

# Appendix

## Special Conditions for Proprietary Software Datacenter 2019

23.3-5432-19



KAMMARKOLLEGIET

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# 1 Applicability

- 1.1 The present Special Conditions supplement the General Conditions for Datacenter 2019 to the extent that the Contract Object includes proprietary software in full or in part. These Special Conditions shall apply to proprietary software provided under the Contract.
- 1.2 If proprietary software are provided along with Hardware and/or Open Source Software and/or Private Cloud Computing Services and/or Public Cloud Computing Services, the present Special Conditions shall apply to proprietary software; the Special Conditions for Hardware shall apply to Hardware; the Special Conditions for Open Source Software shall apply to Open Source 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 regard to proprietary 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 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 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 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 chapter 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.

## 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 chapter 8 (Liability for Errors) of the General Conditions for a warranty period of three years from the Effective Date of Delivery.
- 6.3 The Framework Agreement Contractor's liability for Errors shall, if relevant, also cover Hardware and/or Open Source Software and/or Private Cloud Computing Services and/or Public Cloud Computing Services included in the Contract Object along with the proprietary 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 Open Source 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 Open Source Software and the Special Conditions for Private Cloud Computing Services and the Special Conditions for Public Cloud Computing Services, respectively.
- 6.4 The Framework Agreement Contractor's liability for Errors shall, if relevant, also cover Hardware and/or Open Source Software and/or Private Cloud Computing Services and/or Public Cloud Computing Services included in the Contract Object along with the proprietary 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 Open Source 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 Open Source Software and the Special Conditions for Private Cloud Computing Services and the Special Conditions for Public Cloud Computing Services, respectively.
- 6.5 Errors shall be remedied as specified in chapter 8 (Liability for Errors) in the General Conditions.

- 6.6 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 chapter 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 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 chapter 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 chapter 8 with regard to the Contracting Authority's use of the proprietary software, provided that the Standard Conditions do not violate the present chapter 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 chapter 8 with regard to proprietary software shall apply mutatis mutandi to such documentation that is provided in connection therewith under clause 4.3.

## 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 chapter 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.