



# DALO

## Terms and Conditions

### Software and Maintenance and Support

#### 1. Introduction

These Terms and Conditions regulate the Supplier's delivery to the Customer of the Deliverables described in the Purchase Order.

Any sales and delivery terms, requirements, etc. from the Supplier are not valid between the Parties unless the Customer has explicitly derogated from these Terms and Conditions by way of a written amendment. A reference to the Supplier's offer in the Purchase Order shall not be deemed to include the Supplier's sales and delivery terms, requirements, etc.

To the extent that the Customer's right (license) to use the Deliverables is subject to restrictions – besides payment – such restrictions are listed in Annex 1, see clause 12.1.

These Terms and Conditions, including any amendments thereto, the Purchase Order and Annex 1 are mutually explanatory. In case of discrepancies between the wording of these Terms and Conditions, Annex 1 and the wording of the Purchase Order, the Terms and Conditions shall take precedence.

#### 2. Annexes

Annex 1: Versions and Releases, service level goals, vulnerabilities and cyber attacks and licensing terms

#### 3. Definitions

*"Agreement"* means the Purchase Order, these Terms and Conditions, including Annex 1, and any written amendment agreed upon by the Parties.

*"Customer"* means the Ministry of Defence and any of its subordinated divisions, represented by the Danish Defence Acquisition and Logistics Organization (DALO).

*"Day"* means a calendar day.

*"Defect"* means when the Deliverables delivered do not conform to the Agreement, all applicable standards and industry norms and/or are not suitable to fulfil the Customer's intended purpose.

*"Delay"* means the Supplier's delivery of the Deliverables after the time of delivery agreed in the Purchase Order, where this is not due to force majeure or to circumstances for which the Customer is responsible.

*"Deliverables"* means all deliverables the Supplier is obliged to deliver under the Agreement, including Software, Documentation and Maintenance and Support.

*"Documentation"* means any description related to the Deliverables delivered.

*"Maintenance and Support"* means the maintenance and support services, including Versions and Releases, connected to the Software to be delivered by the Supplier and defined in clause 5.3.

*"Parties"* means the Customer and the Supplier, and in the singular, Party, either of the said Parties.

*"Purchase Order"* means the order which the Customer has submitted to the Supplier, including the Supplier's offer to the extent accepted by the Customer in writing.

*"Release"* means a minor update of the Software, including corrective action, generally characterised by a change in the Software identification number by one decimal (e.g. from 5.0 to 5.1).

*"Software"* means the software specified in the Purchase Order.

*"Supplier"* means the seller of the Deliverables covered by the Agreement.

*"Terms and Conditions"* means these Terms and Conditions, including Annex 1.

*"Version"* means an update of the Software containing substantially changed functionality, generally characterised by a change in the main version number (e.g. from 5.1 to 6.0).

*"Working Day"* means any Day except for Saturdays, Sundays, Danish public holidays, the Day of Christmas Eve (24 December), the Day of New Year's Eve (31 December), and Constitution Day (5th of June).

Unless the context dictates otherwise, the abovementioned definitions shall apply to the use of the words and phrases in the singular and plural as well as the definite and indefinite forms.

#### 4. The Supplier's acceptance of the Agreement

The Supplier shall confirm its acceptance of the provisions of the Agreement in their entirety, either by:

- (1) confirming the Purchase Order in writing within 8 (eight) Days from the receipt; or
- (2) signing the Purchase Order

The Agreement becomes effective at the Suppliers acceptance.

If the Supplier has made any changes to the Purchase Order, these are not valid unless a new Purchase Order is issued by the Customer or an amendment is made to the original Purchase Order by the Customer.

The Agreement shall not be derogated from in any way unless expressly permitted by the Customer in a written amendment to the Agreement.

## **5. The Supplier's obligations**

### **5.1 General**

All Deliverables covered by the Purchase Order shall be performed and delivered in accordance with the Agreement, including the requirements specified in the Purchase Order.

If the Agreement does not stipulate a specific standard of performance, the Deliverables covered by the Purchase Order shall be in accordance with good IT practice.

### **5.2 Software**

The Supplier shall deliver the Software stated in the Purchase Order.

### **5.3 Maintenance and Support**

The Supplier shall deliver the Maintenance and Support stated in the Purchase Order.

Maintenance and Support shall be performed by qualified and trained personnel.

#### **5.3.1 Versions and Releases**

As part of the Maintenance and Support, the Supplier shall deliver new Versions and Releases of the Software covered by the Agreement as soon as and to the extent such Software is released for distribution in Denmark.

The Customer is, however, not obliged to perform updates with such new Versions or Releases. If such update is a prerequisite for the Supplier achieving any service level goals, cf. clause 5.3.2, this is indicated by the Supplier in Annex 1 with the maximum number of Versions/Releases the Customer may be behind. Furthermore, any such update may be a condition for the Supplier's obligation to take corrective action as part of the Maintenance and Support.

#### **5.3.2 Service level goals**

If any service level goals apply to the Supplier's performance of the Maintenance and Support, these are stated in Annex 1.

The Supplier guarantees that the service level goals described by the Supplier in Annex 1 will be fulfilled and maintained as from the delivery of the Software covered by the Purchase Order.

### **5.4 Documentation**

As an integral part of the Deliverables under the Agreement, the Supplier shall deliver the

Documentation necessary for the Customer's full use of the Deliverables delivered.

As part of the Maintenance and Support, the Supplier shall furthermore maintain the Documentation delivered in order for the Customer to always hold an updated edition of the necessary Documentation.

The Documentation shall be developed in accordance with good IT practice.

All Documentation shall be delivered in Danish or English unless otherwise agreed by the Parties.

### **5.5 Delivery**

#### **5.5.1 General**

Delivery of the Software and new Versions and Releases shall be deemed to have taken place when the Software and / or new Versions and Releases are at the Customer's disposal, meaning that they are fully downloadable and installable from the premises of the Customer.

Delivery of Maintenance and Support, apart from new Versions and Releases, shall be deemed to have taken place when the services in question have been performed.

#### **5.5.2 Place of delivery**

The Supplier shall deliver the Deliverables at the premises of the Customer, unless otherwise agreed between the Parties.

The Software and new Versions and Releases shall be delivered via non-physical distribution channels (e.g. via a supplier portal, website or equivalent), unless otherwise agreed between the Parties.

Maintenance and Support, apart from new Versions and Releases, may be delivered remotely, e.g. via telephone or email, and by physical support at the premises of the Customer.

#### **5.5.3 Time of delivery**

The Deliverables shall be delivered at the date specified in the Purchase Order, unless otherwise agreed between the Parties.

Unless otherwise specified in the Purchase Order, the Maintenance and Support shall be delivered immediately after the delivery of the Software covered by the Purchase Order.

#### **5.5.4 Passing of risk**

The Supplier shall bear the risk of the Deliverables until delivery has taken place.

### **5.6 Warranty**

The warranty period for the Deliverables shall be 12 (twelve) months from the time of delivery, cf. clause 5.5.3.

The warranty period shall be extended in case of delivery of defective Software, Versions and Releases under the Agreement, meaning that a new warranty period starts running for the Software, Versions and Releases in question when the Supplier has remedied the Defect(s) in accordance with clause 8.

The Supplier shall remedy all Defects in the warranty period without costs for the Customer.

### **5.7 Compliance with applicable law**

During the performance of its obligations under the Agreement, the Supplier shall comply with all applicable rules governing the execution of the Supplier's business no matter where this business is carried out, including regulation of human rights, anti-corruption and environment.

Non-compliance shall be deemed to exist i.a. if the Deliverables or any work in the performance of the Agreement do not meet the requirements set out in this clause **Fejl! Henvisningskilde ikke fundet.** and/or the Supplier fails to take appropriate remedial steps in this connection and/or the Supplier fails to deliver the documentation required in due time.

#### **5.7.1 Corporate social responsibility (CSR)**

In the performance of the Agreement the Supplier shall respect CSR by observing the principles of the UN Global Compact initiative and the provisions of ILO conventions Nos. 1, 26, 29, 30, 87, 98, 105, 131, 135, 138, 155 and 182. The Supplier may i.a. not make use of forced and child labour in contravention of these conventions.

Furthermore, the Supplier shall work against corruption and any other illegitimate influence in all its forms.

With respect to these obligations the Supplier is responsible for acts or defaults of any subcontractors, who contribute to the performance of the Agreement, as if they were the acts or defaults of the Supplier.

If the Supplier becomes aware of non-compliance in regard to the CSR requirements, or if proceedings are brought against the Supplier for such violation related to the CSR requirements, the Supplier must immediately, on its own initiative, inform the Buyer.

The Buyer is at any time entitled to request relevant documentation of compliance with the CSR requirements. However, as a general rule, the Buyer will not request documentation that the Supplier complies with the CSR requirements in the performance of the Agreement unless prompted by special circumstances, such as a suspicion based on actual observations and/or indications.

Relevant documentation shall as a minimum include a written statement and documentation of the production processes and / or methods used in manufacturing or

delivering the Deliverables and of the materials used in the Deliverables.

The Supplier shall further state whether its own actions, including its choice of subcontractors or components, may have an impact on the compliance with the CSR requirements.

The written statement shall also describe any specific actions or measures taken by the Supplier to fulfill the CSR requirements and to reduce the risk of non-compliance.

The Supplier shall provide such documentation within 14 (fourteen) Days. In case of subcontractors the same relevant documentation must be submitted within reasonable time, however no later than 42 (forty-two) Days. In special circumstances the time limit can be extended by DALO upon a written and signed request from the Supplier stating the reasons.

On the basis of the written statement and documentation, etc., and taking all relevant circumstances into consideration, DALO will make an assessment of the individual incident.

#### **5.7.2 ILO Convention No. 94 – Labour Clause**

This Labour Clause does not apply to agreements concerning the purchase of Deliverables that are part of the Supplier's ordinary production or stocks, off-the-shelf goods, unless the product is manufactured in a custom-made production for the Buyer.

For work performed in Denmark in the performance of the Agreement the Supplier shall ensure that workers employed by the Supplier and any subcontractors who contribute to the performance of the Agreement are secured pay, including special allowances, hours of work and other working conditions which are no less favourable than those established for work of the same character under a collective agreement entered into by the most representative organizations of workers and employers in Denmark in the trade or industry concerned being in force throughout the territory of Denmark.

For work performed outside of Denmark in the performance of the Agreement the Supplier shall ensure that workers employed by the Supplier and any Subcontractors who contribute to the performance of the Agreement are secured pay, including special allowances, hours of work and other working conditions which are no less favourable than those established in accordance with applicable national regulations and legislation including international obligations for work of the same character performed in that country.

The Supplier and any subcontractors shall ensure that the workers are informed of the provisions of this Labour Clause.

The Buyer is at any time entitled to request relevant documentation of compliance with the conditions of pay and work for the workers as stipulated in this Labour Clause.

The Buyer may thus require that the Supplier, after written notice to that effect, within 14 (fourteen) Days provides relevant documentation, such as pay-slips, time sheets, payroll accounts and employment contracts establishing the basis for the conditions of work and calculation the payments.

In case of subcontractors the same relevant documentation must be provided within reasonable time, however no later than 42 (forty-two) Days. In special circumstances the time limit can be extended by the Buyer upon a written and signed request from the Supplier stating the reason.

If the Supplier does not provide the requested documentation within the stipulated time limits the Buyer is entitled to withhold amounts from its payments to the Supplier until the Supplier has provided the required documentation.

The Supplier shall in all cases redact any personal information such as information concerning racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, or data concerning health or sexual orientation from the supplied information in order to comply with applicable rules and legislation on personal data protection (currently the Act on Processing of Personal Data; in Danish: Persondataloven and Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)).

If the Supplier fails to comply with its obligations pursuant to this Labour Clause, and if such non-compliance results in a legitimate claim for additional pay to the workers, the Buyer is entitled to withhold amount covering such additional payments from its payments to the Supplier (the Price) in order to ensure that this Labour Clause and the labour conditions are met.

### **5.8 Vulnerability and cyber attacks**

In connection with the conclusion of the Agreement, the Supplier has informed the Customer in writing of any known

- a) vulnerabilities in the Supplier's Software and / or new Versions and Releases;
- b) cyber attacks attempted on the Software and / or new Versions and Releases where the Software and / or new Versions and Releases were in fact compromised, e.g. by hacking; and
- c) cyber attacks that the Supplier has been exposed to where the firewall has been broken

down or where the Supplier suspects that the attack was targeted on this Agreement.

This information shall be stated by the Supplier in Annex 1.

If the Supplier discovers or is made aware of any vulnerabilities in the Software and / or new Versions and Releases delivered to the Customer while the Agreement is in force, the Supplier shall notify the Customer of this immediately.

If attacks that could potentially have a negative impact on the Customer (of any kind) are attempted on the Software and / or new Versions and Releases or if the Software and / or new Versions and Releases are in fact compromised, e.g. by hacking, while the Agreement is in force, the Supplier shall notify the Customer thereof immediately. This also applies in case of attacks on the Supplier's Software and / or new Versions and Releases delivered to other customers.

If the Supplier is exposed to cyber attacks whereby the firewall has been broken down or where the Supplier suspects that the attack was targeted on this Agreement, while the Agreement is in force, the Supplier shall notify the Customer thereof immediately.

Any notification of vulnerabilities and attacks or attempted attacks shall be made by telephone directly to the Customer's contact person. The notification by telephone shall shortly afterwards be followed up by a written message by e-mail to the Customer's contact person. The first written message shall be followed up by a new message to the Customer's contact person as soon as the Supplier becomes aware of the extent of the vulnerabilities/cyber attacks. The notification shall contain further information about the vulnerability/cyber attack and information on which data, documents, pictures etc. that might be compromised.

### **5.9 Deliverables performed at the Customer's premises**

If the Supplier is to perform Deliverables at the Customer's premises or another location designated by the Customer, the Supplier is obliged to comply with the instructions given by the person in charge at the premises/location. This also applies to license audits, cf. clause 5.12.

It is the responsibility of the Supplier to obtain any permissions or security clearances that may be needed in order to be granted access to the premises, location, and/or facilities, etc., in question.

### **5.10 Secrecy and security classification**

The Supplier shall treat as confidential all information received in connection with this Agreement and is not entitled to publish or in any other way disseminate the information received to the public or any third parties with the exception of information submitted to

subsuppliers for the sole purpose of carrying out this Agreement.

Furthermore, access to and treatment of classified matters and documents, if applicable to this Agreement or its performance, shall be governed by the NATO security regulations laid down in NATO document C-M (2002) 49 (or any later revisions which have replaced said document).

The Supplier and any subsuppliers are required to comply with NATO Security Regulations as implemented by the National Security Authority of the country in which the work is performed.

If it is necessary for the Supplier to disclose classified matters or documents to any of its subsuppliers, the Supplier shall require the subsupplier(s) to comply with the conditions in this clause. The Supplier shall comply with all instructions relating to security obligations, in particular those relating to supervision of personnel, security procedures, safety of material and actual or presumed sabotage.

Failure by the Supplier or any subsuppliers to comply with the provisions of this clause 5.10, including the security regulations referred to, shall be deemed to be a material breach of the Agreement, cf. clause 10.1. In addition, the Supplier may be liable to criminal proceedings.

#### **5.11 Insurance**

The Supplier shall maintain customary insurances, including professional liability insurance, and product liability insurance covering the Supplier to an extent that corresponds to the Agreement.

On the Customer's request, the Supplier shall provide documentation that the insurance requirement has been complied with.

#### **5.12 License audit**

If the Supplier wants to conduct a license audit of the Customer's use of the Supplier's Software, the Supplier shall give written notification of at least 60 (sixty) Days before initiation of the license audit.

The Supplier shall propose the procedure, documentation and tools/scripts, if any, that the Supplier wishes to use for the audit not later than 45 (forty-five) Days before the license audit is commenced. The Supplier's tools/scripts shall only collect data which is relevant in relation to the Customer's use of the Software.

The Customer shall be entitled, for security reasons, to refuse to use the tools/run scripts for collection of data. It shall be the Supplier's responsibility to ensure that the Customer is able, in another manner, to fulfil any reporting obligations related to the Customer's use of the Deliverables.

For security reasons the Supplier will not get access to

the Customer's IT systems unless the Supplier has the necessary security clearances.

In connection with the release of data, the Customer shall be entitled to obscure compromising data (e.g. IP addresses, server names, etc.). Any data to be extracted by the Supplier from the Customer's systems shall be subject to the Customer's consent. The Customer shall be entitled to refuse release of data to the Supplier. This may both be individual data or all data. However, such refusal may only be for security reasons. If the Customer is unable to release individual data or all data, the Customer will give the Supplier a brief account thereof.

Any costs in connection with the performance of a license audit shall be borne by the Supplier, irrespective of whether the Supplier chooses to use a possible third party (e.g. an audit firm).

If the Customer's IT systems contain unintended installations of the Software covered, the Customer shall promptly uninstall such installations after the Customer has become aware of such installations or after the Supplier has notified the Customer thereof.

### **6. Change of the Purchase Order**

The Customer may demand that changes be made in the content, size or time of performance/delivery of the Deliverables covered by the Purchase Order. Both the Customer and the Supplier may demand that changes be made to the content and size of the Purchase Order, if this is required by law or public regulations that were unforeseeable at the time of the Supplier's acceptance of the Purchase Order.

Any demand for changes of the Purchase Order shall be forwarded in writing in reasonable time before the changes are to take effect. Changes may only be made to the extent permitted by the public procurement rules in force at the time of the change.

If the changes lead to an increase or a decrease in the Supplier's costs, the payment to the Supplier, cf. clause 7.1, shall be adjusted accordingly.

### **7. Prices and payment**

#### **7.1 Prices**

All prices are fixed and exclusive of VAT, but inclusive of all other taxes and duties.

Payment shall take place as specified in the Purchase Order.

Any discount shall be specified in the Purchase Order.

#### **7.2 Terms of payment**

The Customer shall pay all invoices no later than 30 (thirty) Days after the Supplier has electronically forwarded the invoice, provided that it contains all

relevant information. Any cash discount will be calculated on the day of payment.

The Customer's payment shall not in any way be deemed to constitute a waiver of the Customer's rights in case of Defects or Delay or in any other way prevent the Customer from relying on the provisions under the Agreement.

### **7.3 Invoices**

#### **7.3.1. Domestic Suppliers**

Domestic Suppliers shall submit invoices in accordance with the Danish Public Payments (Consolidation) Act No. 798 dated 28 June 2007 (lovbkg. nr. 798 af 28. juni 2007 om offentlige betalinger m.v.) concerning electronic invoicing to:

Forsvarsministeriets Regnskabsstyrelse (Danish Defence Accounting Agency)  
Arsenalvej 55  
9800 Hjørring  
Denmark

The invoice shall be submitted in OIOUBL format with reference to purchase order number, electronic invoicing address, EAN location number and reference person / staff number to the contact person from the Customer assigned to the Agreement. Further information is available at: <http://oioubl.info/classes/da/index.html>

The Danish Defence Accounting Agency will not accept invoices submitted from a scanning bureau (virk.dk may however be used).

Any other information or enquiries concerning payment, e.g. credit note, reminder etc., shall be submitted by email to FRS-KTP-KRE@MIL.DK.

#### **7.3.2. Foreign Suppliers**

Foreign Suppliers shall submit invoices in PDF format referring to purchase order number, and reference person / staff number to the contact person from the Customer assigned to the Agreement. Invoices shall be attached to an email message addressed to FRS-KTP-KRE-INVOICE@MIL.DK and FMI-KTP-FDD-IMPORT@MIL.DK.

If possible, the foreign Suppliers may submit the invoice electronically in OIOUBL format.

If foreign Suppliers have a Danish CVR number the terms applicable to domestic Suppliers become effective, cf. clause 7.3.1.

#### **7.3.3. All Suppliers (Both domestic and foreign)**

If an electronic invoice does not comply with the requirements above, the invoice will be rejected and returned as incorrect and no payment will take place. Likewise, no interest will be paid for the period until a correct electronic invoice has been submitted and the payment deadline has passed.

Any other information or enquiries concerning payment, e.g. credit note, reminder etc., shall be submitted by email to FRS-KTP-KRE@MIL.DK.

### **8. Defects**

#### **8.1 General**

The Supplier is liable for Defects in the warranty period, cf. clause 5.6.

If the Customer identifies any Defects in the Deliverables delivered, the Customer shall give notice to the Supplier of such Defect(s) within reasonable time.

After receiving notification of a Defect or identifying a Defect, the Supplier shall immediately remedy the Defect.

If the Supplier's remedial action

- (i) is not performed, or
- (ii) is performed, but does not lead to the Deliverables being free of Defects,

the Customer shall be entitled to a price reduction whereby the Customer shall only pay such price as is deemed fair and reasonable taking into account the nature and extent of the Defect(s).

#### **8.2 Failure of the Supplier to remedy Defects**

If the Supplier fails to remedy a Defect, cf. clause 8.1, the Customer shall be entitled to terminate the Agreement, if the Defect is material, if the Defect deprives the Customer of the intended purpose and/or if more Defects jointly constitute a material Defect.

### **9. Delay**

#### **9.1 The Supplier's Delay**

In case of a Delay, the Supplier shall immediately notify the Customer thereof and take the steps necessary to reduce the Delay.

The Customer shall be entitled to terminate the Agreement if the Delay is material, cf. clause 10.1, and claim damages if the conditions are met, cf. clause 11.1.

If the delivery of the Software has not taken place within 4 (four) weeks, the Delay shall always be deemed to be material unless otherwise expressly agreed in the Purchase Order.

If only part of the Agreement has been performed, the Customer may choose to terminate the Agreement with regard to the Deliverables which are delayed.

#### **9.2 The Customer's Delay**

In the event of delayed payment from the Customer to the Supplier, the Supplier shall be entitled to claim default interest calculated on the basis of the interest rate applicable from time to time pursuant to section

5(1) of the Danish Interest Act (in Danish: "renteloven").

## **10. Termination for cause**

### **10.1 The Supplier's breach**

The Customer may terminate the Agreement, in whole or in part, on the conditions stipulated in this clause if the Supplier is in material breach of its obligations under the Agreement. This shall apply regardless of any other provision of the Agreement.

Material breach shall include, but is not limited to, the following situations:

- (1) The Supplier's anticipated breach of its obligations under the Agreement, including but not limited to bankruptcy, commencement of restructuring proceedings etc.,
- (2) The Supplier's non-material breach of the Agreement that in combination with one or more other non-material breaches constitutes a material breach of the Agreement,
- (3) Repeated and/or serious non-compliance of the requirements related to applicable law, CSR requirements and/or Labour Clause, cf. clause 5.7.
- (4) Breach of any secrecy and security classification obligations, cf. clause 5.10.
- (5) Failure by the Supplier to remedy a Defect as described in clause 8.2, including if the Supplier does not meet a service level goal, cf. clause 5.3.2, 5 (five) or more times during a period of 3 (three) consecutive months.
- (6) Material Delay, including the Supplier's notification of an anticipated material Delay, cf. clause 9.1.

If the Customer considers that the Supplier is in material breach of the Agreement, the Customer shall notify the Supplier in writing. If the Supplier has not remedied the breach within 14 (fourteen) Days, the Customer shall be entitled to terminate the Agreement and claim damages for any loss, cf. clause 11.

In case of termination for cause, including termination of only a part of the Agreement, the Customer shall be entitled to make replacement purchases from a third party for the Supplier's account.

In case of termination for cause, the Supplier shall refund all payments made by the Customer, cf. clause 7.1, for the Deliverables, without deduction of Deliverables already delivered at the time of termination to the extent such Deliverables are of no value to the Customer.

### **10.2 The Customer's breach**

If the Customer is in breach with its payment obligations under the Agreement, the Supplier may claim interest in accordance with clause 9.2.

Furthermore, the Supplier shall be entitled to terminate the Agreement with regard to the Deliverables affected, on condition that the Supplier has given written notice

to the Customer specifying the Customer's breach of its payment obligations regarding these Deliverables and that failure to pay within 60 (sixty) Days may lead to termination of the Agreement regarding these Deliverables, and provided that the Customer has not fulfilled the payment obligations within this time limit.

### **10.3 Termination in accordance with section 185(1) of the Danish Public Procurement Act**

The Customer shall be entitled to terminate the Agreement, in whole or in part, with a written notice of 1 (one) month, if:

- a) the Agreement has been subject to a material change which would have required a new procurement procedure, cf. section 178 of the Danish Public Procurement Act (in Danish: udbudsloven)
- b) the Supplier was subject to one of the grounds for exclusion under sections 135-137 of the the Danish Public Procurement Act at the time of the award of the Agreement, and should therefore have been excluded from the procurement procedure, or
- c) the Agreement should not have been awarded to the Supplier in view of a serious infringement of the obligations under the EU treaties and the EU directives on public procurement established by the Court of Justice of the European Union in connection to a procedure under Article 258 of the Treaty on the Functioning of the European Union.

The Supplier's possible claim for damages due to the circumstances mentioned in items a) and c) above shall be settled in accordance with the general rules of Danish law, cf. however clause 11. Furthermore, the reservation for termination with a notice as stipulated above shall be taken into account when calculating the Supplier's loss. If the Supplier knew - or ought to have known - the factual or legal grounds leading to the termination of the Agreement, the Supplier shall not be entitled to raise any claim for damages against the Customer.

If the Customer terminates the Agreement due to circumstances mentioned in item b) above, the Supplier shall not be entitled to raise any claim for damages against the Customer.

### **10.4 Annulment of the decision to award the Agreement and ineffectiveness**

The Customer shall be entitled to terminate the Agreement, in whole or in part, at a written notice of 1 (one) month, if the Danish Complaints Board for Public Procurement (in Danish: Klagenævnet for Udbud) or the courts of law annuls the Customer's decision to award the Agreement. This shall also apply if the Agreement is to be terminated pursuant to section 185 (2) of the Danish Public Procurement Act.

If the Danish Complaints Board for Public Procurement or the courts of law declare that the Agreement is inef-

fective (in Danish: "uden virkning") and orders the Customer to terminate the Agreement within a time-limit fixed by the Complaints Board or the courts, the Customer shall be entitled to terminate the Agreement, in whole or in part, giving notice in accordance with the order issued by the Complaints Board or the courts of law.

If the order issued contains additional terms and conditions or requirements, the Customer shall be entitled to transfer such terms and conditions or requirements to the Supplier in the notice of termination, provided that this is objectively justified, and the Supplier shall then comply with such terms and conditions.

The Supplier's possible claim for damages under this clause 10.4 shall be settled in accordance with the general rules of Danish law, cf. however clause 11.

The provisions on termination pursuant to section 185(1) of the Danish Public Procurement Act or due to the Agreement being annulled or declared ineffective by the Complaints Board for Public Procurement under the Agreement shall be taken into account when calculating the Supplier's loss.

If the Supplier, at the time of conclusion of the Agreement, had or should have had knowledge of the actual and/or legal circumstances causing the annulment of the award of the Agreement or causing the Agreement to be declared ineffective, the Supplier shall not be entitled to damages or any other kind of compensation from the Customer.

The Parties agree that clause 10.4 of the Agreement constitutes a separate agreement which shall apply irrespective of whether the Agreement in general might be declared ineffective.

## **11. Damages and Liability Cap**

### **11.1 Damages**

Without prejudice to any other remedy stated in the Agreement, the Customer shall be entitled to claim damages for any loss or damage suffered due to the Supplier's breach of its obligations under the Agreement.

The existence and extent of the Supplier's liability shall be determined in accordance with the general rules of Danish law.

### **11.2 Indirect losses**

Neither the Supplier nor the Customer shall be liable for operating losses, consequential losses or other indirect losses. Loss of data shall be regarded as an indirect loss except the loss of data where this is due to the Supplier's operation or other handling of data covered by the Agreement.

## **11.3 Liability cap**

The Supplier's maximum liability under the Agreement shall be limited to the sum of:

- a) the total price for Software and Documentation; and
- b) the price paid by the Customer for Maintenance and Support from the effective date until the time when the Customer became aware of the facts giving rise to the claim, however not less than the price for Maintenance and Support for 18 (eighteen) months.

This liability cap shall not apply in case of the Supplier's wilful misconduct or gross negligence.

## **12. Miscellaneous**

### **12.1 Intellectual property rights**

The Supplier shall grant to the Customer a non-exclusive right (license) to use the Deliverables. For the avoidance of doubt, no intellectual or industrial property rights are transferred to the Customer under the Agreement; the Customer is only granted a license to use the Deliverables.

To the extent that the license is subject to restrictions – besides payment – the Supplier has listed such restrictions in Annex 1. The restrictions listed in Annex 1, if any, shall be exhaustive, and the Customer's right of use shall thus be subject to no other restrictions, limitations, etc. of any kind. If no restrictions are listed, the Customer's right of use shall be unrestricted.

The Supplier shall indemnify the Customer in the event that the Customer is met by a claim from any third party on the basis of intellectual or industrial property rights which have not been disclosed or which are contrary to the information stated in Annex 1. This shall not apply, however, if the claim from the third party concerns the use of software not comprised by the Agreement.

The right of use shall be transferred at delivery, cf. clause 5.5.3.

In the event of termination, the right of use to the Deliverables covered by the termination, shall cease. The right of use shall cease at the time of the Supplier's reimbursement of the sum paid by the Customer, cf. clause 10.1.

### **12.2 Use of sub-suppliers**

Unless otherwise specified in the Purchase Order, the Supplier shall be entitled to use sub-suppliers for the performance of the Agreement, but the Customer's prior consent to this shall always be required in cases where performance of the Agreement requires special expertise or requires that the sub-supplier gains access to confidential information. The Customer will not refuse such consent without reasonable justification.

The Supplier shall inform the Customer of the name, contact details and legal representative of any



subsupplier(s) directly involved in the performance of the Agreement. The Supplier shall provide such information prior to commencing the performance of the Agreement if the subsupplier(s) are known at that time. In other instances, the information shall be provided as soon as possible and in any case prior to the subsupplier's performance of any part of the Agreement.

Irrespective of the Supplier's use of subsuppliers, the Supplier shall be liable to the Customer for all obligations under the Agreement.

The Supplier shall ensure that the same conditions and obligations are imposed on subsuppliers as those undertaken by the Supplier to the Customer.

### **12.3 Force Majeure**

If a force majeure event occurs, the Parties' obligations towards each other shall be suspended for the time being, provided that the force majeure event is notified to the other Party with supporting arguments and particulars describing the nature and extent of the force majeure event as soon as the Party in question has become aware of a force majeure event, and in any event no more than 5 (five) Working Days from the occurrence of the force majeure event.

To this effect, force majeure shall be defined as an event that is (i) outside the control of the Parties, and of a certain qualified nature: *war, hostilities, riots, nuclear or natural disasters, etc.*, (ii) unforeseeable or not reasonably foreseeable at the time of submission of the Supplier's offer and (iii) ought not to be overcome neither by reasonable investments of work nor money.

It is specifically agreed that any export restriction shall not be regarded as a force majeure event, unless the Supplier documents that appropriate measures have been timely taken to obtain and maintain all relevant export and licenses and other clearances necessary for the delivery, and upon the occurrence of such force majeure event, without undue delay, investigate whether substitute deliverables can be lawfully obtained from other sources. In case such delivery of substitute deliverables is possible, the Supplier shall deliver such without undue delay.

If the force majeure event continues beyond 120 (one hundred and twenty) Days - not necessarily consecutive, but within the same 180 (one hundred and eighty) Days - each Party shall be entitled to terminate the Agreement. In such instance, the Supplier shall be entitled to receive payment for Deliverables delivered until the force majeure event occurred, and the Customer shall only be liable to pay an amount equivalent to the Deliverables received.

Notwithstanding the foregoing, if the force majeure event only extends to some and not all Deliverables, the Customer shall be entitled, but not obliged, to claim delivery of such Deliverables.

Neither Party shall make any claim against the other Party based on a force majeure event.

### **12.4 Non-waiver**

Any consent to or waiver by the Customer of any provision or breach shall not constitute consent to or a waiver of such provision or breach in the future. Any specific consent or waiver shall be in writing and shall only affect the relevant breach.

No failure by the Customer in exercising any of its rights and or the provisions under the Agreement shall operate as a waiver of that provision/right, nor for the future.

### **12.5 Amendments to the Agreement**

Additions or amendments to the Agreement shall only be valid if agreed upon in writing by both parties.

### **12.6 Transfer**

The Customer shall be entitled to transfer its rights and obligations under the Agreement to another public institution if the duties performed by the Customer until then are transferred to another public institution. This shall apply regardless of any provisions in the Supplier's sales and delivery terms if these apply, cf. clause 1.

The Supplier shall not be entitled to transfer any rights and/or obligations under the Agreement to a third party, including but not limited to other companies in the same group as the Supplier, without the Customer's prior written consent. The Customer will not refuse such consent without objective justification.

### **12.7 Disputes: Law and venue**

Any dispute arising out of or in connection with the Agreement shall be governed by Danish law, substantive as well as procedural, however excluding choice-of-law rules and the United Nations Convention on the International Sale of Goods (CISG).

Any dispute as mentioned above, including any disputes regarding the existence, validity or termination of the Agreement, shall be settled by the ordinary Danish courts.

### **13. Termination for convenience and expiry**

The Customer shall be entitled to terminate the Agreement with the Supplier for convenience with a written notice of 6 (six) months.

The Agreement shall expire after a period of 4 (four) years from the effective date, cf. clause 4, unless otherwise stated in the Purchase Order.

### **14. Survivability**

The Parties agree and acknowledge that the following provisions, including the obligations they confer on the

Parties, shall survive the expiry or termination of the Agreement, as the case may be, and remain in force for an unlimited duration:

- 1) The provisions concerning secrecy and security classification in clause 5.10;
- 2) The provisions concerning intellectual and industrial property rights in clause 12.1;
- 3) The provisions concerning governing law and disputes in clause 12.7.



**DALO**  
**Terms and Conditions**  
**Software and Maintenance and Sup-**  
**port**

**Annex 1**

*[This Annex is to be filled in by the Supplier in connection with submission of the offer.]*

### 1. Service Level goals

The service level goals applicable to the Supplier's performance of the Deliverables are described below:

*[The Supplier is to state the service level goals applicable to the Supplier's performance of the Deliverables, cf. clause 5.3.2 of the Terms and Conditions.]*

### 2. Versions and releases as a prerequisite for achieving the service level goals

To the extent that the Customer's updates of new Versions and Releases is a prerequisite for the Supplier achieving the service level goals, cf. clause 1, it is stated here with the maximum number of Versions and/or Releases the Customer can be behind:

*[The Supplier is to state if the Customer's update of new Versions and Releases is a prerequisite for the Supplier achieving the service level goals, cf. clause 1, and – if applicable - indicate the maximum number of Versions and/or Releases the Customer can be behind, cf. clause 5.3.1 of the Terms and Conditions.]*

### 3. Vulnerabilities and Cyber attacks

Information about vulnerabilities and cyber attacks, if any, cf. clause 5.8 of the Terms and Conditions, are stated below:

*[The Supplier is to state any known:*

- a) vulnerabilities in the Supplier's Software and / or new Versions and Releases;*
- b) cyber attacks attempted on the Software and / or new Versions and Releases where the Software and / or new Versions and Releases were in fact compromised, e.g. by hacking; and*
- c) cyber attacks that the Supplier has been exposed to where the firewall has been broken down or where the Supplier suspects that the attack was targeted on this Agreement.]*

### 4. Licensing Terms

To the extent that the Customer's right (license) to use the Deliverables is subject to restrictions – besides payment – such restrictions are listed below:

*[The Supplier is to list and describe any restriction – besides payment – in the Customer's right to use the Deliverables.]*

The restrictions listed above, if any, shall be exhaustive, and the Customer's right of use as provided for in clause 12.1 of the Terms and Conditions shall thus be subject to no other restrictions, limitations, etc. of any kind. If no restrictions are listed, the Customer's right of use shall be unrestricted.