

Appendix

Special Conditions for
Licensing Services

Software and Services

23.3-5561-17



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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 Licensing Services under the Contract.
- 1.2 The document Requirements Catalog appended to the Framework Agreement enumerates in greater detail the various Licensing Services that may be sub-ordered from the Framework Agreement.
- 1.3 The Contracting Authority may clarify the following clauses in its sub-order according to the more detailed provisions in the respective clauses: 2.1, 2.3, and 3.2.

2 Special Obligations

- 2.1 Licensing Services 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 Licensing Services provided by the Framework Agreement Contractor shall always be performed by qualified and competent physical persons.
- 2.2 The Framework Agreement Contractor shall take any initiative needed for the provided Licensing Services to obtain and maintain any necessary knowledge and understanding that enables them to provide Licensing Services.
- 2.3 The Contracting Authority and the Framework Agreement Contractor have the option in the Contract to stipulate that a specific, named person in the sub-order response shall provide a specific, stated part of the Licensing Services. If stipulated, the Framework Agreement Contractor hereby agrees and undertakes not to substitute this named person without the Contracting Authority's prior written approval. However, such approval must be granted if there are objective reasons for such a substitution.
- 2.4 The Contracting Authority shall be entitled to request substitution of persons who are not meeting the relevant requirements in the Contract or if the Contracting Authority can demonstrate that there are other objective reasons for requesting a



substitution, such as difficulty cooperating. The substitution shall then take place without delay.

- 2.5 The Framework Agreement Contractor, and its Licensing Services Provider, shall comply with all the provisions set out in the executed Security Protection Agreement and, among other things, ensure that the person participates in the stipulated background check. If the person 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 person be placed at the disposal of the Contracting Authority without delay.
- 2.6 In substituting a person who is performing Licensing Services, irrespective of whether it is the Framework Agreement Contractor or the Contracting Authority that initiates the replacement, 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 persons and for the new person's acquainting him or herself with the relevant parts of the Licensing Service. In the event that the Contracting Authority suffers damage as a result of the substitution and such damage is owing 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 person performing the Licensing Services 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 employment of the person performing the Licensing Services. 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.

3 General Notes on the Performance of Licensing Services

- 3.1 Licensing 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 Licensing Services.
- 3.2 Unless otherwise provided in the Contract, Licensing 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 Licensing Services.

4 Completion of Licensing Services

- 4.1 Licensing Services shall be considered fulfilled once the Licensing Services have been performed in accordance with the requirements set out in the Contract.
- 4.2 For Licensing Services that involve an obligation for the Framework Agreement Contractor to provide a specified service on an ongoing basis, the Licensing Services shall be considered fulfilled once the Licensing Services have been performed in accordance with the requirements set out in the Contract.
- 4.3 If the Framework Agreement Contractor is providing license management (Software Asset Management) as a Private Cloud Computing Service to the Contracting Authority, the Framework Agreement Contractor shall be liable for the accuracy of

the Contracting Authority's license portfolio with respect to the obligation in the current Contract. The Framework Agreement Contractor's liability shall be conditional upon the Contracting Authority's providing the Framework Agreement Contractor with access to any necessary information and the Contracting Authority's compliance with the Framework Agreement Contractor's reasonable recommendations. In the event that the Framework Agreement Contractor fails in its obligations to identify and notify the Contracting Authority about underlicensing, the Framework Agreement Contractor shall indemnify the Contracting Authority with respect to any damage that the Contracting Authority might suffer as a result of being underlicensed and the Framework Agreement Contractor's failure to perform its obligations, including but not limited to any supplementary license fees, damages or other compensation that the Contracting Authority would be obligated to pay to the licensor. The limitations on liability set out in the General Conditions shall not apply to this type of obligation to indemnify the Contracting Authority.

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.