

1. Written and text form

The contract, any **amendments** and supplements to the contract and all material communications must be in written form, unless the parties have made different arrangements, or a stricter form is prescribed by law. In the event of transmission by telecommunication to be deemed to be in written form, this transmission must take place via the eProcurement Tender Platform of the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH as the contracting authority (hereinafter ‘GIZ’ or the ‘contracting authority’). Insofar as text form is provided for in this annex of the EVB IT Cloud contract, it shall consist of a readable declaration on a durable medium in which the person making the declaration is named.

2. Confidentiality

Any and all data relating to the contract as well as any other information, such as submitted documents and exchanged information, of which the contractor and its employees become aware in the course of performing the contract, must be treated as confidential during and beyond the term of the contract. The contractor must also observe the principle that such data and information may only be made accessible and disclosed to persons who absolutely need the information in order to perform their designated tasks (‘need-to-know’ principle). This provision applies even if such documentation and information has not been explicitly designated as secret or confidential. The contractor must not make documents and/or work results of any kind, including in particular, but not limited to, reports, accessible to third parties without prior approval in text form by GIZ. Third parties under this provision also include the ultimate commissioning party/client. The contractor shall also not be permitted to make use of any such data and information for its own purposes beyond the uses permitted by GIZ.

3. Requirement for GIZ’s approval for publications

Any publications regarding the contract require prior approval in text form by GIZ, even after the contract has come to an end. A brief description of the contract and scope of activity for the contractor’s PR purposes shall not require GIZ’s approval. A statement on the content of the contract and the key results constitutes a brief description for the purposes of this contract. The contractor must always express in an appropriate way that its activities are on behalf of GIZ and must also name the ultimate commissioning party/client and any further financing parties.

4. Use of GIZ’s corporate design

When designing materials relating to the contract which are intended for use with third parties (e.g. business cards, letterhead, emails, publications, presentations), GIZ’s Corporate Design Center rules (<https://www.giz.de/cdc/en/html/59557.html>) and all other GIZ specifications must be followed. The design must also be agreed with GIZ and in the event of direct cooperation also with the responsible partner institution in the country of assignment.

5. Data protection

Within the framework of the contract, GIZ processes person-related data exclusively in accordance with the provisions of the EU General Data Protection Regulation (GDPR) and other applicable data protection regulations. Such data are processed and stored by GIZ only to the extent necessitated by this contract. The contractor shall have the right to view, delete or rectify the data and can approach GIZ (datenschutzbeauftragter@giz.de) or the responsible government authorities in order to assert this right.

The contractor shall comply with the requirements of applicable data protection regulations and take

measures to ensure such compliance by its employees.

The contractor warrants that data transmitted to GIZ have been processed in accordance with applicable data protection provisions and are free from any third-party rights that could prejudice the use of this data within the purpose of this contract. The contractor indemnifies GIZ against all claims arising from the violation of data protection regulations and shall reimburse GIZ for all costs incurred in connection with its corresponding legal defence or the imposition of government sanctions.

Should applicable data protection law contain special principles that must be adhered to when providing works and services (for example implementation of technical requirements in a privacy-friendly way by means of Privacy by Design and Privacy by Default), the contractor shall place particular emphasis on ensuring compliance with such principles.

Should the contractor process personal data for GIZ within the meaning of Art. 28 GDPR, this processing shall be performed on the basis of an associated separate agreement.

6. Prevention of the financing of terrorism and compliance with embargoes

The contractor shall not use the remuneration received from GIZ to make any financial resources or other economic resources available, either directly or indirectly, to third parties that are included on a United Nations or EU sanctions list.

When executing the contract, the contractor may enter into and/or maintain business or contractual relationships only with third parties that are reliable and to whom no statutory ban on doing business or entering into contracts applies.

In executing the contract, the contractor shall also comply with embargoes or other trade restrictions imposed by the United Nations, the EU or the Federal Republic of Germany.

The contractor shall notify GIZ without delay and of its own volition if the contractor, a member of its official managing body and/or other administrative bodies, its shareholders and/or its employees should be placed on a sanctions list published by the United Nations or the EU. The same stipulation applies if the contractor should learn of an event that results in the inclusion of aforementioned individuals on such a list.

The contractor shall notify GIZ without delay and of its own volition of any violation of the provisions of the present section 6.

7. Obligations under the Code of conduct

7.1 Code of Conduct for Contractors

The contractor shall guarantee with regard to its own business activities that it acts in accordance with the Code of Conduct for Contractors of the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH ('Code of Conduct'). It warrants that it will appropriately address the provisions of the Code of Conduct along the supply chain if it establishes the existence of a human-rights or environment-related risk or is informed by GIZ of such a risk.

The contractor is obliged to hold GIZ harmless from third-party claims resulting from a breach of the Code of Conduct unless the contractor can prove that it is not responsible for the breach.

7.2 Preventive measures

The contractor must take appropriate measures to minimise the risk of breaching the provisions of the Code of Conduct. If GIZ identifies (new) risks during performance of the contract, additional preventive measures must be taken. GIZ is entitled to instruct the contractor to take specific measures.

7.3 Ensuring access to the complaints procedure in the supply chain

The contractor shall ensure unhindered access for all of its employees to the complaints procedure set up at GIZ. In particular, the contractor shall not undertake any actions that hinder, prevent or complicate access to the complaints procedure. This also applies to indications that human-rights or environment-related obligations have been violated due to the actions of an indirect supplier.

7.4 Ad hoc controls

GIZ is entitled to check whether the contractor complies with the provisions of the Code of Conduct if compliance risks have been identified and the contractor has been informed of them. The corresponding control measures must be appropriate and give due consideration to the contractor's justified concerns. The control measures that may be considered include demands for comprehensive disclosure, on-site checks by GIZ or a commissioned third party and mandatory certification in line with recognised standards. All control measures are restricted to compliance with human-rights and environment-related obligations.

7.5 Participation in training courses

If GIZ identifies compliance risks related to the Code of Conduct, the contractor shall be obliged at GIZ's request to take part in the training courses held by GIZ on compliance with the Code of Conduct and on appropriate measures to address the Code of Conduct in the further supply chain. Participation is not necessary if GIZ agrees and if the contractor confirms in writing to GIZ that it (i) complies with the provisions of the Code of Conduct and (ii) verifiably conducts its own training courses.

7.6 Obligations to provide information and documents

The contractor is obliged on request to procure and provide the information and documents that GIZ needs in order to meet all of the regulatory requirements resulting from the contractual relationship, e.g. requirements under the German Supply Chain Act (LkSG).

7.7 Legal consequences in the event of violations of the Code of Conduct

If the contractor breaches any of the obligations set out in the Code of Conduct, GIZ is entitled to suspend performance of the contract or to terminate the contract if the breach is not remedied after setting a reasonable deadline. There is no need to set a deadline in the event of a serious, persisting or repeated breach. In the event of termination, the Contractor shall be entitled to remuneration for the services provided under the contract up to the date on which the termination takes effect. However, remuneration shall not be payable for services for which GIZ demonstrates that they are of no interest to it as a result of the cancellation. If the contractor breaches an obligation under the Code of Conduct, the contractor is additionally obliged to pay damages unless it can prove that it is not responsible for the breach. The payment of damages also includes appropriate compensation for reputational damage.

If the contractor breaches an obligation under the Code of Conduct, GIZ is furthermore entitled to exclude the contractor from future competitive award procedures for a period that is limited to the duration of the breach and to the extent appropriate.

The contractor is obliged to pay a contractual penalty for each breach of the Code of Conduct; the amount of this penalty (i) depends on the nature and severity of the breach, (ii) is established by GIZ after due consideration and (iii) does not exceed EUR 50,000. If a pecuniary advantage granted by the contractor as a form of bribery is greater than EUR 50,000, the contractor must pay a contractual penalty equal to this sum. Further rights of GIZ to claim damages shall remain unaffected. However, contractual penalties that have already been paid shall be deducted from such claims for damages.

8. Experts

8.1 Assignment of Experts

For the assignment and replacement of experts, the contractor shall submit an implementation proposal in text form to the person at GIZ who is responsible for the commission (stating the nominated expert, Terms of Reference, duration of assignment and number of expert-days) for approval.

8.2 Qualifications and requirements for the assigned experts

The contractor shall be obliged to assign only such experts as are trustworthy and capable of performing the tasks allocated to them, who have the necessary professional and local knowledge, and are adequately informed of and prepared for the security situation in the country of assignment. The contractor shall ensure that the experts it assigns to work on the contract are suitably informed about the contractual provisions on information security. If participation by the contractor and/or its experts in special preparatory courses is agreed, the preparation period shall not form part of the period of assignment.

8.3 Compliance with contractual obligations

The contractor shall ensure that the experts it assigns comply with the relevant provisions of the contract.

8.4 Replacement of an expert at GIZ's request for a compelling reason

GIZ may demand the replacement of an expert if there is a compelling reason for doing so. In particular, a compelling reason is deemed to exist:

- (a) if it becomes clear that the expert does not meet the requirements in terms of health, language skills, professional or personal qualifications or the requirements under section 8.2 above;
- (b) if the expert's conduct is detrimental to the interests of the Federal Republic of Germany or of the ultimate commissioning party/client, or is the subject of complaint for understandable reasons by the government of the country of assignment or the partner institution;
- (c) if the expert contravenes the duties to be imposed on him/her by the contractor despite having been required by the government and/or partner institution in the country of assignment to conduct himself/herself in accordance with his/her duties, or if GIZ has complained about the expert's conduct to the contractor.

The contractor shall bear all additional costs incurred due to a need for a replacement for a compelling reason, as well as any additional expenses arising for replacement personnel. If an expert is replaced following a complaint by the government of the country of assignment or the partner institution, the contractor bears these costs only if it or its expert is responsible for the cause of complaint. If the contractor or its expert is not responsible for the cause of complaint, GIZ shall reimburse unavoidable expenses in connection with the replacement

9. Obligation of the Contractor to report on the status of the Contract

GIZ shall be entitled to review the progress and results of the performance of the Contract at any time, including the project accounts and any special accounts connected to the project. The Contractor must keep the necessary records available and provide the necessary information for this purpose. At the request of GIZ the Contractor shall also provide information to other institutions or persons and organisations commissioned by GIZ as well as making audits possible, and agreeing to cooperate appropriately in any such audits.

10. Reporting information security incidents

The contractor shall inform GIZ (informationsecuritymanagement@giz.de) without delay and in an appropriate form of any information security incidents that (also) concern GIZ information.

An information security incident is an event that could negatively impact information security, for example through unauthorised inspection/disclosure of information (loss of confidentiality), modification of information (loss of integrity) or deletion of information/disruption of access to information (loss of availability).

11. Compliance with relevant procedures for export from the European Union

If the contractor is responsible for the transport of the goods to the location of use, it shall ensure compliance with the relevant procedures and provisions in respect of foreign trade and payments when exporting the equipment.

12. Keeping of GIZ-related records

The contractor must keep contract-related records and work results, including financial records, for ten years after acceptance of the final report or, as the case may be, of the work. These must be handed over if requested by GIZ.

At the end of the contract, without delay and without needing to be prompted, the contractor must return all other documents, aids, materials or items received from GIZ that were not handed over permanently to the contractor for the intended purpose. This provision also applies to all copies.

In the cases outlined above, the handover should follow a procedure specified by GIZ. GIZ is also entitled to require the complete or partial secure (i.e. non-reconstructible) deletion or destruction of such items. If re-requested, the contractor must provide evidence to GIZ of deletion and of the deletion method used, e.g. in the form of a written declaration. No additional remuneration will be paid.

This provision does not affect any statutory retention duties and periods.

13. Use of end devices

When using end devices as part of its work to implement the contract, the contractor shall ensure that the place of use is appropriately secure and that unauthorised third parties cannot use them. Arrangements must also be in place (e.g. privacy filters) to ensure that unauthorised third parties are not able to see any GIZ-related information.

14. Pricing, remuneration and invoicing**14.1 Pricing**

When commissioning GIZ, the Federal Republic of Germany requires that Regulation PR 30/53 on the Prices for Public Contracts of 21 November 1953 – Bundesanzeiger (Federal Gazette) No. 244 of 18 December 1953 – with the Guiding Principles for Pricing on the Basis of Prime Costs is applied, including for the indirect provision of works and services. As a result, even those commissions executed by subcontractors for GIZ may accordingly be subject to price auditing by the competent price authority.

The price specified in the contract is a maximum amount; as a general rule, any costs in excess of this shall not be reimbursed.

In addition to the contractually agreed price the contractor may, where applicable, invoice value-added tax (VAT) at the statutory rate. As stipulated by GIZ, the contractor is obliged to cooperate so that GIZ can be exempted from or claim back VAT in the country of assignment on the basis of national regulation

or under international law.

Section 14.3.3 contains a number of provisions on the reimbursement of VAT charged by third parties or other indirect taxes in the country of assignment.

14.2 Price reductions

Rebates, discounts, refunds, tax concessions or refunds and all other price reductions obtained by the contractor in providing works and services, the costs of which are reimbursed by GIZ, must be availed of and passed on to GIZ or deducted from the invoice.

14.3 Other Costs

14.3.1 Other costs

Costs not included in Sections 14.3.1 to 14.3.4 of this Annex shall be reimbursed as lump sums or against proof, to the extent contractually agreed.

14.3.2 Flexible remuneration item

Where a flexible remuneration item is contractually agreed, the Contractor shall be permitted to exceed the contractually agreed quantities up to the amount of the flexible remuneration item, taking into account the contractually agreed individual rates and bases for invoicing. The flexible remuneration item covers costs only for items listed in the Price Schedule as contractually agreed.

Use of the flexible remuneration item must be approved in text form by GIZ before the costs in question are incurred.

14.3.3 VAT charged by third parties or other indirect taxes in the country of assignment

On production of proof, GIZ shall reimburse the contractor for VAT and other indirect taxes due and paid in the country of assignment in accordance with legislation as a result of invoices received from its contractual partners.

This provision shall apply only if, due to national or international regulations, the contractor or its contractual partners is not eligible for an exemption or reimbursement (primarily by deducting the input tax) in the country of assignment. The contractor shall confirm whether this is the case when presenting its invoices to GIZ.

14.3.4 Offsetting costs

On submission of the final invoice, overruns on individual remuneration items may be offset against omitted or reduced items of remuneration if GIZ has approved the offsetting in text form before the costs in question are incurred. GIZ's approval is not required for offsetting up to 1% of the total contract value, or a maximum of EUR 5,000 for each remuneration item.

An increase in the individual rates or agreed prices is not possible. Lump-sum payments cannot be offset.

14.4 Terms of payment, invoicing for service contracts

14.4.1 Presentation of invoices

The Contractor shall bill GIZ for its work and services using invoices that meet all applicable legal requirements. The legal requirements for invoices depend on which VAT law the Contractor is subject to. VAT shall only be reimbursed if the value-added tax in question is a statutory tax on work and services contained in the invoice.

Up until 26 November 2020, the Contractor shall be able to submit invoices using GIZ's invoice form in the original or by using GIZ's invoice submission platform to submit an electronic invoice that complies

with the CEN standard for electronic invoicing.

From 27 November 2020, invoices are to be submitted electronically exclusively via GIZ's invoice submission platform. Exceptions have to be agreed upon with GIZ.

14.4.2 Advance payments and settlement plans

Advance payments and settlement plans are governed by provisions contained in the contract/contract award letter and their annexes.

14.4.3 Securities for advance payments

If an advance payment is to be made, GIZ shall be entitled to demand that the contractor present proof of its creditworthiness or the existence of a line of credit in the corresponding amount, or else to provide securities. GIZ may also require provision of securities retroactively for advance payments effected and as yet unsettled if it considers that a deterioration of the contractor's financial circumstances or similar circumstances jeopardise the performance of contractual obligations or repayment of the advance payment.

If the contractor provides security, it shall be obliged to do this by way of a guarantee or surety in accordance with the specimen forms ([giz2015-en-Advance-Payment-Guarantee.doc \(live.com\)](#)) issued by a bank recognised by GIZ.

14.4.4 Final invoice, final payment of payment plan

The contractor shall be obliged to submit the final invoice without delay, and in any event not later than six weeks after the contractual end of the period of assignment. The final invoice may be submitted before the end of the contractually agreed term once the services have been completed. The invoice must contain all the contractor's claims for remuneration, be verifiable and contain all the necessary information (with all the necessary receipts/vouchers). Final payment is made on submission of the final invoice in due form and performance by the contractor of all contractual obligations.

Any amounts overpaid by GIZ must be repaid to GIZ by the contractor without delay after invoicing.

If an advance payment was made and the contractor does not submit the final invoice within 15 days despite a reminder by GIZ, the Contractor shall be obliged to repay the advance payment.

14.4.5 Invoicing in foreign currencies

GIZ shall reimburse any amounts disbursed in the local currency on the basis of verified euro exchange rates for the currency in question.

14.5 Reconciliation of accounts

The contractor shall be obliged on request by GIZ to reconcile the balances for each contract (advance payments less invoiced amounts) with GIZ's Financial Accounting Division once a year at a time of GIZ's choice.

14.6 Price adjustment

This sub-section applies only to contracts with an original service period of at least two years and provided that

- the service period is extended by exercising an option or by agreement between the contracting parties and
- separate remuneration has not already been agreed in the contract for optional extensions

The remuneration may be increased to the following rule:

The increase must be reasonable and not contrary to market trends relevant to the service, and it may

not exceed 3% of the contractually agreed remuneration.

15. Contract supplements

15.1 Principle

The parties to the contract may agree on amendments to the contract relating to the scope of works and services, the performance period and the agreed remuneration.

15.2 Contract supplements

All amendments that entail changes in the specification of inputs, as well as the replacement of key experts and other major modifications to the contract, shall be agreed by the parties in the form of written contract supplements. Changes in the specification of inputs concern, for example, changes in the performance period, the expansion of the scope of works and services, changes to personnel requirements and/or changes in remuneration.

Cost-neutral extensions of the performance period without changes in the specification of inputs and the re-placement of experts who are not key experts do not call for a written contract supplement and can be agreed in text form.

16. Final Provisions

16.1 Prohibition of assignment by the contractor

The contractor shall not be entitled to assign claims under the contract unless it has obtained GIZ's prior written approval.

16.2 Partial invalidity

Should individual provisions of this contract be or become invalid or unenforceable, the validity of all other provisions under the contract shall remain unaffected. The invalid or unenforceable provision is to be replaced by a valid and enforceable rule, the effects of which most closely replicate the economic objective which was pursued by the contractual parties with the invalid or unenforceable provision. This shall apply accordingly if it emerges that the contract has gaps or omissions.