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# DATEV eG Special Terms and Conditions of IT-related Purchase and Rent

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## A. General Terms and Conditions

### 1. Scope

The provisions set out in the following sections of these Special Terms and Conditions of Purchase of DATEV eG (hereinafter referred to as "DATEV"),

**B. Special Terms and Conditions for the Purchase of Software**

**C. Special Terms and Conditions for Software Rental**

**D. Special Terms and Conditions for the Purchase of Hardware**

**E. Additional Terms and Conditions for Software Maintenance**

apply only insofar as the provisions are applicable to the respective object of the service concerned.

### 2. Use of Open-Source Software

The Contractor confirms that it will only use open-source software within the framework of the contractually owed software or hardware insofar as there is no copyleft effect. The Contractor shall also provide DATEV with the source code (if required under the respective OSS license), the documentation, and the license terms of the open-source software used no later than upon handing over the contractually owed software or hardware.

### 3. Security Analysis

- (1) In addition to functional tests, the Contractor grants DATEV the right to conduct a security analysis – including by third parties commissioned by DATEV.
- (2) Insofar as DATEV exercises its rights and performs a security analysis, the Contractor shall provide the necessary support and remedy any security vulnerabilities without delay at its own expense.
- (3) In the case of software development, the Contractor shall have a security analysis carried out by a independent third party in accordance with the requirements of the IT security guidelines (see Section 4.1) and shall submit the audit report to DATEV.

### 4. IT Security Requirements

- (1) The Contractor undertakes to always observe the current state of the art. This applies, in particular, to security features, confidentiality, integrity, authenticity, and transparency. This includes, for example, implementing solutions to prevent attacks on online applications, such as "cross-site scripting" or "SQL injection."
- (2) The Contractor shall pass on all information about any security defects/vulnerabilities that arise in connection with the contractual software to SOC@DATEV.de as soon as it becomes aware of them.
- (3) The software or hardware provided by the Contractor may only allow authorized persons (in accordance with the "need-to-know" principle) access to confidential data, in particular the program code. Access by unauthorized third parties and the manipulation of data must be ruled out.

### 5. Remote Access

If and as long as there is a separate agreement between the Parties regarding remote access to DATEV's systems, the Contractor's services that are the subject of this Agreement may be performed by the Contractor by means

of remote access to DATEV's systems from the Contractor's premises.

## B. Special Terms and Conditions for the Purchase of Software

In respect of the purchase of software, the following terms and conditions apply in addition to, and taking precedence over, DATEV's General Terms and Conditions of Purchase.

### 6. Software Rights of use

- (1) The Contractor grants DATEV the nonexclusive, transferable, sublicensable right, unlimited in terms of territory and time, to use the software provided by the Contractor, including the respective documentation, within the scope of the license agreed upon in the Agreement. In particular, this usage right includes the right to demonstrate, make available to public, commercially exploit, and further exploit such actions by and/or for third parties. Insofar as agreed upon in the Agreement, the usage right also includes the right to provide the software in connection with DATEV product solutions by means of a hosting model or with DATEV products supplied to end users (DATEV customers).
- (2) Unless otherwise agreed in the Agreement, the number of licenses agreed upon in the Agreement (or any license scales) shall correspond to the number of users who may simultaneously use the software provided under the terms of the Agreement (concurrent user licenses).
- (3) In addition to – in the event of contradictions, however, subordinate to – the Agreement, the General Terms and Conditions of Purchase, and these Special Terms and Conditions – the use rights provisions of the End User License Agreement (EULA) stipulated in the Agreement shall apply, but without any other contractual provisions contained in the End User License Agreement (such as any limitations of liability).

### 7. Fees

The price agreed in the Agreement for the purchase of the software is a fixed price.

## B. Special Terms and Conditions for Software Rental

In respect of the rental of software, the following terms and conditions apply in addition to, and taking precedence over, DATEV's General Terms and Conditions of Purchase.

### 8. Software Rights of use

- (1) The Contractor grants DATEV the nonexclusive, transferable, sublicensable right, unlimited in terms of territory and limited in time to the contractual rental period, to use the software provided by the Contractor, including the respective documentation, within the scope of the license agreed upon in the Agreement. In particular, this usage right includes the right to demonstrate, make available to public, commercially exploit, and further exploit such actions by and/or for third parties. Insofar as agreed upon in the Agreement, the usage right also includes the right to provide the software in connection with DATEV product solutions by means of a hosting model or with DATEV products supplied to end users (DATEV customers) during the rental period of the contract.
- (2) Unless otherwise agreed in the Agreement, the number of licenses agreed upon in the Agreement (or any license scales) shall correspond to the number of users who may

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simultaneously use the software provided under the terms of the Agreement during the rental period of the contract (concurrent user licenses).

- (3) In addition to – in the event of contradictions, however, subordinate to – the Agreement, the General Terms and Conditions of Purchase, and these Special Terms and Conditions – the rights provisions of the End User License Agreement (EULA) stipulated in the Agreement shall apply, but without any other contractual provisions contained in the End User License Agreement (such as any limitations of liability).

### 9. Freedom from Defects and Software Maintenance

- (1) The software shall be provided by the Contractor during the term of the rental period in a condition that is free from material defects and defects of title, and shall be properly updated and/or maintained.
- (2) The Contractor shall provide its services in accordance with the current and proven state of the art and with processes that meet recognized quality standards. DATEV is entitled to verify that the Contractor adheres to these standards.
- (3) Maintenance services for the software provided are based on Section E (Additional Terms and Conditions for Software Maintenance) of these DATEV Special Terms and Conditions of Purchase and Rental and are covered by the agreed remuneration for the rental period stipulated in the Agreement.

### 10. Fees

The rental price agreed upon in the Agreement is either a fixed price per month, per year, or determined by DATEV's actual use of the software in each calendar month that has ended.

### 11. Termination

Insofar as no fixed term is agreed upon in the Agreement or after the expiry of an agreed minimum term, both Parties are entitled to terminate the Agreement for the Rental of Software in whole or in part, subject to a notice period of three months to the end of any given calendar month.

## C. Special Terms and Conditions for the Purchase of Hardware

In respect of the purchase of hardware, the following terms and conditions apply in addition to, and taking precedence over, DATEV's General Terms and Conditions of Purchase.

### 12. Making the Software Ready for Operation, Acceptance

- (1) Insofar as agreed upon in the Agreement, the Contractor is obligated to make the contractual hardware ready for operation and, in particular, to set up and install the individual hardware components supplied by the Contractor and to integrate these components within DATEV's system environment.
- (2) After successful completion of this work, the Contractor shall demonstrate the operational readiness of the contractual hardware at the agreed time. DATEV shall confirm acceptance in at least electronic form, provided that the demonstration of operational readiness and functional testing were successful.
- (3) Defects that occur during functional testing are assigned by DATEV to the defect classes A, B, and/or C described

below and recorded in an inspection report, specifying the respective category:

#### a) Defect class A:

The service is subject to a defect that renders the usability of the hardware owed impossible or only permits it with serious limitations or constitutes a security defect.

#### b) Defect class B:

The service is subject to a defect that restricts the usability of the hardware owed without the existence of a category A defect.

#### c) Defect class C:

The service is subject to a defect that only negligibly restricts the usability of the hardware owed.

- (4) DATEV may refuse acceptance if there is either a defect in class A or there are several defects in class B and/or C that, taken as a whole, make the contractually agreed use of the hardware owed impossible or only permit it with serious limitations.
- (5) If defects are identified during functional testing, the Contractor shall be given a reasonable period of time to remedy the defects; the functional testing shall then be carried out again. Other rights of DATEV remain unaffected.
- (6) Implicit acceptance, in particular through the use of the object of the service, is excluded.

### 13. Fees

The price agreed upon in the Agreement for the purchase of the hardware is a fixed price.

### 14. Maintenance

Insofar as maintenance has not already been agreed upon with the purchase of the hardware, the Contractor agrees to conclude a separate maintenance contract for the contractual hardware at competitive, customary market conditions for a period of at least six years from the date of delivery or acceptance.

### 15. Place of Performance

Unless otherwise agreed upon in the Agreement, the place of performance and effect shall be DATEV's respective registered office.

## D. Additional Terms and Conditions for Software Maintenance

In respect of software maintenance, the following terms and conditions apply in addition to, and taking precedence over, DATEV's General Terms and Conditions of Purchase and the Special Terms and Conditions for the Purchase of Software and/or for the Rental of Software.

### 16. Scope of Maintenance Services

- (1) The Contractor shall provide the contractually agreed maintenance services for the contractual software. Parts of these services include the provision of support, the elimination of malfunctions, and the adaptation and further development of the software.

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- (2) If the Contractor or an authorized third party has modified the software, maintenance and update services must be provided with regard to the modified version. The above obligations are also unaffected by changes to the devices and systems on which DATEV uses the software.

### 17. Adaptation and Further Development

The Contractor is obligated to provide DATEV with the most up-to-date version of the software, supplemented with versioned references to new functionalities and corresponding documentation, while maintaining the operability of the software and observing the IT security guidelines. The Contractor is particularly obligated to implement modifications to the software as a result of legal changes without delay and to make them available to DATEV as soon as possible.

### 18. Support

The Contractor shall provide DATEV employees with support for the software to be maintained by telephone, email, and/or a support portal. The Contractor shall log support requests from DATEV and provide DATEV with the content of the log.

### 19. Troubleshooting

- (1) The Contractor is obligated to rectify faults in the software. A fault exists if, due to a cause attributable to the software, the software fails to perform its function, delivers incorrect results, stops its operations in an uncontrolled manner, or otherwise does not behave in accordance with its proper functions.
- (2) The Contractor shall inform DATEV immediately of any faults in the software as soon as the Contractor becomes aware of them.
- (3) Depending on DATEV's error classification, the following response times apply on the part of the Contractor:

#### a) Priority level A

Priority level A exists if there is an error that renders the usability of the software impossible or permits it only with severe limitations or constitutes a security deficiency.

In such a case, the Contractor shall immediately begin to resolve the problem and inform DATEV of the status of troubleshooting within two hours.

If the fault is due to errors in the software provided and produced by the Contractor, the fault rectification or workaround shall be provided without delay and, if necessary, shall be accompanied by an updated version of the user documentation for the software licensed by the Contractor.

In the event of faults at this priority level, the Contractor shall, if necessary, take additional action to analyze or solve the problem at its own expense within 24 hours, including at DATEV's premises.

#### b) Priority level B

Priority level B exists if there is an error that restricts the usability of the software without the existence of a Category A error.

The Contractor shall begin to resolve the problem on the day the fault is reported and shall inform DATEV of the status of troubleshooting within eight hours during its support hours until the problem is resolved.

If the fault is due to errors in the software provided and produced by the Contractor, the fault rectification or workaround shall be provided without delay and, if necessary, shall be accompanied by an updated version of the user documentation for the software licensed by the Contractor.

In the event of faults at this priority level, the Contractor shall, if necessary, take additional action to analyze or solve the problem at its own expense within three workdays, including at DATEV's premises.

#### c) Priority level C

Priority level C exists if there is an error that does not significantly restrict the usability of the software.

The Contractor shall submit confirmation of receipt of the fault report within 24 hours of the fault being reported. The Contractor shall begin troubleshooting within five workdays and shall inform DATEV of the status of the troubleshooting measures on a monthly basis.

If the faults are due to errors in the software provided and licensed by the Contractor, the faults will be rectified with the next update.

- (4) If faults cannot be rectified at short notice, the Contractor shall provide DATEV with a temporary solution (workaround) insofar as this is appropriate in terms of the consequences and use for DATEV and if the Contractor is able to do so. A workaround, however, does not constitute the elimination of the fault. The Contractor is obligated to rectify the error with the next update at the latest.
- (5) In the event of successful troubleshooting, the Contractor will issue a corresponding declaration of service restoration to DATEV. DATEV shall be deemed to have accepted the troubleshooting procedure if DATEV does not notify the Contractor of the persistence of errors within 15 workdays of receipt of the declaration of service restoration.

### 20. Fees

The price agreed upon in the contract for software maintenance is a fixed price. Payment of the fee shall be due in advance for the respective maintenance period upon receipt by DATEV of a proper invoice from the Contractor. If software is rented, the maintenance services are covered by the agreed remuneration for the contractual rental period.

### 21. Termination of the Maintenance Contract

Insofar as no fixed term is agreed upon in the Agreement or after the expiry of an agreed minimum term, both Parties are entitled to terminate the Agreement for the Maintenance of the Software in whole or in part, subject to a notice period of three months to the end of any given calendar month.