Contract - K03

on

the development and delivery of an IT delivery for [...]

**concluded between**

(in the following referred to as the Customer)

**and**

 (in the following referred to as the Supplier)

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# Definitions

Acceptance Date

The date on which the Supplier passes the acceptance test for a Partial Delivery or a Separate Task, provided that the Customer subsequently approves the acceptance test for the Partial Delivery/the Separate Task in writing, or the Customer wrongfully deploys a Partial Delivery in whole or in part, cf. clause 13.2.

Activity Plan

Plan of activities and tasks agreed between the Parties to be performed in each Iteration. The Activity Plan forms part of Appendix 1.

Actual Change

The types of changes set out in clause 6.3.

Agile Adjustments

The types of changes set out in clause 6.2.

Agile Demonstrations

Agile Demonstrations are an integral part of the agile process. Agile Demonstrations are carried out on an ongoing basis in connection with the development process as part of each Iteration with a view to testing whether the acceptance criteria laid down for the services included in each Iteration have been complied with.

Agile Method

The method chosen and described in Appendix 7 regarding development of the Deliverables.

Business Objectives and Needs

The Customer's specific Business Objectives and Needs as set out in Appendix 3a.i and as specifically stated in the Customer's Statement of Needs, including the detailed specification of the requirements in connection with the planning of each Iteration.

Contract

This Contract with all its Appendices and any subsequent amendments and addenda.

Customised Software

Software not classified and recorded in Appendix 3 as Standard Software.

Defects

Where a Partial Delivery delivered fails to comply with the requirements and obligations stipulated in the Description of the Deliverables (except for Other Requirements lapsed before the Acceptance Date) and in the other provisions of the Contract, including the warranties provided by the Supplier, or where their quality or function does not meet the Customer's expectations based on the Contract, or where Good IT Practice has not been observed, unless only trivial matters are involved.

Any maintenance and, if relevant, Operation is defective if the services of the Supplier fail to comply with the requirements stipulated in the Contract, including the service level goals and the warranties provided by the Supplier, or if Good IT Practice has not been observed, unless only trivial deviations are involved.

See also the definition of Faults.

Deliverables

Any services to be delivered by the Supplier in pursuance of the Contract on or before the Acceptance Date of the last Partial Delivery in the Project. These include, but are not limited to, the Supplier's management of the Project, advisory services, resource consumption management, reporting, quality assurance, Software, equipment, Documentation, implementation, training and other services to be provided on or before the Acceptance Date. Neither Operation nor maintenance and support are included in the Deliverables even if carried out prior to the Acceptance Date.

Delivery Plan

Schedule of the activities and tasks laid down by the Parties to be carried out in a Partial Delivery. The Delivery Plan forms part of Appendix 1.

Dependencies

Functional and commercial dependencies between Mandatory Requirements stated explicitly by the Customer in Appendix 3.a.ii prior to conclusion of the Contract.

Deployment Date

The date on which the Customer first uses a Partial Delivery for the day-to-day execution of its business tasks.

Description of the Deliverables

Comprises, at the time of conclusion of the Contract, the Customer's Statement of Needs and the Supplier's Overall Solution Description. The description of the Deliverables is to be adjusted on an ongoing basis in connection with the completion of the Project as part of the application of the Agile Method, cf. clauses 5 and 6.

Documentation

Any description related to the Deliverables, including User Documentation and System Documentation, cf. Appendix 4.

Fault List

A list of Faults noted in connection with a test, cf. clause 7.2.1.

Faults

Where a Partial Delivery delivered fails to comply with the requirements and obligations stipulated in the Description of the Deliverables (except for Other Requirements lapsed before the Acceptance Date) and in the other provisions of the Contract, including the warranties provided by the Supplier, or where its quality or function does not meet the Customer's expectations based on the Contract, or where Good IT Practice has not been observed, unless only trivial matters are involved.

Any maintenance and, if relevant, Operation is faulty if the services of the Supplier fail to comply with the requirements stipulated in the Contract, including the service level goals and the warranties provided by the Supplier, or if Good IT Practices has not been observed, unless only trivial deviations are involved.

See also the definition of Defects.

Good IT Practice

Performance according to good practice in a particular field, as generally accepted according to IT industry standards.

Installation Date

The date on which the Supplier proves to the satisfaction of the Customer that any equipment included in a Partial Delivery is properly installed and functional on the Customer's premises, and when licenses for Software on the agreed equipment are available, cf. clause 7.3.

Iterations

Relatively short project stages. The duration is agreed between the Parties as part of the application of the Agile Method. An Iteration is concluded by an Agile Demonstration.

Mandatory Requirements

Requirements (functional and non-functional) stated in the Customer's Prioritised Requirements List (Appendix 3a.ii) to be indispensable to the fulfilment of the Customer's Business Objectives and Needs.

Notice

Written communication in pursuance of clause 36.2 or notice given at a steering group meeting as included in approved minutes.

Operation

Execution of the Software representing the Deliverables or any part(s) thereof.

Options

A right for the Customer to require the fulfilment, at such prices and subject to such other terms as stipulated in the Contract, of further requirements than those specified in the Prioritised Requirements List by including the requirements specified in Appendix 3 or further functionalities in the agile process. The Options described in Appendix 3 may be ordered for delivery at the time of and as part of the Deliverables or as a Separate Task.

Other Requirements

Requirements (functional and non-functional) specified in the Customer's Prioritised Requirements List (Appendix 3a.ii) which do not constitute Mandatory Requirements.

Overall Solution Description

The Supplier's overall description of how the Supplier will comply with the Customer's Statement of Needs. The Supplier's Overall Solution Description contains the risk log.

Partial Delivery

An identified and delimited part of the Deliverables, to be accepted and, if relevant, deployed separately (unless there are Dependencies between Mandatory Requirements, in which case acceptance will be conditional, cf. clause 13.2). A Partial Delivery may comprise one or more Iterations.

Parties

The Customer and the Supplier, and in the singular, Party, either of the said Parties.

Prioritised Requirements List

Prioritised list of the requirements for the Deliverables as drawn up by the Customer, cf. Appendix 3a.ii.

Project

The Project covered by the Contract regarding the Deliverables as well as operation, maintenance, and support, cf. clause 3.

Project Manager

The project manager of the cooperation organisation, cf. clause 7.

Project Plan

Plan of the activities and tasks agreed between the Parties to be carried out in the Project as a whole. The Project Plan forms part of Appendix 1.

Public Institution

Ministries, government agencies, state enterprises, independent public enterprises (in Danish referred to as "SOV"), municipalities, regions, public administrative bodies, municipal enterprises, boards and commissions as well as independent institutions essentially financed out of public funds. State-owned public companies and public companies with municipal participation are not covered.

Release

A minor update of Standard Software or Customised Software, including, but not limited to, corrective action. Generally characterised by a change of the Software identification number by one decimal (e.g. from 5.0 to 5.1).

Scope

The Scope of the Deliverables comprises the agreed delimitation of the services to be provided in the Project, cf. Appendix 3, and any agreed Actual Changes and Options ordered. The delimitation is carried out on the basis of the Customer's Statement of Needs (Appendix 3a) and the Business Objectives and Needs contained therein (Appendix 3a.i).

Separate Task

Options or Actual Changes not tested as part of a Partial Delivery.

Software

Comprises Customised Software and/or Standard Software as well as interfaces.

Standard Maintenance and Standard Development Tools

Maintenance and development tools generally available on the Danish market on usual commercial terms.

Standard Software

Software classified and recorded in Appendix 3 as Standard Software as it is a) neither adapted, adjusted, nor developed specifically for the Customer in connection with the Supplier's performance of the Contract, b) generally available on ordinary commercial/non-commercial and equal terms.

Statement of Needs

The Customer's overall requirements for the Deliverables, cf. Appendix 3a. The Statement of Needs contains the Customer's Prioritised Requirements List and a description of the Customer's Business Objectives and Needs to be supported by the Deliverables.

System Documentation

Description of the Deliverables aimed at operational personnel, developers, and other personnel groups who need to gain insight into architecture and code for the purpose of changing parameters, correcting, maintaining and/or operating the Software.

Third Party Standard Software

Standard Software produced by a third party.

Time Schedule

An overall time schedule for the Project, cf. Appendix 1.

User documentation

Description(s) of the functions and application and installation possibilities of the Deliverables aimed at end-users, superusers, system administrators and other users who are not given access to architecture or code.

Version

An update containing substantially changed functionality besides corrective action. Generally characterised by the main version number being changed (e.g. from 5.1 to 6.0).

Working Day

Monday through Friday except for public holidays, 24 December, 31 December, and 5 June (the Danish Constitution Day).

# background and purpose

## Introduction

This Contract shall regulate the rights and obligations of the Supplier and the Customer in connection with the implementation of a large-scale IT project (the Project) at the Customer.

The Project shall be implemented with the main focus on the Supplier's development and implementation services and closely linked to the Supplier's advisory services and management of the Project.

The Project shall be implemented through an agile approach, using the Agile Method.

## Background, purpose, and Description of the Deliverables

*[Beskriv baggrunden for indgåelse af Kontrakten, herunder baggrunden for at tilrettelægge Projektet under anvendelse af en agil metode, og Kundens formål med Projektet, herunder vigtige forretningsmæssige mål og behov.*

*Såfremt formålsangivelsen er omfattende, kan Kunden vælge at lade denne være indeholdt i bilag 3a og blot henvise hertil i nærværende punkt i Kontrakten. Bilag 3a har i øvrigt typisk ikke har noget selvstændigt indhold, men udgør blot den kontraktuelle samlebetegnelse for bilagets to underbilag: Kundens Forretningsmæssige Mål og Behov og Kundens Kravliste.]*

# the deliverables

## Scope

The Supplier shall deliver the services described in the Description of the Deliverables (Appendix 3), including the agreed Actual Changes and Options ordered.

The Scope of the Deliverables may be changed solely within the framework of and in accordance with the principles laid down and described in clause 6.3 and clause 14.

## The Supplier's delivery responsibility

### General

The overall delivery responsibility shall rest with the Supplier, although the Customer shall share the responsibility for implementation of the Project. The Customer is thus obliged to participate actively in the Project as described in the Contract, cf. clause 10, Appendix 7 and Appendix 9.

### Deliverables

The Supplier shall deliver services with the characteristics and in compliance with the terms stipulated in the Contract, including especially the Description of the Deliverables (Appendix 3) and any changes agreed along the way, cf. clause 6. The Services shall be suitable for supporting the Customer's Business Objectives and Needs. Services delivered shall also comprise Options, cf. clause 14.

The Supplier shall deliver the agreed Deliverables in the form of tested Partial Deliveries approved by the Customer. Each Partial Delivery shall comprise the deliverables covered by one or more completed Iterations and complying with one or more of the Customer's requirements. The specific content of the individual Partial Deliveries, including which parts of the Deliverables should be provided in the Partial Deliveries and any Dependencies between them, is specified in Appendix 3.

The Supplier shall be obliged to deliver as a minimum deliverables meeting the requirements in the Prioritised Requirements List (Appendix 3a.ii) that are stated as Mandatory Requirements; the Supplier shall endeavour to deliver as many of the Other Requirements as possible. Thus, the Customer may not refuse to approve a test citing non-compliance with Other Requirements.

### Project management

The Supplier shall undertake the management of the Project, provided that the Customer participates actively, cf. clause 3.2.1.

The Project management shall be performed as described in more detail in Appendix 7.

### Advisory services

The Supplier shall regularly advise the Customer on how best to ensure the suitability of the Deliverables in relation to the Customer's Business Objectives and Needs. The Supplier's advisory services shall thus ensure that the Project continually translates into deliverables with a business value for the Customer. In this context, the Supplier shall advise the Customer on new technology or new solutions of significance to the Supplier's services, including how the Supplier can meet the Customer's needs. Moreover, the advisory services shall ensure that the Customer is or should be aware of the consequences and risks associated with the Customer's choices, including how to fulfil the Customer's Business Objectives and Needs in subsequent Iterations, and in relation to the Customer's license agreements, cf. Appendix 16.

The contents of the Supplier's advisory services to the Customer are described in more detail in Appendix 7.

### Resource management

The Supplier shall have the overall responsibility for resource management.

In this connection, the Supplier shall ensure that the Project can be implemented according to the stipulations in the Time Schedule (Appendix 1) and within the amount agreed as the price of the total Deliverables.

### Reporting

The Supplier shall report on and present the status of the Project to the Customer on an ongoing basis. In this connection, the Supplier shall provide an overview, which on an ongoing basis, as specified in Appendix 7, illustrates the status and progress of the Project.

Reporting shall take place in accordance with the guidelines in Appendix 7.

### Quality assurance

The Supplier shall maintain quality assurance during the execution of the Deliverables, in compliance with the requirements in Appendix 3 and Good IT Practice.

## Third Party Standard Software

As part of the Deliverables, the Supplier has chosen to base [part of] its deliverables on Third Party Standard Software as described in more detail in the Description of the Deliverables (Appendix 3).

## Equipment

The Supplier shall deliver the equipment set out in the Description of the Deliverables (Appendix 3) or as otherwise required for the fulfilment of the terms of the Contract.

## Documentation

The Supplier shall provide the Documentation necessary for utilising the Deliverables, including System Documentation regarding technical interfaces in the Deliverables. Furthermore, the Supplier shall deliver any Documentation to the Customer required to enable a third party to undertake, on fair and usual terms, the Operation and Maintenance of Software and equipment and to make changes to Customised Software and, if relevant, Standard Software under the other provisions of the Contract.

The Documentation shall be prepared on an ongoing basis in connection with the individual Iterations and shall form part of the Partial Deliveries agreed.

The Documentation preparation method is set out in Appendix 4. Appendix 4 specifies the Documentation requirements, including Documentation of technical interfaces and the Documentation to be delivered by the Supplier at the acceptance test or other tests.

The Documentation shall be prepared in accordance with Good IT Practice and meet the requirements stipulated in the Contract, including in Appendix 4.

User Documentation shall be available in Danish and other Documentation shall be available in Danish or in English unless otherwise stated in Appendix 4. To the usual extent, the Documentation may be made available to the Customer as an integral part of the relevant Software or as online Documentation, including by reference to a website or similar where the Customer can access the Documentation.

In step with the performance of Agile Adjustments and Actual Changes, the Supplier shall amend the Documentation supplied to ensure that it continues to meet the requirements laid down in this clause.

## Data conversion

If the Supplier is to convert data or offers such conversion as an Option, the relevant requirements are set out in Appendix 3, including format, media, etc., for data to be converted. Appendix 3 also specifies the time limit for exercising any Option.

In connection with the insertion of data, the Supplier shall arrange for the necessary counts, checks, etc., to verify the correctness of the initial data.

The Customer shall be responsible for the quality and presence of original data in the agreed format, cf. Appendix 3, and for making it available to the Supplier.

## Training

The Supplier shall deliver the training of Customer personnel described in Appendix 3.

## Other services

In addition to the services specified in clauses 3.1 - 3.7 above, the Supplier shall deliver the other services set out in the Description of the Deliverables, cf. Appendix 3, in order to perform the Contract.

# the customer's it environment

The parts of the Customer's IT environment that are significant to the Deliverables and maintenance and Operation, if relevant, of the Deliverables are described in Appendix 2.

Appendix 2 includes the Supplier's specification of any necessary changes to the Customer's IT environment, including the need for further licenses, upgrades, etc. as prerequisites for performance of the Contract or as preconditions for the possibilities, stated in clause 6.2, of making Agile Adjustments within the agreed scope or the possibilities set out in Appendix 3 of making Actual Changes.

The Supplier shall update Appendix 2, including statement of any supplementary requirements of the Customer's IT environment, to the extent warranted by the clarification and planning phase, cf. clause 5.1.1. However, the Supplier may only introduce such supplementary requirements of the Customer's IT environment that the Supplier has not foreseen or should have foreseen at the time of conclusion of the Contract. Within […] Working Days, the Customer shall then provide written notice of whether this is acceptable. In the same connection, the Parties shall agree on the necessary procurement. In this context, the Project Plan shall take into account when such supplementary equipment should be installed in the Customer's IT environment.

During the Project, the Parties shall otherwise jointly ensure, in connection with the planning of the order of Deliverables, that any needs for changes to or upgrades of the Customer's IT environment or any problems with the Customer's IT environment can be identified as early as possible during the Project.

In connection with the Project, should a need arise for change of the requirements of the Customer's IT environment, the Supplier shall advise the Customer in this respect. The Supplier shall also suggest the necessary adjustment of Appendix 2 in accordance with the procedure set out in clause 6.

The Supplier shall notify the Customer immediately of any faults or problems found in the Customer's IT environment of significance to the Supplier's performance of the Contract. At the same time, the Supplier shall recommend to the Customer the measures required to remedy the fault or problem, thereby ensuring to the greatest possible extent that the Deliverables are not delayed.

If the Supplier's requirements of the Customer's IT environment are met, the Deliverables and the provision of maintenance and Operation, if applicable, shall be sufficient, with the Customer's IT environment and the Customer's participation, cf. clause 10, to satisfy the requirements under the Contract. A precondition for this is the absence of faults or unfulfilled conditions in the Customer's IT environment, cf. Appendix 2, of significance to the Supplier's performance of the Contract. Should the Customer's IT environment fail to meet these requirements, the Supplier shall be released from its obligation to fulfil the requirements regarding the Deliverables, maintenance or Operation, if applicable, insofar as this is justified by the Customer's failure to observe the Supplier's preconditions according to Appendix 2.

The Customer should expect that the Supplier's maintenance obligations after the expiry of the warranty period will be based on the condition that the Customer has an up-to-date IT environment. The Supplier shall state new requirements and descriptions on or before the date when installation of new Versions or Releases is offered at the premises of the Customer. Should the Parties fail to reach agreement on the ongoing development of the IT environment, the procedure set out in clause ‎37.3 shall be initiated.

# execution of the deliverables

## Commencement of the Deliverables

### Clarification and planning phase

Immediately after the conclusion of the Contract and in accordance with the Time Schedule (Appendix 1) the Parties shall jointly initiate a clarification and planning phase comprising all parts of the Deliverables, involving overall planning of the further delivery process for the Deliverables.

The Parties shall be mutually obliged to participate actively in the clarification and planning phase and to contribute to a constructive dialogue on more detailed planning of the Deliverables, including participation in analyses, workshops, and demonstrations, etc. The activities of this phase are described in more detail in Appendix 1, Appendix 3, and Appendix 7.

Should the Customer, in connection with the signing of the Contract, order one or more Options for delivery together with and as part of the Deliverables, these Options shall be included in the clarification and planning phase.

The Parties shall discuss the Customer's Statement of Needs, including the Customer's prioritisation of requirements in the Customer's Prioritised Requirements List (Appendix 3a.ii). The Customer shall maintain at any time an updated version of the Customer's Statement of Needs, including the Customer's Prioritised Requirements List, cf. Appendix 5, clause 5.

Furthermore, the Parties shall review and specify the Time Schedule (Appendix 1) and shall, jointly and managed by the Supplier, plan the further progress of the Project in the form of an overall plan for Partial Deliveries under the Project, including the Iteration content of the first Partial Delivery. The Customer shall make a preliminary prioritisation of requirements and activities regarding the Iterations in the first Partial Delivery.

In addition, the Parties shall perform further detailed planning of activities and tasks in the upcoming Iteration, cf. clause 5.2.1.

The Parties shall jointly assess the risks that may influence the implementation of the Project, and this assessment shall serve as the basis for the Supplier's updating of the risk log (Appendix 3b). The Supplier shall update the risk log on an ongoing basis according to the guidelines in Appendix 3b.

The Supplier shall present a detailed updated version of the Time Schedule (Appendix 1) and in that connection prepare a Project Plan and a Delivery Plan for the activities and tasks which, as agreed by the Parties, shall be carried out under the Project and the individual Partial Deliveries, respectively, as well as an Activity Plan for the upcoming Iteration, cf. clause 5.2.1. In addition, the Supplier shall present updated versions of any other appendices that may have undergone changes/supplementary wording during the clarification and planning phase.

Within five Working Days, the Customer shall inform in writing whether the updated appendices, including the Project, Delivery, and Activity Plans, are acceptable.

Completion of the clarification and planning phase shall not release the Supplier from the responsibility for ensuring that the Deliverables comply with the Customer's Mandatory Requirements and from any other obligations under the Contract.

### Overall fee and time consumption estimates

During the clarification and planning phase, the Supplier shall prepare overall fee and time consumption estimates, using the method stated in Appendix 14 for execution of the individual Iterations. The Supplier shall relate these estimates to the fixed fee and agreed delivery times for the individual Partial Deliveries and the Deliverables as a whole.

### Establishment of development and test environment

A development environment shall be established for the purposes of Project implementation. If warranted by the Description of the Deliverables (Appendix 3), a test environment shall also be established. The environment(s) are described in Appendix 2.

The time and place for establishment of the environment(s) appear from the Time Schedule (Appendix 1). Similarly, the respective responsibilities of the Parties regarding provision, Operation and maintenance of the environment(s) and ownership thereof on termination of the cooperation of the Parties are set out in Appendix 2.

If the environment(s) is/are to be established at the premises of the Customer, the Customer shall undertake to ensure that the necessary preparations according to the Supplier's instructions have been made and ensure compliance with the IT environment requirements within the deadlines stipulated in the Time Schedule (Appendix 1). The deadline for the Customer's receipt of the Supplier's instructions appears from Appendix 2.

The Parties shall not use the environment(s) for any other purpose than completion of this Project unless otherwise agreed, cf. Appendix 2.

The environment(s) shall be maintained until the Acceptance Date for the last Partial Delivery, unless otherwise stated in Appendix 2.

## Development of the Deliverables

### Development in Iterations

Immediately before the commencement of each Iteration, the Parties shall review the Prioritised Requirements List with a view to evaluation and detailed planning of activities and tasks, including prioritisation of requirements in the upcoming Iteration. The Parties shall base their planning on experience from previous Iterations, if any, and observe the overall framework of the Delivery Plan.

When planning the individual Iteration, the Parties shall seek to achieve a suitable combination of Mandatory and Other Requirements to ensure compliance with Mandatory Requirements and completion of as many of the Customer's Other Requirements as possible in the Partial Delivery in question. If required in order to ensure fulfilment of Mandatory Requirements, the Supplier shall be entitled to demand inclusion of Mandatory Requirements in an Iteration or exclusion of Other Requirements.

As an element of the planning of the upcoming Iteration, the Parties shall lay down acceptance criteria for the requirements comprised by that Iteration. The acceptance criteria shall be determined in accordance with the guidelines in Appendix 6.

On the basis of the planning of the Parties, the Supplier shall prepare an Activity Plan for the activities and tasks to be carried out in the upcoming Iteration as agreed by the Parties. In accordance with the method stated in Appendix 14, the Supplier shall prepare a detailed fee and time consumption estimate for the Iteration.

Commencement of an Iteration shall not be initiated until the Customer has approved the proposed Activity Plan and the Supplier's fee and time consumption estimate for the Iteration. The Customer shall approve such proposals without undue delay. Planning of an upcoming Iteration and the Customer's approval of the Activity Plan and fee and time consumption estimate for the Iteration shall be in place before the completion of the preceding Iteration.

#### Non-performance within the fee and time consumption estimate

The Supplier shall be responsible for ongoing follow-up relative to the presented fee and time consumption estimate for an Iteration. Should there be a risk of non-performance of one or more of the requirements under the Iteration within the estimate, the Supplier shall immediately notify the Customer thereof in writing. The notification shall include a detailed description of the reasons for the expected non-performance.

When receiving a Notice of expected non-performance of one or more requirements, the Customer shall make a decision in the matter of non-performance. The Supplier shall advise the Customer in this matter.

Unless the Customer decides otherwise, cf. immediately below, the non-performed requirements shall again be included in the Customer's Prioritised Requirements List and in the planning of the subsequent Iterations. The Customer shall then re-prioritise the requirements comprised by the Partial Delivery. If no further Iterations are forthcoming, Other Requirements shall lapse.

The Customer may decide that one or more of the non-performed requirements shall lapse. A decision on the lapse of Other Requirements constitutes an Agile Adjustment and shall follow the guidelines set out in clause 6.2. A decision on the lapse of Mandatory Requirements constitutes an Actual Change and shall follow the guidelines set out in clause 6.3.

The Customer may decide to raise and extend, respectively, the fee and time consumption estimate for the Iteration. Such a decision constitutes an Agile Adjustment and shall follow the guidelines set out in clause 6.2. The decision shall not entail that the fixed fee and agreed time of delivery for the Partial Delivery may be exceeded.

### Agile Demonstrations

Each Iteration shall be completed by the Supplier demonstrating to the Customer the completed work and performing an Agile Demonstration in the test environment of the part of the Deliverables that is declared ready for delivery by the Supplier. Agile Demonstrations shall be carried out in accordance with the provisions of clause 7.1.

# changes

## General

### Change requests

After the signing of the Contract, change requests may be submitted according to the guidelines below. In the clarification and planning phase, however, clause 5.1.1 of the Contract stipulates a special deadline of five Working Days for approval of the appendices updated in connection with the clarification and planning phase.

A change request may be submitted in the form of an Agile Adjustment, cf. clause 6.2, or an Actual Change, cf. clause 6.3.

Upon receipt of a change request from the Customer, the Supplier shall assess whether the change request should be treated as an Agile Adjustment in accordance with the guidelines in clause 6.2 or as an Actual Change according to the guidelines in clause 6.3. The Supplier shall notify the Customer of its assessment without undue delay after receipt of the change request.

### Disputes

Should the Customer disagree with the Supplier's assessment of the categorisation of a change, and should the Parties fail to reach agreement on this, the procedure described in clause 37.3 shall be initiated. Pending a decision on categorisation of the change request, the Supplier shall treat the request as categorised by the Customer.

## Agile Adjustments

### Adjustments covered

In the Contract, Agile Adjustments shall mean the changes made using the Agile Method described in clause 5, cf. Appendix 7, and which are within the Scope of the Deliverables, cf. clause 3.1.

Agile Adjustments are made as an element of the development of the Deliverables on a daily basis and may be initiated by either Party.

Agile Adjustments include the following types of changes:

* The Customer's changed prioritisation of Other Requirements in the Customer's Prioritised Requirements List (Appendix 3a.ii)
* Addition or removal of Other Requirements in the Customer's Prioritised Requirements List (Appendix 3a.ii)
* The Customer's changed prioritisation of requirement performance (including Mandatory Requirements) in an Iteration and deselection of requirement performance in the Iteration
* The Customer's transfer of Other Requirements from performance in one Partial Delivery to performance in another
* Change of fee and time consumption estimates for the individual Iterations, cf. clause 5.1.2.

### Adjustment procedure

Agile Adjustments shall be documented in writing on an ongoing basis according to the guidelines in Appendix 5 and must be signed by both Parties.

### Authorisation

An agreement on Agile Adjustments can be concluded only by the persons stated in Appendix 8 and Appendix 9.

## Actual Changes

### General

An agreement on Actual Changes shall not be concluded if it reflects renegotiation of the essential terms of the Contract.

At the time of conclusion of the Contract it is assumed that the fixed fee for the overall Deliverables can be changed in the event of Actual Changes by up to *[…]* %. It is furthermore assumed that the agreed delivery times of the Deliverables as a consequence thereof can be changed by a total of up to *[…]* Working Days. This shall not be construed to mean that the Parties are entitled to demand that an Actual Change be made.

An agreement on Actual Changes shall be implemented according to the procedure in this clause 6.3 and Appendix 5.

The overall Time Schedule (Appendix 1) may contain periods during which the Customer may not submit change requests.

### Changes covered

In the Contract, Actual Changes shall mean changes not covered by the Agile Adjustments mentioned in clause 6.2.1.

Actual Changes shall always be taken to mean the following types of changes:

* Extension of the Scope of the Deliverables
* The Customer's changed prioritisation of a Mandatory Requirement to an Other Requirement and vice versa in the Customer's Prioritised Requirements List (Appendix 3a.ii)
* The Customer's deselection or selection of a Mandatory Requirement in the Customer's Prioritised Requirements List (Appendix 3a.ii)
* The Customer's transfer of a Mandatory Requirement from performance in one Partial Delivery to performance in another
* Change of the fixed fee for a Partial Delivery and/or the overall Deliverables
* Change of the agreed delivery dates for a Partial Delivery and/or the overall Deliverables
* Other contractual changes. Such changes may reflect e.g. change of the choice of Agile Method or the settlement method used.

#### Extension of the Scope of the Deliverables to include delivery of Actual Changes as part of the Deliverables

If Appendix 3 sets out that Actual Changes to the Scope of the Deliverables may be ordered for delivery at the same time and as part of the Deliverables, and the Customer by submitting a Notice places an order within the deadlines set out in Appendix 3, the Actual Change shall become part of the Deliverables and treated in every respect as if it had originally been included in the Contract as part of the Deliverables, including with respect to testing, Acceptance, and fees, unless otherwise stated in Appendix 3.

The requirements of the Actual Change shall then be included in the requirements already included in the Prioritised Requirements List. The Actual Change shall then be included as part of the Project in the detailed planning of each Partial Delivery and Iteration.

#### Extension of the Scope of the Deliverables to include delivery as a Separate Task

When Actual Changes to the Scope of the Deliverables are ordered, which are not ordered as a part of the Deliverables, such delivery shall take the form of a Separate Task.

Such a Separate Task shall be subject to the same requirements for testing, warranties, penalties, maintenance and support as well as Operation, if applicable, as the Deliverables, unless otherwise stated in the Contract.

The Supplier shall then develop and implement the requirements covered by the Actual Change, using the Agile Method (Appendix 7) and in accordance with the provisions of clause 5.2.

Penalties, compensation, etc., shall be calculated on the basis of the agreed fee for the Separate Task, and any failure to meet guarantees or any other breach related to these tasks shall be treated separately from the rest of the Deliverables.

### Change control procedure

#### The Customer's request for Actual Changes

Requests for Actual Changes, cf. clause 6.3, shall be submitted in writing to the Supplier. If the change request requires amendment of the Customer's Statement of Needs, a proposal for amendment of the Customer's Statement of Needs shall also be enclosed in the change request.

The Supplier, without undue delay and no later than *[10]* Working Days after receipt, shall state in writing whether the change request is acceptable. If the change request requires changes to the Appendices to the Contract, the Supplier shall at the same time submit a proposal for change.

If the Supplier demonstrates that the change request is impossible to implement for significant technical or functional reasons, the Supplier shall not be obliged to accept the change request. This, however, shall not apply to Actual Changes set out in Appendix 3 when the Contract is signed.

No later than *[5]* Working Days after receipt of the proposal for change, shall the Customer notify the Supplier in writing as to whether the Customer wishes the Actual Change to be implemented, as the proposal shall otherwise lapse. If approved by the Customer, the Actual Change shall be incorporated into the Contract in accordance with clause 36.3.

If the Customer rejects implementation of the Actual Change, the Supplier shall be entitled to a reasonable fee to cover the preparation of the proposal for change, calculated on the basis of documented time consumption, at the hourly rates stated in Appendix 14.

#### The Supplier's change request

Within the framework of its advisory services to the Customer, cf. clause 3.2.4, the Supplier may suggest that the Customer submit change requests.

## Changes without the Supplier's consent

If the Customer, without the Supplier's consent, instigates changes to the Deliverables or to the Customer's IT environment, Software or equipment outside the Contract, and such changes have significant influence on the proper functions of the Deliverables, the Supplier shall be entitled to demand release, in future, from any obligation in relation to the Deliverables, including correction of Faults, undertaking maintenance and support as well as Operation, if applicable, insofar as this is reasonably justified by the consequences of the change.

Any reinstatement by the Customer of the original situation shall cause the Supplier's obligations to revive. The Supplier shall be entitled to verify that the original situation has been reinstated and to charge a reasonable fee for this, calculated on the basis of time spent.

The Supplier shall give its prior consent to the Customer and/or the Customer's other suppliers carrying out standard maintenance and support and Operation of the Deliverables, provided that this does not entail intervention in violation of Appendices 10 and 16.

# agile demonstrations, testing and approval

## Agile Demonstrations

Agile Demonstrations shall be carried out in each Iteration, in that the Supplier shall demonstrate to the Customer whether the acceptance criteria laid down by the Parties for the requirements, including quality requirements, covered by the relevant Iteration are met. Agile Demonstrations shall be carried out, regardless of whether it is clear at the end of the relevant Iteration that not all requirements covered by the Iteration have been completed or that it is not possible to meet the acceptance criteria laid down.

The contents of Agile Demonstrations shall be determined and Agile Demonstrations shall be carried out in accordance with the requirements set out in Appendix 6.

The parts of the Iteration for which the Parties agree that the acceptance criteria laid down have been met, shall be transferred for testing as part of the next Partial Delivery.

If the acceptance criteria have not been met for one or more of the requirements in the Prioritised Requirements List, these requirements shall not be included in further testing, cf. clause 7.2, but shall be regarded as non-performed in the Iteration in question. These requirements shall then be reintroduced into the Customer's Prioritised Requirements List and into the planning of the subsequent Iterations, unless the Customer decides that one or more of the non-performed requirements shall lapse, cf. clause 5.2.1.1. However, the Supplier shall be entitled to decide that Mandatory Requirements must be tested as part of the next Partial Delivery, notwithstanding that the Customer does not regard the agreed acceptance criteria as having been met.

### Timing

The timing of Agile Demonstrations shall be agreed between the Parties and carried out in accordance with the deadlines stated in the Time Schedule (Appendix 1) and before the date of conclusion of the Iteration as agreed between the Parties.

## Testing

### General

Testing of a Partial Delivery shall take place as an acceptance test and an operational test as described in Appendix 6 and this clause 7. Testing of a Partial Delivery shall take place provided that the Partial Delivery can be Deployed separately, cf. clause 13.1. Not until the acceptance test for the Partial Delivery has been approved in writing by the Customer shall the Partial Delivery be regarded as accepted, without prejudice to clause 13.2, however, regarding acceptance subject to the Dependencies with respect to Mandatory Requirements not delivered. Any special approval procedures applying to parts of the Deliverables are described in Appendix 6.

If equipment is delivered in a Partial Delivery, an installation test will also be conducted, cf. clause 7.3.

The starting time and the period for completion of a test shall be agreed between the Parties and stated in the Time Schedule (Appendix 1).

The test shall be conducted in an environment that corresponds to normal operations as far as possible. Should the Supplier correct observed Faults during the period of testing, the Customer shall be entitled - without any change of the deadline for completion of testing - to demand repetition of the whole test with a view to testing the correction of the observed Fault.

A test has been passed when the acceptance criteria have been met. The Customer shall submit a Notice as to whether the test can be approved.

If the test cannot be approved, the Customer shall, no later than 10 Working Days after completion of the test, give Notice to the Supplier stating the grounds for non-approval, including specification of which Mandatory Requirements the non-approval concerns. If the Customer fails to give Notice of approval within the deadline, the Supplier may give Notice to the effect that the test is deemed to have been approved, unless the Customer, within 10 Working Days, gives Notice of rejection of the test.

The Customer may approve a test even though there may remain Faults to be included in the Fault List. Non-inclusion in this List shall not entail any waiving by the Customer of a requirement for correction of a Fault. However, this shall not apply if the Customer, upon issuing the approval, has been expressly made aware of the Fault or any other deviation.

The Supplier shall subsequently correct the Faults stated in the Fault List. In the absence of a time schedule for taking corrective action in connection with approval of the test, corrective action shall be performed subject to the deadlines set out in the maintenance schedule. The Supplier shall provide the requisite documentation to the Customer showing that corrective action has been taken.

The Customer's review, comments on or approval of a test shall not be interpreted to reflect a change to the requirements that may be imposed under the Contract, unless the Customer's Prioritised Requirements List is changed at the same time.

### Failure to pass test

In the event of failure to pass a test, the Supplier shall be entitled to seek to take corrective action for the observed Faults after the completion of the test and to repeat the test with a view to approval, provided that this can be undertaken within the deadline for approval of the test stated in the Time Schedule or at the latest *[…]* Working Days after this date. Repetition of the test shall be subject to a notice of at least five Working Days. At any time during the process, the Supplier shall be entitled to stop all or one of the tests in case of non-observance of the acceptance criteria, in order to enable deployment of resources for corrective action. In case of such a stop, the test shall be regarded as not passed, and the Customer shall be entitled to demand repetition of the whole test. The Supplier shall indemnify the Customer for fair and usual external additional costs related to repetition of the test.

## Installation test

The Supplier's installation of any equipment shall be completed by an installation test designed to show that the agreed equipment and Software have been duly connected in functional condition on the Customer's premises as and to the extent required to conduct the acceptance test as specified in Appendix 6.

If the Time Schedule specifies that installation is to take place in several stages, an installation test shall be conducted for each installation in respect of the equipment and Software set out in Appendices 1 and 3 for the respective installations.

The contents of the installation test shall be determined, and the installation test shall be conducted in accordance with the requirements set out in Appendix 6.

## Acceptance test

The acceptance test shall be carried out by the Supplier with the active participation of the Customer. If the acceptance test requires third party participation, this is stated in Appendix 6.

An acceptance test shall be carried out for each Partial Delivery, as specified in Appendix 6. The acceptance test shall comprise the deliverables in the relevant Partial Delivery as well as integration with and Dependencies related to any previous Partial Deliveries. As a main rule, functionality, etc., approved in a previous acceptance test shall not be tested, unless testing is specified in Appendix 6, or the Customer is able to demonstrate special grounds for testing.

The procedures, contents, and acceptance criteria of the acceptance test are stipulated in Appendix 6.

As regards Actual Changes and Options ordered for delivery as a Separate Task, cf. clauses 6.3 and 14.3, the acceptance test shall also comprise integration into the original Deliverables.

The Customer shall not refuse to approve an acceptance test citing non-observance of the acceptance criteria for Other Requirements. Non-observance of the acceptance criteria for Other Requirements shall be regarded as a Fault to be included in the Fault List, cf. clause 7.2.

## Operational test

An operational test shall be carried out for each Partial Delivery accepted by the Customer.

With respect to Actual Changes and Options ordered for delivery as a Separate Task, cf. clauses 6.3 and 14.3, the operational test shall also comprise the original Deliverables.

The procedures, contents, and acceptance criteria of the operational test are stipulated in Appendix 6.

The Customer shall commence the operational test no later than *[20]* Working Days after the passing of the acceptance test. Otherwise, the operational test for the relevant Partial Delivery shall lapse if the Customer fails to commence testing within 15 Working Days after receipt of a Notice with a demand from the Supplier. The Notice with a demand may be submitted after the expiry of the deadline for commencement of testing and shall contain a statement to the effect that failure to commence operational testing shall cause the test to lapse. With at least 10 Working Days' notice, the Customer shall submit a Notice to the Supplier stating the time of commencement of the test.

During the operational test, the Supplier shall be entitled to optimise the Deliverables on an ongoing basis to the extent required, and to correct any Faults observed.

The operational test shall run for at least 20 consecutive Working Days, during which time the Deliverables are in normal operation.

If circumstances arise for which the Supplier does not bear the risk and which impede normal use of the Deliverables, the operational test shall be interrupted. The deadline for the operational test shall then be extended by the number of Working Days lost due to the interruption. The number of Working Days lost shall be raised to the nearest higher number of whole Working Days if it is not a whole number.

# cooperation and personnel

##  General

The cooperation between the Parties shall be based on a positive, professional and responsible approach, and each Party shall strongly endeavour to achieve the best result possible. This entails that the Parties shall display a degree of flexibility that should be regarded as reasonable and usual for implementation of a project based on agile development.

The Parties have a mutual obligation to point out, without undue delay and according to the agreed decision processes, any obvious Faults in material prepared by the other Party and any other issues that may influence the proper implementation of the Project in accordance with the Time Schedule and the Contract in general.

The Parties shall participate loyally in the agreed organisation, cf. clause 3 and Appendix 7, throughout the lifetime of the Project.

## Authority to act

The Parties shall, on an ongoing basis and at short notice, take business decisions of consequence to the implementation of the Project. The Parties shall have the organisational support for this.

The Parties shall ensure the necessary authority and authority to act for the project participants of the Parties during the entire Project lifetime with a view to ensuring the required dialogue and progress of the Project, including in relation to the handling of disputes, cf. clause 37.3.1.

Appendices 8 and 9 may contain more detailed requirements with respect to the authority to act of the Parties.

## Cooperation Organisation

For the purposes of expedient Project implementation and Contract performance, and in order to promote the necessary cooperation, the Parties shall establish a cooperation organisation consisting of representatives of the Supplier and the Customer and possibly third parties.

The organisation, including its structure, roles, and authority to act, is described in Appendix 7.

The Supplier shall undertake the management of the Project via the daily project management and shall have the duty to take initiatives in the cooperation between the Parties, but the Customer shall be assumed to play an active role in the project management, cf. clause 3.2.3. The cooperation between the Parties shall be a joint responsibility to be undertaken at all relevant levels of the Project. The steering group shall have the overall management responsibility in the Project, cf. Appendix 7.

The reporting requirements of the Parties are set out in Appendix 7.

## Personnel

Appendices 8 and 9 specify the personnel allocated to the Project by the Parties. The responsibilities and roles of the employees in connection with the implementation of the Project are set out in Appendix 7. The competencies and qualifications of key personnel are set out in Appendices 8 and 9.

### The Supplier's personnel

The Supplier's project manager, other key personnel and other personnel as well as any subcontractors participating in the Project shall all possess the required competencies and qualifications, including the relevant and necessary education and training, knowledge and experience, in relation to their roles in the implementation of the Project.

In particular, the Supplier's project manager shall have documented training as a project manager and concrete experience from other projects implemented using the Agile Method.

Throughout the lifetime of the Project, the Supplier shall maintain the capacity and knowledge required for the performance of the Deliverables, including in the form of sufficient and qualified personnel.

If the Supplier is unable to perform the Deliverables in the agreed quality, or if a delay or risk of delay occurs in relation to Mandatory Requirements, which is not due to circumstances on the part of the Customer, the Supplier shall adjust its personnel, including allocation of additional or other human resources as required. Changes of the personnel allocated to the Project, including replacement of personnel, are regulated by clauses 8.4.3 and 8.4.3.1*.*

At any time and without undue delay, the Supplier shall be able to document, at the Customer's request, the competencies and qualifications of the allocated personnel or any other issues of significance to either the Supplier's ability to perform the Deliverables or the quality of the Deliverables. In the event of failure to produce Documentation at the Customer's request, the Supplier shall be obliged, at the Customer's request, to redeem the situation; in this connection, the Customer may require that the Supplier involve subcontractors.

### The Customer's personnel

The Customer's project manager, other key personnel, and other personnel participating in the Project shall possess the required competencies and qualifications, including the relevant knowledge of and insight into the Customer's business activities and Business Objectives and Needs as well as the required authority to act in relation to their roles in the implementation of the Project.

Throughout the lifetime of the Project, the Customer shall maintain the capacity and knowledge required for the fulfilment of the Customer's obligations under the Contract, including in the form of sufficient and necessary employees at the relevant levels of the Customer's organisation.

Furthermore, the Customer shall contribute to the execution of the Deliverables to the extent described in clause 10 and Appendix 9.

### Replacement of personnel

To facilitate the progress and quality of the work and in view of the close daily cooperation between the Parties, the Parties shall, to the greatest extent possible, avoid replacement of personnel on the Project.

The Parties shall not reduce the number of employees working on the performance of the Deliverables if this will jeopardise the quality of the Deliverables or the completion of the Project in accordance with the Time Schedule.

Either Party shall, without undue delay, notify the other Party in writing of the resignation or absence of key personnel. In such case, the notifying Party shall appoint a successor or temporary replacement with at least the same or equivalent competencies and qualifications, cf. Appendices 8 and 9.

Either Party shall, at the request of the other Party, replace an employee within *[20]* Working Days, including a key employee, if the other Party's request is fair and based on reasonable grounds, e.g. in the event of significant cooperation problems or if the employee's competencies and qualifications are insufficient.

The Parties shall ensure that new employees meet the qualification requirements, cf. clauses 8.4.1 and 8.4.3 and Appendices 8 and 9, and that they have at least the same or equivalent competencies and qualifications as the replaced employees. The replacement shall not influence the ability of the Parties to undertake the tasks under the Project, including by delaying the completion of the Deliverables.

Either Party shall bear all costs related to replacement of that Party's personnel.

#### The Supplier's replacement of key personnel

Prior to approval of the operational test for the final Partial Delivery, the Supplier shall not replace its project manager or other key personnel stated in Appendix 8 without the Customer's written consent and without prior submission of the CV of the new key employee to the Customer, unless the replacement is due to the employee's personal circumstances, including termination of employment, leave of absence, long-term illness or similar circumstances beyond the Supplier's control. The Customer shall not refuse to give such consent without reasonable grounds.

Nor shall the Supplier reduce the number of key employees working on the performance of the Deliverables or reduce the key employees' actual participation in the performance of the Deliverables without the Customer's written consent. The Customer shall not refuse to give such consent if the Supplier is able to prove that the need for the relevant key employee's participation in the performance of the Deliverables has been correspondingly reduced.

Any fee-related consequences of replacement are set out in Appendix 8.

####  The Customer's replacement of key personnel

In the event that the Customer replaces its project manager or other key personnel stated in Appendix 9, it is assumed that the replacement will allow the agreed structure and distribution of roles for presupposed tasks, responsibilities and competencies, etc., in the organisation to continue unchanged.

If the Supplier is able to render probable that the Customer's replacement of a key employee will entail that the agreed delivery times of the Deliverables cannot be complied with, or that other terms of delivery will be affected, the replacement shall only take place through a change request, cf. clause 6.3.3.2.

# insight

Implementation of the Project using the Agile Method presupposes that the Parties have insight into the management of an IT project through an agile approach as well as insight into the Agile Method applied. The more detailed requirements of the insight of the Parties are specified in clauses 9.1 and 9.2 and Appendices 8 and 9.

## The Supplier's insight

The Supplier shall have insight into the Agile Method, including experience with the management and implementation of IT projects based on the Agile Method and concrete experience from other IT projects with the use of the Agile Method applied.

## The Customer's insight

The Customer shall have insight into the Agile Method applied, including ensuring the organisational support for using the Agile Method and the related cooperation structure for implementation of the Project.

On the basis of Appendix 9, the Supplier shall advise the Customer with respect to any insufficient insight in relation to implementation of the Project while using the Agile Method. With a view to acquiring the required insight, the Customer's project participants shall, prior to commencement of the first Iteration of the Project, complete the training programme described in Appendix 3 in the Agile Method applied. Fees for completed training shall be paid on the basis of the amounts set out in Appendix 14, cf. clause 20.

# The customer's participation

## Introduction

The Customer shall have a shared responsibility for the implementation of the Project, and the Customer shall participate actively in the Project as presupposed in the Agile Method as stated in the Contract, cf. clauses 5, 8, 10.2 - 10.4 and Appendices 7 and 9.

## General requirements of the Customer's participation

In order to ensure the progress of the Project, the Customer shall allocate the necessary time and dedicate the necessary personnel resources at all relevant levels in the Customer's organisation throughout the whole project process and contribute by participating in the organisation, cf. clause 8 and Appendix 7.

The Customer shall be responsible for the contents and prioritisations of the Prioritised Requirements List, including that the individual requirements in the Prioritised Requirements List are described with sufficient clarity. The Customer shall, on an ongoing basis, describe, prioritise and re-prioritise, including add, deselect and change, its requirements in the Prioritised Requirements List with a view to supporting a development process which results in deliverables with the highest business value for the Customer. The Customer's prioritisation of the Prioritised Requirements List shall be based on the Supplier's advice and estimates and shall be aligned with the Customer's own organisation.

The Customer's competencies are set out in Appendix 9, and the Customer's participation shall be delivered at the competence level stated therein.

Any inquiries from the Supplier shall be replied to without undue delay, unless otherwise agreed.

In addition, the Customer shall contribute in general to the extent that can be expected in a project of this nature and scope.

## Participation in demonstrations and testing

The Customer shall participate in the ongoing planning and execution of Agile Demonstrations and tests, cf. clause 7.

The extent of the Customer's and possibly a third party's participation in the execution of Agile Demonstrations and tests, including the Customer's obligation to provide relevant data for testing purposes, is described in more detail in Appendices 6, 7, and 9. The nature of the Customer's and possibly a third party's participation is described in Appendix 7.

## Other requirements of the Customer's participation

Appendix 9 describes the extent to which the Customer is otherwise obliged to participate in the performance of the Contract, e.g. by providing information, Documentation, premises, equipment, systems, development and test environments, etc.

The Supplier may advise the Customer and request that the Customer participate in the performance of the Contract by making Standard Software available for the Deliverables. The more detailed guidelines in this respect, if any, are set out in Appendix 9. The Supplier's use of such Standard Software is comparable with the Supplier's use of subcontractors, cf. clauses 11 and 23.8.

The timing requirements related to the Customer's participation are stated in Appendix 9 and also outlined in the Time Schedule (Appendix 1).

The statements in Appendix 9 shall only be interpreted to reflect the Supplier's expectations of the Customer's participation on the basis of the Supplier's experience from previous projects. The use of the Agile Method and individual circumstances of the Customer, which are not described in detail in the Appendices, entail that a need for adjustment may arise during the process, involving adjustment of both scope and contents, including extension of the scope of the Customer's participation.

The Supplier shall ascertain, on an ongoing basis, that the Customer participates in the Project as agreed and estimated in Appendix 9, or as can be expected. The Supplier shall promptly notify the Customer in writing if the Customer fails to participate in the implementation of the Project as agreed and estimated in Appendix 9, or as can be expected. The Customer shall promptly send written and reasoned notification to the Supplier when the Customer finds it probable that a risk of delay in relation the Customer's participation will occur.

# use of subcontractors

The Supplier's cooperation partners, if any, contributing to the Project shall be regarded as subcontractors.

The Supplier's use of subcontractors shall entail no limitation of the Supplier's responsibility for performance of the Contract.

The Supplier's use of subcontractors is set out in Appendix 8.

The Supplier shall not without the Customer's written consent transfer the performance of the Contract or parts thereof to subcontractors other than those stated in Appendix 8. The Customer shall not refuse to give such consent without reasonable grounds.

Replacement, if any, of key subcontractor personnel in the Supplier's project team shall be subject to the guidelines set out in clause 8.

Although the Customer has given its consent to the use of a specific subcontractor, the Customer shall be entitled to contact the Supplier in all matters.

# delivery

## Place of delivery

The Supplier shall deliver at the locations set out in Appendix 3.

## Time Schedule

### Time Schedule, Project Plan, Delivery Plan, and Activity Plans

The Supplier shall deliver the individual Partial Deliveries in accordance with the Time Schedule (Appendix 1), including the Project, Delivery and Activity Plans.

Prior to conclusion of the Contract, the agreed delivery dates for the individual Partial Deliveries and the overall Deliverables have been determined in Appendix 1, unless otherwise stated in Appendix 1. The Supplier's overall time estimates for the implementation of the individual Iterations have subsequently been incorporated into the Time Schedule, cf. clause 5.1.2.

The Supplier shall regularly update the Time Schedule (Appendix 1), including the Project, Delivery and Activity Plans, as an element of using the Agile Method, cf. clause 5.2.1, and as a consequence of the agreements of the Parties on Actual Changes to the Deliverables, cf. clause 6.3. An updated version of the Time Schedule shall be available electronically to both the Customer and the Supplier at any time. The Supplier shall ensure corresponding availability of previous versions of the Time Schedule.

### Maintenance and Operation

Any maintenance as well as Operation and support shall be delivered from the dates set out in Appendices 10 and 12.

### Separate Task

Actual Changes which are subsequently ordered for delivery as a Separate Task, cf. clause 6.3, shall be delivered according to the time schedule agreed for these changes. Options delivered as a Separate Task shall be delivered at the time stated in the Option.

### Right of deferral

By submitting a Notice of at least *[20]* Working Days, the Customer shall be entitled to defer the Project, after discussing the matter with the Supplier, and consequently extend the delivery dates agreed in the Time Schedule (Appendix 1). The Customer's right of deferral shall not exceed *[60]* Working Days.

If the Customer wishes to defer the Project, the Supplier may state as a condition for the deferral that the Customer indemnifies the Supplier for the latter's reasonable costs related to the deferral. The Supplier's reasonable costs shall be calculated according to the guidelines in Appendix 14.

## Partial Deliveries

The Deliverables are divided into Partial Deliveries as described in more detail in the Time Schedule (Appendix 1) and the Description of the Deliverables (Appendix 3).

# deployment, acceptance, and passing of risk

## Deployment

The Partial Deliveries may be Deployed by the Customer as from the Acceptance Date.

In addition, the Customer may exceptionally Deploy a Partial Delivery in whole or in part after the time agreed for approval of the acceptance test, cf. the Time Schedule (Appendix 1), even if the test is not passed. It is a condition for the Customer's Deployment that the grounds for the failure to pass the acceptance test are not due to circumstances on the part of the Customer. The Customer shall then pay a proportionate part of the payment related to the approval of the acceptance test in accordance with the payment schedule set out in Appendix 14. The Customer's deployment shall only take place, if it does not entail significant inconvenience to the Supplier's completion of the Mandatory Requirements comprised by the Partial Delivery and to the completion of the agreed acceptance test, unless the Customer is able to prove that Deployment is necessary in order to avoid significant losses.

## Acceptance

A Partial Delivery has been accepted by the Customer when the acceptance test for the Partial Delivery as a whole has been approved in writing by the Customer, cf. clause 7.4. With respect to Actual Changes and Options ordered for delivery as a Separate Task, cf. clauses 6.3 and 14.3, Acceptance shall take place upon the Customer's submission of a Notice to the Supplier, approving the acceptance test. The Customer shall issue an approval when the acceptance criteria have been met, cf. Appendix 6.

In the event that the Mandatory Requirements comprised by the Partial Delivery contain Dependencies to Mandatory Requirements not delivered, the Customer's Acceptance of a Partial Delivery shall be conditional, in that final acceptance of the Partial Delivery shall only take place when the Mandatory Requirement(s) covered by the Dependency has/have subsequently been accepted by the Customer.

In the event of Deployment of the Partial Delivery as a whole or parts thereof before Acceptance of the Partial Delivery, without prior compliance with the conditions set out in clause 13.1, the Supplier shall be entitled to request by Notice that the Customer cease this deployment. If the Customer fails to comply with the request within 20 Working Days, the Partial Delivery shall be considered accepted by the Customer.

The Supplier shall bear the risk related to a Partial Delivery until Acceptance of the Partial Delivery in question. In the event of Deployment of the Partial Delivery or parts thereof prior to Acceptance, the risk related to the respective parts of the Partial Delivery shall pass to the Customer as from the Deployment.

However, any equipment shall only be at the Supplier's risk until the Installation Date.

# options

## General

After the signing of the Contract, the Customer may order delivery of Options according to the guidelines below.

## Options for delivery as part of the Deliverables

The Customer may order the Options contained in Appendix 3 for delivery simultaneously with and as part of one or more of the Partial Deliveries. The deadlines for ordering are contained in Appendix 3. If the Customer orders an Option within the deadlines stated, what is comprised by the Option shall then be regarded as a part of the Partial Delivery in question and shall in every respect be treated as if the Option had originally been included in the Partial Delivery, including with respect to testing, acceptance, and fees, unless otherwise stated in Appendix 3.

The requirements comprised by the Option shall then be included in the Prioritised Requirements List alongside the requirements already contained in the Prioritised Requirements List. The Option shall thus be included as a Project element with respect to detailed planning of the individual Partial Deliveries and Iterations.

## Options for delivery as a Separate Task

Options that are not ordered as part of the Deliverables shall be delivered as a Separate Task. The Customer may order the Options contained in Appendix 3 as a Separate Task. The deadlines for ordering are contained in Appendix 3.

The Supplier shall then develop and implement the requirements covered by the Option, using the Agile Method (Appendix 7) and in accordance with the provisions of clause 5.2. The provisions of the Contract shall otherwise apply to matters not regulated by Appendix 3.

Penalties, compensation, etc., shall be calculated on the basis of the agreed fee for the Separate Task, and any failure to meet guarantees or any other breach related to these Options shall be treated separately from the rest of the Deliverables.

# MAINTENANCE AND SUPPORT

## General

The Supplier shall undertake to carry out maintenance and support of a Partial Delivery from the Acceptance of the Partial Delivery, unless otherwise stated in Appendix 10, cf. clause 12.2.2.

With respect to Actual Changes and Options ordered for delivery as a Separate Task, cf. clauses 6.3 and 14.3, maintenance and support shall be undertaken from the Acceptance of the Separate Task in question, unless otherwise stated in Appendix 10.

The extent of maintenance and support and the execution thereof is specified in Appendix 10. Maintenance of Software shall always comprise the relevant Documentation, without prejudice to clause 23.8.

The Customer shall be under no obligation to perform updates in the form of new Versions or Releases. If such an update is a precondition for the Supplier's compliance with service level goals, this will be set out in Appendix 10, stating the maximum number of Versions/Releases with which the Customer may be in arrears. In addition, such an update may be a precondition for the Supplier's duty to take corrective action as part of the maintenance plan, cf. Appendix 14.

Maintenance shall be undertaken in accordance with Good IT Practice and by qualified personnel with knowledge of the Deliverables. The provisions set out in clauses 3.2.7, 18 and 19 on quality assurance, audit and security shall apply by analogy, except for insight requirements.

## Maintenance plan

The deadlines for the Supplier's initiation of corrective action are set out in Appendix 11, without prejudice to clause 23.8 concerning third party software.

The classification of a Fault depends, in particular, upon whether the Fault is critical to the performance of the Customer's tasks and to compliance with the Description of the Deliverables, and whether a workaround is possible. A workaround shall be construed as, for instance, the use of other and/or additional entries or functions and the Customer's use of changed work processes.

Faults shall be classified by the Parties jointly in connection with the Customer's reporting of the Fault. In the event of disagreement regarding the classification of the Fault, the provisions of clause 37.2 shall apply. In the event of disagreement regarding the classification of the notified Fault, the Supplier shall correct the Fault in accordance with the Customer's classification until a decision has been made.

The deadlines for initiated and completed corrective action shall apply as from the time when the Supplier received the Customer's adequate notification, cf. Appendix 10, to the time when the Supplier initiated the corrective action or corrected the Fault and informed the Customer thereof, cf. Appendix 10. If the Supplier, by agreement with the Customer, provides remote diagnostics, the corrective action shall be considered initiated at the time when the Supplier established or attempted to establish the agreed connection.

## Performance

Corrective action and other maintenance activities shall be planned and performed with as little inconvenience to the Customer as possible.

In the event that maintenance activities are carried out at the initiative of the Supplier and in the event that such maintenance activities by the Supplier have not been scheduled in advance, the Customer shall, to the extent possible, be notified thereof at least 10 Working Days in advance, cf. Appendix 10.

The Customer may require that maintenance activities take place outside the Customer's normal working hours. Unless otherwise stated in Appendices 10 and 14, the Customer shall then pay an additional fee in this respect in accordance with Appendix 14, irrespective of the cause of the maintenance activities.

Where maintenance activities necessitate a full or partial interruption of the Customer's use outside of any agreed service windows, the Supplier shall obtain permission from the Customer prior to such interruption. If the Customer refuses to grant permission to such interruption immediately after the Supplier has made the request, the Customer shall be considered to have requested a postponement of the maintenance activity. If the postponed maintenance activity causes non-compliance with service level goals, cf. Appendix 11, or any other requirements, the Supplier shall not be responsible for this in the period in which the maintenance activity is postponed.

In the course of corrective action, the Supplier shall keep the Customer regularly updated of the progress thereof.

# operation

Where the Supplier is to undertake the Operation or offers this as an Option, the service and the terms thereof are specified in Appendix 12, which also specifies the deadline for the exercise of any Option.

The provisions of clauses 3.2.7, 18 and 19 concerning quality assurance, audit, and security shall apply by analogy, except for insight requirements.

The Operation shall be undertaken for each Partial Delivery and shall be undertaken from the Acceptance Date of a Partial Delivery.

If it has not been agreed that the Supplier is to undertake Operation, the Customer shall be entitled at any time to entrust the Operation to a third party appointed by the Customer. If the Supplier has specific requirements for - or if specific preconditions otherwise apply to - any such Operations undertaken by a third party, this shall be stated in Appendix 12. Such requirements shall not be unreasonable and shall be justifiable. The Customer accepts that the Supplier may make justifiable, reasonable and factual requirements for Operation by a third party as a precondition for compliance with the service level goals to be met by the Supplier under the Contract. Such requirements shall also be stated in Appendix 12.

The Supplier warrants that the necessary Documentation and Customised Software shall be made avaiable to a third party for use in Operation, unless otherwise stated in Appendix 12.

# service level goals

## General

The purpose of the service level goals is to list requirements concerning response time, reaction time and availability. The service level goals are specified in Appendix 11.

The service level goals comprise the Deliverables, including Other Requirements which have not lapsed, cf. clause 5.2.1.1.

The service level goals comprise the entire Deliverables, unless otherwise explicitly stated in Appendix 11.

The service level goals must be complied with from the Acceptance Date of the individual Partial Deliveries, unless otherwise stated in Appendix 11.

In the event of disagreement between the Parties about the classification of a Fault, or about compliance with service level goals, clause 37.2 shall apply.

## Failure to achieve service level goals

Appendix 11 classifies non-compliance with response time and reaction time into different fault categories (fault category I, II, III, IV or V) and assigns a weighted value to each fault category. If different requirements apply to the individual Partial Deliveries, this is also stated in Appendix 11.

Non-compliance with the required response time and reaction time in a calendar month shall not exceed the weighted totals stated in Appendix 11.

# Audit

## The Customer's right of audit

The Customer shall be entitled, during the term of the Contract, to inspect the Supplier's work with a view to uncovering any risks of non-compliance with the Time Schedule (Appendix 1) and the stated fee and time consumption estimates, cf. clause 5.1.2, with a view to ensuring that the Supplier complies with the requirements for regular quality assurance of the work under the Contract, cf. clause 3.2.7, and that the Supplier complies with the security requirements, cf. clause 19. In this connection, the Customer may require that the auditor be given access to the Supplier's source code with a view to inspecting the quality thereof. The Customer may furthermore request that the Supplier prepare a detailed resource plan for all activities directly or indirectly contributing to the performance of the Contract, including the Customer's participation.

The audit may also include an inspection as to whether the Supplier complies with the requirements with respect to insight, cf. Appendix 8, including whether any failure to achieve the required level of insight may be of relevance to the Supplier's performance of the Contract.

## The Supplier's right of audit

The Supplier shall be entitled, during the term of the Contract, to inspect whether the Customer's participation is in accordance with the insight level requirements, cf. Appendix 9, including whether any failure to achieve the required level of insight may be of relevance to the Supplier's performance of the Contract.

## Performance of audit

Audit shall be performed by an impartial expert appointed in accordance with the provisions of clause 37.2. Decisions by the impartial expert shall be final and binding on both Parties.

Disputes relating to the interpretation of the Contract and other legal matters shall not be decided by the expert.

Audit shall take place at 10 Working Days' notice by way of a Notice and no more than four times a year. Expenses for the impartial expert shall be borne by the Party requesting the audit, cf. below, however.

In the event that the Supplier exceeds a time limit for Acceptance, an operational test, or the Supplier acknowledges that such time limit will be exceeded, an audit of the Supplier may be performed in excess of the stated maximum number of audits per year. In this case, the costs of the impartial expert shall be borne by the Supplier.

Each Party shall assist the auditor, to a reasonable extent and without any additional fee, where necessary for the performance of the audit, including giving the auditor access to relevant premises and information.

The audit shall not limit the responsibilities of the Supplier in relation to compliance with the requirements of the Contract. If an audit performed gives rise to amendments to the Contract, such amendments shall be implemented in accordance with clauses 6 and 36.3.

To the extent possible, audit shall be planned so as to cause as little inconvenience to the performance of the Contract as possible.

# security

The Supplier, the Supplier's personnel, subcontractors, and subcontractors' personnel shall implement and comply with the security requirements stated in Appendix 3 in connection with the performance of the Contract. If compliance with such requirements involves requirements for the Customer's participation, in excess of the activities which the Customer is expected to handle itself on the basis of own guidelines and work routines, the Supplier shall state this in Appendix 9.

# charges

All prices are stated in Danish kroner (DKK). The charges include indirect taxes, except VAT, applicable at the time of conclusion of the Contract. If the indirect taxes are changed or new taxes are introduced, prices shall be adjusted by the net financial effect thereof to ensure an unchanged situation for the Supplier.

The prices are fixed unless otherwise indicated in Appendix 14.

The charges include insurance until the Acceptance Date; for any equipment, however, only until the Installation Date.

The charges include transport, consumption and accommodation for the Supplier's personnel, unless otherwise stated in Appendix 14.

The charges relating to the Deliverables comprise the agreed charges for the Deliverables, cf. clause 2 of Appendix 14. A specification of the charges relating to the Deliverables and other charges, including a maintenance and operation fee, is included in Appendix 14.

In respect of Actual Changes and Options delivered as a Separate Task, cf. clauses 6.3 and 14.3, a separate fee shall be fixed in accordance with the guidelines in Appendix 14.

For the purposes of calculating the charges relating to the Deliverables pursuant to clauses 25.2.1, 28 and 37.3.4.1, however, any periodical payments for the use of Standard Software for four years as from the Acceptance Date shall be included.

# incentives

If an incentive scheme has been agreed for the Supplier, this is described in Appendix 15.

# terms of payment

## General

The Customer shall pay the charges relating to the Deliverables in accordance with the terms of Appendix 14.

In the event that Faults are detected during the acceptance test in connection with Mandatory Requirements and/or Other Requirements which do not prevent the approval of the acceptance test, a fair and proportionate share of the fee payable on the approval of the test shall be retained until the Faults have been corrected or the Fault List has otherwise been closed by agreement between the Parties. The retained share is described in detail in Appendix 14.

Fees for maintenance, support, and payment for use of Standard Software shall be paid by the Customer as stated in Appendix 14.

However, the Customer is not under any obligation to effect payment until 30 calendar days after receipt of an adequate invoice.

In respect of payments made prior to the Acceptance Date (payments on account), other than fees for Deployment prior to the Acceptance Date, payment is subject to the condition that the Supplier pledges in advance a full and irrevocable demand guarantee from a reputable bank or insurance company as collateral for repayment of the amount. The demand guarantee shall be presented to the Customer for approval. The guarantee shall be released when the Deliverable in question has been delivered to the Customer.

## Invoicing

Invoicing shall take place electronically in accordance with the Danish Public Payments (Consolidation) Act no. 798 of 28 June 2007 regarding Public Payments, etc., with subsequent amendments applicable from time to time, applicable provisions thereof, as well as the provisions of the Danish VAT Act, applicable from time to time, cf. VAT Order no. 663 of 16 June 2006 on the Danish Value Added Tax, as amended, concerning the contents of invoices (section 40) and electronic invoices (section 45).

A deadline for invoicing shall mean that the electronic invoices shall be available to the Customer in the electronic payment system within the expiry of the deadline.

The Customer's EAN number is: *[Indsættes af Kunden]*.

Invoicing shall take place as set out in Appendix 14.

# warranties

## General warranty

Provided that any requirements concerning the Customer's IT environment are satisfied, cf. clause 4, and that the Customer provides the agreed participation, cf. clause 10 and Appendix 9, the Supplier warrants that the Deliverables, maintenance, and Operation, if applicable, comply with all requirements to the Deliverables under the Contract and Good IT Practice. If the Deliverables delivered by the Supplier fail to comply sufficiently with the Contract and Good IT Practice, the Supplier shall, at no additional fee and within the deadlines fixed, cf. Appendix 1, deliver what is required for the proper performance of the Contract.

The Supplier warrants that the equipment and Software comply with the requirements for function, capacity, architecture, security, interfaces, and integration as stated in the Description of the Deliverables (Appendix 3) and the Contract in general, including Appendix 16 with respect to Software.

The Supplier warrants that design methods, quality standards, programming language and programme development tools that are in conformity with Good IT Practice shall be used for Customised Software.

The Supplier warrants that the delivered Software is covered by the licenses stated in Appendix 16.

## Software Faults

If the Customer has required certain specified Software, the Customer shall bear the risk of any Faults and of any extraordinary costs incurred in connection with the Supplier's compliance with its maintenance obligations which must be attributed to such Software and which ought not to have been avoided by the Supplier.

If the requirement relates only to Software in general, the Customer shall only bear the risk of Faults and extraordinary maintenance costs in so far as, in choosing the specific Software, the Supplier did not foresee or ought not to have foreseen such Faults or extraordinary maintenance costs.

##  The Supplier's resources

The Supplier warrants that it will apply sufficient and qualified resources for the performance of services under the Contract and that it is in possession of the agreed competencies and has achieved the required level of insight to carry out the Project using the Agile Method, cf. Appendix 8.

## Estimates

The Supplier warrants that it will prepare estimates in a professional and responsible manner and to apply the method stated in Appendix 14 in respect of fees and time consumption estimates.

## The Customer's participation

The Customer warrants that it will participate actively in the Project as described in the Contract, cf. clause 10 and Appendix 7, and will in its participation use sufficient and qualified resources.

The Customer furthermore warrants that it will comply with the requirements set out in Appendix 9, cf. clause 9.2, with respect to achievement of the required level of insight with a view to implementing the Project using the Agile Method

If the Customer's achievement of the level of insight set out in Appendix 9, cf. clause 9.2, is conditional upon the Customer's users having attended a training course in the Agile Method applied, this is specified in Appendix 3.

If the Customer's use of the Deliverables is conditional upon the Customer's users having attended a training course recommended and conducted by the Supplier, this is specified in Appendix 9.

## Change possibilities

The Supplier warrants that changes to the Deliverables and the Operation, if applicable, will be possible in accordance with the guidelines in clauses 6 and 14 and what has been described as a possible Option or an Actual Change of the Deliverables in Appendix 3 or described as an additional functionality in Appendix 16.

In addition, the Supplier warrants that Options and agreed changes shall not restrict the existing properties of the Deliverables with respect to compliance with the Customer's Statement of Needs (Appendix 3a), including the suitability of the Deliverables with respect to the Customer's Business Objectives and Needs, or prevent/restrict the continued compliance of the Deliverables with the requirements under the Contract, unless otherwise stated in Appendix 3 or resulting from the agreement on the said Option or change.

## Maintenance and changes carried out by third parties

The Supplier warrants to integrate changes delivered by third parties with the Deliverables provided the technical solution of the change satisfies requirements for interfaces, etc., as provided for in Appendix 3 and Good IT Practice in general. The Supplier shall be remunerated separately in this respect.

The Customer shall be entitled to carry out or appoint a third party to carry out maintenance of or changes to Software, unless otherwise stated in Appendix 16, cf. clause 31.

To the extent that the Customer is entitled to carry out or appoint a third party to carry out maintenance of or changes to Software, cf. clause 31, the Supplier warrants that:

* Software shall be implemented in an appropriate manner so as to enable a third party to carry out maintenance and changes without disproportionate resource consumption, provided that the third party possesses the qualifications customary for undertaking such task.
* Software and equipment delivered shall be designed in such a way as to enable a third party to carry out maintenance and changes using Standard Maintenance and Standard Development Tools, unless otherwise stated in Appendix 16.
* If it is specified in Appendix 16 that maintenance and changes shall not be carried out using Standard Maintenance and Standard Development Tools, the Supplier shall, in accordance with clauses 31.2 and 31.3.1.1, make the necessary maintenance and development tools, etc., available to the Customer or a third party appointed by the Customer for the task.

##  Liability for subcontractors

The Supplier shall be liable for deliveries and services provided by subcontractors under the Contract in the same way as for the Supplier's own deliveries and services, but with the limitations mentioned below.

If the Customer, on the advice of the Supplier, has concluded a license agreement on the use of Third Party Standard Software directly with the licensor, cf. clause 10.4, the licensor shall also be considered a subcontractor.

If a Fault occurs in Third Party Standard Software, which the Supplier ought not to have acknowledged or foreseen at the time of the conclusion of the Contract, and which is in the nature of a Software Fault in relation to the subcontractor's specifications (programme fault) and not a Fault in relation to the requirements for the Deliverables under the Contract (system error), the following limitations shall apply to the Supplier's duty to remedy:

* The Supplier shall immediately report the Fault to the producer of the Standard Software and obtain confirmation from the producer that the issue has been accepted as a notification of Fault. The Supplier shall at suitable intervals follow up on the notification of fault and report back to the Customer.
* The Supplier shall do its utmost to reduce the extent of the problem, including by providing instructions for relevant workarounds.
* If a third party has taken remedial action in relation to the relevant Fault or any other Faults or has provided instructions for relevant workarounds, the Supplier shall promptly notify the Customer and undertake installation at the Customer's premises, provided that this forms part of the agreed maintenance.

The limitation referred to above regarding the Supplier's correction of Faults shall not include the Software specifically exempted in Appendix 3. Software from the Supplier's affiliated companies shall not be exempted. The limitation shall not involve any limitation of the requirements for approval of acceptance test or operational test or any other remedies of breach available to the Customer.

## Warranted service level goals

The Supplier warrants that the service level goals stated in Appendix 11 shall be met from the Acceptance of the individual Partial Deliveries until the expiry of the maintenance obligation. If specific service level goals apply to any period of deployment prior to the Acceptance Date, this is stated in Appendix 11.

For the purpose of meeting the warranted service level goals, the Supplier shall carry out preventive and remedial maintenance as stated in clause 15.

## Third party rights

The Supplier warrants that the deliverables shall not infringe the rights of any third party, including patents or intellectual property rights.

The warranty shall be subject to the condition that the Customer, by way of a Notice, promptly notifies the Supplier thereof as soon as the Customer becomes aware of any infringement of rights and that the Customer assists the Supplier during the case to the extent necessary.

## Regulatory compliance

The Supplier warrants that the services and deliveries provided comply with relevant mandatory rules and the non-mandatory rules set out in Appendix 3, as available on conclusion of the Contract or at the time of ordering a change and an Option.

The extent to which introduction of new provisions after conclusion of the Contract is comprised by the Supplier's maintenance plan is set out in Appendix 10.

## Warranty period

The warranty period for a Partial Delivery and a Separate Task shall be one year, starting from the Acceptance of the Partial Delivery or Separate Task. No time limit shall apply to warranties relating to third party rights, cf. clause ‎23.10, and compliance with rules, cf. clause 23.11.

The warranty period for a Partial Delivery which is Accepted subject to Dependencies shall not expire, however, until a year from the final Acceptance. Equipment, if any, shall always, however, be subject to a warranty period of one year starting from the Deployment of the equipment. In the event that the manufacturer of the equipment in question provides a long-term warranty, the Supplier shall ensure that the Customer be granted the entire warranty period from the manufacturer.

The correction of Faults shall be subject to warranty until the end of the original warranty period, however no less than three months starting from the time of correction.

Maintenance and other services provided regularly shall be subject to warranty. Any claims concerning such services shall be made within one year from delivery of the said services.

# protection of individuals with regard to the processing of personal data

In the event that the processing of personal data is necessary for the Supplier's performance of the Contract, the Supplier shall ensure that, at any time, current Danish legislation on the processing of personal data is complied with, in particular the Act on Processing of Personal Data (Act nr. 429 of 31 May 2000 with subsequent amendments) (*in Danish:* *persondataloven*), as well as the Executive Order on Data Safety (Executive Order nr. 528/2000 with subsequent amendments) (*in Danish: sikkerhedsbekendtgørelsen*) if the Customer is a public administration.

To the extent that the Supplier's performance of the Contract entails the Supplier's processing of personal data, the Supplier, as data processor, shall act solely upon instruction from the Customer as data controller, and the provisions of sections 41 (3) - (5) of the Act on the Processing of Personal Data shall also apply with respect to the processing of personal data with the Supplier. The Supplier shall not process personal data for other purposes than those specified by the Customer, nor shall the Supplier process personal data upon instruction from anybody other than the Customer.

The Supplier shall implement appropriate technical and organisational security measures to protect data against accidental or unlawful destruction, loss or alteration and against unauthorised disclosure, abuse or other processing in violation of the provisions laid down in the Act on Processing of Personal Data and the Executive Order on Data Safety. This shall also apply if the processing of data with the Supplier takes place in a home office.

If the Supplier is established in another EU member state, the provisions on security measures laid down by the law in the member state in which the Supplier is established shall also be incumbent on the Supplier. If the Supplier is established in another EU member state, the Supplier shall thus comply with both the security measures laid down in both the Danish Act on Processing of Personal Data and the security measures laid down by the law of the member state of the Supplier.

Upon request from the Customer the Supplier shall provide adequate information for the Customer's compliance with its obligations under the Act on Processing of Personal Data, including its obligations to the data subjects (such as the right of access), and the obligation to ensure that the Supplier has implemented the mentioned technical and organisational security measures. In this respect, the Supplier shall ensure that an independent third party submits an annual auditors' statement to the Customer regarding the Supplier's security precautions with respect to the processing of personal data.

The Supplier shall be obliged, as part of its performance of the Contract, to participate in any consultations with the Data Protection Agency (*in Danish:* *Datatilsynet*) and incorporate any recommendations and/or directions from the Agency concerning the processing of personal data.

The Supplier shall inform the Customer without undue delay in case of breach of security.

# breach by the supplier

## General duty to notify

It shall be the duty of the Supplier to serve a reasoned Notice to the Customer immediately after the Supplier can predict a risk of non-compliance with its obligations under the Contract, including non-compliance with a fee and/or time consumption estimate, cf. clause 5.2.1.1, or any other risk of delay or non-compliance with the Contract.

## Delay

### Penalty

If one of the time limits for the Acceptance set out in the Time Schedule (Appendix 1) is exceeded due to the Supplier's circumstances, the Supplier shall pay a penalty for each commenced Working Day by which the agreed time limit is exceeded. Upon the lapse of a conditional Acceptance of a Partial Delivery due to non-approval of the acceptance test for a Partial Delivery which was subject to Dependencies from the conditionally accepted Partial Delivery, a penalty shall accrue on both Partial Deliveries from the time when the time limit for Acceptance of the Partial Delivery subject to Dependencies was exceeded.

The penalty shall constitute *[…]* % of the charge fixed for the Partial Delivery or Separate Task comprised by the delay for each commenced Working Day.

Where the operational test cannot be carried out with the agreed result before the agreed time limit, cf. Appendix 1, due to the Supplier's circumstances, the Supplier shall pay a penalty for each commenced Working Day by which the agreed time limit is exceeded.

The penalty shall constitute *[…]* % of the charge fixed for the Partial Delivery or Separate Task comprised by the delay for each commenced Working Day.

The total penalty for a delay concerning a Partial Delivery or Separate Task shall not exceed *[…]* % of the fee fixed for the said Partial Delivery or Separate Task.

Any penalty imposed shall be paid weekly on demand made by Notice from the Customer. The Customer's entitlement to penalty payments shall lapse if the Supplier has not received Notice thereof from the Customer within 12 months of the agreed time limit.

## Defects

### Remedy

For the parts of the Deliverables comprised by the maintenance plan, it shall be the duty of the Supplier to correct Faults in the Deliverables as part of the said scheme in accordance with clauses 15 and 17 and Appendix 10.

In respect of other services, the Supplier shall correct Faults where necessary for the operational test to pass or where notification of a Fault is given within the warranty period.

The Supplier's duty to remedy applies to Faults in connection with both Mandatory Requirements and Other Requirements which have not lapsed, cf. clause 5.2.1.1.

When the Supplier has taken remedial action, the Supplier shall notify the Customer thereof.

In the event of disagreement about the existence of a Fault or whether the Supplier's remedial action is adequate, the issue shall be settled in accordance with clause ‎37.3.

Reference is made to the limitations on the Supplier's duty to remedy in relation to third party products, cf. clause ‎23.8.

### Penalty for failure to meet service level goals

In the event of failure to meet the service level goals set out in Appendix 11, the Supplier shall pay a penalty in accordance with the principles stated in Appendix 11.

The total penalty for failure to meet service level goals in a month shall not exceed […] % of the maintenance fee charged for the said month.

Any penalty imposed shall be paid monthly on demand made by Notice from the Customer. The Customer's entitlement to penalty payments for the said month shall lapse if the Supplier has not received Notice thereof from the Customer within 12 months from the end of the month.

### Proportionate reduction

If defects are not remedied within a reasonable time and the defect causes a decrease in value, the Customer shall be entitled to a proportionate reduction. In the calculation of the relevant decrease in value upon which the reduction is based, regard shall be had to the utility value not available to the Customer due to the Fault.

For circumstances giving rise to the payment of a penalty, a proportionate reduction shall only be claimed to the extent that the Customer provides documentation of a decrease in value in excess of the penalty paid.

# termination by the customer

## Conditions for termination

The Customer shall be entitled to terminate the Contract in full or in part for material breach.

Termination on the grounds of Defects requires that the Defects have not been remedied within a reasonable time, cf. Appendix 11 for requirements for reaction time and availability. Faults resulting from n-compliance with Other Requirements on the Acceptance shall not be included in the assessment of whether a material breach has occurred, cf. clause 7.4. Any non-compliance with service level goals is assessed in relation to the Deliverables, including Other Requirements, which have not lapsed, cf. clause 5.2.1.1.

Termination by the Customer shall have effect only for the specific Partial Delivery/Deliveries for which material breach has occurred and for future Partial Deliveries. Thus, termination shall not have effect for Partial Deliveries already accepted by the Customer. This shall not apply, however, where the Acceptance has taken place conditionally, cf. clause 13.2, and where the Partial Delivery has Dependencies to Mandatory Requirements which, at the time of termination, have not been provided upon Acceptance of a Partial Delivery, or the Partial Delivery has Dependencies relating to Mandatory Requirements comprised by a Partial Delivery with respect to which material breach exists.

Any breach by the Supplier of its operational obligations, if any, shall not justify a termination of any other services under the Contract. If a period of non-termination for the Supplier has been provided for in Appendix 12, any such provision shall only apply if the Customer is in a position to have a third party manage the Operation on usual business terms.

If the Supplier commits material breach of the maintenance obligations during the warranty period, the Customer shall be entitled to terminate the Contract in full or in part. Termination shall comprise the agreement to carry out maintenance and support or parts thereof as well as any future Partial Deliveries. In addition, termination may comprise only the Partial Delivery/Deliveries which are specifically, and of consequence to their functionality, materially affected by the Supplier's breach, and for which the warranty period has not yet expired. When assessing whether the functionality has been materially affected, any restoration of the functionality shall be taken into consideration if maintenance is transferred to a third party. After expiry of the warranty period, the termination shall solely comprise the maintenance and support agreement or parts thereof.

### Grounds for termination

The following grounds, among others, shall be considered as material breach justifying the Customer to terminate the Contract in full or in part in accordance with clause 26.1:

* The time limits for Acceptance and approved operational test of a Partial Delivery are exceeded by more than *[40]* Working Days in total
* If at a given time during two reference periods in succession the Supplier incurs maximum penalty for failure to comply with service level goals, cf. clause 25.3.2. This shall apply irrespective of whether the failure to comply with the service level goals is attributable to Faults in Mandatory Requirements and/or Other Requirements which have not lapsed, cf. clause 5.2.1.1.
* The Supplier's insolvency, unless the insolvency estate announces, without undue delay following a written application from the Customer, that the estate will become a party to the Contract.
* The Supplier enters into reconstruction.
* The Supplier enters into negotiations for an arrangement with its creditors, or the Supplier's materially deteriorated financial affairs in general jeopardise the proper performance of the Contract.
* The Supplier's discontinuance of the business to which the Contract applies, or other circumstances seriously jeopardising the proper performance of the Contract.

If an independent expert has decided by audit, cf. clause 18, that the Supplier's failure to comply with the requirements with respect to insight set out in Appendix 8 is of material significance to the Supplier's delay in relation to the Time Schedule (Appendix 1) or to the Supplier's ability to deliver without material Defects, and the Supplier has not shown during a renewed audit by the independent expert that the requirements to the Supplier's insight have been complied with within a deadline determined by the independent expert, the Customer shall be entitled to terminate with respect to the Partial Delivery in question and future Partial Deliveries, without prejudice to clause 26.1, however, regarding termination of Dependencies

In the event that the agreed Acceptance of an Actual Change or an Option delivered as a Separate Task, cf. clauses 6.3 and 14.3, is exceeded by more than *[30]* Working Days, the Customer shall also be entitled to terminate, in full or in part, the agreement on the relevant Actual Change or Option.

## Settlement on termination

### General

In case of termination, the Supplier shall promptly repay any amounts paid by the Customer concerning the parts of the Deliverables comprised by the termination without any deduction for decrease in value or normal use.

The Customer shall return the parts of the Deliverables comprised by the termination in the condition in which they are found at the premises of the Customer. The Customer shall be liable in damages for any loss due to any unexpected use of the Deliverables. The Supplier shall undertake dismantling.

The Customer shall be entitled, however, to use parts of the Deliverables until alternative solutions can be provided. In that case, the amounts received from the Customer for what is affected by the termination shall not be repaid until the date of return.

For the period from termination until such return, the Customer shall pay a reasonable amount for the Customer's benefit of the use of the parts of the Deliverables in question, including for any Deployment prior to the Acceptance Date. Upon the return of parts of the Deliverables, the utility value shall as a general rule be determined as the sum total of any operational charge, maintenance charge and periodical payments for the use of Software (or any proportion of a fixed lump sum). Such charges and fees shall be payable in proportion to the Customer's enrichment from the use.

In the case of termination, the Customer shall retain the parts of the Deliverables not comprised by the termination and any rights attached thereto on the terms otherwise applying in pursuance of clause 31 and Appendix 16. The Customer shall not claim repayment of any fees paid for such parts of the Deliverables.

The Customer may demand that the Supplier re-establish the conditions relating to any previously accepted Partial Deliveries not comprised by the termination, in the event that those Partial Deliveries are no longer fully functional due to circumstances relating to the parts of the Deliverables for which material breach has occurred.

For the parts of the Deliverables comprised by the termination, the agreement on maintenance and any Operations shall lapse on return. The Supplier shall still be under an obligation to maintain and handle any Operations of the parts of the Deliverables not comprised by the termination on the existing terms and conditions, always provided that the Supplier's fee is reduced proportionately. However, the Supplier shall be entitled to request that the maintenance fee and/or any Operations fee for the remaining parts of the Deliverables be adjusted to the extent that this is reasonably justified.

### Return of and rights in Software and Documentation on termination

On termination of a Partial Delivery, the right of use, with the exceptions stated in this clause 26.2.2, of the Software and supporting Documentation comprised by the termination shall cease. The right of use shall cease at the time of the Supplier's repayment of amounts paid by the Customer for the Software, cf. clause 31.1.

#### Interdependency

The Customer shall return Software, etc., only to the extent that the full functionality concerning any previously accepted Partial Deliveries not comprised by the termination is not affected thereby. In the event that the right of use to the Software, etc., comprised by the termination of a given Partial Delivery is essential to the Customer's use of one or more previously delivered Partial Deliveries not comprised by the termination, the Customer thus retains the right of use to the Software, etc., unless the Supplier re-establishes the conditions relating to those Partial Deliveries. The Customer's use of the functionalities of such Software shall be subject to payment of a fee as stated in Appendices 14 and 16.

# breach by the customer

## The Customer's breach of its payment obligations

In the event that the Customer is in breach of its payment obligations under the Contract, the Supplier shall be entitled to receive interest in accordance with the Danish Interest Act (*in Danish: renteloven*).

In addition, the Supplier shall be entitled to terminate the Contract in so far as specific services and/or a specific Partial Delivery and future Partial Deliveries are concerned if the Supplier has sent a Notice requiring payment to the Customer stating firstly that the Customer, in a specified manner, is in breach of its payment obligations concerning the said Partial Delivery, secondly that failure to make payment within *[40]* Working Days shall result in termination of the Contract as regards that Partial Delivery and future Partial Deliveries if the Customer has not fulfilled its payment obligations before the expiry of the time limit.

## The Customer's breach of other obligations

If the Customer fails to participate in the Project as assumed in the Agile Method and as stated in the Contract, including with the required insight, cf. clauses 5, 9 and 10 and Appendix 9, and if the Customer's non-participation, etc., causes a delay of one or several of the agreed time limits for demonstrations and testing in the Time Schedule (Appendix 1), the Supplier shall be entitled to extend subsequent time limits for demonstrations and testing by a number of days corresponding to the delay. In consequence, the Customer shall, at the request of the Supplier and in accordance with the change control procedure stated in clause 6.3.3, submit a change request with a view to extending subsequent time limits for demonstrations and testing by a number of days corresponding to the delay. The Customer's right of extension, cf. clause 12.2.4, shall be reduced correspondingly.

Any request for extension shall be given in writing to the Customer when the Supplier can predict that the Time Schedule (Appendix 1), as a result of the Customer's circumstances, will be exceeded, however not later than three Working Days after the delay is ascertained. If the request is submitted after the expiry of this deadline, only the time limits occurring after the Customer's receipt of the request can be extended.

Failure to request extension of time limits shall entail that the delay shall not be attributable to the Customer.

To the extent that the Supplier has submitted a written request for extension of time limits to the Customer, the Supplier shall be entitled to include in its fee any expenses for direct, documented additional expenses incurred by the Supplier as a result of delay caused by the Customer's non-participation, and, in addition, the Supplier shall be entitled to interest on any deferred payments caused by the delay.

If the Customer's non-participation, etc., constitutes material breach of the Customer's obligations under the Contract, the Supplier shall also be entitled to terminate the Contract in so far as the specific Partial Delivery which was delayed by the Customer's non-participation and future Partial Deliveries are concerned, if the Supplier has sent a Notice to the Customer stating firstly that the Customer, in a specified manner, is in breach of its obligations under the Contract, and secondly that failure to correct this within *[20]* Working Days shall result in the termination of the Contract as regards the said Partial Delivery and future Partial Deliveries, assuming that the Customer has not fulfilled its payment obligations under the Contract within the deadline set.

# rights and remedies provided at law or in equity

Unless otherwise stated in the Contract, the rights and remedies under the Contract shall not exclude any other rights and remedies provided to the Parties at law or in equity.

# damages and insurance

The Parties shall be liable in damages to the extent that the necessary basis of liability exists and a loss has been incurred.

For circumstances resulting in payment of a penalty or a proportionate reduction, damages shall only be claimed to the extent that the Customer provides documentation of a loss in excess of the penalty or the proportionate reduction. At all events, damages and any penalty or proportionate reduction combined shall be limited to the charges relating to the Deliverables.

If an independent expert has decided by audit, cf. clause 18, that a Party's failure to satisfy the requirements with respect to insight, cf. clause 9, has had a significant effect on that Party's material breach of the Contract, the maximum amount of the combined damages and penalty or reduction of the fee shall be increased by […] %.

The Parties shall in no event be liable for operating losses, consequential losses or other indirect losses. Consequential losses and indirect losses shall not comprise a) any costs incurred by the Customer for Standard Software after a partial termination if these costs are in excess of the necessary costs related to the Customer's use of Partial Deliveries not comprised by the termination, [b)…c)……]. Loss of data shall be considered as indirect loss except when it is a result of the Supplier's Operation or other data handling comprised by the Contract.

The limitations mentioned above shall apply only if the loss was not caused by gross negligence or intentional acts by the Party causing the loss.

The Supplier is subject to product liability with respect to products provided or manufactured by the Supplier. The Supplier shall maintain a product liability insurance from conclusion of the Contract until five years from the Acceptance Date of the final Partial Delivery. The amount of product liability for property damage shall be limited to DKK 5 million per occurrence.

For those parts of the Deliverables in respect of which a maintenance or Operation agreement has been entered into, the product liability insurance shall be maintained for the duration of the maintenance and operation period.

# Force majeure

Neither the Supplier nor the Customer shall be considered accountable to the other Party with respect to circumstances beyond the control of that Party and which the Party, on signing the Contract or an agreement on changes, should neither have taken into account (including strikes) nor have avoided or overcome. A subcontractor's circumstances shall be considered force majeure only if an obstacle comprised by the first sentence exists for the subcontractor, which the Party should not have avoided or overcome.

For delays, force majeure ma y be claimed only for the number of Working Days the force majeure situation lasts. If a time limit for the Supplier is postponed due to force majeure, the payments relating thereto shall be similarly postponed.

Force majeure shall apply only if the Party in question has given Notice thereof to the other Party no later than five Working Days after the occurrence of the force majeure. The said Notice shall contain an assessment of the expected duration of the force majeure situation.

The Party not affected by force majeure shall be entitled to cancel the Contract in full or in part if the agreed Acceptance is exceeded by 60 Working Days as a result of force majeure. Cancellation shall only have effect for the specific Partial Delivery/Deliveries affected by the force majeure situation and for future Partial Deliveries. Thus, cancellation shall not have effect for Partial Deliveries already accepted by the Customer, unless the Partial Delivery has Dependencies to Mandatory Requirements not delivered upon Acceptance of a Partial Delivery at the time of cancellation.

In the event of cancellation, both Parties shall, as soon as possible, return effects received from the other Party and comprised by the cancellation, and no further claims shall subsequently exist between the Parties. The Customer shall also be entitled to cancel an agreement on maintenance or Operation, if applicable, with effect for future services if the Supplier is prevented from providing the services as a result of force majeure for a period of 20 Working Days within a period of three months.

# rights in software, documentation, and other material protected by intellectual property rights

## General

The Supplier and/or any subcontractors hold the intellectual property rights in Software and Documentation in accordance with the provisions of the Danish Act on Copyright (*in Danish: ophavsretsloven*).

The Customer shall obtain the right of use for Software and Documentation, including Software and Documentation adjusted or changed in accordance with clause 6 and/or subject to maintenance in accordance with clause 15.

The right of use shall comprise the right to perform the copying and changes necessary for the use of the Software, including backup copies, error correction and decompilation with a view to achieving interoperability, in accordance with sections 36 and 37 of the Danish Copyright Act.

To the extent that the Supplier is not in charge of Operation, the right of use shall also comprise the right to make copies, changes, etc., necessary for the Customer to entrust the Operation of the Deliverables to a third party.

The qualitative content of the right of use as well as its scope in terms of quantity, geography and time are set out in Appendix 16 in so far as both Standard Software and Customised Software are concerned, both with supporting Documentation. To the extent that information about the Customer's right of use is not provided in Appendix 16, no limitations shall apply thereto.

Appendix 16 also sets out the Customer's right to transfer the right of use to a third party, in addition to what is stated in clause 33.

The information provided in Appendix 16 shall not cause any non-compliance with the Description of the Deliverables or departure from the information provided in this clause 31. This shall apply irrespective of whether the license agreements in Appendix 16 have been concluded between the Supplier and the Customer or between subcontractors and the Customer. The main purpose of Appendix 16 is, as part of the Supplier's license management for the Customer, to determine the content of the right of use in accordance with the Description of the Deliverables and this clause 31.

The functionalities of the Software comprised by the Description of the Deliverables shall be set out in Appendix 16. In the event that Appendix 16 does not contain such information, all functionalities of the Software shall be considered to be comprised by the Description of the Deliverables.

The consequences with respect to charges for the use of the individual functionalities of the Software within the Description of the Deliverables shall be stated in Appendix 16. In the event that Appendix 16 does not contain such information, the use shall not be subject to any charge.

Any other consequences than charges with respect to the use of the Software within the Description of the Deliverables, including for instance obligations to publish any changes, shall be stated in Appendix 16. In the event that such consequences are not stated, they shall have no legal effect as between the Customer and the Supplier.

The Supplier shall indemnify the Customer in the event that the Customer is met by a claim from any third party on the basis of license terms which have not been disclosed or which are contrary to the information stated in Appendix 16. This shall not apply, however, if the claim from the third party concerns the use of Software not comprised by the Description of the Deliverables.

The right of use of Standard Software and Customised Software with supporting Documentation is also described in clauses 31.2 and 31.3. It is stated in Appendix 3 whether the Software is Standard Software.

The right of use shall pass on Acceptance. For Software and Documentation for which the Customer has paid prior to Acceptance in accordance with clause 13.1 and/or Appendix 14, the right of use shall pass at the time of payment.

In the event of termination, the right of use of the Software and supporting Documentation comprised by the termination shall cease.

The right of use shall cease at the time of the Supplier's repayment of payments made by the Customer, including any payments under the demand guarantee, cf. clauses 22.1 and 26.2.

## Standard Software and supporting Documentation

It is stated in Appendix 16 whether the Customer is entitled, itself or by appointing a third party, to maintain, including to make changes to, the Standard Software and supporting Documentation

If the Customer is entitled, itself or by appointing a third party, to carry out maintenance, the Supplier shall make the necessary tools, including necessary source code and non-standardised development tools, available to the Customer. The conditions for the Customer's use of the tools for maintenance are set out in Appendix 16.

If the Customer or a third party is entitled to maintain the Standard Software and supporting Documentation, the Customer shall acquire a right of use, cf. clause 31.1, to the Standard Software maintained and supporting Documentation.

The Supplier shall obtain no rights in changes made by the Customer or a third party.

## Customised Software and supporting Documentation

### The Customer's rights

#### Changes

The Customer shall be entitled to make changes or appoint a third party to make changes, including maintenance, of Customised Software and supporting Documentation, without prejudice to clause 6.4 concerning changes made without the consent of the Supplier.

The Supplier shall make the necessary tools, including source code and non-standardised maintenance tools and non-standardised development tools, available to the Customer or a third party free of charge to the extent that the Supplier holds the copyright and, if not, on the same license terms as those applicable to the Supplier. Such license terms shall be set out in Appendix 16. The payment shall be stated in Appendices 14 and 16.

The Customer shall only be entitled to use the tools made available in accordance with the above section, for maintenance, operation or further development of the Customised Software.

In this connection, the Customer shall be entitled to make the tools available for changes to be made by other Public Institutions in accordance with clause 31.3.2.

The Customer shall obtain the right of use, cf. clause 31.1, of changed Customised Software and supporting Documentation.

The Supplier shall obtain no rights in changes made by the Customer or a third party.

The Customer shall not assign its changes to any third party, including other Public Institutions. This shall not apply to changes consisting of correction of faults and integration into existing and new systems.

#### Placing in escrow of unavailable source code

Unless otherwise expressly stated in Appendix 16 and/or Appendix 6, and in so far as the Customer does not already have access to the source code, cf. clause 31.3.1.1, the Supplier shall deliver at regular intervals and shall, at the latest immediately after the Customer's approval of an acceptance test also comprising Customised Software, take relevant measures to make the source code available to the Customer in case of the Supplier's breach.

If requirements are specified in Appendix 6 with respect to availability of the source code for Agile Demonstrations, the terms as regards the frequency and practical arrangement for making the source code available are set out in Appendix 6.

In case of breach by the Supplier, the Customer shall acquire such rights in the source code which are necessary for the performance of the Deliverables.

### Rights of Other Public Institutions

Unless otherwise expressly stated in Appendix 16, the Supplier shall enter into agreements regarding right of use of Customised Software with supporting Documentation with any Other Public Institution requesting such agreement.

The right of use agreement shall be entered into on the same conditions as those set out in this Contract, except for clause 31.3.1.1. The right of Other Public Institutions to carry out or to have a third party carry out any changes shall be limited to corrective action and integration into existing and new systems.

On conclusion of this Contract, the Supplier has undertaken no other obligations to Other Public Institutions to carry out changes to Customised Software.

If the Supplier carries out changes to the Customised Software in order to meet the special needs of another Public Institution, the Supplier shall be entitled to a fee in this respect. If the Supplier is unable to deliver a required change on reasonable and usual terms, the Public Institution shall be entitled to make its own arrangements for carrying out the change.

The Customer shall be entitled to make the Customised Software specific Documentation, maintenance or development tools, etc., which the Supplier has transferred to the Customer under the Contract, available to another Public Institution for use in corrective action and integration into existing and new systems as well as changes pursuant to the second sentence of the preceding paragraph.

The Public Institution shall acquire the right of use to changes with supporting Documentation subject to the same terms as the terms under this Contract.

The Supplier shall acquire no rights to in changes which the Supplier has not itself made.

## Other material protected by intellectual property rights

The Customer shall be entitled to make use of other material which is protected by intellectual property rights and which is not Software or Documentation to the extent necessary, partly in connection with the Customer's normal use of the Deliverables, partly in connection with a re-tender of the Contract or a tender of the operation and maintenance of the Deliverables comprised by the Contract.

# confidentiality

## General

The Parties shall observe confidentiality in accordance with the guidelines set out below. The duty of confidentiality shall also apply after the termination of the Contract irrespective of the cause.

## The Supplier's duty of confidentiality

The Supplier and the Supplier's personnel shall observe unconditional confidentiality as regards information about the Customer's, the users' or other parties' circumstances and data of which they obtain knowledge in connection with the performance of the Contract. The Supplier shall instruct any subcontractors, subcontractors' personnel and others assisting the Supplier in connection with the performance of the Contract, to observe a similar duty.

The Supplier shall be entitled to include the Customer in a simple list of references, but the Supplier shall not otherwise be entitled to use the Customer as reference without the prior consent of the Customer.

Following discussions with the Supplier, the Customer shall decide how to announce the conclusion of the Contract. Hence, the Supplier shall not, without the Customer's prior written consent, make any announcement about the Contract or the content of the Contract.

## The Customer's duty of confidentiality

The Customer and the Customer's personnel shall observe confidentiality in accordance with the rules applicable to personnel in the Danish public administration. Consultants and any other persons assisting the Customer shall observe a duty, as far as information about the circumstances of the Supplier is concerned, similar to the duty observed by the Supplier with respect to the Customer's circumstances.

# assignment of the contract

## The Customer's assignment

The Customer shall be entitled to assign its rights and obligations under the Contract to another Public Institution if the tasks so far performed by the Customer are transferred to another Public Institution. This shall apply regardless of any provision to the contrary in Appendix 16.

## The Supplier's assignment

The Supplier shall not assign its rights and obligations under the Contract to any third party without the written consent of the Customer. Consent shall be given only if such assignment is effected subject to the applicable rules of tender, and if no material circumstances prevent such assignment.

# duration

## The Customer's right of withdrawal

The Customer shall be entitled, at any time, giving at least *[20]* Working Days' written notice of termination, to withdraw in full or in part from the Contract with effect for future deliveries.

On the Customer's withdrawal, the obligations of both Parties to further perform the Contract shall lapse, however without prejudice to clause 35 concerning the Supplier's obligations in connection with the termination of the Contract.

Unless the Customer decides otherwise, the Supplier shall be under an obligation to continue to carry out maintenance and support related to Partial Deliveries already accepted by the Customer at the time of the Customer's withdrawal, always provided that the Supplier's fee for these services shall be proportionally reduced. The Supplier shall be entitled to demand that the maintenance and/or any operations fee for future services be adjusted to the extent that this is reasonably justified. The Parties shall be entitled to terminate any maintenance and support as well as Operations, if applicable, related to the said Partial Deliveries in accordance with the guidelines described in clauses 34.2 and 34.3.

On withdrawal, the Customer shall pay a fee to the Supplier. The fee is specified in Appendix 14.

If the Customer chooses to withdraw from the Contract at a time when parts of the Deliverables have passed for testing as part of the next Partial Delivery, cf. clause 7.2, the said parts of the Deliverables shall, in relation to fees, be considered approved and accepted by the Customer.

On payment of fees to the Supplier, the Customer shall obtain the right to the Deliverables as available at the time of the Customer's withdrawal from the Contract, in accordance with the guidelines set out in clause 31 and Appendix 16. The provisions set out in clause 26.2 on the settlement on termination shall apply by analogy.

## Maintenance and support

The Supplier shall be entitled, by giving Notice, to terminate the maintenance and support of the entire Deliverables, giving 12 months' notice to the first day of a month, to expire no sooner than four years after Acceptance of the last Partial Delivery. However, the Supplier shall be entitled, by giving Notice, to terminate the maintenance and support of the Standard Software of a third party if the producer thereof ceases to offer maintenance and support in Denmark. Such termination shall be effected by at least three months' notice and shall not take effect prior to the time when the producer ceases to offer maintenance and support.

The Customer shall be entitled, by giving Notice, to terminate the maintenance and support of the entire Deliverables, giving six months' notice to the first day of a month, to expire no sooner than one year after Acceptance of the last Partial Delivery, unless otherwise explicitly stated in Appendix 10.

The Customer shall be entitled, by giving Notice, to terminate the maintenance and support for parts of the Deliverables, as set out in Appendix 10 by giving six months' notice to the first day of a month, to expire no sooner than the expiry of the warranty period of the Partial Delivery in question, unless otherwise explicitly stated in Appendix 10. In the event of partial termination of maintenance and support, the maintenance fee shall be reduced by the amounts specified in Appendix 14 for the parts of the Delivery affected by the termination. In addition, the warranted service level goals shall cease to apply if this is stated in Appendix 11.

If the Supplier is in charge of the Operation, cf. clause 16, maintenance for the entire Deliverable shall only be terminated if the Operation is terminated for expiry at the same time as the maintenance.

## Operation

If the Supplier is in charge of the Operation of the Deliverables, the Customer shall be entitled, by giving Notice, to terminate the Operation separately subject to the notice specified in Appendix 12.

## Cancellation of the award of the Contract and ineffectiveness

### Ineffectiveness

If the Danish Complaints Board for Public Procurement declares that the Contract is ineffective and orders the contracting authority to terminate the Contract within a time limit fixed by the Complaints Board, the Customer shall be entitled to terminate the Contract, in full or in part, giving notice in accordance with the order prescribed by the Complaints Board or a court of law. Thus, the Contract shall be terminated, in full or in part, by notice as prescribed in the order with effect from the effective date specified in the order.

If the order issued contains additional terms and conditions or requirements, the Customer shall be entitled to transfer these terms and conditions or requirements in the notice of termination sent to the Supplier, provided that this is objectively justified, and the Supplier shall in that case comply with these.

### Damages

If the required basis of liability exists, and the Supplier has suffered a loss, the Supplier shall be entitled to claim damages or any other kind of compensation as a result of the decision to cancel the award of the Contract, or of the Contract having been declared ineffective and an order to terminate having been issued, including any costs, etc., of complying with the additional terms and conditions or requirements that the Customer has transferred via the notice of termination. However, the Parties have agreed that indirect losses shall not be compensated, cf. clause 29. Finally, damages shall be limited in accordance with the maximum stated in clause 29 of the Contract.

If the Supplier, at the time of the conclusion of the Contract, had or should have had knowledge of the actual and/or legal circumstances causing the cancellation of the award of the Contract or causing the Contract to be declared to be ineffective, the Supplier shall not be entitled to claim damages or any other kind of compensation from the Customer due to the decision to cancel the award of the Contract or due to the Contract being declared to be ineffective and an order to terminate being issued, including, for instance, the costs of complying with additional terms and conditions or requirements transferred by the Customer in the notice of termination.

# obligations on termination

The Supplier shall, in connection with the full or partial termination of the Contract, irrespective of the cause, assist the Customer, in so far as is reasonable and necessary, in connection with the Customer's retrieval and/or transfer to other suppliers or authorities. The assistance shall be provided as quickly as possible and, if possible, within the date of termination.

In addition, the Supplier shall loyally assist the Customer in the Customer's planning and implementation of a re-tender, if any, and in this connection make the necessary personnel available. The Supplier shall also, to a reasonable and necessary extent, cooperate with a new supplier, if any, in connection with the transfer of services under the Contract to the new supplier.

After the date of termination and until the transfer to any new supplier, etc., or retrieval has been effected, the Supplier shall continue to provide the services under the Contract on the terms and conditions stated in the Contract and Appendix 13 and at the prices stated in Appendix 14 unless otherwise agreed.

The Supplier's obligations on termination are detailed in Appendix 13.

The Supplier shall be entitled to compensation for assistance provided as stated in Appendix 14, unless the termination of the Contract is due to the Supplier's breach.

# interpretation and contract management

## Interpretation and precedence of documents

The provisions of the tender material, in the Supplier's bid, in previous correspondence or any other similar preceding material not included in the Contract shall not subsequently apply as the basis of interpretation.

The same shall apply to knowledge of services to be provided under the Contract, the Customer's IT environment, etc., which a Party may have acquired in connection with previous cooperation. In such a situation, either Party shall, however, be under an extended obligation to seek clarification of any circumstances that could cause any doubts on the basis of such knowledge.

References to the Contract or a provision therein shall also comprise the Appendices thereto and the Appendices relevant to the said provision. Reference to an Appendix shall also comprise any Sub-appendices to the Appendix. The provisions of the Contract shall take precedence over provisions of Appendices, for which reason provisions of an Appendix which are in conflict with the provisions of the Contract shall not have legal effect.

If, at the time of conclusion of the Contract, an appendix conflicts with a requirement made by the Customer and the Supplier's overall response thereto, the Customer's requirement shall take precedence. However, this shall not limit the Supplier's obligation to provide any further services beyond the Customer's requirement that may be stated in the Supplier's overall response to the Customer at the time of conclusion of the Contract.

## Notices

Unless otherwise stated in Appendix 7, any Notice shall be submitted to the relevant persons and in accordance with the contact information stated, of which the Parties, at any time, have given Notice. The relevant persons and contact information concerning the Contract are provided in Appendices 8 and 9.

Changes to the above information shall be effected by giving Notice to the other Party, after which the Parties shall implement changes to the Contract in accordance with clause 36.3.

## Contract management following changes, etc.

This clause 36.3 shall not concern contract management in connection with changes made in the form of an Agile Adjustment, cf. clause 6.2. Contract management in the form of Agile Adjustments is regulated by clause 6.2.2 and Appendix 5.

In addition, the Parties shall jointly undertake contract management on the basis of the following main principles:

* All Actual Changes and Options to the Contract and/or its Appendices shall be made in writing in connection with an update of the Contract as such and/or the Appendices as such, and shall be signed by both Parties.
* All Actual Changes and Options to the Contract and Appendices shall be documentable with full traceability, e.g. tracking of changes, edit history and the like.

It shall be the duty of the Supplier to initiate such contract management.

# disputes

## Governing law

This Contract shall be governed by Danish law.

## Disagreement regarding classification of a Fault or compliance with service level goals

In the event of disagreement regarding the classification of a Fault or compliance with the service level goals in a certain period, cf. clauses 15, 16 and 17, either Party may refer the issue to the Customer's and the Supplier's project managers, who shall settle the disagreement jointly. If the project managers of the Parties are unable to reach agreement, the dispute shall be sought to be settled by conducting negotiations in a dispute settlement body established by the Parties, cf. clause 37.3.1.1.

If agreement still cannot be reached, either Party may request that an independent expert appointed by the Danish Institute of Arbitration settle the issue finally with binding effect on both Parties.

Disputes about the interpretation of the Contract and other legal matters shall not be decided by the expert. The expert shall decide the distribution of its fee on the Parties, taking due account of the outcome of the settlement.

## Other disputes

### Negotiation

If disagreement arises between the Parties in connection with the Contract, the Parties shall, taking a positive, collaborative and responsible attitude, seek to open negotiations with a view to settling the dispute in accordance with the procedure described in this clause 37.3. Negotiations shall, initially, be opened at the level of the cooperation organisation at which the dispute occurred. Negotiations shall be escalated to the next level of the cooperation organisation at the request of a Party if the Parties have not reached a settlement within a period of *[…]* Working Days from the occurrence of the dispute.

#### Dispute settlement body

If the dispute, on escalation to the Customer's and the Supplier's project managers, is not settled within a period of *[…]* Working Days from the referral of the dispute to the project managers for negotiation, or if the project managers agree that the negotiations will not result in a settlement, either Party shall be entitled to request, by Notice, that the dispute be referred to negotiations in a dispute settlement body established by the Parties.

On conclusion of the Contract, either Party shall list the persons authorised to make binding decisions on behalf of the Party in relation to any disputes arising and to represent the Party in the dispute settlement body. The representatives are listed in Appendices 8 and 9.

Members of the dispute settlement body shall, no later than *[…]* Working Days after the referral of the dispute, meet with a view to negotiating a settlement of the dispute. If the dispute settlement body fails to reach agreement on a settlement of the dispute at the meeting, the dispute settlement body shall hold another meeting within an additional period of *[…]* Working Days.

### Advisory opinion

If agreement cannot be reached in the dispute settlement body, and if there is disagreement about the interpretation of the provisions of the Contract, either Party shall be entitled to request that an advisory opinion on the issue be obtained from an independent third party.

### Mediation

If agreement cannot be reached in the dispute settlement body, the dispute shall, at the request of a Party, be referred to mediation headed by a mediator appointed jointly by the Parties. If the Parties have not agreed on a mediator within *[5]* Working Days after the request of a Party to refer the dispute to mediation, either Party shall be entitled to request the Association of Danish IT Attorneys (*in Danish: Danske IT-advokater*) (DITA) to appoint a mediator. Mediation shall then be carried out in accordance with the mediation procedure of the Association of Danish IT Attorneys.

### Arbitration

If agreement cannot be reached in the dispute settlement body, either Party may refer the dispute to arbitration for final settlement in accordance with the provisions of clause 37.3.4.1 or clause 37.3.4.2.

The place of arbitration shall be the municipality in which the Customer is registered.

#### Minor disputes

If, for either Party, the value of the dispute does not exceed DKK […] million with an addition of maintenance fee and Operation fee, if applicable, the dispute shall be settled by arbitration in accordance with "The rules of simplified arbitration procedure of Danish Arbitration". In the calculation of the maintenance fee and the Operation fee, if applicable, the fee for these services shall be calculated for four years from the Acceptance Date to the last Partial Delivery.

The arbitration tribunal shall be appointed by the Danish Institute of Arbitration in accordance with the "Rules of simplified arbitration procedure of Danish Arbitration". The arbitrator shall be appointed by the Danish Institute of Arbitration. The Parties may, no later than at the deadline for the respondent's statement of defence, make a joint proposal for an arbitrator. The Parties agree to seek to appoint an arbitrator jointly on the recommendation of the Association of Danish IT Attorneys (DITA).

#### Major disputes

Disputes not comprised by clause 37.2 or clause 37.3.4.1 shall be settled by arbitration or in accordance with the "Rules of arbitration procedure of Danish Arbitration".

The arbitration tribunal shall be appointed by the Danish Institute of Arbitration in accordance with the "Rules of arbitration procedure of Danish Arbitration". When the dispute is to be settled by three arbitrators, the claimant may make a proposal for its arbitrator in its statement of claim. The respondent may make a proposal for its arbitrator in its response. The third arbitrator, who shall be the chairman of the arbitration tribunal, shall be proposed by the Danish Institute of Arbitration unless the Parties, before the deadline for the respondent's statement of defence, make a joint proposal for a chairman. The Parties agree to seek to appoint a chairman jointly on the recommendation of the Association of Danish IT Attorneys (DITA).

## Obligations of the Parties during disputes

During the period in which the dispute settlement takes place, cf. clauses 37.2 and 37.3, the Parties shall continue to perform their duties under the Contract, including the development of the Deliverables.

# conditions precedent relating to funding

The Contract shall only be binding on the Customer on condition that the necessary funding basis is provided. The necessary funding basis shall be provided no later than the date set out in Appendix 1. Otherwise, the Supplier shall be released from its obligations under the Contract.

# signatures

The Contract shall be signed in two original copies, of which the Parties each receive one.

Place: Place:

Date: Date:

On behalf of the Customer: On behalf of the Supplier: