

Bitkom's contractual terms for maintaining standard software -VPS Bitkom-

(VPS Bitkom, Version 3.0)

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A Subject matter of the contract

A 1 Items requiring maintenance

The provider renders the agreed maintenance services only for the respective, current versions of the standard software agreed as items requiring maintenance ("maintained software") in exchange for the agreed remuneration. If third-party software is expressly agreed as maintained software in the contract, the restrictions described there apply to it.

The provider shall render the following maintenance services to the extent agreed:

A 2 Malfunction management

2.1 Receipt of messages concerning malfunctions

During their regular business hours, the provider shall receive the customer's malfunction reports, furnish each with an ID, classify the malfunctions into agreed categories and use this classification to implement the agreed measures to analyze and remedy the malfunctions. Item 2.4 of the document titled 'AV Bitkom' applies to malfunction reports. On request by the customer, the provider shall confirm receipt of a malfunction report with a notification of the ID assigned to it.

Malfunction management does not include any services concerning a use of maintained software in unapproved operating environments, or modifications to maintained software by the customer or third parties.

2.2 Classification into malfunction categories

Unless agreed otherwise, the provider shall classify received malfunction reports after an initial inspection into one of the following categories:

a) Serious malfunction

The malfunction is based on an error which has occurred in the maintained software so as to make use of the software impossible, or possible only with significant limitations. The customer cannot circumvent this problem in a reasonable manner, and is therefore unable to complete urgent jobs.

b) Other malfunction

The malfunction is based on an error which has occurred in the maintained software so as to limit the customer's use of the software more than just insignificantly, without there being a serious malfunction.

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c) Other report

Malfunction reports which do not fall into category a) or b) are assigned to the category of other reports. Other reports are handled by the provider only in accordance with the agreements reached in this regard.

2.3 Implementation of measures to eliminate malfunctions

In the case of reports about serious malfunctions and other malfunctions, the provider shall promptly initiate relevant measures according to the circumstances reported by the customer, in order to first localize the cause of the malfunction.

If the reported malfunction does not turn out to be an error in the maintained software after initial analysis, the provider shall promptly inform the customer about this.

Otherwise the provider shall initiate appropriate measures to further analyze and correct the reported malfunction or - in the case of third-party software - send the malfunction report including their analysis results to the distributor or manufacturer of the maintained software with a request for remedy.

To circumvent or remedy errors in maintained software, the provider shall promptly supply the customer with available measures such as procedural instructions or corrections to the maintained software. The customer shall promptly implement such measures to circumvent or remedy malfunctions, and promptly notify the provider again of any remaining malfunctions when implementing the measures.

A 3 Transfer of new versions

3.1 Contractual services

The provider shall transfer to the customer certain new versions of the maintained software in order to keep it updated and prevent malfunctions. These updates of the maintained software include technical modifications, improvements, minor functional extensions, as well as patches comprising corrections to the maintained software or other preventive measures for possible malfunctions. These updates of the maintained software are collectively termed "new versions".

Not included in maintenance services is a transfer of upgrades comprising significant functional extensions, or new products or obligations to further develop the maintained software, unless expressly agreed otherwise.

3.2 Rights and obligations for new versions

The provider shall supply the customer with new versions of the software. The customer shall promptly inspect new versions and promptly object if there are any recognizable defects, section 377 German commercial Code applying accordingly here.

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Malfunctions and defects are handled as set forth in Item A 2. Items 2.4 and 4.1 of 'AV Bitkom' apply additionally. If the provider has supplied the customer with a new version, they shall continue to maintain the previous version for a sufficient transitional period, generally not exceeding three months.

If the customer is entitled to claims due to defects, said customer initially only has a right to supplementary performance within a reasonable period. Supplementary performance includes, at the provider's discretion, either remedy or delivery of replacement software. The customer's interests are to be considered adequately in the choice.

The customer shall enable installation and removal for the provider in the scope of supplementary performance, unless this is unreasonable for the customer. Before taking own measures to remedy defects, the customer shall consult the provider.

Any entitlement of the customer's to reimbursement of expenditure is limited to a reasonable extent, taking into consideration the value of the relevant performance in faultless condition and the significance of the defect.

For new versions of third-party software, the guarantee provisions of the transfer contract between the customer and provider apply as a priority to this third-party software, unless agreed otherwise. Section 475a German Civil Code remains unaffected.

A 4 Contact point (hotline)

4.1 Contractual services

The provider shall set up a contact point (hotline) for the customer. This point of contact processes the customer's inquiries in connection with technical requirements and conditions for use of the maintained software, as well as individual functional aspects. Item A 2.1 applies.

The hotline does not provide services relating to a use of maintained software in unapproved operating environments, or modifications to maintained software by the customer or third parties.

4.2 Receipt and processing of inquiries

As a prerequisite for receipt and processing of inquiries, the customer is to announce an appointment of expert and technically qualified staff to the provider, and assign these staff to internally process inquiries from users of the maintained software. The customer is obliged to submit inquiries to the hotline only via these staff members appointed for communicating with the provider, using the forms supplied by the provider for this purpose. The hotline receives such inquiries via e-mail, fax, and telephone during the provider's normal business hours.

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The hotline shall process appropriate inquiries as part of normal business routine and answer them as far as possible. In its responses, the hotline can refer the customer to available documentation and other training material for the maintained software. If the hotline is not able to answer an inquiry at all or in a timely fashion, the provider - if this is expressly agreed - shall forward the inquiry for processing, especially in the case of inquiries regarding maintained software not produced by said provider.

Other hotline services such as further contact hours and periods as well as on-call service or the provider's deployment on-site at the customer's premises must be expressly agreed in advance.

A 5 Additional services

Services beyond the scope of Items A 2. to A 4. are not due under this contract, and instead require separate agreement and remuneration. This can involve, for example, additionally agreed deployments on-site at the customer's premises, consultation and support in the case of modified software, clarification of interfaces to extraneous systems, as well as support in installation and configuration.

B General provisions

The following provisions apply in equal measure to malfunction management (A 2.), transfer of new versions (A 3.) and the hotline (A 4.).

B 1 Duration

- 1.1 Unless agreed otherwise, the maintenance contract begins on delivery as set forth in the transfer contract for standard software.
- 1.2 After expiry of an agreed minimum duration, if applicable, the maintenance contract can be terminated in writing with a 3-month notice period by the end of a calendar year, but not before expiry of the calendar year following contract conclusion. Moreover, the contract can be terminated by the provider and customer for an important reason without observing a period of notice.
- 1.3 Notices of termination are only valid if they are in writing.

B 2 Remuneration

2.1 Flat-rate remuneration

The customer shall remunerate maintenance services with an ongoing flat-fee. Remuneration for maintenance is owed in advance of an accounting period, and shall be invoiced by the provider to the customer at the beginning of the accounting period. The accounting period is essentially the calendar year. If the contract begins within an accounting period, remuneration is owed pro-rata and invoiced on contract conclusion.

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2.2 Remuneration of additional services

Additional services not covered by the flat-rate remuneration are compensated as set forth in item 1.1 of the document titled 'AV Bitkom'.

2.3 Adjustments to remuneration

The provider reserves the right to increase remuneration for the first time after 12 months, and at most once per year with a 3-month notice period, in accordance with the trend in the index of labour costs for the manufacturing and service industries. The provider can also pass on cost increases beyond this for third-party supply services, unless the provider has caused these cost increases. As soon as the annual remuneration increases by more than 5%, the customer is authorized to terminate the contract by the time the increase takes effect, within a period of six weeks after receipt of the demand for increase. If relevant costs are reduced, the customer can also request a corresponding reduction in remuneration, for the first time after 12 months.

B 3 Right of use

The customer's rights to use new versions and other corrections to maintained software correspond to their rights to use the previous versions of the maintained software. With regard to such rights, the rights to use new versions and other corrections supersede the rights to the previous versions and other corrections after an appropriate transitional period - generally not more than one month. The customer may archive a duplicated copy.

B 4 Customer's obligations

4.1 The customer shall promptly notify the provider about changes in the operating environment, also to enable the provider to render the maintenance services. Moreover, the customer shall ensure that maintenance software is used only in an operating environment which is approved and supported by the software. The provider is not liable for maintaining software not used in this kind of environment.

4.2 Unless agreed otherwise, the customer shall additionally store, at their premises, all documents, information and data submitted to the provider in such a way that these can be reconstructed in the event of damage and loss of data carriers.

B 5 Transfer

If software is transferred within the scope of these conditions, this shall be done using the same procedure as that for transferring maintained software, unless agreed otherwise.

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B 6 Data protection

- 6.1** To the extent that the provider can access personal data belonging to the customer or present in their domain, said provider shall act exclusively as a processor and only process and use these data to execute the contract. The provider shall observe the customer's instructions on handling such data. The customer shall bear any negative consequences of such instructions for contract execution. The customer and provider shall agree details on handling of the customer's data by the provider in accordance with legal requirements concerning data protection.
- 6.2** The customer remains the data controller generally in the contractual relationship and in the context of data protection legislation. The following applies to the relationship between the provider and customer: The customer is responsible for processing (including collection and use) of personal data vis-à-vis the data subject, unless the provider is answerable to any claims by the data subject as regards breaches of duty attributable to them. The customer shall review, process and answer any enquiries, requests and claims by the data subject. This also applies to claims raised by the data subject against the provider. The provider shall support the customer as part of their duties.
- 6.3** The provider guarantees that the customer's data are processed exclusively in the territory of the Federal Republic of Germany, or a member state of the European Union, or another state party to the agreement on the European Economic Area, unless agreed otherwise.

B 7 Validity of 'AV Bitkom'

Bitkom's general contractual terms (document titled 'AV Bitkom') apply additionally.