Appendix

Special Conditions for

Proprietary Software

Software and Services

23.3-6188-17

Contents

1 Applicability

1.1 The present Special Conditions supplement the General Conditions for Software and Services to the extent that the Contract Object includes proprietary software in full or in part. The present Special Conditions shall apply to proprietary software provided under the Contract.

1.2 If the proprietary software is provided along with Open Source Software and/or Public Cloud Computing Services, the present Special Conditions shall apply to the proprietary software; the Special Conditions for Open Source Software shall apply to Open Source Software; and the Special Conditions for Public Cloud Computing Services shall be applied to the part that consists of Public Cloud Computing Services.

1.3 The Requirements Catalog appended to the Framework Agreement states that certain hardware may be called-off under the Framework Agreement for Call-Offs of proprietary software provided in combination with special hardware under the Special Conditions specified in the Framework Agreement. The present Special Conditions apply also to such hardware.

1.4 The present Special Conditions shall also apply if only Support Services, Updates, and/or Upgrades shall be provided with regard to proprietary software.

1.5 The Contracting Authority may specify the following clauses in its Call-off according to the more detailed provisions in the respective clauses: 4.1, 4.2, 4.3, 4.4, 4.5, 6.2, 7.1, 7.3, 7.4, 8.2, and 8.3.

2 Special Notes on Contract Documents

2.1 The General Conditions and the present Special Conditions may be supplemented with the Standard Conditions, if applicable with derogations therefrom stipulated by the Contracting Authority and the Framework Agreement Contractor, on the

condition that the Standard Conditions or stipulations relating to the derogation do not violate the General Conditions and the present Special Conditions.

3 Framework Agreement Contractor's General Obligations

3.1 In addition to the provisions set out in clause 4.2 of the General Conditions, the provision of proprietary software shall also comply with the Framework Agreement Contractor's or its licensors' own specifications and product descriptions for the proprietary software as set out in the documentation provided upon execution of the Contract, or for the provision of the proprietary software, the documentation published on the Framework Agreement Contractor's or its licensor's website.

4 Delivery and Special Obligations

4.1 The Framework Agreement Contractor shall be liable for any and all risks and costs associated with the shipment until the Framework Agreement Contractor has had the Delivery unloaded and it has been received by the Contracting Authority at the location specified in the Contract. The Contracting Authority and the Framework Agreement Contractor may stipulate that proprietary software shall be provided remotely by download.

4.2 The Contracting Authority and the Framework Agreement Contractor may separately stipulate that the Delivery shall undergo acceptance testing as set out in clause 6 (Delivery) of the General Conditions.

4.3 Unless otherwise stipulated by the Contracting Authority and the Framework Agreement Contractor, the proprietary software shall be delivered with any and all

necessary user documentation. The Contracting Authority and the Framework Agreement Contractor may separately stipulate that the proprietary software shall be delivered with any systems documentation necessary to operate the proprietary software. Documentation shall be written in Swedish or English.

4.4   If the proprietary software is delivered pre-installed on the hardware included in the Contract Object and Errors are identified upon Delivery or at the first attempt to use the hardware – in which case the hardware shall be considered to be dead on arrival (DOA) – the Contracting Authority may return the hardware. Unless otherwise stipulated by and between the Contracting Authority and the Framework Agreement Contractor, any notification that the delivered hardware is dead on arrival shall be provided no later than 10 (ten) working days after the Delivery has taken place. For notifications that any delivered hardware is dead on arrival, the Framework Agreement Contractor shall remedy the defect as prescribed for Remediation of Errors in clause 6, by which the contractual Delivery of hardware and pre-installed proprietary software shall not be considered to have been effected until the Framework Agreement Contractor has remedied the defect in question. Defects that are immaterial to the hardware's intended use and which do not entail any inconvenience according to the Contracting Authority shall not result in the hardware's being considered dead on arrival.

4.5   The Contracting Authority and the Framework Agreement Contractor may stipulate separately that the Framework Agreement Contractor shall notify the Contracting Authority within a certain period that hardware specified in the Contract will be retired from the provider's product line.

5 Security, Contracting Authority Information, and Personal Data

5.1   By way of derogation from clause 18.2 of the General Conditions and on the condition that the Contracting Authority does not expressly specify otherwise in its Call-Off Inquiry, the Standard Conditions shall apply to the processing of personal data. However, the application of the Standard Conditions is conditional upon the Standard Conditions' meeting the requirements established under the General Data Protection Regulation (GDPR) with related implementation regulations as well as any further requirements specified by the Contracting Authority in the Call-Off Inquiry with respect to processing of personal data. The Framework Agreement Contractor, its licensor (irrespective of part), and if applicable the Contracting Authority shall comply with the Standard Conditions for Processing Personal Data.

5.2   By way of derogation from clause 15.1 of the General Conditions and on the condition that the Contracting Authority does not expressly specify otherwise in its Call-Off Inquiry, the Standard Conditions shall apply to security. The Standard Conditions for security shall be observed by the Framework Agreement Contractor, its licensor (irrespective of part) and, if applicable, the Contracting Authority.

5.3   Irrespective of the provisions set out in the Standard Conditions, the Framework Agreement Contractor and its licensor may handle – e.g. store, process, or disclose – the Contracting Authority's Information solely to the extent necessary to provide the proprietary software and in accordance with the Contracting Authority's instructions. This obligation shall apply without limitation in time.

5.4   Information contained in the proprietary software's log may be used by the Framework Agreement Contractor solely as required for the functionality of the proprietary software. The Contracting Authority shall be permitted to access the information that is registered in the log.

5.5   Any Contracting Authority information that has been deleted in compliance with the Swedish Archives Act (1990:782) [Arkivlagen], the Archives Ordinance (1991:446), and the regulations governing the National Archives of Sweden, a so-called thinning out, shall be irreversibly destroyed no later than 180 days after the Contracting Authority has performed the thinning out, at the premises of the licensor including the premises of any other providers on which the licensor has relied in providing the proprietary software.

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

6.1   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.

6.2   The Framework Agreement Contractor shall be liable for Errors under clause 8 (Liability for Errors) of the General Conditions for a warranty period of 12 (twelve) months from the Effective Date of Delivery.

6.3   The Framework Agreement Contractor's liability for Errors shall also, if relevant, include hardware and/or software that is Open Source Software and/or Public Cloud

Computing Services included in the Contract Object alongside the proprietary software. If so, the Framework Agreement Contractor agrees and accepts that it shall bear comprehensive liability for the Contract Object's functionality, including any integrations between all the constituent parts. However, in a special scheme, the Framework Agreement Contractor shall also be liable for any Errors in software that is Open Source Software or in Public Cloud Computing Services as provided in the Special Conditions for Open Source Software and the Special Conditions for Public Cloud Computing Services, respectively.

6.4   Errors shall be remedied as specified in clause 8 (Liability for Errors) in the General Conditions. For hardware, Errors may also be remedied by providing a substitute product.

6.5   If the Contracting Authority alters the proprietary software's source code without the consent of the Framework Agreement Contractor during the period that the Framework Agreement Contractor is liable for Errors under the present Special Conditions, the Framework Agreement Contractor shall not be liable for Errors in such altered source code or source code that are due to such an alteration.

7 Support Services, Updates, and Upgrades

7.1   The Framework Agreement Contractor's provision of Support Services and Updates is regulated in the General Conditions.

7.2   The Contracting Authority and the Framework Agreement Contractor may stipulate separately that the Framework Agreement Contractor shall provide Upgrades during the Contract Period. The provision of Upgrades shall take place in accordance with the Standard Conditions for Upgrades, if relevant by derogating from that document as stipulated by the Contracting Authority and Framework Agreement Contractor, on the condition that the Standard Conditions or any stipulation to derogate does not violate the present clause 7 or the General Conditions.

8 Contracting Authority's Use of Proprietary Software

8.1   The Contracting Authority shall be given a non-exclusive right to use the proprietary software for its activities. The Contracting Authority's right to use proprietary software is, unless otherwise stipulated, granted without a fixed term until it is terminated by the Contracting Authority in writing with 3 (three) months' notice. In the event of termination as specified in the previous sentence, the Contracting Authority shall not be entitled to any reimbursement of fees paid. If the Contracting Authority fails materially in its obligations in respect of the use of the proprietary software, the Framework Agreement Contractor may terminate the right of use under clause 23.2(a) (Right to Terminate Contract) in the General Conditions.

8.2   The Contracting Authority may not copy the proprietary software except for copying the proprietary software for the permitted use or for reserve or backup purposes wherever possible.

8.3   The Contracting Authority may not lend not rent out the proprietary software or reassign its right of use without the Framework Agreement Contractor's approval. However, if the Contracting Authority relies on a third party to perform services for the Contracting Authority and unless otherwise specified in the Contract, the Contracting Authority shall be entitled to lease out the corresponding usage rights to the third party in question for such limited purposes. However, reassignment of the usage rights may take place as specified in clause 26 (Assignment of Contract) in the General Conditions.

8.4   The Contracting Authority and the Framework Agreement Contractor may stipulate that the Standard Conditions shall complement the provisions in the present clause 8 with regard to the Contracting Authority's use of the proprietary software, provided that the Standard Conditions do not violate the present clause 8. In order to avoid doubt, any such stipulation may solely pertain to provisions with regard to the Contracting Authority's rights and obligations related to use of the proprietary software and not to provisions related to Delivery, the Framework Agreement Contractor's liability, or any other regulations that do not specifically pertain to the Contracting Authority's use of the proprietary software.

8.5   The provision in the present clause 8 with regard to proprietary software shall apply mutatis mutandi to such documentation that is provided in connection therewith under clause 4.3.

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9 License Audit

9.1   If the Framework Agreement Contractor or its licensors wish to conduct a contractual audit for the purpose of verifying the Contracting Authority's license portfolio with regard to the obligations under the Contract, this shall be notified in a timely fashion.

9.2   The scope of the audit shall be defined as stipulated in the Contract. The Contracting Authority and the Framework Agreement Contractor may stipulate that the regulations related to the scope of a license audit in the Standard Conditions shall complement these provisions with regard to license audits, provided that the Standard Conditions do not violate the present clause 9.

9.3   The audit shall be conducted by an independent, authorized accounting firm unless the Contract specifies that audit shall be conducted by means of so-called internal controls where the Contracting Authority performs contractual controls under its own auspices. Information relating to other software from other providers shall not be part of this with the exception of such Third-Party Software that, if applicable, is part of the Contract Object. The right to audit the Contracting Authority's licensing shall not apply if the audit violates the Swedish laws on security or secrecy. If relevant, a separate Security Protection Agreement shall be signed before any audit is performed.

9.4   The party that requests the audit shall document the audit thoroughly in a report that shall clearly specify the scope and results of the audit. The Contracting Authority shall be entitled to review and comment on the report before it is finalized. The Contracting Authority shall always be entitled to access the final report.

9.5   The Contracting Authority and the party that requests the audit shall be liable for their own audit-related costs.