

# Checklist I

## Choosing a DPSS contract template

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## Checklist I – Choosing a DPSS contract template

### A. General

No.	Questions about subject matter of contract	No	Yes	Applicable DPSS contract template
1.	Will the contract cover <b>only</b> : <ul style="list-style-type: none"> <li>• <b>customised software</b> to be owned by the service procurer and developed by the provider; and/or</li> <li>• a <b>complete system</b> (consisting of hardware and software) to be owned by the service procurer and procured from the provider; and/or</li> <li>• other <b>ICT goods/services under a work contract</b> (= work/outcome requiring acceptance, e.g. programming/adaptation of third-party software components or interfaces, complex parameterisation, development of a key plan)?</li> </ul>	↓	→	<b>WKV 1</b>
2.	Will the contract cover <b>only consultancy services</b> in the ICT domain (e.g. project management only, purely advisory support for software development or plans/concepts), for which the main requirement is a professional activity rather than a specific outcome?	↓	→	<b>DLV 2</b>
3.	Will the contract cover <b>only the purchase</b> (= with subsequent ownership) <b>of hardware/ICT infrastructure</b> (excluding software)?	↓	→	<b>HKV 3</b>
4.	Will the contract cover <b>only the licensing of standard software</b> to be used by the service procurer and paid for on a one-off or recurring basis (without transfer of ownership of the source code)?	↓	→	<b>SLV 4</b>

5. Will the contract cover only the maintenance of your own hardware and/or software maintenance and/or the provision of support services? ↓ → WPV 5

Did you answer "No" to all of the above questions or are you unsure about any of your answers? → → Take a look at the special cases in section B (especially regarding use of template CLV 6 for cloud/online services).

## B. Special cases (if the general checklist in section A has not provided a clear answer)

Questions about special cases	No	Yes	Applicable DPSS contract template/solution
1. Does the contract cover a <b>combination</b> of the subject matters listed in section A?	↓	→	<ul style="list-style-type: none"> <li>• If an additional service is generally only a very subordinate service, it is often acceptable to use the DPSS contract template for the main service. However, the additional service must always be specified in the contract document.</li> <li>• Subordinate, non-business-critical additional services such as ICT consulting can usually be added to the main service by mentioning them in the DPSS contract template, without the need for a separate DLV 2. Project management and support, for example, are typical additional services for WKV 1, and can also form part of a DLV 2 or the other contracts.</li> <li>• In the event of stand-alone but interdependent services, you should check whether two or more separate contracts can be drawn up. It is generally possible to combine a WPV 5 with an SLV 4, an HKV 3 and/or a WKV 1. Depending on the case, appropriate investment protection must be ensured, for example by ensuring that the costs for a prior WPV 1 are only paid with the periodic services under the WPV 5 or by agreeing security.</li> </ul>

		<ul style="list-style-type: none"> <li>• In the case of clearly separable, independent services, there is generally nothing to prevent the use of multiple contracts.</li> <li>• Merging two DPSS contract templates into a single contract is more challenging, and therefore requires particularly careful drafting and coordination, usually with legal assistance.</li> </ul>
<p>2. Does a specific contract in section A also require a prior, separate <b>project</b> that presupposes a successful inspection and acceptance of the project services to enable conclusion of the contract for the main service? (Example: The purchase of a software licence requires extensive interface adaptations and preliminary work for which the provider is to be responsible. Counter-example: A licensed software is to be installed at the service procurer's premises, involving a small amount of additional work. -&gt; The installation forms part of the SLV 4, possibly with minor additions.)</p>	<p>↓ →</p>	<ul style="list-style-type: none"> <li>• The conclusion of a WKV 1 for the project phase (usually a work contract) in addition to the conclusion of the contract for the main service must be examined. In the case of extensive preliminary work, care must again be taken to ensure appropriate investment protection, if necessary by calling in legal assistance.</li> <li>• If the focus is on the procurement of a complete system to be owned by the service procurer, the WKV 1 is often sufficient for the project phase too, as such contracts often include a prior project, which is already taken into account in this DPSS contract template.</li> </ul>
<p>3. Does the contract involve the creation/licensing and/or the maintenance or operation of business-critical ICT systems (hardware and/or software), the outsourcing of business-critical tasks or a legal transaction entailing considerable risks (especially financial, legal or reputational)?</p>	<p>↓ →</p>	<ul style="list-style-type: none"> <li>• In these cases, the DPSS contract templates and DPSS GTC 2025 can only represent an initial starting point in the contract drafting process and, where relevant, in the contract negotiations. However, they are no substitute for a thorough legal analysis and adaptation of the contracts to the individual case, undertaken as early as possible and with legal assistance.</li> <li>• In such cases, it is usually essential to specify key details in appendices to the contracts and to draft the contract carefully. Attention must also be paid to the necessary data and operational security and, where relevant, to</li> </ul>

ensuring the portability and continuity of the tasks/ICT solutions involved.

4. Does the contract involve the procurement of ICT goods/services via external networks, to be paid for periodically (keyword: cloud computing)? Such recurring services may include: the operation of software applications as a service (SaaS), outsourcing (including business process outsourcing, managed services), online services, operational services "as a service" (e.g. IaaS, PaaS, ASP), hosting and/or communication services, where (a) the provider makes resources, operational or other services, functionality and/or infrastructure available to the service procurer predominantly online; and/or (b) the service procurer's data is systematically stored and processed temporarily by the provider on external infrastructure, whether its own or acquired from third parties, for the purpose of providing an operational or other service.
- ↓ →
- The comments under B:3 above must be observed. Otherwise, the template **CLV 6** can be used.
  - It should be noted that, while some specific clauses for such services have been included in the DPSS GTC 2025, at this general level they may not be able to fully cover all conceivable scenarios for this group of services. It may therefore be necessary to check whether additions and adjustments need to be made in specific cases. Seek legal assistance with this where necessary. The WPV 5, possibly combined with an SLV 4 with recurring licence fees, will often be useful here as a rough basis for a contract. If implementation and transfer projects are also involved, the WKV 1 or DLV 2 should be used instead. In the case of contracts for online services, the following are particularly important:
    - (a) an appendix specifying the subject matter of the contract and describing in detail the functions and characteristics of the goods/services procured;
    - (b) an SLA appendix setting out the guaranteed service levels and in particular the availability and quality of the goods/services procured (e.g. also backed up by performance penalties such as contract penalties or bonus/malus provisions);
    - (c) explanations or appendices covering the measures taken with regard to data protection and information security, including resilience and business continuity processes. Under the DPSS GTC 2025, contract penalties are now also in place for breaches of data protection and information security obligations in

addition to cases of default and breaches of confidentiality obligations.

- Given the increased dependency on the provider that often exists with such goods/services (especially if they are not easily substitutable on the market and/or a transition to a new provider would be a lengthy process), particular care must be taken to ensure appropriate business continuity and, if possible, to ensure that the goods/services are returned to the service procurer or, if need be, to another external provider. It is often a good idea to require the provider to provide a certain amount of termination support in such transition phases (up to and including the temporary continuation of the goods/services until they are completely replaced and transitioned). At the end of the contract, if the provider defaults or goes bankrupt, problems with service provision can quickly arise. These can be mitigated by careful contract drafting, including specification of the support services required at the end of the contract.

**Did you answer "No" to all of the above questions or are you unsure about any of your answers?**

→

→ **Bespoke agreement (using the DPSS contract templates as, at most, an initial starting point). Legal assistance is recommended.**