

Appendix

Special Conditions for

Consulting Services

Software and Services

23.3-5562-17



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1 Applicability

- 1.1 The present Special Conditions document supplements the General Conditions for Software and Services to the extent that the Framework Agreement Contractor shall perform Consulting Services under the Contract. However, the present Special Conditions shall not apply to consulting engagements that constitute a fully integrated part of the Contract Object where other Special Conditions apply.
- 1.2 The Framework Agreement provides that Consulting Services may consist of Resource Services, Team Services, and Engagement Services. Engagement Services may consist in having the Framework Agreement Contractor provide both a result that is subject to certain requirements – e.g. an implementation project – and a specified service for which it is responsible on an ongoing basis over a certain period. The document Requirements Catalog appended to the Framework Agreement enumerates in greater detail the various Consulting Services that may be called-off from the Framework Agreement.
- 1.3 Unless otherwise provided, all the conditions listed in the present Special Conditions shall apply to Resource Services, Team Services, and Engagement Services. For Team Services, the conditions in clause 7 shall supersede the other conditions in the present Special Conditions.
- 1.4 The Contracting Authority may clarify the following clauses in its Call-Off according to the more detailed provisions in the respective clauses: 2.1, 2.3, 3.2, 4.3, 5.2, 6.1, 6.2, 7.2, 7.3, 7.4, 7.5, 7.6, 7.7, 7.8, 7.9, 7.10, 7.11, 7.12, 7.13, 7.14 and 7.15.

2 Special Obligations

- 2.1 Consultants made available by the Framework Agreement Contractor shall, if relevant, meet the requirements for expertise and other qualifications specified in the Contract. Irrespective of any such specified requirements, the Consultants provided by the Framework Agreement Contractor shall always possess the proper training and have the relevant qualifications and expertise to perform the Consulting Services.

- 2.2 The Framework Agreement Contractor shall take any initiative needed for the provided Consultants to obtain and maintain any necessary knowledge and understanding that enables them to provide Consulting Services in the Contracting Authority's environment.
- 2.3 The Contracting Authority and the Framework Agreement Contractor have the option in the Contract to stipulate that a specific, named Consultant in the Call-Off Response shall provide a specific, stated part of the Consulting Services. If stipulated, the Framework Agreement Contractor hereby agrees and undertakes not to substitute this named Consultant without the Contracting Authority's prior written approval. However, such approval must be granted if there are objective reasons for such a substitution. The Framework Agreement Contractor shall generally endeavor to keep the turnover of Consultants at a reasonable level.
- 2.4 The Contracting Authority shall be entitled to request substitution of Consultants who are not meeting the requirements in the Contract for Consultants or if the Contracting Authority can demonstrate that there are other objective reasons, such as cooperation difficulties, for requesting a substitution. The substitution shall then take place without delay.
- 2.5 The Framework Agreement Contractor (and its Consulting Services Provider) shall comply with all the provisions set out in the executed Security Protection Agreement and, among other things, ensure that the Consultant participates in the stipulated background check. If the Consultant is not permitted to perform work for the Contracting Authority upon his or her completed background check, the Framework Agreement Contractor shall ensure that a different, suitable Consultant be placed at the disposal of the Contracting Authority without delay.
- 2.6 In substituting Consultants, irrespective of whether it is the Framework Agreement Contractor or the Contracting Authority that initiates the exchange, a new candidate shall be subject to the approval of the Contracting Authority. Moreover, the Framework Agreement Contractor shall be liable for its own costs and time spent on the substitution of Consultants and for a new Consultant acquainting him or herself with the relevant parts of the Consulting Service. In the event that the Contracting Authority suffers damage as a result of the substitution and such damage is not due to circumstances outside the control of the Framework Agreement Contractor, and even though the Contracting Authority has approved the Substitution in writing, the Contracting Authority shall be entitled to a reasonable deduction in the compensation corresponding to the damage that has arisen.
- 2.7 The Consultant shall never be considered an employee of the Contracting Authority. The Framework Agreement Contractor shall therefore be liable for any taxes, social security costs, and any other costs associated with the Consultant's employment. If the Contracting Authority is liable for payment of taxes and social security costs for the compensation payable to the Framework Agreement Contractor under the law, the Framework Agreement Contractor shall reimburse the Contracting Authority for any such costs. If possible, this shall be done by offsetting the cost in the compensation that is paid to the Framework Agreement Contractor.

- 2.8 Subject to the approval of the Framework Agreement Contractor, the Consulting Services Provider may delegate its obligations to perform Consulting Services to another Consulting Services Provider with whom the Framework Agreement Contractor has a co-operation agreement within the framework of the Framework Agreement. The Framework Agreement Contractor shall be responsible for all costs related to handling new and/or amended Security Protection Agreements and/or Personal Data Processor Agreements arising from such a delegation.

3 General Notes on the Performance of Consulting Services

- 3.1 Consulting Services shall be performed in accordance with the requirements stipulated in the Contract. In addition to the provisions set out in the Contract and the General Conditions, the provisions set out in the present Special Conditions shall apply to the performance of Consulting Services.
- 3.2 Unless otherwise provided in the Contract, Resource Services and Team Services shall be performed on the Contracting Authority's premises and the Contracting Authority shall provide the Framework Agreement Contractor with access to its premises and provide any equipment that might reasonably be required for the performance of the Consulting Services. Engagement Services shall be governed by the provisions related to access to premises and equipment set out in clause 5.1 of the General Conditions.

4 Performance of Consulting Services

- 4.1 Resource Services shall be considered performed once the Resource Services have been performed in accordance with the requirements set out in the Contract.
- 4.2 For performance of Team Services, please refer to clause 7.
- 4.3 For Engagement Services that involve an obligation for the Framework Agreement Contractor to provide a certain result, the regulations regarding acceptance testing, cf. clause 6 (Delivery) of the General Conditions, shall apply unless otherwise stipulated by the Contracting Authority and the Framework Agreement Contractor in writing. Clause 6 (Delivery) in the General Conditions shall regulate when such Engagement Services shall be considered to have been performed.
- 4.4 For Engagement Services that involve an obligation for the Framework Agreement Contractor to provide a specified service on an ongoing basis, the Engagement Services shall be considered performed once the Engagement Services have been performed in accordance with the requirements set out in the Contract.

5 Special Notes on Liability for Errors, Delays, and Other Contractual Non-Performance

- 5.1 The Framework Agreement Contractor's liability for Errors, delays, and other contractual non-performance is specified in the General Conditions with the following special provisions. However, for Team Services, clause 7 shall be given preference.

- 5.2 Unless otherwise stipulated in the Contract, the Framework Agreement Contractor shall be liable for any Errors under clause 8 (Liability for Errors) in the General Conditions for a warranty period of at least 12 (twelve) months, calculated from the Effective Date of Delivery with respect to Consulting Services subject to acceptance testing or from when the Consulting Services are performed with respect to other types of Consulting Services, respectively.

6 Intellectual Property Rights

- 6.1 The Contracting Authority and the Framework Agreement Contractor shall stipulate in the Contract which of the alternatives, (a) or (b) listed below, shall apply to the right to work and materials, including documentation produced by the Framework Agreement Contractor specifically for the Contracting Authority within the framework of Consulting Services (result). In case no such stipulation is made, alternative (a) shall apply.

(a) The Contracting Authority shall be granted a non-exclusive right of use of the result within the Contracting Authority's activities, unlimited in time and free of charge, including the right to freely copy and change (modify, further develop, and correct) the result. If the Contracting Authority relies on a third party to perform services for the Contracting Authority, the Contracting Authority shall be entitled to lease out the corresponding right of use to the third party for such limited purposes. Unless otherwise specified in clause 26.1 of the General Conditions, the Contracting Authority may otherwise not lease out or assign its right of use as set out above.

(b) All intellectual property rights, including copyright, to the result shall be assigned to the Contracting Authority with full rights of disposal and ownership, including the right to freely copy, change (modify, further develop, and correct) as well as to lease out or assign the result. The Framework Agreement Contractor may neither use the result or dispose of the result without the Contracting Authority's approval. The Framework Agreement Contractor shall make exceptions for the Contracting Authority's rights to the result with respect to any Consulting Services Provider it engages.

- 6.2 In the event that the Framework Agreement Contractor introduces existing work that belongs to the Framework Agreement Contractor or a third party into the result, the Framework Agreement Contractor shall ensure that the Contracting Authority's right to such existing work does not derogate from alternative (a) or (b) under clause 6.1, stipulated by the Contracting Authority and the Framework Agreement Contractor or which may be considered to have been stipulated with

respect to the result. This shall apply unless the Contracting Authority has already approved a different arrangement in writing.

7 Team Services

- 7.1 The conditions set out in the present clause 7 shall apply only to Team Services and shall supersede the application of any other conditions in the present Special Conditions. Taking this into due consideration, the conditions in the present clause 7 shall be complemented by the other conditions in the present Special Conditions.

The conditions set out in the present clause 7 have been designed for Team Services regarding system development and may under the Contract be clarified for this purpose as specified in the respective clauses. Under the Contract, the conditions may also be adapted for Team Services for other purposes than system development.

- 7.2 Unless otherwise provided in the Contract, the Team Services shall begin with a start-up phase of up to 6 (six) weeks in which the Contracting Authority and the Framework Agreement Contractor will jointly produce a concept and possible approaches for how the Contracting Authority's needs might best be accommodated and evaluate these. During the start-up phase, Consultants will be added gradually to the team as determined by the Contracting Authority and Framework Agreement Contractor in regard to the areas of expertise deemed as required for the Framework Agreement Contractor's team. The start-up phase shall be finalized with the creation of a product backlog, cf. clause 7.6, and agreement on a date for the commencement of the Team Services' first stage.
- 7.3 Upon completion of the start-up phase, if relevant, the Team Services shall be performed by the Framework Agreement Contractor's team in successive stages. Stages shall have no intervening pauses and the duration of each stage shall be 3 (three) weeks, including time for verification and tests, unless otherwise specified in the Contract.
- 7.4 The Framework Agreement Contractor shall be responsible for the team's composition at the individual level based on the specifications provided by the Contracting Authority with respect to the eventual need they seek to satisfy, and the expertise that the Framework Agreement Contractor must have the capacity to deliver as set out in the Contract. The Framework Agreement Contractor shall be responsible for ensuring that the project team, as a whole, possesses the requisite expertise to perform the Team Services and for the team's productivity and ability to cooperate. Unless otherwise provided in the Contract, the Framework Agreement Contractor shall also be responsible for maintaining the project team's full productivity irrespective of whether individual Consultants are absent.

- 7.5 The Contracting Authority shall designate a product owner who will manage the progress of the work as well as represent the Contracting Authority in relation to the Framework Agreement Contractor's project team. Unless otherwise provided in the Contract, the product owner shall, at a minimum, be responsible for:
- (a) The Contracting Authority's definition of the need that eventually should be accommodated;
 - (b) Decisions relating to prioritization of tasks to be performed by the project team according to the product backlog that has been created;
 - (c) Final control and decisions related to the approval of tests, such as function, usability, or verification of whether the impact objectives have been achieved, associated with each stage; and
 - (d) Determination of whether the Contracting Authority's need can be viewed as having been fully satisfied or otherwise if the project team's engagement should be terminated.
- 7.6 Unless otherwise provided in the Contract, the product owner and the project team shall jointly produce a so-called product backlog that is documented in some form and that is handled according to the procedures set out below. A backlog is a list of tasks whose completion contributes to meet the Contracting Authority's defined need. An individual task might be to complete a specific function or for a described user experience to be verified. In creating and updating tasks in the project's product backlog, the project team shall contribute with its assessment of the tasks' complexity and time expenditure required as well as any dependencies. The product owner shall make a final decision about which tasks should be included in the project's product backlog as well as any prioritization that should apply to the project team's work on the tasks. The product backlog shall be subject to ongoing discussions between product owners and project teams and shall be updated continuously over the course of the engagement. Unless otherwise provided in the description of an individual task, tasks in a backlog shall be delivered according to the so-called minimum viable product principle.
- 7.7 Unless otherwise provided in the Contract, the stage backlog shall be handled as follows. Before a stage starts, the project team shall determine which tasks from the project's product backlog shall be included in the stage; these tasks constitute the stage backlog and shall be documented in some form. Tasks included in the stage backlog shall, in principle, be selected based on the task prioritization scheme in the product backlog. The product owner shall approve the project team's proposal for a stage backlog before the project team's work on the stage is commenced.
- 7.8 Unless otherwise provided in the Contract, a minimum of the following three types of controls shall be conducted:
- (a) Control of performed tasks in the backlog (that a specific function has been completed, verification of a described user experience, etc.);
 - (b) Control of stages (in addition to control of individual tasks, that these form a functioning whole as stipulated, that any impact objectives have been met, etc.); and
 - (c) Final acceptance testing once the Contracting Authority's needs are considered to have been met or otherwise whether the project team's work should be terminated.

7.9 Unless otherwise provided in the Contract, acceptance testing, cf. clause 6 (Delivery) of the General Conditions, shall not be applied. The Contracting Authority and the Framework Agreement Contractor shall stipulate and document control designs for the individual tasks, stages, and the final acceptance testing.

Unless otherwise provided in the Contract, liability for delays, cf. clause 7.2 of the General Conditions, shall not apply for tasks and stages. The Contracting Authority and the Framework Agreement Contractor shall stipulate and document the consequences of any delays with respect to tasks and stages.

In case of disagreement in respect of the approval of any of the controls, clause 27 (Dispute Resolution, Governing Law) in the General Conditions shall apply.

7.10 Unless otherwise provided in the Contract, the Contracting Authority shall designate a coach with the following duties and responsibilities. A coach shall be independent of the project team and shall provide advice and support to the project team in its development by conducting discussions with the project team based on a number of metrics. In consultation with the project team, the coach shall document the metrics that will be used for the discussions. The metrics shall, at a minimum, cover quality, productivity, innovation, the project team's team spirit and ability to cooperate as well as the relationship between the project team and the Contracting Authority's activities. The coach and project team each have a duty to request discussions based on the metrics as often as needed, but in such a manner that discussions are conducted at least once per stage. For discussions, the coach and project team shall be in the same physical location save for special reasons. The coach shall lead and document the discussions.

7.11 Unless otherwise provided in the Contract, the development tools used by the Framework Agreement Contractor's project team to provide the Team Services shall be Open Source Software and all work performed shall be saved using open standards.

7.12 Unless otherwise provided in the Contract, the rights to work and materials – including any documentation produced especially for the Contracting Authority by the Framework Agreement Contractor within the framework of Team Services (the result) – and which do not include:

- (a) adaptation of Open Source Software; or
- (b) adaptation of software for which the copyright belongs to the Framework Agreement Contractor or the Framework Agreement Contractor's Subcontractor; or
- (c) adaptation of Third-Party Software

shall be regulated according to the following:

- (1) All intellectual property rights, including copyright, to the result shall be assigned to the Contracting Authority with full rights of disposal and ownership, including the right to freely copy, change (modify, further develop, and correct) as well as lease out or assign the result.
- (2) The Framework Agreement Contractor obtains a right to use the result freely.
- (3) The Framework Agreement Contractor shall make exceptions for the Contracting

Authority's rights to the result with respect to any Consulting Services Provider it engages.

If the Contract Object includes Open Source Software in full or in part, the Special Conditions for Open Source Software shall apply. If the Contract Object includes proprietary software in full or in part, the Special Conditions for Proprietary Software shall apply.

If the Framework Agreement Contractor introduces existing work that belongs to the Framework Agreement Contractor or a third party into the result, the Framework Agreement Contractor shall ensure that the Contracting Authority's right to such existing work does not derogate from the Contracting Authority and the Framework Agreement Contractor stipulations in respect of intellectual property rights or might be considered to have stipulated with respect to the result. This shall apply unless the Contracting Authority has not already approved a different arrangement in writing.

- 7.13 If the agreed payment for the performance of Team Service is mainly based on a common unit price per hour and Consultant, and unless otherwise provided in the Contract, the Contracting Authority and the Framework Agreement Contractor can agree to change the Contract Object or way to work only provided that this does not result in a higher common unit price per hour and Consultant.
- 7.14 In addition to the provisions set out in the General Conditions and unless otherwise provided in the Contract, the Contracting Authority may decide that the Contract shall be terminated in full or in part, at any time and irrespective of the cause during the Contract Period. The period of notice shall be in effect from when the Contracting Authority notifies the Framework Agreement Contractor in writing of the termination until whichever period is shorter of the following two:
- (a) The next scheduled end of the stage to be commenced or that was intended to commence; and
 - (b) 20 (twenty) Working Days.

The Framework Agreement Contractor shall be entitled to compensation during the period of notice to the extent that the Framework Agreement Contractor can demonstrate that the affected Consultants cannot be assigned to other engagements.

- 7.15 In addition to the provisions set out in the General Conditions and unless otherwise provided in the Contract, the Framework Agreement Contractor may decide that the Contract shall be terminated in full or in part, at any time and irrespective of the cause during the Contract Period. The period of notice shall be in effect for 60 (sixty) Working Days from when the Framework Agreement Contractor notifies the Contracting Authority in writing.