

**Request for Proposal**

**CPE Procurement**

**SSA-T, Appendix 8**

**Changes to the General Contractual Wording**

**Version log**

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| Version | Initials | Date | Comments/amendments |
| 1.0 | DIK | 18.10.2019 | Part of the Tender documents |
| 1.1 |  |  |  |
| 1.2 |  |  |  |

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# Changes to the general contractual wording

***Instruction to Bidder:*** *Text in (blue) < italic > contains instructions to Bidder as to how this document shall be filled out and completed by the Bidder. The table below contains the Customers proposed changes to the general contractual wording. To the extent Bidder has any reservations, these shall be included in section 2 below in the bid phase. The tables will be merged after contract award.*

| **Ref.** | **Original wording** | **Changed wording** |
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| 2.3.1 | The Contractor shall develop that which is described in the detailed specification, cf. clause 2.2, such that the software satisfies the requirements of the Agreement. The Contractor is in this regard responsible for carrying out design and development, as well as its own testing, of the software in accordance with the detailed project plan, cf. Appendix 4. | The Contractor shall *provide* *the deliverables* as described in the detailed specification, cf. clause 2.2, such that *the deliverables* satisfy the requirements of the Agreement. The Contractor is in this regard responsible for carrying out design, development, *manufacturing, assembly* *etc*, as well as its own testing, of *the deliverables* in accordance with the detailed project plan, cf. Appendix 4. |
| 2.3.2, 3rd paragraph |  | Deleted. |
| 2.3.8 |  | Deleted. *<Deleted as conversion of data is not part of the scope.>*  |
| 2.4.3 | The Customer shall prepare and be responsible for a plan for the Customer's acceptance test; the Contractor shall contribute as set out in Appendix 5.The Contractor shall make available to the Customer the material the Contractor will utilise as a basis for its testing of the solution, such that the Customer may use this as a basis for the Customer's work on the test plan.The acceptance test plan shall describe how the Customer's acceptance test shall be conducted. The Customer shall submit the test plan to the Contractor for its comments. This shall be set out in Appendix 5. The Contractor shall, as soon as possible, consider the test plan and provide a written response concerning whether or not it is deemed adequate to achieve the satisfactory testing of the solution by the deadline set out in Appendix 5. | The *Contractor*  shall prepare and be responsible for a plan for the Customer's acceptance test; the *Customer* shall contribute as set out in Appendix 5.The Contractor shall make available to the Customer the material the Contractor will utilise as a basis for its testing of the *deliverables*.The acceptance test plan shall describe how the Customer's acceptance test shall be conducted. The *Contractor* shall submit the test plan to the *Customer* for its comments. This shall be set out in Appendix 5. The *Customer* shall, as soon as possible, consider the test plan and provide a written response concerning whether or not it is deemed adequate to achieve the satisfactory testing of the solution by the deadline set out in Appendix 5. |
| 2.5.2, 4th paragraph | Unless otherwise agreed in Appendix 5, any errors shall be repaired, at the latest, by the end of the approval period, with the exception of: 1) errors that, pursuant to the agreed rectification plan, shall be rectified later, as well as 2) errors that are of only minor significance in respect of the Customer's use of the solution, and which will be rectified in a planned update of the software within a reasonable period of time and at the latest by the end of the warranty period, and which it would therefore be disproportionately resource-demanding for the Contractor to rectify during the approval period. Under any circumstances, the errors shall be rectified by no later than the end of the warranty period. | Unless otherwise agreed in Appendix 5, any errors shall be repaired, at the latest, by the end of the approval period, with the exception of: 1) errors that, pursuant to the agreed rectification plan, shall be rectified later, as well as 2) errors that *would not prevent final approval of the deliverables*, and which will be rectified in a planned update of the software within a reasonable period of time and at the latest by the end of the warranty period, and which it would therefore be disproportionately resource-demanding for the Contractor to rectify during the approval period. Under any circumstances, the errors shall be rectified by no later than the end of the warranty period. |
| 2.5.2, 5th paragraph | The basis for further examination during the approval period shall be regarded as having been rendered impossible if the Customer finds, and invokes in writing, A or B errors that on their own or combined would made further examination impossible, or very difficult, or that mean that the value of such an examination would be significantly reduced. The Customer may demand that the approval period be extended by a period of time equal to the time is takes to rectify the errors, as well as a reasonable period of time for retesting. | The basis for further examination during the approval period shall be regarded as having been rendered impossible if the Customer finds, and invokes in writing, *such* errors that on their own or combined would make further examination impossible, or very difficult, or that mean that the value of such an examination would be significantly reduced. The Customer may demand that the approval period be extended by a period of time equal to the time is takes to rectify the errors, as well as a reasonable period of time for retesting. |
| 2.5.3, 4th paragraph | If the Contractor does not dispute the Customer’s refusal, the Contractor shall within five (5) working days send the Customer a timetable for repairing the errors associated with the deliverables. The Contractor shall give written notice to the Customer when the repairs have been carried out. Repairs are not deemed to be performed until they have been properly tested by the Contractor and retested by the Customer. The Contractor's tests shall cover all parts of the deliverables that may be affected by the errors. The Customer shall retest the rectification(s) within five (5) working days. | If the Contractor does not dispute the Customer’s refusal, the Contractor shall within five (5) working days send the Customer a timetable for repairing the errors associated with the deliverables. The Contractor shall give written notice to the Customer when the repairs have been carried out. Repairs are not deemed to be performed until they have been properly tested by the Contractor and retested by the Customer. The Contractor's tests shall cover all parts of the deliverables that may be affected by the errors. *The Customer is entitled to reasonable time extension to perform such testing.* |
| 2.6.1, 1st paragraphand2.6.2, 1st paragraph | “items” |  “deliverables” |
| 3.2, 3rd paragraph | Documented costs in connection with the preparation of change estimates are carried by the Customer in accordance with the prices and terms applicable to supplementary work, cf. Appendix 7. If standard prices for the preparation of change estimates are set out in Appendix 7, the Contractor shall not be entitled to the reimbursement of any costs in excess thereof, unless the Customer has given its prior written approval of a larger estimate. | All costs in connection with the preparation of change estimates are carried by the Contractor, unless the Customer has given its prior written approval to cover for preparation of the change estimates. |
| 4, 1st paragraph | Unless otherwise agreed in Appendix 7, the warranty period shall be one (1) year for software and two (2) years for equipment after the delivery date, cf. clause 2.5.3. | Unless otherwise agreed in Appendix 7, the warranty period shall be one (1) year for software and *five* (5) years for equipment after the delivery date, cf. clause 2.5.3. *For equipment where parts or components are replaced in accordance with the warranty obligations, the new warranty period of specified length shall apply. For equipment, the Contractor shall provide replacement compontents until the repair or replacement has been performed.* |
| 5.1, 4th paragraph | The provisions of the licence terms and conditions governing right of disposal shall prevail over the provisions governing right of disposal in this Agreement, unless otherwise is explicitly stated in Appendix 8. The Contractor shall, however, ensure that standard software is offered under licence terms and conditions with a right of disposal that satisfy the requirements in respect of the deliverables and their area of use stipulated by the Customer in Appendix 1, and this Agreement's provisions governing right of disposal. To the extent that the provisions of licence terms and conditions governing right of disposal differ from this Agreement's provisions governing right of disposal, the Contractor shall describe this clearly in Appendix 7. In the event of defects in title, the Contractor shall not be liable for damages for defects in title associated with standard software beyond that which follows from licence terms and conditions included in Appendix 10 and the coverage of any liability for damages imposed on it in relation to a third party (the rightsholder(s)) pursuant to clause 13.4. | The provisions of the licence terms and conditions *for standard software* shall prevail over this Agreement, unless otherwise is explicitly stated in Appendix 8. The Contractor shall, however, ensure that standard software is offered under licence terms and conditions with a right of disposal that satisfy the requirements in respect of the deliverables and their area of use stipulated by the Customer in Appendix 1, and this Agreement's provisions governing right of disposal. To the extent that the provisions of licence terms and conditions governing right of *use* differ from this Agreement's provisions governing right of *use*, the Contractor shall describe this clearly in Appendix 7. In the event of defects in title, the Contractor shall not be liable for damages for defects in title associated with standard software beyond that which follows from licence terms and conditions included in Appendix 10 and the coverage of any liability for damages imposed on it in relation to a third party (the rightsholder(s)) pursuant to clause 13.4. |
| 5.2, 2nd paragraph | Persons designated as key personnel in Appendix 6 shall not, within the scope of the Contractor’s managerial prerogative as employer, be replaced without the prior approval of the Customer. Such approval shall not be unreasonably withheld. The actual participation of the key personnel in the provision of the deliverables shall not be scaled back without the prior approval of the Customer. | Persons designated as key personnel in Appendix 6 shall not, within the scope of the Contractor’s managerial prerogative as employer, be replaced without the prior approval of the Customer. Such approval shall not be unreasonably withheld *and, if applicable, be given within 5 working days from the Contractor’s request for approval*. The actual participation of the key personnel in the provision of the deliverables shall not be scaled back without the prior approval of the Customer. |
| 5.2, 3rd paragraph | Personnel that the Customer, for justifiable reasons, does not wish to use, or wishes to have replaced, shall as soon as possible be replaced by alternative personnel with at least corresponding expertise. | Personnel that the Customer, for justifiable reasons, does not wish to use, or wishes to have replaced, shall as soon as possible*, and no later than within 30 working days,* be replaced by alternative personnel with at least corresponding expertise. |
| 5.3, insert new 2nd paragraph |  | *The Contractor may not use more than 2 levels of subcontractors (Customer-Contractor-Subcontractor1-Subcontractor2).* |
| 5.4 | However, the Contractor shall be released from the duties mentioned in this clause if the Contractor substantiates that such cooperation will be of material disadvantage for the Contractor's relationship to its existing subcontractors or other business contacts. | However, the Contractor shall be released from the duties mentioned in this clause if the Contractor substantiates that such cooperation will be of material disadvantage for the Contractor's relationship to its existing sub-contractors or other business contacts. *This only applies however towards third parties not identified in Appendix 6.* |
| 5.6 |  | *New section 5.6 “Code of Conduct”**“The Contractor shall ensure that the deliverables are produced and delivered in accordance with the Code of Conduct as specified in Appendix 11.* |
| 7.3, 6th paragraph | The confidentiality obligation shall apply to the parties’ employees, subcontractors and other third parties who act on behalf of the parties in connection with the implementation of the Agreement. The parties may only transmit confidential information to such subcontractors and third parties to the extent necessary for the implementation of the Agreement, and provided that they are subjected to a confidentiality obligation corresponding to that stipulated in this clause 7.3. | The confidentiality obligation shall apply to the parties’ employees, sub-contractors and other third parties *identified in Appendix 6* who act on behalf of the parties in connection with the implementation of the Agreement. The parties may only transmit confidential information to such sub-contractors and third parties *identified in Appendix 6* to the extent necessary for the implementation of the Agreement, and provided that they are subjected to a confidentiality obligation corresponding to that stipulated in this clause 7.3. *The Customer may on the same terms transmit confidential information to relevant public bodies and entities involved in the toll charging.*  |
| 8.5, 1st paragraph |  | Deleted.  |
| 8.5, 2nd paragraph | The prices may be adjusted to the extent that rules or administrative decisions pertaining to indirect taxes are amended in a way that affects the consideration or costs of the Contractor.  | The prices may be adjusted to the extent that rules or administrative decisions pertaining to public taxes and dues are amended in a way that affects the consideration or costs of the Contractor.  |
| 10.2.1, 3rd paragraph | Consideration for the right of disposal in respect of the software, including any prerequisites and limitations, for example, in relation to the number of users or the place where the right of disposal is exercised/the equipment used to do so, is described in Appendix 7. | Consideration for the right of disposal in respect of the software, including any prerequisites and limitations, for example, in relation to the number of users or the place where the right of disposal is exercised/the equipment used to do so, is described in Appendix 7. *Any such prerequisites and limitations in Appendix 7 shall apply only to the extent the prerequisites and limitations are clear and unambiguous. Unclear provisions shall be interpreted in favour of the Customer.* |
| 10.2.3 |  | Deleted. |
| 10.3.1 | The Contractor shall retain the copyright to software that are developed specifically for the Customer unless otherwise agreed in the particular case. | The Contractor shall retain the copyright *and any other intellectual property rights* to software *and the documentation* that are developed specifically for the Customer unless otherwise agreed in the particular case. |
| 10.4.4 |  | Deleted. |
| 10.7.6, 1st paragraph | If the Customer requires the use of specific free software as part of the deliverables, the Customer shall itself pay any costs resulting from inadequate functionality caused by errors or defects in the free software. | If the Customer *in Appendix 1* requires the use of specific free software as part of the deliverables, the Customer shall itself pay any costs resulting from inadequate functionality caused by errors or defects in the free software.  |
| 11.2, 2nd paragraph | No damages or other remedies for breach of contract may be claimed for circumstances that have not been notified at the latest prior to the expiry of the warranty period. Nevertheless, this shall not apply to any liability for damages imposed in relation to a third party in respect of defects in title pursuant to clause 13.4. | No damages or other remedies for breach of contract may be claimed for circumstances that have not been notified at the latest prior to the expiry of the warranty period. Nevertheless, this shall not apply to any liability for damages imposed in relation to a third party in respect of defects in title pursuant to clause 13.4 *or if the breach is caused by gross negligence or wilful misconduct*. |
| 11.5.2, 1st paragraph | If the agreed detailed specification approval date, solution ready for acceptance test date, acceptance test approval date, delivery date, or some other deadline in respect of which the parties have stipulated liquidated damages in Appendix 4 is not complied with, and this is not caused by force majeure or circumstances related to the Customer, there is a delay on the part of the Contractor that triggers liquidated damages. | If the agreed solution ready for acceptance test date, acceptance test approval date, delivery date, or some other deadline in respect of which the parties have stipulated liquidated damages in Appendix 4 is not complied with, and this is not caused by force majeure or circumstances related to the Customer, there is a delay on the part of the Contractor that triggers liquidated damages. |
| 11.5.2, 2nd paragraph | If the Contractor is delayed with regard to the detailed specification approval milestone or later milestones for which the parties have stipulated liquidated damages, later deadlines shall be extended corresponding to the number of calendar days of the liquidated damages. If the Contractor, through acceleration, manages to meet the milestone solution ready for acceptance testing at the originally agreed time, the previously accrued liquidated damages shall be cancelled. | If the Contractor is delayed with regard to the milestones for which the parties have stipulated liquidated damages, later deadlines shall be extended corresponding to the number of calendar days of the liquidated damages. If the Contractor, through acceleration, manages to meet the milestone solution ready for acceptance testing at the originally agreed time, the previously accrued liquidated damages shall be cancelled. |
| 11.5.2, 3rd paragraph | The liquidated damages shall accumulate automatically. The liquidated damages amount to 0.15 per cent of the total consideration payable for the deliverables (the contract price), excluding Value Added Tax, for each calendar day of delay, but albeit limited to a maximum of one hundred (100) calendar days. If the delay pertains to a partial delivery, the liquidated damages shall amount to 0.15 per cent of the total consideration (exclusive of Value Added Tax) for the partial delivery in question for each calendar day the delay lasts, but limited to a maximum of one hundred (100) calendar days. If no price has been quoted for the partial delivery in Appendix 7, the liquidated damages shall be calculated based on the partial delivery's relative share of the consideration for the total delivery. In the case of the final, comprehensive acceptance test, liquidated damages shall be calculated based on the total consideration for the deliverables. The sum of previously accumulated liquidated damages for the partial deliveries and the comprehensive acceptance test may not exceed 15 per cent of the total consideration for the deliverables. | The liquidated damages shall accumulate automatically. The liquidated damages amount to 0.15 per cent of the total consideration payable for the deliverables (the contract price), excluding Value Added Tax, for each calendar day of delay, but albeit limited to a maximum of one hundred (100) calendar days. If the delay pertains to a partial delivery, the liquidated damages shall amount to 0.15 per cent of the total consideration (exclusive of Value Added Tax) for the partial delivery in question for each calendar day the delay lasts, but limited to a maximum of one hundred (100) calendar days. If no price has been quoted for the partial delivery in Appendix 7, the liquidated damages shall be calculated based on the partial delivery's relative share of the consideration for the total delivery. In the case of the final, comprehensive *(i.e. covering all partial deliveries)* acceptance test *and approval period*, liquidated damages shall be calculated based on the total consideration for the deliverables*, and not the consideration for the final partial delivery*. The *total**accumulated* sum of liquidated damages for the partial deliveries and the comprehensive acceptance test *and approval period* may not exceed 15 per cent of the total consideration for the deliverables. |
| 11.5.2, 6th paragraph | If only parts of the agreed deliverables are delayed, the Contractor may request a reduction in the liquidated damages proportional to the ability of the Customer to utilise the part of the deliverables that has been delivered. | If only *minor* parts of the agreed deliverables are delayed, the Contractor may request a reduction in the liquidated damages proportional to the ability of the Customer to utilise the part of the deliverables that has been delivered. |
| 11.5.4, 3rd paragraph | The Customer may terminate the Agreement for breach for a partial delivery when the period for the liquidated damages for the specific partial delivery has expired. If the delay is of such a type that the delivery as a whole must be deemed to be substantially delayed, for example, because that which is already delivered or which shall be delivered later cannot be used without that which is covered by the right to terminate for breach, the Customer may terminate the total delivery for breach. | The Customer may terminate the Agreement for breach for a partial delivery when the period for the liquidated damages for the specific partial delivery has expired. If the delay is of such a type that the delivery as a whole must be deemed to be *in material breach*, for example, that *a partial delivery* which is already delivered or which shall be delivered later cannot be used without the *deliverables* which are covered by the right to terminate for breach, the Customer may terminate the total delivery for breach. |
| 11.5.6, 3rd paragraph | The said limitations of damages shall not apply in the case of gross negligence or wilful misconduct on the part of the Contractor or anyone for whom the Contractor is responsible. | The said limitations of damages shall not apply in the case of *data protection breaches, cf. section 9.3, breaches of confidentiality, cf. section 7.3 or* gross negligence or wilful misconduct on the part of the Contractor or anyone for whom the Contractor is responsible. |
| 12.3 | The Contractor shall not suspend any performance as the result of breach of contract on the part of the Customer, unless the breach is material, cf. clause 12.4. | The Contractor shall not suspend any performance as the result of breach of contract on the part of the Customer, unless the breach is material, cf. clause 12.4. *The Contractor shall notify any suspension of performance in writing with at least 10 working days’ prior notice.* |
| 13.2, 2nd paragraph | The responsible party shall deal with the claim at its own expense. The other party shall assist the relevant party with this task to a reasonable extent. | The responsible party shall *have full authority to handle the claim and* deal with the claim at its own expense. The other party shall assist the relevant party with this task to a reasonable extent *and may not accept a settlement or otherwise settle the claim without the responsible party’s approval.* |
| 15.1, 1st paragraph | The risk of damage to equipment and delivered software copies, etc., due to an accidental occurrence, shall pass to the Customer on the date they are physically handed over to, or downloaded at, the Customer. The Contractor is responsible for maintaining insurance cover for the period up to this date. | The risk of damage to equipment and delivered software copies, etc., due to an accidental occurrence, shall pass to the Customer on the *completion of the Customer acceptance test (SAT).* The Contractor is responsible for maintaining insurance cover for the period up to this date. |

# Reservations/Change Proposals to the general contractual wording Made by the Contractor

***Instruction to Bidder:*** *To the extent Bidder has any reservations to SSA-T, including Customers proposed changes in section 1, these shall be included in the table below.*

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| **Ref.** | **Original wording** | **Changed wording** | **Potential consequences** | **Reason for proposal** |
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# Reservations/Change Proposals to the Appendixes made by Contractor

***Instruction to Bidder:*** *To the extent Bidder has any reservations to appendix 3-12, or annexes to these appendixes, such reservationsshall be included here in the bid phase. The reservations remaining after BAFO will be moved to the relevant appendix/annex before contract signature with the choosen Bidder*

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| **Ref.** | **Original wording** | **Changed wording** | **Potential consequences** | **Reason for proposal** |
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