

# Development and Customisation Agreement

Agreement governing the delivery of software  
that is developed or customised for the Customer

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The Norwegian Government's Standard Terms and  
Conditions for IT Procurement  
SSA-T

# Agreement governing the delivery of software that is developed or customised for the Customer

**An agreement governing**  
CPE Procurement

**has been concluded between:**

[Write here]

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(hereafter referred to as the Contractor)

**and**

Vegfinans E134 Buskerud AS

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(hereafter referred to as the Customer)

**Place and date:**

[Write place and date here]

---

[Insert Customer name]

[The Contractor's name]

---

Signature of the Customer

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Signature of the Contractor

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

**Short name of the Agreement**

CPE E134 Buskerud

**Communications**

Unless otherwise specified in Appendix 6, all communications concerning the Agreement shall be directed to:

**On behalf of the Customer:**

Name:

Position:

Telephone:

Email:

**On behalf of the Contractor:**

Name:

Position:

Telephone:

Email:

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## 1. GENERAL PROVISIONS

### 1.1 SCOPE OF THE AGREEMENT

The Agreement governs the delivery of software that is developed or customised for the Customer, as well as configuration, the setting of parameters, integration work, and other services associated with the customisation of software for the Customer as described in Appendices 1 and 2 ("the deliverables").

The Agreement shall also apply to any delivery of equipment, training, etc.

The Customer has, based on its purposes and needs, specified its requirements in Appendix 1 (Customer requirements specification) and has described the software and the systems with which the software shall be compatible in Appendix 3. The Contractor has described its solution, based on the Customer requirements specification and the Contractor's assumptions in respect of the deliverables, in Appendix 2 (Contractor solution specification), including any requirements relating to the Customer's operating environment that must be satisfied in order to enable the Customer to utilise the deliverables. If the Contractor is of the view that there are obvious errors or ambiguities in the Customer requirements specification, the Contractor shall point this out in Appendix 2.

If Appendix 1 stipulates that the deliverables shall function together with the Customer's current technical platform, the Customer shall describe this in Appendix 3. If the Customer's technical platform needs to be upgraded in order to enable the Customer to utilise the deliverables, the Contractor shall point this out in Appendix 2.

The Contractor shall, in Appendix 2, inform the Customer of the likely consequences of the relevant customisations in terms of the complexity and price of any future maintenance of the standard system and customisation.

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

The "Agreement" means this general contractual wording, including Appendices.

### 1.2 APPENDICES TO THE AGREEMENT

All rows shall be ticked (Yes or No)	Yes	No
Appendix 1: Customer requirements specification	X	
Appendix 2: Contractor solution specification	X	
Appendix 3: Customer technical platform and physical environment	X	
Appendix 4: Project and progress plan	X	
Appendix 5: Testing and approval	X	
Appendix 6: Administrative provisions	X	
Appendix 7: Total price and pricing provisions	X	

Appendix 8: Changes to the general contractual wording	X	
Appendix 9: Changes subsequent to the conclusion of the Agreement	X	
Appendix 10: Licence terms and conditions for standard software and free software	X	
Other Appendices:		
Appendix 11: Code of Conduct	X	
Appendix 12: Data Processor Agreement	X	

### 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 the 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 the clause or clauses that have been changed, replaced or supplemented, are clearly and unequivocally specified, 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.
4. The standard licence terms and conditions (Appendix 10) shall apply between the producer of any standard software (licensor) and the Customer, but these shall not change the Contractor's obligations under this Agreement to an extent greater than that which is stipulated in clause 5.1 (The Contractor's responsibility for the deliverables) and chapter 10.7 (Free software). "Standard software" means software that is produced for delivery to multiple users, where a licence (right of disposal) may be acquired independent of services from the software producer.

### 1.4 THE REPRESENTATIVES OF THE PARTIES

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

## **1.5 THE PHASES AND MILESTONES OF THE AGREEMENT**

The Agreement is split into five phases: the preparatory phase (chapter 2.1), the specification phase (chapter 2.2), the development phase (chapter 2.3), the acceptance test phase (chapter 2.4), and the approval period (chapter 2.5). The specification phase, development phase, acceptance test, and approval period may be repeated as often as is necessary to realise the deliverables, see clause 2.1.4 (Partial deliveries).

The main milestones in the Agreement are:

- Approval of the detailed specification (2.2.2)
- Solution ready for acceptance test (2.4.2)
- Acceptance test approved (2.4.6)
- Delivery date (2.5.3)

## **2. PERFORMANCE OF THE DELIVERABLES**

### **2.1 PREPARATIONS AND ORGANISATION**

#### **2.1.1 Project and progress plan**

An overall project and progress plan for the delivery of the deliverables shall be included in Appendix 4.

During the planning phase, the Contractor shall, in cooperation with the Customer, prepare a detailed project and progress plan within the framework defined by the overall plan in Appendix 4. The detailed project and progress plan shall define activities under the milestones defined by the general plan and describe the scope of the Customer's contribution to the project, including resource and time estimates. Those parts of the plan that concern the Customer's participation shall be approved by the Customer. This shall not affect the responsibility of the Contractor for the delivery of the deliverables. If partial deliveries as described in clause 2.1.4 are used, this shall be stipulated in the plan.

The Contractor shall be responsible for keeping the plan updated in the case of changes. An updated version of the plan shall be available to both the Customer and the Contractor at any given time.

#### **2.1.2 Project organisation**

The project organisation, definition of roles, responsibilities and authorisations, management documents, reporting, meetings and frequency of meetings are described in Appendix 6.

#### **2.1.3 Project documentation**

The Contractor shall prepare and update, on an ongoing basis, the project documentation specified in Appendix 6.

The Contractor shall provide the Customer with status reports for the project in



conformity with the procedures agreed in Appendix 6.

#### **2.1.4 Partial deliveries**

The deliverables may be split into partial deliveries that are introduced over time. An overall plan for this shall be set out in Appendix 4. The procedures in this Agreement's chapters 2.2-2.4 shall be repeated in connection with each partial delivery. If the partial deliveries shall be put into production on an ongoing basis as they are fully developed and tested, an approval period shall be conducted for each partial delivery, cf. chapter 2.5. Unless otherwise is stipulated in Appendix 4, an overall specification for all of the deliverables, which shows how the combination of the partial deliveries satisfies the overall scope of delivery pursuant to the Agreement, shall be prepared as part of the specification phase for the first partial delivery.

During the acceptance test and the approval period for each new partial delivery, a regression test shall be conducted to check that partial deliveries that have previously been made available or put into use continue to function as they did when they were approved earlier and that they fulfil the Agreement's requirements concerning the interaction between the various partial deliveries, performance, stability and scalability. Detailed provisions concerning the type and scope of the acceptance test for each partial delivery and the overall acceptance test and approval period shall be stipulated in Appendix 5.

Unless otherwise is stipulated in Appendix 4, the approval period shall be one (1) month for each partial delivery and three (3) months in connection with the final partial delivery, cf. clause 2.5.1. If one or more partial deliveries shall be exempt from the combined testing, this shall be stipulated in Appendix 4.

## **2.2 DETAILED SPECIFICATION (THE SPECIFICATION PHASE)**

### **2.2.1 Preparation of a detailed specification**

During the specification phase, the Contractor shall prepare a detailed specification for the deliverables. Unless otherwise is stipulated in Appendix 4, the detailed specification shall contain an overall description of the deliverables (overall specification), a detailed description of the functionality of the solution (functional specification) and a specification of the interface, and any guidelines for the technical architecture, for those components of the deliverables that shall be developed, and for those components of the deliverables that the parties otherwise find it necessary to specify in more detail.

The specification work shall be carried out in close cooperation with the Customer, and in accordance with procedures and guidelines agreed in Appendix 4. Unless otherwise is stipulated in Appendix 4, the Customer shall be represented at meetings by people with the expertise necessary to discuss questions of significance concerning alternatives for the solution. The Contractor shall document clarifications concerning the solution and the proposed choices made for the solution and send them to the Customer for approval. The Contractor shall, after each working meeting, send out written minutes that describe the choices that were proposed, including the consequences the choices have for the detailed specification and, if relevant, for Appendices 1 and 2. Unless the Customer presents written objections to the proposed choices made for the solution within ten (10)

working days, they shall be deemed to have been approved by the Customer. "Working days" means all days that are neither Saturdays, Sundays or public holidays, nor Christmas Eve or New Year's Eve. The Customer shall be responsible for any delays in respect of the deliverables if the Customer does not approve or present written objections to the proposed choices made for the solution by the agreed deadline.

The detailed specification shall set out the choices made for the solution in respect of the deliverables, including details and clarifications of the requirements, within the framework of Appendices 1 and 2. To the extent that changes are made to the Customer's requirements in Appendix 1 and the Contractor's proposed solution in Appendix 2, and these have consequences for the contract price, progress plan, Customer's participation, other requirements in Appendix 1, or other factors, a change order shall be issued. A joint change order shall be prepared for changes that follow from the specification work, although it shall be clearly stated which requirements have been changed. The Customer may not waive requirements in any other manner than by issuing a change order.

The detailed specification shall form the basis for the development and delivery of the solution.

A plan for the conversion work shall also be prepared in the specification phase, cf. clause 2.3.8.

### **2.2.2 Delivery and approval of the detailed specification**

A final detailed specification, cf. clause 2.2.1, and a complete project and progress plan for the deliverables, cf. clause 2.1.1, shall be handed over to the Customer, for final review and approval by the deadlines set out in Appendix 4.

Unless different deadlines are agreed between the parties, or are agreed in Appendix 4, the Customer shall, within ten (10) working days after they are handed over pursuant to the previous paragraph, consider the documents and provide the Contractor with a written response stating whether or not the documents are approved. If the Customer has not provided a response by the agreed deadlines, the specification shall be regarded as approved. If, in the opinion of the Customer, the documents do not conform with the requirements agreed in Appendices 1 and 2 as these are set out in detail and clarified pursuant to clause 2.2.1 or as changed through a change order, the Customer shall specify which factors it wants changed and notify the Contractor of these in writing. The Contractor shall rectify the documents in accordance with the Agreement, and shall submit such documents to the Customer anew. The Customer shall then make a decision concerning the documents within ten (10) working days or the deadline stipulated in Appendix 4. Detailed terms and conditions for the approval of detailed specifications may be agreed in Appendix 5. If only minor components of the detailed specification are not approved by the Customer, the Contractor may start working on the deliverables for the approved components.

If the Customer rejects or requires changes to the detailed specification for any reason other than that it does not conform with what has been agreed (for example, because the Customer disagrees with some choices made for the solution and wants them changed, despite the fact that the choices would represent fulfilment of the requirements in Appendices 1 and 2, and are described in detail and clarified

pursuant to clause 2.2.1) the Contractor shall be entitled to a change order.

## **2.3 PERFORMANCE OF THE DELIVERABLES**

### **2.3.1 Development**

The Contractor shall develop that which is described in the detailed specification, cf. clause 2.2, such that the software satisfies the requirements of the Agreement. The Contractor is in this regard responsible for carrying out design and development, as well as its own testing, of the software in accordance with the detailed project plan, cf. Appendix 4.

### **2.3.2 Interaction with equipment and other software**

The Contractor shall execute the implementation work at the Customer, such that the software satisfies the requirements of the Agreement.

The Contractor shall be responsible for ensuring that the deliverables work together with those components of the Customer's current solution that the Customer has, in Appendix 3, informed the Contractor of and that the appendix states they shall work with, unless the Contractor has, in Appendix 2, stipulated that upgrading is required, cf. clause 1.1.

The Contractor shall be responsible for integrating the software with other software that the Customer has described in Appendix 3 pursuant to the requirements set out in Appendix 1, as well as the Contractor's proposed solution and assumptions in respect of the integration work in Appendix 2. Appendices 1 and 2 shall set out which integrations the Contractor shall bear responsibility for in respect of their results and progress, and which shall be delivered as additional services (contribution obligation). Integrations that are delivered as additional services, shall, unless otherwise is agreed, be paid for by the Customer on the basis of time spent charged at the Contractor's hourly rates in Appendix 7. Integrations that are delivered as additional services, shall, insofar as it is possible, be delivered pursuant to the progress plan in Appendix 4, but shall not provide a basis for rejecting the deliverables during the acceptance test or the approval period.

### **2.3.3 Implementation method**

Appendix 2 shall describe the methods and tools that shall be used to implement the deliverables, as well as the environment in which they shall be implemented. Any special requirements on the part of the Customer as far as the methods, tools or environment are concerned are set out in Appendix 1.

### **2.3.4 Quality assurance**

The Contractor shall have and maintain a quality plan based on documented work and quality assurance methods. The Contractor shall quality assure and test in a proper manner anything developed in accordance with the quality plan.

### **2.3.5 Audits**

The Customer, or whomever it may authorise, shall, for its own account, be entitled to carry out quality and security audits and reviews of the development effort. The Customer shall also be entitled to conduct other audits to verify that the Contractor

is complying with its other obligations under this Agreement. More detailed procedures and notification rules may be set out in Appendix 6. The Customer shall have the right to engage a third part to conduct the audit. The Contractor shall be notified of any third party selected by the Customer, and may reject the assignment if the Contractor is able to demonstrate that this will entail a material commercial disadvantage to the Contractor.

### **2.3.6 Documentation**

Documentation requirements shall be set out in Appendices 1 and 2. Unless otherwise is agreed, the Customer shall be granted access to the Contractor's standard documentation for the solution, as well as the documentation of the components of the solution that have been developed or customised especially for the Customer.

The documentation shall be delivered within the deadline or deadlines specified in Appendix 4. Unless otherwise specified therein, the documentation shall be delivered no later than the day before the Customer acceptance test shall commence, in order to enable testing of the documentation simultaneously with testing the other parts of the deliverables.

### **2.3.7 Training**

If the Contractor shall assist with training, this shall be stipulated in Appendices 1 and 6, and priced separately in Appendix 7. The date for training shall be stipulated in Appendix 4.

### **2.3.8 Conversion**

If the Contractor shall carry out the conversion of the Customer's data, this is described in more detail in Appendix 1 and/or Appendix 2. Unless otherwise is agreed in Appendix 7, conversion shall be executed on the basis of time spent charged at the Contractor's hourly rates in Appendix 7.

A detailed plan for the conversion work and a specification of the necessary conversion software shall be prepared and approved in the detailed specification phase, cf. clause 2.2. The plan shall also describe how personal data shall be processed in connection with conversion.

It is a prerequisite that the Customer has undertaken the necessary synchronisation and structuring of its own databases to ensure that the data quality of the Customer's existing systems is sufficient for purposes of conversion to the software.

The Contractor shall, for example, by obtaining confirmation from the Customer, ensure that backup copies are made of the Customer's data before conversion takes place. The backup shall be stored until the Customer has confirmed that the conversion has been correctly executed.

Approval shall take place by the parties conducting one or more test conversions of data, as specified in detail in Appendix 5, whereupon the Customer shall verify that the test conversion has been correctly executed, including that the data have been transferred and are in the correct format.

Approval of the conversion shall otherwise take place pursuant to the provisions of Appendix 5, and within the deadlines specified in Appendix 4.

## **2.4 THE CUSTOMER ACCEPTANCE TEST**

### **2.4.1 Preparations for acceptance tests**

The duties of the Customer and the Contractor in connection with preparations for acceptance tests shall be stipulated in Appendix 5.

### **2.4.2 Solution ready for acceptance test**

The Contractor shall inform the Customer in writing once the development and customisation of the software has been completed and it has been tested by the Contractor. The Contractor's test report, which shall include a list of known errors, shall be appended to the notice. The Customer may, in Appendix 5, stipulate requirements that limit the number of errors in various categories that the software may contain at the start of the acceptance test.

If, during the first ten (10) working days after the Customer has received notification from the Contractor, it becomes clear that the solution is so defective that it would entitle the Customer to halt the acceptance test pursuant to clause 2.4.5, paragraph five, the Customer may contest the notice and the milestone "Solution ready for acceptance test" shall be deemed not to have been achieved. Such complaints from the Customer shall be sent within ten (10) working days after the Customer received the notice from the Contractor. A corresponding procedure shall apply to any new notices.

### **2.4.3 Plan for the Customer acceptance test and the approval period**

The Customer shall prepare and be responsible for a plan for the Customer's acceptance test; the Contractor shall contribute as set out in Appendix 5.

The Contractor shall make available to the Customer the material the Contractor will utilise as a basis for its testing of the solution, such that the Customer may use this as a basis for the Customer's work on the test plan.

The acceptance test plan shall describe how the Customer's acceptance test shall be conducted.

The Customer shall submit the test plan to the Contractor for its comments. This shall be set out in Appendix 5. The Contractor shall, as soon as possible, consider the test plan and provide a written response concerning whether or not it is deemed adequate to achieve the satisfactory testing of the solution by the deadline set out in Appendix 5.

### **2.4.4 Scope of the acceptance test**

The Customer acceptance test shall comprise the software and the equipment that form part of the deliverables. The scope of the acceptance test is described in more detail in Appendix 5 and the test plan.

## 2.4.5 Performance of the Customer acceptance test

The acceptance test shall be commenced and completed in accordance with the deadlines 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, cf. clause 2.4.3. The Customer is obliged to observe the progress plan for the test.

All errors reported during the Customer acceptance test shall be documented, in order that they may be reproduced. All reported errors shall be categorised as A, B or C errors by the Customer.

Unless Appendix 5 specifies otherwise, the following error definitions shall apply:

Level	Category	Description
A	Critical error	<ul style="list-style-type: none"> <li>- Error that results in the stoppage of the software or equipment, a loss of data, or in other functions that, based on an objective assessment, are of critical importance to the Customer not being delivered or not working as agreed.</li> <li>- The documentation being so incomplete or misleading that the Customer is unable to use the software or the equipment, or material parts thereof.</li> </ul>
B	Serious error	<ul style="list-style-type: none"> <li>- Error that results in functions that, based on an objective assessment, are of importance to the Customer not working as described in the agreement, and which it is time-consuming and costly to work around.</li> <li>- The documentation being incomplete or misleading, and this resulting in the Customer being unable to use functions that, based on an objective assessment, are of importance to the Customer.</li> </ul>
C	Less serious error	<ul style="list-style-type: none"> <li>- Error that results in individual functions not working as intended, but which can be worked around with relative ease by the Customer.</li> <li>- The documentation being incomplete or imprecise.</li> </ul>

The Customer shall report errors to the Contractor on an ongoing basis, and the Contractor shall repair the errors without undue delay. Rectified errors shall be delivered for retesting as set out in Appendix 5.

If the Customer is prevented from executing the test because of inadequate error rectification, or if errors are discovered that prevent the effective execution of the entire test, or parts thereof, the affected component of the test shall be halted until the Contractor has performed the necessary rectifications. A period of time equal to the length of time for which the test was stopped plus the length of time the Customer needs to redo the test shall be added to the period for the Customer's acceptance test.

If previously rectified errors are reintroduced into the solution because the Contractor makes a version management mistake and inserts outdated code, the

Customer's acceptance test shall be halted until the Contractor has performed the necessary rectifications. A period of time equal to the length of time for which the test was stopped plus the length of time the Customer needs to redo the test shall be added to the test period.

If the type or scope of the errors prevent all of the planned tests being conducted within the period of time set aside for the acceptance test, the Customer shall be entitled to extend the acceptance test by the period of time necessary.

#### **2.4.6 Approval of the Customer acceptance test**

If the Customer approves the acceptance test, the Customer shall give the Contractor written notice to such effect without undue delay. The acceptance 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 expiry of the acceptance test period, including any extensions because of matters as described in clause 2.4.5, stating that it is not approved. The acceptance test is also deemed to have been approved if the Customer opts to put the software into operation.

The Customer may not refuse to approve the test on the basis of matters that are immaterial for purposes of the Customer's use of the deliverables. A and B errors are deemed to be 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 are deemed to be immaterial, unless several C errors imply, in aggregate, that approval would be clearly unreasonable. Other, or more detailed, acceptance criteria may be described in Appendix 5. Errors that have only occurred once, and which it has not been possible to reproduce during the acceptance test period, are not deemed to be errors for the purpose of approving the test. If the Customer refuses approval, the reasons for this shall be explained in writing with a statement of which errors are preventing approval. If the Contractor wishes to argue that the refusal is unjustified, including that the Contractor disagrees with the categorisation of errors, written notice shall be given to such effect, which notice shall be given within five (5) working days. If the Customer still refuses to approve the test, the dispute shall be resolved pursuant to chapter 16. The Contractor shall in all circumstances rectify the asserted errors as quickly as possible.

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. The Contractor shall give written notice to the Customer when the repairs have been carried out. Repairs are not deemed to be performed until they have been properly tested by the Contractor and the acceptance test of the Customer. The Contractor's 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 stating that the errors have been repaired and tested, resume its acceptance test. The Customer shall be entitled to a reasonable amount of additional time for purposes of carrying out such testing.

If, at the end of the acceptance test, the deliverables have errors and deviations that would entitle the Customer to reject the deliverables, the Customer may nevertheless choose to accept them with reservations. If the Customer chooses to accept with reservations and references to the agreed rectification plan, and the

rectification plan is not complied with, the remedies shall apply as if the acceptance test was rejected (delay) from this point in time.

If the Customer, during the last five (5) working days of the acceptance test, reports an error to the Contractor for the first time that in principle prevents approval, the error shall be deemed to be covered by the agreed rectification plan. Such errors shall be rectified within ten (10) working days after the end of the acceptance test. The Customer shall then have five (5) working days to test the rectified errors. If the errors have not been rectified within the ten-day deadline, the remedies shall apply as if the acceptance test was extended (delay).

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

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

#### **2.4.7 Commissioning**

The software may be put into ordinary operation after the Customer's acceptance test has been successfully conducted and approved. The schedule for preparing for commissioning is set out in Appendix 4.

The duties of the parties in connection with commissioning are specified in Appendix 5.

### **2.5 APPROVAL PERIOD AND DELIVERY DATE**

#### **2.5.1 Duration**

A three (3) month approval period commences 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 the 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.

#### **2.5.2 Implementation of the approval period**

The Customer shall carry out, during the approval period, checks as to whether the deliverables are in conformity 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, daily operational and other duties. A detailed specification of the content of the approval period, with a specific description of the checks to be carried out by the Customer, may be set out in Appendix 5 or in a separate plan for the approval period.

The Customer shall during the approval period give the Contractor written notice of



any errors on an ongoing basis, including a description of the errors, in accordance with the same procedures for the acceptance test, unless otherwise is agreed in a separate plan for the approval period or in Appendix 5. The Contractor shall, as quickly as possible, rectify the errors and test the error rectifications before they are handed over to the Customer for retesting.

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

- 1) errors that, pursuant to the agreed rectification plan, shall be rectified later, as well as
- 2) errors that are of only minor significance in respect of the Customer's use of the solution, and which will be rectified in a planned update of the software within a reasonable period of time and at the latest by the end of the warranty period, and which it would therefore be disproportionately resource-demanding for the Contractor to rectify during the approval period. Under any circumstances, the errors shall be rectified by no later than the end of the warranty period.

The basis for further examination during the approval period shall be regarded as having been rendered impossible if the Customer finds, and invokes in writing, A or B errors that on their own or combined would make further examination impossible, or very difficult, or that mean that the value of such an examination would be significantly reduced. The Customer may demand that the approval period be extended by a period of time equal to the time it takes to rectify the errors, as well as a reasonable period of time for retesting.

### **2.5.3 Final approval – delivery date**

The Customer shall, prior to the end of the approval period, give the Contractor written notice of the extent to which of the deliverables are deemed to be in conformity with the agreed deliverables 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 laches).

The Customer may not refuse to approve the deliverables on the basis of matters that are immaterial for the Customer's use of the deliverables. Unless otherwise is agreed in Appendix 5, the following shall apply: A errors and three (3) B errors are deemed to be individually material. C errors are deemed to be immaterial, unless several C errors imply, in aggregate, that approval would be clearly unreasonable.

If the Customer refuses to approve the deliverables, such refusal shall be explained in writing. If the Contractor wishes to argue that the refusal is unjustified, including that the Contractor disagrees with the categorisation of errors, written notice shall be given to such effect no later than five (5) working days after the 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. The Contractor shall in all circumstances rectify the asserted errors as quickly as possible.

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 are not deemed to be performed until they have been properly tested by the Contractor and retested by

the Customer. The Contractor's tests shall cover all parts of the deliverables that may be affected by the errors. The Customer shall retest the rectification(s) within five (5) working days.

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

If, at the end of the approval period, the deliverables have errors and deviations that would entitle the Customer to reject the deliverables, the Customer may nevertheless choose to approve them with the proviso that the errors be rectified in accordance with an agreed rectification plan. If the rectification plan is not complied with, the remedies shall apply as if the approval period was rejected (delay from the end of the original approval period).

If the Customer, during the last five (5) working days of the approval period, reports an error to the Contractor for the first time that in principle prevents approval, the error shall be deemed to be covered by the agreed rectification plan. Such errors shall be rectified within ten (10) working days after the end of the approval period. The Customer shall then have five (5) working days to test the rectified errors. If the errors have not been rectified within the ten-day deadline, the remedies shall apply as if the approval period was extended (delay).

The first working day after the deliverables are, or are deemed to be, approved, is referred to as 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, during the warranty period, the rectification of errors and defects that the Customer did not discover and could not be expected to discover during the approval period, or errors that have not been rectified by the Contractor during the approval period.

## **2.6 CANCELLATION – TEMPORARY SUSPENSION**

### **2.6.1 Cancellation in connection with the specification phase**

Prior to the end of the specification phase as stipulated in clause 2.2, the Customer may cancel, in full or in part, the items contracted under this Agreement. Such cancellation shall be made in writing, and shall be received by the Contractor no more than ten (10) working days after the end of the specification phase.

In the event of such cancellation, the Customer shall pay the amount stipulated in Appendix 7 for cancellation during this phase, or if no such amount has been stipulated:

- a) Any amount due to the Contractor in respect of such part of the project 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 make use of for other purposes.  
The total cancellation fee for the specification phase may never exceed the consideration for the specification phase agreed in Appendix 7.

The consequences that partial cancellation has in respect of the remaining parts of the deliverables, including the effect on the contract price, shall be handled in accordance with the provisions in chapter 3.

### **2.6.2 Cancellation after the specification phase**

After the specification phase as stipulated in clause 2.2, the Customer may cancel, in whole or in part, the items contracted under this Agreement on one (1) month's written notice.

In the event of such cancellation, the Customer shall pay:

- a) Any amount due to the Contractor in respect of such part of the project 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 make use of for other purposes.

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

- four (4) per cent of the contract price, or
- six (6) per cent of such part of the contract price as remains unpaid as per the cancellation date, and which has not been paid pursuant to letter a) above either.

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

In the case of partial cancellation, the cancellation fee shall be calculated on the basis of the share of the contract price accounted for by the cancelled items. The consequences that partial cancellation has in respect of the remaining parts of the deliverables, including the effect on the contract price, shall be handled in accordance with the provisions in chapter 3.

### **2.6.3 Temporary suspension of the deliverables**

The Customer may request upon minimum 5 (five) working days' written notice to the Contractor, the temporary suspension of the delivery of the deliverables.

The Customer shall specify, in such notice, as from what date (milestone) the delivery of the deliverables shall be suspended, as well as from which date it is intended for the delivery of the deliverables to recommence.

The Contractor shall immediately, and no later than five (5) working days after notice has been received, send the Customer an overview of the functions and activities that need to be sustained during the suspension period.

The delivery of the deliverables shall recommence, without undue delay, upon written notice from the Customer.

The Customer shall reimburse the Contractor for its documented costs relating to the reassignment of personnel on the part of the Contractor and its subcontractors, as well as other direct costs incurred by the Contractor as the result of the suspension. If the Customer requests that personnel who participated in the delivery of the deliverables prior to the suspension shall recommence the work and complete the delivery of the deliverables, the Customer shall reimburse the costs of the Contractor in respect of such personnel, calculated on the basis of the lowest of the hourly rates for consultants set out in Appendix 7, but only to the extent that it has not been possible for the Contractor to use the resources for other income-generating work during the period of suspension of the delivery of the deliverables. Such a claim from the Customer shall be submitted no later than the notice referred to in paragraph two above.

If the suspension has consequences in terms of progress in the delivery of the deliverables or the contract price, cf. Appendices 4 and 7, such consequences shall be dealt with pursuant to the provisions in chapter 3 on changes.

If the delivery of the deliverables has been continuously suspended for more than one hundred and twenty (120) calendar days, the Contractor may terminate the Agreement without cause by written notice to the Customer. Unless the Customer renders written notice, within fourteen (14) calendar days of having received the notice, stating that the delivery of the deliverables shall recommence, the cancellation provisions of clauses 2.6.1 and 2.6.2 shall apply correspondingly.

#### **2.6.4 Handover of specifications, etc.**

Upon cancellation pursuant to clause 2.6.1 or 2.6.2, the Contractor shall hand over to the Customer all specifications and other materials prepared for the Customer up and until the cancellation date. This shall apply to both written and electronic materials.

### **3. CHANGES SUBSEQUENT TO THE CONCLUSION OF THE AGREEMENT**

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

The Customer has 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 have reasonably expected upon the conclusion of the Agreement.

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

If the overall consideration of the Contractor, net of all reductions and additions, is reduced by more than fifteen (15) per cent of the original contract price, such reduction shall be dealt with as a partial cancellation, cf. clause 2.6.

### **3.2 CHANGE ESTIMATE**

Unless otherwise is specified in Appendix 6 or the change order itself, the Contractor shall, within a maximum of ten (10) working days from 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 event of a request for major changes, the parties shall agree an extension of the deadline with such number of days as is deemed to be reasonable. In such circumstances, the Contractor may require an extension of the time-limit of up to ten (10) working days. The request for an extension of the deadline must be submitted before the end of the ten-day deadline in the first sentence.

At a minimum, the study shall include the following:

- a) description of the change
- b) description of the scope of work that needs to be carried out as a result of the change, and the time required for such work
- c) implications for the requirement specification/solution specification and/or 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, cf. clause 3.5
- f) implications for the progress plan, cf. 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 standard system and the developed software, and the relation between these

Documented costs in connection with the preparation of change estimates are carried by the Customer in accordance with the prices and terms applicable to supplementary work, cf. 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 larger estimate.

If the preparation of a change estimate does in itself necessitate 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 apply to the change order as well, unless otherwise explicitly stated in the change order.

### **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 directory 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 requires a change, the Contractor shall have the right to require adjustments to the contract price and progress plan or other matters, cf. 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.

If it is not possible to calculate the change based on the hourly rates or unit prices in Appendix 7, the Contractor shall present a quote in respect of the addition or deduction for the changes. The offer shall reflect the general price level of this Agreement.

If any changes and/or additions requested would, as a general rule, have resulted in an adjustment to the agreed date on which the solution will be ready for the acceptance test or delivery date, the Contractor shall, to the extent practicable, seek to accelerate implementation in order that the agreed deadlines may nevertheless be observed. In such case, acceleration shall be deemed to constitute a change to be dealt with pursuant to the rules set out 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 in terms of the contract price, the progress plan or other terms and conditions of the Agreement have been finally resolved, cf. clause 3.6.

### **3.6 DISPUTE CONCERNING THE CONSEQUENCES OF A CHANGE**

If the parties agree that there is a change, but disagree on the effect of such change as far as the contract price is concerned, the Customer shall pay a preliminary consideration calculated pursuant to the rules set out in clause 3.5. If no ruling from 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 after 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 to be final. The Contractor shall pledge security for the disputed part of the consideration, or alternatively choose to be paid half of the disputed part of the consideration, up to the date when the consideration is deemed to have been set with final effect.

### **3.7 DISAGREEMENT AS TO WHETHER THERE IS A CHANGE**

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

Together with the change order request, the Contractor shall provide 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 costs associated with the preparation of change estimates shall be paid by the Customer if the Contractor's request for a change order is accepted.

If the Contractor fails to make such request within a reasonable period of time, the work shall be deemed to form part of the Contractor's obligations pursuant to the Agreement, and the Contractor waives its right to invoke such work as grounds for extending deadlines, additional consideration or damages.

### **3.8 DISPUTED CHANGE ORDER**

If the Contractor has requested the Customer to 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.

Even if the change order is disputed, the Contractor shall perform what has been ordered in return for the Customer paying a provisional consideration corresponding to half of the amount to which the Contractor believes it is entitled. If the Contractor does not demand a decision concerning the disputed change pursuant to clause 3.9 of the Agreement within three (3) months after the consideration has been paid, or if the work is deemed to fall within the scope of the Agreement, the provisional consideration shall be set off against the consideration due upon the next payment milestone. If the work is deemed to be a change, the fixed consideration for the change, adjusted for the provisional consideration, shall be incorporated into the ordinary payment plan.

The Contractor may contest the duty to perform the work by requesting 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, cf. chapter 16. Such a request must be submitted without undue delay after the Customer has provided notice that the change is disputed. The Contractor shall bear the risk

associated with any delays that may occur due to the postponement of the work, if it is determined that the work falls within the scope of the Agreement.

### **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, cf. 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 7, the warranty period shall be one (1) year for software and two (2) years for equipment after the delivery date, cf. clause 2.5.3.

Contingent upon normal, diligent use on the part of the Customer, the Contractor shall, at no additional cost, rectify errors and defects, replace defect parts of equipment and rectify errors in software governed by this Agreement and which the Customer has complained about before the expiry of the warranty period. No damages or other remedies for breach of contract may be claimed for defects that are rectified pursuant to the warranty.

Appendix 2 may specify detailed requirements for the maintenance of equipment that must be performed for the warranty to remain valid.

### **4.2 PERFORMANCE LEVEL**

Any maintenance services beyond the warranted performance shall be specified and priced in a designated agreement.

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 agreement has been concluded, the performance level during the warranty period shall be specified in Appendices 1 and/or 2.

Moreover, all work involved in curing errors and defects shall be commenced and completed without undue delay after the Contractor has received notice of such errors or defects. The second to last paragraph of clause 5.1 shall apply correspondingly.

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 and defects 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**

In the event of errors and defects that fall outside the scope of the warranty, the Contractor will perform the same service as agreed for the warranty period, 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 THE RESPONSIBILITY OF THE CONTRACTOR FOR ITS PERFORMANCE**

The Contractor is responsible for ensuring that the deliverables as a whole (the overall 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, cf. clause 1.1, and that the deliverables are compatible with other software specified in Appendices 1 and 2.

To the extent that standard software included in the deliverables must be delivered under standard licence terms and conditions and agreement terms and conditions (licence terms and conditions), this shall be explicitly stated in a separate chapter in Appendix 2, and copies of the licence terms and conditions shall be appended as Appendix 10.

The provisions of the licence terms and conditions governing right of disposal shall prevail over the provisions governing right of disposal in this Agreement, unless otherwise is explicitly stated in Appendix 8. The Contractor shall, however, ensure that standard software is offered under licence terms and conditions with a right of disposal that satisfy the requirements in respect of the deliverables and their area of use stipulated by the Customer in Appendix 1, and this Agreement's provisions governing right of disposal. To the extent that the provisions of licence terms and conditions governing right of disposal differ from this Agreement's provisions governing right of disposal, the Contractor shall describe this clearly in Appendix 7. In the event of defects in title, the Contractor shall not be liable for damages for defects in title associated with standard software beyond that which follows from licence terms and conditions included in Appendix 10 and the coverage of any liability for damages imposed on it in relation to a third party (the rightsholder(s)) pursuant to clause 13.4.

The deliverables shall be tested and approved pursuant to this Agreement's provisions governing testing and approval, independent of what may follow from the software's licence terms and conditions.

The Contractor shall be responsible for the deliverables (the overall solution) meeting the requirements under this Agreement, irrespective of the provisions of the particular licence terms and conditions.

If the deliverables deviate from what was agreed under this Agreement, it shall be the responsibility of the Contractor to rectify the deviation in such a way as to make the deliverables conform to what was agreed, even if such deviation is caused by factors in standard software that are subject to licence terms and conditions that include different provisions on the rectification of errors. The rectification of errors in, or errors caused by, standard software may be effected in any manner that makes the deliverables conform to the requirements under the Agreement.

If the Contractor documents that deviations in the deliverables are due to the behaviour of the standard software not matching the software producer's specifications, and that access to the standard software's source code is required in order to rectify the errors, the Contractor's obligation to rectify the errors is limited to reporting the error to the software producer, seeking to the best of its ability to make rectification of the error a priority, keeping the Customer informed about the status of the error rectification, and making the rectified version available to the Customer once the error in the standard software has been rectified by the software producer. The Contractor shall assist with installation at the request of the Customer, without additional consideration. The Contractor shall make a reasonable effort to find a temporary solution while the software producer rectifies the error. A maximum financial limit for the Contractor's obligation to work out temporary solutions that work around errors in standard software can be agreed in Appendix 7.

Errors in standard software such as those mentioned in the second to last paragraph shall not be included in the assessment of whether or not the acceptance criteria or approval criteria have been fulfilled, unless the Contractor has failed to perform its duties in respect of following up the error rectification and installing the rectified version. As soon as the errors in the standard software have been rectified, the rectified version has been installed, and the Contractor has otherwise performed the tasks necessary for the deliverables to match that which has been agreed, the Customer shall be entitled to a reasonable period of time to retest the deliverables. If such errors as those mentioned in this paragraph result in the Customer deciding to postpone the start of the approval period, the Contractor may not demand consideration for this postponement, even if a change order is issued pursuant to clause 2.5.1, paragraph two. If the errors in the standard software are not rectified by the expiry of the warranty period, the Customer may demand a price reduction and possible damages pursuant to the Agreement's chapter 11.

## **5.2 REQUIREMENTS AS TO THE RESOURCES AND EXPERTISE OF THE CONTRACTOR**

The Contractor warrants that the deliverables will be performed with sufficient qualitative and quantitative resources and expertise, given 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 that directly participate in the performance of the deliverables must be approved in writing by the Customer. Approval shall not be unreasonably withheld.

Subcontractors that are approved shall be specified 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 shall be specified in Appendix 6. Any consideration for such assistance shall be specified in Appendix 7. 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 for the Contractor's relationship to its existing subcontractors or other business contacts.

### **5.5 WAGES AND WORKING CONDITIONS**

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

In respect of areas covered by the Regulations relating to Generalised Collective Wage Agreements, the Contractor shall ensure that its and any subcontractors' employees who contribute directly to the performance of the Contractor's obligations under the Agreement do not receive wages or have working conditions that are inferior to those stipulated in the Regulations relating to Generalised Collective Wage Agreements. In areas not covered by generalised collective wage agreements, the Contractor shall ensure that the same employees do not receive wages or have working conditions that are inferior to those stipulated in any applicable nationwide collective wage agreements relating to the relevant trade. This applies to work performed in Norway.

All agreements that are entered into by the Contractor and that involve the performance of work that contributes directly to the performance of the Contractor's obligations under the Agreement shall include corresponding terms and conditions.

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

The Contractor's obligations as mentioned above shall be documented in Appendix 6 by means of either a self-declaration or a third-party declaration showing conformity between the relevant collective wage agreement and the actual wages and working conditions relating to compliance with the Contractor's and any subcontractors' obligations.

The Contractor shall, at the request of the Customer, disclose documentation relating to the wages and working conditions which are used. 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 require the third party to sign a declaration that the information will not be used for any purpose other than to ensure fulfilment of the Contractor's obligations pursuant to this provision. The disclosure obligation shall also apply to subcontractors.

Further clarification concerning the implementation of this clause 5.5 may be agreed in Appendix 6.

## **6. THE DUTIES OF THE CUSTOMER**

### **6.1 RESPONSIBILITIES OF AND CONTRIBUTIONS BY THE CUSTOMER**

The Customer is responsible for having described the purpose of the procurement and its requirements and needs, in Appendix 1, in a clear manner, 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, cf. clause 1.1, the Customer shall itself ensure such upgrading, unless otherwise stipulated in Appendices 1 and/or 2.

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

The Customer shall contribute to the delivery of the deliverables in the manner specified in Appendix 2, in accordance with the deadlines stipulated in Appendix 4.

### **6.2 USE OF A THIRD PARTY BY THE CUSTOMER**

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

## **7. DUTIES OF THE CUSTOMER AND THE CONTRACTOR**

### **7.1 MEETINGS**

A party may, if deemed necessary by it, 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 deadlines 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 in the same manner as if said party was performing the work itself.

## **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 scope of the confidentiality obligation under this provision shall not go beyond that laid down by the Act of 10 February 1967 relating to Procedure in Cases concerning the Public Administration (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 demanded pursuant to laws or regulations, including any disclosure or right of access pursuant to the Act of 19 May 2006 relating to the Right of Access to Documents in the Public Administration (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, subcontractors and other 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 be subjected to a confidentiality obligation following their resignation as well, as far as factors mentioned above are concerned. The confidentiality obligation shall lapse five (5) years after the delivery date, unless otherwise stipulated by law or regulation.

#### **7.4 FORM OF COMMUNICATION - IN WRITING**

All notices, demands or other communications relating to the Agreement shall be submitted in writing to the postal address or electronic address stated on the first page of the Agreement, unless the parties have agreed a different procedure in Appendix 6 for this type of enquiry.

### **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, including travel and subsistence costs, 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 include customs duties and any other indirect taxes.

All prices are quoted in Norwegian kroner unless the Customer has, in Appendix 7, agreed that prices for components that are delivered from abroad may be stated in a foreign currency.

#### **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.

When the Customer has made arrangements for such, the Contractor shall submit invoices, credit notes and reminders in accordance with the Electronic Trading Format (EHF) that has been determined.

The payment schedule and other payment terms, and any terms and conditions relating to the use of EHF, are set out in Appendix 7.

The Contractor shall be responsible for paying any costs that it incurs in respect of submitting electronic invoices.

#### **8.3 LATE PAYMENT INTEREST**

If the Customer fails to make payment by the agreed time, the Contractor shall be entitled to claim interest on any overdue amount, pursuant to the Act No. 100 of 17

December 1976 relating to Interest on Overdue Payments, etc. (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 deadline.

#### **8.5 PRICE ADJUSTMENTS**

Hourly rates charges for services may be adjusted at the beginning of every calendar year by an amount equivalent to the increase in the retail price index (the main index) of Statistics Norway, with the initial reference index value being the index value for the month in which the Agreement was formed, unless a different index value is agreed in Appendix 7.

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

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

### **9. EXTERNAL LEGAL REQUIREMENTS, DATA PROTECTION AND SECURITY**

#### **9.1 GENERAL 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 conclusion and implementation of this Agreement. The Customer shall be responsible for specifying, in Appendix 1, any relevant functional and security 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 that occasion a need for 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, cf. chapter 3.

## **9.2 INFORMATION SECURITY**

The Contractor shall implement proportionate measures to address the information security requirements associated with the performance of the deliverables.

## **9.3 PERSONAL DATA**

If the Contractor shall process personal data on behalf of the Customer in connection with the performance of the deliverables (for example, in the case of converting data), the Contractor will be acting as a data processor. As a data processor acting on behalf of the Customer, the Contractor shall process the personal data in accordance with the Agreement. The Contractor may not process personal data in any other manner. The parties may also have concluded a separate data processor agreement. In the case of conflict, the data processor agreement shall prevail over the Agreement with respect to the processing of personal data.

The Contractor shall, through planned and systematic measures, ensure adequate information security with respect to confidentiality, integrity and accessibility when processing personal data, cf. section 13 of the Personal Data Act. The Contractor shall document the information system and security measures. Such documentation shall be made available, upon request, to the Customer and its auditors, as well as the Norwegian Data Protection Authority and the Privacy Appeals Board.

Further provisions governing how personal data shall be processed, including relevant security measures and requirements for storage times and deletion, etc. shall be set out in Appendices 1 and 2, and/or in the detailed specification or specification for the conversion work.

The Contractor may not transfer personal data to others for storage, processing or deletion without the consent of the Customer. Subcontractors that are approved by the Customer shall be named in Appendix 6. The Contractor shall ensure that any subcontractors used by the Contractor, and that process personal data, assume the same obligations as those set out in clause 9.3.

Personal data shall not be transferred to countries outside the European Economic Area (EEA) without the prior written consent of the Customer.

## **10. RIGHT OF OWNERSHIP AND RIGHT OF DISPOSAL**

### **10.1 RIGHT OF OWNERSHIP OF EQUIPMENT, ETC.**

Equipment that is delivered pursuant to the Agreement becomes the property of the Customer upon such delivery. The transfer of title implies that the Customer is granted complete physical and legal right of use of the equipment, subject to the limitations set out in this Agreement with appendices, 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 STANDARD SOFTWARE**

### **10.2.1 Limited right of disposal**

The Customer is granted a limited right of disposal of the standard 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.

Consideration for the right of disposal in respect of the software, including any prerequisites and limitations, for example, 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 Security for access to source code, etc.**

The Customer may, in Appendix 1, stipulate a requirement that the Contractor shall offer the Customer an agreement concerning access to source code or some other solution (for example, a performance bond from its parent company or an associated company) that satisfactorily secures the Customer's interests should the Contractor go bankrupt or for some other reason be unable, or cease, to deliver its services pursuant to this Agreement or an associated maintenance agreement. In those circumstances where the Customer is entitled to access to the source code pursuant to this provision or have arrangements put in place to fulfil this provision, the Customer shall have an expanded right of disposal that covers the right to use, copy, modify and develop the deliverables itself, or with the aid of a third party, to the extent necessary to achieve the purpose of the procurement.

### **10.2.3 Maintainability**

If the Contractor chooses to deliver customer customisations in the form of developing the source code of software that provides the basis for the deliverables, the Contractor shall ensure that the customer customisations are also addressed in subsequent versions of the software.

## **10.3 RIGHTS TO DEVELOPMENT AND CUSTOMISATIONS**

### **10.3.1 The rights of the Contractor**

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

### **10.3.2 The rights of the Customer**

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 includes the right to use, copy, modify and develop the customisations, either on its own or with the assistance of a third party. The Customer is entitled to confer a corresponding expanded right of disposal on any other public body.

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

## **10.4 RIGHT OF DISPOSAL OF DOCUMENTATION**

### **10.4.1 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.

### **10.4.2 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.

### **10.4.3 Documentation of development and customisations**

The Customer is granted a corresponding right of disposal of documentation prepared in connection with development and customisations, cf. clause 10.2, as the Customer is granted in relation to the development and customisations. This shall also cover training materials.

### **10.4.4 Utilisation of the detailed specification**

Each of the parties may utilise the detailed specification without hindrance in respect of the other party's possible copyright. The right of utilisation includes the right to reuse the detailed specification in other assignments and to make it available to others, including for their reuse. This provision does not provide a right to distribute information that is covered by a confidentiality obligation pursuant to clause 7.3.

## **10.5 JOINT PROVISIONS APPLICABLE TO SOFTWARE AND DOCUMENTATION**

### **10.5.1 Marking of software and documentation**

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

### **10.5.2 Duration of the right of disposal**

The right of disposal shall apply as from signing of the Agreement, without any deadline 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 by giving three (3) months' notice, unless otherwise is agreed in Appendix 7. The right of disposal shall lapse as per the end of the relevant calendar month. Upon termination, a proportional consideration shall be paid for the right of disposal up to the expiry of the period of notice. Further provisions may be stipulated concerning this in Appendix 7.

### **10.5.3 Return or destruction upon termination of the right of disposal**

The Customer undertakes to return or delete, upon the termination of an agreed right of disposal of software, 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.

## **10.6 THE TOOLS AND METHODOLOGICAL BASIS OF THE CONTRACTOR**

Unless otherwise specified in Appendix 1 and/or Appendix 2, the Contractor, the subcontractors, and any third party from whom the Contractor or the subcontractors derive their rights, shall retain the right to their own tools and to the methodological basis used by the Contractor in respect of the deliverables. This includes any customisations that the Contractor has developed independently of the Customer, and has reused for purposes of these deliverables.

## **10.7 FREE SOFTWARE**

### **10.7.1 General provisions pertaining to free software**

Free software means software that is offered under what are generally recognised to be free software licences.

A free software licence 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 as a separate chapter in Appendix 2. Copies of the applicable licence terms and conditions for the relevant free software shall be appended in Appendix 10.

The Contractor shall ensure that no free software is being used under licence terms that are incompatible with the requirements applicable to the deliverables, or incompatible with the licence 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.

#### **10.7.2 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, cf. clause 5.1, irrespective of the provisions of any particular free software licence.

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 licence terms and conditions 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.

#### **10.7.3 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 licence.

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

#### **10.7.4 Effects of distributing free software to others**

If the deliverables are to be distributed to others, the terms of the relevant free software licence 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 licence, this shall be specified by the Contractor in Appendix 2.

#### **10.7.5 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 licences, 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 by clause 10.7.6, 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, cf. clause 13.4.

#### **10.7.6 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 carry the risk of defects in title relating to free software that the Customer has requested be used as 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, cf. clause 13.4 of the Agreement.

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 copyrights, the Contractor shall point this out in Appendix 2, cf. clause 1.1 of the Agreement.

The Contractor shall, as a supplementary and chargeable service, assist the Customer with the remediation of any defects or defects in title 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 to the agreed functions, requirements or deadlines. 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, insofar as it is possible, when performance can take place. A corresponding obligation shall apply if additional delays are to be expected after the first notice has been given.

No damages or other remedies for breach of contract may be claimed for

circumstances that have not been notified at the latest prior to the expiry of the warranty period. Nevertheless, this shall not apply to any liability for damages imposed in relation to a third party in respect of defects in title pursuant to clause 13.4.

### **11.3 EXTENSIONS OF DEADLINES**

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

The Customer shall not be entitled to claim liquidated damages, ordinary damages or other remedies for breach of contract in respect of the period comprised by an extension of the deadline.

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

### **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 to work as agreed. 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 if the conditions for this in clause 11.5.3 or clause 11.5.4 are met.

If the Contractor has failed to cure the breach of contract within the stipulated or agreed deadline, 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 deadline 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 the event 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 the case of delay**

If the agreed detailed specification approval date, solution ready for acceptance test date, acceptance test approval date, delivery date, or some other deadline 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 related to the Customer, there is a delay on the part of the Contractor that triggers liquidated damages.

If the Contractor is delayed with regard to the detailed specification approval milestone or later milestones for which the parties have stipulated liquidated damages, later deadlines shall be extended corresponding to the number of calendar days of the liquidated damages. If the Contractor, through acceleration, manages to meet the milestone *solution ready for acceptance testing* at the originally agreed time, the previously accrued liquidated damages shall be cancelled.

The liquidated damages shall accumulate automatically. The liquidated damages amount to 0.15 per cent of the total consideration payable for the deliverables (the contract price), excluding Value Added Tax, for each calendar day of delay, but albeit limited to a maximum of one hundred (100) calendar days. If the delay pertains to a partial delivery, the liquidated damages shall amount to 0.15 per cent of the total consideration (exclusive of Value Added Tax) for the partial delivery in question for each calendar day the delay lasts, but limited to a maximum of one hundred (100) calendar days. If no price has been quoted for the partial delivery in Appendix 7, the liquidated damages shall be calculated based on the partial delivery's relative share of the consideration for the total delivery. In the case of the final, comprehensive acceptance test, liquidated damages shall be calculated based on the total consideration for the deliverables. The sum of previously accumulated liquidated damages for the partial deliveries and the comprehensive acceptance test may not exceed 15 per cent of the total consideration for the deliverables.

Other rates for liquidated damages, a different calculation basis and other periods for liquidated damages may be agreed in Appendix 4. Unless otherwise is explicitly stated in Appendix 4, total liquidated damages shall not exceed 15 per cent of the total consideration for the deliverables.

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 having given the Contractor a written notice and granted it a reasonable deadline for remedying the

situation, terminate all or part of 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 deadline, if this expires later.

The Customer may terminate the Agreement for breach for a partial delivery when the period for the liquidated damages for the specific partial delivery has expired. If the delay is of such a type that the delivery as a whole must be deemed to be substantially delayed, for example, because that which is already delivered or which shall be delivered later cannot be used without that which is covered by the right to terminate for breach, the Customer may terminate the total delivery for breach.

### **11.5.5 Damages**

The Customer may claim damages in respect of any direct loss, including additional costs the Customer incurs due to substitute purchases, any loss caused by additional work and other direct costs in connection with delays, deficiencies or other breaches of contract pursuant to clause 11.1, unless the Contractor demonstrates that the Contractor did not cause 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. Indirect loss includes, but is not limited to, lost earnings of any kind, lost savings, loss of data, and claims from third parties, with the exception of liability for damages pursuant to clause 13.4.

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

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

## **12. BREACH OF CONTRACT ON THE PART OF THE CUSTOMER**

### **12.1 WHAT IS DEEMED TO CONSTITUTE BREACH OF CONTRACT**

There is breach of contract on the part of 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 related to the Contractor, or by circumstances deemed to constitute force majeure.



The Contractor shall submit a complaint 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 observing any deadlines, 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 ON THE PART 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, cf. clause 12.4.

## **12.4 TERMINATION FOR BREACH**

In the event 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 having received the Contractor's written notice pursuant to clause 8.4.

In the event of other material breach of contract, the Contractor may send the Customer a written notice stating that the Agreement will be terminated for breach unless the Customer has discontinued or cured the breach of contract within sixty (60) calendar days after the Customer received the notice. Termination for breach shall not take place if the Customer has discontinued the breach of contract situation before the expiry of the deadline.

## **12.5 DAMAGES**

The Contractor may claim damages in respect of any direct loss that arises from breach of contract pursuant to clause 12.1, unless the Customer demonstrates that the breach of contract or the cause of the breach of contract is not attributable to the Customer. If the Customer's performance of its duties under the Agreement is delayed, and this results in the Contractor spending more time implementing its part of the deliverables, the Contractor shall have the right to adjust the agreed consideration by an amount corresponding to the number of hours of additional work the Contractor has been caused due to the breach on the part of the Customer.

The limitation of damages provision of the Agreement, cf. clause 11.5.6, 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 carry 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 thereof in writing 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

If the defect in title cannot be resolved as stipulated in paragraph three, the Customer shall stop any further use of the solution and delete the relevant software component.

### **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 the other party the right to terminate the Agreement for breach.

### **13.4 INDEMNIFICATION OF 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 loss pursuant to the provisions of clauses 11.5.5, 11.5.6 and 12.5.

## **14. SETTLEMENT UPON TERMINATION FOR BREACH**

Upon termination for breach, the Customer shall have the rights stipulated in chapter 10 to what has been produced and made available to the Customer, and the Customer shall pay the agreed consideration for the deliverables that were performed prior to the date of the termination for breach with the deduction of a price

reduction in accordance with clause 11.5.3. Clause 2.6.4 concerning the handover of material shall apply correspondingly.

If the deliverables rendered prior to the termination date are of such a nature that the Customer has gained little or no benefit from the deliverables rendered on the termination date and cannot reasonably expect to complete the deliverables with the assistance of another contractor, the Customer may, in connection with termination for breach, choose to demand the repayment of consideration received by the Contractor under the Agreement, with the addition of interest, at the rate of NIBOR plus one (1) per cent, as from the date on which payment was made. In this circumstance, chapter 10 shall not apply.

When the rights of the Customer in relation to what has been made available to the Customer 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 stating that this has been done. In the event of termination for breach by the Customer, the fee of the auditor shall be paid by the Customer, otherwise it shall be paid by the Contractor.

## **15. OTHER PROVISIONS**

### **15.1 Risk**

The risk of damage to equipment and delivered software copies, etc., due to an accidental occurrence, shall pass to the Customer on the date they are physically handed over to, or downloaded at, the Customer. 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 will be under an obligation to have insurance policies that are sufficient to cover any claims the Contractor may bring on the basis of the risks or 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 meet such claims from the Customer as may arise 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 on terms and conditions that are deemed to be ordinary within the Norwegian insurance industry.

The Contractor shall, at the request of the Customer, explain and document those of the insurance policies of the Contractor that are of relevance to compliance with this

provision.

### **15.3 ASSIGNMENT OF RIGHTS AND OBLIGATIONS**

To the extent that the Customer is a public body, the Customer may assign its rights and obligations under this Agreement to another public body. The entity 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 de-merged into several companies or in the case of assignment to a subsidiary or another company within the same group, but not if the Contractor is merged with another company. Consent shall not be unreasonably withheld.

The right to assignment in the paragraph above shall only apply if the new contractor meets the original qualification requirements, no other material changes are made to the contract, and the assignment is not made to circumvent the regulations concerning public procurement.

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 case 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, unless otherwise is stipulated by mandatory law.

### **15.5 DUTY OF CARE IN RELATION TO EXPORTS**

If any products, including spare parts, software and technology, delivered by the Contractor 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 case 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 end the Agreement 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. Each of the parties shall cover their own costs associated with the ending of the contractual relationship. The Customer shall pay the agreed price for the part of the deliverables that was performed prior to the Agreement coming to an end. The parties may not present other claims against each other due to the Agreement coming to an end pursuant to this provision.

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 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, each of the parties may request that the dispute be brought before an independent expert or submitted for mediation.

### **16.3 INDEPENDENT EXPERT**

The parties shall in connection with the conclusion 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 to 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 after negotiations or by using 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.

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 and who shall hold such qualifications as the parties believe to be the most appropriate in relation to the nature of the dispute.

The detailed approach to the 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 in accordance with clause 16.3, second paragraph,
- 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 such 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, each party may require such dispute to be resolved with final effect before the Norwegian courts of law.

The venue shall be the court of domicile of the Customer.

The parties may alternatively agree that the dispute shall be resolved with final effect through arbitration.

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