

Special terms and conditions of business for operation

Chemnitz, January 03, 2019

1 Scope

1.1 These special terms and conditions of business shall apply to all operational services to be provided by c.a.p.e. IT for OTRS- and KIX-based applications and application components of the client (Operational STCs).

1.2 The operational STCs supplement the general terms and conditions of business.

2 Subject matter of the contract

2.1 The contract for operational services builds on a corresponding support agreement and supplements the support services.

2.2 The subject matter of the contract for operational services, as well as the contents and scope of the obligation to provide services, is in accordance with the respective client order and the service overview for operational services. Operating services are updating and upgrading services, as well as operational support.

2.3 The operational services are provided for the client's OTRS- and KIX-based applications and application components, which were selected by the client and were also described in detail as is the case with the operating environment (in particular the system structure and any system extensions) and are correspondingly defined in the service overview for maintenance.

3 Maintenance report

An operational report corresponding to the support report (c.f. Clause 8 of the Support SLA) will be issued on request. The operational report documents the operational work performed.

4 Commencement of the contract

4.1 The contractual term shall commence on the date stated by c.a.p.e. IT in the provisioning notification.

4.2 c.a.p.e. IT shall only be obliged to provide operational services once the complete documentation of the operating environment is available to it.

5 Open-source software; rights of use

5.1 To the extent that c.a.p.e. IT implements operational services by providing OTRS- or KIX updates or upgrades that are not produced by c.a.p.e. IT, but are provided by third parties, the client shall purchase the rights of use directly from the copyright holder or legal owner. The scope of the rights of use shall be in accordance with the contract concluded between the copyright holder/legal owner and the client (for OTRS itself, for example, this occurs at the time of the conclusion of the contract under GPLv3. This can be accessed at <http://www.gnu.org/licenses/gpl.txt>.)

5.2 When using the software, the client shall comply with the licence terms and conditions that apply to the software or module concerned.

5.3 If the applicable licence terms and conditions so require, c.a.p.e. IT shall provide the client with the source code of the software and/or module.

6 Duties of cooperation of the client

The client shall be subject to the following additional duty of cooperation:

6.1 Prior to the commencement of the provision of services, the client shall provide c.a.p.e. IT with full documentation (a detailed description of the system structure, system extensions and applications, for example KIX including additional modules). For this purpose, the client shall be able to use an additional module provided by c.a.p.e. IT free of charge, which is to be installed by the latter in the KIX package management and is to be used for the documentation. This module collects the aforementioned information for the documentation and sends it to c.a.p.e. IT.

6.2 The client shall enable the necessary network access for the operational work. In addition, the client shall grant the necessary remote access to all client systems necessary for the provision of the services in the form of an https access to the administrative interface of the supported OTRS or KIX system, as well as an encrypted console access (e.g., sshv2) to the operating-system level of the OTRS- or KIX server system, including an authorisation to change the central application configuration files (config.pm, etc.).

6.3 All changes to the system that the client implements without the involvement of c.a.p.e. IT after the handover to c.a.p.e. IT must be immediately reported to c.a.p.e. IT in writing and mutually approved.

7 Remuneration and payment terms

7.1 c.a.p.e. IT shall receive the fixed price agreed under the regulations of the general terms and conditions of business from the client on an annual basis, unless otherwise agreed.

7.2 In addition to the agreed remuneration, the client shall bear the travel and hotel costs and expenses of the deployed c.a.p.e. IT employees in accordance with the regulations of the general terms and conditions of business.

7.3 If the client defaults in respect of payment of the remuneration for more than two months, c.a.p.e. IT shall be entitled to withhold operational services until such a time as the client has paid the outstanding remuneration. The claim to remuneration shall not be affected thereby. The operational services shall be resumed once the arrears have been settled.

8 Contractual term, termination

8.1 The contract for operational services is concluded for a term of 12, 24 or 36 months (hereinafter "Minimum Contractual Term").

8.2 Following the end of the Minimum Contractual Term, the operational-services agreement shall always be extended by one year, unless terminated by giving three months' notice before the end of the Minimum Contractual Term or before the end of any subsequent contractual period.

8.3 Both parties shall retain the right to extraordinary termination for good cause. Section 314 of the German Civil Code (BGB) shall apply.

8.4 In the case of justified extraordinary termination by c.a.p.e. IT, the client shall be obliged, if it is responsible for the grounds for termination, to remunerate c.a.p.e. IT, less any expenses saved by c.a.p.e. IT, until the date on which the contract would have ended in the case of an ordinary termination.

8.5 Declarations of termination must be made in writing. Compliance with the written form is a prerequisite for the effectiveness of the termination. Faxes and emails shall not suffice for the written-form requirement.

9 Proprietary rights

9.1 c.a.p.e. shall only provide a guarantee in respect of defects of title if and to the extent that the service provided by c.a.p.e. IT is itself affected. No guarantee shall be provided if material provided by the client or by a third party engaged by the same has been included in the object of service.

9.2 Liability and guarantee exclusions included in open-source licences such as the AGPL or GPL shall remain unaffected in relation to the legal owners, à that c.a.p.e. IT is not the legal owner.

9.3 The parties shall immediately notify each other if claims are asserted against them due to breach of proprietary rights in relation to the software that forms the subject matter of the contract.

10 Liability for errors in the description of the operating environment

If the client has not described the operating environment correctly, and if this lead to difficulties in the provision of services or even to damages on the part of the client, this shall be at the expense of the client. c.a.p.e. IT shall not be liable in this respect.