



## Agreement for Delivery of Services

between

DigiPlex Norway AS  
Org.no. 981 663 322

Business/visiting address Ulvenveien 89B, 0581 Oslo

and

Blue Yonder Controls Limited  
Company Registration Number 9576677

Business address: 12 Elmgrove Road, Hucclecote, Gloucester

GL3 3RQ, UK

<b>DigiPlex</b> DigiPlex Norway AS Ulvenveien 89B 0581 Oslo	<b>Quality Record System</b>	Document name: Subcontractor agreement
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## General Terms of Agreement

Unless otherwise agreed upon in writing, the following terms apply for this agreement with Attachments (hereinafter called **the Agreement**) between DigiPlex Norway AS (hereinafter **DigiPlex**) and Blue Yonder (hereinafter **the Supplier**), DigiPlex and the Supplier are individually each called **Party** or jointly **Parties**.

### 1. Background

DigiPlex is a supplier of IT-housing services to its customers at the Premises and requires the products/services stated in Attachment 2 from the Supplier as its subcontractor. In order to determine the terms of such deliverables from the Supplier, the Parties have entered into this Agreement.

### 2. Definitions

**The Premises** – the building including the defined indoor and outdoor areas that DigiPlex has at its disposal at the address Ulvenveien 89 B, 0581 Oslo

**Business day** – those days that are not Saturdays, Sundays, public holidays and bank holidays or Christmas Eve or New Year's Eve.

**The Agreement** – this document with general terms and associated Attachments.

**Events** – Situations and/or circumstances that are believed to be, or pose a threat to DigiPlex' ability to deliver services.

**Downtime** – any shutdown in DigiPlex's systems which are continuously delivering power or cooling to its customers' central IT-solutions or other IT-housing deliverables from DigiPlex.

**The Deliverables** – the products (hardware and/or software) and/or services which are to be delivered by the Supplier in accordance with Attachment 2.

### 3. Form of the Agreement

This Agreement is constituted of these general terms and conditions and associated attachments as described below with later amendments and documents ('Attachments') as these contractual documents are incorporated by reference. The Agreement shall be interpreted and applied according to general principles of Norwegian law. Overview of associated Attachments at conclusion of the Agreement:

- Attachment 1 – Contact persons
- Attachment 2 – DigiPlex Description of the Deliverables
- Attachment 3 – Compensation
- Attachment 4 – Amendments
- Attachment 5 – Instructions, procedures etc

At conflict the following principles of interpretations shall be applied:

1. Upon conflict between an Attachment and the general text of the Agreement, the Attachment is only to prevail the general text of the Agreement if the Attachment is clear and unequivocal on which paragraph or paragraphs have been amended, replaced or made an addendum to.
2. Attachment 4 shall prevail the general text of the Agreement or any other

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Attachments, but only to the extent that it is made clear and unequivocal which paragraph or paragraphs have been amended, replaced or made an addendum to.

3. Upon conflict between the Attachments whereby the changes have not been clearly specified as described under 1 and 2 above, the Attachment 2 shall prevail any other Attachment.
4. The Agreement precedes minutes of meetings, notes and similar documents that have been communicated between the Parties, unless the Parties have agreed that text defined in such a document shall prevail a specific paragraph of the Agreement where such an amendment is clearly defined.

### 4. Response time

The Supplier shall be able to deliver the Deliverables to DigiPlex 24/7/365. If not otherwise requested by DigiPlex, the Deliverables shall be delivered on Business days between the hours 08:00 and 16:00 local time. The Supplier shall answer the requests from DigiPlex as quickly as possible.

Unless otherwise agreed in Attachment 2, the Supplier guarantees the following response time:

#### For Downtime or other urgent requests from DigiPlex:

Answer the emergency telephone stated in Attachment 1	Within 30 minutes

If the Supplier does not keep the response time agreed upon, DigiPlex may in its own right or by another subcontractor take actions in order to have the Deliverables delivered as soon as possible. DigiPlex shall have the right to invoice the Supplier for its own accrued time in accordance with the Suppliers' rates for the delivery of the Deliverables stated in Attachment 2, as well as actual accrued expenses linked to getting the Deliverables delivered by others.

### 5. Remuneration and Delivery

For the delivery of the Deliverables, DigiPlex shall pay to the Supplier the remuneration that is stated in Attachment 3. If the Supplier has campaign prices, special offers, etc., which are more favourable than those laid down in the Agreement, DigiPlex shall automatically be offered these prices for delivered Deliverables without this having any impact on the Agreement otherwise.

Agreed terms of delivery are DDP (Incoterms 2000) to the Premises. If the Supplier explicitly quotes a price without forwarding costs, the Supplier may invoice DigiPlex for the Supplier's additional documented forwarding costs (including carriers for the Supplier) up to the Premises.

#### 5.1 Payment terms

Unless otherwise agreed upon, the Supplier may invoice DigiPlex for the delivered

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Deliverables after a written approval from DigiPlex has been given. Payment terms are thirty (30) days from the invoice date, and the Supplier shall send the invoice to DigiPlex on the same day as the date of the invoice.

### **5.2 Collateral for delivery**

DigiPlex may request reasonable guarantee or collateral if;

- i. DigiPlex finds it necessary based on credit information or that the Supplier is registered in a warning register;
- ii. There exists significant risk that the Supplier will not fulfil its obligations;
- iii. The Supplier has or will register an address outside of Norway; or
- iv. The Agreement in part or as a whole is transferred to a third party.

If the Supplier opposes to fulfil DigiPlex's request of collateral within reasonable time, this will be considered to be a substantial breach of this Agreement.

### **6. Follow-up meeting/Cooperation**

The Parties are to hold a minimum of one annual follow-up meeting at the Premises associated with the Agreement. The Supplier is responsible for ensuring that such a meeting takes place.

### **7. Duration and Termination**

The Agreement is valid as of the date of start-up stated in Appendix 2 and is non-terminable for the Supplier for two (2) years. The Agreement will thereafter be automatically renewed with a mutual written notice of 6 months. DigiPlex has at any time over the duration of the Agreement, the right to terminate the Agreement with a four (4) month written notice.

### **8. Breach of Agreement**

For substantial breach from one of the Parties which is not rectified immediately or within seven – 7 – days at the latest after written notice has been given by the other Party, the Agreement may be terminated with immediate effect. The Parties are liable in accordance with general compensation laws for documented financial losses. On failure to deliver and delays from the Supplier, the Supplier shall compensate DigiPlex for the revenue losses this has resulted in for DigiPlex. The Supplier is equally liable to DigiPlex for breach from the subcontractors used by the Supplier in order to deliver the full or parts of the Deliverables.

### **9. Force majeure**

None of the Parties are liable for delays caused by force majeure. Force majeure means any event outside the reasonable control of what is the normal climate for the region, prolonged failure or shortage in electricity supply, flood, drought, lightning, fire, strikes, lockouts, labour disputes or work disturbances, non-delivery or bankruptcy or debt negotiations for any supplier or manufacturer, act or omission by a government entity, road authorities, public telecommunication providers or other competent authority.

### **10. Transfer and Alterations**

Rights and liabilities under the Agreement cannot be transferred to a third party without the written consent from the other Party. Consent shall not be unreasonably withheld.

Alterations or additions to the Agreement shall, in order to be valid, be carried out in writing

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and be duly signed by the representatives of the Parties as stated in Attachment 1.

If the Deliveries covered by this Agreement can or will no longer be offered by the Supplier, the Supplier shall notify DigiPlex with four (4) months' written notice.

### **11. Treatment of name details and video images**

The Supplier agrees that DigiPlex may save, store and process name details, contact information, location information and video images for administration of access rights, documentation, as well as to safeguard the statutory purposes or other requirements related to the current operations of DigiPlex. The Supplier may contact DigiPlex if the Supplier would like more information regarding such records, or wishes to change the records kept by DigiPlex.

### **12. Confidentiality**

Information on a Party or associated persons acquired in connection with the implementation of the Agreement, including the Agreement and all information and knowledge that the one Party may acquire about the other Party's business conditions, technical installations, human resource matters, planning and projects, business related surveys and calculations, as well as trade secrets the Party might gain knowledge of under the Agreement and compliance with this shall be treated as confidential and not be made available to third parties without the written consent of the other Party. Regardless of the preceding each of the Parties may present confidential information without the consent of the other Party to the extent that this is required by law, governmental regulations or court orders. Unless otherwise agreed the confidentiality shall be applied indefinitely.

### **13. Disputes**

The Agreement shall be governed by Norwegian law. Disputes related to the Agreement should be resolved through negotiations between the Parties. If a settlement cannot be reached within five – 5 – Business days, the dispute shall be resolved through an arbitrator appointed by both Parties. The Arbitrator shall be a lawyer with expertise or experience in IT-deliveries or IT-contracts. The Arbitrator shall make his decision with binding effect within fourteen – 14 – days after which each of the Parties has sent a written statement of the dispute to the Arbitrator. Each of the Parties carries their own expenses in connection with the resolution of the dispute by the Arbitrator.

Date:

Digiplex Norway AS

Dan Oldham

Name: Giselle Eckhoff  
Title: Admin. Dir.

Blue Yonder Controls Limited

Steve Coldrick

Name: S. COLDRICK  
Title: DIRECTOR

## Attachment 1: Contact persons

DigiPlex and the Supplier shall contact the following Contact persons at the other Party:

### 1. For annual maintenance, downtime or other urgent requests from DigiPlex:

#### At DigiPlex:

Name	Telephone	Email
Jonny Ulfsryggen	+47 900 50 511	ju@digiplex.com
Geir Almquist	+47 917 06 523	ga@digiplex.com
Pål Rune Viken	+47 916 23 897	prv@digiplex.com

#### At Supplier:

Name	Telephone (emergency telephone)	Email
Steve Coldrick	+44 7972 594557	SteveColdrick@BlueYonder.Co.UK

### 2. For other types of requests between the Parties:

#### At DigiPlex:

Name	Telephone	Email
Pål Rune Viken	916 23 897	prviken@digiplex.no
Kristin Ohnstad	934 06 671	kohnstad@digiplex.no

#### At Supplier:

Name	Telephone	Email
Steve Coldrick	+44 7972 594557	SteveColdrick@BlueYonder.Co.UK

### General requirements:

- As written notice is also an email between the Contact persons designated by the Parties accepted.
- When there is a wish to alter terms in the General terms, the Supplier must send an application via email to the Managing Director at DigiPlex:  
[gisle.eckhoff@digiplex.com](mailto:gisle.eckhoff@digiplex.com).

## Attachment 2: DigiPlex Description of the Deliverables

The Supplier shall deliver services and/or products (the Deliverables) to DigiPlex in accordance with the specifications below, unless otherwise has been agreed upon in writing between the Parties' Contact persons.

**Start-up for delivery of the Deliverables:** Date: 1<sup>st</sup> July 2016

**Delivery address for the Deliverables (the Premises):** Delivery location is at DigiPlex Norway AS at the address Ulvenveien 89 B, 0581 Oslo.

Specification of equipment belonging to DigiPlex as services from the Supplier shall be delivered at:

### Business Management System

Specification of services/software to be delivered to DigiPlex by the Supplier:

**Annual maintenance consists of the following:**

#### Overview

The technical support of the building management and control system is as follows:

- Pre-planned on -site technical support as detailed in the appended task lists.
- Visiting on-site inspection of Digiplex Service Provider SAAS Prosjekt AS
- Remote Technical Support and Alarm Assistance.

#### Parts and Repairs

There is no allowance for corrective maintenance or for the provision of spare parts

Any faults found or potential faults identified during the course of the works shall be discussed with the Client and corrective actions agreed prior to any further measures being taken.

#### Scheduled Visits / Access

The charges listed in Schedule of Annual Charges and Labour Rates are based on activity in accordance with the frequency indicated.

Scheduled activity will normally be completed during normal working hours defined in the Schedule of Annual Charges and Labour Rates.

A service report on the system operation and alarms shall be provided.

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It is a condition of payment that this report is submitted immediately on completion of each service visit.

### Responsibility Demarcation

Blue Yonder has responsibility only for technical assistance to DigiPlex and DigiPlex's service provider SAAS Prosjekt AS in respect of the building management system.

### Unplanned Support / Access

Blue Yonder shall provide Remote telephone support, Remote Monitoring and Operation, Alarm Diagnostics and analysis as necessary.

This service is available 24 hours per day, 365 days per year.

Contact telephone numbers and emergency service numbers are provided in the Specialist Contractor details section. All labour and spare parts derived from the use of these unplanned support / access services are chargeable based on the Schedule of Annual Charges and Labour Rates.

### Other Requirements

Any adjustments, changes to software or other works which may impede the operation shall be fully identified prior to any such work being implemented and such works must be authorised by a DigiPlex representative.

Prior to work on any system the contractor in conjunction with DigiPlex operations shall carry out a business risk assessment to ensure no loss of service to DigiPlex customers, once agreed with DigiPlex work can then be undertaken.

### Applicable tasks – Part 1

Task Ref.	Support Task	Frequency
1 - 5	See task sheet	Annually

### Applicable tasks – Part 2

Task Ref.	Maintenance Task	Frequency
A	Remote Support	24 x 365
B	Software Update	As available
C	Report & review	Annual

### Frequency

Blue Yonder shall provide a suitably trained technician to attend site once **per annum** each site visit shall consist of a minimum 3 days per annum site attendance

### Task Sheets

Task No.	Support Task	Frequency
1	Attend site and oversee that the service tasks have been correctly actioned by DigiPlex local Service Provider SAAS Prospekt AS	Once per annum
2	Check that all BMS Outstations are operable and respond to commands from the management station  Check Alarm Logs and advise any issues	Once per annum
3	Check that SAAS Prospekt AS has correctly actioned system back up's of software for each outstation and the management station	Once per annum
4	Advise and implement any user enhancements of the systems and management system	Once per annum
5	Provide report of findings	Once per annum

Additional Provisions		
A	<p><b>Remote Support</b></p> <p>Provide and review contact details for emergency calls / remote access to support the system in the event of an emergency</p> <p>Accept and respond to any alarms that are actioned by the BMS system</p> <p>Assist remotely (by telephone / remote dial in) DigiPlex and their service provider SAAS Prospekt AS as necessary</p> <p>Report any 'out of normal conditions ' identified</p>	24/365
B	<p><b>Software Update</b></p> <ol style="list-style-type: none"> <li>1. Apply updates and enhancements when they become available.</li> <li>2. At an agreed time, install the relevant software updates and enhancements</li> <li>3. Deliver complementary documentation, as applicable</li> <li>4. Familiarise one person with the changes made</li> <li>5. Advise of any software extensions and upgrades available</li> </ol>	As available
C	<p><b>Report &amp; Review</b></p> <p>Provide an annual report of the technical assistance provided the report to include</p> <ul style="list-style-type: none"> <li>• any defects found on the system</li> <li>• a record of alarms which has necessitated action</li> </ul> <p>A review discussion by telephone call to with DigiPlex to discuss the operational performance and any further actions that may be required.</p>	Annual

## **General obligations for the Supplier associated with the Deliverables:**

- Access to the Premises requires special permission and the Supplier commits himself to use a limited number of persons approved in advance by DigiPlex.
- The Supplier shall seek a pre-approved work permit before performing any services at the Premises.
- The Supplier guarantees qualified personnel. The Supplier shall ensure that any necessary training is given to DigiPlex personnel at each annual visit.
- In addition to the right of complaint as laid down in the law of 13 May 1988 no. 27, the Supplier guarantees that delivered equipment delivered under the Agreement are free from errors or defects for a warranty period of 2 (two) years counted from the actual day of delivery to DigiPlex. For software and other materials delivered from the Supplier, a warranty period of 1 (one) year counted from the actual day of delivery to DigiPlex applies. During the warranty period the Supplier commits himself to rectify errors and defects or make redeliveries free of charge for DigiPlex. The Supplier shall carry out a rectification of errors or redelivery within 3 (three) weeks counted from the actual complaint from DigiPlex unless otherwise have been agreed upon in writing. For errors or defects not covered by complaint or warranty, the Supplier shall offer the same rectification or repair as stated in the above, but then as a billable service where the Supplier's standard rates for equivalent services apply (same hourly rate as agreed upon, see Attachment 3).
- The Supplier guarantees to DigiPlex that the Supplier holds all the necessary material and immaterial rights linked to the delivery. If third parties institute legal proceedings or objections about violation of immaterial rights, DigiPlex shall notify the Supplier immediately. The Supplier shall assume the case and the costs and risks linked thereto. The Supplier shall indemnify DigiPlex for any claim linked to such violation or alleged violation.
- The Supplier undertakes to hold liability insurance for the Deliverables.
- A checklist with condition reports on what spare part/ products that should be changed etc. shall be prepared after each inspection. A control shall only be performed if requested by the customer. Checklist / condition report must be forwarded to the customer, at the latest 14 days after the executed service.
- DigiPlex operates a Health and Safety system at their sites and the contractor hereby confirms their agreement to operate within the requirements of the system.
- All personnel provided by the contractor shall be aware of Health and Safety and shall ensure they are suitably qualified for the works to be undertaken and shall ensure where necessary a Health and Safety risk assessment is provided to DigiPlex prior to works being undertaken.

## Attachment 3: Compensation

Unless otherwise agreed upon in writing all prices stated by the Supplier are in NOK and without VAT.

Description	Fixed price
1st December 2015 – 30th November 2018	£5,000 (£GBP) per annum (inclusive of travel and expenses)
24/7/365 Remote support	Inclusive in above cost.
Additional Works	Price
Labour Rate for additional work	£55.00 per Hour
Travel Costs	Actual Incurred Cost +2.5%

### General obligations for the Supplier associated with invoicing:

- The supplier shall, at the latest together with the invoice, deliver a time sheet of hours worked, including a description of the services carried out.
- The prices from the Supplier shall include all expenses, administration and taxes or expenses the Contractor may have had carrying out the Deliverables, including travels, subsistence allowances and delivery to the delivery address stated by DigiPlex.
- The prices may be adjusted according to the consumer price index, for the first time in November 2018 following the entering into the Agreement. Any such adjustment must be alerted to the other Party with 30 days prior written notice.
- Work beyond the agreed maintenance, shall be invoiced according to the agreed hourly rate. Overtime and extraordinary expenses can only be invoiced to the extent that they have been approved in advance in writing and in accordance with the PO (Purchase Order).

## Attachment 5: Instructions, procedures etc

Method statement (MS) for execution of the service must be made by the supplier before the actual service, and submitted and approved in Digiplex' system called E-Permit.

This MS shall describe the generic health and safety risks as well as precautions. It must also list any operational risks known to the supplier as a consequence of the planned works (like downtimes, limited service etc. from the system itself).

All accesses and permits to work are based on a pre-approved MS' in E-Permit and subsequent access request submitted by the contractor and approved by Digiplex before work can begin.

<https://digiplexlive.e-permits.co.uk/default.aspx>

<http://www.digiplex.com/epermit>