

CONFIDENTIAL

Contract number / identifier Client: **tbd – Tender number 10018005**

Contract number / identifier Contractor: _____

Contract for Cloud Services

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Contract for cloud services

between Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH "GIZ or Principal"

and Contractor named in the Contract award notification "Contractor"

the following contract is concluded:

1 Subject matter and components of the contract

1.1 Subject matter of the contract

The subject matter of the contract is the following cloud services:

1.2 Contractual components

The following shall apply as integral parts of the contract:

1.2.1 this contract text with the following annexes:

Annexes to the EVB-IT Cloud Contract			
(Attention: The Contractor's GTC are not to be indicated here, but in section 1.2.4)			
Annex No.	Designation	Date/Version	Number of pages
1	2	3	4
1	Terms of Reference (ToR) incl. Annexes	Date of publication	
2	Price Sheet	According to the contract award letter	
3	Technical Offer	According to the contract award letter	
4	Outsourcing of Data Processing	According to the contract award letter	
5	Special Terms and Conditions of Contract of GIZ	Date of publication	

☒ The annexes shall apply in the following order of priority 1,2,3,4,5.

1.2.2 The Supplementary Terms and Conditions for Cloud Services (EVB-IT Cloud-AGB) in the version applicable at the time of provision of the tender documents

1.2.3 and thereafter the General Conditions of Contract for the Execution of Services (VOL/B) in the version applicable at the time of provision of the tender documents.

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1.2.4 and thereafter

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- ☐ the following General Terms and Conditions of the Contractor regarding the type and scope of the Cloud Services (together Annex No. _____)

Designation	Date/Version	Number of pages
_____	_____	_____
_____	_____	_____

- ☐ the Contractor's GTC according to the "Annex for the Inclusion of Contractor's GTC", therein "I. Annex to the EVB-IT Cloud Contract".

The aforementioned Contractor-side GTC* on the nature and scope of the cloud services are also effectively included insofar as they provide for a dynamic reservation of the right to make changes, insofar as the changes are not to the disadvantage of the Client.

Any inclusion of the contractor's GTC* on the nature and scope of the cloud services shall only be subordinate to all other provisions and only to the extent that they neither conflict with nor restrict all other contractual provisions.

Notwithstanding the foregoing, with regard to individual concrete requirements, corresponding contractor-side GTC* provisions on the type and scope of the cloud services shall apply with priority to the EVB-IT Cloud-AGB, insofar as this is expressly agreed with regard to the categories listed here in the Annex for the inclusion of contractor-side GTC*, therein "II Annex to the Catalogue of Criteria".

Further Contractor-side GTC* are excluded, irrespective of whether they have been included in this contract or not.

The EVB-IT Cloud-AGB are available for inspection at www.cio.bund.de and the VOL/B at www.bmwi.de.

The euro shall apply uniformly as the currency for all amounts stated in this contract. The agreed remuneration is net of the statutory value-added tax, insofar as value-added tax is payable.

1.2.5 Order of priority of the right of use regulations

Agreed rights of use shall apply in the following order of priority:

- Rights regulations of the Client according to Annex No. _____ (e.g., Annex No. 3 Criteria Catalogue(s) for Cloud Performance or Annex No. 1 Service Description)
- Item 14 EVB-IT Cloud-AGB
- the right of use provisions from the contractor's GTC* on the nature and scope of the cloud services included in accordance with section 1.2.4. However, these only apply insofar as they neither conflict with nor restrict the other contractual provisions.

2 Overview of the agreed services

- ☒ Special initial services (setup)
- ☒ Software as a Service* (SaaS*), Platform as a Service* (PaaS*)
- ☐ Infrastructure as a Service* (IaaS*)
- ☐ Managed Cloud Services* (MCS*)
- ☐ Performances at the end of the contract
- ☐ Other services

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3 Subject matter of the services

The nature, scope, and dates of the services to be provided are shown in the following table (schedule of dates and services):

3.1 Services in accordance with section 1.1 EVB-IT Cloud-AGB

No.	Product/Service: (Product and service description and/or reference to criteria catalogue(s) for cloud services in Annex No. 3)	Quantity	MVD ¹	Start ²	End/Date ³	Deviating notice period in months ⁴	Automatic renewal by number of months ⁵	Monthly price or deviating price model according to Annex
1	2		3	4	5	6	7	8
1	Pursuant to Terms of References and Price Sheet (Annex 1 & 2)	Pursuant to Terms of References and Price Sheet	N/A	Pursuant to Contract award notification	Pursuant to Contract award notification	Pursuant to Contract award notification	N/A	Pursuant to Price Sheet (Annex 2)

¹ MVD = Minimum contract period

² If there is no default start date, leave the field blank. In this case, the conclusion of the contract is considered the start e.g., fixed date with time if necessary or "after 48 months" (if the contract is open-ended, leave the field blank).

³ If, in deviation from clause 20.1 of the EVB-IT Cloud-AGB

⁴ The service period is extended by the agreed months if it is not terminated with three months' notice to the end of the term.

⁵ Inclusion of a price sheet is possible here, especially in the case of a deviating price model.

3.2 One-off performances

3.2.1 Initial performances

3.2.1.1 Type and scope of the initial performance

- ☒ The Contractor shall owe initial performances to bring about operational readiness*.
- ☒ Details according to Annex No. 1.
- ☐ The performances shall not be provided on the basis of this contract, but within the framework of a separate contract pursuant to Annex No. _____.
- ☐ Further regulations on initial performance according to Annex No. _____

3.2.1.2 Remuneration of the initial performance

The initial performances are not remunerated separately, unless otherwise regulated below:

- ☐ The remuneration for the initial services shall be paid at a fixed flat rate of _____ Euro.
- ☐ The remuneration for the initial services shall be made according to effort in accordance with category/categories _____ from number 5.1
- ☐ with an upper limit in the amount of _____ Euro.

3.2.2 Other one-off performances

3.2.2.1 Nature and scope of other performances

- ☐ The Contractor shall provide the other performances described in Annex No. #.

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3.2.2.2 Remuneration for other performances

- ☐ Remuneration for the other performances shall be paid at a fixed flat rate of _____ Euro.
- ☐ Remuneration for the other performances shall be made according to effort in accordance with category/categories _____ from number 5.1
 - ☐ with an upper limit in the amount of _____ Euro.

3.2.3 Performances at the end of the contract**3.2.3.1 Nature and scope of performances at the end of the contract**

- ☐ Pursuant to Section 13.2 EVB-IT Cloud-AGB, the Contractor is obliged to render performances to a reasonable extent which are necessary to enable a new Contractor or the Client to take over the services.
- ☒ In deviation from/supplement to clause 13.2 EVB-IT Cloud-AGB, the Contractor owes the following performances in connection with the end of the contract: [In accordance with Annex No. 1](#)

3.2.3.2 Remuneration for performances at the end of the contract

- ☐ Remuneration for the performances at the end of the contract shall be made at a fixed flat rate in the amount of _____ Euro.
- ☐ Remuneration for the performances at the end of the contract shall be based on effort in accordance with category/categories _____ from number 5.1
 - ☐ with an upper limit in the amount of _____ Euro.

3.3 Services on call

The services according to no. _____ (here number 3.1 no. X or number 3.2.2) are provided on call.

- ☐ The minimum lead time for the call-off is _____ (hours/days).
- ☐ The estimated utilization is _____ (quantity) per _____ (e.g., contract month/contract quarter/contract year/contract term); the maximum quantity or value is _____ (quantity/euro).
- ☐ The agreed minimum utilization is _____ (quantity) per _____ (e.g., contract month, contract quarter, contract year, contract term).

The Client is not obliged to call off. This does not apply to the minimum utilization agreed here, if applicable.

3.4 Ticket system

- ☐ The Parties shall use the ticket system for the reporting, classification, and confirmation of disruptions*, other reports and requests as well as for the observation and monitoring of the processing progress

- ☐ _____ of the Contractor,
 - ☐ _____ of the Client,
- which
- ☐ is accessible at the web address _____.
 - ☐ is provided as follows _____.

4 Due date and payment of the remuneration**4.1 Due date of the remuneration**

By way of derogation from section 16.1 EVB-IT Cloud-AGB, the remuneration for recurring services is not due monthly in arrears by the 15th of each month, but:

- ☐ quarterly by the 15th of the second month of the current quarter
- ☐ annually by _____ of the current year
- ☐ one-off by _____
- ☒ pursuant to Section 14.7 of Annex No. 4.

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In deviation from section 16.2.1 EVB-IT Cloud-AGB, the remuneration for services according to effort is not due monthly in arrears by the 15th of each month, but:

☐ _____

4.2 Payment of the remuneration

☐ In deviation from section 16.3 EVB-IT Cloud-AGB, remuneration due is payable not 30 days but _____ days after receipt of an auditable invoice.

4.3 Invoice address

☐ The invoice must be submitted electronically in accordance with the requirements of the e-Invoice Regulation.

The routing ID _____ must be indicated in the invoice or for invoice creation. In addition, all compulsory fields, and the additional fields

must be filled in.

An invoice that is not issued electronically contrary to the above provision does not constitute a delay pursuant to Section 286 (3) of the German Civil Code (BGB).

☐ The invoice address is shown in Annex No. _____.

4.4 Price adjustment

☒ A price adjustment is agreed:

☐ in accordance with section 16.5 EVB-IT-Cloud GTC:

☐ for the monthly flat-rate fixed price in accordance with point 3.1.

☐ for the following further allowances: _____.

☒ according to [Section 14.7 of Annex No. 4](#).

5 Supplementary agreements in the case of remuneration for services rendered by persons on a time and effort basis

5.1 Agreement on the price categories for remuneration according to time and effort by personnel employed by the Contractor

No.	Designation of the personnel category	Remuneration for activities within business hours		Surcharges in per cent on the remuneration rates from columns 3 and 4 for activities within the following periods				
		Hourly rate	Daily rate	Working days - Monday to Friday outside business hours	Saturday		Sundays and public holidays at the place of performance	
					from _____ to _____	from _____ to _____	from _____ to _____	from _____ to _____
1	2	3	4	5	6	7	8	9
Category 1				_____ %	_____ %	_____ %	_____ %	_____ %
Category 2				_____ %	_____ %	_____ %	_____ %	_____ %
Category 3				_____ %	_____ %	_____ %	_____ %	_____ %

Determination of business hours:

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Working day	Business hours			
Monday till Thursday	from		to	o'clock
Friday	from		to	o'clock

- ☐ further agreements (e.g., on travel expenses deviating from clause 16.2.1 EVB-IT Cloud-AGB according to Annex No. _____.

5.2 Deviating regulations for the determination and remuneration of person daily rates

- ☐ In deviation from section 16.2.3 sentence 2 of the EVB-IT Cloud-AGB, up to 10 hours may be invoiced for a person day if appropriate evidence is provided.
- ☐ In deviation from section 16.2.3 sentences 2 and 3 EVB-IT Cloud-AGB, a full daily rate can only be invoiced if at least 10 hours have been worked. If less than 10 hours are worked per day, these are to be invoiced on a pro rata basis.
- ☐ further agreements according to Annex No. _____.

5.3 Special provisions on remuneration by time and effort

- ☐ By way of derogation from section 16.2.1 EVB-IT Cloud-AGB, ancillary costs/travel expenses/travel time/material costs shall be remunerated in accordance with Annex No. _____.
- ☐ Further special provisions on remuneration by time and effort are agreed in Annex No. _____.

6 Deviating liability regulations

- ☐ In deviation from section 19.1 EVB-IT Cloud-AGB, the liability for slightly negligent breaches of duty shall be governed by the provisions set out in Annex No. _____.
- ☐ In deviation from section 19.2 EVB-IT Cloud-AGB, the Contractor shall also be liable for loss of profit.

7 Representatives and contact persons

7.1 Agent of the Contractor (name, email address)

- ☐ Information security: TBD,
- ☐ Data protection: TBD,
- ☐ Secret protection: TBD.

7.2 Contact person for questions regarding the contract (name, email address)

for the Contractor TBD
for the Client TBD

8 Further regulations

8.1 Special requirements for employees of the Contractor

- ☐ For the tasks according to Annex No. _____ only personnel who are willing to be obligated on the basis of the Commitment Act shall be deployed.
- ☐ Minimum requirements for the Contractor's personnel to be deployed (e.g., security clearance in accordance with SÜG) are set out in Annex No. _____.

8.2 General safety requirements

For the term of the contract, the Contractor undertakes

- ☒ to comply with the regulations on IT security in accordance with Annex No. 2.
- ☐ to be subject to confidentiality supervision in accordance with Annex No. _____.
- ☐ to comply with the Client's regulations on safety at the place of work in accordance with Annex No. _____.
- ☐ comply with the following further regulations: _____.

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8.3 Audit rights

- ☐ In addition to section 6.4 EVB-IT Cloud-AGB and without prejudice to the statutory provisions, not only the Client and auditing firms obliged by the Client to maintain professional secrecy, but also
- ☐ the supervisory bodies of the Client
 - ☐ the BSI
 - ☐ the following auditors appointed by it _____
- Are entitled to check compliance with the measures. The Contractor shall grant the necessary rights of access, inspection and information for this purpose and shall provide support to the extent required.
- ☐ In addition to or in deviation from section 6.4 EVB-IT Cloud-AGB, regulations on audit rights are set down in Annex No. _____.

8.4 Subcontractor

- ☒ With regard to the use of subcontractors, section 15.3 EVB-IT Cloud-AGB shall apply instead of section 15.1 EVB-IT Cloud-AGB.

8.5 Confidentiality

- ☒ In addition to or in deviation from section 6.3 EVB-IT Cloud-AGB, regulations on confidentiality are set down in **Section 14.7 of Annex No. 4.**

8.6 Liability insurance

- ☐ Proof of liability insurance in accordance with section 21 EVB-IT Cloud -AGB is agreed.

9 Other Provisions

- ☐ Other agreements:
- ☐ The other agreements are shown in Annex No. _____.

9.1 Other provisions

9.1.1 Start of the contract, place of supply

The contract comes into force upon notification of its award.

The Contractor performs the service for GIZ in Chile.

The Contractor performs the service for the GIZ in Holanda 100, oficina 604-605, Providencia, Santiago de Chile, Chile. In accordance with Section 3a, Paragraph 2, Sentence 2 of the German VAT Act (Umsatzsteuergesetz – UStG), the place of supply for VAT purposes is therefore in Chile (third country). If the Contractor invoices third-country VAT, and if the respective General Agreement on Technical Cooperation is not applicable, GIZ will pay the amount charged.

9.2 Reporting

9.2.1 The Contractor shall submit reports pursuant to the Annex “Special Terms and Conditions of Contract of GIZ” in the language and on the dates specified in the terms of reference and in accordance with any other provisions laid down in this regard.

9.2.2 The final report shall be due at the latest at the end of the term of the commission.

9.3 Options

9.3.1 Extension of the period for fulfilment of the contract

If such option is laid down in the terms of reference, GIZ is entitled to extend the period for fulfilment of the original contract by unilaterally notifying the Contractor and allowing a reasonable amount of time. The

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quantitative requirements are adjusted accordingly taking into account any unused items and budgets. In addition, the fees may be adjusted in accordance with Annex 4. All other provisions of the contract and its annexes shall remain unchanged. Notification must be given in text form.

9.3.2 Extension of the scope of services

GIZ is entitled to extend the scope of services in the original contract by unilaterally notifying the Contractor as laid down in the terms of reference and allowing a reasonable amount of time for the respective extension. The quantitative requirements are adjusted accordingly taking into account any unused items and budgets. In addition, the fees may be adjusted in accordance with Annex 4. All other provisions of the contract and its annexes shall remain unchanged. Notification must be given in text form.

9.4 EU-PAGoDA

If the Terms of Reference include a reference to a co-financing agreement with the EU, the Contractor shall - in addition to the requirement for GIZ's approval for publications - ensure that all publicity, communications and visibility measures comply with Section 8 of the General Conditions for Delegation Agreements (https://ec.europa.eu/international-partnerships/system/files/contribution-agreement-annex-ii_en.pdf) and the latest version of the Communication and Visibility Manual for EU External Actions. The Contractor further undertakes to correct any identifiable deficits in the implementation of publicity, communications and visibility measures and if such plan has been agreed on and has been made available as part of the tender documents to comply with Annex VI of the Delegation Agreement, 'Communication and Visibility Plan'.

9.5 Open Source Software (OSS)

Should the software to be delivered as a service result be fully or partially licensed as OSS, the following Sections 9.22.1 – 9.22.5 shall apply to the OSS software components only. Unless otherwise set out in Section 9 "Other provisions" above, the EVB-IT Cloud AGB shall remain unaffected in all other respects; this shall apply in particular to the Contractor's liability.

9.5.1 Nature of OSS

The software to be delivered as a service result is fully or partially licensed as OSS. It complies with the requirements of the Open Source License and the Free Software License, i.e. it may be used, studied, modified and redistributed by anyone free of royalties.

The source code of the OSS shall be delivered to GIZ together with the copyright notices, disclaimers and any other references on a data carrier or made available for download when the results of the services are provided.

9.5.2 Right to use

GIZ may inherit rights of use to the open source component(s) from the respective rights holders if it concludes license agreements with the respective rights holders under the terms and conditions of the respective open source license(s). In such case, the use of the open source component(s) shall be governed solely by the respective open source license(s), which is referenced in Section 9.22.4 below.

However, the provisions in Section 14.2 – 14.3 of the EVB-IT Cloud AGB shall apply to the software components developed by the Contractor unless the Contractor is required to license such components as open source software (so-called copyleft effect). The Contractor is responsible to verify whether such requirement exists and must communicate the outcome of such verification to GIZ. In case a copyleft requirement exists and has been communicated to GIZ by the Contractor, the provision of the previous paragraph shall apply.

9.5.3 GNU Lesser General Public License

In case the software or any component thereof is linked to libraries licensed under the GNU Lesser General Public License (LGPL), Sections 14.2 – 14.3 of the of the EVB-IT Cloud AGB shall apply to those components of the software which are not licensed as Open Source Software, but which are licensed with one or more program libraries under the GNU Lesser General Public License (LGPL) under the following provisions.

Option 1 (GNU Lesser General Public License, Version 2.1):

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GIZ is entitled to use the proprietary components which are linked to program libraries licensed under the GNU Lesser General Public License (LGPL) for GIZ's internal use only and to modify, analyse and reengineer them for this purpose. A transfer of information gained thereby is only permitted within scope of Section 14 EVB-IT Cloud AGB. A list of proprietary software components, which are linked to program libraries licensed under the LGPL, is attached in Section 9.22.5 below.

Option 2 (GNU Lesser General Public License, Version 3):

GIZ is entitled to analyse and reengineer proprietary software components linked to program libraries licensed under the GNU Lesser General Public License (LGPL) in order to modify such proprietary software components linked to program libraries under LGPL and to fix bugs in the proprietary software components. A transfer of information gained thereby is only permitted within scope of Section 14 EVB-IT Cloud AGB. A list of proprietary software components, which are linked to program libraries licensed under the LGPL, is attached in Section 9.22.5 below.

9.5.4 OSS License

[Placeholder – tbd]

9.5.5 List of proprietary software components linked to program libraries licensed under the GNU Lesser General Public License (LGPL)

[Placeholder – tbd]

Date, Client

No signature required

Date, Contractor

No signature required