

# Appendix

# Special Conditions for

# Open Source Software

# Datacenter 2019

23.3-5432-19



KAMMARKOLLEGIET



# Contents

|  |   |
|--|---|
| 1 Applicability.....   | 3 |
| 2 Special Notes on Contract Documents.....   | 3 |
| 3 Framework Agreement Contractor's General Obligations.....                                    | 4 |
| 4 Delivery and Special Obligations.....  | 4 |
| 5 Special Notes on Liability for Errors, Delays, and Other Contractual<br>Non-Performance..... | 5 |
| 6 Support Services, Updates, and Upgrades.....   | 6 |
| 7 Adjustments of Open Source Software.....   | 6 |
| 8 License Audit.....   | 8 |

# 1 Applicability

- 1.1 The present Special Conditions supplement the General Conditions for Datacenter 2019 to the extent that the Contract Object includes Open Source Software in full or in part. These Special Conditions shall apply to Open Source Software provided under the Contract.
- 1.2 If Open Source Software are provided along with Hardware and/or proprietary Software and/or Private Cloud Computing Services and/or Public Cloud Computing Services, the present Special Conditions shall apply to Open Source Software; the Special Conditions for Hardware shall apply to Hardware; the Special Conditions for proprietary Software shall apply to proprietary Software; the Special Conditions for Private Cloud Computing Services shall apply to Private Cloud Computing Services and the Special Conditions for Public Cloud Computing Services shall apply to Public Cloud Computing Services.
- 1.3 The present Special Conditions shall also apply if only Support Services, Updates, and/or Upgrades shall be provided with respect to Open Source Software.
- 1.4 In the present Special Conditions it is specified how some clauses may be clarified in the Contract.

# 2 Special Notes on Contract Documents

- 2.1 The General Conditions and the present Special Conditions shall be complemented with the Standard Conditions as specified in 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 Open Source Software shall also comply with the Framework Agreement Contractor's or its licensor's own specifications and product descriptions for the Open Source Software as set out in the documentation provided upon execution of the Contract, or for the provision of Open Source 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 received by the Contracting Authority at the location specified in the Contract. The received Delivery shall be receipted in writing by the Contracting Authority. The Contracting Authority and the Framework Agreement Contractor may stipulate that Open Source 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 chapter 6 (Delivery) of the General Conditions.
- 4.3 The Open Source Software shall be delivered with any necessary user documentation unless otherwise stipulated by the Contracting Authority and the Framework Agreement Contractor. The Contracting Authority and the Framework Agreement Contractor may separately stipulate that the Open Source Software shall be delivered with any systems documentation necessary to operate the Open Source Software. Documentation shall be written in Swedish or English.

## 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.
- 5.2 The Framework Agreement Contractor shall be liable for Errors under chapter 8 (Liability for Errors) of the General Conditions for a warranty period of 12 months from the Effective Date of Delivery.
- 5.3 The Framework Agreement Contractor's liability for Errors shall, if relevant, also cover Hardware and/or proprietary software and/or Private Cloud Computing Services and/or Public Cloud Computing Services included in the Contract Object along with the Open Source Software. In such case, the Framework Agreement Contractor agrees and undertakes that it shall bear comprehensive liability for the Contract Object's functionality, including any integration between all the constituent parts. However, in a special scheme for any Errors in Hardware or proprietary software or Private Cloud Computing Services or Public Cloud Computing Services, the Framework Agreement Contractor shall also be liable as indicated in the Special Conditions for Hardware and the Special Conditions for Proprietary Software and the Special Conditions for Private Cloud Computing Services and the Special Conditions for Public Cloud Computing Services, respectively.
- 5.4 Remediation of Errors shall take place as specified in chapter 8 (Liability for Errors) in the General Conditions.
- 5.5 If the Contracting Authority alters the Open Source Software 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 Open Source Software or source code that depends on such an alteration.

## 6 Support Services, Updates, and Upgrades

- 6.1 The Framework Agreement Contractor's provision of Support Services and Updates are regulated in the General Conditions.
- 6.2 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 chapter 6 or the General Conditions.

## 7 Adjustments of Open Source Software

- 7.1 The Framework Agreement Contractor shall be liable for the distribution of the Open Source Software to the Contracting Authority, including any customization thereof, in accordance with the provisions set out in the relevant license conditions (Standard Conditions) for the respective Open Source Software.
- 7.2 The Framework Agreement Contractor shall specify the extent to which the applicable license conditions (Standard Conditions) affect the Contracting Authority's right to customization performed under the present chapter 7 in its Call-Off Response.
- 7.3 If the Contracting Authority orders a customization of the Open Source Software, the Framework Agreement Contractor shall provide such customization under the Special Conditions for Consulting Services, with the derogations specified in the present chapter 7.

- 7.4 The Contracting Authority and the Framework Agreement Contractor shall stipulate in the Contract the right to customize Open Source Software according to alternative (a) or (b). If no alternative is stipulated, alternative (a) shall be applied.
- (a) The Contracting Authority shall be granted a non-exclusive right of use of the customization 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 customization. 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 in question for such limited purposes. Unless otherwise specified in clause 26.1 of the General Conditions, the Contracting Authority may not lease out or assign its right of use as set out above. The Contracting Authority's right shall not otherwise affect the Framework Agreement Contractor's right to the customization.
- (b) All intellectual property rights, including copyright, to the customization 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 customization. The Framework Agreement Contractor may neither use the result nor dispose of the customization without the Contracting Authority's approval. The Framework Agreement Contractor shall make exceptions for the Contracting Authority's rights to the customization in respect of any Consulting Services Provider it engages.
- 7.5 Source code attributable to the modification Open Source Software shall be included in the Delivery. If clause 7.4 (a) is applied, the Framework Agreement Contractor shall also make source code attributable to the modification generally available at the Framework Agreement Contractor's public website as well as specify the Open Source Software and version to which the customization applies.
- 7.6 Customization in the form of source code and any documentation attributable to the source code specified in clause 7.5 shall be published no later than 30 days after the Effective Date of Delivery and be accessible for the duration of the term of the Framework Agreement and subsequently.
- 7.7 The Framework Agreement Contractor shall provide the source code, cf. clause 7.5, no later than 30 days after the Effective Date of Delivery to the software project(s) to which the customization pertains or that it supplements. The customization shall be provided in accordance with the conditions and the practice specified by the interest group or the company behind the affected Open Source Software.
- 7.8 The Framework Agreement Contractor may not assign or lease out the right to customization to the Contracting Authority on terms that restrict or exceed the rights provided in the applicable license conditions (Standard Conditions) for the respective Open Source Software. If the Framework Agreement Contractor violates the present clause, the Contracting Authority shall be entitled to reasonable damages.

- 7.9 The Framework Agreement Contractor may not use evaluation materials that belong to the Contracting Authority without the Contracting Authority's written consent. All such materials shall be surrendered to the Contracting Authority when no longer needed or, at the latest, at the end of the Contract Period.

## 8 License Audit

- 8.1 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 respect to the obligations under the Contract, this shall be notified in a timely fashion.
- 8.2 The scope of the audit shall be defined as stipulated in the Contract. The Contracting Authority and the Framework Agreement Contractor may stipulate that regulations with respect to the scope of the license audit in the Standard Conditions shall complement these provisions relating to license audits, provided those Standard Conditions do not violate the present chapter 8.
- 8.3 The audit shall be conducted by an independent, authorized accounting firm unless the Contract specifies that audits shall be conducted by means of so-called internal controls where the Contracting Authority performs contractual controls under its own auspices. Information relating to software from other providers shall not be part of this except for such Third-Party Software that, if applicable, forms 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.
- 8.4 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.
- 8.5 The Contracting Authority and the party that requests the audit shall be liable for their own audit-related costs.