

# Assistance Agreement

Agreement governing assistance to be provided  
by a Consultant

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The Norwegian Government's Standard Terms and  
Conditions for Consultancy Assistance  
SSA-B

# Consultancy Assistance Agreement

## An agreement governing

Consultancy Assistance on the preparation of the Council of European Energy Regulators (CEER) Working Programme for 2017.

## has been concluded between:

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(hereafter referred to as the Consultant)

## And

The Norwegian Water Resources and Energy Directorate (NVE)

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(hereafter referred to as the Customer)

## Place and date:

Oslo

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The Norwegian Water Resources and  
Energy Directorate (NVE)

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Signature of the Customer

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Signature of the Consultant

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

## Communications

Unless otherwise specified in Appendix 3, all communications concerning the Agreement shall be directed to:

### On behalf of the Customer:

Name: Anne Dønnem

Position: Senior Advicer

Telephone: +47 951 82 732

Email: ado@nve.no

### On behalf of the Consultant:

Name:

Position:

Telephone:

Email:

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## 1. GENERAL PROVISIONS

### 1.1 SCOPE OF THE CONSULTANCY ASSISTANCE

The Consultant shall render professional assistance under the direction of the Customer, hereafter referred to as the Assistance, as described in Appendix 1.

The Consultant shall also, to the extent deemed desirable by the Customer, participate in other activities that form part of the project.

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: Description of the Assistance	x	
Appendix 2: Project and progress plan	x	
Appendix 3: Administrative provisions		x
Appendix 4: Total price and pricing provisions		x
Appendix 5: Changes to the general contractual wording		x
Appendix 6: Changes to the Assistance subsequent to the conclusion of the Agreement		x
Other Appendices:		

### 1.3 INTERPRETATION – RANKING

Changes to the general contractual wording shall be set out in Appendix 5, 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 5 shall prevail over the general contractual wording.
  - b) If the general contractual wording refers to changes to any other Appendix than Appendix 5, such changes shall prevail over the general contractual wording.
  - c) Appendix 6 shall prevail over the other Appendices.

#### **1.4 DURATION**

The work shall commence and be finalised in accordance with the progress plan in Appendix 2.

#### **1.5 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 are specified in Appendix 3.

#### **1.6 KEY PERSONNEL**

The key personnel of the Consultant in connection with the rendering of the Assistance shall be specified in Appendix 3.

Any replacement of key personnel on the part of the Consultant requires the approval of the Customer. Approval shall not be unreasonably withheld.

In the case of the replacement of personnel due to circumstances relating to the Consultant, the costs associated with transferring expertise to the new personnel shall be for the account of the Consultant.

## **2. CHANGES, SUSPENSION AND CANCELLATION**

### **2.1 CHANGES TO THE DELIVERABLES SUBSEQUENT TO CONCLUSION OF THE AGREEMENT**

Changes or additions to the agreed deliverables shall be agreed in writing. The Consultant shall maintain a directory of such changes on an ongoing basis, which directory shall form Appendix 6, and shall without undue delay provide the Customer with an updated copy thereof.

If the Consultant believes that the contents or scope of the Assistance are being changed underway, such change shall be notified in writing to the Customer without undue delay. The Assistance shall be rendered by the agreed date and at the agreed price if no such notice has been given.

### **2.2 TEMPORARY SUSPENSION OF THE ASSISTANCE**

The Customer may order the temporary suspension of the Assistance. Such an order shall be made in writing with a minimum of five (5) calendar days' notice. It shall be specified when the Assistance is to be suspended, and when it is planned to be resumed.

In the case of temporary suspension, the Customer shall reimburse:

- a) The documented costs incurred by the Consultant in relation to the reassignment of personnel.
- b) Other direct costs incurred by the Consultant as a result of the suspension.

## **2.3 CANCELLATION**

The Assistance may be cancelled by the Customer by giving thirty (30) days' written notice.

In the case of cancellation prior to the completion of the Assistance, the Customer shall pay:

- a) The amount owing to the Consultant for the work already performed.
- b) The documented costs incurred by the Consultant in relation to the reassignment of personnel.
- c) Other direct costs incurred by the Consultant as a result of the cancellation.

## **3. THE DUTIES OF THE PARTIES**

### **3.1 THE DUTIES OF THE CONSULTANT**

The Assistance shall be completed in accordance with the Agreement, and shall be rendered efficiently, effectively and to a high professional standard.

The Consultant shall apply any standards and/or methods, etc., specified by the Customer in Appendix 1.

The Customer shall be enabled to check and verify work performed by the Consultant, as well as adherence to the specified standards/methods.

The Consultant shall cooperate with the Customer in good faith, and shall attend to the interests of the Customer.

Requests from the Customer shall be replied to without undue delay.

The Consultant shall, without undue delay, give notice of circumstances that the Consultant understands, or ought to understand, may be of relevance to the completion of the Assistance, including any expected delays.

### **3.2 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 Consultant shall ensure that its and any subcontractors' employees who contribute directly to the performance of the Consultant'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 Consultant 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 Consultant and that involve the performance of work that contributes directly to the performance of the Consultant's obligations under the Agreement shall include corresponding terms and conditions.

If the Consultant 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 Consultant, until it has been documented that compliance has been achieved.

Performance of the Consultant'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 Consultant's and any subcontractors' obligations.

The Consultant 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 Consultant 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 Consultant may require the third party to sign a declaration stating that the information will not be used for any other purpose than ensuring compliance with the obligations of the Consultant under this provision. The disclosure obligation shall also apply to subcontractors.

Further clarification concerning the implementation of this clause 3.2 may be agreed in Appendix 3.

### **3.3 THE DUTIES OF THE CUSTOMER**

The Customer shall contribute to the completion of the Assistance in good faith.

Requests from the Consultant shall be replied to without undue delay.

The Customer shall, without undue delay, give notice of circumstances that the Customer understands, or ought to understand, may be of relevance to the completion of the Assistance, including any expected delays.

### **3.4 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 3.

### **3.5 RISK AND RESPONSIBILITY IN RELATION TO COMMUNICATION AND DOCUMENTATION**

Both parties shall ensure the proper communication, storage and backup copying of documents and other materials of relevance to the Assistance, irrespective of the format thereof, including emails and other electronically stored materials.

The Consultant assumes all risks relating to, and full responsibility for, all materials, irrespective of the format thereof, that are damaged or destroyed whilst under the control of the Consultant.

### **3.6 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 these are subjected to a confidentiality obligation corresponding to that stipulated in this clause 3.6.

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.

### **3.7 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 3 for this type of enquiry.



## **4. CONSIDERATION AND PAYMENT TERMS**

### **4.1 CONSIDERATION**

The consideration and payment terms are set out in Appendix 4. Unless otherwise specified in Appendix 4, all prices are quoted exclusive of Value Added Tax. All prices are quoted in Norwegian kroner.

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 4.

An estimate of the number of hours, as well as rules for the notification of overruns, is set out in Appendix 4.

### **4.2 INVOICING**

Invoicing shall take place in arrears on a monthly basis, unless otherwise agreed in Appendix 4. The invoiced amount shall pertain to the time spent up and until the invoicing date and any reimbursement of expenses incurred over the same period.

Payment shall be made within thirty (30) calendar days of the invoice date. The invoices of the Consultant shall be specified and documented in such a manner as to enable the Customer to check these. All invoices relating to hours recorded on an ongoing basis shall be accompanied by a detailed specification of the hours accrued. Disbursements and other expenses shall be specified separately.

When the Customer has made arrangements for such, the Consultant 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 4.

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

### **4.3 LATE PAYMENT INTEREST**

If the Customer fails to make payment by the agreed time, the Consultant 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).

#### **4.4 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 Consultant 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.

#### **4.5 PRICE ADJUSTMENT**

The prices may be adjusted to the extent that the rules pertaining to indirect taxes are amended in a way that impacts on the consideration or costs of the Consultant.

The price may be adjusted as per the beginning of every calendar year, with an amount that shall not exceed 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 4.

Any other provisions pertaining to price adjustments are set out in Appendix 4.

### **5. COPYRIGHT AND RIGHT OF OWNERSHIP**

The right of ownership, the copyright and all other relevant rights, including all other relevant intellectual property rights, associated with the outcome of the Assistance shall accrue to the Customer when payment has been made, unless otherwise agreed in Appendix 5, and subject to any limitations laid down by other agreements or by mandatory law.

These rights also include the right to changes and the right to further assignment, cf. section 39b of the Act No. 2 of 12 May 1961 relating to Copyright in Literary, Scientific and Artistic Works, etc. (Copyright Act).

The Consultant shall retain the rights to its own tools and methods. Both parties may also utilise general know-how that they have accumulated in connection with the Assistance, provided that such know-how is not confidential.

### **6. BREACH OF CONTRACT**

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

There is a breach of contract if one of the parties fails to perform its obligations under the Agreement, and this is not caused by circumstances relating to the other party or by force majeure.

## **6.2 NOTIFICATION OBLIGATION**

If one of the parties is unable to perform its duties as agreed, such party shall give the other party written notice of this 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.

## **6.3 REMEDIES FOR BREACH OF CONTRACT**

### **6.3.1 Suspension of performance**

In the event of breach of contract on the part of the Consultant, 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. The Consultant shall not suspend any performance as the result of breach of contract on the part of the Customer, unless the breach is material.

### **6.3.2 Price reduction**

If the Consultant 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.

### **6.3.3 Termination for breach**

If there is a material breach of contract, the other party may, after having given the defaulting party written notice and granted it a deadline for remedying the situation, terminate all or part of the Agreement for breach with immediate effect.

If the services rendered prior to the termination date are of such a nature that the Customer has gained little or no benefit from the services rendered on the termination date, the Customer may, in connection with termination for breach, choose to demand the repayment of consideration received by the Consultant in relation to ongoing hours worked and any expenses 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. Apart from this, the Customer, to the extent that the Customer is able to utilise these services as intended, shall pay for the services rendered prior to the termination date after deducting a price reduction pursuant to clause 6.3.2.

### **6.3.4 Damages**

A party may claim damages in respect of any direct loss, including additional costs 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 6.1, unless the defaulting party demonstrates that the defaulting party did not cause the breach of contract or the reason for the breach of contract.

### **6.3.5 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 imposed as a result of defects in title.

Overall damages over the term of the Agreement are limited to an amount that corresponds to the agreed consideration or an upper estimate for the Assistance, excluding Value Added Tax.

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

## **7. OTHER PROVISIONS**

### **7.1 INSURANCE POLICIES**

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

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

### **7.2 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 Consultant may only assign its rights and obligations under the Agreement with the written consent of the Customer. The same shall apply if the Consultant 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 Consultant 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.

### **7.3 BANKRUPTCY, COMPOSITION WITH CREDITORS, ETC.**

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

### **7.4 FORCE MAJEURE**

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

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

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

## **8. DISPUTES**

### **8.1 GOVERNING LAW**

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

### **8.2 NEGOTIATIONS**

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

### **8.3 MEDIATION**

If a dispute related to this Agreement is not resolved after negotiations, the parties may attempt to resolve the dispute through mediation.

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 procedure for the mediation shall be determined by the mediator, in consultation with the parties.

#### **8.4 LITIGATION OR ARBITRATION**

If a dispute is not resolved through negotiations or mediation, each party may require the 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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