

# GOVERNIKUS



GOVERNIKUS  
COM **VIBILIA**<sup>®</sup>  
eBO Edition

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## Nutzungsbedingungen Governikus COM Vibia eBO

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Governikus COM Vibia eBO, Version 10.11.2

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## **Nutzungsbedingungen Governikus COM Vibilia**

Bitte lesen Sie diese Nutzungsbedingungen sorgfältig, bevor Sie die Standardsoftware Governikus COM Vibilia (nachfolgend "Software" genannt) installieren. Falls die unten aufgeführten Voraussetzungen für die Nutzung der Software auf Sie, bzw. ihren Arbeitgeber nicht zutreffen, sind Sie nicht berechtigt, die Software zu installieren oder zu verwenden.

Die Software ist urheberrechtlich geschützt und ausschließliches Eigentum der Governikus GmbH & Co. KG (nachfolgend Governikus KG genannt).

Diese Nutzungsbedingungen gelten für alle Editionen der Standardsoftware Governikus COM Vibilia

Zur Nutzung der Software ist berechtigt, wer von der Governikus KG bzw. von einem zur Nutzungsüberlassung berechtigten Dritten eine Lizenz erworben hat oder wer aufgrund des Beitritts zum Projekt "Pflege Governikus" zur Nutzung berechtigt ist. Solch ein Vertrag regelt die Nutzung aller zugehörigen Medien, gedruckten Materialien und Dokumentationen im "Online"- oder elektronischem Format. Die Software umfasst auch sämtliche Updates und Ergänzungen zu der ursprünglich von der Governikus KG überlassenen beziehungsweise bereitgestellten Software.

Die vorliegenden Nutzungsbedingungen erläutern den rechtlichen Rahmen für die Nutzung der Software in dem jeweiligen Release-Stand.

Sollten Sie eine modifizierte Version von Governikus COM Vibilia installieren, gelten die vorliegenden Nutzungsbedingungen nur, soweit die besonderen Nutzungsbedingungen dieser Versionen, nicht eine speziellere Regelung enthalten. Grundsätzlich gelten die vorliegenden Nutzungsbedingungen ergänzend zu den besonderen Nutzungsbedingungen.

## **1 Nutzungsberechtigung aufgrund des Erwerbs einer Lizenz**

### **Nutzungsberechtigung aufgrund des Erwerbs einer Lizenz von der Governikus KG oder von einem zur Lizenzüberlassung berechtigten Dritten**

Soweit keine abweichenden vertraglichen Vereinbarungen zwischen der Governikus KG und Ihnen getroffen wurden, gelten für die Nutzung der Software die "Ergänzenden Vertragsbedingungen für die zeitlich unbefristete Überlassung von Standardsoftware" (EVB-IT Überlassung Typ A). Wurde abweichend hiervon eine zeitlich befristete Überlassung der Software vereinbart, gelten die "Ergänzenden Vertragsbedingungen für die zeitlich befristete Überlassung von Standardsoftware" (EVB-IT Überlassung Typ B).

Für den Fall der Nutzung der Software gemeinsam mit dem Elektronischen Gerichts- und Verwaltungspostfach (EGVP), weisen wir darauf hin, dass das EGVP-Programm nicht durch die Governikus KG, sondern durch die Bundesrepublik Deutschland vertreten durch die am EGVP-System teilnehmenden Gerichten und Behörden zur Nutzung überlassen wurde. Die Nutzung der Software wird davon nicht berührt, so dass diese Nutzungsbedingungen hierfür einschlägig sind.

## **2 Nutzungsberechtigung aufgrund des Beitritts zum Projekt "Pflege Governikus"**

Die öffentliche Verwaltung in Deutschland, nämlich Bund, Länder und Kommunen haben sich in der Gemeinschaft "Pflege Governikus" zusammengeschlossen. Soweit ein Beitritt zu der Gemeinschaft "Pflege Governikus" erfolgt ist, wurde allen Stellen der beigetretenen Länder, Gemeinden und Gemeindeverbände sowie dem Bund, die auch zur Nutzung von Governikus berechtigt sind, ein nicht ausschließliches und nicht übertragbares, zeitlich unbegrenztes Nutzungsrecht an der Standardsoftware " Governikus COM Vibilia " eingeräumt. Dies gilt für die Standard-Edition COM Vibilia.

Dies gilt nicht für für die besonderen Editionen von COM Vibilia wie etwa

- a) COM Vibilia eBO Edition
- b) COM Vibilia Starter Edition
- c) COM Vibilia REST Edition
- d) COM Vibilia StB Edition

### 3 Nutzungsrechte

1. Soweit keine abweichenden vertraglichen Vereinbarungen zwischen der Governikus KG und dem Lizenznehmer getroffen wurden, bilden die vorliegenden Nutzungsbedingungen rechtlichen Rahmen für die Nutzung der Standardsoftware Governikus COM Vibilia.
2. Governikus COM Vibilia sowie dazugehörige Medien, gedruckte Materialien und Dokumentationen – im elektronischen oder „online“- Format – (im Folgenden „Software“ genannt) sind ausschließliches Eigentum der Governikus KG.
3. Allein für die COM Vibilia Starter Edition gilt, dass die Governikus KG berechtigt ist, die entgeltfreie Nutzung der Software jederzeit nach einer Ankündigungsfrist von wenigstens drei Monaten zu beenden. Dies kann dadurch erfolgen, dass die Governikus KG die Funktionalitäten der Software weiter einschränkt und/oder den Download-Server abstellt. Dabei wird zunächst die Funktion des Versendens von Nachrichten deaktiviert, so dass für eine Übergangszeit das Empfangen und Lesen von eingehenden Nachrichten möglich bleibt. Nach dieser Übergangszeit von wenigstens drei Monaten werden auch dieser Funktionen deaktiviert. Weiter gilt allein für die COM Vibilia Starter Edition, dass die Governikus KG die Anzahl der versendbaren Nachrichten beschränken kann.
4. Die Governikus KG stellt den für die Nutzung der Validierungsfunktion erforderlichen Validierungsdienst über das Internet zur Verfügung. Die Governikus KG behält sich vor, die in der Software angegebenen Adressinformationen des Validierungsdienstes wie Hostname, Port und Pfad, von Zeit zu Zeit zu ändern, wenn dies technisch notwendig ist. Über solch eine Veränderung wird die Governikus KG auf ihren Webseiten informieren und dort die aktuelle URL mitteilen.
5. Die Software nutzt die im nachfolgenden Kapitel aufgelisteten Softwareprodukte von Drittherstellern („3rd Party Software“). Diese unterliegen gesonderten Nutzungsbedingungen.
6. Sondernutzungsbedingungen  
Zusätzlich zu den oben aufgeführten Bestimmungen gelten die in dieser Ziffer 6 aufgeführten Sondernutzungsbedingungen für den Fall, dass der Nutzer die Software
  - a) außerhalb der in Ziffer 3 beschriebenen Governikus Pflege gegen ein Entgelt
    - aa) direkt von der Governikus KG oder
    - bb) von einem Vertriebspartner der Governikus KG entweder einzeln oder in einem Produktpaket erworben oder
  - b) als Demo-Version erhalten hat.
- 6.1. Nutzung
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  - 6.1.2. Mit der Überlassung der Software räumt die Governikus KG dem Kunden das Recht ein, die Software unter den hierin angegebenen Sondernutzungsbedingungen zu nutzen. Eine weitergehende Nutzung oder Verwertung ist ausgeschlossen.

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- 6.1.4. Die Software darf geändert oder bearbeitet werden, soweit dies zur bestimmungsgemäßen Nutzung, zur Verbindung der Software mit anderen Programmen und zur Fehlerkorrektur notwendig ist. In der Software enthaltene Firmennamen, Warenzeichen, Copyright-Vermerke und sonstige Vermerke über Rechtsvorbehalte dürfen nicht geändert werden und sind in geänderte oder bearbeitete Fassungen der Software zu übernehmen. In diesem Fall ist der Copyright-Vermerk von der Governikus KG um einen entsprechenden Hinweis zu ergänzen, der die vorgenommene Änderung und deren Urheber erkennen lassen.
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  - 6.2.1 Der Kunde ist berechtigt, die Software nur zusammen mit diesen Nutzungsbedingungen an einen nachfolgenden Nutzer abzugeben. Diese Berechtigung erstreckt sich nicht auf Kopien oder Teilkopien der Software und auch nicht auf die Weitergabe der geänderten oder bearbeiteten Fassungen oder davon hergestellten Kopien oder Teilkopien. Soweit die Software nicht auf einen festen Datenträger übergeben wurde, bedeutet Kopie jede weitere Kopie der erhaltenen Software.
  - 6.2.2. Mit der Abgabe der Software geht die Berechtigung zur Nutzung auf den nachfolgenden Nutzer über, der damit im Sinne dieser Bedingungen an die Stelle des Kunden tritt. Zugleich erlischt die Berechtigung des Kunden zur Nutzung.
  - 6.2.3. Mit der Weitergabe hat der Kunde alle Kopien und Teilkopien des Programms sowie geänderte oder bearbeitete Fassungen und davon hergestellte Kopien und Teilkopien umgehend und vollständig zu löschen oder auf andere Weise zu vernichten. Dies gilt auch für alle Sicherungskopien.
  - 6.2.4. Für die Weitergabe der Software durch den jeweiligen Nutzer an einen nachfolgenden Nutzer tritt dieser an die Stelle des vorausgehenden Nutzers im oben dargestellten Sinne.
- 6.3. Alle weitergehenden Rechte zur Nutzung und Verwertung der Software bleiben vorbehalten. Unberührt bleiben die Verwertungsrechte des Kunden an eigenen Programmen, die unter bestimmungsgemäßer Benutzung der erworbenen Software entwickelt oder betrieben werden sowie an allen anderen Arbeitsergebnissen, die durch die Benutzung der Software erzielt werden.
- 6.4. Gewährleistung und Haftung

- 6.4.1. Es wird darauf hingewiesen, dass es nach dem Stand der Technik nicht möglich ist, Computersoftware so zu erstellen, dass sie in allen Kombinationen und Anwendungen fehlerfrei arbeitet. Vertragsgegenstand ist daher nur eine im Sinne der Beschreibung und Benutzungsanleitung grundsätzlich nutzbare Software. Die Gewährleistung ist gem. § 524 Abs. 1 BGB auf arglistig verschwiegene Sachmängel der Software begrenzt.
- 6.4.2. Der Kunde verwendet das Programm ausschließlich auf eigenes Risiko. Die Haftung der Governikus KG ist gemäß § 521 BGB auf Vorsatz und grobe Fahrlässigkeit beschränkt. Die Governikus KG haftet nicht für entgangenen Umsatz oder Gewinn oder den Verlust von Daten oder für direkte, indirekte, spezielle, logisch folgende, beiläufige oder einschließende Schäden, die durch den Gebrauch oder die Unmöglichkeit des Gebrauchs des Softwareprodukts verursacht wurden, es sei denn, die Governikus KG hat vorsätzlich gehandelt. Dies gilt auch, wenn die Governikus KG von der Möglichkeit solcher Schädigungen benachrichtigt worden ist.

## 4 Software von Drittanbietern

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3rd Party Software	Version	File	License
AdoptOpenJDK	11.0.10+9	Jdk	GNU General Public License, version 2, with the Classpath Exception
Apache Batik SVG Toolkit	1.17	batik-all-1.17.jar	Apache License 2.0
Apache Commons Compress	1.24.0	commons-compress-1.24.jar	Apache License 2.0
Apache Commons Codec	1.16.0	commons-codec-1.16.jar	Apache License 2.0
Apache Commons HttpClient	4.5.14	httpclient-4.5.14.jar	Apache License 2.0
Apache Commons HttpClient	4.4.16	httpcore-4.4.16.jar,	Apache License 2.0
Apache Commons Collections	3.2.2	commons-collections3.2.2	Apache License 2.0
Apache Commons IO	2.14.0	commons-io-2.14.0.jar	Apache License 2.0
Apache Commons Lang	3.13.0	commons-lang3-3.13.0.jar	Apache License 2.0
Apache Commons Text	1.10.0	commons-text-1.10.0.jar	Apache License 2.0
Apache XML Commons External Components	1.3.04	xml-apis-ext 1.3.04.jar	Apache License 2.0
Cryptacular Library	1.2.6	cryptacular 1.2.6	Apache License 2.0 GPL 3.0
Apache CXF	3.5.7	cxf 3.5.7*	Apache License 2.0
Apache Formatting Objects Processor (FOP)	2.9	fop-2.9.jar*	Apache License 2.0
Apache Logging Service	2.20.0	log4j-api-2.20.0.jar, log4j-core-2.20.0.jar, log4j-slf4j-impl-2.20.0.jar	Apache License 2.0
Simple Logging Facade for Java (SLF4J)	2.0.9	slf4j-api-2.0.9.jar, log4j-over-slf4j-2.0.9.jar, jcl-over-slf4j-2.0.9.jar,	Apache License 2.0 MIT License



3rd Party Software	Version	File	License
		jul-to-slf4j-2.0.9.jar	
Project Lombok	1.18.30	lombok-1.18.30.jar	MIT License
Apache Neethi	3.2.0	neethi 3.2.0	Apache License 2.0
Apache pdfbox	2.0.29	fontbox-2.0.29.jar, pdfbox-2.0.29.jar, xmpbox-2.0.29.jar	Apache License 2.0
Apache Velocity Engine	2.3	velocity-engine-core-2.3.jar	Apache License 2.0
Apache WSS4J	2.4.1	wss4j 2.4.1*	Apache Software License 1.1
Apache XML Graphics Commons	2.9	xmlgraphics-commons-2.9.jar	Apache License 2.0
Apache XML Security (Santuario)	2.3.34	xmlsec-2.3.4.jar	Apache License 2.0
Bouncy Castle Security Provider	1.76	bcprov-jdk15on-1.76.jar, bcpkix-jdk15on-1.76.jar, bcutil-jdk15on-1.76.jar	Bouncy Castle License
DOM4J	2.1.4	dom4j-2.1.4.jar	DOM4J-Lizenz
DSS	5.12.1	dss.jar*	GNU Lesser General Public License, version 2.1
DVDV-Bibliothek	1.16.0	dvdv_sdk.jar	Bremer Lizenz für freie Softwarebibliotheken (DVDV) Version 1.0
Extended StAX API	2.1.0	stax-ex-2.1.0.jar	Eclipse Distribution License - v 1.0
Stax2 API	4.2.1	stax2-api 4.2.1	BSD2-clause Licence 2
Freemarker	2.3.28	freemarker-2.3.28.jar	Apache License 2.0
GMBAL API Only	4.0.3	gmbal-api-only-4.0.3.jar	CDDL+GPL
Graal VM/JavaScript/Truffle	22.3.2	js-22.3.2.jar, js-scriptengine-22.3.2.jar, graal-sdk-22.3.2.jar, truffle-api-22.3.2.jar	UPL
Guava	32.1.3	guava 32.1.3	Apache License 2.0
International Component for Unicode for Java (ICU4J)		icu4j-71.1.jar	ICU

3rd Party Software	Version	File	License
JACOB (Java-COM bridge) (FreemanSoft Inc)	1.20	jacob1.20.jar	GNU Lesser General Public License, version 2.1
Java Support	7.5.2	java-support 7.5.2	Apache License 2.0
JavaFX Base, Controls, Graphics, Media, Swing und Web	11.0.2	javafx-*.jar	GPLv2 with classpath exception
JavaMail API	1.6.2	javax.mail-api-1.6.2.jar javax.mail-1.6.2.jar	CDDL Version 1.1
Java Servlet API	4.0.1	javax.servlet-api 4.0.1	CDDL Version 1.1, GPL 2.0, LGPL 2.1
Jasypt (Java Simplified Encryption)	1.9.3	jasypt 1.9.3	Apache License 2.0
JAXB Core	2.3.0.1	jaxb-core-2.3.0.1.jar	CDDL Version 1.1
JAXB Runtime	2.3.6	jaxb-runtime-2.3.6.jar	Eclipse Distribution License - v 1.0
JAXB2 Basics Runtime	0.12.0	jaxb2-basics-runtime-0.12.0.jar	BSD Licence 2
Jakarta Activation	1.2.2	jakarta.activation-1.2.2.jar, jakarta.activation-api-1.2.2.jar	Eclipse Distribution License - v 1.0
Jakarta Annotations API	1.3.5	jakarta.annotation-api 1.3.5	Eclipse Public License 2.0
Jakarta Web Services Metadata API	2.1.0	jakarta.jws-api-2.1.0.jar	Eclipse Distribution License - v 1.0
Jakarta XML Bind API	2.3.3	jakarta.xml.bind-api-2.3.3.jar	Eclipse Distribution License - v 1.0
Jakarta SOAP with Attachments API	1.4.2	jakarta.xml.soap-api-1.4.2.jar	Eclipse Distribution License - v 1.0
Jakarta XML Web Services API	2.3.3	jakarta.xml.ws-api-2.3.3.jar	Eclipse Distribution License - v 1.0
Jaxen	1.2.0	jaxen-1.2.0.jar	BSD2-clause Licence 2
Joda Time	2.12.5	joda-time 2.12.5	Apache License 2.0
FindBugs JSR305	3.0.2	jsr305 3.0.2	Apache License 2.0
Istack Common Utility Code Runtime	3.0.12	istack-commons-runtime-3.0.11.jar	Eclipse Distribution License - v 1.0
JDesktop Integration Componentes (JDIC)		jdic.jar, jdic-native.jar, jdic_stub.jar	JDIC License**

<b>3rd Party Software</b>	<b>Version</b>	<b>File</b>	<b>License</b>
Open Card Framework		-	OpenCard CS License
OpenSAML	3.4.6	opensaml 3.4.6*	Apache License 2.0
OSCI-Bibliothek	2.4.1	osci-bibliothek.jar	Bremer LffSB 1.0
SAAJ Impl	1.5.3	saaj-impl-1.5.3.jar	Eclipse Distribution License - v 1.0
WS-Policy implementation	2.7.10	policy-2.7.10.jar	Eclipse Distribution License - v 1.0
XML Streambuffer	2.1.0	streambuffer-2.1.0.jar	Eclipse Distribution License - v 1.0
Woodstox	6.5.1	woodstox-core 6.5.1	Apache License 2.0
Java stub generator for WSDL	1.6.3	wSDL4j 1.6.3	CPL 1.0
XML Commons Resolver Component	1.2	xml-resolver 1.2	Apache License 2.0
XMLSchema Core	2.3.0	xmlschema-core 2.3.0	Apache License 2.0

Tabelle 1: Software von Drittanbietern

## 5 Governikus Auftragsverarbeitungsvereinbarung – AVV

Diese Nutzungsbedingungen für Governikus COM Vibilia regeln allein die Bedingungen, unter denen der Nutzer die Software nutzen kann. In der Software kann der Nutzer ein oder mehrere Postfächer anlegen, die auf Verzeichnisdienste wie beispielsweise einen Registrierungsserver, SAFE, DVDV oder andere zugreifen. Diese Verzeichnisdienste wie auch die OSCI-Manager werden von Dritten betrieben. Die Bedingungen, unter denen der Nutzer der Software diese Dienste Dritter nutzt, sind zwischen dem Nutzer und dem Diensteanbieter zu vereinbaren. Diese Nutzungsbedingungen für Governikus COM Vibilia beinhalten keine Bedingungen für die Nutzung von Diensten Dritter.

Soweit Governikus – im Folgenden Auftragnehmer genannt – einen Dienst betreibt, bei dem durch Governikus personenbezogene Daten verarbeitet werden, gilt die Governikus Auftragsverarbeitungsvereinbarung – AVV – mit der Annahme dieser Nutzungsbedingungen als vereinbart.

1. Gegenstand, Dauer, Art und Zweck des Auftrags
  - 1.1. Der Auftragnehmer verarbeitet personenbezogene Daten im Auftrag des Auftraggebers im Sinne von Art. 4 Nr. 2 und Art. 28 DSGVO.
  - 1.2. Gegenstand, Art und Zweck der Datenverarbeitung durch den Auftragnehmer sind in der Leistungsbeschreibung für den jeweils vertragsgegenständlichen Dienst von Governikus beschrieben.
  - 1.3. Der Auftragnehmer verarbeitet die personenbezogenen Daten ausschließlich im Gebiet der Bundesrepublik Deutschland, in einem Mitgliedsstaat der Europäischen Union oder in einem anderen Vertragsstaat des Abkommens über den Europäischen Wirtschaftsraum. Die Verarbeitung von personenbezogenen Daten in einem Drittstaat bedarf der vorherigen Zustimmung des Auftraggebers und darf nur erfolgen, wenn die besonderen Voraussetzungen der Art. 44 ff. DSGVO erfüllt sind.
2. Rechte und Pflichten
  - 2.1. Der Auftraggeber ist alleine verantwortlich für die Beurteilung der rechtlichen Zulässigkeit der Datenverarbeitung, sowie für die Wahrung der Rechte der betroffenen Personen. Gesetzliche oder vertragliche Haftungsregelungen bleiben hiervon unberührt.
  - 2.2. Sollte eine betroffene Person sich bezüglich ihrer Rechte gem. Art. 12 bis 22 DSGVO an den Auftragnehmer wenden, so hat der Auftragnehmer das Ersuchen unverzüglich an den Auftraggeber weiterzuleiten. Der Auftragnehmer unterstützt den Auftraggeber mit geeigneten technischen und organisatorischen Maßnahmen, damit dieser seine Pflichten gem. Art. 12 bis 22 DSGVO gegenüber der betroffenen Person erfüllen kann.
  - 2.3. Der Auftragnehmer hat auf Anfrage an der Erstellung und Aktualisierung des Verzeichnisses der Verarbeitungstätigkeiten mitzuwirken. Der Auftragnehmer wirkt bei der Erstellung einer Datenschutz-Folgenabschätzung und gegebenenfalls bei der vorherigen Konsultation der Aufsichtsbehörde mit. Er hat dem Auftraggeber alle erforderlichen Angaben und Dokumente auf Anfrage zur Verfügung zu stellen.
  - 2.4. Der Auftragnehmer sichert zu, dass er die bei der Durchführung der Arbeiten beschäftigten Mitarbeiter vor Aufnahme der Tätigkeiten mit den für sie maßgebenden

Bestimmungen des Datenschutzes vertraut macht und für die Zeit ihrer Tätigkeit wie auch nach Beendigung des Beschäftigtenverhältnisses in geeigneter Weise zur Verschwiegenheit verpflichtet. Der Auftragnehmer überwacht die Einhaltung der datenschutzrechtlichen Vorschriften in seinem Unternehmen.

- 2.5. Beim Auftragnehmer ist ein Beauftragter für den Datenschutz bestellt, der seine Tätigkeiten gem. Art. 38 und 39 DSGVO ausüben kann. Ein Wechsel des Datenschutzbeauftragten ist dem Auftraggeber unverzüglich mitzuteilen. Sofern der Auftragnehmer nicht zur Bestellung eines Datenschutzbeauftragten verpflichtet ist, teilt er dieses dem Auftraggeber mit.
3. Technische und organisatorische Maßnahmen zum Schutz der personenbezogenen Daten
  - 3.1. Der Auftragnehmer wird in seinem Verantwortungsbereich angemessene technische und organisatorische Maßnahmen zum Schutz der personenbezogenen Daten treffen, die den Anforderungen der Datenschutz-Grundverordnung gem. Art. 32 DSGVO genügen. Die technischen und organisatorischen Maßnahmen haben die Vertraulichkeit, Integrität, Verfügbarkeit und Belastbarkeit der eingesetzten Systeme und Dienste sicherzustellen. Die Maßnahmen haben einen dem Risiko angemessenes Schutzniveau zu gewährleisten.
  - 3.2. Die getroffenen Maßnahmen sind im Unteranhang 1 dieser Vereinbarung zu dokumentieren und dem Auftraggeber zur Prüfung zu übergeben. Bei Akzeptanz durch den Auftraggeber werden die dokumentierten Maßnahmen Grundlage dieser Vereinbarung. Als Faktoren zum Nachweis der Umsetzung geeigneter technischer und organisatorischer Maßnahmen kann die Einhaltung genehmigter Verhaltensregeln gem. Art. 40 DSGVO oder ein genehmigtes Zertifizierungsverfahren gem. Art. 42 DSGVO herangezogen werden.
  - 3.3. Die technischen und organisatorischen Maßnahmen unterliegen dem technischen Fortschritt und der Weiterentwicklung. Insoweit ist es dem Auftragnehmer gestattet, alternative adäquate Maßnahmen umzusetzen. Dabei darf das Sicherheitsniveau der festgelegten Maßnahmen nicht unterschritten werden. Wesentliche Änderungen sind zu dokumentieren und dem Auftraggeber zur Verfügung zu stellen.
4. Berichtigung, Löschung und Sperrung von personenbezogenen Daten

Der Auftragnehmer darf die Daten, die im Auftrag verarbeitet werden, nicht eigenmächtig sondern nur auf Weisung des Auftraggebers berichtigen, löschen oder deren Verarbeitung einschränken.
5. Kontrollrechte und -pflichten
  - 5.1. Der Auftragnehmer stellt sicher, dass sich der Auftraggeber von der Einhaltung der Pflichten des Auftragnehmers nach Art. 28 DSGVO überzeugen kann. Der Auftragnehmer verpflichtet sich, dem Auftraggeber auf Anforderung die erforderlichen Auskünfte zu erteilen und insbesondere die Umsetzung der technischen und organisatorischen Maßnahmen nachzuweisen.
  - 5.2. Der Auftraggeber hat das Recht, im Benehmen mit dem Auftragnehmer Überprüfungen durchzuführen oder durch im Einzelfall zu benennende Prüfer durchführen zu lassen. Er hat das Recht, sich durch Stichprobenkontrollen, die in der Regel rechtzeitig anzumelden sind, von der Einhaltung dieser Vereinbarung durch den Auftragnehmer in dessen

Geschäftsbetrieb zu überzeugen.

## 6. Unterauftragsverhältnisse

- 6.1. Der Auftragnehmer kann Leistungen an Unterauftragnehmer nur mit schriftlicher Zustimmung des Auftraggebers vergeben.
- 6.2. Ein Unterauftragsverhältnis im Sinne dieser Regelung liegt insbesondere vor, wenn der Auftragnehmer weitere Auftragnehmer mit der ganzen oder einem Teil der im Vertrag vereinbarten Leistung beauftragt. Nicht als Unterauftragsverhältnis im Sinne dieser Regelung sind solche Dienstleistungen zu verstehen, die der Auftragnehmer bei Dritten als Nebenleistung zur Unterstützung bei der Auftragsdurchführung in Anspruch nimmt. Hierzu zählen z.B. Telekommunikationsleistungen, Wartung und Benutzerservice, Reinigungskräfte, Prüfer oder die Entsorgung von Datenträgern sowie sonstige Maßnahmen zur Sicherstellung der Vertraulichkeit, Verfügbarkeit, Integrität und Belastbarkeit der Hard- und Software von Datenverarbeitungssystemen in Anspruch nimmt. Der Auftragnehmer ist jedoch verpflichtet, zur Gewährung des Datenschutzes und der Datensicherheit der Daten des Auftraggebers auch bei fremd vergebenen Nebenleistungen angemessene und gesetzeskonforme vertragliche Vereinbarungen zu treffen.
- 6.3. Der Zugriff auf Daten durch den Unterauftragnehmer darf erst erfolgen, sofern der Auftragnehmer im Rahmen eines schriftlichen Vertrags mit den Unterauftragnehmer sichergestellt hat, dass die in diesem Vertrag vereinbarten Regelungen auch gegenüber den Unterauftragnehmer gelten, wobei insbesondere hinreichende Garantien dafür geboten werden müssen, dass die geeigneten technischen und organisatorischen Maßnahmen so durchgeführt werden, dass die Verarbeitung entsprechend den Anforderungen der DSGVO erfolgt.
- 6.4. Derzeit sind die in Unteranhang 2 genannten Unternehmen zur Durchführung des vereinbarten Auftrages als Unterauftragnehmer eingesetzt. Die in Unteranhang 2 genannten Unterauftragsverhältnisse gelten als genehmigt, sofern die in Ziffer 6.3 genannten Voraussetzungen umgesetzt sind.

## 7. Mitteilungspflichten

Der Auftragnehmer unterrichtet den Auftraggeber unverzüglich über Störungen des Betriebsablaufs, die Gefahren für die Daten des Auftraggebers mit sich bringen, sowie über Datenschutzverletzungen die im Zusammenhang mit den Daten des Auftraggebers stehen. Gleiches gilt, wenn der Auftragnehmer feststellt, dass die bei ihm getroffenen Sicherheitsmaßnahmen den gesetzlichen Anforderungen nicht genügen. Dem Auftragnehmer ist bekannt, dass der Auftraggeber verpflichtet ist, umfassend alle Verletzungen des Schutzes personenbezogener Daten zu dokumentieren und ggf. den Aufsichtsbehörden bzw. der betroffenen Person unverzüglich mitzuteilen. Sofern es zu solchen Verletzungen gekommen ist, wird der Auftragnehmer den Auftraggeber bei der Einhaltung seiner Meldepflichten unterstützen.

## 8. Weisungsbefugnisse

- 8.1. Der Auftragnehmer verarbeitet personenbezogene Daten ausschließlich im Rahmen der getroffenen Vereinbarungen und nach Weisungen des Auftraggebers, sofern er nicht zu einer anderen Verarbeitung durch das Recht der Union oder der Mitgliedstaaten, dem der Auftragnehmer unterliegt, hierzu verpflichtet ist (z. B. Ermittlungen von

Strafverfolgungs- oder Staatsschutzbehörden); in einem solchen Fall teilt der Auftragnehmer dem Verantwortlichen diese rechtlichen Anforderungen vor der Verarbeitung mit, sofern das betreffende Recht eine solche Mitteilung nicht wegen eines wichtigen öffentlichen Interesses verbietet.

- 8.2. Mündliche Weisungen wird der Auftraggeber unverzüglich schriftlich oder in Textform bestätigen. Der Auftragnehmer verwendet die Daten für keine anderen Zwecke und ist insbesondere nicht berechtigt, sie an Dritte weiterzugeben. Kopien und Duplikate werden ohne Wissen des Auftraggebers nicht erstellt. Hiervon ausgenommen sind Sicherheitskopien, soweit sie zur Gewährleistung einer ordnungsgemäßen Datenverarbeitung erforderlich sind, sowie Daten, die im Hinblick auf die Einhaltung gesetzlicher Aufbewahrungspflichten erforderlich sind.
  - 8.3. Der Auftragnehmer wird den Auftraggeber unverzüglich darauf aufmerksam machen, wenn eine vom Auftraggeber erteilte Weisung seiner Meinung nach gegen gesetzliche Vorschriften verstößt. Der Auftragnehmer ist berechtigt, die Durchführung der entsprechenden Weisung solange auszusetzen, bis sie durch den Verantwortlichen beim Auftraggeber nach Überprüfung bestätigt oder geändert wurde.
9. Umgang mit personenbezogenen Daten bei Vertragsbeendigung
- 9.1. Unabhängig von dem Recht des Auftraggebers, über die für ihn verarbeiteten Daten uneingeschränkt zu verfügen und deren Herausgabe bzw. Rückübertragung zu verlangen, gelten für die Beendigung der Zusammenarbeit die nachfolgenden Absätze.
  - 9.2. Nach Abschluss der vertraglichen Arbeiten oder früher nach Aufforderung durch den Auftraggeber – spätestens mit Beendigung der Leistungsvereinbarung – hat der Auftragnehmer sämtliche in seinen Besitz gelangte Unterlagen, erstellte Verarbeitungs- und Nutzungsergebnisse sowie Datenbestände, die im Zusammenhang mit dem Auftragsverhältnis stehen, dem Auftraggeber auszuhändigen oder nach vorheriger Zustimmung datenschutzgerecht zu vernichten bzw. zu löschen. Die Löschung ist in geeigneter Weise zu dokumentieren. Gleiches gilt für Test- und Ausschussmaterial. Das Protokoll der Löschung ist auf Anforderung vorzulegen.
  - 9.3. Dokumentationen, die dem Nachweis der auftrags- und ordnungsgemäßen Datenverarbeitung dienen, sind durch den Auftragnehmer entsprechend der jeweiligen Aufbewahrungsfristen über das Vertragsende hinaus aufzubewahren. Er kann sie zu seiner Entlastung bei Vertragsende dem Auftraggeber übergeben.
10. Schlussbestimmungen
- 10.1. Sollten die Daten des Auftraggebers beim Auftragnehmer durch Pfändung oder Beschlagnahme, durch ein Insolvenz- oder Vergleichsverfahren oder durch sonstige Ereignisse oder Maßnahmen Dritter gefährdet werden, so hat der Auftragnehmer den Auftraggeber unverzüglich darüber zu informieren. Der Auftragnehmer wird alle in diesem Zusammenhang Verantwortlichen unverzüglich darüber informieren, dass die Hoheit und das Eigentum an den Daten ausschließlich beim Auftraggeber liegen.
  - 10.2.** 10.2 Die übrigen Regelungen des dieser Vereinbarung zugrundeliegenden Vertrags über die vom Auftragnehmer zu erbringenden Leistungen bleiben von dieser Governikus Auftragsdatenvereinbarung unberührt.
  - 10.3.** 10.3 Die Laufzeit dieser Governikus Auftragsdatenvereinbarung ist gebunden an den

Bestand des dieser Vereinbarung zugrundeliegenden Vertrags über die vom Auftragnehmer zu erbringenden Leistungen. Diese Governikus Auftragsdatenvereinbarung bedarf für ihre Geltung keiner separaten Unterschrift. Sie gilt als Zusatzvereinbarung mit Abschluss des dieser Vereinbarung zugrundeliegenden Vertrags über die vom Auftragnehmer zu erbringenden Leistungen als mitvereinbart.



## **Unterhang 1: Technische und organisatorische Maßnahmen gemäß Artikel 32 DSGVO**

Die folgenden Punkte stellen die Gesamtheit der umgesetzten Maßnahmen dar. Je nach Dienstleistung und Kundenvereinbarung sind nicht alle aufgeführten Punkte anwendbar.

### **A. Allgemeines**

- a) Es ist ein Datenschutzbeauftragter bestellt.
- b) Alle Personen, die personenbezogene Daten erheben, verarbeiten und nutzen, sind auf die Verschwiegenheit verpflichtet.
- c) Alle Personen bei dem Unterauftragnehmer gemäß des Unterhangs 2, die Verkehrsdaten erheben, verarbeiten und nutzen, sind auf das Fernmeldegeheimnis gem. § 88 TKG verpflichtet.
- d) Es existiert eine Richtlinie zur Informationssicherheit und ist allen Beschäftigten zugänglich und bekannt.
- e) Es sind Notfallkonzepte vorhanden und einsehbar, die ein Business Continuity Management (BCM) ermöglichen. Das Hauptrechenzentrum des Unterauftragnehmers gemäß des Unterhangs 2 wird regelmäßig nach ISO 27001 zertifiziert.

### **B. Maßnahmen zur Sicherstellung der Vertraulichkeit und Integrität**

#### a) Zutrittskontrolle

Es sind technische und organisatorische Maßnahmen zu treffen, die sicherstellen, dass Unbefugte keinen Zutritt zu Datenverarbeitungssystemen mit denen personenbezogene Daten verarbeitet oder genutzt werden, erhalten.

Relevant für RZ-Dienstleistungen.

Getroffene Maßnahmen:

1. Es besteht ein Zutrittskontrollsystem zum Schutz vor unbefugtem Zutritt zu den Datenverarbeitungssystemen. Im Hauptrechenzentrum des Unterauftragnehmers gemäß des Unterhangs 2 sind zwei Faktoren für den Zutritt erforderlich, Biometrie sowie berechtigter Codeträger. Im Nebenrechenzentrum genügt für den Zutritt der berechnigte Codeträger. An beiden Standorten ist ein Notfallzutritt mit einem zentral hinterlegten Schlüssel möglich. Die Nutzung dieses Notfallzutritts löst dabei einen Alarm aus.
2. Die Verantwortlichkeiten und Rollen bezüglich des Zutrittskontrollsystems sind geregelt.
3. Es gibt ein dokumentiertes Verfahren zur Vergabe und zum Entzug von Zutrittsrechten.
4. Die vergebenen Zutrittsrechte werden protokolliert.
5. Die Räumlichkeiten, in denen die Datenverarbeitungssysteme untergebracht sind, verfügen über eine Alarmanlage.
6. Türen und Fenster der Räumlichkeiten, in denen die Datenverarbeitungssysteme untergebracht sind, sind so gesichert, dass ein unberechtigtes Betreten nicht möglich ist, bzw. einen Alarm auslösen wird.

Externe (z.B. Wartungspersonal, Reinigungsdienste) erhalten Zutritt zu den Räumlichkeiten, in denen die Datenverarbeitungssysteme untergebracht sind

ausschließlich in Begleitung hierzu berechtigter Mitarbeiter des Unterauftragnehmers gemäß des Unteranhangs 2.

7. . Auf diese Weise gewährter Zutritt wird protokolliert.

b) Zugangskontrolle

Es sind technische und organisatorische Maßnahmen zu treffen, die sicherstellen, dass Datenverarbeitungssysteme nicht von Unbefugten genutzt werden können.

Relevant für RZ-Dienstleistungen sowie teilweise für Managed Services des Unterauftragnehmers gemäß des Unteranhangs 2.

Getroffene Maßnahmen:

1. Der Zugang zu den Datenverarbeitungssystemen ist durch ein personalisiertes Passwort geschützt.
2. Die Passwortnutzung wird protokolliert sofern die betreffenden Systeme dies zulassen.
3. Es gibt eine Richtlinie zur Verwendung von Passwörtern. Diese regelt folgende Punkte:
  - Komplexität des Passwortes
  - Änderungsintervalle der Passwörter
  - Keine Verwendung von Trivialpasswörtern
  - Regelungen zur Weitergabe von Passwörtern
4. Die Datenverarbeitungssysteme geben eine regelmäßige Änderung der Passwörter vor sofern die betreffenden Systeme dies zulassen.
5. Zur Verhinderung des Ausspähens des Passworts wird nach einer bestimmten Anzahl von Fehlversuchen der Zugang gesperrt bzw. zeitlich verzögert.
6. Es wird ein dokumentiertes Verfahren zur Genehmigung der Berechtigung des Zugangs auf die Datenverarbeitungssysteme bei Einstellung sowie Ausscheiden von Mitarbeitern verwendet. Dieses Verfahren sieht auch Regelungen bezüglich des Entzugs von Berechtigungen vor.
7. Der Zugang wird bei Inaktivität nach einer vorab festgelegten Zeit gesperrt sofern die betreffenden Systeme dies zulassen.
8. Die Passwörter werden verschlüsselt gespeichert sofern die betreffenden Systeme dies zulassen.
9. Die externen Zugänge zum Netzwerk werden in der Regel durch eine Zwei-Faktor-Authentifizierung geschützt.
10. Die Übertragung von Authentisierungsgeheimnissen (Credentials) erfolgt im Netzwerk verschlüsselt.

c) Protokollierung und Protokollauswertung

(Siehe auch Zugriffs-, Eingabe- und Auftragskontrolle)

Relevant für RZ-Dienstleistungen sowie teilweise für Managed Services des Unterauftragnehmers gemäß des Unteranhangs 2.

Getroffene Maßnahmen

1. Administrative Anmeldungen werden protokolliert.

2. Unbefugte Anmeldeversuche werden protokolliert sofern die betreffenden Systeme dies zulassen.
3. Der Umfang der Protokollierung richtet sich nach dem Schutzbedarf der Daten unter Berücksichtigung der Sensibilität und der Eintrittswahrscheinlichkeit einer Gefährdung. Dies erfordert bei kundenspezifischen Diensten ggf. die Mitwirkung des Kunden, indem dieser Informationen zur Sensibilität der Daten liefert.

d) Maßnahmen zum Schutz der Datenverarbeitungssysteme

Es existieren Richtlinien für eine sichere Konfiguration von Datenverarbeitungssystemen.

Relevant für RZ-Dienstleistungen sowie teilweise für Managed Services des Unterauftragnehmers gemäß des Unteranhangs 2.

Getroffene Maßnahmen

1. Die Datenverarbeitungssysteme sind gehärtet. Beispiel: Entfernen von nicht benötigten Diensten und Funktionalitäten
2. Das Netzwerk ist angemessen segmentiert.
3. Es existiert ein mehrstufiges Firewall-Konzept.
4. Es existiert ein System zur Erkennung und Abwehr von Angriffen (IPS).
5. Es existiert ein System mit Maßnahmen zur Erkennung, Verhinderung und Beseitigung von Malware.
6. Personenbezogene Daten werden in manchen Fällen via WLAN übertragen. Hierbei gelten folgende Schutzmaßnahmen:
  - Verbindungen via WLAN werden wie externe Zugriffe behandelt, d.h. es muss eine sichere VPN-Verbindung, i.d.R. mit 2-Faktor-Authentifizierung aufgebaut werden, um Dienste nutzen zu können. Im WLAN wird zudem ein starker Verschlüsselungsmechanismus (WPA2) eingesetzt.
  - Es gibt keine einfache Authentifizierung mit einem WLAN-Kennwort für Alle, sondern es kommt eine individuelle Authentifizierung nach IEEE 802.1X zur Anwendung.
  - Im Rahmen des Netzwerkbetriebs wird auch die Firmware der WLAN-Accesspoints aktuell gehalten. Bekannt gewordene Schwachstellen werden im Rahmen des Security Incident Management Prozesses behandelt.
7. Es erfolgen Zugriffe auf Systeme im Rahmen einer Fernwartung. Für die Absicherung dieser Zugriffe wurden Festlegungen getroffen und Verfahren vorgegeben.
8. Es existiert eine Richtlinie für den Umgang mit mobilen Datenträgern.
9. Personenbezogene Daten werden im Normalfall verschlüsselt übertragen.
10. Es existiert ein Verbot der Nutzung von privater Software.

e) Sicherheitsmanagement

Relevant für Managed Services des Unterauftragnehmers gemäß des Unteranhangs 2.

Getroffene Maßnahmen

1. Im Rahmen des Schwachstellenmanagements werden externe Quellen zur

Erkennung von neuen Sicherheitslücken herangezogen, z.B. CERT Bund, CERT Nord, Heise.de.

2. Im Rahmen des Schwachstellenmanagements findet eine Bewertung der Kritikalität bekannt gewordener Schwachstellen und der Auswirkungen fehlerhafter Patches statt. Sicherheitspatches werden nach ggf. erforderlichen Tests zeitnah eingespielt.
3. Das Vorgehen im Fall von Sicherheitsvorfällen ist im Teilprozess „Security Incident Management“ des Informationssicherheitsmanagementsystems beschrieben.

f) Zugriffskontrolle

Es sind technische und organisatorische Maßnahmen zu treffen, die gewährleisten, dass die zur Benutzung eines Datenverarbeitungssystems Berechtigten ausschließlich auf die ihrer Zugriffsberechtigung unterliegenden Daten zugreifen können und dass personenbezogene Daten bei der Verarbeitung, Nutzung und nach der Speicherung nicht unbefugt gelesen, kopiert, verändert oder entfernt werden können.

Relevant für RZ-Dienstleistungen.

Getroffene Maßnahmen

1. Es existiert ein Berechtigungskonzept, das die Berechtigungen zum Zugriff auf die Daten regelt. Hierbei sind folgende Punkte berücksichtigt:
  - Differenzierung nach Verarbeitungsmöglichkeiten (lesen, schreiben, löschen), sofern dies technisch möglich ist
  - Regelungen zur Aktivierung und Deaktivierung von Zugriffsrechten
2. Änderungen der Zugriffsberechtigungen werden protokolliert.
3. Jeder Mitarbeiter erhält nur die Zugriffsrechte, die er zur Aufgabenerfüllung benötigt (Need-to-know-Prinzip).
4. Es gibt ein dokumentiertes Verfahren zur Genehmigung und Deaktivierung von Zugriffsrechten.
5. Die Entsorgung von Unterlagen, Fehldrucken etc. erfolgt durch ein zertifiziertes Unternehmen.

g) Mandantentrennung

Es sind technische und organisatorische Maßnahmen zu treffen die gewährleisten, dass personenbezogene Daten unterschiedlicher juristischer Personen getrennt verarbeitet werden können.

Relevant für RZ-Dienstleistungen.

Getroffene Maßnahmen

1. Die Trennung der Verarbeitung der für unterschiedliche Zwecke erhobenen Daten erfolgt je nach Dienst und Kundenanforderung auf unterschiedliche Weise.
  - Logische Mandantentrennung
  - Physikalische Mandantentrennung
  - Trennung über Zugriffsberechtigungen
2. Es erfolgt eine Trennung zwischen Test- und Produktivdaten.

h) Weitergabekontrolle

Es sind technische und organisatorische Maßnahmen zu treffen, die gewährleisten,

- dass personenbezogene Daten bei der elektronischen Übertragung oder während ihres Transports oder ihrer Speicherung auf Datenträger nicht unbefugt gelesen, kopiert, verändert oder entfernt werden können und
- dass überprüft und festgestellt werden kann, an welcher Stelle eine Übermittlung personenbezogener Daten durch Einrichtungen zur Datenübertragung vorgesehen ist.

Relevant für RZ-Dienstleistungen.

Getroffene Maßnahmen

1. Die Vernichtung von Datenträgern bzw. mobilen Datenträgern erfolgt durch einen zertifizierten Entsorger.
2. Darüber hinaus findet grundsätzlich keine Weitergabe von personenbezogenen Daten statt.
3. Es werden keine Datenträger im Rahmen von Wartungs- oder Reparaturarbeiten an Dienstleister weitergegeben.

### **C. Maßnahmen zur Sicherstellung der Verfügbarkeit**

#### a) Verfügbarkeitskontrolle

Es sind technische und organisatorische Maßnahmen zu treffen, die gewährleisten, dass personenbezogene Daten gegen zufällige Zerstörung oder Verlust geschützt sind.

Relevant für RZ-Dienstleistungen.

Getroffene Maßnahmen

1. Die Verantwortlichkeiten bezüglich der Datensicherung sind verbindlich geregelt.
2. Folgende Maßnahmen gegen eine zufällige Zerstörung oder gegen einen Verlust der Daten stehen zur Verfügung und kommen je nach Dienst und Kundenvereinbarung zum Einsatz:
  - Speichernetzwerk (SAN/NAS)
  - Geografisch-getrennte Redundanz
  - Festplattenspiegelung (RAID)
  - Backupverfahren
  - Unterbrechungsfreie Stromversorgung
  - Überspannungsschutz
  - Löschanlage
3. Eine Datensicherung erfolgt in angemessenen Intervallen bzw. gemäß Vereinbarung mit dem Kunden.
4. Die Sicherungs-Daten werden vor Kenntnisnahme durch Dritte je nach Vereinbarung mit dem Kunden durch folgende Maßnahmen gesichert:
  - Verschlussenes Behältnis
  - Verschlussene Räumlichkeiten (im RZ Relevant des Unterauftragnehmers gemäß des Unteranhangs 2)

- Zugangs- und Zugriffsberechtigungen
- 5. Die Verfahren der Datensicherung werden regelmäßig auf ihre Wirksamkeit kontrolliert.
- 6. Bei der Datensicherung werden die gesetzlich vorgeschriebenen Speicherfristen entsprechend der Vorgabe des Kunden berücksichtigt.

#### **Unteranhang 2: Technische und organisatorische Maßnahmen**

Derzeit sind Unternehmen zur Durchführung des vereinbarten Auftrages als Unterauftragnehmer eingesetzt:

- BREKOM GmbH, Am Weser-Terminal 1, 28217 Bremen

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### 6.3 Bremer Lizenz für freie Softwarebibliotheken Version 1.0

[http://www1.osci.de/sixcms/media.php/13/Bremer\\_Lizenz.pdf](http://www1.osci.de/sixcms/media.php/13/Bremer_Lizenz.pdf)

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Bremer Lizenz für freie Softwarebibliotheken Version 1.0

Den Aufträgen des KoopA-ADV entsprechend wurden die Implementierungen der OSCI-Bibliothek

in JAVA und in .net erarbeitet und werden von der OSCI-Leitstelle

herausgegeben. Es kommt "Bremer Lizenz für freie Softwarebibliotheken" zum Einsatz, eine an das deutsche Haftungsrecht angepasste Open-Source-Lizenz.

Bremer Lizenz für freie Softwarebibliotheken Version 1.0

Präambel

Diese Lizenz ist bestimmt, eine freie Nutzung der OSCI-Bibliothek durch jedermann zu ermöglichen. Die OSCI-Bibliothek dient der Implementierung des Standards "OSCI-Transport".

OSCI-Transport wurde vom Bundesministerium des Innern als obligatorischer Standard für elektronische Transaktionen zwischen Bürger und Verwaltung eingestuft. Durch Umsetzung des Standards wird eine solche Transaktion in elektronisch gesteuerten Verwaltungsverfahren unabhängig von der verwendeten Technik ermöglicht. Die OSCI-Bibliothek

soll als implementiertes Produkt den Herstellern von Fachverfahren für die öffentliche Verwaltung dienen, ihre Programme schnell und mit geringem Aufwand OSCI-fähig zu machen. Um die Durchsetzung von OSCI-Transport über den Einsatz der Bibliothek zu realisieren, muss diese ohne weiteres verbreitet, angepasst, in andere Programme integriert und weiterentwickelt werden können. Den Lizenznehmern werden daher durch diese Lizenzbestimmungen Befugnisse eingeräumt, die weit über das hinausgehen, was den Lizenznehmern "proprietärer" Software erlaubt wird. Die Bezeichnung OSCI ist als Wortmarke der Freien Hansestadt Bremen beim Deutschen Patent- und Markenamt eingetragen.

Die Nutzung der OSCI-Bibliothek ist nur nach Maßgabe dieser Lizenzbestimmungen zulässig. Durch die nachfolgenden Lizenzbestimmungen wird jedermann ein einfaches Nutzungsrecht eingeräumt. Dieses erlaubt dem Lizenznehmer die freie Vervielfältigung, Verbreitung und Online-Zugänglichmachung sowie die freie Weiterentwicklung, Änderung und sonstige Bearbeitung der OSCI-Bibliothek. Um Veränderungen zu ermöglichen, wird der Quelltext der Bibliothek offengelegt Gegenstand der Lizenz sind dabei nur Nutzungshandlungen, die über eine bestimmungsgemäße Benutzung der OSCI-Bibliothek

einschließlich der Fehlerberichtigung, die Herstellung einer Sicherheitskopie oder die Dekompilierung zur Herstellung von Interoperabilität mit anderen Programmen hinausgehen. Für solche Nutzungshandlungen ist ein Rechtserwerb nicht notwendig, da diese bereits durch die Bestimmungen des Urheberrechtsgesetzes gestattet werden.

Die Lizenzbestimmungen führen im Übrigen nicht zu einem Verzicht der Lizenzgeber auf ihre Rechte an der OSCI-Bibliothek. Vielmehr wird durch deren Annahme ein Lizenzvertrag geschlossen, der dem Lizenznehmer auch Pflichten auferlegt. Hierzu gehört vor allem, dass der Lizenznehmer bearbeitete Versionen der OSCI-Bibliothek wiederum diesen Lizenzbestimmungen unterstellen muss ("Copyleft"). Verstößt der Lizenznehmer gegen seine Pflichten, erlöschen seine Nutzungsrechte an der OSCI-Bibliothek.

### Abschnitt 1: Definitionen

- (1) Lizenzgeber: Jeder Inhaber ausschließlicher Schutzrechte an der Bibliothek.
- (2) Lizenznehmer: Jeder, der die Bibliothek nach Maßgabe dieser Lizenzbestimmungen verwertet.
- (3) Schutzrechte: Ausschließlichkeitsrechte jeglicher Art, die an der Bibliothek bestehen, z.B. Urheberrechte, Patente oder Markenrechte.
- (4) Bibliothek: Die OSCI-Bibliothek einschließlich aller zugehörigen Module, Dateien zur Definition von Schnittstellen sowie Skripte, die für die Steuerung der Compilation und die Installation der Bibliothek verwendet werden. Keine Anwendung findet die Lizenz auf den in der Klasse `de.osci.helper.IS08601DateTimeFormat.java` enthaltenen Code der Software "Skaringa". Dieser steht unter der "Skaringa-License" deren Regelungen bei einer Verwertung der genannten Klasse zu beachten sind.
- (5) Vollständiger Quelltext: Der gesamte Quelltext aller Bestandteile der Bibliothek.
- (6) Verwerten: Jedes Vervielfältigen, Verbreiten und öffentliche (Online-) Zugänglichmachen der Bibliothek, soweit diese Nutzungshandlungen über die bestimmungsgemäße Benutzung der Bibliothek einschließlich der Fehlerberichtigung, die Herstellung einer Sicherheitskopie, oder die Dekompilierung zur Herstellung von Interoperabilität mit anderen Programmen hinausgehen.
- (7) Bearbeitung: Jede Form der Änderung der Bibliothek, z.B. eine Kompilierung oder Kürzung des Quelltextes oder das Hinzufügen von Quelltext soweit es sich nicht um eine bloße Zusammenstellung nach § 5 Absatz 2 handelt.
- (8) Bearbeiter: Jeder der eine Bearbeitung an der Bibliothek vornimmt und an der Bearbeitung ein Schutzrecht erwirbt.

### Abschnitt 2: Nutzungsrechtseinräumungen

## § 1 Vertragsschluss

(1) Der Lizenzgeber erklärt mit diesen Lizenzbestimmungen gegenüber jedermann ein Angebot zum Abschluss eines Lizenzvertrages über die Einräumung von Nutzungsrechten an der Bibliothek nach Maßgabe der nachfolgenden Bestimmungen. Der Vertrag kommt zustande, wenn der Lizenznehmer die Bibliothek verwertet. Die Annahmeerklärung muss dem Lizenzgeber nicht zugehen.

(2) Der Lizenzvertrag kommt stets zwischen dem ursprünglichen Lizenzgeber und dem Lizenznehmer zustande, auch wenn der Lizenznehmer die Bibliothek von einem Dritten erlangt.

## § 2 Rechte zur unveränderten Verwertung des Quelltextes

(1) Mit Zustandekommen des Lizenzvertrages werden dem Lizenznehmer lizenzgebührenfrei einfache, räumlich und zeitlich unbeschränkte Rechte eingeräumt, den vollständigen Quelltext der OSCI-Bibliothek, so wie er ihn bekommen hat, zu verwerten. Diese Nutzungsrechte sind nicht übertragbar.

Der Lizenznehmer darf entgeltliche Leistungen anbieten, die mit der Bibliothek in Zusammenhang stehen, wie z.B. das Anbieten von Beratungsleistungen oder den Verkauf von Datenträgern, auf denen die Bibliothek enthalten ist.

(3) Der Lizenznehmer darf die Bezeichnung "OSCI" in Zusammenhang mit der Verwertung der unveränderten Bibliothek verwenden.

## § 3 Rechte zur Erstellung und Verwertung von Bearbeitungen des Quelltextes

(1) Der Lizenznehmer erhält das Recht, den Quelltext der OSCI-Bibliothek, so wie er ihn erhalten hat, auf beliebige Weise zu bearbeiten. Bearbeitungen der Bibliothek dürfen nicht die Urheberpersönlichkeitsrechte der Schöpfer verletzen.

(2) Der Lizenznehmer darf die Bearbeitungen der Bibliothek unter Beachtung der Pflichten aus Abschnitt 3 dieser Lizenzbestimmungen verwerten. Der Lizenznehmer darf für die Nutzung der Bearbeitung keine Lizenzgebühren verlangen. In Bezug auf das Angebot anderer entgeltlicher Leistungen im Zusammenhang mit einer Bearbeitung gilt § 2 Absatz 2 entsprechend.

(3) Die Bezeichnung "OSCI" darf, gleich ob alleinstehend oder mit Zusätzen, zur Bezeichnung oder Bewerbung von Bearbeitungen der Bibliothek nur verwendet werden, wenn die Freie Hansestadt Bremen dem vorher ausdrücklich in schriftlicher Form zugestimmt hat. Anfragen auf die Erteilung solcher Zustimmungen können an die Adresse [bibliothek@osci.de](mailto:bibliothek@osci.de) gerichtet werden.

## § 4 Rechte zur Verwertung im Objektcode oder in ausführbarer Form

Der Lizenznehmer darf die unveränderte oder bearbeitete Bibliothek ganz oder in Teilen nach Maßgabe der §§ 1 und 2 dieser Lizenzbestimmungen auch in Objektcode-Form oder in

ausführbarer Form verwerten, soweit er hierbei die Pflichten des 3. Abschnitts beachtet.

#### § 5 Rechte zur Verwertung von Gesamtprogrammen

(1) Der Lizenznehmer darf die Bibliothek mit anderen eigenständigen Programmen, die nicht unter diesen Lizenzbestimmungen zu stehen brauchen, zu einem Gesamtprogramm kombinieren und dieses Gesamtprogramm verwerten.

(2) Bei einer Verwertung der Bibliothek im Rahmen eines Gesamtprogramms kommen diese Lizenzbestimmungen nur für die Bibliothek selbst, nicht aber für das Gesamtprogramm insgesamt oder das mit der Bibliothek kombinierte Programm zur Anwendung. Etwas anderes gilt nur dann, wenn sich das Gesamtprogramm als Bearbeitung der Bibliothek darstellt. In diesem Fall darf das Gesamtprogramm entsprechend § 8 Absatz 1 nur unter diesen Lizenzbestimmungen verwertet werden. Das Gesamtprogramm stellt solange keine Bearbeitung der Bibliothek dar, wie der Quelltext der Bibliothek und der Quelltext anderer Teile des Gesamtprogramms in unterschiedlichen Dateien gespeichert sind.

#### § 6 Rechte zur Verwendung des Lizenztextes

(1) Der Lizenznehmer darf den Lizenztext in unveränderter Form für die Verwertung der OSCI-Bibliothek verbreiten, vervielfältigen und der Öffentlichkeit zugänglich machen.

(2) Bearbeiter der Bibliothek dürfen ihre bearbeitete Version der Bibliothek dem Lizenztext in unveränderter Form nur unterstellen, wenn Ihnen die Verwendung der Bezeichnung "OSCI" gemäß § 3 Absatz 3 Satz 1 dieser Lizenzbestimmungen gestattet ist. Bearbeiter, die nicht über eine Zustimmung gemäß § 3 Absatz 3 Satz 1 verfügen, müssen die Bezeichnung "OSCI" aus dem Lizenztext entfernen, ohne den Inhalt der Lizenzbestimmungen- vor allem die Rechte und Pflichten- dabei zu ändern (§ 8 Absatz 1 Satz 1).

(3) Es ist jedermann gestattet, den Lizenztext für die Verwertung von anderen Programmen als der OSCI-Bibliothek nach Maßgabe des Absatzes 1 zu nutzen und für solche Zwecke beliebig anzupassen und zu verändern. Wird der Lizenztext, gleich ob in ursprünglicher oder veränderter Form, für die Verwertung anderer Programme genutzt, darf die Bezeichnung "OSCI" hierin nicht enthalten sein.

### Abschnitt 3: Nutzerpflichten

#### § 7 Pflichten bei der Verwertung des unveränderten Quelltextes

(1) Verbreitet der Lizenznehmer Vervielfältigungsstücke der Bibliothek hat er jedem Vervielfältigungsstück eine Kopie dieser Lizenzbestimmungen beizufügen. Macht er die Bibliothek online zugänglich, sind diese Lizenzbestimmungen in gleicher Weise für jedermann frei und ohne Einschränkung bereitzuhalten. An jedem Vervielfältigungsstück der Bibliothek ist ein deutlicher Hinweis auf den Fundort der Lizenzbestimmungen anzubringen.

(2) In jedem Fall der Verfügbarmachung der Bibliothek an einen Dritten ist durch einen

ausdrücklichen, deutlich sichtbaren Vermerk auf die Geltung dieser Lizenzbestimmungen hinzuweisen. Die Hinweise, die der Quelltext der Bibliothek auf die Urheber, die Inhaber der ausschließlichen Rechte und die Geltung dieser Lizenzbestimmungen enthält, dürfen vom Lizenznehmer nicht verändert werden.

#### § 8 Zusätzliche Pflichten bei der Verwertung von Bearbeitungen

(1) Erwirbt der Lizenznehmer an einer Bearbeitung der Bibliothek ein Urheberrecht, ist dessen Verwertung nur gestattet, wenn der Lizenznehmer die Bearbeitung wiederum diesen Lizenzbestimmungen unterstellt. Der Bearbeiter darf einzelne sprachliche Anpassungen der Lizenzbestimmungen vornehmen, soweit er hierzu aufgrund der Bestimmungen in § 3 Absatz 3 Satz 1 und § 6 Absatz 2 verpflichtet ist. Inhaltliche Änderungen der Lizenzbestimmungen sind dem Bearbeiter dagegen nicht gestattet.

Sonstige Schutzrechte (z.B. Patente oder Markenrechte), die der Lizenznehmer im Zusammenhang mit einer Bearbeitung oder Verwertung der Bibliothek erwirbt, dürfen nicht eingesetzt werden, um Beschränkungen der Rechte aus dieser Lizenz oder weitere Verpflichtungen der Nutzer der Bibliothek herbeizuführen.

(3) Bei der Verwertung von Bearbeitungen der Bibliothek sind die Änderungen durch einen auffälligen Vermerk im Quelltext kenntlich zu machen. Aus dem Vermerk muss sich ergeben, welche Modifikationen zu welchem Zeitpunkt vorgenommen wurden. Der Bearbeiter kann in diesem Vermerk auf seine Autorenschaft hinweisen.

#### § 9 Besondere Pflichten bei der Verwertung in Objektcode-Form oder in ausführbarer Form

(1) Verwertet der Lizenznehmer die Bibliothek in Objektcode-Form oder in ausführbarer Form ist er verpflichtet, gleichzeitig den vollständigen maschinenlesbaren Quelltext der Bibliothek wie er ihn erhalten hat, auf einem Medium beizufügen, das üblicherweise zum Austausch von Software benutzt wird.

(2) Statt gemäß Absatz 1 den vollständigen Quelltext beizufügen, genügt es, wenn bei der Verbreitung oder sonstigen Verfügbarmachung (z.B. zum Download) der Bibliothek in Objektcode-Form oder in ausführbarer Form jedem Vervielfältigungsstück entweder:

a) ein mindestens 3 Jahre gültiges Angebot auf Zusendung des vollständigen Quelltextes auf einem Medium beigefügt wird, das üblicherweise zum Speichern von Software benutzt wird, wobei die Kosten der Zusendung die Selbstkosten für den Datenträger und den Versand nicht überschreiten dürfen; oder

b) ein deutlicher Hinweis auf eine allgemein zugängliche Internet-Adresse angebracht wird, unter der jedermann den vollständigen Quelltext kostenfrei herunterladen kann.

#### § 10 Zusätzliche Pflichten bei der Verwertung in Gesamtprogrammen

(1) In jedem Fall der Verwertung der Bibliothek im Rahmen eines Gesamtprogramms gem. § 5 dieser Lizenzbestimmungen hat der Lizenznehmer- neben den sonstigen aus den §§ 7-9



bestehenden Verpflichtungen - durch einen deutlichen Hinweis darauf aufmerksam zu machen, dass die Bibliothek in dem Gesamtprogramm enthalten ist und dass diese nur unter den vorliegenden Lizenzbestimmungen verwertet werden darf.

(2) Wenn das Gesamtprogramm während des Ablaufs Urheberrechtshinweise anzeigt, müssen die Hinweise auf die Urheber und die Inhaber der Nutzungsrechte an der OSCI-Bibliothek,

wie sie der Lizenznehmer vorgefunden hat, ebenfalls angezeigt werden.

(3) Wendet der Lizenznehmer auf die Bibliothek oder ein Gesamtprogramm technische Schutzmaßnahmen (z.B. Kopierschutzsysteme) an und werden dadurch Verwertungen der unveränderten

oder bearbeiteten - Bibliothek, die nach diesen Lizenzbestimmungen

jedermann gestattet sind, faktisch verhindert, ist er entsprechend den Regelungen in §- 9 dieser Lizenzbestimmungen verpflichtet, den vollständigen Quelltext jedermann verfügbar zu machen und gegebenenfalls auf den Fundort hinzuweisen. Zugangsbeschränkungen für Intranets gelten nicht als "technische Maßnahmen" im Sinne des Satzes 1.

Abschnitt 4: Abweichungen von den Lizenzbestimmungen und Erlöschen der Rechte

#### § 11 Sondervereinbarungen

Abweichungen von diesen Lizenzbestimmungen sind möglich, wenn zwischen dem Lizenzgeber und dem Lizenznehmer besondere schriftliche Vereinbarungen abgeschlossen werden. Diesbezügliche Anfragen können an die Adresse [bibliothek@osci.de](mailto:bibliothek@osci.de) gerichtet werden.

#### § 12 Rechte Dritter und staatliche Verbote

Ist der Lizenznehmer aufgrund der Rechte Dritter oder staatlicher Verbote verpflichtet, bei der Verwertung der Bibliothek von den Regelungen dieser Lizenzbestimmungen ganz oder teilweise abzuweichen, ist ihm die Verwertung der Bibliothek insgesamt untersagt.

#### § 13 Erlöschen der Rechte bei Verstoß gegen die Lizenzbestimmungen

(1) Verstößt der Lizenznehmer gegen diese Lizenzbestimmungen, erlöschen seine Nutzungsrechte an der Bibliothek unmittelbar mit Wirkung auch für die Vergangenheit.

(2) Das Erlöschen der Nutzungsrechte nach Absatz 1 hat auf die Rechte anderer Nutzer keinen Einfluss, solange diese selbst die Lizenzbestimmungen nicht verletzen.

#### Abschnitt 4: Haftung und Gewährleistung

##### § 14 Haftung und Gewährleistung des Lizenzgebers

Im Verhältnis zwischen Lizenzgeber und Lizenznehmer sind Haftung und Gewährleistung des Lizenzgebers auf Vorsatz und grobe Fahrlässigkeit beschränkt. Soweit nach dem Gesetz eine Gewährleistung des Lizenzgebers nur bei einem arglistigen Verschweigen von Mängeln vorgesehen ist, gelten die gesetzlichen Regelungen.

## Abschnitt 5: Sonstige Klauseln

### § 15 Anwendbares Recht, Gerichtsstand

(1) Auf diese Lizenzbestimmungen findet deutsches Recht Anwendung.

(2) Soweit die Lizenznehmer Kaufleute, juristische Personen des öffentlichen Rechts oder öffentlich-rechtliche Sondervermögen sind, ist der Gerichtsstand Bremen.

### § 16 Salvatorische Klausel

Stellt sich eine der vorstehenden Klauseln als unwirksam heraus, berührt dies die Wirksamkeit dieser Lizenzbestimmungen im Übrigen nicht.

## Anhang: Wie wird die OSCI-Bibliothek unter die Bremer Lizenz für freie Softwarebibliotheken gestellt?

Um jedermann die Rechte zur freien Nutzung der OSCI-Bibliothek nach Maßgabe dieser Lizenzbestimmungen verschaffen zu können, ist an jedem Vervielfältigungsstück der OSCI-Bibliothek

der nachstehende Hinweis auf die Geltung dieser Lizenz und deren Fundort in deutlich sichtbarer Form anzubringen. Zudem ist der folgende Vermerk beizufügen, der den Inhaber der ausschließlichen Nutzungsrechte, den Ersteller von Bibliothek und Lizenztext und das Jahr der Erstveröffentlichung bezeichnet. Seine Hinweise sollten am Anfang jeder Quelltext Datei stehen.

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Die Lizenzbedingungen können unter der URL [www.osci.de](http://www.osci.de) abgerufen oder bei der OSCI-Leitstelle,

Senator für Finanzen, Freie Hansestadt Bremen, Postfach 10 15 40, 28015

Bremen schriftlich angefordert werden.

Der Lizenztext wurde von Till Kreutzer, Institut für Rechtsfragen der Freien und Open Source Software (ifrOSS), entwickelt."

## 6.4 Bremer Lizenz für freie Softwarebibliotheken (DVDV)

Version 1.1

### Präambel

Diese Lizenz ist bestimmt, eine freie Nutzung der DVDV-Bibliothek durch jedermann zu ermöglichen.

Zweck der DVDV-Bibliothek ist es, Softwareentwickler von Fachverfahren oder Anwendungsprogrammen bei der Integration von Anfragen an das Deutsche Verwaltungsdienstverzeichnis (DVDV) zu unterstützen. Die DVDV-Bibliothek bietet Funktionalitäten in Form von Java-Klassen und –Methoden, um möglichst komfortabel Anfragen ans DVDV zu formulieren und die Antworten des Verzeichnisses auszuwerten. Die Bibliothek entlastet den Softwareentwickler so weit möglich von der Programmierung zur Kommunikationsinfrastruktur oder XML-Nachrichtenformaten. Es werden sowohl Einzelanfragen als auch eine Stapel-Verarbeitung unterstützt.

Die DVDV-Bibliothek kann entweder als direkt nutzbare Programmierschnittstelle unverändert verwendet werden, oder die Quellen der Implementierung können ganz oder in Teilen als Muster für die eigene Integrationsprogrammierung dienen. Die Programmierschnittstelle macht keine Vorgaben hinsichtlich Laufzeit-Architektur des nutzenden Java-Programms; die Bibliothek kann eingebunden werden in einfache Java-Batchprozesse (Applications) oder als Services eines J2EEContainers den eigenen Anwendungsprogrammen zugänglich gemacht werden.

Die Kommunikation von Klientensystemen (Fachverfahren oder Anwendungsprogrammen) mit dem Deutschen Verwaltungsdienstverzeichnis erfolgt über OSCI-Transport 1.2. Zu diesem Zweck stützt sich die DVDV-Bibliotheksimplementierung auf die Java-Version der OSCI-Bibliothek des KoopA [OSCIBib]. Im Sinne eines Schichtenmodells bildet die DVDV-Bibliothek daher eine spezielle Anwendungsebene oberhalb der OSCI-Transport-Kommunikation. Die Programmierschnittstelle abstrahiert – so weit möglich – von den darunter liegenden Kommunikationsmechanismen.

Die Nutzung der DVDV-Bibliothek ist nur nach Maßgabe dieser Lizenzbestimmungen zulässig. Durch die nachfolgenden Lizenzbestimmungen wird jedermann ein einfaches Nutzungsrecht eingeräumt. Dieses erlaubt dem Lizenznehmer die freie Vervielfältigung, Verbreitung und Online-Zugänglichmachung sowie die freie Weiterentwicklung, Änderung und sonstige Bearbeitung der DVDV-Bibliothek. Um Veränderungen zu ermöglichen, wird der Quelltext der Bibliothek offen gelegt. Gegenstand der Lizenz sind dabei nur Nutzungshandlungen, die über eine bestimmungsgemäße Benutzung der DVDV-Bibliothek einschließlich der Fehlerberichtigung, die Herstellung einer Sicherheitskopie oder die Dekompilierung zur Herstellung von Interoperabilität mit anderen Programmen hinausgehen. Für solche Nutzungshandlungen ist ein Rechtserwerb nicht notwendig, da diese bereits durch die Bestimmungen des Urheberrechtsgesetzes gestattet werden.

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Bezüglich der Nutzung der OSCI-Bibliothek wird auf die Bremer Lizenz für freie Softwarebibliotheken (OSCI-Bibliothek) verwiesen. Diese kann unter der URL [www.osci.de](http://www.osci.de) abgerufen oder bei der OSCI-Leitstelle, Senator für Finanzen, Freie Hansestadt Bremen, Postfach 10 15 40, 28015 Bremen schriftlich angefordert werden.

### **Abschnitt 1: Definitionen**

- (1) Lizenzgeber: Jeder Inhaber ausschließlicher Schutzrechte an der Bibliothek.
- (2) Lizenznehmer: Jeder, der die Bibliothek nach Maßgabe dieser Lizenzbestimmungen verwertet.
- (3) Schutzrechte: Ausschließlichkeitsrechte jeglicher Art, die an der Bibliothek bestehen, z.B. Urheberrechte, Patente oder Markenrechte.
- (4) Bibliothek: Die DVDV-Bibliothek einschließlich aller zugehörigen Module, Dateien zur Definition von Schnittstellen sowie Skripte, die für die Steuerung der Compilation und die Installation der Bibliothek verwendet werden. Keine Anwendung findet die Lizenz auf den enthaltenen Code anderer Hersteller. Hier gelten die Lizenzbedingungen der jeweiligen Hersteller, deren Regelungen bei einer Verwertung des Codes zu beachten sind.
- (5) Vollständiger Quelltext: Der gesamte Quelltext aller Bestandteile der Bibliothek.
- (6) Verwerten: Jedes Vervielfältigen, Verbreiten und öffentliche (Online-) Zugänglichmachen der Bibliothek, soweit diese Nutzungshandlungen über die bestimmungsgemäße Benutzung der Bibliothek einschließlich der Fehlerberichtigung, die Herstellung einer Sicherheitskopie, oder die Dekompilierung zur Herstellung von Interoperabilität mit anderen Programmen hinausgehen.
- (7) Bearbeitung: Jede Form der Änderung der Bibliothek, z.B. eine Kompilierung oder Kürzung des Quelltextes oder das Hinzufügen von Quelltext soweit es sich nicht um eine bloße Zusammenstellung nach § 5 Absatz 2 handelt.
- (8) Bearbeiter: Jeder der eine Bearbeitung an der Bibliothek vornimmt und an der Bearbeitung ein Schutzrecht erwirbt.

### **Abschnitt 2: Nutzungsrechtseinräumungen**

#### **§ 1 Vertragsschluss**

- (1) Der Lizenzgeber erklärt mit diesen Lizenzbestimmungen gegenüber jedermann ein Angebot zum Abschluss eines Lizenzvertrages über die Einräumung von Nutzungsrechten an der Bibliothek nach Maßgabe der nachfolgenden Bestimmungen. Der Vertrag kommt zustande, wenn der Lizenznehmer die Bibliothek verwertet. Die Annahmeerklärung muss dem Lizenzgeber nicht zugehen.
- (2) Der Lizenzvertrag kommt stets zwischen dem ursprünglichen Lizenzgeber und dem Lizenznehmer zustande, auch wenn der Lizenznehmer die Bibliothek von einem Dritten erlangt.

#### **§ 2 Rechte zur unveränderten Verwertung des Quelltextes**

- (1) Mit Zustandekommen des Lizenzvertrages werden dem Lizenznehmer lizenzgebührenfrei einfache, räumlich und zeitlich unbeschränkte Rechte eingeräumt, den vollständigen Quelltext der DVDV-Bibliothek, so wie er ihn bekommen hat, zu verwerten. Diese Nutzungsrechte sind nicht übertragbar.

(2) Der Lizenznehmer darf entgeltliche Leistungen anbieten, die mit der Bibliothek in Zusammenhang stehen, wie z.B. das Anbieten von Beratungsleistungen oder den Verkauf von Datenträgern, auf denen die Bibliothek enthalten ist.

(3) Der Lizenznehmer darf die Bezeichnung „DVDV“ in Zusammenhang mit der Verwertung der unveränderten Bibliothek verwenden.

### **§ 3 Rechte zur Erstellung und Verwertung von Bearbeitungen des Quelltextes**

(1) Der Lizenznehmer erhält das Recht, den Quelltext der DVDV-Bibliothek, so wie er ihn erhalten hat, auf beliebige Weise zu bearbeiten. Bearbeitungen der Bibliothek dürfen nicht die Urheberpersönlichkeitsrechte der Schöpfer verletzen.

(2) Der Lizenznehmer darf die Bearbeitungen der Bibliothek unter Beachtungen der Pflichten aus Abschnitt 3 dieser Lizenzbestimmungen verwerten. Der Lizenznehmer darf für die Nutzung der Bearbeitung keine Lizenzgebühren verlangen. In Bezug auf das Angebot anderer entgeltlicher Leistungen im Zusammenhang mit einer Bearbeitung gilt § 2 Absatz 2 entsprechend.

(3) Die Bezeichnung "DVDV" darf, gleich ob allein stehend oder mit Zusätzen, zur Bezeichnung oder Bewerbung von Bearbeitungen der Bibliothek nur verwendet werden, wenn das Informationstechnikzentrum Bund dem vorher ausdrücklich in schriftlicher Form zugestimmt hat. Anfragen auf die Erteilung solcher Zustimmungen können an die Adresse [dvdv@itzbund.de](mailto:dvdv@itzbund.de) gerichtet werden.

### **§ 4 Rechte zur Verwertung im Objektcode oder in ausführbarer Form**

Der Lizenznehmer darf die unveränderte oder bearbeitete Bibliothek ganz oder in Teilen nach Maßgabe der §§ 1 und 2 dieser Lizenzbestimmungen auch in Objektcode-Form oder in ausführbarer Form verwerten, soweit er hierbei die Pflichten des 3. Abschnitts beachtet.

### **§ 5 Rechte zur Verwertung von Gesamtprogrammen**

(1) Der Lizenznehmer darf die Bibliothek mit anderen eigenständigen Programmen, die nicht unter diesen Lizenzbestimmungen zu stehen brauchen, zu einem Gesamtprogramm kombinieren und dieses Gesamtprogramm verwerten.

(2) Bei einer Verwertung der Bibliothek im Rahmen eines Gesamtprogramms kommen diese Lizenzbestimmungen nur für die Bibliothek selbst, nicht aber für das Gesamtprogramm insgesamt oder das mit der Bibliothek kombinierte Programm zur Anwendung. Etwas anderes gilt nur dann, wenn sich das Gesamtprogramm als Bearbeitung der Bibliothek darstellt. In diesem Fall darf das Gesamtprogramm entsprechend § 8 Absatz 1 nur unter diesen Lizenzbestimmungen verwertet werden. Das Gesamtprogramm stellt solange keine Bearbeitung der Bibliothek dar, wie der Quelltext der Bibliothek und der Quelltext anderer Teile des Gesamtprogramms in unterschiedlichen Dateien gespeichert sind.

### **§ 6 Rechte zur Verwendung des Lizenztextes**

(1) Der Lizenznehmer darf den Lizenztext in unveränderter Form für die Verwertung der DVDV-Bibliothek verbreiten, vervielfältigen und der Öffentlichkeit zugänglich machen.

(2) Bearbeiter der Bibliothek dürfen ihre bearbeitete Version der Bibliothek dem Lizenztext in unveränderter Form nur unterstellen, wenn Ihnen die Verwendung der Bezeichnung "DVDV" gemäß § 3 Absatz 3 Satz 1 dieser Lizenzbestimmungen gestattet ist. Bearbeiter, die nicht über eine Zustimmung gemäß § 3 Absatz 3 Satz 1 verfügen, müssen die Bezeichnung "DVDV" aus dem Lizenztext entfernen, ohne den Inhalt der Lizenzbestimmungen – vor allem die Rechte und Pflichten - dabei zu ändern (§ 8 Absatz 1 Satz 1).

(3) Es ist jedermann gestattet, den Lizenztext für die Verwertung von anderen Programmen als der DVDV-Bibliothek nach Maßgabe des Absatzes 1 zu nutzen und für solche Zwecke

beliebig anzupassen und zu verändern. Wird der Lizenztext, gleich ob in ursprünglicher oder veränderter Form, für die Verwertung anderer Programme genutzt, darf die Bezeichnung "DVDV" hierin nicht enthalten sein.

### **Abschnitt 3: Nutzerpflichten**

#### **§ 7 Pflichten bei der Verwertung des unveränderten Quelltextes**

(1) Verbreitet der Lizenznehmer Vervielfältigungsstücke der Bibliothek hat er jedem Vervielfältigungsstück eine Kopie dieser Lizenzbestimmungen beizufügen. Macht er die Bibliothek online zugänglich, sind diese Lizenzbestimmungen in gleicher Weise für jedermann frei und ohne Einschränkung bereitzuhalten. An jedem Vervielfältigungsstück der Bibliothek ist ein deutlicher Hinweis auf den Fundort der Lizenzbestimmungen anzubringen.

(2) In jedem Fall der Verfügbarmachung der Bibliothek an einen Dritten ist durch einen ausdrücklichen, deutlich sichtbaren Vermerk auf die Geltung dieser Lizenzbestimmungen hinzuweisen. Die Hinweise, die der Quelltext der Bibliothek auf die Urheber, die Inhaber der ausschließlichen Rechte und die Geltung dieser Lizenzbestimmungen enthält, dürfen vom Lizenznehmer nicht verändert werden.

#### **§ 8 Zusätzliche Pflichten bei der Verwertung von Bearbeitungen**

(1) Erwirbt der Lizenznehmer an einer Bearbeitung der Bibliothek ein Urheberrecht, ist dessen Verwertung nur gestattet, wenn der Lizenznehmer die Bearbeitung wiederum diesen Lizenzbestimmungen unterstellt. Der Bearbeiter darf einzelne sprachliche Anpassungen der Lizenzbestimmungen vornehmen, soweit er hierzu aufgrund der Bestimmungen in § 3 Absatz 3 Satz 1 und § 6 Absatz 2 verpflichtet ist. Inhaltliche Änderungen der Lizenzbestimmungen sind dem Bearbeiter dagegen nicht gestattet.

(2) Sonstige Schutzrechte (z.B. Patente oder Markenrechte), die der Lizenznehmer im Zusammenhang mit einer Bearbeitung oder Verwertung der Bibliothek erwirbt, dürfen nicht eingesetzt werden, um Beschränkungen der Rechte aus dieser Lizenz oder weitere Verpflichtungen der Nutzer der Bibliothek herbeizuführen.

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#### **§ 9 Besondere Pflichten bei der Verwertung in Objektcode-Form oder in ausführbarer Form**

(1) Verwertet der Lizenznehmer die Bibliothek in Objektcode-Form oder in ausführbarer Form ist er verpflichtet, gleichzeitig den vollständigen maschinenlesbaren Quelltext der Bibliothek wie er ihn erhalten hat, auf einem Medium beizufügen, das üblicherweise zum Austausch von Software benutzt wird.

(2) Statt gemäß Absatz 1 den vollständigen Quelltext beizufügen, genügt es, wenn bei der Verbreitung oder sonstigen Verfügbarmachung (z.B. zum Download) der Bibliothek in Objektcode-Form oder in ausführbarer Form jedem Vervielfältigungsstück entweder:

a. ein mindestens 3 Jahre gültiges Angebot auf Zusendung des vollständigen Quelltextes auf einem Medium beigelegt wird, das üblicherweise zum Speichern von Software benutzt wird, wobei die Kosten der Zusendung die Selbstkosten für den Datenträger und den Versand nicht überschreiten dürfen; oder

b. ein deutlicher Hinweis auf eine allgemein zugängliche Internet-Adresse angebracht wird, unter der jedermann den vollständigen Quelltext kostenfrei herunterladen kann.

## **§ 10 Zusätzliche Pflichten bei der Verwertung in Gesamtprogrammen**

(1) In jedem Fall der Verwertung der Bibliothek im Rahmen eines Gesamtprogramms gem. § 5 dieser Lizenzbestimmungen hat der Lizenznehmer – neben den sonstigen aus den §§ 7-9 bestehenden Verpflichtungen - durch einen deutlichen Hinweis darauf aufmerksam zu machen, dass die Bibliothek in dem Gesamtprogramm enthalten ist und dass diese nur unter den vorliegenden Lizenzbestimmungen verwertet werden darf.

(2) Wenn das Gesamtprogramm während des Ablaufs Urheberrechtshinweise anzeigt, müssen die Hinweise auf die Urheber und die Inhaber der Nutzungsrechte an der DVDV-Bibliothek, wie sie der Lizenznehmer vorgefunden hat, ebenfalls angezeigt werden.

(3) Wendet der Lizenznehmer auf die Bibliothek oder ein Gesamtprogramm technische Schutzmaßnahmen (z.B. Kopierschutzsysteme) an und werden dadurch Verwertungen der - unveränderten oder bearbeiteten - Bibliothek, die nach diesen Lizenzbestimmungen jedermann gestattet sind, faktisch verhindert, ist er entsprechend den Regelungen in § 9 dieser Lizenzbestimmungen verpflichtet, den vollständigen Quelltext jedermann verfügbar zu machen und gegebenenfalls auf den Fundort hinzuweisen. Zugangsbeschränkungen für Intranets gelten nicht als "technische Maßnahmen" im Sinne des Satzes 1.

## **Abschnitt 4: Abweichungen von den Lizenzbestimmungen und Erlöschen der Rechte**

### **§ 11 Sondervereinbarungen**

Abweichungen von diesen Lizenzbestimmungen sind möglich, wenn zwischen dem Lizenzgeber und dem Lizenznehmer besondere schriftliche Vereinbarungen abgeschlossen werden. Diesbezügliche Anfragen können an die Adresse [dvdv@itzbund.de](mailto:dvdv@itzbund.de) gerichtet werden.

### **§ 12 Rechte Dritter und staatliche Verbote**

Ist der Lizenznehmer aufgrund der Rechte Dritter oder staatlicher Verbote verpflichtet, bei der Verwertung der Bibliothek von den Regelungen dieser Lizenzbestimmungen ganz oder teilweise abzuweichen, ist ihm die Verwertung der Bibliothek insgesamt untersagt.

### **§ 13 Erlöschen der Rechte bei Verstoß gegen die Lizenzbestimmungen**

(1) Verstößt der Lizenznehmer gegen diese Lizenzbestimmungen, erlöschen seine Nutzungsrechte an der Bibliothek unmittelbar mit Wirkung auch für die Vergangenheit.

(2) Das Erlöschen der Nutzungsrechte nach Absatz 1 hat auf die Rechte anderer Nutzer keinen Einfluss, solange diese selbst die Lizenzbestimmungen nicht verletzen.

## **Abschnitt 5: Haftung und Gewährleistung**

### **§ 14 Haftung und Gewährleistung des Lizenzgebers**

Im Verhältnis zwischen Lizenzgeber und Lizenznehmer sind Haftung und Gewährleistung des Lizenzgebers auf Vorsatz und grobe Fahrlässigkeit beschränkt. Soweit nach dem Gesetz eine Gewährleistung des Lizenzgebers nur bei einem arglistigen Verschweigen von Mängeln vorgesehen ist, gelten die gesetzlichen Regelungen.

Abschnitt 5: Sonstige Klauseln

### **§ 15 Anwendbares Recht, Gerichtsstand**

(1) Auf diese Lizenzbestimmungen findet deutsches Recht Anwendung.

(2) Soweit die Lizenznehmer Kaufleute, juristische Personen des öffentlichen Rechts oder öffentlich rechtliche Sondervermögen sind, ist der Gerichtsstand Köln.

### **§ 16 Salvatorische Klausel**

Stellt sich eine der vorstehenden Klauseln als unwirksam heraus, berührt dies die Wirksamkeit dieser Lizenzbestimmungen im Übrigen nicht.

### **Anhang: Wie wird die DVDV-Bibliothek unter die Bremer Lizenz für freie Softwarebibliotheken (DVDV) gestellt?**

Um jedermann die Rechte zur freien Nutzung der DVDV-Bibliothek nach Maßgabe dieser Lizenzbestimmungen verschaffen zu können, ist an jedem Vervielfältigungsstück der DVDV-Bibliothek der nachstehende Hinweis auf die Geltung dieser Lizenz und deren Fundort in deutlich sichtbarer Form anzubringen. Zudem ist der folgende Vermerk beizufügen, der den Inhaber der ausschließlichen Nutzungsrechte, den Ersteller von Bibliothek und Lizenztext und das Jahr der Erstveröffentlichung bezeichnet. Beide Hinweise sollten am Anfang jeder Quelltext Datei stehen.

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Informationstechnikzentrum Bund

Koordinierende Stelle DVDV

E-Mail: [dvdv@itzbund.de](mailto:dvdv@itzbund.de)

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Version 1.0

8/10/1999

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