

**Diskos 2.0**

Request for Proposal (RFP)

**Seismic, Well and Production modules**

SSA-L Appendix 7:

Changes to the general contractual wording



**30.12.2019**



**Changes to the general contractual wording**

*The Contractor shall, as part of their tender, deliver an updated version of SSA-L Appendix 7. Changes to the general contractual wording shall be set out here, unless the general contractual wording refers such changes to a different Appendix. All changes made by the Tenderer shall be done with the use of “track changes” in Word.*

*The Tenderer should be aware of the fact that deviations, reservations or changes to the Agreement in connection with the submission of a tender may result in rejection of the tender by the Customer.* ***The Tenderer must submit assessments on economic value to each and every reservation/deviation.***

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| **Clause** | **Shall be replaced by (change in wording and/or added text)**  | **Customer’s comment** |
| **Entire Agreement** | The terms “Tenderer” and “Contractor” have the same meaning and shall be interpreted equally.  | Clarification to address that SSA-T and SSA-L have different wording for defining Tenderer/Contractor, although these terms have the same meaning in both agreements. For convenience, Customer’s appendices to both contracts use the term “Contractor”.  |
| **1.1** **Scope of the Agreement** | **New last paragraph - added text:** The contractual relationship between the Customer and the Contractor is regulated by SSA-T (Difi 2018), this SSA-L (Difi 2018), as well as an agreed data processor agreement (Appendix 10), all with appendices. Requirements for establishing, testing and approving the Service are set out in the SSA-T with appendices. However, SLA requirements in accordance with SSA-L clause 2.1 and SSA-L Appendix 4 apply during the approval period, but without sanctions for breach of SLA. If the approval period is delayed due to errors/deviations in the Service, SLA-sanctions according to SSA-L Appendix 4, will apply as from agreed delivery date defined in SSA-T Appendix 4. The requirements for the Service are regulated in the Appendix 1 and 2 to SSA-T, including requirements for information security and privacy. The requirements shall apply throughout the contract period, i.e. also in the time after the delivery has been approved in accordance with SSA-T and when in regular service according to SSA-L.  | Clarification to enlighten the relationship and dependencies between SSA-T and this SSA-L.  |
| **2.1****The Contractor’s responsibility for the Service** | **New last paragraphs regarding “Life cycle management - contemporariness” - added text:** The Contractor shall bear total responsibility for the life cycle management of the Service that is necessary to sustain the agreed service level, cf. first paragraph. The responsibility for life cycle management shall also mean that the Contractor shall actively ensure that the Service is up-to-date from the delivery date according to the SSA-T agreement, and throughout the entire term of the Agreement. "Up-to-date" means that the Service shall, throughout the entire term of the Agreement, be as efficient and of equally good quality as they were on the date the Agreement was concluded (signed), compared with other equivalent service delivery in the market (proportionality).Furthermore, the Contractor shall actively contribute to the Service fulfilling the needs of the Customer throughout the entire term of the Agreement. Changes in the needs of the Customer shall be handled pursuant to clause 1.4 of the Agreement concerning changes, if these entail changes to the agreed requirements.  |  |
| **2.1 A****The Contractor’s responsibility for the Service - Cross contract obligations** | **New sub-section 2.1 A regarding "Cross contract obligations" - added text:**The Contractor’s agreements with NOROG GT and the Trade contractor regarding their roles and responsibilities shall be in effect throughout the duration of this Agreement. | New sub-section under section 2.1 to emphasize the importance of Contractor’s cross-contract obligations in the Agreement.  |
| **2.2** **The Contractor’s responsibility for third-party deliverables** | **The whole clause, replaced with:****The Contractor’s responsibility for third-party deliverables**To the extent that third-party deliverables are included in the Service of the Contractor and must be delivered under their own terms and conditions, a copy of the terms for the Customer's access to and use of third-party deliverables shall be enclosed in Appendix 9. Appendix 9 also includes the Contractor's response to the Business Principles for the relevant third-party deliverables. The Supplier's response to Business Principles and the terms set out in Appendix 9 are binding for the Customer and governs the conditions for the Customer's access to such third-party deliverables included in the Service of the Contractor. Consideration for third-party deliverables is agreed to in Appendix 6. If there is a conflict between Business Principles and terms for third-party deliveries, the Business Principles will prevail.The Contractor is not liable to the Customer for any errors/deviations in third-party deliverables arising after the delivery date. This entails that the Customer may not invoke any non-fulfilment of agreed quality requirements after the delivery date, including service level requirements, if this is due to an error in third-party deliverables. This also applies to the loss or destruction of data. The limitations of liability in this section does not apply if the Contractor could or should have limited the scope and/or consequences of such errors. The Supplier shall, regardless of the limitations of liability in this section, and regardless of the agreed service levels with sanctions in this Agreement, claim any right to financial compensation for failure to achieve an agreed service level for third party deliverable(s) as part of the Agreement, cf. section 9.2.4, that the Contractor or Customer is entitled to (if applicable) in agreement with the third party. The Supplier shall deduct any such compensation from its next invoice to the Customer for service-fees in this Agreement. In the case of errors in third-party deliverables, the Contractor will be obliged to report the error to the third party, to the best of their ability seek priority in correcting the error, explain to the Customer why the scope and/or consequences of such errors could not or should not have been limited, and keep the Customer informed about the status of the error rectification, including informing when it has been rectified. If the Contractor is responsible for the installation of third-party deliverable(s) as part of the Agreement, the Contractor must test that the third-party service(s) function after the error rectification, in accordance with any guidelines specified by the Customer in Appendix 1, cf. clause 1.1 of the Agreement. The Contractor shall to a reasonable extent seek to find a temporary solution while error correction in the third-party delivery is in progress. In Appendix 6, an upper economic limit may be agreed to for the Contractor's obligation to prepare such temporary solutions that covers errors in third-party deliveries. If the agreed on functionality in Appendices 1 and 2 is removed in third-party deliveries and the Contractor is unable to prevent this, any such loss of functionality, if the loss of functionality is considered a critical error in accordance with clause 3.3 of the Agreement, or as defined in Appendix 3, the Customer shall have access to cancel the Service in accordance with clause 5.2 of the Agreement with immediate effect and without cancellation fee as agreed under clause 5.2 (d).The same applies if the agreed functionality is not present in the original delivery and this is not rectified within a reasonable time.In the event that updates or changes in third-party deliverables affect the Service in accordance with the requirements and descriptions specified in Appendices 1 and 2, the Contractor is not responsible for making changes to the Service in order to sustain the already agreed requirements. If the Customer wishes the Service to be changed to function in accordance with the requirements and descriptions specified in Appendices 1 and 2, this work shall be ordered as a change request in accordance with clause 1.4 of the Agreement.The consideration for work related to such changes is the Contractor's hourly rates set out in Appendix 6, unless other remuneration model is set out in Appendix 6. The parties may choose to use SSA-O or SSA-B for implementation of changes.In the event that the Contractor has the opportunity to delay the configuration and customization of updates or changes made to third-party deliverables, the Contractor shall carry out an impact assessment of the changes made in the updated third-party delivery and whether this affects the Customer’s requirements as set out in Appendix 1. Such impact assessment shall be included in the Service without additional fees. The impact assessment shall be presented to the Customer as soon as possible and before the update is implemented. If the updates and changes can adversely affect the Customer and the Customer's requirements as described in Appendix 1, the impact assessment shall contain proposals on how the consequences for the Customer can be minimized as much as possible. If the Customer accepts the proposal, the Customer shall request a change order in accordance with clause 1.4 of the Agreement. The parties may choose to use SSA-O or SSA-B to carry out the work.  | Clarifications of the Contractor's responsibility for third-party/cloud provider's parts of the Service, given that, and taken into account, the cloud provider's standard terms and conditions are enclosed in Appendix 9 and may be binding on the Customer - despite the third party being the Contractor’s subcontractor/a party on Contractor’s side.  |
| **Chapter 3 Establishment and performance of the Service**  | **Clauses 3.1 - 3.3 do not apply,** except the table in clause 3.3 containing error definitions, which still applies. **3.7 Warranty period - new clause**: Warranty according to the SSA-T agreement will be in effect for as long as agreed to in SSA-T, even after the Service is delivered and regulated in this SSA-L. | Establishment of the Service, including migration of data, testing of the Service, approval period and agreed delivery date, is regulated in the SSA-T agreement. Clarification that the Contractor’s responsibility for warranties and warranty period according to SSA-T is valid after delivery date, and as long as agreed to in SSA-T, even after the Service is delivered and regulated in SSA-L. |
| **3.5** **Upgrading/maintenance of the Service after the delivery date** | **Whole clause, changes and added text:** **Upgrading/maintenance of the Service after the delivery date**Standard upgrades and general maintenance of the Service, including new versions and error rectifications, are included in the consideration unless specified otherwise in Appendix 6. Unless otherwise agreed on in Appendix 1 and/or 2, the Contractor is responsible for testing and making the standard upgrades, new versions and error rectifications, to the service necessary for the service to fulfil agreed requirements, including service level requirements in Appendix 4, during the agreement period. Further requirements of testing can be included in Appendix 1.If the Contractor has to make changes to configurations, customizations and/or integrations for the Customer as a consequence of standard upgrades to third-party deliverables, the Contractor will be responsible for testing the service after the upgrade(s) and change(s) has(have) taken place. The Contractor shall, prior to implementation of any updates/changes to the Service mentioned above, and within agreed time limits for notifying the Customer and Diskos Users on planned maintenance set in Appendix 4, notify the Customer. For updates/changes from the Contractor's subcontractor, the duty to notify applies to the extent that the Supplier has or should have knowledge of the information.Security updates related to the Service must be performed without undue delay and may be implemented without prior notice to the Customer. | Reasonable clarifications to address among others. The Contractor's duty to inform the Customer about upgrades/maintenance of standard cloud services if such are part of the agreed Service/Diskos 2.0-solution.  |
| **5.2** **Cancellation** | **The whole clause, replaced with:****Cancellation**The Customer may cancel the Service contracted under this Agreement in full or in part by giving six (6) months’ written notice, although the first time with effect as from the fourth anniversary date for the SSA-L (i.e. 4 years after Delivery date). Other terms of notice of cancellation may be agreed in Appendix 5.Unless another cancellation fee has been agreed in Appendix 6, on cancellation the Customer will pay:a) The amount due to the Contractor in respect of the part of the Service that has already been completed.~~b) The Contractor’s necessary and documented direct costs in relation to the reassignment of personnel.~~b) Other documented direct costs incurred by the Contractor as a result of the cancellation, including disbursements and costs that have been incurred by the Contractor prior to its receipt of the notice of cancellation, and which the Contractor is unable to make use of for other purposes.c) A cancellation fee equivalent to 10% of the price element L6B-04 in SSA-L Appendix 6B, of the consideration invoiced to the Customer during the last three months prior to cancellation. In the event of partial cancellation, the cancellation fee is calculated on the basis of pro rata settlement of the fee, as agreed in (c). ~~To the extent that it has been agreed that the Service is scalable with respect to payment on any reduction of the number of users, functionality or similar, the Customer's use of this agreed scalability will not be considered to be a cancellation.~~  | Clarifications to prevent potentially time-consuming discussions on the basis for calculating cancellation fee.  |
| **5.3** **Termination of the Agreement** | **First paragraph - change and added text:** The notice period runs from the date of the notice of termination, annulment or cancellation until the Agreement expires. The Customer will be entitled to follow-up assistance for up to one hundred and eighty (180) calendar days after the Service has been established at a new contractor or at the Customer itself, even if this takes place after the expiry of the Agreement. The Contractor shall in this period unconditionally, cooperate with and assist Customer and any person engaged by Customer, including new contractor(s) of the services. Upon Customer’s request, within an agreed deadline no later than 90 calendar days prior to expiry date of the Agreement, the Contractor is obligated to keep all parts or parts of the service available for the Customer for up to 180 calendar days after the service has been established at a new supplier. Such services shall be compensated according to the agreed prices in SSA-L Appendix 6. | Clarification to address the Customer’s need for the Supplier’s agreed commitments in termination of the Agreement/Service. Handover-project and migration of data to the Customer or new supplier/service provider is expected to last far longer than 30 calendar days.  |
| **6.2** **Personal data**  | **Fifth paragraph (whole) - change:** “Personal data may not be transferred to countries outside the EEA without the Customer’s prior written consent.” **Eight paragraph (whole) - added text:**  The parties' liability for damage suffered by a data subject or other natural persons which is due to a violation of the General Data Protection Act (Regulation 2016/679), the General Data Act with regulations or other regulations that implement the General Data Protection Act, will follow the provisions of article 82 of the General Data Protection Act.The limitation of liability in section 9.2.7 does not apply to liability arising from article 82 of the General Data Protection Act.  | The Service (Diskos 2.0) requires data centers to be located within the EU/EØS. Clause 6.2, that provides the Contractor, or subcontractor, a transfer right to countries outside EU/EØS, is therefore updated to reflect non- functional requirement NFQR57 in Appendix 2B. Clarification and minimization of the parties’ liability according to GDPR article 82.  |
| **7.2** **Ownership of data** | **New last paragraph, added text:** For the avoidance of any doubt, “Customer’s data” in this Agreement means data stored or in other ways processed as part of the Service, regardless of underlying actual rights of ownership of the data, e.g. all Data Owners’ data are all deemed to be the “Customer’s data” in this Agreement as long as they are stored or in other ways processed as part of the services.  | Clarification to avoid any doubt regarding for example which data Customer, subject to clause 5.3, may claim transferred as part oftermination of the Agreement.  |

Table : Customer’s changes to the general contractual wording