contractor. Sec 377 of the Austrian Companies Act (*Unternehmensgesetzbuch – UGB*) does not apply.
- 7.8. If the acceptance of the defect-free performance object is not carried out by Post within 4 weeks after submission of a written readiness report following the conclusion of any trial operations or after the quality and function tests as specified in Section 7, the performance object will be deemed to have been accepted and free of defects four weeks after submission of the readiness report or after the quality and function tests.



8. Takeover / Partial handovers

8.1. The day of takeover is:

- the business day following the day on which the successful acceptance test is concluded upon signing of the acceptance report (Section 7.7); or
- in the event that Post dispenses with an acceptance test, the business day after which the software was installed in an operational condition in accordance with the acceptance report signed by Post and is in full compliance with the contract, free of defects and ready for use by Post; or
- if an acceptance test is ruled out due to the nature of the subject matter, the business day on which the work was delivered in compliance with the contract and free of defects.

8.2. Should more than one acceptance be necessary for parts of the software, it will subsequently only be taken over as a whole. The takeover is concluded upon written confirmation of takeover stating the parts of the work taken over and the lists of defects from the individual acceptance tests. The takeover can only be concluded after trouble-free trial operations and (a) successful acceptance test(s).

8.3. Takeovers of parts of the software will only be carried out with the express prior approval of Post. If partial takeovers are carried out, then Post only takes over the part in question.

8.4. If, due to a longer time interval between the completion of all (partial) acceptance tests and the takeover owing to defects in the subject matter, special measures are required to maintain the faultless condition of the work until takeover and thus until the beginning of the warranty period, these must be carried out by the Contractor or their representative according to the Contractor's specifications; if necessary, the Contractor will provide the technical personnel for the maintenance of the functions.

8.5. The Contractor will rectify the defects in accordance with the requirements of Post – based on operational time requirements.

9. Requirements

9.1. Should the creation of documents be part of the contract, the Contractor undertakes to ensure that they

- are compiled in correspondence with the standards of engineering and state of the art in accordance with the requirements of Post;
- have a clear, straightforward structure;
- contain a management summary at the end; and
- show the respective version status of the chapters, sources of statements and quotes.

9.2. Should a requirement analysis and creation of technical specifications be part of the contract, the Contractor undertakes to ensure that

- the requirement analysis investigates all important processes needing technical support;
- the technical specifications present all processes of Post needing technical support "as is" with their organisational and technical weaknesses as found in the analysis, as well as their target state in their entirety and – if necessary – in graphic format;
- the technical specifications document the necessary changes in such a way that these can be understood by the specialist divisions at Post on the one hand, and can be used as reference material on which to base the technical implementation without requiring any further processes on the other.
- the technical specifications have been examined as to their logical consistency and workability;
- the components comply with the provisions of the relevant laws, regulations, technical guidelines in Austria and the EU.

9.3. Furthermore, the Contractor undertakes to deliver software components that

- are free of viruses and other software anomalies, especially Trojans and malware;



- have a comprehensible operating design, where in particular similar commands/tasks are done in a comprehensibly similar way;
- the work to be provided has not only been tested as to its functionality, but also as to its behaviour in borderline cases (incorrect entries, number of simultaneous transactions, data quantities) that are to be expected in the application area;
- the functions commonly expected and agreed are reliably fulfilled;
- there are safeguard functions; including protection against foreseeable operating errors; and
- the configuration settings can easily be modified by Post.

9.4. If the creation/delivery of a standard software is part of the agreement, it must be created and/or delivered in a form that

- is user friendly, functions in a similar way for identical or similar operations, and can be used by a user who is familiar with the subject area of the application without having to refer to any auxiliary documentation and after standard instruction in its basic functions;
- offers a user interface in German language for the user;
- offers a user interface in German language for the user's supervisor and the operator;
- displays a uniform menu design and function key assignment within the application area;
- displays an online help system in German language;
- does not require changes to the operating system's code in order to be installed.

9.5. If the creation and delivery of custom software/adaptation is an express part of the agreement, the Contractor undertakes to ensure that

- the source code only uses the standard language features of the contractually agreed programming language;
- it can be easily adapted to a different environment (e.g. changes in the organisation, legislation and the market, operating system versions, database systems), i.e. it is as independent as possible of the platform or operating system;
- it is user friendly, i.e. the readability and structure of the components are simple, and can be used easily after the introductory training; that it displays a uniform menu design and function key assignment;
- each module possesses exactly one entry point and, preferably, one exit point;
- the function and the input and output parameters of each module are described in understandable terms in a comment in the source code, following the header of the module;
- the source code contains sufficient explanatory comments; corresponding documentation is available;
- use does not require any changes to the source code;
- it was comprehensively tested, not only by the programmer, but also by other employees of the Contractor;
- defined and documented test cases (including execution steps and the test data / input parameters used) are made available to Post;
- any test automation implemented as part of the software development is made available to Post for unrestricted use and further development.

9.6. 9.4 applies correspondingly to adaptation programming.

10. Source code (IF PART OF THE AGREEMENT)

10.1. If expressly agreed, the Contractor must provide the application software, in the source language and translated into the machine code, on a data carrier that can be read on Post's system, and install the application software on Post's system.

After installation, the Contractor will hand over to Post this data carrier with the source code including the corresponding documentation (content and structure of the data carrier, program and data flow diagrams, test cases, test procedures and test programs, error handling,



etc.).

- 10.2. The data carrier must contain the application software in the original programming languages at the time of installation, including all changes made since then, as well as the documentation, insofar as it has a machine-readable form. Part descriptions that are not machine readable must be enclosed in a format that can be read without any aids. In any case, however, the Contractor must enclose a list of the deposited items that can be read without any aids, and instructions on how the data carrier must be read on Post's system and how the delivered work must be installed.

This must be deposited / handed over every time a new version of the application software is delivered.

If the Contractor is incapable of acting – this includes, in particular, liquidation, if the opening of the insolvency proceedings is rejected on the grounds of insufficient assets, the liquidation resolution of the general assembly, the suspension of the Contractor's business activities without appointing a successor company authorised to receive or render performance, any other unjustified refusal by the Contractor to properly maintain, process or adapt the software or to have a third party maintain, process or adapt it – then Post is entitled to break the seals of the deposited data carrier and use the work in the source code together with the documentation or commission a third party to use it; Section 21.2 applies correspondingly.

- 10.3. The source code of custom software/adaptations (including database scripts, Java scripts, etc.) is included in the contract and must also be delivered. The Contractor must also compile and submit to Post documentation of the development steps of the software, on the basis of which further development of the custom software and/or custom software adaptations is possible without requiring any additional research on the part of Post. This documentation must not only contain detailed information about the development environment (program; version number) that was used to develop the supplied individual software and which compiler/interpreter (program; version number) was used, but the Contractor must also disclose all other developer tools, components and testing tools that were used to create and test the software. If the Contractor makes use of freeware ("open source components"), they must not only state the respective names, version numbers and sources and attach a copy of the open source components used in the version to the documentation, but also document any modifications made to the freeware for the creation of the custom software. If the individual program contains components (programs, software routines, algorithms, etc.) that were not specifically developed for Post by the Contractor or their subcontractors, but which are used or will be used in the future in software solutions or test solutions intended for other customers, the Contractor agrees in advance that Post can use these components, but only for the purpose of adapting, maintaining, further developing and testing the individual software supplied to Post by the Contractor. In this respect, the Contractor undertakes to indemnify and hold harmless Post against any claims by third parties arising from the use of these components, insofar as they are used in the course of adaptation, maintenance and further development.
- 10.4. The information in the documentation must be presented in such a way that it is comprehensible even for a software engineer / programmer / tester not involved in the development who does not have the company-specific knowledge the Contractor has.

11. Documentation

Part of the performance object of the agreement is the supply of documentation based on statutory provisions (e.g. operating instructions) and – if agreed – the supply and update during the term of the agreement of all documentation necessary and appropriate for the use of the performance object of the agreement in physical or machine-readable form, with Post specifying the medium for this documentation in each case. This documentation consists of the following:



For software components: At least one user documentation, a short description, a technical documentation and a list of the test cases prepared or executed including test steps and the test data or input parameters used (concerns black and white box testing);

For standard software: A documentation for the installation and administration as well as for users, each in German language; this must also be supplied in a machine-readable format. The documentation must describe all processes necessary for the ongoing work in such a way that they are understandable and comprehensible for a trained person; in particular, it must describe typical and foreseeable error situations and how to remedy them.

The technical documentation must comply with the usual standards applicable at the time of installation and be presented in such a way that it can be understood and implemented by an expert familiar with comparable components. In addition, documentation of all test cases prepared or executed (including test steps and the test data or input parameters used) and the testing tools used must be provided.

Post may copy and use the supplied documentations at will.

12. Obligations of the Contractor

12.1. The Contractor undertakes to state the order number and the reference number of Post on all papers relating to an order, in particular on delivery orders and invoices.

12.2. The Contractor undertakes to ensure minimal disruption of operations and to comply with any applicable employment and social legislation as well as the Code of Conduct for Contractors, Annex ./1, and the relevant operational regulations of Post, in particular the safety regulations, the working time regulations, the house rules, etc. All employees deployed by the Contractor (and thus also those of subcontractors, etc.) must be entitled to reside and take up employment in Austria.

12.3. The Contractor undertakes (i) to ensure that the Contractor's legal representatives, employees and engaged and/or commissioned subcontractors comply with all applicable legal provisions relating to anti-corruption regulations and (ii) to take appropriate measures to ensure compliance with the anti-corruption regulations. In the event of a violation of anti-corruption regulations, the Principal is entitled – without prejudice to other rights of withdrawal and termination – to terminate the contract without notice and to assert any claims for damages.

12.4. Furthermore, the Contractor undertakes to provide Post with any agreed services in accordance with the applicable national and European laws and standards and the employee protection regulations within the meaning of the Austrian Federal Occupational Health And Safety Act (*ArbeitnehmerInnenschutzgesetz – ASchG*) and any guidelines and recommendations issued by the trade associations in a technically sound, comprehensive manner and to the best of their ability, while making the utmost effort to protect the interests of Post. This includes keeping Post apprised of opportunities and possibilities as well as risks and how to minimise them. Unless expressly agreed otherwise, the Contractor owes Post a service that can be used by Post for the contracted purpose.

12.5. Post and the Contractor work together to implement the health and safety regulations within the meaning of Sec 8 *ASchG* and coordinate their hazard prevention activities (e.g. handling of heavy loads, **conduct on the company premises**). Post and the Contractor must share with each other all information on potential hazards (e.g. operating instructions, inspection of health and safety documents).

The Contractor undertakes to comply with Post's instructions for external companies.

Furthermore, the Contractor undertakes to only deploy staff who have been trained appropriately, in particular with regard to the handling of work equipment, etc., and who have been instructed accordingly, in writing and demonstrably, on safety, risk avoidance and health protection (within the meaning of Sections 12 and 14 *ASchG*). Furthermore, the Contractor is obliged to always request the currently valid version of the documents such as operating instructions, operating manuals, guidelines, etc., from Post, to ensure that the Contractor's



training on hazard prevention and avoidance is always based on the current documents.

If the Contractor does not personally carry out the contractual Services but uses subcontractors, the Contractor undertakes, in their capacity as principal, to demonstrably impose this provision upon the subcontractors or to demonstrably pass on to the subcontractors all hazard-specific information relevant to the performance of the activity and to demonstrably instruct them on the hazards.

The Contractor is obliged to check compliance with the instructions on a regular basis.

Should an employee of the Contractor or a subcontractor or an employee of a subcontractor suffer an occupational accident on premises of Post, the Contractor is obliged to fully indemnify and hold harmless Post with regard thereto. This also applies to any administrative and legal proceedings, any attendant costs including costs of legal representation and penalties of all kinds.

- 12.6. Should written elaborations be part of the contract, the Contractor is obliged to carry them out in accordance with Section 9.1.
- 12.7. In addition, the Contractor is obliged to state in writing the extent to which the product supplied can be used by disabled persons ("Accessibility Statement") and to name a contact person for accessibility issues.
- 12.8. As soon as the Contractor becomes aware of any circumstances which may impair the performance of the contract, the Contractor must immediately inform Post in writing within 48 hours of becoming aware of these circumstances and suggest ways of resolving them.
- 12.9. If, during performance of the contract, a service not covered by the contract proves to be necessary, the Contractor must reach an agreement with Post in this regard prior to performance. If the necessity or expediency of this service is determined by mutual agreement, the corresponding remuneration is to be agreed at the same time. If the Contractor carries out a service not covered by the contract without prior written consent and agreement of the remuneration, Post is not obliged to remunerate the Contractor for it.
- 12.10. The Contractor undertakes to only deploy staff who have been trained appropriately with regard to the contractual requirements. Should Post so demand, the Contractor will replace, within an appropriate period of time, employees who do not possess the requisite expertise or who impair the fulfilment of the contract.
- 12.11. In accordance with the obligation to protect the interests of the Principal, the Contractor is prohibited from enticing away employees of Post, either for themselves or for third parties. The Contractor is obliged to refrain from taking any enticement actions of any kind. Furthermore, the Contractor undertakes to refrain from employing employees of Post during the term of the contract and for a period of 12 months after termination of the contract. In the event of a violation thereof, the Contractor is obliged to pay a contractual penalty to Post amounting to the gross annual salary of the employee enticed away. The right to assert further claims for damages remains unaffected thereby.
- 12.12. Similarly, in the event of violation of the obligation specified in Section 23(1)(e), the Contractor must pay the Principal a lump-sum compensation of 50% of the gross total order value. In the case of recurring violations, the Contractor is obliged to pay a lump-sum compensation equivalent to the gross annual fee per contract year.
- 12.13. The Contractor must ensure maintenance of the software for at least 5 years (from the day of handover); the specific maintenance period must be mutually agreed in a separate agreement. Maintenance includes, above all, troubleshooting, setting up and operating a hotline, further development, and provision of advice to Post on the use of IT components. Errors are diagnosed and remedied by remote or on-site maintenance. The maintenance obligation also



includes the obligation to continuously update the documentation of the software and to supply or keep available for Post the most up-to-date manuals and online aids for standard software at no extra charge.

- 12.14. The Contractor must inform Post of any technical improvements as well as possible further developments of the software and/or possible adaptations. Scheduled maintenance work or version updates are agreed in advance.
- 12.15. The Contractor is obliged to operate maintenance facilities and to set up a hotline to coordinate the ongoing services, all in an appropriate scope, which must be available, at the very least, on business days from Monday to Thursday between 8am and 5pm and on Fridays between 8am and 3.30pm. In addition, the Contractor must set up either an email address or a trouble ticket system that Post can access at no extra charge. The malfunction notifications and the communication regarding software questions must also be made via this alternative communication channel without any significant extension of the response time for maintenance or troubleshooting.
- 12.16. If expressly requested by the Principal, the Contractor is obliged to offer a help desk / support process.
- 12.17. Outside the on-call times for maintenance, the Contractor must perform maintenance, unless this is unreasonable after weighing the interests of Post and the Contractor's own interests. In any case, it is deemed reasonable if the malfunction belongs to defect classes A or B. The assignment of malfunctions to defect classes is made by mutual agreement, but at least in accordance with the classification of Post.
- 12.18. The following defect classes apply:
Defect **class "A"** ("critical malfunction") includes malfunctions that make it impossible to use the IT system or significant parts thereof, or that limit the use to an unreasonable extent, that have a serious effect on the business activities of Post or compromise safety. Non-exhaustive examples of this defect group include data loss/destruction, system shut-downs that cannot be remedied by rebooting, time-critical mass processing yielding incorrect results, etc.
If a malfunction is assigned to defect class "A", the Contractor must ensure that the defect is dealt with by qualified personnel during the on-call time, but no later than within the agreed reaction time, and must promptly at least provide a workaround (in principle within 8 working hours from commencement of troubleshooting). This obligation also includes measures not directly related to software, including in particular the replacement of hardware components, services such as software reconfiguration and fixing software problems with patches. If the Contractor suspects that third-party components may have caused or contributed towards the defect, they must report the defect to the manufacturer concerned without delay.

Defect class "B" ("high malfunction") includes malfunctions that significantly limit the use of the IT system or parts thereof, however – despite having a serious effect on the business activities or safety – generally allow work to continue under limited, but not unreasonable conditions. Examples of this defect group include incorrect or inconsistent processing, noticeable shortfalls of the agreed performance data of the IT system, higher frequency of short malfunctions, etc.

If a malfunction is assigned to defect class "B", the Contractor must ensure that qualified personnel begin to deal with the defect during the on-call time, and provide a workaround in the medium term and, as far as possible, a correction of the cause of the defect in the medium term. This obligation also includes measures not directly related to software, including the replacement of hardware components, services such as software reconfiguration and fixing software problems with patches. If the Contractor suspects that third-party components may have caused or contributed towards the defect, the Contractor must report the defect to the manufacturer concerned without delay.



Defect class "C" ("low malfunction") includes malfunctions that slightly impede the functional use of the IT system or parts thereof, the malfunction only has an insignificant effect on business activities or safety, and work can be continued without restriction. Demonstrative examples of this defect group are incorrect defect notifications / program goes into a standby mode and must be activated manually by the user, etc.

If a malfunction is assigned to defect class "C", the Contractor must ensure that qualified personnel begin to deal with the defect within a reasonable period, and that the cause of the defect is corrected as quickly as possible e.g. by replacing hardware components, reconfiguring software, fixing software errors within the scope of the release policy, etc. In addition, the Contractor notifies a manufacturer other than Post of the defect.

- 12.19. In the event that Post gives the Contractor or their subcontractors access to a permanent or temporary confidential area (Sec 2.11 of Policy № 11 "Capital Market Compliance Policy" of Österreichische Post AG), the Contractor undertakes to give Post the name of a designated contact person for capital market compliance matters. The Contractor also undertakes to keep a list of all persons involved in handling the order and to keep this list up to date. In addition, the Contractor undertakes to demonstrably (e.g. in the form of email with read receipts) notify the persons on said list of all written communications (e.g. regarding the aforementioned policy or blocking periods) that the Contractor receives from Post's Compliance Department. In addition, the Contractor undertakes to forward to Post, at its request, both the list of persons and proof that the communications were forwarded.
- 12.20. If the Contractor intends to engage subcontractors, the Contractor must demonstrably notify Post thereof by the time the offer is obtained or the contract awarded and may only proceed to engage such subcontractors with the prior written consent of Post. If, at some point after conclusion of the agreement, the Contractor intends to change subcontractors or engage a subcontractor that was not disclosed in the offer or during the awarding procedure, the Contractor is obliged to provide Post with the reasons for this change and the name of the intended subcontractor. If the Contractor was required to fulfil suitability criteria, the Contractor must provide, when notifying Post, all paperwork necessary to substantiate the suitability of the subcontractor in question. A change in subcontractor or appointment of a new subcontractor requires the prior written consent of Post, whereby the consent is deemed given if Post does not reject the proposed subcontractor within three weeks of receiving notification; the three-week period only commences upon provision of all paperwork. Post will not withhold its consent unreasonably. No such consent is, however, required for the conclusion of contracts with subcontractors with which the Contractor is affiliated within the meaning of Sec 189a *UGB*. The Contractor is liable for the fault of all persons whose services the Contractor engages to fulfil their contractual obligations to the same extent as for the Contractor's own fault and the Contractor indemnifies and holds harmless Post in this respect.

13. Duty to supply information

- 13.1. The Contracting Parties will continually share with each other important information regarding the subject matter of the agreement.
- 13.2. The Contractor is not obliged to hold training sessions without additional remuneration; however, they must inform Post, at Post's request, of any other training programmes in good time. This duty to supply information encompasses further training measures, participation costs, training dates and training venue. Post must be given the opportunity to participate in these training programmes at usual market terms.
- 13.3. The Contractor is not permitted to make any reference, whether directly or indirectly, to their work for Post without Post's prior written consent, i.e. in particular, to name Post as a reference customer.

14. Project management

- 14.1. Before commencing work, the Contractor must notify Post of one person in charge



designated as the project manager.

14.2. *Project management and reporting:*

In accordance with the specifications of the contract, the Contractor must draw up a project plan in sufficient detail and update it weekly in critical phases, otherwise every 14 days, in the agreed format, and send it to the Principal; a target/actual comparison must be included.

The Contractor must maintain documentation in which the most important project management mechanisms (setup and workflow organisation, persons involved, rules for working together, quality assurance, etc.) are defined.

The Contractor must draw up a report of the results of each meeting in the agreed format of the MS Office system used by Post and send it to all parties involved no later than one week after the respective meeting.

14.3. *Changes to the requirements*

Changes that become necessary due to defects in the result of an already completed phase of the project must be carried out at the full expense of the Contractor, providing the Contractor also carried out this phase of the project; the changes must be compensated for by additional work or similar measures in such a way that the deadlines in the schedule are kept.

Changes requested by Post within the first third of the project's term that make up no more than 1/10 of the total contract volume have no impact on the schedule.

15. Remuneration

15.1. The remuneration is understood as a fixed package price with all statutory levies included; import sales tax / VAT excluded. General price reductions, including reductions on the part of the Contractor, that are introduced after the date of contract signing are to be passed on to Post. All services are deemed compensated with the agreed remuneration. Any maintenance work for which a recurring maintenance fee has been agreed is subject to the rules of price adjustment in accordance with the Maintenance Contract.

15.2. Post will assume no ancillary costs, including in particular travel, accommodation and other expenses. Costs incurred for necessary travel must be included in the contract/offer and be contractually agreed.

15.3. If, in the course of project execution, it becomes apparent, through no fault of the Contractor, that additional services are necessary or expedient, the Contractor must notify Post of this in accordance with Section 12.6 and come to an agreement. Failing this, the Contractor is not entitled to remuneration for their work, not even if it is useful or expedient. Liability for unjust enrichment (e.g. Sec 1041f ABGB) or liability from the title of *negotiorum gestio* (i.e. conducting another's affairs without authority to do so) (Sec 1035f ABGB), whether in direct or analogous application of the law of unjust enrichment or *negotiorum gestio*, is excluded in this case with the exception of imminent danger.

16. Invoicing / Terms of payment

16.1. Invoices will only be accepted for processing if they contain the order (commission) number or reference number, the ordering/contracting department of Post, the name of the orderer, and the invoice elements specified in Sec11 of the Austrian VAT Act (Umsatzsteuergesetz – UStG). Invoices must be sent as a single copy to the central invoice receipts department

**Österreichische Post AG
Rechnungseingangsstelle
Business Center 590
1000 Wien**



- 16.2. If the Services are performed on the basis of an individual confirmation of services rendered, the latter must be appended to the invoice.
- 16.3. Following completed performance without defects and issue of an invoice without objection, payment of the net amount with a 3% discount will be made within 30 days. The payment term begins on the date of receipt at our central invoice receipts department.
- 16.4. Invoices with substantive or calculation errors will not form the basis of any payment obligation until they have been rectified, and may be returned by Post at any time. In the latter case, a payment obligation will only be constituted upon receipt of the corrected invoice.

17. Exploitation rights / Patents

- 17.1. The Contractor will hand over the standard software and/or software components including all work results required for putting into service, ongoing operations, maintenance and support of the work by Post.
- 17.2. In the case of software explicitly declared as custom software/adaptations, Post has the non-exclusive, unrestricted right to use the work to be provided to Post by the Contractor and the associated work results, including the knowhow included therein, in whatever manner, free of charge, irrevocably and for an indefinite period of time. The Contractor agrees that Post may make changes of any kind to the work. Unless otherwise agreed, this does not encompass the right of commercial exploitation and publication, except for the purpose of executing invitations to tender.
- 17.3. Post may use the software referred to in Sections 17.1 and 17.2 in the agreed scope; this also includes the right of reproduction (for backup and archiving purposes) and free distribution to group companies pursuant to Section 15 of the Austrian Stock Corporation Act (*Aktiengesetz – AktG*).

18. Default in performance

- 18.1. Should, for reasons within the purview of the Contractor, a deadline specified in the schedule not be met, or the performance of a service, the submission of the readiness report or the real operations of the standard software or a part to be accepted separately be delayed, Post is entitled, at its own discretion:
- to demand performance and at the same time a penalty for each calendar day or part thereof exceeding the deadline in accordance with Section 19; or
 - without prejudice to its right to assert a penalty pursuant to Section 19, to withdraw from the contract after setting a reasonable grace period; in this case Post may demand a penalty that corresponds to the number of days of the actual delay, but no less than 90 days.
- 18.2. If, according to the agreement, the standard software is to be provided in parts, and the Contractor is in default with one part of the work only, the withdrawal may only be made in respect of the individual or, alternatively, of all parts that are still outstanding.

19. Contractual penalty

- 19.1. The Contractor must pay a contractual penalty irrespective of fault of 0.5% of the agreed gross order value for each calendar day or part thereof exceeding the deadline, or EUR 120.00, however no more than 10% of the total gross order value, provided that Post is not solely responsible for causing the delay. In the event of default, the Principal can demand the larger of the two amounts. In the case of recurring services, the contractual penalty is 10% of the gross annual fee per contract year. Section 21 remains unaffected thereby.
- 19.2. The contractual penalty will be charged from the day the Contractor falls into default until the day of full performance of the service; proof of damage is not required.



- 19.3. This does not affect the right of Post to withdraw from the contract; in the event that Post withdraws from the contract due to circumstances for which the Contractor is responsible, the contractual penalty will – without prejudice to any other consequences of the withdrawal – only be charged until the date on which the Contractor receives the notice of withdrawal. If the agreed contractual penalty is not specified per day but per week or month, then a calendar day will be 1/7 of a week or 1/30 of a month in the calculation. The Contractor bears the full costs of decommissioning and dismantling machinery.
- 19.4. The right to assert claims for damages in excess of the contractual penalty remains unaffected thereby.
- 19.5. The payment of a contractual penalty does not release the Contractor from their obligation to fulfil the agreed Services.

20. Warranty (Sec 922 et seqq. ABGB)

- 20.1. Unless a longer warranty period is provided for by law, the warranty period is 2 years and begins on the day of takeover; if notice of defects is given within this period, they are deemed to have been present on the day of takeover.
- 20.2. After completion of performance, the Contractor is obliged to remedy all defects upon request by Post within a reasonable grace period – without entitlement to any further remuneration.

If the Contractor fails to meet their obligation to remedy defects even after a reasonable grace period, or fails to do so on time or in full, or if the remedy is also defective, the following applies:

If the work is unusable for Post and cannot be improved, even by a third party, the Contractor loses their entitlement to remuneration; the Contractor shall repay any amounts already received plus interest of 9.2% above the base interest rate applicable (as provided by Sec 456 UGB, Sec 1333(2) ABGB as amended from time to time), calculated from the date of receipt of the amounts.

If an improvement of the work by a third party is possible, Post is entitled to claim reimbursement of all costs of improvement from the Contractor.

If the value of the work provided to Post has been diminished and if an improvement by a third party is impossible, Post is entitled to reduce the remuneration appropriately.

- 20.3. In each case of a delay caused by the Contractor, Post is entitled to initiate performance by a substitute at the expense of the Contractor after a warning has been communicated and a reasonable grace period set; the setting of a grace period is not applicable for fixed-term contracts as defined in Sec 919 ABGB. Sec 377 UGB does not apply.
- 20.4. The Contractor has the burden to prove the absence of a defect or the insignificance thereof, and will bear all costs and expenses incurred in connection therewith.

21. Damages

- 21.1. The statutory provisions apply. Liability for damage caused by slight negligence is limited to the gross total contract value per contract year; in the case of recurring services, liability is limited to the gross annual fee per contract year.
- 21.2. The agreement of a contractual penalty as defined by Sec 1336 ABGB does not affect the assertion of the right to claim damages exceeding the contractual penalty. In the case of a default in performance caused by the Contractor, Post is entitled to initiate execution by substitution at the expense of the Contractor after a warning has been communicated and a reasonable grace period set. The setting of a grace period is not applicable for fixed-term contracts (Sec 919 ABGB).



22. Freedom from third-party rights

22.1. If a claim is made or may be made against Post on the grounds of the infringement of the intellectual property rights of a third party as a result of the utilisation of components, Post will inform the Contractor without delay and give the Contractor the opportunity of defending themselves against the claim or of obtaining the full rights.

22.2. The Contractor will compensate Post for any damage resulting from or in connection with the infringement of industrial property rights of third parties associated with the Contractor's delivery or performance. The damage to be compensated includes any payments made for the settlement of disputes out of court, which Post may make subject to the Contractor's consent; the Contractor will not unreasonably withhold consent.

23. Extraordinary termination

23.1. Post is entitled to terminate the contract for good cause at any time by unilateral declaration and with immediate effect. Should there be no grounds for extraordinary termination, Post must compensate the Contractor for the proven cash expenditure and pay an appropriate part of the remuneration for the work already performed by the Contractor. Good cause exists, in particular:

- a) if insolvency proceedings against the Contractor have been rejected on the grounds of insufficient assets;
- b) if the Contractor's work has significant quality defects or the Contractor is in default with the agreed work; if, according to the agreement, the work is to be provided in parts, and the Contractor is in default with one part of the work only, a partial termination may also only be made in respect of the individual part or, alternatively, of all parts that are still outstanding. Post is not required to grant a grace period;
- c) if there are circumstances that make it obviously impossible to fulfil the contract in time and delay completion by more than half of the originally agreed delivery time, provided that these were not caused by Post itself;
- d) if the Contractor enters into an agreement with a subcontractor without Post's consent;
- e) if the Contractor offers, promises or guarantees, directly or indirectly, a pecuniary advantage to an institution and/or employee of Post or a third party that is involved with the conclusion and implementation of the contract at Post, and/or violates anti-corruption regulations or Section 12.3;
- f) if the Contractor themselves, or a person engaged by the Contractor for fulfilment of the contract, breaches the obligation of secrecy;
- g) if it becomes known after the fact that the Contractor made incorrect statements in the course of the tender or when submitting their offer, and this had an impact on the award decision or acceptance of the bid;
- h) if the Contractor restricted or unfairly influenced free competition in the award or tender process in contravention of the law or of good morals;
- i) if a non-appealable judgment has been passed against the Contractor or, in the case of legal entities, the partnerships under commercial law, registered acquisition companies and syndicates, a person working on the Contractor's management, for serious acts or omissions in connection with his professional activity by the competent criminal (regional) court;
- j) if the Contractor loses their official (commercial) licence.
- k) the Contractor is no longer able to perform the Services owing to a substantiated case of *force majeure* through no fault of the Contractor, or if the Contractor is not able to perform the Services within 10 business days.

23.2. Both in the event of withdrawal from the contract on the part of the Principal and in the event of extraordinary termination in accordance with this section, the Contractor loses all entitlement to remuneration and compensation of expenses if they have not yet executed an agreed partial performance that is free of defects and can be used by Post; payments already made are to be paid back without delay. The Contractor must compensate Post for any additional costs incurred by subcontracting the commission to a third party, unless such costs are



already covered by liquidated damages.

24. Retention and performance obligation

In the event of a dispute, the Contractor is not entitled to withhold deliveries and/or to cease performance of work.

25. Retention of title

A reservation of title of the Contractor as of acceptance is excluded.

26. Exclusion of set-off

The set-off of amounts payable to the Contractor by amounts payable to the Principal is not permitted.

27. Exclusion of the right of transfer

The transfer of rights and obligations arising from the agreement and the transfer of the agreement by the Contractor requires the prior approval of Post. The prohibition of assignment of payment claims was negotiated individually within the meaning of Sec 1396a ABGB as amended.

In the event of violation of this provision, the Principal has the right to demand a penalty regardless of fault amounting to 80% of the transferred claim, however, up to no more than EUR 2,000.00 in each case.

28. Applicable law / Court of jurisdiction

Any and all disputes arising out of and in connection with this Agreement / Framework Agreement are subject to Austrian law, with the exclusion of the UN Convention on the International Sale of Goods and conflict of law provisions.

It is agreed that disputes will be referred to the local court responsible for commercial matters in 1030 Vienna.

29. Costs and charges

29.1. The costs, taxes and charges associated with the execution of the agreement will be borne by the Contractor.

29.2. In the event that liability for charges arises from the agreement in accordance with the Austrian Fees and Duties Act 1957 (*Gebührengesetz – GebG*, BGBl. I No. 194/1999 as amended) and duties are levied, these are borne solely by the Contractor.

29.3. If a claim is asserted against Post as a tax debtor or liable party and/or especially, pursuant to Sec 28 *GebG* as amended, as debtor of fees, for tax debts of the Contractor by federal, provincial or regional tax authorities, the Contractor undertakes to compensate the payments made by Post and fully indemnifies and holds harmless Post in this regard irrespective of fault.

29.4. Each of the contracting parties will bear its own costs for the drafting of the agreement and for legal representation.

30. Miscellaneous

30.1. It is emphasised that the headings and subheadings in these GCC merely serve the purpose of providing structure and therefore have no legal effect.

30.2. Only written agreements are of binding effect; no verbal ancillary agreements exist. Amendments and additions to this Agreement must be made in writing to take legal effect; the same applies to any deviation from the formal requirement of the written form.

30.3. Should one or more provisions of this Agreement be found to be or become invalid or



unenforceable, the Parties will jointly define a new valid and enforceable provision that comes closest to the economic goal and purpose of the invalid and unenforceable provision. The invalidity or unenforceability of individual provisions does not impair the validity or enforceability of the entire Agreement.

- 30.4. The Contractor waives their right to avoidance of the contract on grounds of unfair and unreasonable consideration (*laesio enormis*).
- 30.5. All rights and obligations arising from the agreement will be transferred to any legal successors of either Contracting Party.

Annexes:

Annex ./1 Code of Conduct Data Processing Contract within the meaning of Art 28 GDPR

Annex ./2 Code of Conduct for Contractors



Annexes:

Annex ./1 Code of Conduct Data Processing Contract within the meaning of Art 28 GDPR

Annex ./2 Code of Conduct for Contractors