

JHS 166 Terms and Conditions of Public IT Procurement

Annex 5. Special Terms and Conditions for Services (JIT 2015 – Services)

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INSTRUCTIONS FOR USE

These Special Terms and Conditions are intended to be used in agreeing on continuous services, such as maintenance services, processing and transfer of materials, or user support. These terms and conditions are not intended to be used for agreeing on consulting and expert services or application services delivered over a data network. Instead, these are governed by their own special terms and conditions.

In the service agreement, special attention should be paid to the following stages of service:

- rollout (possible piloting)
- production stage when the service must be usable in accordance with the agreement
- withdrawal from the service

Situations related to the rollout of the service vary from case to case, and the terms and conditions associated with them are left to be agreed on between the contracting parties.

Regarding the production stage, the following should be described in detail in the service agreement:

- the service and service processes (the service process depends on the selected supplier)
- service environment (including testing environments) and the division of responsibilities between the contracting parties and between different suppliers
- service hours
- response times and urgency categories and
- service level, its measurement and monitoring, as well as the consequences of breaches

Instructions for the specification of the service level and quality are offered in the recommendation *JHS 174 Service level categories for ICT services* and for quality management in the recommendation *JHS 182 Development of ICT services: Quality assurance*.

In addition, in the agreement, attention should be paid to the development of the service development as well as to questions related to data protection and information security. If necessary, the agreement should determine the 'controller' and 'processor' and to take into account the requirements set in the General Data Protection Regulation (EU) 2016/679 for the processing of personal data. If the supplier processes personal data on behalf of the client, it is recommended that the *JIT 2015 – Special Terms and Conditions for the Processing of Personal Data (JIT 2015 – Personal Data)* be attached to the agreement.

If the location of the service production is significant, it should be agreed upon in the agreement.

Furthermore, one should prepare in the agreement for the eventual termination of the service and for putting the service again out to tender in a manner that does not cause disturbance to the client's operations. The terms and conditions of the agreement include a section concerning the supplier's assistance obligation, the sufficiency or necessity of which needs to be evaluated separately in each case. It may be particularly useful to consider and specify in advance and in more detail which material and information the client will need upon the termination the service.

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The end results of the service must be specified in the agreement. Continuous services do not always generate reusable end results. On the other hand, it is possible to agree in the service agreement on, for example, a software support service, in which case the service may also generate reusable end results. The tools and methods used in the production of the service are not usually regarded as end results of the service.

It should be identified clearly in the pricing information which work is subject to a separate charge or may cause changes in the fixed service charge, if any.

These use instructions do not form part of the agreement.

Agreement date and no.: _____

Annex no.: _____

JIT 2015: Special Terms and Conditions for Services

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1 Scope of application

(1) These Special Terms and Conditions are applied to the procurement of data processing services by public procurement units, if these terms and conditions are referred to in the agreement and to the extent it has not been otherwise agreed in writing.

(2) These Special Terms and Conditions are used together with the General Terms and Conditions of Public IT Procurement. In case of any conflict, these Special Terms and Conditions take precedence over the aforementioned General Terms and Conditions of Government IT Procurement with regard to their corresponding provisions.

2 Definitions

In addition to the following definitions of the Special Terms and Conditions, the definitions of *JIT 2015 General Terms and Conditions* shall be applied.

rollout project

fi käyttöönottoprojekti

a project carried out in conjunction with service start-up, as a result of which the service defined in the agreement can be taken into use

service description

fi palvelukuvaus

a detailed specification of the content of the service

service environment

fi palveluympäristö

the premises, technical hardware environment, such as hardware, software and data links, as well as the licences and their maintenance required for the delivery and production of the service agreed upon in the agreement

3 The service and its results

3.1 Service

(1) The supplier commits to producing the services specified in the agreement to the client in accordance with the requirements and the agreed service descriptions.

(2) The services and any possible limitations thereto, end results of the service, quality level as well as the detailed terms and conditions of each service are described in the agreement.

(3) The responsibilities of the contracting parties are specified in the agreement.

(4) The rollout of the service is agreed upon in the agreement.

3.2 Service environment

(1) The supplier shall be responsible for the construction, functionality and maintenance of the service environment in full, unless otherwise expressly agreed with respect to a specific part of the service environment. Unless otherwise agreed, the supplier shall not, however, be responsible for parts of the service environment which are located in the client's premises.

(2) The supplier shall notify the client in advance of the location where the service is being produced. The supplier shall also notify the client in advance if the location is changed. If the service includes the processing of personal data included the client's personal data register, the data may only be processed outside the European Economic Area or by a subcontractor based on a written permission issued in advance by the client and in compliance with lawful data transfer practices.

3.3 The client's material

- (1) The client shall be responsible for ensuring that the client's material is available to the supplier as agreed and free of charge and in the extent required under the agreement.
- (2) The supplier is not liable for any errors or defects in the service that are caused by the client's material.
- (3) The supplier commits to storing any information, databases and files generated as a result of the services in a openly specified manner (i.e. in accordance with an open standard or in a manner specified mutually by the supplier and the client). Insofar as this would not be the case, the supplier commits, without any separate compensation, to converting the information, databases and files into such a format upon the termination of the agreement and, upon the client's request, during the operation.
- (4) The supplier shall have the right to use the client's material solely for the purposes of the agreement.

3.4 Service hours

- (1) The service shall be available during the service hours specified in the agreement.
- (2) Unless otherwise agreed, tasks related to the service which are performed in the client's premises shall be carried out during the working hours followed within the client's organisation.

4 Changes to the service

- (1) If they so wish, the contracting parties may propose changes to the content or service level of the service. The changes referred to herein do not, however, refer to any additional services that have been pre-priced in the agreement or any changes in the service volume. The contracting parties commit to processing the change proposals presented by the other party without any undue delay.
- (2) The supplier shall notify the client of the impact the proposed changes have on the services and their delivery schedule or service level and of any additional work or additional costs caused by the changes to the supplier.
- (3) Changes shall be processed in a procedure agreed between the contracting parties, and all changes shall be agreed upon in writing.
- (4) The supplier shall be entitled and obligated to carry out a change only if it has been agreed upon in writing. The supplier has the right to charge for any changes it has made in accordance with the agreement entered into between the contracting parties.
- (5) However, the supplier is entitled to and obligated to implement changes without following the change procedure referred to in the section above, if ensuring the agreed level of information security or service continuity necessarily requires immediate actions. The supplier shall notify the client without any delay of any changes it has made on the basis of this section, and the contracting parties shall jointly process the impact of the changes.
- (6) If a contracting party wishes to make changes in the service environment for which it is responsible and these changes will result in changes in the hardware environment, systems, software, service production or use of the other party, the contracting party wishing to make the change must notify the other contracting party of the intended changes in good time in advance. Such changes must be agreed upon before they can be implemented.

(7) The client may decrease or increase the volume of the service per invoicing period if the service pricing is tied to a specific quantitative variable (e.g. the number of personnel or offices). The basis of the volume, its measurement and its impact on pricing, as well as the management and schedule of the changes shall be agreed upon in the agreement.

5 Delivery of the service

5.1 Quality of the service

(1) The supplier shall render the services with diligence and prudence and in accordance with the professional standards that can reasonably be expected from a professional and experienced supplier. In rendering the service, good technical practice, the agreed quality system and the written instructions accepted by the contracting parties must be followed.

(2) If the service does not correspond with the agreed requirements and service descriptions, the supplier is obligated to bring the service in accordance with them.

5.2 Service levels

(1) The supplier shall deliver the services in accordance with the service level requirements agreed upon in the agreement, monitor the service level and report on the realised service level. If any defects are discovered in the service level, the supplier shall present a proposal to correct the service level and shall correct the defects in the service level as specified in the service level agreement.

(2) The supplier shall comply with any response times and urgency categories agreed upon in the agreement.

(3) If the service level is not in accordance with the agreement, the client shall have the right to the contractual penalty agreed upon the agreement for not reaching the service level.

5.3 Working methods and working processes

(1) Unless otherwise agreed, the supplier's working methods and working processes shall be applied in the implementation of the service. The supplier may freely change them, provided that the change does not cause any additional costs, damage or inconvenience to the client.

(2) The supplier commits to maintaining and actively developing the working methods, practices and processes it uses.

5.4 Service personnel

(1) For the production of the service, the supplier shall use personnel with suitable qualifications and experience. The supplier shall, without delay and free of charge, replace any of its service person who does not have sufficient professional skills or who, on the basis of a security clearance conducted, is not suitable for the task in question.

(2) The supplier shall, with all means reasonably available to it, avoid any replacements of its appointed service personnel that deteriorate the service or its quality. If a service person is replaced for a cause attributable to the supplier, the supplier shall be responsible for providing the new service person with the required training and induction at its own expense.

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(3) Upon the start-up of the service, the supplier shall, upon the client's request, draw up a list of those members of its personnel or those of its subcontractors who take part in the production of the service and have access to the client's personal data, identification data and confidential data material. In case of changes, the supplier must revise the list and deliver it to the client. The client may apply for a security clearance to be conducted of the personnel taking part in the production of the service in accordance with *Section 18(6) of JIT 2015 – General terms and conditions*.

(4) The supplier is responsible for ensuring that the service personnel taking part in rendering the service are aware of their confidentiality obligations before they are appointed to any service tasks under the agreement, and that these obligations are complied with.

(5) The supplier is responsible for ensuring that the use of the service personnel and any work performed in the client's premises is always carried out in accordance with the security and information security, general conduct and other reasonable guidelines and directions of the client. The client must notify in advance of all such procedure obligations intended to be followed by the supplier's personnel. Any changes causing additional costs shall be agreed upon separately.

5.5 Cooperation and reporting

(1) The contracting parties shall agree upon cooperation related to the steering, monitoring and reporting of the service.

(2) The service includes continuous reporting in the extent agreed.

(3) In addition, the supplier commits to otherwise report on the delivery of the services in the manner and at the intervals reasonably and specifically requested by the client, provided that the client compensates the supplier for the additional costs arising from such reporting.

5.6 Service documentation

(1) The supplier shall maintain service documentation in the extent and in the manner enabling a person who has received proper training to be able to use, maintain and further develop the service. Documentation includes, among other things, descriptions of the service process, documentation of the service environment controlled or used exclusively by the client, user instructions, manuals and log data on the environment and the log data related to the processing of personal data used by the client.

(2) During the service, the supplier shall deliver service documentation to the client to the extent as is necessary in order to utilise the service.

(3) Upon the termination of the service, the supplier shall hand over, as part of its assistance obligation set forth in *Section 8*, the required service documentation for the client's use.

(4) This section does not mitigate the obligation of the contracting parties to comply with the confidentiality obligations set out in the agreement and *Section 17(2) of JIT 2015 – General terms and conditions*, which obligations shall remain valid also after the termination of the agreement.

5.7 Cooperation with third parties

(1) The supplier commits to cooperation with other possible service providers that supply services to the client at any given time so that the entirety formed by the services functions as flexibly as possible for the client and without interruptions. If the activities cause additional costs for the supplier, it shall have the right to invoice the client. The supplier is obligated to notify the client in advance of any additional costs to be incurred. The client shall notify the supplier in advance if the client will use other service providers that may have an impact on service production and the service environment under the agreement.

5.8 General obligations of the client

(1) The client is responsible for ensuring that all tasks for which the client is responsible are performed with care and in accordance with the agreement.

(2) The client shall provide the supplier with sufficient and correct information for the production of the service. The supplier shall be obligated to give notification of the information it requires if the delivery of the service is prevented or made more difficult due to incomplete information.

(3) The client shall notify the supplier of any decline in service levels and any errors in the service without undue delay.

(4) The client shall ensure that the supplier's personnel have access, as necessary, to use the client's hardware and software following any agreed guidelines and directions.

6 Rights

(1) The right of ownership and intellectual property rights to the client's material belong exclusively to the client or a third party.

(2) The supplier shall have the right to use the client's material solely for the delivery of the service to the client and in accordance with the agreement. The client shall be responsible for ensuring that the supplier has the right to use the client's material for purposes of the agreement.

(3) Unless otherwise agreed, intellectual property rights to the supplier's tools and methods used in the production of the service, end results of the service and service documentation shall belong to the supplier or a third party.

(4) The client shall have an unlimited right to use and modify the end results of the service in its internal activities and hand them over to third parties for use for the client's operations.

7 Delays

(1) If a contracting party finds that it will be delayed in the rollout of the service, or considers such delay probable, the contracting party must, without delay and in writing, notify the other contracting party of the delay and its impact on the fulfilment of the agreement. If the supplier is delayed, it shall notify the client of a new delivery time as soon as possible.

(2) If the rollout of the service is delayed due to a reason attributable to the supplier, the supplier shall pay a contractual penalty to the client for each commencing seven (7) day period of time by which the supplier exceeds the due date agreed for the rollout or its part in the agreement. The penalty for each of the aforementioned periods shall be 0.5 per cent of the calculatory price for twelve (12) months of the

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continuous service not performed due to the delay. However, the maximum penalty is 7.5 per cent of the afore-mentioned price. The amount of damage caused by the delay does not affect the amount of the penalty.

(3) The supplier shall not be entitled to receive a contractual penalty due to the client's delay.

(4) If the rollout of the service is delayed or the delivery is interrupted due to a reason attributable to the client, the rollout or delivery of the service shall remain interrupted until the client notifies that the reason for the delay or interruption no longer exists. After receiving the client's notification, the supplier shall announce a new delivery schedule for the service and continue the delivery of the service no later than within one (1) month of the client's notification. If the rollout of the service is delayed or the delivery of the service is interrupted due to a reason attributable to the client for more than three (3) months, the supplier has the right to cancel the agreement.

8 Assistance obligation upon termination of the service

(1) Upon the termination of the service or a part thereof, the supplier commits to assisting the client in transferring the terminating service to a third party or the client itself. As part of its assistance obligation, the supplier is obligated to take the following actions upon the client's request:

- i. The supplier shall continue the delivery of the services to the client under the terms and conditions of the agreement and in the extent requested by the client.
- ii. The supplier shall assist the client in the performance of the tasks required for the transfer in the extent requested by the client and shall take part in the transfer by supplying information, material, support, training and consulting and by working in cooperation with the client and its other service providers. This shall be performed at the supplier's prices under the agreement.

(2) The assistance obligation shall begin already before the agreement terminates, upon a notice of termination or cancellation, or upon the client notifying that it will initiate a procurement process concerning the services under agreement. The obligation shall continue at most until nine (9) months have passed from the termination of the agreement.

(3) Upon the termination or cancellation of the agreement or a specific service whole, the supplier shall return to the client all up-to-date material handed over by the client or the client's material pertaining to the service and shall destroy the client's data material from its volumes, unless otherwise agreed. On its own part, the client shall return the supplier's material to the supplier and shall destroy any copies of the material and parts thereof, unless otherwise agreed. However, any program or material may not be destroyed if the legislation or orders from authorities demand that it be retained.

(4) While offering assistance, the supplier is not required to reveal its confidential working methods.

(5) The supplier shall not have the assistance obligation referred to in *Section 8(1)* if the agreement terminated due to the client's essential breach of the agreement. If the supplier has cancelled the agreement due to the client's non-payment of clear and undisputed charges related to the use of the service, the supplier shall, however, have the contributory obligation referred to in *Section 8(1)* if the client pays its due and payable charges to the supplier and lodges an acceptable security for the payment of future charges.

9 Termination of the agreement

The contracting parties may terminate an agreement that is valid until further notice, or one or more service wholes, following the agreed period of notice. Unless otherwise agreed, the period of notice is six (6) months

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on the part of the client and nine (9) months on the part of the supplier. The notice of termination must be issued in writing.