Contract for IT Operations 2017

a standard contract Template for

IT infrastructure services (IT operations)

(non-authorised translation)

This contract template is made by a working group consisting of representatives of major interest organisations within the Danish IT industry and its customers, i.e. The Danish IT Industry Association (ITB) and Danish IT Society (DIT), and of The Association of Danish IT Attorneys (DITA).

The English language version is made available to users by The Association of Danish IT Attorneys.

The contract template contains the official balanced version proposed by the working group (in black letters), while alternative wordings of certain clauses are proposed by DIT [in blue letters] and ITB [in red letters], respectively.

A (Danish language only) introduction to the use of the template may be found on DITA’s web-page: <http://itadvokater.dk/kontrakter/>.

Any comments or suggestions for improvement of the template may be sent to: [forening@danskeadvokater.dk](mailto:forening@danskeadvokater.dk), using the header: Contract for IT Operations 2017

CONTRACT

BETWEEN

[Name of the Customer]

[Customer's address1]

[Customer's address2]

Central Business Registration No. (CVR): [Customer's CVR No.]

(hereinafter the "**Customer**")

and

[NAME OF THE SUPPLIER]

[Supplier's address1]

[Supplier's address2]

Central Business Registration No. (CVR): [Supplier's CVR No.]

(hereinafter the "**Supplier**")

REGARDING IT infrastructure services (IT operations)

(hereinafter the "**Contract**")

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# PART I: BACKGROUND, STRUCTURE AND DEFINITIONS

# Contract background

### [XX]

# Structure of the Contract

### Sections II-IV of the Contract sets out the Services to be delivered during the cooperation phases; from the preliminary analysis and until termination. Section V sets out prices and terms of payment, while the general regulation related to the services provided by the Parties are set out in sections VI-VIII.

### The Contract has been divided into the following sections:

I: Background, structure and definitions

II: Analysis and transition phases

III: Phase of operation

IV: Termination phase

V: Prices and terms of payment

VI: Cooperation, employees and change management

VII: Risk management and proactive activities

VIII: General contract terms

# Definitions

### The Contract includes a number of defined terms specified in Annex 1 (Definitions). Unless otherwise specifically specified in connection with the use of a term in the Contract, the definition set out in Annex 1 shall apply.

# PART II: DUE DILIGENCE, ANALYSIS AND TRANSITION PHASES

# Due diligence before signing of the Contract

## Due diligence information

### Before entering into the Contract, the Supplier has conducted a due diligence investigation. The Due Diligence Information received by the Supplier before signing of the Contract appears from Annex 2a (Due Diligence Information). The Customer must ensure that any information requested by the Supplier, or which the Customer should generally realize was relevant for the Supplier, has been made available as part of the due diligence. Annex 2a sets out the requested information, material and other documentation, which the Customer has not been able to provide the Supplier with. In addition to this, the Supplier has been given access to all requested information etc.

### Annex 3b (Transfer of employees) sets out the names of the employees transferred to employment with the Supplier. The Customer must ensure that the Supplier has received all information about each employee's terms of employment, including information about any collective agreements, joint pension schemes and similar, which the employees are comprised by.

## Supplier's presupposed conditions

### The Supplier's presupposed conditions for the prices quoted, the supply of Services in accordance with the Contract requirements and the Supplier's liabilities under the Contract in general have been set out in Annex 2b (Supplier's Presupposed Conditions). If the Supplier determines, on the basis of the Due Diligence Information, that the presupposed conditions do not correspond to the actual circumstances at the time of signing of the Contract, this must be specified in relation to the presupposed condition.

### [ITB alternative wording: The Supplier's specific presupposed conditions for the prices quoted, the supply of Services in accordance with the Contract requirements and the Supplier's liabilities under the Contract in general have been set out in Annex 2b (Supplier's Presupposed Conditions), in that extent not otherwise stated in the contract. If the Supplier determines, on the basis of the Due Diligence Information, that the presupposed conditions do not correspond to the actual circumstances at the time of signing of the Contract, this must be specified in relation to the presupposed condition.]

# Analysis phase

## Subsequent analysis and verification of the Due Diligence Information

### After signing of the Contract, the Supplier must verify the Due Diligence Information.

### The Customer must loyally assist the Supplier with such verification and in this connection give access to the Customer's systems and network to the extent necessary, including the existing operating environment, and as required participate in meetings convened by the Supplier. If the Customer has an existing supplier, who is not obliged to give the Customer or the Supplier access to its systems, network and operating environment, the Customer must seek to procure such information in writing from this supplier that is required in order for the Supplier to verify the Due Diligence Information.

### The Supplier will review the above information and the documentation provided. As part of this review, the Supplier must determine whether the additionally provided information is sufficient or if any additional information is needed. The Supplier must notify the Customer if the Customer does not contribute as agreed or if any additional information may be required. The Customer must loyally provide information on all relevant matters and give the Supplier access to relevant information required for the Supplier's verification.

### [DIT alternative wording: The Supplier will review the above information and the documentation provided. The Supplier must notify the Customer if the Customer does not contribute as agreed. The Customer must loyally provide information on all relevant matters and give the Supplier access to relevant information required for the Supplier's verification.]

## Analysis report

### The Supplier will prepare an analysis report on the basis of the verification. The report must as a minimum include the following information:

* A description of matters not complying with the Due Diligence Information;
* A description of matters that remain undocumented, or where sufficient information is still required and further clarification is necessary;
* [DIT alternative wording: A description of matters that remain undocumented, or where sufficient information is still required and further clarification is necessary to ensure that the supplier is capable of completing the transition and providing the agreed services in accordance with the Agreement;]
* A specification of any deviations from the Supplier's presupposed conditions set out in Annex 2b (Supplier's presupposed conditions);
* A proposal for adjustment of the Contract annexes based on the actual circumstances, including especially Annex 3 (Transition and Transformation) and Annex 4 (Supplier's Services), including a specification as to why such adjustments are required;
* Any proposals for a consequential adjustment of the payment; To the extent unit prices have been agreed upon, the adjustment is calculated on this basis; and
* Any proposals for additional adjustments, that may lead to improved efficiency or other improvements for the Customer.

### The analysis report is included in the Contract as Annex 2c (Analysis Report).

## Contract adjustments

### If the analysis report discloses any matters of significant importance to the performance of the contract caused by

### [ITB alternative wording: If the analysis report discloses any matters of importance to the performance of the contract caused by]

1) deviations from the Due Diligence Information, which the Supplier should not have taken into consideration, or

2) deviations from the Supplier's presupposed conditions set out in Annex 2b (Supplier's presupposed conditions) and provided in accordance with clause 4.2,

the Parties must loyally amend the annexes to the Contract based on the actual circumstances, so that the annexes, including the descriptions of Services, timetables and payments are adjusted to such circumstances.

### The Supplier may request that the payment is adjusted pursuant to clause 5.3.1 if it is documented in the analysis report that the actual circumstances affect the Supplier's costs related to the performance of the Contract. Any payment adjustments must be calculated on the basis of the total net change in the extent of the Supplier's Services, and, to the extent available, the unit prices specified in Annex 6 (Prices).

## Customer's right to resign from the Contract

### If the Parties cannot reach an agreement regarding adjustment of the Contract, cf. clause 5.3.1, within four (4) weeks after the analysis report has been made available, the Customer may choose (a) within ten (10) Working Days to accept such reasonable amendments which the Supplier may be entitled to claim, or (b) to terminate the Contract against payment to withdraw from the Contract as set out in Annex 6 (Prices). If the Supplier rejects the Customer's reasonable amendments of the Supplier's proposed adjustments, the Customer may withdraw from the Contract without payment, unless the rejection is due to the fact that such amendment is technically impossible to implement or will otherwise be very inconvenient to the Supplier in a way that cannot be compensated with the price adjustment.

### [ITB alternative wording: If the Parties cannot reach an agreement regarding adjustment of the Contract, cf. clause 5.3.1, within four (4) weeks after the analysis report has been made available, the Customer may choose (a) within ten (10) Working Days to accept such amendments which the Supplier may be entitled to claim, or (b) to terminate the Contract against payment to withdraw from the Contract as set out in Annex 6 (Prices).]

### [DIT alternative wording: If the Parties cannot reach an agreement regarding adjustment of the Contract, cf. clause 5.3.1, within four (4) weeks after the analysis report has been made available, the Customer may choose (a) within ten (10) Working Days to accept such reasonable amendments which the Supplier may be entitled to claim, (b) make amendments to the adjustments proposed by the Supplier or (c) to terminate the Contract against payment to withdraw from the Contract as set out in Annex 6 (Prices). If the Supplier rejects the Customer's reasonable amendments of the Supplier's proposed adjustments, the Customer may withdraw from the Contract without payment, unless the rejection is due to the fact that such amendment is technically impossible to implement or will otherwise be very inconvenient to the Supplier in a way that cannot be compensated with the price adjustment.]

# The transition phase

## Execution of the Transition

### After termination of the analysis phase, the transition phase is executed as described below.

### The Transition is executed as described in Annex 3 (Transition and Transformation), as Annex 3a (Transition and Transformation Plan) sets the deadlines for the transition and the Supplier's supply of Services.

### The Transition Plan included in Annex 3a (Transition and Transformation Plan) must be broken down into a detailed plan no later than the date specified in the plan. The detailed plan must include a description of all activities and obligations for each Party during the transition phase, including (i) the Customer's obligations as regards coordination with, and supply of services from, the Customer and the Customer's other suppliers, (ii) setting up the cooperation pursuant to Annex 8 (Cooperation Organisation), (iii) setting up of processes and reporting, cf. clause 9.3, and (iv) continuous development of Documentation for established environments.

### The Supplier must ensure progress during the transition phase, including as regards management and quality assurance of all activities, and the Supplier must take action on activities which have not been explicitly specified as being the Customer's responsibility. The Supplier has a duty to take initiatives are regards all activities and must continuously inform the Customer of all matters relevant to the proper and timely performance of the transition. In addition, the Supplier must, on its own initiative, ensure that the Supplier's obligations are met if possible, even if the Supplier is waiting for information, a decision or similar from the Customer, and the Supplier must continuously ensure progress, including by reminding the Customer about items that need clarification or similar. The Supplier is not liable for delays during the transition phase caused by the Supplier's non-cooperation and may claim payment of any related and documented additional costs.

## Transfer of employees

### As part of the transition, the employees specified in Annex 3b (Transfer of employees) are transferred for employment with the Supplier on the terms specified in the Annex and as further set out in the transition plan.

## Management of contracts with third parties

### With effect from the Take Over Date, the Supplier will take over the management of the contracts related to licensing, leasing, maintenance, support, telecommunications etc. specified in Annex 3c (Contracts where the Supplier will take over the management). The Customer will remain a party to these contracts. The Customer will pay any costs related to such contracts, e.g. ongoing licence fees and maintenance fees. The Supplier must ensure that the contracts are complied with and must properly object to any breach towards a third party. The Supplier is not liable for a third party's breach of the contracts managed, unless such breach has been caused by defects in the Supplier's management of the said contract pursuant to the terms specified in Annex 3c. Any legal action is at the expense of the Customer and must be conducted by either the Customer itself or by the Supplier on behalf of and representing the Customer, subject to a separate agreement

## Take-over of third-party contracts

### With assistance from the Customer, the Supplier must transfer the third-party contracts, including licence and maintenance agreements, specified in Annex 3d (Contracts which are transferred to the Supplier), from the Customer to the Supplier with effect from the Take Over Date, so that the Supplier becomes a party to the contract instead of the Customer. The Customer must assist the Supplier in obtaining any required consent for such transfer from relevant third-party suppliers.

### If such consent cannot be obtained, the Supplier must lay down and introduce alternative procedures that are reasonable, fair and sufficient for the supply of Services in accordance with the requirements specified in the Contract, all with reasonable assistance from the Customer and at the Customer's expense. If the Customer cannot approve the Supplier's suggestion for an alternative procedure, this must be notified to the Supplier without undue delay. Until an alternative procedure has been agreed upon, the Supplier must manage the third-party contracts pursuant to clause 6.3.

### The Customer is obliged to pay any transfer or upgrading fees or other fees payable to a third-party supplier as a result of the transfer or operator replacement.

### [DIT alternative wording: The Customer is obliged to pay any off fees payable to a third-party supplier as a result of the transfer or operator replacement.]

### Any payment under the contracts taken over are included in the fixed periodic payment.

### [ITB alternative wording: Any payment under the contracts taken over regarding the period after the day of handover and as documented in the Due Diligence Information, are included in the fixed periodic payment.]

### [DIT alternative wording: Any additional payment, including upgrades under the contracts taken over are included in the fixed periodic payment.]

## Testing and launch

### Testing is made in accordance with the timetables in Annex 3a (Transition and Transformation Plan) and Annex 3g (Tests during the transition and transformation phases).

### At the latest [XX] Working Days after the completion of the test, the Supplier will deliver a report including proper documentation as regards start criteria; test cycle; test cases and approval criteria, if any; any problems and other significant incidents during the tests and an explanation as to how they will be solved and within which deadline.

### The Supplier's draft report is subject to written approval by the Customer. On the basis of the reports including documentation, the Customer will determine if the Supplier has met the requirements for approval of the tests pursuant to Annex 3f. The Customer's approval or rejection must be presented no later than [XX] Working Days after receipt of the report. If the Customer does not comply with the deadline, the Supplier may announce that the test is considered approved unless the Customer rejects the test by submitting a duly substantiated notification to the Supplier within [XX] Working Days.

### If the Customer legitimately rejects to approve a take-over test, the Customer has the following options in addition to any remedies for breach:

(i) To extend the Supplier's testing period for all Services for a period of time fixed by the Customer, where the Supplier must remedy all matters leading to rejection of the test and repeat the test, or

(ii) To put into operation all Services and request the Supplier to remedy all matters leading to rejection of the test within a reasonable period of time. Until remedial action has been taken, the Customer's payment for Services will be reduced with an amount corresponding to the price of the Services that are not approved, or

(ii) [ITB alternative wording: To put into operation all Services and request the Supplier to remedy all matters leading to rejection of the test within a reasonable period of time. Until remedial action has been taken, the Customer's payment for Services will be reduced with a rejection corresponding to the price reduction (proportional reduction) of the Services that are not approved, or]

(iii) To put into operation parts of the Services pursuant to clause (ii) and extend the Supplier's testing period for the remaining part of the Services pursuant to clause (i). The Customer will pay for the Services that are put into operation with a rejection as specified in clause (ii).

(iii) [ITB alternative wording: To put into operation parts of the Services that can approved and extend the Supplier's testing period for the remaining part of the Services pursuant to clause (i). The Customer will pay for the Services that are put into operation.]

### The Customer will make available the required number of employees for the testing activities. Annex 8 (Cooperation Organisation) includes the Supplier's estimate of the number of employees which the Customer must make available.

# PART III: THE PHASE OF OPERATION

# Supplier's total liability and the Customer's participation

# [ITB alternative wording: Supplier's liability and the Customer's participation]

### The Supplier shall be fully liable for providing the Services. The Supplier must take any action and deliver any service that is a natural or necessary part of the supply of the agreed Services, regardless if the relevant action or service has been specifically specified in the Contract.

### [ITB alternative wording: The Supplier has the liable for providing the Services, however the Customer will be held responsible for the Customers complicity. The Supplier must take any action and deliver any service that is a natural or necessary part of the supply of the agreed Services, regardless if the relevant action or service has been specifically specified in the Contract.]

### The Customer's responsibilities in connection with the supply of the agreed Services are described in Annex 4e (Requirements for the Customer's participation). In addition, the Customer must contribute and comply with the obligations otherwise specified in the Contract.

# Supplier's Services

## Services

### The Supplier must deliver the Services described in Annex 4 (Supplier's Services) in compliance with the undertakings specified in the Contract and the Service Targets specified in Annex 7 (Service Targets) and otherwise in accordance with good IT practice. The Supplier must scale the Services when the relevant criteria have been met as described in Annex 4. Scaling payment is set out in Annex 6 (Prices).

### It appears from Annex 4 (Supplier's Services) to which extent the Contract comprises the following types of Services:

### Network services

1. Data centre services
2. Application operation
3. Service-desk
4. Desktop services
5. Cross-sectoral Services.

## Access to Services by other legal entities

### The Customer may allow the legal entities specified in Annex 4g (Associated Undertakings) access to Services for the prices specified in Annex 6 (Prices). The Customer may furthermore give other legal entities similar access pursuant to the change management procedure in Annex 10 (Change Management).

### [DIT alternative wording: The legal entities as mentioned in appendix 4g (Associated Companies) have access to Services against payments in accordance with the standard prices as listed in appendix 6 (Prices) for additional consumption of units. There is no additional charge. The Customer may furthermore give other legal entities similar access pursuant to the change management procedure in Annex 10 (Change Management).]

# Service targets

## Compliance with Service Targets

### Services must continuously comply with the Service Targets described in Annex 7 (Service Targets). Annex 7 sets out the included environment(s), location(s) etc. for each Service Target and when measurement, compliance and reporting in relation to service targets is commenced.

## Amendment of Service Target requirements

### If a special procedure has been agreed for the Customer's right to amend Service Targets, this procedure has been set out in Annex 7 (Service Targets). If no special procedure has been agreed upon, the Customer may request amendments of Service Targets in accordance with the ordinary procedure for change management specified in clause 27 and Annex 10 (Change Management).

## Measurements

### Service Targets must be complied with, measured and reported from the Take Over Date, and the Supplier must set up the measurements and procedures specified in Annex 7 (Service Targets) in order for the reporting to comply with the requirements set out in clause 11.

# Security

## In general

### The Supplier must observe the security precautions specified in Annex 4 (Supplier's Services), including especially Annex 4b (Security Requirements) and the Contract in general.

## The Customer's internal security regulations

### The Supplier must process all data, including personal data, in accordance with the Customer's internal security regulations as available when the Contract is signed, cf. Annex 4b (Security Requirements).

### Any request for amendment of Services as a result of changes of the Customer's internal security regulations will be handled as a change request from the Customer pursuant to clause 27.1.

## Supplier's own amendments

### The Supplier's amendment of security precautions which are not customer-specific but are made as part of an adjustment to good IT-practice and general security regulations and which are to apply for several of the Supplier's customers will be carried out at the Supplier's own expense and handled as a change request from the Supplier pursuant to clause 27.2.

### If the consequences of such amendments are that the Supplier cannot meet the Service targets or other Services requirements, the amendments must be handled pursuant to the rules on change management set out in clause 27 and Annex 10 (Change Management).

### [DIT alternative wording: The Supplier is not allowed to change precautions, which are not costumer specific, if the changes results in the Supplier not observing the Service meet the Service targets or other Services requirements.]

### Regardless of the contents of the Customer's internal security regulations, the Supplier is entitled to make any technical adjustments of its Operating Environment at its own expense with a view to continuously prevent or remedy well-known security risks. If such amendments cause deviations from the Customer's internal security regulations, the amendments must be handled pursuant to the rules on change management set out in clause 27 and Annex 10 (Change Management).

## Antivirus and protection against hacking

### The Supplier must at any time have systems and procedures in force to protect the Services and the Customer's data against virus and hacking etc., including continuous installation and upgrading of antivirus programs in accordance with good IT practice. A detailed description of these requirements is set out in Annex 4 (Supplier's Services).

## Recovery plans and back-up

### The Supplier must at any time have systems, procedures and agreements securing back-up in accordance with Annex 4b (Security Requirements).

### The Supplier must at any time have recovery plans and related systems, procedures and agreements ensuring recovery of Services in case the Supplier may be exposed to fire, flooding, stroke of lightning and other similar extraordinary events. Recovery plans, including systems, procedures and agreements required to secure the Services, must be documented by the Supplier if so requested by the Customer. Once every year, the Supplier must document towards the Customer that the preparedness has been tested and works in accordance with the recovery plan.

## The Supplier's duty of disclosure in case of a security breach

### If the Supplier registers a security breach, including a personal data breach, the Supplier must notify the Customer thereof without undue delay. This applies even if the security breach has been remedied and the Customer's data was not compromised.

### Such notice must be followed by a detailed statement of the security breach, which complies with the requirements specified in Article 33 of the General Data Protection Regulation, including the requirements to the contents of a notification to the supervisory authority. The statement must be submitted, as far as possible, within forty-eight (48) hours after the Supplier has become aware of the security breach. If this is not possible for the Supplier, the Supplier must notify the Customer thereof together with the first notice and include information about the cause of such delay.

### The Supplier must furthermore provide information about any non-compliance with any security requirements pursuant to the general duty to provide information pursuant to clause 10.1.

# Reporting

## General mutual duty to provide information

### The Parties must continuously inform each other about any matter deemed relevant for the performance of the Contract. This includes that the Parties must loyally exchange information, data and documentation to the extent relevant for the performance of the Contract.

## Supplier's reporting

### Annex 5 (Supplier's Reporting) sets out rules regarding contents, form and frequency of the Supplier's reporting to the Customer.

### The Customer must consider the contents of the Supplier's reports on an ongoing basis. Any comments by the Customer to a report must be submitted to the Supplier no later than [XX] Working Days after the Customer has received the report. If the Customer has not submitted any comments within this deadline, the report will be deemed approved. This is, however, based on the condition that the Supplier when submitting the report has notified that the report will be deemed approved if the Customer has not submitted any comments before expiry of the deadline.

### [ITB alternative wording: The Customer must consider the contents of the Supplier's reports on an ongoing basis. Any comments by the Customer to a report must be submitted to the Supplier no later than [XX] Working Days after the Customer has received the report. If the Customer has not submitted any comments within this deadline, the report will be deemed approved.]

### No later than [XX] Working Days after the end of each measurement period, the Supplier must submit a report of the achieved Service targets for the period, including calculation of penalty, if any, unless Annex 7 (Service Targets) sets out another specific rule for the reporting of Service Targets. If all Service Targets have not been reported in due time, the Customer may claim the maximum penalty for the Service Targets not reported if the Supplier has not still submitted a report at the latest [XX] Working Days after having received a written notice in this regard from the Customer, including information that non-submission will lead to a claim for payment of the maximum penalty. This, however, does not apply (i) if the non-reporting has been caused by circumstances for which the Supplier is not liable pursuant to clause 31.9, or (ii) if it has not been possible for the Supplier to measure the Service targets, e.g. as a result of errors in measuring tools and provided that the Supplier may otherwise document that the Service Targets have been met.

# Audit statement

## Frequency

### Once every year, the Supplier must submit an audit statement to the Customer as specified in Annex 4 (Supplier's Services). This statement must be submitted to the Customer without undue delay after its completion.

## Consequences of remarks etc.

### If such audit statement includes remarks or other criticism relates to the Supplier's performance of its obligations under the Contract, the Supplier must remedy the situation without undue delay. Together with the statement, the Supplier must deliver a detailed action plan describing how and when the said circumstances will be remedied. After the outstanding matters have been remedied, the Supplier must send a statement to the Customer that documents this. The statement must be prepared by the audit company preparing the original audit statement including remarks, unless this is not possible e.g. if the said audit company has ceased to exist or the parties have agreed to use another audit company.

### Clause 12.2.1 does not prevent the Customer from claiming breach of the Contract.

# Audit

## Frequency and notice

### In addition to the audit statement, the Customer may once a year claim that an external audit is made specifically to verify the Supplier's compliance with the Contract in the areas defined in the request.

### Audits can only take place with a prior notice of at least four (4) weeks and must be carried out so that the Supplier's business in general suffers the minimum interference and inconvenience.

### The Customer may request additional audits in cases of urgent importance, e.g. in case there is reasonable grounds for suspecting that the Supplier engages in criminal activities or other circumstances that may be very inconvenient for the Customer. In such cases, an audit must be made as soon as possible.

## Election of auditor

### The Customer must use a generally recognised impartial auditor to make such audits regarding IT operations. The Supplier must approve the appointed auditor. Approval cannot be withheld without objective justification. The Supplier may always oppose to the appointment of a direct competitor as auditor. If the auditor makes use of any sub-suppliers, these sub-suppliers must furthermore be approved by the Supplier.

### The Supplier may claim that the auditor signs a general non-disclosure agreement and furthermore that the auditor complies with the Supplier's security regulations before an audit is commenced.

## Audit with sub-suppliers

### The Supplier must notify the Customer about the Supplier's own audits with sub-suppliers. The Customer may claim that the Supplier makes an audit once every year with the sub-suppliers set out in Annex 4g (Approved sub-suppliers), unless otherwise specified in the Annex. In addition, the Customer may claim that the Supplier makes an annual audit of other sub-suppliers, unless the Supplier has any justified reasons to object thereto. The Customer is entitled to participate in the Supplier's audit of sub-suppliers as regards the services provided by the sub-supplier that concerns the Supplier's Services, unless the Supplier has any justified reasons to object thereto.

### [ITB alternative wording: The Supplier must notify the Customer about the Supplier's own audits with sub-suppliers. The Customer may claim that the Supplier makes an audit once every year with the sub-suppliers set out in Annex 4g (Approved sub-suppliers), unless otherwise specified in the Annex. In addition, the Customer may claim that the Supplier makes an annual audit of other sub-suppliers, unless the Supplier has any justified reasons to object thereto (including not being able to obtain sub-suppliers acceptance). The Customer is entitled to participate in the Supplier's audit of sub-suppliers as regards the services provided by the sub-supplier that concerns the Supplier's Services, unless the Supplier has any justified reasons to object thereto (including not being able to obtain sub-suppliers acceptance).]

## Audit report

### The auditor's report is submitted to the Parties simultaneously or is presented by the auditor at a joint meeting. Either Party may submit remarks to the report within ten (10) Working Days, and the auditor then has an additional ten (10) Working Days to amend or confirm the report.

## Audit costs

### The Customer will pay all audit costs. If an audit reveals any significant defects in the Supplier's performance of the Contract, the Supplier must pay the costs of the auditor. If the audit reveals any non-significant defects, the auditor will determine the distribution of costs based on the nature and scope of these defects.

## Consequences of audit

### If the audit report documents that parts of the Supplier's Services do not comply with the Contract requirements, the provisions in the Contract regarding breach shall apply, including that the Supplier must remedy the breach in accordance with clause 31.4.

# Data disclosure

## Upon request from the Customer, the Supplier will provide the Customer with a copy of all or parts of the Customer's data, including the log files and other data generated in connection with the performance of the Contract, in an electronic medium without any transformations that may cause data loss. The medium and data format are to be agreed between the Parties in connection with the transition phase and is set out in Annex 3 (Transition and Transformation), where any notice may furthermore be specified. If no notice has been given, the disclosure must be made within a reasonable deadline specified by the Customer.

## Unless such data disclosure pursuant to Annex 3 (Transition and Transformation), Annex 4 (Supplier's Services) or Annex 6 (Prices) is explicitly included in a fixed payment, the time spent by the Supplier in this regard will be invoiced on the basis of the time spent and on the basis of the hourly prices set out in Annex 6.

# Transfer Plan

## Preparation of a Transfer Plan

### At the latest six (6) months after the Take Over Date, the Supplier must present a draft Transfer Plan in accordance with Annex 4d (Transfer Plan) for a total or partial transfer of Services to the Customer and/or to a third party appointed by the Customer subject to approval. The Customer's approval or rejection must be communicated to the Supplier at the latest twenty (20) Working Days after receipt of the draft. The Supplier must specify this deadline when the draft is presented. If the Customer does not approve or reject the draft before the deadline, the draft will be deemed as approved unless the Supplier has not set a deadline when presenting the draft. Any rejection by the Customer must be substantiated, and an approval cannot be refused without justified reasons. In case of non-approval, the Supplier must amend the draft to a reasonable extent until the Customer's approval has been obtained pursuant to the requirements specified in Annex 4d. The Supplier may reject the Customer's request for amendments if the Supplier can document that technical circumstances or other external circumstances, e.g. third party rights, hinders the transfer as requested by the Customer. If the Parties cannot reach an agreement regarding the contents of the transfer plan, the dispute is to be settled pursuant to clause 44.3. When the Transfer Plan has been approved by the Customer, it is included in the Contract as Annex 4d. The Supplier is entitled to payment for the time spent on drafting the Transfer Plan pursuant to Annex 6 (Prices).

### [ITB alternative wording: At the latest six (6) months after the Take Over Date, the Supplier must present a draft Transfer Plan in accordance with Annex 4d (Transfer Plan) for a total or partial transfer of Services to the Customer and/or to a third party appointed by the Customer subject to approval. The Customer's approval or rejection must be communicated to the Supplier at the latest twenty (20) Working Days after receipt of the draft. The Supplier must specify this deadline when the draft is presented. If the Customer does not approve or reject the draft before the deadline, the draft will be deemed as approved. Any rejection by the Customer must be substantiated, and an approval cannot be refused without justified reasons. In case of non-approval, the Supplier must amend the draft to a reasonable extent until the Customer's approval has been obtained pursuant to the requirements specified in Annex 4d. The Supplier may reject the Customer's request for amendments if the Supplier can document that technical circumstances or other external circumstances, e.g. third party rights, hinders the transfer as requested by the Customer. If the Parties cannot reach an agreement regarding the contents of the transfer plan, the dispute is to be settled pursuant to clause 44.3. When the Transfer Plan has been approved by the Customer, it is included in the Contract as Annex 4d. The Supplier is entitled to payment for the time spent on drafting the Transfer Plan pursuant to Annex 6 (Prices).]

## Updates

### The Supplier must update the Transfer Plan at least once every twelve (12) months without any additional payment. The update must reflect any amendments of the agreed Services and the comprised platform and infrastructure. Any updates to the Transfer Plan must be approved by the Customer on the same terms as those specified in clause 15.1.1.

## Quality

### The Transfer Plan must at any time be of such a quality that an independent third party with the same qualifications as the Supplier without any undue obstacles may take over the delivery of similar Services to the Customer. This provision only relates to the quality of the Transfer Plan.

### The Transfer Plan must at any time be of such a quality that an independent third party with the same qualifications as the Supplier without any undue obstacles may take over the delivery of similar Services to the Customer. This provision only relates to the quality of the Transfer Plan [ITB alternative wording: (and not a third party’s access to the interest and the contracting parties of the Suppliers et cetera.).]

# PART IV: TERMINATION PHASE

# General information about assistance in case of termination

### In case of termination of the Contract, in total or in part and regardless of the reason, the Supplier must assist in the transfer of Services from the Supplier to the Customer or to a third party appointed by the Customer in a good and appropriate manner.

### The Supplier will receive separate payment for providing such assistance in case of termination. The payment is based on the time spent and the hourly rate set out in Annex 6 (Prices). If the Supplier has cancelled the Contract due to the Customer's material breach, the Supplier is entitled to request collateral for the payment, or to request prepayment.

### Assistance in case of termination has been further specified in Annex 4c (Assistance in case of termination).

# Duty to provide information

### Annex 4c (Assistance in case of termination) sets out the information, documentation etc. which the Supplier must provide to the Customer or a third party appointed by the Customer in case of termination of the Contract, and rules to be observed in this connection regarding protection of the Supplier's intellectual property rights and trade secrets. The Annex furthermore includes information about the requested media and formats.

### Regardless of clause 17.1.1, the Supplier must immediately provide any other information required for the Services to be transferred to the Customer or a third party appointed by the Customer as detailed in Annex 4c (Assistance in case of termination).

### Any provided information, documentation etc. can only be used by a new supplier to supply services to the Customer, but not to supply services to the supplier's other customers. The Supplier may claim that a new supplier signs a statement in this regard.

### The Supplier has no right of retention as regards information, documentation etc. comprised by the obligation to provide information.

### In case of such provision of information, the Supplier must comply with the Customer's reasonable instructions.

### The Supplier may make any provision of information to a third party conditional upon the third party signing a statement confirming that the third party will respect that the provided material may be protected by copyright and include trade secrets and can only be used for the future supply of Services to the Customer.

# Provision and deletion of the Customer's data at the time of termination

### By termination of the Contract, the Customer may claim that the Supplier provides the Customer with all the Customer's data, including all log files and other data generated in connection with the performance of the Contract.

### After termination of the Contract, the Supplier cannot without the Customer's approval retain any copies of the Customer's data. The Customer must be notified with a prior notice of five (5) Working Days before the Supplier will delete any copies of the Customer's data.

### The Supplier's deletion of the Customer's data must comply with the rules of Danish legislation relating to efficient deletion of personal data. Upon request from the Customer, the Supplier must confirm in writing that all Customer data has been deleted in accordance with the requirements specified in the Contract in this regard.

# Other Assistance in case of termination

### Upon request from the Customer, the Supplier must provide additional and relevant assistance in connection with the transfer of Services from the Supplier to the Customer or to a third party appointed by the Customer. This provision shall apply for six (6) months after the end of the Contract with a notice of at least ten (10) Working Days. Such assistance will be paid on the basis of documented time spent and the hourly rates specified in Annex 6 (Prices).

# PART V: PRICES AND TERMS OF PAYMENT

# Prices

## Annex 6 (Prices) sets out the prices to be paid by the Customer for the Services, including fixed periodic payments and payments based on use and for scaling of Services at fixed unit prices. All Services are included in the fixed periodic payment unless otherwise specified in the Contract.

## [DIT alternative wording: Annex 6 (Prices) sets out the prices to be paid by the Customer for the Services, including fixed periodic payments and for scaling of Services at fixed unit prices. All Services are included in the fixed periodic payment unless otherwise specified in the Contract.]

## All prices are specified in Danish Kroner (DKK) and are exclusive of VAT and other taxes. To the extent where Services are subject to tax (including VAT, sales tax and any other kinds of duties and taxes), interest or public charges, such taxes and/or charges must be added to the price in accordance with the legislation in force and must be invoiced in accordance therewith.

## If any new or adjusted sales taxes, general taxes, duties, contributions or similar duties and taxes are imposed by public authorities, prices must be adjusted with the net financial consequence for the Supplier.

# Invoicing, payment, price adjustments, benchmarking

## Invoicing and terms of payment

### The invoicing frequency has been set out in Annex 6 (Prices).

### Unless otherwise specified in the Contract, an invoice will be issued for all payments, which falls due for payment at the latest thirty (30) days after receipt of an invoice complying with the requirements specified in Annex 6 (Prices). The Customer is deemed to have received an invoice on the second Working Day after the date of dispatch of the invoice, unless otherwise documented.

### The Customer is entitled to withhold payment for any part of an invoice when the Customer has a reasonable reason to object against the invoice amount. The Customer must immediately notify the Supplier of the reason therefor and pay the approved part of the invoice amount before the due date. The Customer must deposit an amount corresponding to the disputed amount in the Customer's bank. The deposit arrangement must be established in a way so that the deposited amount may only be released in accordance with this clause 21.1.3. The deposit must be made as soon as possible after it becomes clear that the Parties disagree on the payment. If this is not done, the Supplier may, with a written notice of five (5) days, refuse to supply the Services comprised by the disputed amount until the deposit is made. The amount deposited may be released to the Supplier when the Parties have reached an agreement in this regard. If the Parties cannot agree on the release of the deposited amount, either Party may request that the matter is decided upon pursuant to the procedure in clause 44.3. Such a decision shall be binding upon the Parties in relation to the question on release of the deposited amount, but is not binding in relation to the decision on the underlying dispute, unless otherwise agreed. If the underlying dispute is subsequently settled by arbitration, the final distribution of the disputed amount shall be according to the arbitration award. Costs related to the deposit shall be divided between the Parties on the basis of the outcome of the matter. As regards any amounts to be paid subsequently, the Customer will pay default interest from the original due date with the default interest rate specified in the Danish Interest Act. If the Customer has paid too much, the Supplier must return the surplus amount and similarly pay default interest on this amount from the original payment date.

### [DIT alternative wording: The Customer is entitled to withhold payment for any part of an invoice when the Customer has a reasonable reason to object against the invoice amount. The Customer must immediately notify the Supplier of the reason therefor and pay the approved part of the invoice amount before the due date.]

* + 1. The Supplier will deduct any penalties from the next invoice.

## Price adjustments

### Annex 6 (Prices) set outs any rules regarding adjustment of prices, including scaling of Services at fixed unit prices and any adjustments based on price index rates.

## Benchmarking

### The Customer is entitled to submit a request for benchmarking of the Supplier's Services in accordance with Annex 6a (Benchmarking).

### [ITB alternative wording: Annex 6a (Benchmarking) indicate any possible terms for benchmarking of the Supplier's Services.]

# PART VI: COOPERATION, EMPLOYEES, THIRD PARTIES, KNOWLEDGE BUILDING AND CHANGE MANAGEMENT

# Cooperation

## Cooperation Organisation and qualifications

### The Parties must loyally contribute to the Cooperation Organisation specified in Annex 8 (Cooperation Organisation). Annex 8 sets out the frequency of regular meetings. The Parties must furthermore participate in any meetings that may reasonably be requested by the other Party.

### The Parties must continuously and at a short notice make such commercial and technical decisions that are relevant for the supply of the agreed Services and the cooperation in general. In this regard, each Party must make available the required organizational structure. The Parties must ensure that the Parties' participants in the Cooperation Organisation have the necessary authorisation and decision-making powers in order to ensure sufficient dialogue and progress.

## Principles of the cooperation

### The Parties acknowledge that the Services are complex and require a significant degree of cooperation. The Parties undertake to solve any problems or disagreements in good faith arising in relation to supply or receipt of Services or the cooperation in general on the basis of the principle of "action first – talk later" – and otherwise pursuant to Annex 8 (Cooperation Organisation).

### The principle of "action first – talk later" means that the disputed Services must be provided by the Supplier upon request from the Customer, regardless of any disagreement between the Parties. If the related payment is disputed, the procedure in clause 21.1.3 must be applied

### [DIT alternative wording: The principle of "action first – talk later" means that the disputed Services must be provided by the Supplier upon request from the Customer, regardless of any disagreement between the Parties after the following principles:

### If the Costumer in the relevant collaboration according to appendix 8 (Collaboration organization) demands delivery of Services, the Supplier must immediately:

* Deliver and execute Services in accordance with the demands of the Costumer
* Implement and execute amendments, and/or
* Remedy defects or events and continue delivering Services to support business needs of the Costumer.

### After delivering in accordance with the above mentioned procedure, any disagreement or conflict will be dealt with in accordance with the process for conflict resolution as described in point 44.3. The resolution concerning any payment and invoicing will be in force retroactively when the conflict is settled

### In case outstanding’s and non-resolved disputes concerning payments under this provision for Services at any time exceeds three (3) months payment, the Supplier is entitled to invoice the amount exceeding three (3) months payment as an on account payment until the disputes are settled. On account payment does not result in loss of right to have the payment returned, if the dispute is settled in favor of the Costumer.]

## Customer's participation

### Any requirements for the Customer's participation have been specified in Annex 4e (Customer's participation) or Annex 8 (Cooperation Organisation). In addition, the Customer must comply with the obligations otherwise specified in the Contract.

# The Parties' employees

## Qualifications and resources

### The Parties' operations managers other key employees and employees in general and any sub-suppliers contributing to the supply of Services must all have the skills and qualifications required to perform their duties in connection with the delivery and receipt of Services, including relevant and necessary education, knowledge and experience. Furthermore, the Customer's employees must have sufficient knowledge and understanding of the use of the systems to which the Services relate.

### The Parties must ensure that the relevant and required capacity and knowledge, including in the form of sufficient and qualified employee resources at the relevant levels of the Parties' organisation, is maintained during the term of the Contract.

## Supplier's key person

### The Supplier must appoint a key person, who must have an in-depth knowledge of (i) the Contract requirements, (ii) the tools and methods applied, (iii) any special regulations regulating the Customer's business as further specified by the Customer.

## Replacement of employees

### Considering the progress and the quality of the work and the close cooperation between the Parties, the Parties must refrain from replacing employees to the widest possible extent.

### The Supplier must comply with any reasonable request from the Customer to replace persons involved in the performance of the Contract.

### The Supplier can only replace the persons identified as key persons in Annex 8 (Cooperation Organisation) with the prior agreement of the Customer. Such agreement cannot be denied without a significant reason and is not required for common career changes requested by the key person itself, long-term illness or termination of employment with the Supplier.

### [DIT alternative wording: The Supplier can only replace the persons identified as key persons in Annex 8 (Cooperation Organisation) with the prior agreement of the Customer. Such agreement cannot be denied without a significant reason and is not required for common career changes requested by the key person itself, long-term illness or expiry of employment with the Supplier.]

# The Customer's right to involve a third party

### The Customer may at any time involve a third party in support of the Customer in connection with the cooperation or the termination thereof. This third party has access to the same meetings, information and documents as the Customer. Such third party may for instance be one of the Customer's other suppliers, who is to assist the Customer with the integration of other systems, solutions or services for the Operating Environment. The Supplier may make it a condition that the third party signs a general non-disclosure agreement if the third party is granted access to the Supplier's confidential information.

### [ITB alternative wording: The Customer may at any time and for their own account involve a third party in support of the Customer in connection with the cooperation or the termination thereof. This third party has access to the same meetings, information and documents as the Customer. Such third party may for instance be one of the Customer's other suppliers, who is to assist the Customer with the integration of other systems, solutions or services for the Operating Environment. The Supplier may make it a condition that the third party signs a general non-disclosure agreement if the third party is granted access to the Supplier's confidential information.]

# Customer's other suppliers

### To the extent where the Customer's maintenance, projects or implementation activities are carried out by the Customer's other suppliers, the Supplier must loyally assist such suppliers as if the task had been carried out by the Customer itself.

### With assistance from the Customer, the Supplier must obtain knowledge of relevant interfaces as regards supplies from the Customer's other suppliers and which relate to the Supplier's Services. As part of its Services, the Supplier must cooperate with the Customer's other suppliers in order to limit interface problems between the Supplier's Services and services from other suppliers.

### The Supplier must establish a forum of cooperation and appoint fixed contact persons for the purpose of identifying and handling any service interruptions caused by interfaces to the Customer's other suppliers. Annex 8 (Cooperation Organisation) sets out the specific guidelines for setting up cooperation fora and handling interfaces.

### Upon request from the Supplier, the Customer must assist in establishing a direct contact between the Supplier and the Customer's other suppliers when this is relevant for the Supplier's performance of the Contract.

### Services provided by the Supplier pursuant to this provision are charged on the basis of the time spent pursuant to the hourly rates specified in Annex 6 (Prices). To the extent where the Supplier's use of time has been caused by defects of the Supplier's Services or other circumstances for which the Supplier is liable pursuant to the Contract, the Supplier cannot claim payment in this regard.

# Knowledge building and optimisation

## Based on the nature of the delivered Services and where relevant, the Supplier must keep track with the technology development and update its knowledge and qualifications on an ongoing basis, in order for the Supplier to fulfil its role as a qualified supplier and advisor to the Customer. This only relates to the platforms and technologies that are relevant for the Supplier's supply of Services under the Contract.

## Based on the Supplier's generation of knowledge and pooling of experience about the Customer's systems, the Supplier must proactively suggest such amendments of the performance of the Services that may lead to improvements or cost reductions for the Customer. Such proposals must be presented and considered in accordance with clause 27.

## [ITB alternative wording: Based on the Supplier's general generation of knowledge and pooling of experience about the Customer's systems, the Supplier must proactively suggest such amendments of the performance of the Services that may lead to improvements or cost reductions for the Customer. Such proposals must be presented and considered in accordance with clause 27.]

# Changes

## Changes requested by the Customer

### The Customer may request changes of Services and the Contract in general in accordance with Annex 8 (Cooperation Organisation), having regard to the change request procedure specified therein.

### If the Supplier documents that the change request due to significant technical or functional reasons cannot be implemented, the Supplier is not obliged to comply with the change request. Any disagreements in this regard or regarding the consequences of a change may be made subject to the procedure specified in clause 44.3.

## Changes requested by the Supplier

### The Supplier may request changes of Services if this is required due to mandatory legislation or otherwise follows from the Contract. The Supplier is furthermore entitled to suggest changes to Services. Such changes are made in accordance with Annex 10 (Change Management), having regard to the change request procedure specified therein.

## Change log

### The Supplier must keep an updated log of all Contract changes, including changes of Services. The Supplier must make the log available to the Customer.

### Once every year, the first time twelve (12) months after the Take Over Date, the Supplier must deliver an updated Contract, where all changes agreed during the most recent twelve (12) months are included. The Customer must notify the Supplier of any objections to the updated Contract no later than one (1) months after the receipt.

# PART VI: RISK MANAGEMENT AND PROACTIVE ACTION

# Risk management and proactive action

### The Supplier must be in charge of risk management and take proactive action as described in Annex 11.

# PART VII: General contract terms

# Compliance with statutory requirements etc.

## In general

### The Supplier's services must comply with mandatory legislation during the term of the Contract, including any amendments thereto. This, however, does not apply to legislation that is specific to the Customer's industry, unless the Parties have explicitly agreed otherwise.

### The Customer is liable that the Customer's specific use of the Services is legal, unless the said Service is so designed that its general use will conflict with mandatory legislation.

## Amendment of legislation

### The Supplier must keep updated about amendments of mandatory legislation that necessitates changes of the Supplier's Services and notify the Customer of such need for changes. However, the Customer must keep updated about amendments of mandatory legislation that are specific to the Customer' industry and must notify the Supplier thereof, unless the Parties have explicitly agreed otherwise.

### Any change in Services necessitated by amendments of mandatory legislation will be handled as a change request pursuant to clause 27. The Supplier is entitled to payment for such changes, regardless if they are requested by the Customer or the Supplier. Payment is based on the costs imposed on the Supplier to implement the changes and on the basis of the principle that the Supplier's total costs related to the change to a reasonable extent are divided between the affected Customers.

### [DIT alternative wording: Any change in Services necessitated by amendments of mandatory legislation will be handled as a change request pursuant to clause 27. Amendments caused by mandatory law, specific to the business of the Costumer, the Supplier is The Supplier entitled to payment for such changes, regardless if they are requested by the Customer or the Supplier. Payment is based on the costs imposed on the Supplier. Amendments caused by mandatory law, specific to the business of the Supplier, must be carried out by the Supplier on the Supplier’s own account.]

### Any change in Services necessitated by the General Data Protection Regulation implemented as of 25 May 2018 will be handled as a change request from the Supplier pursuant to clause 27.2. The Supplier cannot request payment for these changes. If the changes are specific for the Customer's industry, the Customer must, however, request the Supplier to effect the change, which will be handled as a change request from the Customer in accordance with the procedures specified in clause 27.1. In this case, the Supplier may request payment for the change.

### [ITB alternative wording: Any change in Services necessitated by the General Data Protection Regulation implemented as of 25 May 2018 will be handled pursuant to clause 29.2.2.]

## Amendments of audit or security standards

### Any change in Services necessitated by amendments of the agreed audit or security standards will be handled as a change request on the part of the Customer in accordance with the procedures specified in clause 27.

# Undertakings

## The Supplier undertakes that

[DIT alternative wording:

* That the Supplier’s Services and the Costumer or a by the Costumer designated third party’s use of the Supplier’s services in accordance with the Contract, does not infringe intellectual property rights owned by third parties.
* That the Supplier will not infringe intellectual property rights to third party software.
* That the Supplier will fulfill the obligations in accordance with the Contract with the necessary qualifications, diligence and thoroughness, and in accordance with the market standard in force, and in accordance with the intern procedures of the Supplier.
* That design methods, programming, language and tools are used in accordance with good it-practice and that Services delivered by the Supplier to the greatest extent possible arises out of the use of standard components available on the market.
* That the Supplier possess, and continuously possess, the by the law required licenses, registrations and permissions in order to deliver Services and incidentally run his business.
* That the Supplier continuously will apply the newest available safeguards against virus and additional malware in order to avoid infection and hacking of the operating environment of the Costumer.
* That the Supplier will observe the “Code of Conduct” issued by the Costumer and the UN Global Compact or]
* [XX]
* [XX]

# Supplier's breach

## In general

### Unless otherwise specified in the Contract, the ordinary rules of Danish law shall apply in case of the Supplier's breach and as regards the Customer's remedies for breach.

### Regardless of the reason for a delay or a defect, the Supplier must immediately notify the Customer if the Supplier expects or knows that a delay or a defect will occur or has occurred.

## Supplier's delay

### The Supplier is in delay when the deadline for an agreed milestone in the Transition is exceeded or when obligations under the Contract or a Service or a change to a Service in general is not delivered at the agreed time.

## Defects related to the Supplier's Services

### The Supplier's Services are considered defect when they do not comply with the Contract requirements or if they do not appear as the Customer may reasonably expect.

### [ITB alternative wording: The Supplier's Services are considered defect when they do not comply with the Contract requirements or if they do not appear as the Customer may reasonably expect based on the Contract unless they are trivial matters.]

## Remedial action

### The Supplier's remedial action must comply with the deadlines, procedures and service targets specified in the Contract.

### If the Contract does not set out any deadlines, procedures or service targets, the Supplier must remedy any cause of delay or defects related to the Services without undue delay. This applies regardless of the cause of the delay or the defect and regardless of any disputes in this regard. The Supplier must provide such additional qualitative and quantitative resources at its own expense and to the extent required. The obligation to remedy delays or defects specified in this clause 31.4.231.4.2 does not apply if the said delay or defect is insignificant to the Customer and if such remedial action will impose disproportionate costs on the Supplier.

### If the delay or the defect has been caused by circumstances for which the Supplier is not liable, the Supplier is entitled to claim payment for such remedial action on a time basis pursuant to the prices specified in Annex 6 (Prices).

### The Customer's claim for remedial action does not deprive the Customer of the right to claim other remedies for breach.

## Proportionate reduction

### The Customer is entitled to claim a proportionate reduction in accordance with the ordinary rules of Danish law. A proportionate reduction does not prevent the Customer from claiming damages, cf. clause 31.6. If the Customer claims a penalty on the basis of delay or non-compliance with Service targets, the Customer cannot claim a proportionate reduction for the same matter.

## Damages

### The Customer may claim damages in accordance with the ordinary rules of Danish law with the limitations specified in this Contract.

### If the Customer claims a penalty, damages may only be claimed if the Customer has suffered a loss exceeding the penalty amount, and only for the difference between the penalty amount and the loss.

### The Customer's right to damages, if any, includes the right to be compensated for the Customer's time spent internally directly resulting from the Supplier's breach. The Customer's loss is determined as the reasonable time spent by each employee multiplied by the said employee's hourly cost (including salary, employer-paid pension and social security contributions. Compensation for the time spent by each employee cannot exceed the Customer's actual hourly cost.

## Penalty

### The Customer's right to penalty in case of delay in the deadlines related to Transition or transfer in case of termination has been specified in Annex 3 (Transition and Transformation).

### The Customer's right to penalty in case of the Supplier's non-compliance with the Service targets specified in Annex 6b (Incentives, penalty, bonus).

### The Supplier incurs a penalty regardless if the circumstances triggering the penalty cannot be attributed to the Supplier as negligent behaviour. The Supplier is not liable to pay penalty for matters for which the Supplier is not liable.

### The Supplier must calculate the penalty on an ongoing basis in connection with the reporting described in clause 11 and set off the penalty against the next invoice. Late settlement of penalty will be subject to interest pursuant to the rules on default interest in the Danish Interest Act.

### The total penalty for Transition delays cannot exceed [XX]% of the Transition payment. The total penalty per month for non-compliance with Service targets cannot exceed [XX]% of the Customer's total payment for the said month. The total penalty for non-compliance with Service targets cannot exceed [XX]% during a consecutive period of twelve (12) months of the Customer's total payment for the said twelve (12) months' period.

## Termination

### The Customer may terminate the Contract in total or in part with immediate effect in case of the Supplier's material breach of the Contract.

### The following situations are always considered material breach, which entitles the Customer to terminate the Contract without notice, unless these circumstances have been caused by matters for which the Supplier is not liable:

### Delay in the Take Over Date exceeding forty (40) Working Days.

### Non-compliance with

1. the same Service targets for three (3) subsequent measurement periods, if the deviation in all three measurement periods is at least [XX];
2. the same Service targets for three (3) out of six (6) measurement periods, if the deviation in all three measurement periods is at least [XX]; or
3. the same Service targets for six (6) subsequent measurement periods.

### In other situations than the ones specified in clause 31.8.2, the Customer may only terminate the Contract with immediate effect if the material breach has not been remedied before expiry of a written notice of at least thirty (30) Working Days. The notice must include a description of the nature of the material breach and information that any non-compliance will lead to termination of the Contract with immediate effect. If the material breach cannot be remedied within thirty (30) Working Days, the Customer may terminate the Contract without prior notice.

### The Customer's termination with immediate effect will take effect from the time of termination (ex nunc) if the Contract is terminated after the Take Over Date, and from the time of signing of the Contract (ex tunc) if the Contract is terminated before the Take Over Date. If the Contract is terminated after the Take Over Date, the Customer cannot claim repayment of any payments related to the period prior to termination, but may, depending on the circumstances, claim a proportionate reduction and compensation for the period prior to termination.

### Regardless of the Customer's termination, the Supplier must continue the supply of Services and provide the Customer with the necessary assistance in case of termination as specified in clause 16-18.

## Matters for which the Supplier is not liable

### The Supplier is not liable for delays and defects related to Services to the extent such delays or defects are due to:

* Customer's breach, regardless if such breach has been caused by the Customer itself or its sub-suppliers;
* Defects in the Customer's own software, including third-party software or other systems provided by the Customer, unless the Supplier knew of should have known about such defects prior to the commencement of operation;
* Force majeure pursuant to clause 34;
* Matters for which the Supplier is not liable pursuant to other parts of the Contract.

The above is not necessarily an exhaustive list of matters for which the Supplier is not liable.

### The Supplier must prove that a delay or a defect has been caused by matters for which the Supplier is not liable.

# Customer's breach

## In general

### By 'Customer's breach' is meant that the Customer does not contribute to the performance of the Contract as agreed, either by not making the agreed payments or by not assisting the Supplier as agreed and furthermore by not meeting its obligations under the Contract.

### Unless otherwise specified in the Contract, the ordinary rules of Danish law shall apply in relation to the Customer's breach and the Supplier's remedies for breach in this regard.

## Default interest

### If the Customer is in breach of its payment obligations, the Supplier is entitled to claim interest pursuant to the provisions of the Danish Interest Act.

## Damages

### The Supplier may claim damages for loss caused by the Customer's breach in accordance with the general provisions of Danish law.

### The Supplier may claim damages for time spent internally which has been directly caused by the Supplier's breach, and which is calculated on the basis of the hourly rates specified in Annex 6 (Prices).

## Termination

### The Supplier may terminate the Contract with immediate effect if the Customer does not pay the agreed amounts in due time, and such payment default is considered a material breach of the Contract in general.

### If the payment is disputed, the situation of non-payment may be temporarily remedied by depositing the disputed amount. In that case, the Supplier cannot terminate the Contract with immediate effect due to payment default. Depositing is made pursuant to clause 21.3.1.

### The Supplier may furthermore terminate the Contract with immediate effect if the Customer's non-contribution to the performance of the Contract can be characterized as a material breach of the Contract in general.

### The Contract can only be terminated with immediate effect if the breach has not been remedied with a written notice of at least thirty (3) Working Days. The notice must be sent to the Customer's Operations Manager including a copy to the Customer's Legal or Financial Manager. The notice must include a description of the nature of the breach as well as information that any non-compliance will lead to termination of the Contract with immediate effect.

## Obligation to remedy defects

### Clause 31.4 on the Supplier's obligation to remedy defects and any payment in this regard shall furthermore apply when such remedy has been rendered necessary by the Customer's breach. In such situation, the Supplier may make it a condition that remedial action is only taken when sufficient security has been provided by the Customer.

## Continued supply of Services regardless of breach

### The Supplier must continue to supply Services pursuant to the Contract regardless if the Customer is in breach. This also applies if the Supplier terminates the Contract with immediate effect due to the Customer's material breach until the earliest of the following: (i) The Customer accepts the justified termination, (ii) the Supplier succeeds with the justified termination at a final and binding dispute resolution, (iii) the Customer informs the Supplier that the Services are no longer to be supplied. The Contract provisions will still apply for the supply of Services after termination of the Contract. The Supplier's obligation to ensure continued supply of Services is conditional upon the Customer providing security for payments in accordance with clause 21.3.1.

### [DIT alternative wording: The Supplier must continue to supply Services pursuant to the Contract regardless if the Customer is in breach. This also applies if the Supplier terminates the Contract with immediate effect due to the Customer's material breach until the earliest of the following: (i) The Customer accepts the justified termination, (ii) the Supplier succeeds with the justified termination at a final and binding dispute resolution, (iii) the Customer informs the Supplier that the Services are no longer to be supplied. The Contract provisions will still apply for the supply of Services after termination of the Contract. The Supplier's obligation to ensure continued supply of Services is conditional upon the Customer providing security for payments.]

# Limitation of liability

### A Party's total claim for proportionate reduction, damages and penalty is limited to [XX]% during a twelve (12) months' period of the amount received by the Supplier during the preceding twelve (12) months. If a period of twelve (12) months has not yet passed, the limitation of liability will be calculated as the average of the amounts received during the months passed multiplied by 12.

### A Party's liability does not include indirect loss.

### [ITB alternative wording: A Party's liability does not include indirect loss and consequential damage.]

### A Party's liability does not include the following types of loss, whether categorized as direct or indirect loss:

* Customer's lost income and savings
* Loss of goodwill
* [XX]

### [DIT alternative wording: The Following loss is always considered as direct loss:

* Necessary expenses for mitigation of loss
* Covering;
* Coast related to security breaches which the Supplier will be held responsible to,
* Fines or other charges/penalties incurred the Customers due to the Suppliers lack of compliance with legislative requirements, including as a result of the Suppliers does not meet the requirements on data protection in this Contract or based on the Supplier has not in general fulfilled its obligation;
* Direct costs or others costs including regular time, overtime and related costs, including allocations of employees, wages and wage for additional staff, travel expenses, overtime pay, telephone expenses and similar costs incurred as a result of the Suppliers breach.]

### Expenses needed to mitigate a loss, including buy-ins, are considered a direct loss. If possible, the injured Party must obtain the other Party's comments to such expenses before they are incurred.

### The Supplier must compensate the Customer's reasonable costs for re-establishing or reconstructing lost or corrupted data, if such loss or corruption of data has been caused by matters for which the Supplier is liable. This, however, does not apply if the Customer itself has chosen not to have any backup services and the Supplier has notified the Customer in this connection that the Customer in that case carries the risk of loss or corruption of data.

### The above limitations of liability do not apply in case of intentional or gross negligent damage.

# Force majeure

### Neither Party is liable for non-compliance with their obligations if this is caused by circumstances outside the Party's control, and which the Party should not have considered when the Contract was signed, nor should have avoided or overcome.

### [ITB alternative wording: Neither Party is liable for non-compliance with their obligations if this is caused by circumstances outside the Party's control, and which the Party should not have considered when the Contract was signed (including strike), nor should have avoided or overcome.]

### Circumstances that occur with a sub-supplier are only considered force majeure if the sub-supplier faces an obstacle comprised by clause 34.1.1 and which neither the sub-supplier or the Supplier should have avoided or overcome.

### Force majeure in case of delay cannot be claimed for more Days than the number of Days for which the force majeure situation is upheld. If a deadline for the Supplier is extended due to force majeure, any payments relating thereto will be postponed accordingly.

### Force majeure may only be claimed if the Party in question has given written notice thereof to the other Party no later than ten (10) Days after the occurrence of the force majeure event.

### The Party not affected by the force majeure situation may terminate the Contract without notice if the force majeure situation is upheld for more than thirty (30) Days.

# Insurance

### The Supplier must take out general third-party liability insurance including what is considered fair and reasonable coverage of Services in the Supplier's industry, and including any Supplier product liability pursuant to the ordinary rules of Danish law.

### The insurance must have a minimum cover of DKK [XX].

# Rights to software, documentation etc.

## In general

### Both Parties will retain any intellectual property rights existing before signing of the Contract.

## The Customer's software, including third party software

### With effect from the signing of the Contract, the Customer grants the Supplier a fixed-term, non-exclusive and non-transferable right of use to the software listed as the Customer's software in Annex 2 (Due Diligence), Annex 3 (Transition and Transformation) or Annex 4 (Supplier's Services) and any software which the Customer at any time entrusts the Supplier with as part of its supply of Services.

### The right of use only includes use required for the performance of the Contract and will terminate by termination of the Contract.

## The Supplier's software, including third-party software

### With effect from the signing of the Contract, the Supplier grants the Customer a non-exclusive and non-transferable right of use to the software listed as the Supplier's software in Annex 2 (Due Diligence), Annex 3 (Transition and Transformation) or Annex 4 (Supplier's Services) to the extent this is necessary for the performance of the Contract. The right of use only comprises the Customer's internal use and will terminate by termination of the Contract. The right of use may be further described in Annex 4. Such terms may only be claimed provided that they are not contrary to the contents of the Contract in general. The right of use is included in the fixed periodic payment and consequently, the Customer will not have to make a separate payment for this right.

## Third parties' rights to software

### Each Party must have the required rights to use third-party software or make the software in question available to the other Party, as provided by the Contract. The licence terms for such third-party software have been included in Annex 2 (Due Diligence), Annex 3 (Transition and Transformation) or Annex 4 (Supplier's Services).

### If a third party files a claim against a Party for infringement caused by the said Party's use or provision of software under the Contract, the Party must notify the other Party in writing, if the other Party has used or has been provided with the said software. The Party who has or should have provided the rights to the software will take over the matter and any related costs and must indemnify the other Party in every respect for any direct loss related to the matter, including costs of advisors, legal costs, damages and compensation, which may be awarded to a claimant. The limitation of liability specified in clause 33 does not apply to such losses.

## Documentation rights etc.

### The Supplier retains all intellectual property rights to the Supplier's documentation, tools and methods developed or made available to the Customer for the performance or use of Services under the Contract.

### The Customer acquires a right of use not limited in time to any description and documentation of the Customer's own systems and business processes, which the Supplier has developed under the Contract. Thus, the Customer has an unrestricted right to use, amend, transfer and versionize such reports, specifications, recommendations, charts and other customer-specific descriptions of the Customer's systems and business processes, which may be developed under the Contract. This right of use furthermore applies after termination of the Contract.

### If the Customer does not have access to the Supplier's operating documentation or only has limited access thereto, the Customer may, if so required, demand to receive a copy thereof in a generally accepted readable format at a recognised medium. The Customer has a transferable right of use not limited in time to the operating documentation. Regardless of the restrictions specified in clause 40, the Customer may give a third party the required insight into the operating documentation in order for the said third party to take over the delivery of similar services.

## General knowledge

### The Supplier is free to use the general knowledge and knowhow acquired when working for the Customer, which, however, does not include customer-specific information.

# Rights to data

## Rights to data

### The Customer retains all rights to data which the Customer delivers to the Supplier, and which is stored, processed and generated as part of the supply of Services. The Supplier cannot use the Customer's data for any other purpose than the performance of the Contract.

## No right of retention

### The Supplier cannot retain the Customer's data, which may have come into the Supplier's possession in connection with the performance of the Contract. This applies even if the Customer has breached its obligations under the Contract, or if some kind of dispute or disagreement has occurred between the Parties.

# Processing of personal data

### The Customer is liable for the personal data processed in the Customer's IT systems, while the Supplier is data processor for the Customer and is thus subject to the Customer's powers of direction.

### The Supplier shall take the required technical and organizational precautions to prevent that personal data are destroyed, lost or deteriorated, accidentally or illegally, or is disclosed to any unauthorized third party, misused or in any other way handled contrary to the rules specified in the Danish Act on the Processing of Personal Data and any other legislation regulating the processing of personal data.

### Upon request from the Customer, the Supplier must provide the Customer with sufficient information and controlled access for the Customer to verify the Supplier's compliance with the Contract requirements related to precautionary measures.

### The Supplier can only entrust the processing of personal data to sub-suppliers with the Customer's prior written consent.

### The Supplier cannot transfer personal data to countries outside the European Union without the Customer's prior written consent, which consent, however, cannot be refused without a justified reason.

### The requirements for the Supplier's processing of personal data and the Parties' mutual relation in this regard is further regulated in Annex 12 (Data Processing Agreement).

# Sub-suppliers

## Liability for sub-suppliers

### The Supplier shall be liable for any services provided by sub-suppliers in the same way as for its own services.

### The Supplier must establish contracts, procedures and workflows ensuring compliance with the Contract in case of the Supplier's use of any sub-suppliers, including the terms in the Contract on confidentiality, access to audit, disclosure of data and information as well as the audit statement to be provided under the Contract.

## Approval requirements

### The Supplier can only use important sub-suppliers or sub-suppliers that are uncommon for the industry with the Customer's prior written approval, which approval cannot be denied without a justified reason.

### If the Supplier uses sub-suppliers delivering specific Services to the Customer, the Customer may make the use of such sub-suppliers conditional upon the fact that the Customer is entitled to adopt and assume the contract with the sub-supplier in case of termination of the Contract.

### The sub-suppliers specified in Annex 4g (Approved sub-suppliers) have been approved by the Customer, including a specification of the agreements with sub-suppliers to which the Customer has a right of subrogation.

## Sub-suppliers processing of personal data

### If the Supplier's sub-suppliers store or process the Customer's personal information on behalf of the Supplier, the Supplier warrants that the sub-supplier has assumed the same liabilities in relation to the Supplier as those liabilities which the Supplier has assumed towards the Customer pursuant to this Contract. The use of sub-suppliers for the processing of personal data requires the Customer's prior written consent.

## Errors in third-party software

### If the Supplier's Services are not in conformity with the agreed specifications and this may be referred to a defect in third-party software which has been approved or ordered by the Customer, the Supplier must endeavour to remedy the problem by a work-around or, if the manufacturer of the said software does not remedy the problem within a reasonable time, replace the defective software with an alternative solution. As long as the Supplier demonstrates reasonable efforts to comply with the above, the Customer cannot claim any other remedies for breach in such situation, however, provided that the Supplier has observed good IT practice when introducing the relevant Service and should not, in compliance of good IT practice, have known, anticipated or prevented the said problem.

# Confidentiality

## Confidentiality requirements

### The Parties, their employees and the Supplier's sub-suppliers must observe confidentiality to a reasonable extent as regards information related to each other or a third party, of which they obtain knowledge in the course of performance of the Contract, and which is not and will not be publicly known ("Confidential Information"). Neither Party may use or disclose such information, unless this is due to the performance of the Contract and in accordance with this provision.

## Exclusions to confidentiality

### The Supplier may disclose Confidential Information to its sub-suppliers to the extent such disclosure is required for the sub-supplier to be able to assist the Supplier with the performance of the Contract. The Supplier must impose a written confidentiality obligation on its sub-suppliers similar to the one which the Supplier must observe pursuant to this Contract.

### The Customer may disclose Confidential Information to consultants, other suppliers and other parties providing assistance to the Customer, on the condition that these parties sign a written confidentiality statement similar to the one which has been imposed on the Customer pursuant to this Contract. This furthermore applies to the Customer's communication with any new and potential suppliers in connection with the termination of the Contract. The right to insight does not include trade secrets.

### The Parties may pass on Confidential Information to the extent required pursuant to legislation, judgments delivered by courts or orders from public authorities or administrative bodies.

### The confidentiality obligation shall furthermore apply after termination of the Contract, regardless of the reason thereof.

## Supplier's references and disclosure

### The Supplier may include the Customer's name in a list of references, unless the Customer explicitly requests otherwise. In addition thereto, the Supplier cannot use the Customer's name for marketing purposes, unless the Customer consents thereto in writing.

### After discussions with the Supplier, the Customer will determine how to announce the signing of the Contract.

### The Parties cannot disclose information to the press about matters related to this Contract without the other Party's prior written consent, unless such disclosure only concerns matters which have already been made available to the public.

# Transfer

## Either Party may transfer its rights or obligations under the Contract to a third party with the other Party's written consent. Such consent may only be denied if the non-transferring Party has any justified objections of a financial nature or similar.

# Commencement, duration and termination

## Commencement

### This Contract shall come into force when signed by both Parties and runs for [XX] years after the Take Over Date.

### With a written notice of at least three (3) months to the end of the Contract term specified above, the Customer may extend the Contract for twelve (12) months on unchanged terms. With a written notice of at least three (3) months to the end of this twelve (12) months' period, the Customer may extend the Contract for an additional twelve (twelve) months on unchanged terms, so that the maximum extension is twenty-four (24) months.

## Termination and early withdrawal and compensation related thereto

### The Contract is non-terminable for the Supplier.

### The Customer may terminate the Contract with a written notice of six (6) months to the end of a month.

### However, the Customer may at the earliest terminate the Contract with effect [XX] months after commencement of the Contract without payment of compensation as specified below. If the Customer terminates the Contract early, the Customer must pay compensation, which is calculated pursuant to Annex 6 (Prices).

### In the following situations, the Customer may terminate the Contract without observing the six (6) months' deadline specified in clause 42.2.2 and without payment of compensation pursuant to clause 42.2.3:

* In case of the Supplier's material breach of the law or material breach of the UN Global Compact principles.
* [DIT alternative wording: In case of the Supplier's breach of the law or breach of the UN Global Compact principles.]
* [XX]
* [XX]

### If the transfer of Services from the Supplier to the Customer or to a third party appointed by the Customer has not been completed at the time of termination of the Contract, the Customer may extend the Contract for three (3) months on unchanged terms with one (1) month's notice. The Customer may repeat this extension until the transfer of Services has been completed. If this extension imposes any additional costs on the Supplier, the Supplier may claim that such costs are to be paid by the Customer, unless the delay in the transfer of Services has been caused by matters for which the Supplier is liable.

# Interpretation

## Priority

### In the event of a conflict in terms, the documents shall rank in the following order: (i) The Contract shall rank prior to the annexes, (ii) Annex 1 (Definitions) shall rank prior to the other annexes, and (iii) annexes shall rank prior to any sub-annexes to a specific annex.

## References

### References to the Contract or a provision therein also include the annexes related to the Contract and the annexes relevant to the said provision. References to an annex includes any sub-annexes thereto.

# Disputes

## Governing law

### This Contract is governed by Danish law.

## Negotiations between the Parties

### In case of a dispute between the Parties regarding the Contract and the performance thereof, either Party may refer the dispute to the Customer's and the Supplier's day-to-day managers, who will settle the dispute jointly. If an agreement cannot be reached between the day-to-day managers, negotiations must be escalated to the steering committee. If an agreement cannot be reached by the steering committee, the dispute must be escalated to a higher level in the Parties' organizations.

## Dispute resolution with assistance from a technical and/or legal expert

### If the Parties cannot reach an agreement through negotiation within five (5) Working Days, either Party may request that the dispute is resolved pursuant to the rules of Danish Arbitration, "Rules on legal/technical statements in matters related to IT" and the process described in these rules.

## Mediation

### If neither Party requests to submit the matter to dispute resolution with assistance from a technical and/or legal expert, either Party may request that the matter is solved by mediation presided over by a mediator appointed by the Parties. If the Parties cannot agree on the appointment of a mediator within ten (10) Working Days after one of the Parties has submitted a request for arbitration, either Party may submit a request to the Association of Danish IT Attorneys (DITA) to appoint a mediator. Mediation will be based on DITA's mediation procedure.

### The mediation procedure is commenced when one of the Parties sends a written request for mediation to the other Party including a copy to DITA. The mediator must be appointed by DITA at the latest ten (10) Working Days after DITA's receipt of a request for mediation.

### As a minimum, a Party must participate in the first meeting convened by the mediator. However, a Party is entitled to open arbitration proceedings if a postponement thereof may result in forfeiture, e.g. due to obsolescence.

### If a Party announces that the said Party does not want to continue the mediation after the first meeting, or if the dispute has not been solved by mediation within eight (8) weeks after a written request for mediation has been submitted, either Party may refer the dispute to final settlement by arbitration in accordance with the provisions specified below.

## Arbitration

### The place of arbitration is the municipality where the Customer is registered.

### If the total value of the dispute does not exceed DKK one (1) million, the dispute is settled by arbitration pursuant to the "Rules of simplified arbitration procedure of the Danish Institute of Arbitration" in force at the time when the arbitration proceedings are commenced.

### The arbitration tribunal is appointed by the Danish Institute of Arbitration in accordance with the "Rules on simplified arbitration of the Danish Institute of Arbitration". The arbitrator is appointed by the Danish Institute of Arbitration. At the latest by the deadline for submission of the respondent's statement of defence, the Parties may jointly propose an arbitrator. The Parties agree to jointly appoint an arbitrator on the basis of a recommendation from the Association of Danish IT Attorneys (DITA).

### If the total value of the dispute exceeds DKK 1 million, the dispute is settled by arbitration pursuant to the "Rules of arbitration procedure of the Danish Institute of Arbitration" in force at the time when the arbitration proceedings are commenced.

### The arbitration tribunal is appointed by the Danish Institute of Arbitration in accordance with the "Rules of arbitration of the Danish Institute of Arbitration". Unless the Parties agree otherwise, the arbitration tribunal shall be composed of three (3) arbitrators. When the dispute is to be decided by a panel of three (3) arbitrators, the claimant may propose an arbitrator in his letter of complaint. The respondent may also propose an arbitrator in the statement of defence. The third arbitrator, who will be the chairman of the arbitration tribunal, shall be proposed by the Institute of Arbitration, unless the Parties jointly propose a chairman before the deadline for the respondent's submission of his statement of defence. The Parties agree to jointly endeavour to appoint the chairman on the basis of the recommendation from the Association of Danish IT Attorneys (DITA).

# Signatures

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Date: \_\_\_\_\_\_\_\_ | |  | | Date: \_\_\_\_\_\_\_\_ | |
| On behalf of the Customer | |  | | On behalf of the Supplier | |
| [Name] | |  | | [Name] | |
| [*Name, occupation*] | |  | | [*Name, occupation*] | |
| Signature | |  | | Signature | |
| [Name] | |  | | [Name] | |
| [*Name, occupation*] | |  | | [*Name, occupation*] | |
| Signature | |  | | Signature | |