

FRAMEWORK AGREEMENT

BETWEEN

NORDUnet A/S

Kastruplundgade 22

DK-2770 Kastrup

DENMARK

And

PROVIDER NAME

Provider Address Line 1

Provider Address Line 2

City/Postal Code

Country

concerning

Provision of Learning Management System

Dissemination Level: NORDUnet Public
Owner: NORDUnet Procurement
Reference: ITSFB Vol. 3

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THIS AGREEMENT is made the [...] day of [...] 2016 (the “**Commencement Date**”)

BETWEEN:

- (1) **NORDUnet A/S** a limited company registered in Denmark and
- (2) **[NAME] [LIMITED] [PLC]** a corporation organised and existing under the laws of [*TERRITORY*] with registered number [*NUMBER*] and having its registered office at [*ADDRESS*] (the “**Provider**” or the “**Framework Provider**”);

in each case a “**Party**” and collectively the “**Parties**”.

BACKGROUND:

- (A) The Provider has expertise in the supply of Learning Management System services.
- (B) The Customer has selected the Provider to provide Learning Management System services for this Framework as further described in this Agreement.
- (C) This Agreement puts in place the framework and provides the terms for the agreement of Call Offs between Provider and National Research and Education Networks (NRENs).

IT IS AGREED as follows:

1. Definitions and Interpretation

1.1 In this Agreement the following expressions shall have the following meanings:

- “**Acceptance**” means the point at which any Test Item has successfully passed the Acceptance Tests in accordance with the procedure set out in Schedule 3 (Acceptance Procedure) and “Accepted” shall be construed accordingly;
- “**Acceptance Criteria**” means the criteria against which a Test Item will be measured to determine whether it has been Accepted;
- “**Acceptance Date**” means in respect of each Test Item the date on which that Test Item is Accepted;
- “**Acceptance Tests**” means the acceptance tests for any Test Item as set out in the relevant Call Off and “Acceptance Testing” shall be construed accordingly;
- “**Affiliate**” means, in respect of a body corporate any other entity which directly or indirectly Controls, is Controlled by or is under common Control of that body corporate;
- “**Agreement**” means all parts of this agreement together with its Schedules, and excludes any Call Offs agreed in accordance with clause 3;

“BCDR Plan”	means a business continuity disaster recovery plan developed in accordance with clause 9.1 to ensure the continued supply of the Services;
“Business Continuity Event”	means any incident or event that causes (or is likely to cause) an adverse effect on the performance and delivery of the Services which is material in nature and cannot be managed within the context of normal operating procedures;
“Business Day”	means Monday to Friday (inclusive) except bank or public holidays in the country where the Services are provided;
“Call Off”	means an order for Services placed by the Customer in accordance with clause 3, in the form of the template set out in Schedule 2;
“Change”	means any change to this Agreement;
“Change Control Procedure”	means the change control procedure for managing Changes to this Agreement set out in Schedule 4 (Change Control Procedure);
“Charges”	means the charges payable by the Customer to the Provider in consideration of the provision of the Services as calculated in accordance with the pricing set out in the Call Off;
“Claim”	means any claim, demand, action, cause of action, proceeding or complaint of any nature or kind brought by any third party against a Party to this Agreement;
“Commencement Date”	means the date defined as such at the start of the Agreement;
“Comparable Supply”	has the meaning given to it in clause 14.3.1;
“Confidential Information”	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of a Party, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as “confidential”) or which ought reasonably to be considered to be confidential;
“Critical Service Failure”	means that the level of service for a particular Service Level falls below the Service Level Threshold;
“NRENs”	means NORDUnet and the entities listed in section I.4 of the notice in the Official Journal of the European Union OJ/S S243 25/10/2013 ID:2013-145858-EN.
“Customer Group Member”	means the Customer and any body corporate which is from time to time a holding company of the Customer, a subsidiary of the Customer or a subsidiary of a holding company of the Customer, each as defined in Section 1159 of the Companies Act 2006;

“Data Protection Law”	means Directive 95/46/EC and all implementing national legislation, and all applicable laws and regulations relating to privacy and the processing of personal data from time to time;
“Default”	means any breach of the obligations of the Customer or the Provider (including fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of the Customer or the Provider or their respective Personnel in connection with or in relation to the subject matter of this Agreement and in respect of which such Party is liable to the other;
“Detailed Project Plan”	means the detailed plan for the delivery of the Services under a Call Off developed and agreed in accordance with clause 5.2;
“Dispute”	means any dispute which arises between the parties out of or in connection with this Agreement or the performance, validity or enforceability of it, excluding any Technical Dispute;
“Dispute Notice”	means the notice that one Party shall give to other setting out the nature and particulars of a Dispute in accordance with clause 31.1.1;
“Dispute Resolution Procedure”	means the procedure outlined under clause 31 of this Agreement;
“Documentation”	means all documentation reasonably necessary for the Customer to effectively operate and use the Services;
“End Date”	means [day month year];
“Escalation Procedure”	means the escalation procedure set out in clauses 31.1.2 and 31.1.3;
“Expert”	means a neutral, independent, impartial person appointed to resolve any Technical Disputes between the parties;
“Force Majeure Event”	means any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Provider, its Personnel or any other failure in the Provider or its sub-contractor’s supply chain;
“Good Industry Practice”	means an efficient, effective, prompt, reliable and professional manner and with the standard of skill, care, knowledge and foresight which would reasonably and ordinarily be expected from an experienced person engaged in providing products and services which are the same as, or similar to, the Services and connected products and services;
“Good Value”	means that:

- (a) the benchmarked Charges are within the upper quartile of the charges for Comparable Supply; and
- (b) the benchmarked Service Levels are equal to or greater than the mean average service levels for Comparable Supply;

“Helpdesk and Support” means the helpdesk and support services which each Service Provider is required to supply under a Call Off;

“Insolvency Event” means, of a Party, entering into administration (whether out of court or otherwise), receivership, liquidation, a formal arrangement with its creditors or any analogous proceedings or procedure, or is otherwise insolvent or ceases or threatens to cease to trade;

“Intellectual Property Rights” means all intellectual property rights, including patents, petty patents, utility models, trademarks, design rights, applications for any of the foregoing, copyright, moral rights, database rights and semi-conductor topography rights whether registrable or otherwise, (including applications for and the right to apply for registration of any such rights), and any similar rights in any country whether currently existing or created in the future, in each case for their full term, together with any renewals or extensions;

“Laws” means: (i) any applicable statute or proclamation or any delegated or subordinate legislation; ii) any enforceable community right within the meaning of section 2(1) European Communities Act 1972; iii) any applicable judgement of a relevant court of law which is a binding precedent in Denmark; and iv) any requirements of any Regulator, in each case in force at any time during the Term where the Services is required to be delivered;

“Losses” means all direct losses, liabilities, damages, costs, and expenses howsoever arising (including reasonable legal fees on a solicitor and own client basis and other professional advisors’ fees, and disbursements and costs of investigation, litigation, settlement, judgment, interest, penalties and remedial actions) and “Loss” shall be construed accordingly;

“Normal Working Hours” means 8.00 am to 5.00 pm on any Business Day;

“Outline Project Plan” means the outline plan for the delivery of the Services under a Call Off as set out in the Call Off;

“Personnel” means, in relation to a Party, that Party’s employees, agents, consultants and sub-contractors who are involved in the performance of this Agreement;

“Project Plan” means the Outline Project Plan and, once agreed in accordance with clause 5.2, the Detailed Project Plan;

“Provider Group Member” means the Provider and any body corporate which is from time to time a holding company of the Provider, a subsidiary of the

Provider or a subsidiary of a holding company of the Provider, each as defined in Section 1159 of the Companies Act 2006;

“Rebate”	shall have the meaning given to it in clause 13.13;
“Referral Notice”	means the notice either Party can serve on the other notifying the latter of its desire to refer a Technical Dispute to an Expert;
“Regulator”	means any person or professional body having regulatory, supervisory or governmental authority (whether under a statutory scheme or otherwise) over all or any part of the Services or all or any part of the Provider's or the Customer's businesses, assets, data resources, employees or members or any professional body of which the Customer employees or partners, members, or directors are members and which is relevant to the Services;
“Remedial Plan”	means the plan to be developed as part of the Remedial Plan Process;
“Remedial Plan Process”	means the remedial plan process set out in clause 8;
“Sales Taxes”	means VAT and any other similar sales taxes, imposed on the Provider by law;
“Services”	means the services (including Helpdesk and Support) which each Service Provider is required to supply under a Call Off;
“Service Catalogue”	means the service catalogue contained in Schedule 1 to this Agreement, as updated in accordance with this Agreement;
“Service Credits”	means credits against the Charges to which the Customer is entitled in respect of failures by the Provider to meet Service Levels in accordance with this Agreement;
“Service Levels”	means the level of service to be provided by the Provider for the Services as specified in the Service Catalogue;
“Service Level Threshold”	means the minimum level of service for a particular Service Level as specified in the Service Catalogue;
“Service Provider”	means a Provider Group Member which has entered into a Call Off with a Service Recipient;
“Service Recipient”	means an NREN which has entered into a Call Off with a Service Provider;
“Specifications”	means the specifications for the Services as set out in the Service Catalogue;
“Spot Rate”	means the exchange rate for a pair of currencies published by the central bank for the Customer's currency, or such other reputable source as the Parties may agree;

“Test Items”	means any software or systems which the Customer identifies as being subject to testing;
“Technical Dispute”	means any dispute arising out of or in connection with this Agreement which is technical or objective in nature;
“Term”	means, unless terminated earlier, the period from the Commencement Date to the End Date; and

1.2 Except where the context otherwise requires:

- 1.2.1 clause and Schedule headings are included for convenience only and will not affect the construction or interpretation of this Agreement;
- 1.2.2 any phrase introduced by the words **“including”**, **“includes”**, **“in particular”**, **“for example”** or similar shall be construed as illustrative and without limitation to the generality of the related general words;
- 1.2.3 unless expressly stated otherwise, any reference to a clause or Schedule is to the relevant clause or Schedule of this Agreement;
- 1.2.4 use of the singular includes the plural and vice versa;
- 1.2.5 any reference to **“persons”** includes natural persons, firms, partnerships, bodies corporate, corporations, associations, organisations, governments, government bodies, states, foundations and trusts (in each case whether or not incorporated and whether or not having separate legal personality);
- 1.2.6 all references to the Parties include their permitted successors and assigns;
- 1.2.7 any reference to a statute or provision of a statute includes references to:
 - (a) that statute or provision as amended, extended or applied by any other provision;
 - (b) any re-enactment of that statute or provision (with or without change); and
 - (c) any regulation, order, code of practice or similar thing having the force of law made under that statute or provision or any provision falling within clauses a) or b); and
- 1.2.8 references to **“indemnifying”** any person against or with respect to any circumstance shall include indemnifying and keeping it (and each of its Affiliates) harmless, on an after tax basis, from all Claims from time to time made against it and each of its Affiliates and all Losses suffered, made or incurred by it and each of its Affiliates arising from or in relation to such circumstance.

2. Commencement Date and Duration

- 2.1 This Agreement shall commence on the Commencement Date and shall remain in force until the End Date unless terminated earlier in accordance with this Agreement or at law.

3. Call Offs

- 3.1 Where an NREN wishes to purchase any Service from a Provider Group Member, it shall send to the Provider Group Member the template Call Off set out in Schedule 2 specifying:

- 3.1.1 the identity of the Service Recipient;
 - 3.1.2 the specific Service to be supplied by the Provider, which may only include Services from the Service Catalogue;
 - 3.1.3 the term of the Call Off;
 - 3.1.4 the Charges for the Services which shall be calculated in accordance with the pricing set out in the Service Catalogue;
 - 3.1.5 the Delivery Location;
 - 3.1.6 where the Customer wishes to purchase the Services in a currency other than Euro, the Spot Rate for the date such template Call Off is sent, which shall apply to the draft Call Off provided the Call Off is agreed within ninety days of such date;
 - 3.1.7 whether a BCDR Plan is required.
- 3.2 Following receipt of the template Call Off by the Provider Group Member, the NREN and Provider Group Member shall use all reasonable endeavours to agree (acting in good faith and within [14] days):
- 3.2.1 the Outline Project Plan for the supply of the Service(s) agreed between the Parties in writing; and
 - 3.2.2 any additional terms applicable to the Call Off, including any amendments required by mandatory rules of local law.
- 3.3 Following agreement of the terms required in clause 3.2 the Call Off template shall be completed and the authorised representatives of both Parties shall sign the Call Off.
- 3.4 The Framework Provider shall send, or procure that the Service Provider sends, a copy of each signed Call Off to NORDUnet within 14 days after the Call Off is signed by both Parties to it.
- 3.5 Once signed by both Parties the Call Off shall be a separate contract incorporating the terms of this Agreement.
- 3.6 The following provisions of this Agreement shall apply only in respect of Call Offs, and shall have no effect between NORDUnet and the Framework Provider (except where such parties enter into a Call Off):
- clause 5 (Implementation and Acceptance Testing);
 - clause 6 (Services);
 - clause 7 (Service Credits);
 - clause 8 (Remedial Plan Process);
 - clause 9 (Business Continuity and Disaster Recovery);
 - clause 10 (Due Diligence);
 - clause 11 (Provider Equipment);

clause 12 (Customer Responsibilities);

clause 13 (Charges and Payment);

clause 14 (Benchmarking);

clause 20 (Intellectual Property Rights);

clause 21.5 (Service Recipient Call Off Liability Limit);

clause 21.6 (Service Provider Call Off Liability Limit);

clause 24.2.2 (Termination for Three Consecutive Service Level Breaches);

clause 24.2.3 (Termination for Two Critical Service Failures);

clause 24.3 (Termination for Non-Payment);

clause 26.2.3 (Refund of Charges);

Schedule 3 (Acceptance Procedure).

3.7 The Framework Provider shall procure that no Provider Group Member provides any services not covered by the scope of this Agreement under any Call Off.

4. Governance

4.1 The Provider shall appoint a senior employee with suitable project management skills and experience and approved by the Customer (such approval not to be unreasonably withheld or delayed) to be the day to day contact for the supply of the Services (the “**Provider Representative**”).

4.2 The Customer shall appoint an employee as its representative (the “**Customer Representative**”) to liaise with the Provider Representative, and may change its nomination by notice to the Provider.

4.3 The Customer Representative and the Provider Representative will serve as the principal interface between the Parties with respect to all issues relating to the delivery of the Services and will meet at such intervals as may be reasonably required by the Customer to monitor and review the Provider’s provision of the Services on an ongoing basis. Approvals or consents given by either Party (including under provisions governing change control) will not be effective for the purposes of this Agreement unless given by the Customer Representative or Provider Representative (as applicable).

4.4 The Provider Representative must attend meetings with the Customer Representative or such other representatives of the Customer as and when reasonably required by the Customer, including any meeting required under the Dispute Resolution Procedure.

5. Implementation and Acceptance Testing

5.1 The Provider shall supply the Services in accordance with the Project Plan.

5.2 The Provider shall develop a draft Detailed Project Plan based on the Outline Project Plan and deliver it to the Customer within one (1) month of signature of the Call Off. The Detailed Project Plan must:

5.2.1 contain information at the level of detail necessary to manage the project effectively and including the identification of key dates for delivery and testing;

- 5.2.2 take account of all dependencies known to, or which should reasonably be known to, the Provider; and
 - 5.2.3 contain a detailed responsibility matrix (“**Responsibility Matrix**”) identifying all Customer dependencies.
- 5.3 Once the draft Detailed Implementation Plan is approved by the Customer in writing (such agreement not to be unreasonably delayed or withheld), the Provider shall:
- 5.3.1 monitor its performance against the Project Plan; and
 - 5.3.2 report to the Customer on such performance.
- 5.4 The Provider shall ensure that each Test Item is ready for and will pass the Acceptance Tests by the relevant date specified in the Project Plan.
- 5.5 Acceptance testing of the Services shall be conducted in accordance with Schedule 3 (Acceptance Testing).
- 5.6 If the Provider becomes aware that it will not (or is unlikely to) meet the timescales set out in the Project Plan or pass any Acceptance Tests, it shall as soon as reasonably practicable:
- 5.6.1 notify the Customer of the fact of the delay and summarise the reasons for it and the likely consequences; and
 - 5.6.2 submit a draft correction plan for approval by the Customer (such approval not to be unreasonably withheld). Once the correction plan has been approved by the Customer, the Provider shall implement the correction plan.
- 5.7 Subject to clause 5.5, if any Test Item does not pass the Acceptance Tests by the relevant date specified in the Project Plan and this is caused by the Provider, then as a sole and exclusive remedy of the Customer the Provider shall pay to the Customer a delay penalty of 0,5 percent per week of the total agreed Charges for the first 12 months for the project in delay, for a maximum of 10 weeks for any Call Off.
- 5.8 Where a delay is attributable in part to the Provider’s Default and in part to the Customer’s Default the Parties shall negotiate in good faith with a view to agreeing a fair and reasonable apportionment of responsibility for the delay and the amounts specified in clause 5.7 shall be reduced accordingly.

6. Services

- 6.1 The Provider shall supply the Services by appropriately skilled and qualified individuals and in accordance with:
- 6.1.1 the terms of this Agreement;
 - 6.1.2 the Specifications and Project Plan;
 - 6.1.3 the standards and security requirements set out in the Service Catalogue;
 - 6.1.4 the Service Levels;
 - 6.1.5 Good Industry Practice;

- 6.1.6 all Laws, and other mandatory codes of practice and standards from time to time applicable to the Provider of the supply of the Services; and
- 6.1.7 except where they impose material additional costs on the Provider, all lawful and reasonable directions, instructions and requests from the Customer.
- 6.2 In supplying the Services and in performing its obligations under this Agreement, the Provider shall:
 - 6.2.1 use all reasonable skill and care;
 - 6.2.2 devote such knowledge, personnel and time as is reasonably necessary for the proper and timely performance of the Services and its obligations under this Agreement;
 - 6.2.3 ensure that all its Personnel are appropriately skilled, trained and experienced to providing the Services.
- 6.3 Nothing in this Agreement shall operate to appoint the Provider as exclusive provider of the Services or any other goods or services to the Customer. The Parties agree that each NREN shall only be committed to purchase Services by signing a Call Off.
- 6.4 The Provider shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services to the Customer. Any improvement identified by the Provider that the Customer wishes to incorporate shall be subject to the Change Control Procedure. To the extent that such cost for which the Provider is responsible are significant the Parties shall agree how to handle the cost impact within the Change Control Procedure.
- 6.5 The Provider shall be responsible for the costs of implementing any Changes to Services, and to any Software in respect of which Helpdesk and Support are being provided, resulting from any change in any Laws after the Commencement Date (with the exception of any changes to Laws which affect the business of the Customer and not the Provider).
- 6.6 The Provider will procure that its Personnel comply with all obligations of the Provider under this Agreement and the Provider will be liable for any act or omission of any Provider Personnel as if it were its own.
- 6.7 The Provider will advise the Customer immediately in writing on becoming aware:
 - 6.7.1 that it may be unable or is unlikely to be able to perform the Services in accordance with this Agreement (including any failure or potential failure to meet the Service Levels); or
 - 6.7.2 of any issue that may have a material impact on its ability to perform the Services in accordance with this Agreement.

Defects

- 6.8 If any defect in the Services is identified within the longest of:
 - 6.8.1 12 months after acceptance of that Service; or
 - 6.8.2 any warranty or guarantee period provided by the Provider in respect of such Services,the Provider shall rectify such defect within ten (20) Business Days of notification of such defect at its own risk and expense.

7. Service Credits

- 7.1 If the Provider fails to meet a Service Level in any month, a Service Credit will be payable by the Provider to the Customer.
- 7.2 Service Credits will be calculated monthly in accordance with the Service Catalogue and shall be shown as a deduction from the amount due from the Customer to the Provider in the next invoice then due to be issued under this Agreement. If no invoice is due to be issued then the Provider shall issue a credit note against the previous invoice and the amount for the Service Credits shall be repayable by the Provider as a debt within thirty (30) days of issue. Cash compensation will be made in case such payables do not exist.
- 7.3 Where Service Credits are provided as a remedy for a failure to meet the Service Levels in respect of the relevant Services it shall be the Customer's exclusive financial remedy except where:

7.3.1 the failure is a Critical Service Failure;

7.3.2 the failure has arisen due to theft, gross negligence, fraud, or wilful default; or

the Customer becomes entitled to terminate (regardless of whether it does terminate) this Agreement at law or under any of clauses regarding termination for default 24.1.1, 24.1.2, 24.2.1, 24.2.2 or 24.2.4.

In case a Service is subject to a Service Level including service penalty or credits, Sections 6.7, 6.8 and 8 shall not be applicable to any defect, error or delay in such a Service.

8. Remedial Plan Process

- 8.1 If the Provider commits a Default and the Default is capable of remedy then the Provider shall:
- 8.1.1 allocate such resources as may be necessary to remedy the Default and any consequences of such Default as soon as practicable and ensure that the Default does not reoccur;
- 8.1.2 investigate, assemble and preserve relevant information with respect to, and report on the causes of, the incidents which led to such Default, including performing a root-cause analysis to identify the cause of the Default;
- 8.1.3 promptly, and in any event within such timescales as are reasonably required by the Customer, provide the Customer with a draft Remedial Plan.
- 8.2 The Provider shall ensure that each Remedial Plan:
- 8.2.1 specifies the steps that the Provider proposes to take to remedy that Default (including actions and timings);
- 8.2.2 specifies the preventative measures (including the allocation of additional resources) which the Provider shall implement to avoid any recurrence of the Default; and
- 8.2.3 is in sufficient detail for the plan to be properly evaluated by the Customer.
- 8.3 The Provider shall comply with the Remedial Plan following its agreement by the Parties and provide regular updates to the Customer of progress against the Remedial Plan. The Provider shall reimburse to the Customer in full for any Losses incurred by the Customer in relation to the implementation of the Remedial Plan.

- 8.4 The Customer shall not be required to follow the Remedial Plan Process (and the material Default shall be deemed as irremediable) in respect of a material Default where:
- 8.4.1 a Remedial Plan has previously been implemented in respect of the relevant material Default but the Provider failed to remedy the Default by those means; or
 - 8.4.2 there is an occurrence of substantially the same material Default within a period of three (3) months following the implementation of any previous Remedial Plan.

In such an instance the provisions of clause 26 shall apply.

9. Business Continuity and Disaster Recovery

- 9.1 The following provisions of clause 9 shall apply to all Call Off's in respect of the Services supplied under that Call Off.
- 9.2 The Provider shall submit to the Customer within 30 days of signature of a Call Off an appropriate and effective business continuity and disaster recovery plan ("**BCDR Plan**") to ensure the continued supply of the Services in the event of a Business Continuity Event.
- 9.3 The BCDR Plan submitted to the Customer pursuant to clause 9.1 shall be subject to the Customer's approval (such approval not to be unreasonably withheld or delayed). The Provider shall promptly make any changes to the BCDR Plan that are reasonably required by the Customer. Where the Provider disagrees with the Customer's request, both Parties shall cooperate in good faith to resolve the disagreement.
- 9.4 The Provider shall establish, maintain and regularly review its processes and procedures with respect to the identification of any threats or risks to the supply of the Services, how such threats and risks may be mitigated and how the supply of the Services may be maintained in the event of any such identified threats or risks materialising. The Provider shall use the information obtained during such a review to propose amendments to the BCDR Plan as appropriate. Any such amendments proposed shall be subject to the Customer's approval (such approval not to be unreasonably withheld or delayed).
- 9.5 The Provider shall, on request by the Customer for each Call Off and no more than once a year:
- 9.5.1 test the BCDR Plan in the presence of the Customer or any third party nominated by the Customer; and
 - 9.5.2 promptly make any changes to the BCDR Plan that are reasonably required by the Customer.
- 9.6 Once approved, the BCDR Plan may not be amended except pursuant to an update under this clause, or in accordance with the Change Control Procedure.
- 9.7 The Provider shall implement the BCDR Plan in the event of a Business Continuity Event.
- ## 10. Due Diligence
- 10.1 The Provider acknowledges and confirms that it has had an opportunity to carry out a thorough due diligence exercise in relation to the Customer's service requirements and has asked the Customer all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Agreement.

11. Provider Equipment

- 11.1 The Provider will be responsible for providing all equipment required for the provision of the Services (“**Provider Equipment**”). The Provider will ensure that the Provider Equipment is in all ways suitable for the provision of the Services in accordance with the Specifications.

12. Customer Responsibilities

- 12.1 The Customer shall:
- 12.1.1 provide to the Provider such information as the Provider may reasonably require for the performance of the Service(s)
 - 12.1.2 comply with technical and security requirements and instructions as the Provider may reasonably require for the performance of the Service(s)
 - 12.1.3 uphold the technical standards, software and equipment required to receive the Service(s) as reasonably instructed by Provider
 - 12.1.4 accept temporary suspension of Services without liability to Provider in case Service(s) is affected due to breach of 12.1.2 and 12.1.3. Provider shall however undertake all reasonable efforts to limit the impact and duration of the suspension.

13. Charges and Payment

- 13.1 In consideration of the provision of the Services by the Provider under a Call Off, the Customer will pay to the Provider the Charges set out in that Call Off, which shall be determined based on the charges set out in the Service Catalogue.
- 13.2 Unless otherwise agreed in any Call Off, the Charges will be invoiced by the Provider once it has been notified of the Customer’s acceptance of the relevant Service, which will occur in (a) accordance with the Acceptance Procedure in respect of Services which contains any Test Items and (b) within 10 Working Days of delivery in respect of any Services which does not contain any Test Items (unless such Software or Services is rejected for being in breach of this Agreement). Any undisputed Charges will fall due and be paid within thirty (30) days of receipt of a valid invoice, correctly rendered together with all substantiating documentation as is reasonably required by the Customer.
- 13.3 All payments made by the Customer under this Agreement shall be made by wire transfer, certified cheque or bank draft and be free and clear of all bank charges.
- 13.4 The obligation to pay the Charges will constitute the Customer’s entire payment liability to the Provider for the supply of the Services.
- 13.5 If the Customer is not able to verify or (acting reasonably) disputes any invoiced amount:
- 13.5.1 the Customer may withhold payment of the amount in question (the “Disputed Amount”);
 - 13.5.2 the Customer and the Provider shall work together to endeavour to agree whether or not any Disputed Amount should have been invoiced. If the matter is not resolved within thirty (30) days, either Party to the dispute in question may refer the matter to the Dispute Resolution Procedure;
 - 13.5.3 any amounts that are agreed or, under the Dispute Resolution Procedure, determined to have been underpaid by the Customer shall be re-invoiced to the Customer, in accordance

with this clause 13. The due date for payment for the purposes of applying this clause 13.5.3 shall be calculated by reference to the re-submitted invoice and not the original invoice; and

13.5.4 any amounts that are agreed or, under the Dispute Resolution Procedure, determined to have been overpaid by the Customer shall be credited to the Customer.

13.6 If any sum payable under this Agreement is not paid by the due date the Party to whom the same is due reserves the right to charge interest from the date due for payment to the actual date of payment (both before and after judgment) at the rate of two percent (2%) above the European Interbank Offer Rate from time to time in force. Such interest will accrue on a daily basis.

13.7 The prices contained in the Service Catalogue shall be in Euros, and shall only be changed by agreement in writing between NORDUnet and the Provider; and/or

13.8 Not used

13.9 The Customer may pay the Charges in a currency other than Euro where set out in the relevant Call Off. In such a case:

13.9.1 the Charges payable by the Customer for Services shall be fixed at the Spot Rate applicable under Clause 3.1.6 until the first anniversary of the Call Off Commencement Date, and on each anniversary of the Call Off Commencement Date, the Charges payable for Services under that Call Off shall be adjusted to take account of any change in the Spot Rate whereby the Spot Rate has changed by more than 5% since the last time the prices were changed in accordance with this clause 13.9.1.

13.10 Where the Customer pays the Charges in a currency other than Euro, or where the Provider prices Services in a currency other than Euro, the Provider shall be responsible for any costs associated with currency conversion, including international transfer fees, commission and exchange pricing spread.

13.11 The Customer may set off any sum of money which is:

13.11.1 recoverable from the Provider by the Customer; and/or

13.11.2 payable by the Provider to the Customer (including in respect of any breach of this Agreement),

against any sum then due, or which at any later time may become due, to the Provider under or in relation to this Agreement.

13.12 The Charges are inclusive of all taxes, fees, charges and duties, excluding Sales Taxes.

13.13 During the contract period The Framework Provider shall provide that, before the 15th calendar day of each month, the Service Provider shall provide NORDUnet with a report of the accumulated invoiced amount for each NREN as well as a sum total for all NRENs, including a calculation of any possible rebate and/or the difference between the total sum and the forthcoming rebate trigger level.

14. Benchmarking

14.1 The Customer shall be entitled to benchmark the Service Levels and Charges for the Services in order to determine whether they are Good Value. Any such "**Benchmarking**" may be conducted annually (provided no such benchmarking shall occur in the first two years of the Term) and may be applied to individual service elements and not just the Services as a whole.

- 14.2 In respect of each benchmarking initiated by the Customer, the Customer shall appoint an independent, established and industry recognised organisation that has demonstrated benchmarking expertise, methodology and data sources (the “**Benchmarker**”).
- 14.3 Each Benchmarking shall be carried out by the Benchmarker in accordance with this clause 14 and the following general principles and criteria:
- 14.3.1 to make the comparison meaningful, there will be a representative, statistical sampling of a sufficient number of receivers of services comparable to the Services, having regard to factors such as the nature and size of the Provider and the Customer, the Service Levels and volumes, any particular or unique circumstances in which the Services are received/supplied and any other relevant factors (“**Comparable Supply**”);
- 14.3.2 the Benchmarker’s data used to make the Benchmark will be based on services performed for third parties no more than twelve (12) months prior to the dates on which the Services were performed/provided, unless a longer period is agreed by the Parties in writing; and
- 14.3.3 the Benchmarker will use appropriate adjustment factors required to take into consideration any differences between the Comparable Supply and the Services, such as the differences in geography, nature or type of the Comparable Supply and the Services.
- 14.4 In respect of each benchmarking, the Benchmarker shall be required to:
- 14.4.1 provide copies of the reports of the Benchmarker’s findings to the Customer and the Provider; and
- 14.4.2 undertake to comply with the reasonable confidentiality requirements of the Customer and the Provider.
- 14.5 The Provider shall provide full co-operation and documents to the Benchmarker in order for the Benchmarker to carry out the benchmarking, including access to relevant records and its Personnel.
- 14.6 The Customer and the Provider shall bear their own costs in respect of their respective co-operation with the Benchmarker. The costs of the Benchmarker shall be borne equally by the Customer and the Provider.
- 14.7 Subject to clause 14.8, if a benchmarking finds that the Service Levels and/or Charges are not Good Value, the Parties shall amend this Agreement (including any Call Off) within 90 days so that they become Good Value. Benchmarking shall not have any retroactive effect on Services or projects performed or ordered prior to the said amendment
- 14.8 If either the Customer or the Provider disputes the findings of the benchmarking they shall be entitled to inform the Benchmarker about the areas of disagreement within twenty (20) days of the Benchmarking report being made available. The Benchmarker shall have a period of twenty (20) days to respond to any such notice and, if necessary, amend the findings of the Benchmarking or decline to do so with the reasons for this set out in a written report. If either the Customer or the Provider does not agree with the revised benchmarking or the Benchmarker’s report, then the Escalation Procedure shall apply.
- 15. Euro Change**
- 15.1 If the Euro ceases to be used as a currency then:

- 15.1.1 the Parties shall, acting reasonably and in good faith, agree an alternative currency (the “New Currency”). The Parties shall ensure that the choice of such New Currency does not create a financial advantage or disadvantage to either Party. In the event that the Parties are unable to agree on the New Currency, the New Currency shall be the currency adopted by Germany. **[Note: Suggested as this is the location of the European Central Bank].**
- 15.1.2 all charges specified in this Agreement to be in Euros shall be converted into the New Currency on the date the Euro officially ceases to exist (“**Euro Expiry Date**”) and the Parties shall make all necessary Changes to this Agreement to reflect this;
- 15.1.3 any invoices which are due but have not been paid as at the Euro Expiry Date shall be converted into and paid in the New Currency (and the Provider shall reissue such invoices to the Customer);
- 15.1.4 any conversion from the Euro to the New Currency shall be at the official rate of exchange recognised by the central bank of the country of the New Currency; and

this Agreement shall be subject to such reasonable changes in interpretation as may be appropriate to minimise the economic effect on the Parties to this Agreement of the change to the New Currency.

16. Change Control

- 16.1 Any request for a Change shall be dealt with in accordance with the Change Control Procedure set out in Schedule 4.

17. Reports, Monitoring and Audit Rights

- 17.1 The Provider shall:
 - 17.1.1 during the Term and for a period of 7 years afterwards maintain in a suitably secure manner copies of all data, records and reports necessary in order to verify the Rebates, the Charges, its compliance with this Agreement and its performance against the Service Levels;
 - 17.1.2 during the Term monitor its performance against the Service Levels;
 - 17.1.3 during the Term provide the Customer with a report which details its performance against the Service Levels and any Service Credits due at the end of each month;
 - 17.1.4 during the Term provide such additional reports to the Customer as it may reasonably request in order to verify the Provider’s compliance with this Agreement.
- 17.2 The Customer may monitor the performance of the Services by the Provider. The Provider shall co-operate, and shall procure that its Personnel co-operate, with the Customer in carrying out the monitoring at no additional charge to the Customer.
- 17.3 The Customer shall have the right, as reasonably required and upon reasonable notice, to perform (either itself or through an appointed representative) full and detailed audits and inspections of the Provider in order to verify the Charges (excluding calculations related to profitability), the Provider’s compliance with this Agreement and its performance against the Service Levels. Except where required by a public body or in the case of suspected fraud, such audits and inspections shall be limited to two per calendar year.

- 17.4 The Framework Provider shall procure that NORDUnet may perform (either itself or through an appointed representative) full and detailed audits and inspections of each Service Provider in order to verify correct payment of the Rebates.
- 17.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 17 unless an audit identifies a material Default by the Provider which is relevant to this Agreement, in which case the Provider shall reimburse the Customer for all the Customer's reasonable costs and expenses incurred in the course of performing or facilitating the applicable audit.
- 17.6 The Customer shall give the Provider reasonable notice of its intention to audit which shall be conducted during Normal Working Hours (save in the case of any event reasonably deemed by the Customer to constitute an emergency, including in respect of any event of fraud, or indicative of a likelihood of fraud, by the Provider, any event which is likely to compromise or adversely affect the health and safety of any persons or any event which would have a material adverse effect on the Customer).
- 17.7 The provisions of clauses 17.2 to 17.7 shall survive for a period of seven years after the Term whether the Agreement expires or is terminated for any reason.

18. Warranties and Undertakings

- 18.1 The Provider represents, warrants and undertakes to the Customer that:
- 18.1.1 it has, and shall continue to have full capacity and authority and all necessary governmental, administrative, regulatory and third party authorisations, licences, permits and consents and rights necessary to enter into this Agreement and supply the Services;
 - 18.1.2 it owns or is the licensee of all necessary Intellectual Property Rights to the extent necessary to enter into and perform this Agreement;
 - 18.1.3 the supply of the Services and their use by the Customer will not infringe the Intellectual Property Rights of any third party;
 - 18.1.4 it is a company duly incorporated, validly existing and in good standing under the Laws of the territory of its incorporation and that the Agreement is executed by duly authorised representatives of the Provider;
 - 18.1.5 as at the date of the Agreement, the Provider is not subject to any Insolvency Event;
 - 18.1.6 the Provider shall use all reasonable endeavours, including maintaining industry-standard development protocols and industry-standard, up to date anti-virus software and firewalls, not to introduce into any Customer system any computer program code, computer virus, computer worm, trojan horse, authorisation key, licence control utility or software lock, which is intended by any person to, is likely to, or may, impair the operation of any such interface or equipment or cause loss of, or corruption or damage to, any program or data held on such systems or damage the reputation of the Customer;
 - 18.1.7 there is no material outstanding litigation, arbitration or other disputed matter to which the Provider is a Party which may have a material adverse effect upon the fulfilment of the Provider's liabilities, responsibilities and obligations pursuant to this Agreement; and

18.1.8 all statements and representations made in connection with tendering for, and entering into, this Agreement were true and accurate when made, remain to the best of its knowledge, information and belief, true and accurate at the date of the Agreement, and that it has advised the Customer of any fact, matter or circumstance of which it has become aware which would render any such statement or representation to be false or misleading.

19. Indemnities

- 19.1 The Provider will indemnify the Customer against any Losses incurred by the Customer in respect of:
- 19.1.1 any fines or other penalty imposed on the Customer under applicable Laws arising as a result of a breach by the Provider of its obligations under the Agreement or any Call Off;
 - 19.1.2 any actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with the receipt of the benefit of the Services;
 - 19.1.3 any fraud or wilful misconduct by the Provider, or any of its Personnel.
- 19.2 If the use of the Services infringes or, in the opinion of impartial qualified legal counsel jointly appointed by both Parties, is likely to infringe the Intellectual Property Rights of any third party, the Provider shall consider the balance in equal measure as to the possible impact to the Customer and having done so, either:
- 19.2.1 replace or modify all or part of the Services so as to render it non-infringing, provided that it remains functionally equivalent, and reimburse to the Customer all additional costs and expenses the Customer incurs in adapting its systems to be compatible with such replaced or modified Services, or
 - 19.2.2 procure for the Customer a licence from the relevant third party to continue receiving the Services.
- 19.3 If the Provider is unable to meet its obligations under clause 19.2, this Agreement and the licences granted under clause 20 may be terminated by either Party with immediate effect, without prejudice to the Customer's right to seek further remedies, including damages, for any Loss arising out of such termination.

20. Intellectual Property Rights

- 20.1 The Provider and its licensors shall retain all right, title and interest in all of their pre-existing Intellectual Property Rights in any documents, software, materials or works used or provided to the Customer in connection with this Agreement, and any modifications to any of them.
- 20.2 The Customer and its licensors shall retain all right, title and interest in all of their pre-existing Intellectual Property Rights in any documents, software, materials or works used or provided to the Provider in connection with this Agreement and any modifications to any of them.
- 20.3 Subject to clause 20.1, the Intellectual Property Rights in any documents, materials or works created by the Provider or any of its Personnel in the performance of this Agreement (including any reports provided to the Customer under this Agreement, but excluding any modifications to pre-existing Provider documents, materials or works as set out in clause 20.1) ("**Bespoke Materials**") shall be owned by the Customer and shall, at the Commencement Date or (if later) on creation of the rights, vest in the Customer. The Provider assigns and agrees to assign (to the extent such Intellectual Property Rights are not capable of prospective assignment) all such Intellectual Property Rights with full title guarantee to the Customer.

- 20.4 The Provider shall procure the irrevocable waiver of all moral rights in the Bespoke Materials to the extent permitted by law.
- 20.5 The Customer grants to the Provider a non-exclusive, perpetual, irrevocable, royalty-free, licence to use, modify, sublicense, create derivatives of and assign the Intellectual Property Rights in Bespoke Materials for commercial and internal purposes of the Provider.
- 20.6 Notwithstanding any other provision of this Agreement, the contents of all Bespoke Materials consisting of Customer's commercial, financial, personal or other processed data shall be the Confidential Information of the Customer.
- 20.7 Subject to the payment of the applicable licence fees set out in the Service Catalogue, the Provider grants to the Customer Group Members and their other service providers a non-exclusive, perpetual, irrevocable (other than for material breach), royalty-free, non-sub-licensable licence to use the Documentation solely for the internal business purposes of the Customer Group. The Provider shall, to the extent such consent is required, procure the consent of any third parties to such grant at its own cost.

Software

- 20.8 Subject to the payment of the applicable licence fees set out in the Service Catalogue, the Provider hereby grants the Customer Group Members and their other service providers a non-exclusive, perpetual, worldwide, irrevocable (other than for material breach), non-sub-licensable, non-transferable licence to use the Software, solely for the internal business purposes of the Customer Group Members.

Licence Restrictions

- 20.9 The Customer may make one copy of the Software solely for backup and archival purposes. The Customer may not, without the Provider's written consent, (i) sublicense, assign, lease or transfer the licence granted hereunder; (ii) grant any rights in the Software or Documentation not expressly authorised herein; or (iii) modify the Software. The Customer shall not reverse-engineer any of the Equipment or decompile any of the Software or otherwise attempt to derive the source code of the Software, subject to clause **Error! Reference source not found.**
- 20.10 The Customer shall preserve intact any notice of copyright, trademark, logo, legend or other notice of ownership from any original or copies of the Software or Documentation.

21. Limitation of Liability

- 21.1 This clause 21 sets out the entire liability of the Parties (including any liability for the acts and omissions of their respective Personnel) in respect of all claims arising under or in connection with this Agreement, whether arising in contract, tort (including negligence), breach of statutory duty or otherwise, howsoever arising.
- 21.2 Nothing in this Agreement shall limit or exclude the liability of either Party for:
 - 21.2.1 death or personal injury resulting from negligence;
 - 21.2.2 fraud or fraudulent misrepresentation;
 - 21.2.3 any repudiation or deliberate breach of this Agreement or any intentionally harmful or negligent act or omission of the Provider;

- 21.2.4 any Losses recoverable by the Customer under any indemnity given by the Provider in this Agreement;
 - 21.2.5 the wrongful termination or abandonment of the Agreement by the Provider; or
 - 21.2.6 any other matter in respect of which liability cannot by any applicable Law be excluded.
- 21.3 Subject to clause 21.2, neither the Customer nor the Provider shall have any liability to each other for:
- 21.3.1 loss of goodwill or injury to reputation;
 - 21.3.2 loss of business opportunity;
 - 21.3.3 indirect, consequential or special loss or damages; and/or
 - 21.3.4 loss of profits, savings or revenue,
- regardless of the form of action, whether in contract, strict liability or tort (including negligence), and regardless of whether the either Party knew or had reason to know of the possibility of the loss, injury, or damage in question.
- 21.4 The provisions of clause 21.3 shall not limit the Customer's right to recover Losses from the Provider caused by:
- 21.4.1 additional and/or administrative costs and expenses incurred by the Customer arising from a Default by the Provider including the costs of implementing any work-around in connection with such Default and the additional costs including overtime, related expenses and overheads (including travel, accommodation and wages);
 - 21.4.2 for wasted expenditure or Charges rendered unnecessary and incurred by the Customer arising from the Default of the Provider;
 - 21.4.3 the costs of any third party engaged by the Customer to make good any Default of the Provider;
 - 21.4.4 additional costs to maintain the Services arising from a Default by the Provider; and
 - 21.4.5 for any loss or corruption of data, including costs of rectification, arising out of a Default by the Provider.

Call Off Liability Limit

- 21.5 Subject to clause 21.2, the aggregate liability of the Service Recipient to the Service Provider in respect of all Losses suffered by the Service Provider arising out of or in connection with any and all Defaults by the Service Recipient and any and all torts or breaches of statutory duty committed by the Service Recipient (or, as the case may be any officer, employee, sub-contractor or agent of the Service Recipient) in connection with the performance or purported performance of the Service Recipient's obligations shall be limited to and will in no circumstances whatsoever exceed 100% of total Charges paid or invoiced and due to be payable under this Call Off during the 12 months prior to the event giving rise to the relevant claim under this Call Off. Where the Default occurs in the first 12 months of this Call Off, such amount shall be 100% of the Charges which have been paid or are payable under this Call Off in the first 12 months of its term.

21.6 Subject to clause 21.2, the annual aggregate liability of the Service Provider for each Call Off and for each individual service under that Call Off (starting from the Commencement Date or anniversary thereof) to the Service Recipient in respect of all Losses suffered by the Service Recipient and/or Customer arising out of or in connection with any and all Defaults by the Service Provider and any and all torts or breaches of statutory duty committed by the Service Provider (or, as the case may be any officer, employee, sub-contractor or agent of the Service Provider) in connection with the performance or purported performance of the Service Provider's obligations shall be limited to and will in no circumstances whatsoever exceed 100% of total Charges paid or invoiced and due to be payable under this Call Off during the 12 months prior to the event giving rise to the relevant claim under this Call Off. Where the Default occurs in the first 12 months of this Call Off, such amount shall be 100% of the Charges which have been paid or are payable in the first 12 months of the Call Off term.

Framework Liability Limit

21.7 Subject to clause 21.2, the aggregate liability of NORDUnet to the Framework Provider in respect of all Losses suffered by the Framework Provider arising out of or in connection with any and all Defaults by NORDUnet and any and all torts or breaches of statutory duty committed by NORDUnet (or, as the case may be any officer, employee, sub-contractor or agent of NORDUnet) in connection with the performance or purported performance of NORDUnet's obligations shall be limited to and will in no circumstances whatsoever exceed EUR 5.000 (five thousand Euros).

21.8 Subject to clause 21.2, the aggregate liability of the Framework Provider to NORDUnet in respect of all Losses suffered by NORDUnet arising out of or in connection with any and all Defaults by the Framework Provider and any and all torts or breaches of statutory duty committed by the Framework Provider (or, as the case may be any officer, employee, sub-contractor or agent of the Framework Provider) in connection with the performance or purported performance of the Framework Provider's obligations shall be limited to and will in no circumstances whatsoever exceed EUR 5.000 (five thousand Euros).

NORDUnet's Liability for Service Recipients

21.9 Subject to clause 21.2, NORDUnet shall have no liability whatsoever to the Framework Provider or to any Provider Group Member for any act, omission or statement of any NREN or any Service Recipient (except where that Service Recipient is NORDUnet), regardless of the form of action and regardless of whether NORDUnet knew or had reason to know of the possibility of the loss, injury, or damage in question.

Service Credits Cap

21.10 Service Credits payable by the Service Provider to the Service Recipient under this Call Off during any year of the Call Off (each starting from the Commencement Date or anniversary thereof) shall be limited to and will in no circumstances whatsoever exceed 20% of total Charges which have been paid or will be payable under this Call Off during that year of the Call Off.

22. Insurance

22.1 The Provider shall, at its own expense, take out and maintain in force during the Term and for the period of 6 (six) months after termination of this Agreement with a reputable insurer approved in writing by the Customer the following insurance policies:

22.1.1 professional indemnity insurance for a minimum amount of EUR 1,000,000 (one million Euro) on an each and every claims basis;

22.1.2 public liability insurance for a minimum amount of EUR 1,000,000 (one million Euro) on an each and every claims basis;

22.1.3 employer's liability insurance for a minimum amount required by law; and

22.1.4 adequate insurance against all its liabilities under this Agreement, including for obligations that survive expiry or termination of this Agreement,

(together the "**Provider Policies**").

22.2 The Provider shall (and shall procure its personnel and sub-contractors shall) comply with all obligations on the part of the Provider and meet all conditions of the Provider Policies.

22.3 the Provider shall at the Customer's reasonable request from time to time, provide to the Customer proof that:

22.3.1 all relevant premiums in respect of the Provider Policies have been paid and that the Provider Policies have been renewed and remain in force; and

22.3.2 the Provider Policies fully conform to the requirements of this Clause.

22.4 The Provider shall, during the Term of this Agreement and for a period of 6 (six) months after its termination, ensure that the terms of the Provider Policies shall not be altered in such a way as to diminish the benefit of the Provider Policies.

22.5 If the Provider fails to maintain any of the Provider Policies, the Customer may itself provide or arrange insurance and may charge the cost of insurance, together with a reasonable administration charge by way of deduction from the Charges or by recovering the same as a debt due to the Customer from the Provider.

22.6 All insurance proceeds received under any Provider Policy in respect of loss or damage in relation to this Agreement shall be applied to compensate the Customer for such Loss and/or damage.

23. **Anti-Bribery Compliance**

23.1 The Provider undertakes to the Customer that it:

23.1.1 will fully comply with, and will procure that all Personnel fully comply with:

(a) all applicable Laws and codes relating to anti-bribery and anti-corruption; and

(b) any anti-bribery or ethics policies provided to it by the Customer as the Customer may update from time to time;

(the "**Anti-Bribery Requirements**");

23.1.2 will not do, or omit to do, any act that will cause the Customer to be in breach of the Anti-Bribery Requirements;

23.1.3 has in place, and shall maintain in place throughout the Term, policies and procedures to ensure compliance with the Anti-Bribery Requirements and will enforce them where

appropriate. At the Customer's request, the Provider will disclose such policies and procedures to the Customer; and

- 23.1.4 will make it clear to those providing services to the Provider, including its Personnel, that the Provider does not accept or condone the payment of bribes on the Provider's behalf.

24. Termination for Default

24.1 The Customer may terminate any Call Off (provided that NORDUnet may only terminate Call-Offs to which it is a party) without liability in whole or in part by written notice to the Provider if:

- 24.1.1 the Provider commits a material breach of this Call Off which is not capable of being remedied;

- 24.1.2 the Provider commits a material breach of the Call Off which is capable of being remedied and following notice from the Customer requiring the Provider to cure the breach and the Provider does not cure such breach within thirty (30) days of receipt of such notice;

- 24.1.3 the Provider is either subject to an enforcement action by any Regulator or ceases to be authorised under any applicable Law, in either case preventing the Provider from lawfully performing its obligations under this Call Off;

- 24.1.4 the Customer is subject to a fine or penalty by any Regulator which arises as a result of a breach of this Call Off by the Provider (or any of its subcontractors or service personnel); or

- 24.1.5 if there is a change of Control of the Provider, which has occurred without the prior written approval of the Customer, then Customer shall have the right to terminate any Call Off upon a prior six 6 months written notice.

24.2 The Customer may terminate any Call Off (provided that NORDUnet may only terminate Call-Offs to which it is a party) without liability in whole or in part by giving the Provider thirty (30) days written notice, if:

- 24.2.1 the Provider commits a material breach of the Agreement, remedies such breach and then commits any material breach again within twelve (12) months of curing the original material breach;

- 24.2.2 the Provider fails to meet the same Service Level under the same Call Off for three (3) consecutive months;

- 24.2.3 there are two Critical Service Failures in any twelve (12) month period under the same Call Off; or

- 24.2.4 the aggregate of all cumulative liabilities arising out of or in connection with the same Call Off exceeds the aggregate cap of liability under clause 21.

24.3 Subject to clause 24, the Provider may terminate the Call Off in whole upon written notice to the Customer if:

- 24.3.1 the Customer fails to make undisputed payments due to the Provider under this Agreement which, in aggregate, exceed three (3) months' aggregate Charges under this Agreement; and

- 24.3.2 the Provider has given notice in writing of default relating to such non-payment addressed for the attention of the Chief Finance Officer of the Customer and further notices at thirty (30) and sixty (60) days following the initial notice; and
- 24.3.3 the Customer does not remedy such default within ninety (90) days of receipt of the initial notice of default from the Provider.

The Provider's only rights to terminate the Call Off for cause shall be in accordance with this clause 24.3 and clause 24.4.

- 24.4 Either Party shall be entitled to immediately terminate this Agreement or any Call Off in whole or in part by written notification to the other if the other Party becomes subject to an Insolvency Event or ceases to carry on its business.

25. Termination for Convenience

- 25.1 The Customer may terminate this Agreement or any Call Off (in whole or in part) for convenience at any time by giving the Provider 3 months' written notice, provided that (subject to the limits and exclusions contained in clause 21) the Customer shall compensate the Provider for any evidenced, unrecoverable costs and Losses incurred by the Provider as a result of such termination which the Provider has been unable to mitigate despite using its reasonable efforts to do so.

26. Consequences of Termination

- 26.1 The termination of this Agreement or any Call Off shall not affect the remaining Call Offs, which shall continue in full force and effect.
- 26.2 On termination or expiry of this Agreement:
 - 26.2.1 each Party shall promptly return to the other Party all documents and materials (and any copies) containing the other Party's Confidential Information (which in respect of termination or expiry of a Call Off shall apply only in relation to Confidential Information disclosed under that Call Off);
 - 26.2.2 each Party shall promptly on request, certify in writing to the other Party that it has complied with the requirements of this clause 26.2;
 - 26.2.3 the Provider shall promptly refund any Charges paid in advance which relates to the period after expiry or termination on a pro rata basis and pay all Rebates due relating to the period before expiry or termination on a pro rata basis;
 - 26.2.4 the Provider shall provide all reasonable assistance to the Customer and/or the replacement supplier to the extent reasonably required to facilitate the smooth migration to the Customer or any replacement supplier of the Services at rates no less favourable than available in the Framework Agreement; and
 - 26.2.5 the Customer shall pay the Provider all outstanding Charges relating to Service delivered before the date of expiry or termination within 30 days of an invoice submitted in accordance with clause 13.

- 26.3 Termination or expiry of this Agreement shall not limit any of the Parties' rights and remedies which have accrued as at termination. Other than as set out in this Agreement, neither Party shall have any further obligation to the other under this Agreement after its termination.
- 26.4 Notwithstanding the expiry or termination of this Agreement for any reason, it shall continue in force to the extent necessary to give effect to those of its provisions which expressly or by implication have effect after expiry or termination, including clauses 17, 18.1.3, 19, 20, 21, 22, 28 and 35.

27. Force Majeure

- 27.1 Subject to the provisions of this clause 27, to the extent that either Party is prevented or delayed from performing its obligations under this Agreement by reason of a Force Majeure Event then that Party's obligation to perform its obligations under this Agreement will (during the continuation of the Force Majeure Event) be read and construed as an obligation to perform such obligations to the best level reasonably achievable in the circumstances of the Force Majeure Event.
- 27.2 To the extent that any Force Majeure Event results in any suspension of Services then the Customer will have no liability to pay Charges in respect of such Services for the period of the suspension or non-provision.
- 27.3 In the event that a delay or failure arising from a Force Majeure Event extends beyond a period of 90 (ninety) days without resolution, then the The Parties shall be entitled to terminate this Agreement or the relevant Call Off by thirty (30) days' written notice to the other Party. On the expiry of this notice period, this Agreement will terminate and such termination shall be without prejudice to the rights of the Parties in respect of any breach of this Agreement occurring prior to such termination.
- 27.4 The Party claiming to be affected by a Force Majeure Event will not be entitled to invoke the provisions of clause 27.1 unless it fully performs the following obligations:
- 27.4.1 on becoming aware of any Force Majeure Event which gives rise, or which is likely to give rise, to any failure in the performance of its obligations under this Agreement, it promptly notifies the other Party, giving details of the nature and extent of the Force Majeure Event, the obligations on its part which are affected and its reasonable estimate of the period for which such failure will continue; and
 - 27.4.2 it takes all reasonable steps to prevent, avoid, overcome and mitigate the effects of such Force Majeure Event; and
 - 27.4.3 without limit to clause 27.4.2, in the case of the Provider only, it is complying fully with its obligations under the BCDR Plan unless such obligations cannot be performed due to a Force Majeure Event.
- 27.5 Without limit to the Customer's right to terminate this Agreement in accordance with clause 25.1, where the performance of an obligation under this Agreement which is required to be performed on or before a specific date or within a specific period of time is affected by a Force Majeure Event any Party so affected will be entitled to such extension of time for the performance of that obligation as is reasonable in all the circumstances and the Parties will use their reasonable endeavours to agree any consequential changes to any timetable for the performance of any other obligation which is affected by the delay.

28. Confidentiality and Publicity

- 28.1 Subject to clause 28.2, each Party shall treat all Confidential Information as strictly confidential and shall not disclose Confidential Information to any person except as necessary for the performance of this Agreement, in which case the disclosing Party shall ensure that any recipient is bound by obligations of confidence no less stringent than those in this Agreement. Each Party will be liable for its officers', employees', representatives' or subcontractors' disclosure or misuse of the other Party's Confidential Information.
- 28.2 A Party may disclose Confidential Information:
- 28.2.1 if expressly permitted under this Agreement;
 - 28.2.2 if and to the extent required by Law or order of the courts, or by any securities exchange or regulatory or governmental body to which such Party is subject or submits, wherever situated (whether or not the requirement for information has the force of law) provided that unless prohibited by Law from doing so the Party subject to such request gives the other Party written notice prior to disclosing any of the Confidential Information and the disclosure is made only to the extent required and for the purpose of complying with the requirement and all reasonable measures to ensure the continued confidentiality of any Confidential Information so disclosed are taken;
 - 28.2.3 on a necessary basis and on conditions of confidentiality to the professional advisers, auditors and bankers of such party;
 - 28.2.4 if such Confidential Information was published, known publicly or otherwise in the public domain or has come into the public domain other than by a breach of any obligation of confidentiality; or
 - 28.2.5 with the prior written approval of the other party (such approval not to be unreasonably withheld or delayed).
- 28.3 Neither Party shall issue any press release and/or make public announcements or statements (including on its website) in relation to the existence or subject matter of this Agreement without the prior written consent of the other Party.

29. Data Protection

- 29.1 This Clause 29 shall apply only to the extent that the Provider processes personal data which it receives in connection with this Agreement.
- 29.2 In this Clause 29 the terms "personal data" and "process" (including derivatives thereof) shall have the meanings attributed to them by Directive 95/46/EC.
- 29.3 The Provider shall only process personal data for the purposes of fulfilling its obligations under this Agreement and in accordance with applicable Data Protection Law, and shall not by its act or omission cause the Customer or any Customer Group Member to be in breach of applicable Data Protection Law.
- 29.4 The Provider shall not transfer any personal data outside the European Economic Area without the prior written approval of the Customer.

30. Notices

30.1 Any notice to be given under or in connection with this Agreement must be in the English language, in writing and delivered to the other Party by any of the methods set out in the left hand column below, and will be deemed to be received on the corresponding day set out in the right hand column:

Method of service	Deemed day of receipt
By hand or courier	the day of delivery
By pre-paid first class post	the second day after posting
By recorded delivery post	the next day after posting

30.2 The Parties' respective representatives for the receipt of notices are, until changed by notice given in accordance with this clause, as follows:

Provider: Address:

Attention:

the Customer: Address:

Attention:

31. Dispute Resolution

31.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it ("**Dispute**") then, except as expressly provided in this Agreement and except in the case of Technical Disputes, the Parties shall comply with the following provisions:

31.1.1 either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**");

31.1.2 the Provider Representative and the Customer Representative (acting in good faith) shall meet to attempt to resolve the Dispute;

31.1.3 if the Dispute remains unresolved ten (10) days following of the Dispute arising, the Senior Vice President or equivalent officer of each Party (acting in good faith) shall meet to attempt to resolve the Dispute;

31.1.4 if the Dispute remains unresolved thirty (30) days following of the Dispute arising, members of the Senior Management of each Party (acting in good faith) shall meet to attempt to resolve the Dispute;

31.1.5 if the Dispute is not resolved within thirty five (35) days of the Dispute arising, the Dispute shall be finally settled in accordance with the Rules of Arbitration adopted by the Danish Institute of Arbitration. The place of arbitration shall be Copenhagen, Denmark. All negotiations and arbitration will be conducted in the English language; and

31.1.6 all negotiations connected with the Dispute shall be conducted in complete confidence, and the Parties undertake not to divulge details if such negotiations except to their professional

advisors who shall also be subject to such confidentiality and shall be without prejudice to the rights of the Parties in any future proceedings. The Parties shall require the Danish Institute of Arbitration not to disclose the fact of or the details of the arbitration to any third party.

- 31.1.7 Nothing in this Clause 31.1 shall operate to prevent the Customer requiring an issue to be escalated to the level it determines to be appropriate.
- 31.2 Prior to the commencement of arbitration, neither Party may commence any court proceedings in relation to any Dispute unless such proceedings:
 - 31.2.1 are for interim relief (including injunctive relief);
 - 31.2.2 would be prejudiced by any delay; or
 - 31.2.3 are intended to preserve a superior position with regard to the creditors of the other Party.
- 31.3 If any dispute arises out of or in connection with this Agreement which is technical or objective in nature (including whether any Service meets the requisite Specification and whether Service Levels have been met) ("**Technical Dispute**"), either Party may serve notice ("**Technical Dispute Notice**") on the other Party in which case the following applies:
 - 31.3.1 within 7 days after receipt of the Technical Dispute Notice, the relevant technical experts of both sides shall meet to identify the problem and potential remediation measures; and
 - 31.3.2 if such measure does not prove successful within further 20 days, either side may defer the dispute to its Chief Technical Officer in order to reach settlement of the Technical Dispute liaising with its counterpart with the other Party.
- 31.4 If no solution can be found, or if the dispute cannot be finally remedied, within 10 days after the efforts made pursuant to section 31.3.2, either Party may serve notice on the other ("**Referral Notice**") that it wishes to refer the dispute to an expert (the "**Expert**") as follows:
 - 31.4.1 The Parties will agree the identity of a single neutral, independent, impartial expert to determine the Technical Dispute. In the absence of agreement within 14 days of the Referral Notice, the matter will be referred to an expert based in the country of the Customer and appointed by the Danish Institute of Arbitration.
 - 31.4.2 Within 28 days after the giving of a Referral Notice, both Parties will exchange simultaneously statements of case of no more than 10,000 words, in total, and each Party will simultaneously send a copy of its statement of case to the Expert.
 - 31.4.3 Each Party may, within 14 days of the date of exchange of statement of case pursuant to clause 31.4.2 above, serve a reply to the other side's statement of case of not more than 10,000 words. A copy of any such reply will be simultaneously sent to the Expert.
 - 31.4.4 The Expert will make his decision on the matter on the basis of written statements and supporting documentation, and following an oral hearing at which the Parties may be represented by counsel of their choice. The Expert may ask additional questions of either Party. Any answers will be provided to the other Party as well as to the Expert. The Expert shall issue his decision in writing within 30 days of the date of service of the last reply pursuant to clause 31.4.3 above or, in the absence of receipt of any replies, within 60 days of the date of exchange pursuant to clause 31.4.3 above or the date of the last oral hearing, whichever is the later.

31.4.5 The Expert's decision will be final and binding on the Parties, save for any manifest errors or fraud contained on the face of his decision, which may be annulled by a court.

31.4.6 Each Party shall act reasonably and co-operate to give effect to the provisions of this clause 31.3 and otherwise do nothing to hinder or prevent the Expert from reaching his determination.

31.4.7 The Expert's charges will be borne equally by the Parties, but each Party shall be responsible for its own legal and professional costs, transport and attendance at any hearing and any other costs.

31.5 Unless agreed otherwise, the Parties shall continue to comply with their respective obligations under the Agreement regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure.

32. Assignment and Novation

32.1 The Provider shall not subcontract its obligations under this Agreement, nor shall it assign, novate or otherwise transfer any of its rights and obligations under this Agreement whether in whole or in part without the prior written consent of the Customer (not to be unreasonably withheld or delayed).

32.2 Where the Customer has given its prior written consent to a subcontract, such sub-contractor will not be entitled to further subcontract the performance of the Services without the Customer's prior written consent. If the Customer consents to such further delegation the terms of this clause 32 shall, as applicable, apply to the subcontractor as if it were the Provider.

33. Amendments

33.1 No amendment to this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the Parties in accordance with the Change Control Procedure.

34. No Third Party Beneficiaries

34.1 Nothing in this Agreement shall be deemed to grant any rights or benefits to any person other than the Parties, or entitle any third party to enforce any provision of this Agreement.

35. General

35.1 If any provision of this Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall not be affected. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

35.2 Each Party shall (at its own expense) promptly execute and deliver all such documents, and do all such things, or procure the execution and delivery of all documents and doing of all such things as are required to give full effect to this Agreement and the transactions contemplated by it.

35.3 Except as otherwise expressly provided in this Agreement, all remedies available to the Provider or to the Customer for any Default (of any nature or severity) under this Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.

- 35.4 The failure to exercise or delay in exercising a right or remedy provided to a Party under this Agreement shall not constitute a waiver of that right or remedy, and no waiver by a Party of any breach of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision. Each right or remedy of a Party under this Agreement is without prejudice to any other right or remedy of that Party under this Agreement or at Law.
- 35.5 Nothing in this Agreement will be construed as constituting or evidencing any partnership, contract of employment or joint venture of any kind between either of the Parties or as authorising either Party to act as agent for the other. Neither Party will have authority to make representations for, act in the name or on behalf of or otherwise to bind the other Party in any way.
- 35.6 Except as expressly provided in this Agreement, no terms and conditions, standard or otherwise, contained on any invoice, order form, licence or other document of the Provider shall apply to the subject matter of this Agreement unless expressly stated in this Agreement or incorporated as a variation via the Change Control Procedure.
- 35.7 This Agreement and the documents referred to in it constitute the whole agreement and understanding of the Parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of this Agreement. Each Party agrees that they did not rely on any representation, warranty, collateral contract, or other assurance or statement made by the other Party before the signature of this Agreement (except those set out in this Agreement) and hereby waives any remedy which might otherwise be available to them in respect of any untrue statement (whether made innocently or negligently but not fraudulently) before the signature of this Agreement.
- 35.8 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same agreement.
- 35.9 Each Party shall bear its own legal costs associated with the preparation, negotiation and execution of this Agreement and any documents referred to in it.
- 36. Governing Law and Jurisdiction**
- 36.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Denmark.
- 36.2 Subject to clause 31.1 and unless otherwise agreed in the Call Off, the Parties irrevocably agree that the courts of Denmark shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

SIGNED by the authorised representatives of the Parties.

SIGNED for and on behalf of **NORDUnet A/S**

Signature:

Name:

Position:

Date:

SIGNED for and on behalf of **[PROVIDER]**

Signature:

Name:

Position:

Date:

37. Schedule 1 – Service Catalogue

[Include detailed specifications and pricing for the Services which can be called off by an NREN.]

[This document should also include:

- Standards and Security

- Service Levels and Service Credits (including Delay Payments and Service Level Thresholds)]

38. Schedule 2 - Template Call Off

Call Off Number: [●]

THIS AGREEMENT is made the [●] day of [●] 201[●] (the “**Call Off Commencement Date**”) by and between

[CALL OFF CUSTOMER NAME], a corporation organised and existing under the laws of [TERRITORY] with registered number [NUMBER] and having its registered office at [ADDRESS] (the “**Customer**”); and

[CALL OFF PROVIDER NAME], a corporation organised and existing under the laws of [TERRITORY] with registered number [NUMBER] and having its registered office at [ADDRESS] (the “**Provider**”),

in each case a “**Party**” and collectively the “**Parties**”.

BACKGROUND:

NORDUnet A/S and **[Insert name of the Framework Provider]** entered into a Framework Agreement as of **[insert Commencement Date of Framework Agreement]** (the “**Framework Agreement**”) permitting and governing the provision by the Provider of certain Services to the Customer.

The Provider and the Customer agree for the provision of Services.

NOW IT IS HEREBY AGREED as follows:

1. Definitions, Structure and Interpretation

1.1 All of the terms of the Framework Agreement shall be incorporated into and form part of this Call Off, excluding the following provisions:

Clauses 3.1 to 3.8 (inclusive) (Call Offs);

Clause 21.7 (NORDUnet Framework Liability Limit);

Clause 21.8 (Framework Provider Liability Limit);

Clause 30.2 (Framework Notices Address) and

Schedule 2 (Template Call Off),

except that in respect of this Call Off the following defined terms contained in such incorporated clauses shall have the following changed meanings:

“**Agreement**” means this Call Off;

“**Call Off**” means this Call Off;

“**Commencement Date**” means the Call Off Commencement Date of this Call Off;

“Customer”	means the Customer under this Call Off;
“Customer Group Member”	<i>[Note: Please define in accordance with the type of group structure of the Customer, ensuring this definition captures each party who the Customer is purchasing on behalf of, and each party who will need to use any Software]</i>
“Customer Representative”	means the Customer Representative set out below in this Call Off;
“End Date”	means the End Date of this Call Off;
“Parties” and “Party”	means the Parties or a Party to this Call Off;
“Provider”	means the Provider under this Call Off;
“Provider Representative”	means the Provider Representative set out below in this Call Off;
“Service Provider”	means the Provider under this Call Off;
“Service Recipient”	means the Customer under this Call Off; and
“Term”	means the Term of this Call Off.

1.2 This Call Off comprises these Sections and the Appendices listed in the table below.

Appendix	Title
1	Services
2	Project Plan
3	Charges
4	Additional Terms and Mandatory Rules of Local Law

1.3 If there is any inconsistency between any of the Sections and the Appendices, the order of priority for the purpose of construction shall be as follows:

- 1.3.1 Sections of this Call Off;
- 1.3.2 Appendices of this Call Off; and
- 1.3.3 terms incorporated from the Framework Agreement.

1.4 Capitalised words and expressions used in this Call Off shall have the meanings ascribed to them in this Call Off and, unless expressly indicated otherwise in this Call Off, the meanings ascribed to such words and expressions in this Call Off shall supersede the meanings given to those words or expressions where such words and expressions are also defined in the Framework Agreement.

1.5 Capitalised words and expressions which are not defined in this Call Off shall have the meanings ascribed to them in the Framework Agreement.

1.6 All references to deletion, amendment or variation of provisions in the Framework Agreement which are set out in this Call Off are references to such deletion, amendment or variation for the purposes of this Call Off only.

2. Term

This Call Off shall commence on the Call Off Commencement Date and subject to earlier termination shall continue until [DATE] (the “**End Date**”), unless it is terminated earlier in accordance with its terms or at law (the “**Term**”).

3. Relationship of this Call Off to the Framework Agreement

The parties acknowledge that, when signed by both Parties, this Call Off will contractually commit the Provider to supplying the Services described in this Call Off in accordance with its terms.

4. Description and scope of the Services

The Services to be provided by the Provider under this Call Off are listed in Appendix 1.

5. Project Plan

The Project Plan for this Call Off is attached as Appendix 2.

6. Incoterms

The Incoterms applicable to this Call Off shall be: [●]

[Insert relevant Incoterms here, consider different Incoterms for different types of equipment and software]

7. Charges

The Charges and any additional payment terms for the Services are specified in Appendix 3.

The currency for the Charges payable under this Call Off shall be [Euro] [and the Spot Rate shall be [●]]. **[Note: If not paying in Euro, please include the exchange Spot Rate for the payment currency against Euro for the date that the draft Call Off is sent to the provider]**

8. Additional Terms

The additional terms agreed by the Parties to apply to this Call Off and any other changes to the terms incorporated from the Framework Agreement required to comply with mandatory rules of local law are specified in Appendix 4.

9. [BCDR

The Provider shall produce a BCDR Plan in accordance with clause 9.]

10. Entire Agreement

In relation to its subject-matter, this Call Off (together with the Framework Agreement) is the entire agreement between the parties and governs their relationship to the exclusion (to the extent permitted by law) of any other terms and conditions, including those upon which any quotation or tender response has been given to the Customer.

11. Notices

The Parties' respective representatives for the receipt of notices are, until changed by notice given in accordance with this Call Off, as follows:

Provider Address:

Attention:

the Customer: Address:

Attention:

12. Rebate

No later than 30 days after having reached the accumulated rebate trigger, the Provider shall pay to the Customer its proportional share of that rebate.

13. Governing Law and Jurisdiction

13.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of <to be agreed between the Parties>.

13.2 The Parties irrevocably agree that the courts of <to be agreed between the Parties > shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims). **[Delete this paragraph if Arbitration is preferred]**

Appendix 1: Services

[Describe what is being purchased in this Appendix]

Appendix 2: Project Plan

[Insert the Project Plan here]

Appendix 3: Charges

[Set out here any amendment to the invoicing terms and payment profile]

Appendix 4: Additional Terms and Mandatory Rules of Local Law

[Insert any additional terms agreed by the Call Off parties here]

[Insert any amendments required by mandatory rules of local law here,]

Appendix 5: Testing Criteria

[Set out the Testing Criteria here. Consider requiring the Provider to prepare a test plan]

[NB the Acceptance Procedure is in Schedule 3 to the Framework Agreement]

For and behalf of **[CUSTOMER]**

For and on behalf of **[PROVIDER]**

Signature:

Signature:

Name:

Name:

Title:

Title:

Date:

Date:

39. Schedule 3 - Acceptance Procedure

1. Testing Methodology

- 1.1 The Provider will give the Customer at least seven (7) days' notice of the date on which it intends to carry out Acceptance Tests on any Test Item.
- 1.2 The Acceptance Tests shall be run during Normal Working Hours. The Provider shall carry out the agreed Acceptance Tests unless the Customer notifies the Provider that it will carry out the Acceptance Tests. The Party carrying out the Acceptance Tests shall permit the other Party to observe all or any part of the testing.
- 1.3 If the proposed date for any Acceptance Tests is not suitable for the Customer the Parties shall try to re-arrange the test date, provided that the Acceptance Test dates will not be changed in any way that may adversely affect the Provider's ability to meet the Project Plan for the relevant Test Item.
- 1.4 After completion of the Acceptance Tests:
 - 1.4.1 The Provider shall provide the Customer with a copy of the test results in the Provider's standard format. Where the Customer is not present at the Acceptance Testing the results shall be delivered to the Customer forthwith by e-mail or fax.
 - 1.4.2 If a Test Item meets all of the Acceptance Criteria for that Test Item it shall be deemed to have passed the Acceptance Tests and be Accepted.
 - 1.4.3 If any Test Item fails to meet any of the Acceptance Criteria it shall be deemed to have failed the Acceptance Tests. In such event, the Customer shall, within seven (7) days from the completion of the Acceptance Tests or any part thereof and receipt of the results of such Acceptance Tests or part thereof, provide a written notice to this effect, giving details of such failure(s). The Provider shall remedy the defects and deficiencies and the relevant test(s) shall be repeated within a reasonable time, not to exceed fourteen (14) days.
- 1.5 If any Test Item fails to pass any repeated Acceptance Tests within two weeks from the date of its second submission to the Acceptance Tests, then the Customer may, by written notice to the Provider, choose at its sole discretion:
 - 1.5.1 to request a repeat test, and if the Test Item or part of it fails such further test, then the Customer may request another repeat test under this paragraph 1.5.1 or proceed under paragraphs 1.5.2 or 1.5.3;
 - 1.5.2 to conditionally accept the Test Item or part of it in its absolute discretion. The conditions of acceptance shall be as the Customer may reasonably determine and notify to the Provider provided that such conditions may not without the prior written agreement of the Provider increase the obligations or restrict any right or remedy of the Provider under this Agreement. Unless otherwise agreed in writing between the Customer and the Provider conditional acceptance shall constitute Acceptance of the Test Item or part of it provided that all the relevant conditions have been met within the period specified by the Customer. If all the relevant conditions have not been met within the period specified by the Customer, the Customer shall be entitled to proceed under paragraph 1.5.3; or
 - 1.5.3 if the Provider is unable to correct the defects within a period of one month from the commencement of Acceptance Tests under paragraph 1.5, to reject the Test Item as not conforming to the Agreement, in which event the Customer may terminate this Agreement.

2. Form of Acceptance Certificate

The following form of Acceptance Certificate shall be used:

“This Acceptance Certificate is delivered on the date set forth below by [CUSTOMER NAME] (the “Customer”) to [PROVIDER NAME] (the “Provider”) pursuant to the Framework Agreement dated [DATE] between the Customer and the Provider (the “Agreement”). Terms used in this Acceptance Certificate shall have the meaning given for such terms in the Agreement.

The Customer hereby confirms to the Provider that [insert name/description of relevant Test Item] [subject to the conditions listed below being met by [insert date]] [meets all relevant acceptance criteria] [and] [has been Accepted].

Signed by..... [()]

For and on behalf of [CUSTOMER NAME]

Date”

3. Reserved Rights

- 3.1 Unless indicated otherwise in this Agreement, Acceptance of any Test Item shall be without limit to any other rights or remedies of the Customer in relation to any other Test Items.

40. Schedule 4 - Change Control Procedure

1. General

- 1.1 Requests for Changes to this Agreement (including the Project Plan and (if required) BCDR Plan), may be initiated by the Customer or the Provider.
- 1.2 Until such time as a Change Control Note (“**CCN**”) has been signed by the Parties, the Provider shall continue to perform its obligations in accordance with this Agreement and any relevant Call Off.
- 1.3 Any work undertaken in connection with any proposed Change by the Provider, or its Personnel, unless agreed otherwise by the Parties, shall be undertaken at no additional cost to the Customer.
- 1.4 A CCN signed by the Parties shall constitute an amendment to this Agreement.

2. Procedure

- 2.1 Where a written request for a Change is received from the Customer, the Provider shall, unless otherwise agreed in writing, submit two copies of a completed CCN signed by the Provider to the Customer within seven (7) days following the appropriate technical evaluation.
- 2.2 A request for a Change originated by the Provider shall be submitted direct to the Customer in the form of two copies of a CCN signed by the Provider.
- 2.3 Each CCN shall be in the form set out below and contain all details reasonably necessary for the Customer to evaluate the Change.
- 2.4 For each CCN submitted, the Customer shall within fourteen (14) days evaluate the CCN and as appropriate:
 - 2.4.1 request further information;
 - 2.4.2 arrange for two copies of the CCN to be signed by or on behalf of the Customer and return one of the copies to the Provider; or
 - 2.4.3 notify the Provider of the rejection of the CCN.
- 2.5 Should a Party require a longer period of time to prepare, evaluate or agree any CCN then they shall make a request for such extension to the other Party with an indication of the extension time required. The other Party shall not unreasonably refuse this request.
- 2.6 Where any Change results in any change or upgrade to the Services, such Services shall be subject to Acceptance Testing in accordance with the procedure in Schedule 3.

Appendix 1 to Schedule 4

CHANGE CONTROL NOTE (CCN) for Changes to the Agreement

By and between:

1. **[NAME]**, a corporation organised and existing under the laws of **[TERRITORY]** with registered number **[NUMBER]** and having its registered office at **[ADDRESS]** (the “**Customer**”); and
2. **[NAME]**, a corporation organised and existing under the laws of **[TERRITORY]** with registered number **[NUMBER]** and having its registered office at **[ADDRESS]** (the “**Provider**”),

CCN STATUS:

Accepted ⬆️ **Date:**

Rejected ⬆️ **Date:**

On Hold ⬆️ **Date:**

(a) Agreement Details	(b) Change Control Notice Details
Title and/or Ref. No: Systems Integration Agreement	Reference No:
Date of Agreement:	CCN Date:
(c) Raised by: _____ Tel: _____ Location: _____	
(d) Priority: Immediate action required ⬆️ High level of impact on hardware ⬆️ Low impact scheduled event ⬆️	
(e) Reason for the change:	
(f) Description of the change:	
(g) Timetable for the change & commencement date:	
(h) Change to Charges (if applicable):	
(j) Impact Statement:	
(k) CCN Expiry Date:	
(l) Other details as required:	
(m) Amended Document attached: ⬆️	

The Parties hereby agree to change the Agreement in the manner and in consideration of the terms set out above. Save as expressly set out in this Change Control Notice the terms and conditions of the Agreement shall remain in full force and effect.

For and on behalf of the Provider

For and on behalf of the Customer

Signed: _____

Printed Name: _____

Title: _____

Date: _____

41. Schedule 5: Extract of Providers Reply to the ITSFB

Here goes relevant sections of the Providers reply to ITSFB decided by NORDUnet.