

Sale and Purchase Agreement

IT procurement agreement governing the transfer of rights of ownership, rights of disposal and other deliverables

**Government Standard Terms and Conditions
for IT Procurement
SSA-K**

IT procurement agreement governing the transfer of rights of ownership, rights of disposal and other deliverables

An agreement governing
(designation of the procurement)

has been concluded by:

(hereafter referred to as the Contractor)

and

(hereinafter referred to as the Customer)

Place and date:

(Name of the Customer)

(Name of the Contractor)

Signature of the Customer

Signature of the Contractor

The Agreement is signed in two copies; one for each party.

Address(es) for delivery and installation

Communications

All communications regarding this Agreement shall be addressed to:

On the part of the Customer:

Name

Position

Telephone

E-mail

On the part of the Contractor:

Name

Position

Telephone

E-mail

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1. GENERAL PROVISIONS

1.1 SCOPE OF THE AGREEMENT

The Agreement governs the procurement of equipment, software and/or other deliverables (the “Deliverables”), as specified in more detail in the Appendices.

The Customer has, based on its purposes and needs, specified its requirements in Appendix 1 (Customer requirement specification), and has described its technical platform in Appendix 3. The Contractor has described its solution, based on the Customer requirement specification, in Appendix 2 (Contractor solution specification).

If upgrading of the Customer’s technical platform is necessary to enable the Customer to utilise the deliverables, the Contractor shall point this out in Appendix 2. If the Contractor is of the view that there are obvious errors, defects or ambiguities in the Customer requirement specification, the Contractor shall point this out in Appendix 2.

The scope and delivery of the deliverables are described in more detail in the Appendices included as part of the Agreement below.

“Agreement” means this general contractual wording, including the Appendices.

1.2 APPENDICES TO THE AGREEMENT

All rows shall be ticked (yes or no)	Yes	No
Appendix 1: Customer requirement specification		
Appendix 2: Contractor solution specification		
Appendix 3: Customer technical platform		
Appendix 4: Project and progress plan		
Appendix 5: Testing and approval		
Appendix 6: Administrative provisions		
Appendix 7: Total price and pricing provisions		
Appendix 8: Changes to the general contractual wording		
Appendix 9: Changes subsequent to the formation of the Agreement		
Other appendices:		

1.3 INTERPRETATION – RANKING

Changes to the general contractual wording shall be set out in Appendix 8, unless the general contractual wording refers such changes to a different Appendix.

The following principles of interpretation shall apply in case of conflict:

1. The general contractual wording shall prevail over the Appendices.
2. Appendix 1 shall prevail over the other Appendices.
3. To the extent that it is clearly and unequivocally specified which Clause or Clauses have been changed, replaced or supplemented, the following principles of precedence shall apply:
 - a) Appendix 2 shall prevail over Appendix 1.
 - b) Appendix 8 shall prevail over the general contractual wording.
 - c) If the general contractual wording refers to changes to any other Appendix than Appendix 8, such changes shall prevail over the general contractual wording.
 - d) Appendix 9 shall prevail over the other Appendices.

1.4 CHANGES TO THE DELIVERABLES SUBSEQUENT TO FORMATION OF THE AGREEMENT

Changes to the deliverables subsequent to the formation of the Agreement shall be made in accordance with the procedures in Chapter 3.

1.5 ENTITLEMENT TO MAINTENANCE AND SERVICE AGREEMENT

The Customer has the right to conclude a maintenance and service agreement with the Contractor, or with a third party that may, by specific agreement, perform maintenance and service on behalf of the Contractor. Such an agreement shall, unless otherwise agreed by the parties, be concluded on the basis of a set of Government Standard Terms and Conditions for Maintenance and Service of Equipment and Software.

A maintenance and service agreement ought to be entered into simultaneously with this Agreement. If such an agreement is not entered into simultaneously with this Agreement, the Contractor shall for a period of two (2) years from the expiry of the approval period be obliged to enter into such an agreement if desired by the Customer. The Customer shall in such case be entitled to request services and pricing terms that are not inferior to the general terms (e.g. list prices) offered by the Contractor at the time of conclusion of the maintenance agreement.

The Contractor shall during this period be obliged to continue providing access to necessary expertise relating to deliverables delivered under this Agreement.

1.6 THE REPRESENTATIVES OF THE PARTIES

Upon conclusion of the Agreement, each of the parties shall appoint a representative who is authorised to act on behalf of the party in matters relating to the Agreement. The authorised representatives of the parties, as well as procedures and notice periods for any replacement of the representatives, shall be specified in more detail in Appendix 6.

2. DELIVERY OF THE DELIVERABLES

2.1 INSTALLATION AND DELIVERY PREPARATIONS

2.1.1 Documentation, disclosure obligation, etc.

Documentation requirements shall be set out in Appendices 1 and 2. The documentation shall, unless otherwise agreed, comply with all requirements implied by good IT practice and conform with best practice in the area at any given time.

Agreed documentation for equipment and standard software shall be delivered without undue delay after the signing of the Agreement, and no later than by the time limit stipulated in Appendix 4, in order to enable the Customer to prepare the premises for the Contractor's installation work, and to give the Customer the opportunity to prepare its organisation for the approval period. The documentation relating to customisations developed specifically for the Customer shall be delivered according to the delivery timetable set out in Appendix 4.

The documentation shall preferably be in the Norwegian language. It shall be dated and be the most recently updated version. If some documentation is not in the Norwegian language, the language used shall be expressly stated in Appendix 2. Unless otherwise specified in Appendix 2, the documentation shall be delivered in one (1) paper hard copy, as well as in machine-readable form on the medium, and in the format, described in Appendix 2.

It shall be the responsibility of the Contractor, to the extent relevant to the deliverables, to provide the Customer with sufficient information in relation to all matters that may be important for the successful installation, preparation and operation of the deliverables. Information shall be provided, unless otherwise agreed, about any requirements that apply with regard to telecommunications, power supply calculations, electric circuitry, safeguarding of operational dependability, safeguarding against loss of data or destruction of facilities in case of power supply interruption, safeguarding against unauthorised access to the system, and other specifics pertaining to the deliverables that are not set out in the installation instructions or similar documents.

2.1.2 Training

Agreed training of the Customer's personnel shall be completed before the Customer makes use of the deliverables, normally as close to the beginning of the approval period as possible, unless otherwise agreed in Appendix 1 and/or Appendix 2. The specific dates of such training are set out in Appendix 4.

2.1.3 Building works

The Customer shall, at its own expense, carry out any building works required on the premises to accommodate the equipment, and arrange electric power supply, cooling and ventilation systems and other installations, as prescribed by the Contractor in the installation instructions, etc. The Contractor shall provide guidance to the Customer concerning the building or refurbishment of premises to accommodate the equipment and the use thereof.

2.1.4 Responsibility for preparing installation

The Customer shall be responsible for completing necessary preparations on the premises of the Customer as agreed in Clause 2.1.5, which responsibility shall include ensuring that the technical platform requirements, to the extent that these are the responsibility of the Customer, conform with the requirements stipulated in Appendix 2.

Any delay to the preparations resulting from errors or defects in the Contractor's documentation or information received by the Customer pursuant to Clause 2.1.1 above shall not be the responsibility of the Customer.

2.1.5 Time limit for installation preparation, and the Contractor's final inspection

The installation preparations shall ordinarily be completed well ahead of the agreed installation commencement date, and no later than the time limit specified in Appendix 4.

The Contractor shall then carry out a final inspection as to whether physical and/or technical conditions are such as to enable the Contractor to approve the commencement of installation, unless the parties have agreed, in Appendix 4, that this is not relevant. Any errors and defects noted during the inspection shall be rectified by the Customer before the agreed installation commencement date, see Appendix 4.

2.1.6 The Contractor's approval

The Contractor shall not, subsequent to the Contractor's inspection and written approval, be entitled to claim reimbursement of any additional expenses incurred by the Contractor as a result of any delay to the deliverables due to such errors and defects in the layout of the premises or the technical platform as ought to have been discovered by the Contractor through a proper inspection.

2.1.7 Installation - Installation date

The Contractor shall be responsible for installing and finalising equipment and/or software in such a way that it works in an integrated manner in accordance with the requirements and specifications set out in the Agreement. Written notice shall be given to the Customer that installation has been completed and that the deliverables are ready for use within the time limit stipulated in Appendix 4.

The first working day after such notice has been received by the Customer shall be deemed to be the installation date. By working days are meant all days that are neither Saturdays, Sundays or public holidays, nor Christmas Eve or New Year's Eve.

The Customer may contest the notice within five (5) working days if it is obvious that installation is so defective as to fall short of the requirements under the Agreement, in which case the installation date shall be deemed not to have occurred. A corresponding procedure shall apply to any new notices of installation.

2.2 THE CUSTOMER ACCEPTANCE TEST

2.2.1 Plan for the Customer acceptance test

The Customer shall, in cooperation with the Contractor, prepare, and be responsible for, a plan for the Customer acceptance test, which shall include test procedures for verifying that the delivered equipment and/or software meet the agreed requirements (the “Acceptance Test Plan”), as a basis for the Customer’s completion of its comprehensive assessment by way of the acceptance test.

The Contractor shall, within the time limit stipulated in Appendix 4 and based on the requirements stipulated for the deliverables, prepare the underlying documentation for the Acceptance Test Plan. The underlying documentation shall include acceptance procedures and acceptance criteria, so as to enable the Customer to proceed with its work on the Acceptance Test Plan.

The Acceptance Test Plan shall describe how the Customer acceptance test is to be carried out, and shall contain detailed descriptions of the tests to be performed, as well as of the acceptance criteria.

The Customer shall submit a draft Acceptance Test Plan to the Contractor for comments no later than thirty (30) working days prior to the commencement of the acceptance test. The Contractor shall examine the Acceptance Test Plan and give written feedback as to whether it is deemed sufficient to achieve satisfactory testing of the solution. If the Contractor is of the view that the Acceptance Test Plan does not suffice, it shall give written feedback to the Customer as to what should be rectified in order for it to be deemed sufficient. The Contractor’s feedback shall be available no later than ten (10) working days after the Acceptance Test Plan has been received by the Contractor.

Other time limits may be agreed in Appendix 4.

2.2.2 Definition of error levels

The Customer acceptance test shall, unless otherwise agreed, be based on the following definitions of errors:

Level	Category	Description
A	Critical error	- Error that results in the stoppage of the system, the loss of data, or in other functions that are of critical importance to the Customer not being delivered or not working as agreed. - The documentation is incomplete or misleading, and this results in the Customer being unable to use the system or material parts thereof.
B	Serious error	- Error that results in functions of importance to the Customer not working as described in the Agreement, and which it is time-consuming or costly to avoid. - The documentation is incomplete or misleading, and this results in the Customer being unable to use functions that are of importance to the Customer.
C	Less serious error	- Error that results in individual functions not working as intended, but which can be avoided with relative ease by the Customer. - The documentation is incomplete, imprecise or easily misunderstood.

2.2.3 Scope of the acceptance test

The Customer acceptance test shall comprise software and/or equipment that form part of the deliverables, see Appendices 1 and 2. Unless otherwise agreed in Appendix 5, the Customer acceptance test shall include the following tests:

- a) function test
- b) robustness test
- c) integration test
- d) volume, capacity and response-time test
- e) review of all documentation
- f) installation test
- g) test of operating procedures, including back-up copying.

2.2.4 Performance of the Customer acceptance test

The acceptance test shall be performed after the installation date, and shall, moreover, be commenced and completed in accordance with the time limits set out in Appendix 4.

The Customer acceptance test shall be performed as described in Appendix 5, and in accordance with the Acceptance Test Plan, see Clause 2.2.1.

The Customer shall keep records of the entire test, showing which tests have been carried out and, for each individual test area:

- a) when the test was performed
- b) who performed the test
- c) the outcome of the test.

All errors reported during the Customer acceptance test shall, if possible, be documented, so that they may be reproduced. All reported errors shall be categorised by the Customer as A-, B- or C-errors, see Clause 2.2.2.

The Customer is obliged to observe the progress plan for the test. The Customer shall report errors to the Contractor on an ongoing basis, and the Contractor shall repair the errors without undue delay. If the Customer is impeded in its implementation of the test because the Contractor fails to make the agreed progress in repairing errors, the Customer shall suspend the test until the Contractor has made the necessary rectifications. The period of suspension of the test shall be added to the period available for the Customer acceptance test.

The Contractor shall document its version-control system. The Customer may nevertheless opt to retest previously rectified errors upon the receipt of each new version. If the Contractor delivers versions in which previously rectified errors are not corrected, the Customer acceptance test shall be suspended until the Contractor has made the necessary rectifications. The period of suspension of the test shall be added to the period available for the test.

Should there arise, during the test, any errors or other problems in relation to the test which imply that further testing serves no purpose, the test shall be suspended and recommenced from the beginning when the matter has been rectified.

The records of the test shall be signed by the representatives of both parties, each of which shall keep one signed copy.

2.2.5 Approval of the Customer acceptance test

If the Customer approves the acceptance test, the Customer shall give the Contractor written notice to this effect without undue delay. Such notice may be given in the records. The test is under any circumstance deemed to be approved unless the Customer has notified the Contractor in writing, within ten (10) working days after the test was to be completed according to the Acceptance Test Plan (taking into account any extensions due to matters as described in Clause 2.2.4), that it is not approved. The acceptance test shall also be deemed approved if the Customer opts to put the solution into operation before the test has been approved by the Customer.

The Customer may not refuse to approve the test on the basis of matters that are immaterial to the Customer's use of the deliverables. A- and B-errors shall be deemed individually material, with the exception of B-errors that are not of material importance to the ability of the Customer to put the software into operation and commence the approval period. C-errors shall be deemed immaterial, unless several C-errors together would make approval clearly unreasonable. Errors that have only occurred once, and which it has not been possible to repeat during the acceptance test period, shall not be deemed errors for the purposes of approving the test. The Customer may make approval of the test conditional upon the existence of a realistic plan for repairing all errors as soon as possible.

If the Customer refuses to approve the test, such refusal shall be explained in writing. A remark from the Customer in the records shall be deemed sufficient written explanation, provided that it is clearly stated that the test is not approved. If the Contractor wishes to argue that the refusal is unjustified, including if the Contractor disagrees with the categorisation of errors, written notice shall be given to such effect within five (5) working days. If the Customer still refuses to approve the test, the dispute shall be resolved pursuant to Chapter 16.

If the Contractor does not dispute the Customer's refusal, the Contractor shall, within five (5) working days, send the Customer a timetable for repairing the errors associated with the deliverables. The Contractor shall give written notice to the Customer when the repairs have been carried out. Repairs shall not be deemed completed until they have been properly tested by the Contractor. Tests shall cover all parts of the deliverables that may be affected by the errors.

The Customer shall resume its acceptance test as soon as the Contractor has given notice that the errors have been repaired and tested. The Customer shall be entitled to a reasonable amount of additional time to carry out such testing.

The approval period may only commence once the acceptance test has been approved.

The Customer's approval of the acceptance test shall not prevent the Customer from demanding, at a later date, the rectification of errors or defects that the Customer did not discover during the test, or errors that have not been rectified by the Contractor during the acceptance test period.

2.2.6 Commissioning

Software and/or equipment shall be put into regular operation after the Customer acceptance test has been successfully completed and approved, and within the time limit specified in Appendix 4.

The duties of the parties in connection with commissioning are specified in Appendix 4.

2.3 APPROVAL PERIOD AND DELIVERY DATE

2.3.1 Duration

A three (3) month approval period shall commence on the date on which the deliverables are put into regular operation, unless a different duration has been agreed in Appendix 5.

If start-up of regular operations is delayed as a result of circumstances related to the Customer, the approval period shall nevertheless commence on the agreed date, unless the Customer requests a change to the progress plan pursuant to Chapter 3.

2.3.2 Duty to check on the part of the Customer

During the approval period, the Customer shall carry out checks as to whether the deliverables conform with what has been agreed.

The checks carried out by the Customer during the approval period shall be performed on the basis of the ordinary, day-to-day operational and other tasks. A detailed specification of the content of the approval period, with a specific description of the checks to be carried out by the Customer, is set out in Appendix 5.

2.3.3 Error-handling

During the approval period, the Customer shall on an ongoing basis give the Contractor written notice of any errors (and descriptions of the errors), in accordance with any procedures agreed in Appendix 5.

Unless otherwise agreed in Appendix 5, any errors shall be repaired, at the latest, by the end of the approval period.

If the Customer discovers A-errors and asserts these in writing, the scope for further checks during the approval period shall be deemed eliminated. The approval period shall be deemed suspended as of the date on which the Customer gives notice, and shall not recommence until the Contractor has repaired the errors in accordance with the rules in Clause 2.3.4. The same shall apply to B-errors that individually or in aggregate make further checks impossible or very difficult, or that materially reduce the value of the checks to the Customer for as long as the error(s) persist.

The Contractor shall, as soon as possible, repair the errors and test the rectification of the errors as stipulated in Clause 2.3.4, fourth paragraph.

2.3.4 Final approval – Delivery date

The Customer shall, prior to the end of the approval period, give the Contractor written notice regarding the outcome of the checks and whether or not the

deliverables are deemed to conform with what has been agreed and, consequently, whether or not they can be approved. If such notice has not been sent by the end of the approval period, the deliverables shall nevertheless be deemed to be approved (through passivity).

The Customer may not refuse to approve the deliverables on the basis of matters that are immaterial to the Customer's use of the deliverables. A- and B-errors shall be deemed individually material. C-errors shall be deemed immaterial, unless several C-errors together would make approval clearly unreasonable. The Customer may make approval of the deliverables conditional upon the existence of a realistic plan for repairing all errors as soon as possible.

If the Customer refuses to approve the deliverables as conforming with what has been agreed, such refusal shall be explained in writing. If the Contractor wishes to argue that the refusal is unjustified, including if the Contractor disagrees with the categorisation of errors, written notice shall be given to such effect no later than five (5) working days after receipt of the Customer's notice of refusal. If the Customer still refuses to approve the deliverables, the dispute shall be resolved pursuant to Chapter 16.

If the Contractor does not dispute the Customer's refusal, the Contractor shall within five (5) working days send the Customer a plan for repairing the errors associated with the deliverables. The Contractor shall give written notice to the Customer when the repairs have been carried out. Repairs shall not be deemed to be carried out until they have been properly tested by the Contractor. Tests shall cover all parts of the deliverables that may be affected by the errors.

The Customer shall, as soon as the Contractor has given notice that the errors have been repaired, continue its checks of the repaired items during the approval period.

If the deliverables are not approved, the approval period shall be extended until the prerequisites for approval have been met.

The first working day after the deliverables are, or are deemed to be, approved shall be the delivery date.

The Customer shall enjoy, as of the delivery date, the warranty described in Chapter 4.

The Customer's approval shall not prevent the Customer from demanding, at a later date, the rectification of errors and defects that the Customer did not discover during the approval period, or errors that have not been rectified by the Contractor during the approval period. The Contractor's claim, if any, for reimbursement of additional expenses is governed by Clause 4.3.

2.4 CANCELLATION

The Customer may cancel, in whole or in part, the items contracted under this Agreement on 1 (one) month's written notice.

In case of such cancellation, the Customer shall pay:

- a) Any amount due to the Contractor in respect of such part of the deliverables as has already been completed.

- b) The Contractor's necessary and documented direct costs in relation to the reassignment of personnel.
- c) Other documented direct costs incurred by the Contractor as the result of the cancellation, including disbursements and costs that have been incurred by the Contractor prior to its receipt of the notice of cancellation, and which the Contractor is unable to use for other purposes.

In addition, the Customer shall pay a cancellation penalty equal to the lower of:

- four (4) percent of the contract price, or
- six (6) percent of such part of the contract price as remains unpaid as at the cancellation date and which, furthermore, has not been paid pursuant to Sub-clause a) above.

A different cancellation penalty may be agreed between the parties in Appendix 7.

In case of partial cancellation, the cancellation penalty shall be calculated on the basis of the share of the contract price accounted for by the cancelled items.

3. CHANGES TO THE DELIVERABLES SUBSEQUENT TO CONCLUSION OF THE AGREEMENT

3.1 RIGHT TO CHANGE THE CONTENTS OF THE AGREEMENT (CHANGE TO THE DELIVERABLES)

The Customer shall have the right to order changes in the form of increases or reductions in the scope, nature, type, quality or delivery of the deliverables, as well as changes to the progress plan, provided that such changes fall within the scope of what the parties could reasonably have expected when the Agreement was concluded.

However, the Contractor shall not be obliged to carry out additional work that represents, in total, a net addition of more than fifteen (15) percent to the original contract price, other than in the case of a disputed change order pursuant to Clause 3.8.

If the total remuneration of the Contractor, net of all reductions and additions, is reduced by more than fifteen (15) percent of the original contract price, such reduction shall be dealt with as a partial cancellation, see Clause 2.4.

3.2 CHANGE ESTIMATE

The Contractor shall, within a maximum of ten (10) working days of receipt of a written request for a change, submit a study of potential risk and change consequences, as well as a price estimate. In the case of a request for major changes, the parties may agree to extend the time limit by the number of days that is deemed to be reasonable.

At a minimum, the study shall include the following:

- a) description of the change
- b) description of the scope of and time required for work that needs to be carried out as a result of the change

- c) implications for the requirement specification/solution specification/detailed specification
- d) implications for the requirements applicable to the Customer's technical platform
- e) implications for the contract price, with a detailed specification of the calculation basis, see Clause 3.5
- f) implications for the progress plan, see Clause 3.5
- g) changes to the Customer participation requirements
- h) changes to test plans and test criteria
- i) implications for the future maintenance of the deliverables.

Documented costs in connection with the preparation of change estimates shall be carried by the Customer in accordance with the prices and terms applicable to supplementary work, see Appendix 7. If standard prices for the preparation of change estimates are set out in Appendix 7, the Contractor shall not be entitled to the reimbursement of any costs in excess thereof, unless the Customer has given its prior written approval of a more extensive estimate.

If the preparation of a change estimate in itself necessitates changes to the progress plan, the Contractor may request that the plan be adjusted.

3.3 CHANGE ORDERS

If the Customer accepts the study and the price submitted by the Contractor, the Customer shall inform the Contractor, by issuing a change order, that the Customer wishes the change to be implemented. The change order shall be signed by the Customer.

Thereafter, the Contractor shall, within ten (10) working days of the Contractor receiving the signed change order, ensure that the change order is incorporated into the Agreement, with changes to specifications, the progress plan, the technical platform, tests, required contributions from the Customer, as well as changes to the contract price, being set out in the Agreement.

The changes shall be presented to the Customer for its approval.

The terms and conditions of the Agreement shall also apply to change orders, unless the change order explicitly states otherwise.

3.4 DOCUMENTATION OF THE CHANGE

Changes to the deliverables as referred to in Chapter 3 shall be made in writing, and shall be signed by an authorised representative of the parties. The Contractor shall maintain a directory of the changes on an ongoing basis, which shall form Appendix 9, and shall without undue delay provide the Customer with an updated copy thereof.

3.5 CONSEQUENCES OF CHANGE ORDERS

If the Customer requests a change, the Contractor shall have the right to request adjustments to the contract price and progress plan or other matters, see Clause 3.2, caused by the change requirement of the Customer.

Adjustments to the contract price shall be calculated on the basis of the hourly charges or other unit prices set out in Appendix 7, provided that the work

occasioned by the change is, in the main, similar to work for which hourly charges or unit prices have been specified.

In cases other than those mentioned in the preceding paragraph, the Contractor shall make an offer, specifying the additions or reductions resulting from the changes. The offer shall reflect the general price level of this Agreement.

If any changes and/or additions requested would normally have resulted in an adjustment to the agreed installation date or delivery date, the Contractor shall, to the extent practicable, seek to accelerate implementation so that the agreed installation date or delivery date can nevertheless be observed. In such a case, acceleration shall be deemed a change that is to be dealt with pursuant to the rules in Chapter 3.

The change order shall be implemented without undue delay when received by the Contractor. This shall apply irrespective of whether the effect of the change order on the contract price, the progress plan or other terms and conditions of the Agreement has been finally resolved, see Clause 3.6.

3.6 DISPUTE CONCERNING THE CONSEQUENCES OF A CHANGE

If the parties agree that there is a change, but disagree about the effect of the change on the contract price, the Customer shall pay a preliminary consideration calculated pursuant to the rules set out in Clause 3.5. If no ruling by an independent expert or mediator has been requested, and no legal proceedings have been instituted in respect of the work occasioned by the change within six (6) months of the delivery date or the date on which notice of termination for breach or cancellation was received by the Contractor, the consideration paid shall be deemed final.

The Contractor shall provide security in respect of the consideration until such date as the consideration is deemed to have been determined with final effect.

3.7 DISAGREEMENT AS TO WHETHER THERE IS A CHANGE

If the Customer requests, in the form of orders, specifications or otherwise, the performance of specific work that the Contractor believes to fall outside the scope of his obligations pursuant to the Agreement, the Contractor shall, in writing, request the Customer to issue a change order.

Together with the change order request, the Contractor shall furnish the Customer with a study of relevant risk and change consequences, as well as a price estimate (change estimate) pursuant to Clause 3.2. The Customer shall not cover costs connected to the preparation of the change estimate unless a change order is issued pursuant to Clause 3.3.

If the Contractor fails to make such a request without undue delay, the work shall be deemed part of the Contractor's obligations pursuant to the Agreement, and the Contractor shall lose its right to invoke such work as grounds for the extension of time limits, additional consideration or damages.

3.8 DISPUTED CHANGE ORDER

If the Contractor has requested that the Customer issue a change order pursuant to Clause 3.7, the Customer shall, within a reasonable period of time, issue a change

order pursuant to Clause 3.3, or issue a written waiver of the request.

If the Customer deems the work to form part of the deliverables, it shall be explicitly stated that the change order is disputed (disputed change order). The change order shall include an explanation as to why the Customer deems the change order to be disputed.

Although the change order is disputed, the Contractor shall be obliged to perform the work ordered, provided that security is provided by the Customer. The requirement to provide security shall not apply if the Customer is a Norwegian public body.

3.9 DISPUTE RESOLUTION – DISPUTED CHANGE ORDER

If the Contractor has received a disputed change order, the Contractor shall, within six (6) months of having received the disputed change order, either request a ruling from an independent expert or mediator, or institute legal proceedings or submit the dispute for arbitration in order to have its claim resolved with final effect, see Chapter 16. If the Contractor fails to do so, the work shall be deemed to fall within the scope of the Contractor's duties under the Agreement.

4. WARRANTY PERIOD

4.1 SCOPE OF THE WARRANTY

Unless otherwise agreed in Appendix 8, the warranty period shall be two (2) years for equipment and one (1) year for software, as from the delivery date, see Clause 2.3.

The Contractor shall, during the warranty period, rectify errors and defects, replace defective parts of equipment and rectify errors in software governed by this Agreement, at no additional cost, conditional upon normal, careful use on the part of the Customer. The warranty is conditional upon the Customer having invoked errors by the expiry of the warranty period, at the latest.

4.2 PERFORMANCE LEVEL

Any maintenance and service beyond the warranted performance shall be specified and priced in a designated agreement, see Clause 1.5.

If the parties have concluded a maintenance and service agreement, the performance level of such agreement shall also form the basis for the warranted performance.

If no maintenance and service agreement has been concluded, or the parties desire it for other reasons, the performance level during the warranty period shall be specified in Appendix 1 and/or 2.

All work involved in remedying errors and defects shall be commenced and completed without undue delay after the Contractor has received notice of such errors or defects.

If the Contractor chooses to rectify errors during the warranty period by delivering a new version of the software, the Contractor shall not be entitled to any consideration in respect of the new version, even if it contains improvements. The Contractor may only rectify errors by way of the delivery of a new version if the Customer is able to utilise such new version on the Customer's existing technical platform.

4.3 ADDITIONAL CONSIDERATION

If defects that ought to have been discovered during the approval period are not invoked until a later date, the Contractor may claim compensation for any additional expenses incurred by the Contractor as the result of late notification of such defects.

In the case of errors and defects that fall outside the scope of the warranty, the Contractor shall perform the same service as agreed above, but in the form of a chargeable service. The Contractor's list prices for such services shall apply, unless otherwise agreed.

5. THE DUTIES OF THE CONTRACTOR

5.1 RESPONSIBILITY OF THE CONTRACTOR FOR ITS DELIVERIES

The Contractor is responsible for ensuring that the deliverables as a whole (the integrated solution) provide the functions and satisfy the requirements specified in the Agreement.

The Contractor is responsible for ensuring that the deliverables are tailored to the technical platform specified in Appendices 2 and 3, see Clause 1.1, and that the deliverables are compatible with other software specified in Appendix 1 and Appendix 2.

5.2 REQUIREMENTS RELATING TO THE RESOURCES AND EXPERTISE OF THE CONTRACTOR

The Contractor warrants that sufficient qualitative and quantitative resources and expertise will be invested in the deliverables, based on the requirements stipulated in the Agreement. The Contractor's project manager and other key personnel are specified in Appendix 6.

Persons designated as key personnel in Appendix 6 shall not, within the scope of the Contractor's managerial prerogative as employer, be replaced without the prior approval of the Customer. Such approval shall not be unreasonably withheld. The actual participation of the key personnel in the provision of the deliverables shall not be scaled back without the prior approval of the Customer.

Personnel that the Customer, for justifiable reasons, does not wish to use, or wishes to have replaced, shall as soon as possible be replaced by alternative personnel with at least corresponding expertise.

Personnel replacements shall not affect the progress of the project or impose additional costs on the Customer.

5.3 USE OF SUBCONTRACTORS

The Contractor's use and replacement of subcontractors shall be approved in writing by the Customer. Approval shall not be unreasonably withheld.

Approved subcontractors shall be named in Appendix 6.

5.4 COOPERATION WITH THIRD PARTIES

The Contractor undertakes to cooperate with third parties to the extent that the Customer deems this necessary for the purposes of performing the duties stipulated in this Agreement. The scope of such assistance, as well as any consideration in respect thereof, shall be specified in Appendix 6. The Contractor shall in such cases adopt an independent position, and act in consultation with the Customer.

However, the Contractor shall be released from the duties mentioned in this Clause if the Contractor substantiates that such cooperation will be of material disadvantage to the Contractor's relationship with existing subcontractors or other business contacts.

5.5 WAGES AND WORKING CONDITIONS

The following shall apply to agreements governed by the Regulations of 8 February 2008 No. 112 relating to Wages and Working Conditions under Public Contracts.

The Contractor shall ensure that employees in its own organisation and the employees of any subcontractors do not have wages or working conditions that are inferior to those stipulated by any applicable nationwide collective bargaining agreement or those that are normal for the relevant location and trade. This only applies to employees who contribute directly to the performance of the Contractor's obligations under the Agreement.

All agreements that are entered into by the Contractor and that involve the performance of work under this Agreement shall include corresponding obligations.

If the Contractor fails to meet this obligation, the Customer shall be entitled to retain part of the contract price, corresponding to approximately 2 (two) times the saving made by the Contractor, until it has been documented that compliance has been achieved.

The Contractor shall, at the request of the Customer, disclose documentation relating to the relevant wages and working conditions. Each of the Customer and the Contractor may request that the information be submitted to an independent third party appointed by the Customer to examine whether the requirements of this provision have been complied with. The Contractor may request the third party to sign a declaration stating that the information will not be used for any purpose other than ensuring compliance with the obligations of the Contractor under this provision. The disclosure obligation shall also apply to subcontractors.

If an independent third party concludes that the requirements under this provision are not complied with, and this is disputed by the Contractor, the Customer may request the Contractor and its subcontractors to disclose to the Customer documentation relating to the applicable wages and working conditions.

6. THE DUTIES OF THE CUSTOMER

6.1 THE RESPONSIBILITIES AND CONTRIBUTIONS OF THE CUSTOMER

The Customer accepts responsibility for expressing the purpose of the procurement and its requirements and needs in a clear manner in Appendix 1, as a basis for the performance of the Contractor. If it is stated in Appendix 2 that the technical platform of the Customer needs to be upgraded, see Clause 1.1, the Customer shall itself ensure that such upgrading takes place, unless otherwise stipulated in Appendix 1 and/or 2.

The Customer shall help to facilitate the Contractor's performance of its duties under this Agreement.

The Customer shall contribute to the delivery of the deliverables as specified in Appendix 2, in accordance with the time limits stipulated in Appendix 4.

6.2 USE OF THIRD PARTIES

The Customer may freely appoint third parties to assist it in connection with its duties under the Agreement. These shall be specified in Appendix 6. The Contractor shall be notified of the Customer's selection of a third party, and may reject the assignment if the Contractor is able to demonstrate that this will entail a material commercial disadvantage for the Contractor.

7. DUTIES OF THE CUSTOMER AND THE CONTRACTOR

7.1 MEETINGS

A party may, if it deems it necessary, convene, with no less than three (3) working days' notice, a meeting with the other party to discuss the contractual relationship and how the contractual relationship is being handled.

Other time limits and procedures for the meetings may be agreed in Appendix 6.

7.2 RESPONSIBILITY FOR SUBCONTRACTORS AND THIRD PARTIES

If the Contractor appoints a subcontractor, or the Customer appoints a third party, to perform work occasioned by this Agreement, the relevant party shall remain fully responsible for the performance of such work, just as if the party was performing the work itself.

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7.3 CONFIDENTIALITY OBLIGATION

Information that comes into the possession of the parties in connection with the Agreement and the implementation of the Agreement shall be kept confidential, and shall not be disclosed to any third party without the consent of the other party.

If the Customer is a public body, the confidentiality obligation under this provision shall not be wider than the obligation imposed by the Act of 10 February 1967

relating to Procedure in Cases concerning the Public Administration (the Public Administration Act) or corresponding, sector-specific regulations.

The confidentiality obligation pursuant to this provision shall not prevent the disclosure of information if such disclosure is required pursuant to an act or regulations, including disclosure and a right of access pursuant to the Act of 19 May 2006 relating to the Right of Access to Documents in the Public Administration (the Freedom of Information Act). The other party shall, if possible, be notified prior to the disclosure of such information.

The confidentiality obligation shall not prevent the information from being used when there is no legitimate interest in keeping it confidential, for example when it is in the public domain or is accessible to the public elsewhere.

The parties shall take all necessary precautions to prevent unauthorised persons from gaining access to, or knowledge of, confidential information.

The confidentiality obligation shall apply to the parties' employees and subcontractors, and to third parties who act on behalf of the parties in connection with the implementation of the Agreement. The parties may only transmit confidential information to such subcontractors and third parties to the extent necessary for the implementation of the Agreement, and provided that they are subjected to a confidentiality obligation corresponding to that stipulated in this Clause 7.3.

The confidentiality obligation shall not prevent the parties from utilising experience and expertise developed in connection with the implementation of the Agreement.

The confidentiality obligation shall continue to apply after the expiry of the Agreement. Employees or others who resign from their positions with one of the parties shall also be subjected to a confidentiality obligation in respect of matters mentioned above following their resignation. The confidentiality obligation shall lapse five (5) years after the delivery date, unless otherwise stipulated by an Act or regulation.

8. CONSIDERATION AND PAYMENT TERMS

8.1 CONSIDERATION

All prices and the detailed terms governing the consideration to be paid by the Customer for the Deliverables provided by the Contractor are set out in Appendix 7.

Disbursements shall only be reimbursed to the extent agreed. Travel and subsistence costs shall be specified separately, and shall be paid pursuant to the Government Travel Allowance Scale applicable at any given time, unless otherwise agreed. Travel time shall only be invoiced if this is agreed in Appendix 7.

Unless otherwise specified in Appendix 7, all prices are quoted exclusive of Value Added Tax, but inclusive of customs duties and any other indirect taxes. All prices are quoted in Norwegian kroner.

The prices also include insurance for the Contractor until the risk of accidental damage is transferred to the Customer.

8.2 INVOICING

Payment shall be made within thirty (30) calendar days of the invoice date. The invoices of the Contractor shall be specified and documented, so that the Customer can easily check whether the invoice conforms to the agreed consideration. All invoices relating to hours recorded on an ongoing basis shall be accompanied by a detailed specification of the hours accrued. Disbursements shall be specified separately.

The payment schedule and other payment terms are set out in Appendix 7.

8.3 LATE PAYMENT INTEREST

If the Customer fails to pay at the agreed time, the Contractor shall be entitled to claim interest on any overdue amount pursuant to the Act of 17 December 1976 No. 100 relating to Interest on Overdue Payments, etc. (the Late Payment Interest Act).

8.4 PAYMENT DEFAULT

If overdue consideration, with the addition of late payment interest, has not been paid within thirty (30) calendar days of the due date, the Contractor may send a written notice to the Customer, stating that the Agreement will be terminated for breach, unless settlement has taken place within sixty (60) calendar days of receipt of such notice.

Termination for breach may not take place if the Customer settles the overdue consideration, with the addition of late payment interest, by the expiry of the time limit.

8.5 PRICE ADJUSTMENTS

The price may be adjusted to the extent that rules or resolutions pertaining to indirect taxes are amended in a way that affects the consideration or costs of the Contractor.

Exchange rate changes that affect the costs incurred by the Contractor in connection with the Deliverables may be asserted against the Customer on 1 (one) month's written notice. If exchange rate increases give rise to changes in the consideration payable, the consideration shall be reduced correspondingly, without the Customer having to request it, if the exchange rates subsequently drop.

Hourly rates charged for services may be adjusted at the turn of each year in line with the increase in the retail price index (main index) compiled by Statistics Norway, with the base value being the index value for the month in which the Agreement was concluded, unless a different index value is agreed in Appendix 7.

Any other provisions pertaining to price adjustments are set out in Appendix 7.

9. EXTERNAL LEGAL REQUIREMENTS, DATA PROTECTION AND SECURITY

9.1 GENERAL PROVISIONS ON EXTERNAL LEGAL REQUIREMENTS AND MEASURES

The Customer shall identify, in Appendix 1, which legal requirements, or requirements that are specific to the party in question, are of relevance to the formation and implementation of this Agreement. Such requirements may be contained in general regulatory frameworks, such as the Act No. 31 of 14 April 2000 relating to the Processing of Personal Data (the Personal Data Act) and the Regulations of 15 December 2000 No. 1265 relating to the Processing of Personal Data (the Personal Data Regulations), the Freedom of Information Act, the Public Administration Act, the Regulations of 25 June 2004 No. 988 relating to Electronic Communications with and within the Public Administration (the eGovernment Regulations), or in sector-specific regulatory frameworks. The Customer shall examine whether any requirements relating to standards specified in the *Reference Manual for IT Standards within the Public Sector* have to be accommodated by the deliverables.

The Customer shall be responsible for specifying, in Appendix 1, any relevant requirements that are applicable to the deliverables.

The Contractor shall in Appendix 2 describe how the Contractor takes account of these requirements through its solution.

Each party is responsible for the follow-up of its own duties pursuant to such legal requirements.

Each party shall, as a general rule, pay the costs of complying with legal requirements applicable to the party and its activities. In the event of amendments to legal requirements or official requirements that affect the activities of the Customer and necessitate changes to the deliverables subsequent to the conclusion of the Agreement, the Customer shall cover the costs associated with such changes and any additional work, see Chapter 3.

9.2 PERSONAL DATA

If relevant to the Agreement, the parties shall in Appendices 1 and 2 clarify how personal data shall be handled, as well as whether and, if applicable, how such data may be transferred to others for storage and processing. The parties shall in Appendices 1 and 2 specify relevant measures required pursuant to the Personal Data Act and related regulations, including compliance with the requirements pertaining to security objectives, security strategy, risk assessment and proportional safeguarding of the data.

9.3 ELECTRONIC COMMUNICATION AND PROCESSING REQUIREMENTS

If the Customer is a public body and needs to formulate requirements relating to electronic communication or case processing in Appendix 1, the Customer shall refer to, and base its specification on, the requirements set out in the eGovernment Regulations issued pursuant to the Public Administration Act, including the

requirements relating to security objectives and security strategy. Correspondingly, the Contractor shall in Appendix 2 clarify how any such requirements may be satisfied.

9.4 SECURITY-CLASSIFIED MATERIALS

If there is a need for access to materials (information and objects) that are security classified at any of the top three levels, the detailed handling of the need (including the timing implications of security clearance, etc.), shall be specified in Appendices 1 and 2, respectively. This shall apply to the extent that compliance with the requirements laid down in the Security Act and the related regulations (on the grounds of concern for the security of the realm and other vital national security interests, etc.) is relevant to the Agreement.

10. RIGHT OF OWNERSHIP AND RIGHT OF DISPOSAL

10.1 RIGHT OF OWNERSHIP OF EQUIPMENT

Any equipment delivered under this Agreement shall become the property of the Customer as of the installation date, see Clause 2.1.7. The transfer of title implies that the Customer is granted a complete physical and legal right of use in respect of the equipment, subject to the limitations set out in this Agreement or in a maintenance and software service agreement.

Any purchase-money security interest may be agreed in Appendix 7.

10.2 RIGHT OF DISPOSAL OF SOFTWARE

10.2.1 Limited right of disposal

The Customer is granted a limited right of disposal in respect of the software that forms part of the deliverables. The right of disposal comprises the rights that are necessary for the Customer to be able to utilise the deliverables as agreed, including a right to make such number of copies of the software as follows from ordinary operational and safety procedures. The Contractor shall be responsible for the Customer being granted the agreed right of disposal in respect of the software, and for the Customer being able to utilise it without being restricted by the copyright or other rights of third parties.

The consideration for the right of disposal in respect of the software, including any prerequisites and limitations, e.g. in relation to the number of users or the place where the right of disposal is exercised/the equipment used to do so, is described in Appendix 7.

10.2.2 Software changes

If the Customer has been granted, by agreement, access to source code for the software, the Customer may, at its own risk, make changes and modifications to the software, unless the opposite has been agreed in an appendix to this Agreement. The Contractor shall not be responsible for any changes or modifications made by the Customer, unless this is expressly agreed in an appendix or in the particular case.

10.2.3 Rights to customisations

The Contractor shall retain the copyright to customisations that are developed specifically for the Customer unless otherwise agreed in a particular case.

The Customer is granted, free of charge, an indefinite and non-exclusive right to utilise the various parts of the software developed or customised specifically for the Customer (expanded right of disposal). The expanded right of disposal comprises a right to use, copy, modify and develop the customisations, either independently or with the assistance of a third party. The Customer is entitled to confer a corresponding expanded right of disposal on any public body.

Source code and associated specifications and documentation relating to the customisations shall be handed over to the Customer within ten (10) working days of the delivery date, unless otherwise agreed in a particular case.

10.3 RIGHT OF DISPOSAL OF DOCUMENTATION

10.3.1 Making of copies (copying)

The Contractor shall make available such number of copies of the documentation as is desired by the Customer, at the prices listed in Appendix 7.

If the Contractor is unable to make available the necessary number of copies, the Customer may make such copies itself for its own use. No consideration shall be payable in respect of such copies.

10.3.2 Changes to the documentation

The Customer may, at its own risk, make such changes, additions, etc., to the documentation for its own use as are deemed appropriate by the Customer.

10.3.3 Documentation of customisations

The Customer is granted a corresponding right of disposal of documentation prepared in connection with customisations, see Clause 10.2.3, as the Customer is granted in relation to the customisations. This shall also cover training materials.

10.4 JOINT PROVISIONS APPLICABLE TO SOFTWARE AND DOCUMENTATION

10.4.1 Marking of software and documentation

If the original copy of the software or documentation made available to the Customer by the Contractor is marked with a copyright notice, the Customer shall add corresponding marking to all the copies made by the Customer pursuant to the Agreement.

10.4.2 Duration of the right of disposal

The right of disposal shall apply as of the signing of the Agreement, without any time limit or right of termination, unless otherwise agreed in Appendix 7.

If a right of disposal has been agreed in return for the payment of ongoing consideration, the right of disposal may be terminated by the Customer on three (3) months' notice. The right of disposal shall lapse at the end of the relevant calendar month. The notice of termination shall address any ongoing consideration for the

right of disposal for the entire agreement term until the effective date of the termination, pursuant, if applicable, to more detailed provisions set out in Appendix 7.

10.4.3 Return or destruction upon termination of the right of disposal

The Customer shall, upon the termination of an agreed right of disposal in respect of software, return or delete all copies of the software that fall within the scope of the agreement and are located on the premises of the Customer. The same shall apply to copies of documentation.

10.5 FREE SOFTWARE

10.5.1 General provisions pertaining to free software

“Free software” means software that is offered under generally recognised free software licenses.

A free software license permits, for example, the Customer to use the software for any purpose and on any scale, and grants access to the source code of and documentation on the software, the right to examine and change the software, to make copies of the software and to make changes and improvements to the software available to the general public.

If free software is to be used in connection with the deliverables, the Contractor shall prepare an overview of the relevant free software. The overview shall be included in a designated chapter in Appendix 2, together with a copy of the license terms governing the relevant free software.

The Contractor shall ensure that no free software is being used under license terms that are incompatible with the requirements applicable to the deliverables, or incompatible with the license terms governing other software that forms part of the Deliverables.

The general terms and conditions of the Agreement shall also govern those parts of the deliverables that consist of free software, subject to the clarifications and exceptions set out below.

10.5.2 The Contractor’s responsibility for the overall functionality of the deliverables when using free software

The Contractor shall be responsible for the deliverables (the overall solution) meeting the requirements under the Agreement, see Clause 5.1, irrespective of the provisions of any particular free software license.

If errors in free software result in the deliverables deviating from what was agreed under this Agreement, it shall be the responsibility of the Contractor to rectify the error in such a way as to make the deliverables conform to what was agreed, even if such free software might be subject to separate license terms that include different provisions on the rectification of errors. The rectification of errors in free software may be effected in any manner that makes the deliverables conform to the requirements under the Agreement.

10.5.3 The Customer’s rights in relation to the parts of the deliverables that are based on free software

As regards the parts of the deliverables that are based on free software, including customisations and further developments of the free software, the Customer shall be granted the rights that are necessary for compliance with the terms of the relevant free software license.

The rights include access to source code and associated specifications and documentation.

10.5.4 Effects of distributing free software to others

If the deliverables are to be distributed to others, the terms of the relevant free software license shall apply.

If distribution to others, or other ways of making the deliverables available, implies that also other parts of the deliverables than those that originally were free software will be governed by the terms of a free software license, this shall be specified by the Contractor in Appendix 2.

10.5.5 The Contractor's responsibility for defects in title to free software

The Contractor shall only use free software that is offered under generally recognised free software licenses, and that does not, based on a sound assessment on the part of the Contractor, infringe third party rights. The assessment shall take into consideration *inter alia* how well-established the relevant free software is in the market, the Contractor's knowledge, if any, of the history and origins of the software, and whether it is known in the relevant market that someone is arguing that the software infringes their rights. The Contractor shall describe its assessment in Appendix 2.

If free software used by the Contractor in connection with the delivery infringes third party rights, the Contractor shall, within the limitations laid down in Clause 10.5.6, remedy the defects in title as specified in Clause 13.2.

The Contractor shall indemnify the Customer in respect of any liability for damages imposed as a result of defects in title in respect of free software that the Contractor has offered or independently chosen to use in connection with the deliverables, see Clause 13.4.

10.5.6 Liability of the Customer if it requires the use of free software

If the Customer requires the use of specific free software as part of the deliverables, the Customer shall itself pay any costs resulting from inadequate functionality caused by errors or defects in the free software.

The Customer shall itself bear the risk of defects in title relating to free software that has been required by the Customer to form part of the deliverables. The Customer shall indemnify the Contractor in respect of any liability for damages imposed as a result of defects in title in respect of free software that the Customer has chosen, see Clause 13.4.

To the extent that the Contractor is aware that free software that the Customer has requested be used as part of the deliverables is unsuited to satisfying the Customer's requirements or infringes, or is alleged by anyone to infringe, third party copyright, the Contractor shall point this out in Appendix 2, see Clause 1.1.

The Contractor shall, as a supplementary and chargeable service, assist the Customer with the remediation of any defects in title and other defects in free software that is chosen by the Customer as mentioned above. The Contractor's standard hourly rate for consultancy services under this Agreement shall apply, unless otherwise agreed in Appendix 7. The Contractor may request a change to the Agreement pursuant to Chapter 3 if the effort to remedy such defects has implications for the other obligations of the Contractor under the Agreement.

11. BREACH OF CONTRACT ON THE PART OF THE CONTRACTOR

11.1 WHAT IS DEEMED TO CONSTITUTE BREACH OF CONTRACT

There is a breach of contract on the part of the Contractor if the Deliverables do not conform with the agreed functions, requirements or time limits. There is also a breach of contract if the Contractor fails to perform other duties under the Agreement.

Nevertheless, there is no breach of contract if the situation is caused by circumstances related to the Customer or by force majeure.

The Customer shall submit a written complaint without undue delay after the breach of contract has been discovered or ought to have been discovered.

11.2 NOTIFICATION OBLIGATION

If the Contractor's deliverables cannot be delivered as agreed, the Contractor shall give the Customer written notice thereof as soon as possible. The notice shall specify the reason for the problem and, to the extent possible, when the deliverable can be delivered. A corresponding obligation shall apply if additional delays are to be expected after the first notice has been given.

11.3 EXTENSION OF THE TIME LIMIT

The Contractor may request an extension of the time limit, which must have the written approval of the Customer in order to apply.

The Customer shall not be entitled to claim liquidated damages or ordinary damages in respect of the period comprised by the extended time limit.

An extension of the time limit shall have no impact on the entitlement of the Customer to liquidated damages or ordinary damages that accrue prior to the extension of the time limit.

11.4 CURE

The Contractor shall commence and complete the effort of curing the breach of contract without undue delay.

The aim of the cure shall be for the Deliverables to satisfy the agreed requirements and specifications, and for the deliverables as a whole to work as agreed. The cure may, for example, take the form of repair, redelivery or supplementary delivery.

To the extent that no cure is provided, the Customer may request a proportional price reduction, or terminate the Agreement for breach pursuant to the provisions of Clause 11.5.3 or Clause 11.5.4.

If the Contractor has failed to cure the breach of contract within the stipulated or agreed time limit, or if the conditions for termination for breach are met, the Contractor shall pay all expenses incurred by the Customer in obtaining a cure from a third party. Nevertheless, the Customer may not allow a third party to cure the defect until any extended time limit has expired.

The Customer shall give written notice to the Contractor prior to appointing a third party.

11.5 REMEDIES FOR BREACH OF CONTRACT

11.5.1 Withheld payment

In case of breach of contract, the Customer may withhold payment, although the amount withheld shall not be obviously higher than what is necessary to secure the Customer's claim resulting from the breach of contract.

11.5.2 Liquidated damages in case of delay

If the agreed installation date, commencement of approval period, delivery date or other time limit in respect of which the parties have stipulated liquidated damages in Appendix 4 is not complied with, and this is not caused by force majeure or circumstances on the part of the Customer, there is a delay on the part of the Contractor that triggers liquidated damages.

The liquidated damages shall accumulate automatically. The liquidated damages amount to 0.15 percent of the total consideration payable for the deliverables (the contract price), excluding Value Added Tax, for each calendar day of delay, albeit limited to a maximum of one hundred (100) calendar days.

Other rates for liquidated damages and other periods for liquidated damages may be agreed in Appendix 4.

The Customer shall not have the right to terminate the Agreement for breach for as long as the liquidated damages continue to accumulate. However, this time restriction shall not apply in the case of wilful misconduct or gross negligence on the part of the Contractor or anyone for whom it is responsible.

If only parts of the agreed deliverables are delayed, the Contractor may request a reduction in the liquidated damages proportional to the ability of the Customer to utilise the part of the Deliverables that has been delivered.

11.5.3 Price reduction

If the Contractor has not succeeded, despite repeated attempts, in curing a defect, the Customer may claim a proportional reduction in the contract price. The price reduction shall compensate for the reduced value of what has been delivered, and shall be independent of any damages.

11.5.4 Termination for breach

If there is a material breach of contract, the Customer may, after giving the Contractor written notice and a reasonable deadline for remedying the situation, terminate the Agreement for breach with immediate effect.

The Customer may terminate all or part of the Agreement for breach with immediate effect if the Deliverables are materially delayed. There is a material delay if delivery has not taken place by the time liquidated damages reach their maximum limit, or by the expiry of an extended time limit, if this expires later.

11.5.5 Damages

The Customer may claim damages in respect of any direct loss, including any loss caused by additional work or other direct costs connected to delayed commencement of operations or operational interruptions, which can be reasonably attributed to delays, defects or other breaches of contract on the part of the Contractor, unless the Contractor demonstrates that the Contractor is not responsible for the breach of contract or the reason for the breach of contract.

Liquidated damages shall be deducted from any other damages in respect of the same delay.

11.5.6 Limitation of damages

No damages may be claimed in respect of indirect loss. Loss of data is classified as indirect loss, unless such loss is caused by data handling that is the responsibility of the Contractor under the Agreement.

Overall damages over the term of the Agreement are limited to an amount corresponding to the contract price exclusive of Value Added Tax.

The said limitations on damages shall not apply in the case of gross negligence or wilful misconduct on the part of the Contractor or anyone for whom it is responsible.

12. BREACH OF CONTRACT BY THE CUSTOMER

12.1 WHAT IS DEEMED TO CONSTITUTE BREACH OF CONTRACT

There is breach of contract by the Customer if the Customer fails to perform its duties under the Agreement.

Nevertheless, there is no breach of contract if the situation is caused by circumstances relating to the Contractor, or by circumstances deemed to constitute force majeure.

The Contractor shall give written notice without undue delay after the breach of contract has been discovered or ought to have been discovered.

12.2 NOTIFICATION OBLIGATION

If the Customer is unable to perform its duties under the Agreement, including as to time limits, the Customer shall notify the Contractor in writing accordingly as soon as possible. The notice shall specify the reason for the problem and, to the extent possible, when the Customer will again be able to perform the agreed duty.

12.3 CURTAILMENT OF THE RIGHT OF RETENTION OF THE CONTRACTOR

The Contractor shall not suspend any performance as the result of breach of contract on the part of the Customer, unless the breach is material and the Customer has acknowledged the breach of contract in writing or the breach of contract has been established through one of the dispute resolution mechanisms in Chapter 16.

12.4 TERMINATION FOR BREACH

In the case of payment default, the Contractor may terminate the Agreement for breach if the Customer has failed to settle overdue payments within sixty (60) calendar days of the Customer receiving the Contractor's written notice pursuant to Clause 8.4.

In the case of other material breaches of contract, the Contractor may send written notice to the Customer to the effect that the Agreement will be terminated for breach unless the Customer has discontinued the breach of contract within sixty (60) calendar days of receiving the notice. Termination for breach shall not take place if the Customer ends the breach of contract situation before the expiry of the time limit.

12.5 DAMAGES

The Contractor may claim damages in respect of any direct loss that can reasonably be attributed to the breach of contract, unless the Customer demonstrates that the breach of contract or the cause of the breach of contract is not attributable to the Customer.

The limitation of damages provision in Clause 11.5.6 of the Agreement shall apply correspondingly.

13. INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES (DEFECT IN TITLE)

13.1 THE RISKS AND RESPONSIBILITIES OF THE PARTIES IN RELATION TO DEFECTS IN TITLE

Each party shall be responsible for ensuring that its deliverables do not infringe the copyrights or other intellectual property rights of third parties, and shall bear all risks in this respect. There is a defect in title if the deliverable entails such infringement.

13.2 THIRD PARTY CLAIMS

If a third party asserts to one of the parties that the Deliverables entail a defect in title, the other party shall be informed as soon as possible.

The responsible party shall deal with the claim at its own expense. The other party shall assist the relevant party with this task to a reasonable extent.

The relevant party shall commence and complete the effort of curing defects in title without undue delay, by:

- a) ensuring that the other party is able to use the deliverable as before, without infringing any third party rights, or
- b) providing a corresponding deliverable that does not infringe any third party rights.

13.3 TERMINATION FOR BREACH

A defect in title that is not cured, and that is of such a nature as to be of material importance to the other party, shall give such other party the right to terminate the Agreement for breach.

13.4 INDEMNIFICATION FOR LOSS RESULTING FROM A DEFECT IN TITLE

A party shall be fully indemnified in respect of any liability for damages imposed on it in relation to a third party, and any legal costs incurred (including the party's own costs connected to dealing with the case), in connection with a defect in title. The party may also claim damages in respect of other losses pursuant to the provisions of Clauses 11.5.5, 11.5.6 and 12.5.

14. SETTLEMENT UPON TERMINATION FOR BREACH

The rights of the Customer in relation to the delivered items shall lapse upon termination for breach, subject to the extensions and exceptions set out below.

The Customer may claim the repayment of any consideration paid, with the addition of interest at the NIBOR rate plus one (1) percent from the date on which payment was made. The Contractor may claim a deduction in respect of the value of any use the Customer may have had of the deliverables prior and subsequent to the termination for breach.

The Customer shall be entitled, if necessary for the activities of the Customer, to utilise the deliverables as agreed also after the termination for breach, but shall as soon as possible find an alternative solution to replace the delivered items. If the termination for breach is due to breach on the part of the Customer, the Contractor may make continued utilisation conditional upon the Customer providing satisfactory collateral.

When the rights of the Customer in relation to the delivered items lapse, and if requested by the Contractor, equipment and software and all other materials, whether in an electronic or other format, and irrespective of the medium, shall be handed back or deleted or destroyed in a proper manner. The Contractor may request confirmation from an impartial auditor that this has been done. If the

termination is due to breach by the Customer, the fee of the auditor shall be paid by the Customer; otherwise, it shall be paid by the Contractor.

If the Agreement covers customisations to which the Customer holds rights pursuant to Clause 10.2.3, the Customer may elect to keep and continue to utilise the customisations in return for paying the Contractor the agreed consideration for the work performed on the customisations.

15. OTHER PROVISIONS

15.1 RISK ASSOCIATED WITH EQUIPMENT AND SOFTWARE

The risk of damage to equipment and delivered software copies, etc., due to an accidental occurrence, shall pass from the Contractor to the Customer on the installation date. The Contractor is responsible for maintaining insurance cover for the period up to this date.

If delivered software copies are destroyed after the risk has passed to the Customer, the Customer shall nevertheless be entitled to new software copies in return for payment of the direct costs incurred by the Contractor in making these available.

15.2 INSURANCE POLICIES

If the Customer is a public body, the Customer shall be self-insured. If the Customer is not self-insured, the Customer shall maintain insurance policies that are sufficient to satisfy such claims as the Contractor may bring on the basis of the risks and responsibilities assumed by the Customer pursuant to this Agreement, within the limits defined by ordinary insurance terms and conditions.

The Contractor shall hold insurance policies that are sufficient, within the limits defined by ordinary insurance terms and conditions, to satisfy any claim the Customer may bring on the basis of the risks and responsibilities assumed by the Contractor pursuant to this Agreement. This obligation shall be deemed to be met if the Contractor takes out third party and business insurance subject to terms and conditions that are deemed ordinary within the Norwegian insurance industry.

The Contractor shall, at the request of the Customer, explain and document such of the insurance policies of the Contractor as are relevant to compliance with the present provision.

15.3 ASSIGNMENT OF RIGHTS AND OBLIGATIONS

If the Customer is a public body, the Customer may assign its rights and obligations under this Agreement to another public body. The body to which the rights and obligations are assigned shall be entitled to corresponding terms and conditions, provided that the rights and obligations under the Agreement are assigned jointly.

The Contractor may only assign its rights and obligations under the Agreement with the written consent of the Customer. The same shall apply if the Contractor is merged with another company or de-merged into several companies, or if assignment is to a subsidiary or another company within the same group. Consent shall not be unreasonably withheld.

The right to consideration under this Agreement may be assigned freely. Such assignment shall not release the relevant party from its obligations and responsibilities.

15.4 BANKRUPTCY, COMPOSITION WITH CREDITORS, ETC.

In the event of debt rescheduling proceedings, composition with creditors, bankruptcy, or any other form of creditor intervention in respect of the business of the Contractor, the Customer shall be entitled to terminate the Agreement for breach with immediate effect.

15.5 DUTY OF CARE IN RELATION TO EXPORTS

If any products delivered by the Contractor, including spare parts, software and technology, are subject to requirements for authorisation from the authorities in the country of origin and/or other countries, the Customer is responsible for obtaining such authorisations in the event of export or re-export of such products.

15.6 FORCE MAJEURE

If an extraordinary situation should arise which is outside the control of the parties, which makes performance of the duties under this Agreement impossible, and which under Norwegian law must be classified as force majeure, the other party shall be notified of this as soon as possible. The obligations of the affected party shall be suspended for as long as the extraordinary situation prevails. The corresponding obligations of the other party shall be suspended for the same period.

In force majeure situations, the other party may only terminate the Agreement for breach with the consent of the affected party, or if the situation prevails or is expected to prevail for more than ninety (90) calendar days as of the date on which the situation arose (and in such case only with fifteen (15) calendar days' notice).

The parties shall, in connection with force majeure situations, have a mutual disclosure obligation towards each other concerning all matters that must be deemed relevant to the other party. Such information shall be disclosed as soon as possible.

16. DISPUTES

16.1 GOVERNING LAW

The rights and obligations of the parties under this Agreement shall in their entirety be governed by Norwegian law.

16.2 NEGOTIATIONS

Should a dispute arise between the parties as to the interpretation or the legal effects of the Agreement, the parties shall first seek to resolve such dispute through negotiations.

If such negotiations do not succeed within ten (10) working days, or a different period agreed by the parties, either party may request that the dispute be submitted to either an independent expert or mediation.

16.3 INDEPENDENT EXPERT

The parties shall in connection with the formation of the Agreement appoint an independent expert, whose name shall be specified in Appendix 6 and who shall hold such qualifications as the parties believe to be the most appropriate in the light of the Agreement. If this has not been done, the parties may agree on the appointment of an independent expert at the time of a dispute.

The parties shall in advance choose either to:

- a) comply with the solution proposed by the expert (binding), or
- b) use the solution proposed by the expert as a basis for reaching a solution themselves (advisory).

The detailed approach for these efforts shall be determined by the independent expert, in consultation with the parties.

16.4 MEDIATION

If a dispute related to this Agreement has not been resolved by negotiations or by an independent expert, the parties may attempt to resolve the dispute through mediation.

Mediation may also be used without the prior use of an independent expert, if the parties agree to this.

The parties may elect to adopt the rules of the Norwegian Bar Association for mediation by advocate, modified, if applicable, to suit the preferences of the parties. The parties should agree on a mediator with such qualifications as the parties believe to be the most appropriate given the nature of the dispute.

The detailed approach to mediation shall be determined by the mediator, in consultation with the parties.

16.5 JOINT RULES FOR INDEPENDENT EXPERT AND MEDIATION

The independent expert and/or mediator shall act impartially and independently in the performance of his or her duties. Prior to accepting an assignment, the expert/mediator shall notify the parties of any potential circumstances that are likely to give rise to a suspicion of insufficient impartiality or independence on his or her part. The expert/mediator shall also give the parties such notice during the assignment if the parties have not previously received such information, or if the relevant circumstances arise during the assignment.

At the start of mediation, the expert/mediator shall inform the parties of the basis on which his or her remuneration will be calculated. Unless otherwise agreed, each party shall pay its own costs and half of the costs of the expert/mediator. The expert/mediator has the right to request the parties to pay a sufficient advance to cover the costs and remuneration of the mediator/expert, or to request the parties to provide sufficient security.

The assignment of the independent expert or mediator shall be concluded in one of the following ways:

- a) through a proposed solution from the expert that that parties have agreed in advance shall be binding
- b) through a written settlement or agreement between the parties, based on the solution proposed by the expert/mediator
- c) through the expert/mediator informing the parties that he or she does not deem it appropriate to continue the assignment, or
- d) through a party informing the expert or the mediator that the party wishes to conclude the assignment.

16.6 LITIGATION OR ARBITRATION

If a dispute is not resolved through negotiations, through mediation or by an independent expert, either party may require such dispute to be resolved with final effect before the Norwegian courts of law.

The venue shall be the registered address of the Customer.

The parties may alternatively agree that the dispute shall be resolved with final effect through arbitration in Norway pursuant to the Act No. 25 of 14 May 2004 relating to Arbitration (the Arbitration Act).
