

## The little cloud agreement

Providing access to Cloud Services delivered on Standard Terms

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The Norwegian Government's Standard Agreement for providing access to Cloud Services delivered on Standard Terms

# Agreement for providing access to Cloud Services delivered on Standard Terms

**Agreement concerning**  
[name of procurement]

**has been entered into between:**

[Enter here]

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(Hereinafter referred to as the Supplier)

**and**

[Enter here]

---

(Hereinafter referred to as the Customer)

**Place and date:**

[Please enter the place and date]

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[Name of Customer]

[Name of Supplier]

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The Customer's signature

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The Supplier's signature

This Agreement shall be signed in two copies, one for each Party.

## **Enquiries**

All enquiries relating to this Agreement must be directed to the individual or role listed as the authorised representative in Appendix 6.

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# **1. GENERAL PROVISIONS**

## **1.1 SCOPE OF THE AGREEMENT**

### **1.1.1 Cloud services supplied on Standard Terms**

This Agreement concerns the providing of access to cloud services provided on standard terms and conditions (hereinafter referred to as the “Cloud Services”).

The Customer has described its needs and requirements for the Cloud Services in Appendix 1 (The Customer’s description of needs and specification of requirements). The Customer has described the system landscape the Cloud Services need to interact with and be part of in Appendix 3.

The Supplier has described the Cloud Services in Appendix 2. If the Cloud Services do not fully meet the Customer’s requirements as specified in Appendix 1, the Supplier shall clearly describe any deviations in Appendix 2.

Cloud Services shall be supplied on standard terms and conditions. The standard terms and conditions for the Cloud Services, including any provisions relating to service level (SLA), shall be specified in Appendix 10 and will hereinafter be referred to as the “Standard Terms”. The party that produces the Cloud Services and has determined the Standard Terms shall hereinafter be referred to as the “Cloud Service Provider”. In Appendix 10, the Supplier shall specify whether the Customer or Supplier is the party to the agreement with the Cloud Service Provider.

The Customer is bound by the Standard Terms with regards to requirements for delivery of the Cloud Services. This will also apply if the Supplier is a party to the agreement with the Cloud Service Provider.

The Customer may not assert any claims against the Supplier regarding the delivery of the Cloud Services other than what is explicitly stated in this Agreement. Other claims must be directed to the Cloud Service Provider in accordance with the Standard Terms.

If the Supplier is a party to the agreement with the Cloud Service Provider, the Supplier shall enforce the Standard Terms of the Cloud Service Provider on behalf of the Customer. If the Customer is a party to the agreement with the Cloud Service Provider, the Supplier shall enforce the Standard Terms of the Cloud Service Provider on behalf of the Customer to the extent stated in Appendix 1 and Appendix 2 that such follow-up is included in the Services.

The “Agreement” means this document and its appendices.

### **1.1.2 Additional Services**

The Agreement may also include basic assistance linked to making the Cloud Services accessible to the Customer, as well as basic maintenance services associated with integrations, etc., (hereinafter referred to as “Additional Services”). Any Additional Services

have been further described in Appendix 1 and 2, see also Section 2.3, Section 2.5 and Section 3.2 concerning the Supplier’s service catalogue.

**1.1.3 Who the Agreement applies to – the Customer’s affiliated companies**

If the Customer acquires Cloud Services and/or Additional Services that will also be used by other affiliated companies, such companies shall be specified in Appendix 1. These affiliated companies shall have the same rights to use to the Cloud Services and Additional Services as the Customer. The Customer shall uphold the Agreement in relation to the Supplier.

**1.2 APPENDICES TO THE AGREEMENT**

Appendix	All columns must be checked (Yes or No)	Yes	No
1.	The Customer’s description of needs and specification of requirements <i>To be filled out by the Customer.</i>		
2.	The Supplier’s description of the Cloud Services and any Additional Services <i>To be filled out by the Supplier.</i>		
3.	The Customer’s system landscape <i>Description of the parts of the Customer’s system landscape that are relevant to the Cloud Services. Appendix 3 to be filled out by the Customer.</i>		
4.	Delivery plan as well as plan and criteria for the Customer’s acceptance test <i>To be filled out by the Supplier based on the overall guidelines provided by the Customer regarding the plan and the requirements specified in Appendix 1 and 2.</i>		
5.	Service levels for Additional Services with standardised compensation <i>To be filled out by the Supplier based on the guidelines and requirements set down by the Customer in the Appendix.</i>		
6.	Administrative provisions <i>Administrative provisions and other information relevant to the Parties’ relationship. To be filled in by the Supplier based on the general guidelines provided by the Customer in the Appendix.</i>		
7.	Price and payment terms <i>Overview of all price elements concerning the Customer’s access to the Cloud Services and fees for any Additional Services. To be filled in by the Supplier based on the general guidelines provided by the Customer in the Appendix.</i>		
8.	Changes to the general contractual wording		
9.	Amendments to the Agreement after the Agreement has been entered into		

<b>10.</b>	Standard Terms and Conditions for the Cloud Services <i>Copy of or reference to the Standard Terms and Conditions (including provisions relating to service levels) for all Cloud Services included in the Agreement.</i>		
<b>11.</b>	Data processing agreement(s) <i>Data processing agreement between the Supplier and Customer and any data processing agreements entered into directly between the Customer and a Cloud Service Provider.</i>		
<b>12.</b>	Terms defined in the Agreement		
<b>13.</b>	Other appendices:		

### 1.3 INTERPRETATION – ORDER OF PRECEDENCE

Changes to the general contractual wording (this document without appendices) 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:

1. The general contractual wording shall take precedence over the appendices.
2. Appendix 1 will take precedence over the other appendices.
3. To the extent that it is clearly and unequivocally specified, the following principles of precedence shall apply:
  - a) Appendix 2 will take precedence over Appendix 1.
  - b) Appendix 8 will take precedence over the general contractual wording.
  - c) If the general contractual wording refers to changes to any other Appendix than Appendix 8, such changes shall take precedence over the general contractual wording.
  - d) Appendix 9 shall take precedence over the other Appendices.
4. Appendix 11, the Data Processing Agreement(s), shall take precedence over the general agreement text and other appendices with regard to provisions that clearly and unequivocally concern the regulation of personal data privacy.

Standard Terms included in Appendix 10 are binding on the part of the Customer with regard to the delivery of Cloud Services as specified in clause 1.1.1 above.

## **2. IMPLEMENTATION OF THE AGREEMENT**

### **2.1 ORGANISATION, THE PARTIES' REPRESENTATIVES AND WRITTEN FORM REQUIREMENT**

Upon entering into the Agreement, each Party shall appoint a representative that is authorised to act on behalf of the Party in matters relating to the Agreement.

The authorised representatives of the Parties, as well as the procedures and notification deadlines for any replacement of such representatives, shall be specified in Appendix 6.

All notifications, claims or other messages concerning this Agreement shall be issued in writing in accordance with the procedures specified in Appendix 6 for the enquiry type in question.

Other organisational and administrative matters, including those relating to meetings and meeting frequency, etc., shall be specified in Appendix 6.

### **2.2 AVAILABILITY OF THE CLOUD SERVICES**

The Supplier shall be responsible for ensuring that the Cloud Services are accessible to the Customer from the time specified in Appendix 4. Such access includes any Additional Services specified in Section 2.3 and that are necessary for the Customer to be able to use the Cloud Services.

If the Cloud Services are to be made accessible in stages, for example by certain functionality/modules being made accessible later than others, or if the agreement concerns multiple cloud Services which will be made accessible at different times, this is specified in Appendix 4. The same applies to Additional Services, see paragraph 2 of Section 2.3. See also Section 3.2.2 concerning the Supplier's service catalogue below.

Approval testing is to be performed in accordance with Section 2.4 for each new Cloud Service and/or each time new functionality/modules are made accessible, unless otherwise agreed in Appendix 4.

### **2.3 ADDITIONAL SERVICES TO THE CLOUD SERVICES**

If the Supplier is to deliver Additional Services, such services are specified in Appendix 1 and 2. Additional Services may include:

- 1) Assistance related to making the Cloud Services accessible for the Customer,
- 2) subsequent maintenance of the results of such services (for example integrations, see Section 2.5) and/or
- 3) Additional Services listed in the Supplier's service catalogue (see Section 3.2.1).

A delivery plan for the Additional Services is to be included in Appendix 4.



If the Supplier is to deliver Additional Services related to functionality or Cloud Services that will be made accessible to the Customer at a later date, Appendix 4 must also include a plan for the delivery of such Additional Services.

Unless otherwise agreed in Appendix 7, Additional Services shall be paid for in accordance with the hourly rates or unit prices agreed in Appendix 7.

## **2.4 THE CUSTOMER'S APPROVAL TEST**

When the Cloud Services are ready for the Customer to access and the Supplier has delivered the agreed Additional Services, the Supplier shall notify the Customer in writing that the Cloud Services are ready for the Customer's Approval test. As part of the Approval test the Customer shall verify that the Customer has access to the Cloud Services as agreed and that the Cloud services work as intended. The Customer shall also verify that any Additional Services have been delivered as agreed.

The Supplier is responsible for ensuring that the applicable Standard Terms and functional descriptions for Cloud Services, as well as any other information that is of importance to the Customer's use of the Cloud Services, have been delivered or otherwise made available to the Customer in writing before A Approval test begins.

The Approval test lasts for a period of 10 (ten) business days from the first business day after the Supplier has issued written notice to the Customer that the Cloud Services are ready for the Customer's Approval test, unless otherwise agreed in Appendix 4.

Unless otherwise agreed in Appendix 4, the Approval test is deemed accepted by the Customer unless the Customer, without undue delay and no later than within 3 (three) business days after the expiration of the Approval test period, provides the Supplier with written notice that:

- a) Additional Services have not been delivered as agreed, or
- b) the Customer does not have access to the Cloud Services as agreed, or
- c) the Cloud Services do not function as agreed, see Section 1.1.1, paragraph three.

The notification shall include a description of the deviations. If such notification is issued by the Customer, the Supplier shall, without undue delay, initiate measures to identify the cause of the deviations. Deviations from the Agreement shall be considered defects. The Supplier shall present a plan to rectify the defects without undue delay. Defects are subsequently to be rectified as soon as possible and no later than according to the plan.

In the event that the reported defects have not been corrected within a period of 60 (sixty) calendar days after the expiration of the Approval test period and the defects are considered material and the Parties have not been able to agree on another solution to the problem, the Customer is entitled to terminate the Agreement in accordance with Section 9.5.5.

A defect is considered material if it prevents the Customer from using the Cloud Services as agreed and/or if the defect is otherwise considered significant under ordinary contract law, taking into consideration how the Customer's needs and requirements have been described in Appendix 1 and how the Supplier has described the Cloud Services and Additional Services in Appendix 2.

If, upon the expiration of the 60-day deadline, there are still outstanding defects that have not been rectified but that are not considered material, the Customer may demand a proportionate reduction in price in accordance with Section 9.5.1. In both cases, damages may be claimed in accordance with the provisions set down in Section **Feil! Fant ikke referansekinden..**

Deviations in the Cloud Services (item c above) shall not prevent acceptance of the Approval test unless the Cloud Services do not have the agreed functionality, see Section 1.1.1, third paragraph, or there are grounds to refuse acceptance in accordance with the Standard Terms.

Other provisions and further description of the Approval test and conditions for acceptance may be agreed in Appendix 4.

The Supplier is responsible for ensuring that, upon commencement of the Approval test period, the Cloud Services meet the Customer's requirements as specified in Appendix 1 and the solution specified in Appendix 2, unless the Supplier has expressly specified in Appendix 2 any requirements that have not been met, see Section 1.1.1, third paragraph.

If functionality specified in Appendix 1, 2 and 10 is removed from the Cloud Services before the commencement of the Approval test period and the Supplier is unable to prevent this, the Supplier shall be obligated to assist the Customer in ensuring that such functionality is otherwise provided.

If the functionality specified in Appendix 1, 2 and 10 cannot be replaced, the Customer is entitled to a proportionate reduction in price.

The Supplier may not request payment for any costs incurred to replace key functionality that is removed before the commencement of the Approval test period.

If the removed functionality constitutes a material defect and the Supplier is unable to replace it, the Customer may terminate the Agreement upon the expiration of the 60-day deadline as described above.

## **2.5 MAINTENANCE AND OTHER FOLLOW-UP ON THE CUSTOMER'S USE OF CLOUD SERVICES**

If the Supplier is to assist with the maintenance of integrations or other Additional Services after the Approval test has been completed, this is specified in Appendix 1 and 2. The agreed service levels for maintenance and other Additional Services after the Approval test (response times and any standardised compensations, etc.) is specified in Appendix 5. Unless

otherwise agreed in Appendix 7, maintenance (and other Additional Services) shall be payable in accordance with the hourly rates agreed in Appendix 7.

The Supplier shall not have any obligations relating to further follow-up of the Cloud Services after the Approval test for any accepted Cloud Services, unless otherwise explicitly specified in Appendix 1 and 2 (as Additional Services) or in the Agreement in general.

## **2.6 TERMINATION OF THE CLOUD SERVICES**

To the extent that the Supplier is to assist in the termination of the Cloud Services, this is described as Additional Services in Appendix 1 and 2.

Such assistance may include assisting the Customer with the transfer of the Customer's data back to the Customer or transferring the Cloud Service Agreement to the Customer if the Supplier is a party to the agreement with the Cloud Service Provider.

Unless otherwise agreed in Appendix 7, Additional Services linked to the termination of the Cloud Services shall be payable in accordance with the Supplier's hourly rates specified in Appendix 7.

## **3. CHANGE PROCEDURE**

### **3.1 AMENDMENT AGREEMENTS**

If, after entering into the Agreement, the Customer needs to change the requirements relating to Additional Services or the Agreement in general, the Customer may request an amendment agreement. No amendment agreement is required when ordering services from the Supplier's service catalogue in accordance with Section 3.2 or when scaling the Cloud Services up or down in accordance with the Standard Terms when Cloud Services are priced per actual use.

The Supplier may claim adjustments to fees or plans resulting from the change. Claims pertaining to adjusted fees or plans must be submitted at the same time that the Supplier responds to the Customer's request for an amendment agreement.

Amendments to the Agreement shall be made in writing and shall be signed by the Parties' authorised representatives, see Section 2.1. The Supplier shall keep an ongoing catalogue of amendments, which shall constitute Appendix 9, and shall provide the Customer with an updated copy without delay.

### **3.2 THE SUPPLIER'S SERVICE CATALOGUE**

#### **3.2.1 Additional Services in the service catalogue**

The scope of the Supplier's obligations may change when the Customer orders Additional Services from the Supplier's service catalogue if these have been included and priced in Appendix 7.

### **3.2.2 Cloud Services in the service catalogue**

The Customer may order new Cloud Services from the Supplier's service catalogue if these have been included and priced in Appendix 7 and the Standard Terms have been included in Appendix 10. This can include additional modules and Cloud Services that are planned to be implemented at a later date than other services.

The procedure for ordering from the service catalogue can be described in Appendix 6.

## **4. TERM AND TERMINATION FOR CONVENIENCE**

### **4.1 TERM OF THE AGREEMENT**

The Agreement enters into force on the date on which it has been signed by the Parties.

The term and termination of the Agreement corresponds to what is specified in the Standard Terms for the Cloud Services. If the Customer has stipulated requirements concerning the term and termination of the Cloud Services, this is specified Appendix 4.

Unless otherwise stipulated in the Standard Terms, the Agreement is valid for 1 (one) year from the date of signature. The Agreement and the Standard Terms will thereafter be automatically renewed for a term of 1 (one) year at a time, unless terminated by the Customer subject to 3 (three) months' notice, or by the Supplier giving 6 (six) months' notice, prior to the renewal date.

### **4.2 TERMINATION FOR CONVENIENCE**

#### **4.2.1 Right to terminate the Additional Services for convenience**

The Customer may terminate any Additional Services related to the Cloud Services for convenience by giving 1 (one) month's prior written notice.

Fees payable by the Customer in connection with termination for convenience for the Additional Services are specified in Appendix 7.

If partial termination for convenience has consequences for the remainder of the Additional Services or Cloud Services, the consequences of the termination for convenience for the remainder of the services must be handled as a change in accordance with Chapter 3.

#### **4.2.2 Termination of the Cloud Service for convenience**

For the Cloud Services, the terms and conditions regarding termination for convenience in full or partially as set out in the Standard Terms, apply.

If the Supplier is a party to the agreement with the Cloud Service Provider, the Supplier shall, at the request of the Customer, assist the Customer with the termination in full or partially in accordance with the terms and conditions set out in the Standard Terms.

If the Customer has specific requirements related to termination for convenience in full or partially of the Cloud Services, the Customer shall specify this in Appendix 1.

## **5. THE DUTIES OF THE PARTIES**

### **5.1 GENERAL RESPONSIBILITIES**

#### **5.1.1 The Supplier's responsibilities for its services**

The Supplier shall deliver the agreed Additional Services pursuant to this Agreement in a professionally sound manner and in accordance with the industry's ethical and professional guidelines/norms.

The personnel designated as key personnel in Appendix 6 shall not, within the scope of the Supplier's control as an employer, be replaced without prior approval by the Customer. Approval shall not be withheld without reasonable cause.

#### **5.1.2 The Customer's responsibility for facilitation**

The Customer shall facilitate the Supplier's performance of its duties by, for example, by granting the Supplier necessary access, physical and/or electronic, and by ensuring that the Customer's other suppliers provide the necessary information and grant the necessary access to the Supplier.

The Supplier shall, in Appendix 2, specify the need for information and access which are necessary for the Supplier to be able to deliver the Services in accordance with the Agreement and specify any further requirements for the Customer's participation.

### **5.2 USE OF SUBCONTRACTORS AND THIRD PARTIES**

#### **5.2.1 Use of subcontractors by the Supplier**

If the Supplier uses a subcontractor that participates directly in the delivery of the agreed Additional Services, the Supplier is liable for the performance of these duties, in the same way as if the Supplier was performing the duties itself.

The Supplier's subcontractors that have been approved by the Customer are listed in Appendix 6.

The Supplier may not replace subcontractors who participate directly in the delivery of the Additional Services without the prior written consent of the Customer, unless otherwise agreed in Appendix 6.

The Customer may not refuse such replacement without reasonable cause.

### **5.2.2 Subcontractors in connection with the Cloud Services**

For the Cloud Services, the Standard Terms apply with respect to the Cloud Service Provider's use and replacement of subcontractors.

### **5.2.3 The Customer's use of third parties**

The Customer is free to engage third parties for assistance in connection with its duties under this Agreement. The Customer is liable for the performance of such duties, in the same way as if the Customer was performing the duties itself. Third parties engaged by the Customer are listed in Appendix 6. The Supplier shall be notified of the Customer's change or choice of new third parties.

The Supplier undertakes to cooperate with the Customer's third parties to the extent the Customer deems this necessary for the fulfilment of the Agreement. Any provisions regarding payment for the Supplier's cooperation with the Customer's third parties shall be specified in Appendix 7.

However, the Supplier shall be released from such duties if it demonstrates that it is probable that such cooperation would be of material disadvantage to its relationship with existing subcontractors or other business contacts, or if it can demonstrate that this will constitute a material commercial disadvantage to the Supplier.

Nevertheless, this shall apply only to such third parties that are not included in Appendix 6 at the time of submitting the tender.

## **5.3 CONFIDENTIALITY**

Information that the Parties become aware of in connection with the Agreement and the execution of the Agreement shall be treated confidentially and shall be kept confidential and shall not be disclosed to any third party without consent from the other Party, unless there are no legitimate interests that dictate that the information should be kept secret. Third party refers to anyone that does not have an actual need for access to the information in order to perform their duties under the Agreement.

If the Customer is a public body, the duty of confidentiality under this provision shall not extend beyond what follows from the Act of 10 February 1967 relating to Procedure in Cases concerning the Public Administration (Public Administration Act) or corresponding sector-specific regulations.

The duty of confidentiality under this provision shall not interfere with statutory rights of access to information.

The duty of confidentiality shall apply to the Parties' employees, subcontractors and other parties contributing to or acting on behalf of the Parties in connection with the execution of the Agreement.

The duty of confidentiality shall lapse five (5) years after the termination of the Agreement, unless stipulated otherwise by laws or regulations.

If the Supplier is a party to the agreement with the Cloud Service Provider, the Supplier shall ensure that the Cloud Service Provider assumes a corresponding duty of confidentiality to that which is stipulated in this Agreement.

#### **5.4 AUDITS**

The Customer has the right to audit and verify that the Supplier complies with its obligations in accordance with the Agreement.

The time and method for conducting audits and assistance shall be agreed in each individual case. However, the Customer may request access and auditing as necessary to fulfil specific orders from public supervisory authorities.

The audit shall be conducted in a manner that minimizes possible disruption to the Supplier's ordinary activities.

However, this shall not prevent that inspections and audits that are required to fulfil specific orders from public surveillance authorities are carried out.

The audit shall be conducted in a manner that minimizes possible disruption to the Supplier's ordinary activities.

If the audit reveals that the Agreement or legal requirements the Supplier shall adhere to are not being complied with, the Supplier shall make changes in order to fulfil the Agreement.

The Parties may agree further audit procedures, including those relating to the use of independent auditors and auditing of subcontractors, in Appendix 6.

The terms and conditions for audit as set out in the Standard Terms shall apply for the Cloud Service.

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

For agreements governed by the Regulations No. 112 of 8 February 2008 relating to Wages and Working Conditions under Government Contracts, the conditions as set out in Appendix 6 shall apply.

## **6. FEES AND PAYMENT TERMS**

### **6.1 FEES AND TERMS OF PAYMENT FOR THE CLOUD SERVICES**

The terms applicable to price, payment terms and price adjustments for the Cloud Services shall be as specified in the Standard Terms.

Unless otherwise agreed in Appendix 7, all prices and/or Supplier discounts and further conditions for the payment due from the Customer in connection with the Cloud Services shall be specified in Appendix 7.

Cloud Services delivered on Standard Terms can be priced in NOK, Euros or US Dollars. Other currencies may be agreed in Appendix 7. Provisions relating to currency adjustments for Cloud Services priced in Norwegian kroner are specified in Appendix 7.

### **6.2 PAYMENT FOR AGREED ADDITIONAL SERVICES**

All prices and further terms and conditions for the payment due from the Customer in connection with the delivery of the agreed Additional Services is specified in Appendix 7.

Unless otherwise specified in Appendix 7, all prices shall be stated in Norwegian kroner (NOK) exclusive of Value Added Tax, but inclusive of customs duties and any other charges.

### **6.3 TERMS OF PAYMENT AND INVOICING**

All provisions regarding terms and conditions for payment and invoicing can be found in Appendix 7.

If the Customer is a public body, it is required that the Supplier uses electronic invoices in an approved standard format in accordance with regulations of 2 April 2019 on electronic invoices in public procurement.

Further provisions relating to the use of electronic invoicing can be found in Appendix 7.

### **6.4 PAYMENT DEFAULT**

If the Customer fails to pay agreed fees within the agreed due date, the Supplier shall be entitled to 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).

If overdue fees with the addition of late payment interest have not been paid within thirty (30) calendar days after the due date, the Supplier may send the Customer a written notice stating that the Agreement will be terminated for breach, unless settled within sixty (60) calendar days from the receipt of the notice.

Termination for breach may not take place if the Customer pays the overdue fees with the addition of late payment interest before the expiry of the deadline.



## **6.5 PRICE ADJUSTMENTS**

All provisions relating to price adjustments and other price changes shall be specified in Appendix 7.

## **7. INFORMATION SECURITY AND DATA PROTECTION**

### **7.1 INFORMATION SECURITY**

#### **7.1.1 General requirements relating to information security**

The Supplier shall take appropriate measures to meet requirements for information security associated with the fulfilment of the Agreement.

If it has been agreed that the Supplier is to deliver Additional Services, the Supplier shall take appropriate measures to ensure the availability and confidentiality of the Customer's data, as well as measures to ensure that data does not fall astray. Furthermore, the Supplier will take appropriate measures against the unintended modification and deletion of data and against virus and other malware attacks.

Unless otherwise agreed in Appendix 1 and 2, the Supplier is obliged to keep the Customer's data separate from data of any other parties to reduce risk of damage and/or access to data in connection with the delivery of the Supplier's Services.

If the Customer has specific requirements as to how the Supplier shall fulfil the requirement for separation of data, the Customer shall specify this in Appendix 1.

#### **7.1.2 Cloud Service requirements**

The Supplier shall perform a prudent assessment to ensure that the Cloud Services fulfil mandatory legal requirements and the Customer's requirements regarding information security and certification as specified in Appendix 1 and Appendix 2.

If the Supplier is a party to the agreement with the Cloud Service Provider, the Supplier shall also notify the Customer if the status of compliance with legal requirements subsequently changes (after completion of acceptance testing).

If the Customer has requirements as to how the Supplier shall ensure that the Cloud Service provide sufficient security of Customer's data, the Customer shall specify this in Appendix 1.

### **7.2 PERSONAL DATA**

#### **7.2.1 Obligation to enter into a data processing agreement**

If the Supplier processes personal data on behalf of the Customer, the Customer and the Supplier are obliged to enter into a data processing agreement in accordance with the

General Data Protection Regulation (GDPR) and any sector-specific privacy legislation that is relevant to the Customer's activities.

A data processing agreement draft is attached to Appendix 11.

The data processing agreement must be entered into before the processing of personal data commences.

### **7.2.2 Data processing agreement for Cloud Services**

If the Supplier is a party to the agreement with the Cloud Service Provider, the Supplier and Customer, or Supplier and data controller if this is not the Customer, may still agree that data processing agreements shall be entered into directly between the Cloud Service Provider and the data controller for any processing of personal data performed by the Cloud Services. Data processing agreements shall meet the requirements set down in the Personal Data Act, the General Data Protection Regulation (GDPR) and any sector-specific data protection legislation relevant to the Customer's activities, as well as any additional requirements imposed by the Customer in Appendix 1.

Data processing agreements entered into pursuant to this clause shall be included in Appendix 11.

If the Customer has specific requirements as to how the Cloud Service shall process personal data, this shall be specified in Appendix 1 by the Customer.

## **8. RIGHTS OF OWNERSHIP AND RIGHT OF USE**

### **8.1 GENERALLY, ABOUT THE RIGHTS OF THE PARTIES**

This Agreement does not change the copyright, usage rights or proprietary rights that the Parties had prior to the fulfilment of the Agreement, or which have been established independently thereof, unless otherwise stated below or in the appendices.

### **8.2 THE CUSTOMER'S RIGHTS OF USE**

#### **8.2.1 Additional Services**

The Customer is granted a limited right of use for all software and other material the Supplier makes available to the Customer in connection with the delivery of the agreed Additional Services.

The rights of use include all rights necessary for the Customer to use the Additional Services and Cloud Services in accordance with the Agreement.

The Supplier hereby also grants the Customer a perpetual and non-exclusive right to use configurations, integrations and any other elements the Supplier has produced especially for

the Customer as part of any Additional Services under this Agreement (hereinafter referred to as Customer Customised Materials).

The right of use to Customer Customized Materials includes the right to use, copy, modify and develop the Customer customised material, either by the Customer or with the assistance of a third party (extended right of use), to the extent necessary to be able to utilise the Cloud Service, also after termination of this Agreement.

## **8.2.2 Cloud Services**

The right of use as set out in the Standard Terms applies for the Cloud Service.

The Supplier shall conduct a prudent assessment of the Standard Terms for the Cloud Services to ensure that these do not prevent the Customer from using the agreed Additional Services and Cloud Services in their entirety pursuant to this Agreement.

If the Standard Terms for the Cloud Services include terms regarding the Customer's use of the Cloud Services that the Customer should pay particular attention to, such terms shall be specified clearly by the Supplier in Appendix 2.

## **8.3 RIGHTS TO DATA**

### **8.3.1 Generally, on rights to data**

The Customer (and its licensors) shall retain all rights to data collected, transferred, adapted, stored, or otherwise processed pursuant to this Agreement. The same applies to the result of the processing of such data.

The Supplier shall have access to data as mentioned above only to the extent necessary for the Supplier to fulfil its obligations under the Agreement.

The Supplier shall under no circumstances be entitled to exercise a right of retention in respect of the Customer's data.

### **8.3.2 Rights to data processed in the Cloud Services**

For rights to data, the terms and conditions as set out in the Standard Terms apply for the Cloud Service.

The Supplier shall conduct a prudent assessment of whether the Standard Terms for the Cloud Services contain any terms and conditions that restrict the Customer's control over or rights to data processed in the Cloud Services on behalf of the Customer in relation to Section 8.3.1 above. In such a case, the Supplier shall provide clear notice thereof in Appendix 2.

## 9. BREACH

### 9.1 WHAT IS DEEMED TO CONSTITUTE A BREACH

#### 9.1.1 Breach on behalf of the Supplier

There is a breach on the part of the Supplier if:

- a) the Cloud Services do not meet the requirements set out by the Customer in Appendix 1 during the Approval test and the Supplier has not clearly described the deviation in Appendix 2,
- b) if the agreed Additional Services are not in accordance with what has been agreed and/or
- c) if the Supplier fails to fulfil its other duties under this Agreement.

A breach of contract in the form of a delay also exists if the Cloud Services or agreed Additional Services are not ready for the Customer's Approval test by the agreed time or if any other deadlines agreed between the Parties in Appendix 4 are not met.

Nevertheless, no breach exists if the situation is caused by circumstances for which the Customer is liable, or by force majeure.

The Customer shall submit a written notice of the breach without undue delay after the breach has been discovered or should have been discovered.

#### 9.1.2 Breach due to errors in the Cloud Services

The terms and conditions for breach as set out in the Standard Terms, including terms and conditions related to notifications, remedies, price reduction, right of retention, as well as terms and conditions related to sanctions such as standardised economic compensation, indemnity, and termination for cause, shall apply for the Cloud Service.

The Supplier is obliged to follow up on any breach/deviations arising from the Cloud Services if the Supplier is a party to the agreement with the Cloud Service Provider.

This Section shall not limit the Supplier's liability under Section **Feil! Fant ikke referansekinden.** to clearly describe in Appendix 2 any deviations from the Customer's requirements as set down in Appendix 1.

#### 9.1.3 Breach by the Customer

There is a breach by the Customer if the Customer fails to fulfil its obligations under this Agreement.

Nevertheless, no breach exists if the situation is caused by circumstances for which the Supplier is liable, or by force majeure.

The Supplier shall submit a written notice of the breach without undue delay after the breach has been discovered or should have been discovered.

## **9.2 NOTIFICATION OBLIGATION**

If all or parts of a Party's obligations cannot be fulfilled as agreed, the Party in question shall notify the other Party of the matter in writing.

The notification shall state the reason for the problem and, to the extent possible, state when the various obligations will be fulfilled. The same applies if further delays must be expected after the first notice has been given.

## **9.3 THE SUPPLIER'S REQUEST FOR EXTENSION OF DEADLINES**

The Supplier may request an extension of deadlines. Such extension must be approved by the Customer in writing in order to be enforceable. The Customer may set conditions for granting extension of deadline.

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

An extended deadline shall not impact the Customer's right to liquidated damages, damages, or other remedies for breach accrued prior to the extension of the deadline.

## **9.4 CURE OF BREACH**

### **9.4.1 Cure of breach by the supplier**

The Supplier shall commence and complete the work to cure the Supplier's breach of contract without undue delay. Such cure may, for example, take the form of remedy (repair), redelivery, or supplementary delivery.

If the Supplier fails to cure any breach of the Additional Services and the terms for price reductions or termination have been met, the Supplier shall pay all expenses incurred by the Customer when obtaining a cure from a third-party supplier. The Customer may not allow a third party to cure the breach until any extended deadline has expired.

The Customer shall give written notice to the Supplier prior to appointing a third-party supplier.

### **9.4.2 Cure of breach by the Customer**

The Customer shall commence and complete the effort of curing its breach without undue delay.

The Customer is responsible for curing the breach in such a way that circumstances the Customer is liable for under this Agreement correspond with what has been agreed.

## **9.5 SANCTIONS IN THE EVENT OF BREACH**

### **9.5.1 Price reduction**

If the Supplier is unable or unwilling to remedy the breach or if the Supplier has not succeeded, despite repeated attempts, to cure the breach, for example, by repair, redelivery or supplementary delivery, the Customer may claim a proportional price reduction.

### **9.5.2 Right of retention**

In the event of breach on the part of the Supplier, the Customer may withhold payment, but the retained amount shall not be obviously higher than necessary to secure the Customer's claim resulting from the breach.

The Supplier may not withhold the Additional Services due to a breach on the part of the Customer unless the breach is material, and the Supplier terminates the Agreement because of such breach.

### **9.5.3 Liquidated damages**

There is a delay if the Cloud Services or agreed Additional Services are not ready for the Customers Approval test by the agreed deadline, or if any other deadlines agreed between the Parties in Appendix 4 are not met (hereinafter referred to as the Delivery Deadline).

If a Delivery Deadline that the Parties in Appendix 4 have subjected to liquidated damages, is not complied with, and this is not caused by force majeure or circumstances for which the Customer is liable, this constitutes a basis for imposing liquidated damages.

Further provisions relating to liquidated damages, the basis for the calculation of liquidated damages and the duration of such liquidated damages, etc. shall be specified in Appendix 7.

### **9.5.4 Financial compensation for breach of agreed service level**

The Customer may claim financial compensation for breach of the agreed Service Levels for the Cloud Services or Additional Services, to the extent and in the manner specified in the Standard Terms or Appendix 5.

### **9.5.5 Termination for cause**

In the event of material breach of contract, the other Party may, after providing the defaulting Party with reasonable written notice to remedy the situation, terminate the Agreement in full or in part with immediate effect. Termination may not take place if the defaulting Party rectifies the breach before the expiration of the deadline.

The Customer may terminate for cause the entire or parts of the Agreement with immediate effect if the Additional Services or Cloud Services are materially delayed.

There is a material delay when the maximum limit of the liquidated damages has been reached, or when the extended deadline has expired, if it expires later.

In the event of payment default, the Supplier may terminate the Agreement for cause if the Customer has failed to settle the overdue payment within 60 (sixty) calendar days after receiving the Supplier's written notice pursuant to clause 6.4.

#### **9.5.6 Termination settlement**

If the Agreement is terminated as a result of the Supplier's breach of contract before the Approval test is completed, the Customer may claim repayment of fees paid for the Additional Services.

If termination for cause takes place after the Approval test has been completed, the Supplier shall be entitled to retain the fees paid for the portions of the Additional Services that have been contractually delivered up to the date of termination, with deduction of a price reduction pursuant to clause 9.5.1.

If the Supplier terminates the Agreement, the Customer shall be entitled to use the Additional Services as agreed, including after termination, if this is necessary for the Customer's day-to-day activities, but the Customer shall identify an alternative solution to replace such services as soon as possible. The Customer shall make a proportionate payment for as long as the Customer uses all or parts of the Additional Services, with the exception of the parts of the Additional Services that have been paid in the form of a one-time fee or the like.

The Supplier may make such continued utilisation conditional upon the Customer providing satisfactory security or prepayment for the Additional Services in question.

### **9.6 DAMAGES**

#### **9.6.1 The Parties' right to damages**

The Parties may claim damages for any direct loss, including additional costs incurred by the Parties due to substitute purchases, losses caused by additional work and other direct costs in connection with delays, defect, or other breach on the part of the other Party.

Liquidated damages and standardised financial compensation shall be deducted from any damages in respect of the same delay or incident.

Each Party shall, to the best of its ability, implement measures to limit its loss in accordance with general rules concerning loyalty in contractual relationships.

## 9.6.2 Limitation of liability

The Parties cannot claim damages for indirect loss. Indirect losses include, but are not limited to, loss of profits of any kind, loss of savings and claims from third parties except for awarded damages pursuant to clause 10.2.

Loss of data is considered as indirect loss except for costs related to reconstruction of data and other direct costs the Customer incurs as a result of loss of data.

Unless otherwise stated in Appendix 7, the total damages each Party may claim per year is limited to an amount corresponding to the total payment for the Additional Services and 12 months' estimated payment for Cloud Services in the year during which breach of contract occurs.

The limitation of liability will not apply in the event of gross negligence or wilful misconduct on the part of a Party or another party for whom it is liable.

## 10. INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES (DEFECT IN TITLE)

### 10.1 THE RISKS AND RESPONSIBILITIES OF THE PARTIES RELATED TO DEFECTS IN TITLE

Each Party has the risk and responsibility for ensuring that it does not infringe any copyrights or other intellectual property rights of third parties in connection with the fulfilment of the Agreement. There is a defect in title if the fulfilment of the Agreement entails such infringement.

### 10.2 DAMAGES RESULTING FROM DEFECTS IN TITLE

A Party may claim damages in full in respect of third parties, as well as legal costs, including the Party's own costs associated with the management of the case due to defects in title for which the other Party is responsible. The Party may also claim damages for other losses in accordance with the clauses pursuant to Section **Feil! Fant ikke referanseilden..**

### 10.3 DEFECTS IN TITLE IN RESPECT OF THE CLOUD SERVICES

The terms and conditions concerning defect in title as set out in the Standard Terms apply for the Cloud Service.

The Customer may demand that the Supplier, at its own expense, on behalf of the Customer, follows up on the Customer's rights pursuant to Standard Terms with the Cloud Service provider.



## **11. OTHER PROVISIONS**

### **11.1 INSURANCE**

If the Customer is a public body, the Customer shall be self-insured. If the Customer is not self-insured, the Customer is obliged to have insurance policies that are sufficient to cover such claims that the Supplier may set forth because of the risks or responsibilities assumed by the Customer under this Agreement, within the limits defined by ordinary insurance terms and conditions.

The Supplier shall hold insurance policies that are sufficient to cover such claims that the Customer may set forth because of risks or responsibilities assumed by the Supplier under to this Agreement, within the limits defined by ordinary insurance terms and conditions.

This obligation shall be deemed fulfilled if the Supplier holds liability and risk insurance on terms and conditions that are considered ordinary within the Norwegian insurance business.

The Supplier shall, at the request of the Customer, give account for, and document, those of the Supplier's insurances that are relevant for the fulfilment of this provision.

### **11.2 ASSIGNMENT OF RIGHTS AND OBLIGATIONS**

#### **11.2.1 Assignment by the Customer**

If the Customer is a public sector body, the Customer may assign its rights and obligations under this Agreement to another public body or legal entity that is wholly owned by a public sector or local authority enterprise.

If the Customer is not a public sector body, the Customer may transfer its rights and obligations under this Agreement to a subsidiary or other company within the same group, but the Customer shall be jointly and severally liable for the payment obligation, unless the Supplier has consented to the transfer. The Supplier's consent shall be required for transfer to companies other than those mentioned in the first and second paragraph. Consent shall not be refused without justified grounds.

The enterprise that assumes the rights and obligations under such a transfer shall be entitled to similar terms, provided that the rights and obligations under the Agreement are transferred collectively.

#### **11.2.2 Assignment by the Supplier**

The Supplier may only assign its rights and obligations under the Agreement with the written consent of the Customer.

The same shall apply if the Supplier 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 Supplier is merged with another company. Such consent shall not be unreasonably withheld.

If the Customer is a public sector body, the right to assignment in the paragraph above shall only apply if the new supplier meets the original qualification requirements, no other material changes are made to the Agreement, and the assignment is not made to circumvent the regulations concerning public procurement.

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

### **11.3 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 a Party, the other Party shall be entitled to terminate the Agreement for cause with immediate effect, unless otherwise is stipulated by mandatory law.

### **11.4 FORCE MAJEURE**

Should an extraordinary situation arise, which is beyond the control of the Parties, and which makes it extremely difficult or impossible to fulfil the duties under this Agreement, and which is considered as force majeure under Norwegian law, 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 endures. The other Party's payment shall be suspended for the same period.

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

Each Party shall cover their own costs associated with the Termination of the Agreement. The Customer shall pay the agreed fees for the part of the Services that has been delivered in accordance with the Agreement prior to the termination of the Agreement. The Parties may not present any other claims against each other because of the Termination of the Agreement subject 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.

### **11.5 OTHER PROVISIONS APPLICABLE TO THE CLOUD SERVICES**

The terms and conditions of insurance, transfer, composition with creditors and bankruptcy etc., as set out in the Standard Terms shall apply for the Cloud Service.

## **12. DISPUTES**

### **12.1 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 20 (twenty) business days, or a different period agreed by the Parties, each Party may submit the dispute for an assessment by an independent expert or for mediation.

### **12.2 INDEPENDENT EXPERT**

The Parties may when entering into the Agreement, appoint an independent expert, as defined in Appendix 6, with qualifications the Parties deem to be best suited for the Agreement. If this is not done, e.g., because the choice of expert may depend upon the nature of the dispute, the Parties may agree to appointment of an independent expert at the time of 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 procedure for this work shall be determined by the independent expert, in consultation with the Parties.

### **12.3 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.

The detailed procedure for the mediation shall be determined by the mediator, in consultation with the Parties.

### **12.4 CHOICE OF LAW AND JURISDICTION**

The Parties' rights and obligations under this Agreement are governed in their entirety by Norwegian law.

If a dispute has not been resolved through negotiations or mediation, each Party may demand to settle the dispute with final effect before Norwegian courts of law.

The venue shall be the legal venue of the Customer.

Alternatively, the Parties may agree to settle the dispute with final effect through arbitration.

## **12.5 DISPUTE RESOLUTION FOR CLOUD SERVICES**

The terms and conditions of dispute resolution, choice of law and venue set out in the Standard Terms shall apply for the Cloud Service.