

# Agile Software Development Agreement

Agreement governing Agile software  
development

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The Norwegian Government's Standard Terms and  
Conditions for IT Procurement  
SSA-S

# Agreement governing Agile software development

**An agreement governing**  
[designation of the procurement]

**has been concluded between:**

[Write here]

---

(hereafter referred to as the Contractor)

**and**

[Write here]

---

(hereafter referred to as the Customer)

**Place and date:**

[Write place and date here]

---

[The Customer's name here]

[The Contractor's name here]

---

Signature of the Customer

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Signature of the Contractor

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

## Communications

Unless otherwise specified in Appendix 4, 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 as described in Appendices 1 and 2, developed using an Agile software development method, as described in detail in Appendix 6. The Agreement also covers any standard systems, free software and equipment, as well as services and deliverables associated with these ("Other components of the deliverables"), if this is stipulated in Appendices 1 and 2.

If the Customer's technical platform needs upgrading, or other changes must be made to the factors described in Appendix 3, to enable the performance of the Contractor's work or the Customer's utilisation of the deliverables, the Contractor shall point this out in Appendix 2. If the Contractor is of the view that there are obvious errors, omissions, or ambiguities in the Customer's Needs specifications or other Appendices submitted by the Customer prior to the conclusion of the Agreement, the Contractor shall point this out in Appendix 2.

The "Agreement" means this general contractual wording, including Appendices. Other explanations of terms are included in chapter 17 (Glossary of terms).

### 1.2 APPENDICES TO THE AGREEMENT

All rows shall be ticked (Yes or No)	Yes	No
Appendix 1: Customer's Needs specification and Requirements		
Appendix 2: Contractor's Solution Description		
Appendix 3: Customer's Technical Platform and IT Environment		
Appendix 4: Plan for the Execution of the Deliverables and Administrative Provisions		
Appendix 5: Testing and Approval		
Appendix 6: Software Development Method		
Appendix 7: Total Price and Price Terms and Bonus		
Appendix 8: Changes to the general contractual wording		
Appendix 9: Changes subsequent to the conclusion of the Agreement		
Appendix 10: Licence terms and conditions for Standard software and free software		
Other Appendices:		

### 1.3 INTERPRETATION – RANKING

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

The following principles of interpretation shall apply in 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 clarifications in an Appendix, this Appendix 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 clause 5.2 (Standard licence terms and conditions) and chapter 10.3 (Free software).

#### **1.4 FLEXIBILITY IN SYSTEM DEVELOPMENT AND CHANGE MANAGEMENT**

The Agreement reflects an execution model based on flexible system development and close collaboration between the Customer and the Contractor in order to realise the Needs specifications in Appendices 1 and 2.

The Customer's choices, specifications and reprioritisation within the framework of the Needs Specifications and pursuant to the software development method described in Appendix 6 are not considered changes pursuant to chapter 3. Changes in functionality that has already been developed and accepted and other changes must be handled in accordance with the provisions in chapter 3, and will be gathered on an ongoing basis in Appendix 9.

#### **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 all matters relating to the Agreement. Any replacement of these representatives must be reported to the other party's representative in writing at least four (4) weeks prior to replacement.

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

### **2.1 GENERAL INFORMATION ABOUT THE DELIVERABLES**

#### **2.1.1 Software development - Releases**

The Software development must be organised as Releases that consist of one or more iterations (development cycles / Sprints). An Acceptance Test must be run for each Release.

The project and milestone plan in Appendix 4 should state whether each Release will be put into ordinary operation (production) – see clause 2.5.1 – as the Release is accepted by the Customer, or whether all or parts of the deliverables will be Put into Production as a whole. If each Release is Put into Production whenever it has been accepted by the Customer, there will be a Handover, Production and approval period for each Release – see clauses 2.4 and 2.5.

#### **2.1.2 Other Deliverable Elements**

Deliverables that are not software development are called Other Deliverable Elements. The content of Other Deliverable Elements is specified in Appendices 1 and 2.

### **2.2 PREPARATIONS AND ORGANISATION**

#### **2.2.1 Project and milestone plan**

An overall Project and milestone plan for the delivery of the deliverables shall be included in Appendix 4. Changes to the plan must be handled in accordance with the provisions in chapter 3.

The Customer and the Contractor must have separate project managers who are organisationally responsible for the parties' contractual obligations being met. Other organisation, with a list of roles, responsibilities and powers must be stated in Appendix 4, as well as the names of key personnel. When the roles are related to and defined in the software development method, Appendix 4 must refer to the definitions in Appendix 6.

#### **2.2.2 Release Plan**

The parties must collaborate on writing a Release Plan within the framework of the Project and milestone plan in Appendix 4 at latest when planning the first Release, and in accordance with the software development method in Appendix 6.

The Release Plan must contain an overall description of the content of each Release and its placement in time. The division into Releases must allow separate testing and Field testing of Releases. The Contractor is responsible for each Release being put together in such a way that it can be tested and field tested, and with consideration of interdependencies. The Contractor must notify the Customer in writing if the Customer makes decisions that will hinder test of the Release.



The Release Plan must be revised in connection with detailed planning of each Release, cf. clause 2.3.1. It must be constantly updated and contain every change related to development, testing and Field testing of Releases. Every time the Release Plan is revised, a decision must be made as to whether to revise the Test strategy in Appendix 5 and the Project and milestone plan in Appendix 4. An eventual revision of the Project and milestone plan that is not caused by circumstances for which the Contractor is responsible, shall be handled as a change in accordance with the provisions in chapter 3. Revisions of the Project and milestone plan that are due to circumstances for which the Contractor is responsible must not lead to a delay to the agreed estimated Handover date for the deliverables as a whole.

If the parties do not agree on the Release Plan, the parties may terminate the collaboration pursuant to clause 2.3.6 (Exit) before conducting the Acceptance Test of the first Release.

The Contractor shall be responsible for keeping the Release Plan updated in the case of changes. The Release Plan must be labelled with the version. An updated version of the Release Plan must be available to the Customer at all times.

Other components of the deliverables in the Agreement must be delivered in accordance with the deadlines set out in the Project and milestone plan in Appendix 4. Also see clause 2.1.2.

### **2.2.3 Test strategy**

The parties must draw up an agreed Test strategy that covers both the Contractor's and the Customer's testing within the framework of the Customer's and Contractor's test strategies at latest when planning the first Release. The agreed Test strategy must be set out in Appendix 5.

The Test strategy must state when Non-functional requirements, including requirements regarding performance, capacity, response time and security, and any other requirements that have not been assigned to a specific Release, will be tested by the Customer.

### **2.2.4 Establishment of Development environment and Test environments**

The Development environment shall be established on the basis of the requirements set out in Appendices 1 and 2, and by the deadlines stipulated in the Project and milestone plan in Appendix 4.

The Test environments specified in the Test strategy must be established in accordance with the requirements in the Test strategy within the deadlines that follow from the Release Plan, cf. clause 2.2.2.

## **2.3 SPECIFICATION, TESTING AND FIELD TESTING OF THE RELEASE**

### **2.3.1 Detailing and specifying the Needs Specifications**

The parties must collaborate on detailing and specifying the Needs Specifications and the requirements in Appendix 1 in accordance with the software development method described in Appendix 6. As part of the work, the Customer should define the Pass/fail criteria that must be met in order for the functionality developed to be accepted.

The Contractor must advise the Customer in choosing between different solutions that will meet the Customer's needs, including the Non-functional requirements. The Contractor must notify the Customer in writing, without undue delay, if the Contractor believes that the Customer's choices in connection with detailing and specifying the Needs Specifications will prevent compliance with Non-functional requirements, including requirements regarding performance, capacity, response time and security, or if the Pass/fail criteria set by the Customer are irreconcilable with these requirements. If the Customer wants to keep the functionality specified or the Pass/fail criterion nevertheless, this must be handled in accordance with the provisions in chapter 3.

### **2.3.2 The Contractor's tests**

Unless otherwise agreed in Appendix 5, the Contractor must run a Component, Integration and System test of all Software before it is delivered to the Customer for Acceptance testing. This also applies to Software that is not assigned to a specific Release, including changes and error rectifying.

The Contractor must show that the Software does not contain more errors than allowed by the Acceptance Criteria for the Release. If the Contractor cannot show this, the errors must be rectified free of cost until the Acceptance criteria have been met. The Contractor's testing must take place as described in the Test strategy in Appendix 5. The Acceptance criteria for the Release shall be set out in the Test strategy in Appendix 5.

Unless otherwise agreed in Appendix 5, the Contractor must hand over to the Customer Test ware from the Contractor's testing within 10 days prior to beginning of the Customer's Acceptance test of the Release.

### **2.3.3 The Customer's Acceptance test for Releases**

The Customer must conduct an Acceptance test of all Releases in accordance with the Test strategy in Appendix 5.

Unless otherwise stated in the Test strategy in Appendix 5, the Customer's Acceptance test must be based on the following definition of errors:

Level	Category	Description
A	Critical error	<ul style="list-style-type: none"> <li>- Error that results in the Software stopping, loss of data, or that functions that, based on an objective assessment, are of critical importance to the Customer, are not 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 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 are not working as described in the Agreement, and which it is time-consuming and costly to circumvent.</li> <li>- The documentation being incomplete or misleading, and this resulting in the Customer being unable to use functions that it has deemed to be important.</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 circumvented with relative ease by the Customer.</li> <li>- The documentation being incomplete or imprecise.</li> </ul>

The Customer may not reject functionality that meets the Pass/fail criteria provided in connection with detailing and specifying the Needs Specifications. If the Customer has not defined Pass/fail criteria, the deliverables must meet the requirements in the detailed Needs Specifications, cf. clause 2.3.1. When there is no detailed Needs Specifications in accordance with clause 2.3.1, the deliverables must meet the requirements in the needs and solution specification in Appendices 1 and 2.

When the Customer has run an Acceptance test and, if applicable, performed other investigations of whether the contractual deliverables meet the agreed level of quality, the Customer must send the Contractor written notification without undue delay, and at latest within ten (10) Working days, that the deliverables have been accepted.

The Customer may not refuse to accept the deliverables on the basis of matters that are immaterial for the Customer's use of the deliverables. The Test strategy in Appendix 5 must state the number and type of errors that are considered material. If no Acceptance criteria are stipulated in the Test strategy, A and B errors shall be 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. 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 to accept 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, which notice shall be given within five (5) Working days. If the Customer still refuses to accept the deliverables, the dispute shall be resolved pursuant to chapter 16.

If the Contractor does not dispute the Customer's refusal, the Contractor shall within five (5) Working days send the Customer a schedule for repairing the errors and descdefects. The Contractor shall give written notice to the Customer when the errors and defects have been rectified. The Customer is entitled to reasonable extra time in order to test and otherwise check whether the corrections are adequate for acceptance of the deliverables. The Customer's acceptance of the deliverables shall not prevent the Customer from subsequently demanding the rectification of errors or defects that the Customer did not discover during the test, or errors that have not been rectified by the Contractor prior to acceptance.

#### **2.3.4 Suspension in the event of persistent errors**

If the Acceptance criteria have not been met after three (3) rounds of error rectification and Re-testing, the software development will be suspended, and all development resources will be assigned to error rectification. The error rectification must continue until the Acceptance criteria have been met. The Contractor will receive no consideration for this error rectification. The suspension of the software development does not mean that the agreed estimated Handover date for the final Release and completion (which has an impact on the completion bonus) will be delayed.

#### **2.3.5 Field testing of releases**

The Software developed must be tested after the Customer has Field tested and accepted the Release. If the Field testing is to take place during ordinary operation, it must be after the Release has been handed over in accordance with clause 2.4, and commissioned in accordance with clause 2.5.1.

The ReleasePlan states how the Field testing will be organised and executed, and how the results will be collected, communicated and implemented.

The purpose of the Field testing is for users outside the project to have an opportunity to use the Software and provide feedback that can be taken into consideration in the further development. If such feedback leads to a need to make changes to functionality that has already been accepted, this must be handled as a change, in accordance with the provisions in chapter 3, cf. clause 1.4 above.

### **2.4 HANDOVER**

When the Customer has accepted the Release, the Contractor must hand over the Software and Other components of the deliverables to the Customer in the way agreed in Appendix 4, together with a written list of what has been handed over. The first Working day after the Contractor's Handover is called the Handover date.

If the Customer does not agree that the deliverables handed over conform with what was agreed, the Customer must notify the Contractor in writing without undue delay.

If the Contractor wishes to argue that the refusal is unjustified, written notice shall be given to such effect, which notice shall be given within five (5) Working days. If the Customer still refuses to accept Handover, the dispute shall be resolved pursuant to chapter 16.

If the Contractor does not dispute the Customer's refusal, the Contractor shall within five (5) Working days send the Customer a schedule for repairing the errors and defects associated with Handover. The Contractor shall give written notice to the Customer when the errors and defects have been rectified.

The Customer is entitled to reasonable extra time in order to check whether the corrections are adequate for acceptance of the Handover.

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

### **2.5.1 Commissioning**

The Software must be put into ordinary operation (production) within the deadline set in the Project and milestone plan in Appendix 4. The Customer must draw up a Commissioning plan. The Contractor must help if this is stated in the Project and milestone plan.

### **2.5.2 Duration of approval period**

There is a three (3) month approval period after Commissioning. If Commissioning 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 milestone plan pursuant to chapter 3.

The first Working day after the deliverables are, or are deemed to be, approved, shall be deemed the Delivery date. The Customer shall enjoy, as of the Delivery date, the warranty described in chapter 4.

### **2.5.3 The Customer's duty to examine**

The Customer shall, during the approval period, check that 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.

### **2.5.4 Defect management**

During the approval period, the Customer must notify the Contractor in writing of any errors on an ongoing basis, in accordance with any procedures agreed in Appendix 5.

Unless otherwise agreed, any errors reported during the approval period must be rectified at the latest by the end of the approval period. If the interaction between the new and past Releases identifies errors in previous Releases, they must be removed during the approval period for the new Release.

If the Customer identifies and invokes in writing errors that make it impossible to use the system or parts of the system, the approval period will be considered suspended starting on the date on which the Customer provides notification. The approval period will not resume until the Contractor has rectified the errors.

## **2.5.5 Final approval – Delivery date**

The Customer shall, prior to the end of the approval period, give the Contractor written notice as to the outcome of the checks, and confirming whether or not the deliverables are deemed to be in conformity with the agreed and, consequently, whether or not they can be approved. If such notice has not been sent by the end of the approval period, the deliverables shall nevertheless be deemed to be approved (through 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. Appendix 5 must state the number and type of errors that are considered material. Unless otherwise stated in Appendix 5, A errors and three (3) or more and B errors will, independently, be considered material. C errors are deemed to be immaterial, unless several C errors imply, in aggregate, that approval would be clearly unreasonable.

If there are errors at the end of the approval period that give the Customer the right to refuse approval, the Customer may nevertheless decide to approve, and stipulate as a condition of the approval a realistic plan for rectification of the errors as soon as possible. If the Contractor does not comply with the plan to rectify such outstanding errors that would give the Customer the right to refuse approval, the Delivery date will not be deemed to have occurred, and the Customer may invoke any delay sanctions in accordance with chapter 11.5.

If the Customer refuses to approve the deliverables as conforming with the Agreement, such refusal must be justified 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.

If the Contractor does not dispute the Customer's refusal, the Contractor shall within five (5) Working days prepare a schedule for repairing the errors associated with the deliverables that shall be sent to the Customer. 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. The tests shall cover all parts of the deliverables that may be affected by the errors.

As soon as the Contractor has given notice that the errors have been rectified, the Customer must continue its checks of the rectified items during the approval period.

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

The first Working day after the deliverables are, or are deemed to be, approved, is referred to as the Delivery date.

The Customer's approval shall not prevent the Customer from demanding, during the warranty period, the rectification of errors or errors that the Customer did not discover during the warranty period, or errors that have not been rectified by the Contractor during the warranty period. Any claim by the Contractor for reimbursement of additional expenses is governed by clause 4.4.

## **2.6 ENDING**

### **2.6.1 Changes based on feedback from the last field test**

After Field testing the final Release, the Contractor must make any changes to the Software, test them as described in clause 2.3.2, and show that the Entry criteria for the Customer's Acceptance test have been met. The Entry criteria for Acceptance testing shall be set out in the Test strategy in Appendix 5.

### **2.6.2 The Customer's final testing and acceptance**

The Customer must execute an Acceptance test of any changes made after Field testing the final Release and of the Non-functional requirements that it was unable to test earlier. The Customer must also Re-test any outstanding errors, and execute any other final tests in accordance with the Test strategy in Appendix 5.

### **2.6.3 Handover, Commissioning and approval**

After the Customer's final testing in accordance with clause 2.6.2, the Contractor must hand over the part of the Software and Other components of the deliverables that were not handed over earlier to the Customer in accordance with clause 2.4. The Software must be commissioned in accordance with clause 2.5.1.

An approval period will begin after Commissioning, in accordance with clauses 2.5.2–2.5.5. If Releases have been commissioned and approved on an ongoing basis, the final approval period will only cover the final delivery, and issues that could not have been tested earlier.

## **2.7 EXIT, CANCELLATION AND TEMPORARY SUSPENSION**

### **2.7.1 Exit prior to acceptance testing of first Release**

If one of the parties believes that it is improbable that the deliverables will be executed in conformity with the Agreement, it may decide to withdraw from the Agreement until the acceptance test for the first Release begins (Exit). The Exit arrangement is in addition to the ordinary cancellation provision in clause 2.7.2.

The party that has taken the initiative to the Exit must notify the other party in writing, presenting the main lines of the challenges. The other party must respond to the notice within five (5) Working days. Together with the notice, the party that has taken the initiative to the Exit must convene a meeting between the parties where they discuss the options for continuing the project. Each party may demand participation of an independent expert appointed according to the rules in chapter 16. The party that has taken the initiative to the Exit must pay the consideration for the independent expert.

If the parties do not agree to continue the project within thirty (30) days of the written notice in accordance with the paragraph above, the party that demands the Exit may withdraw from the Agreement with immediate effect.

Unless otherwise agreed in Appendix 7, in connection with the Exit initiated by the Customer, the Contractor will receive consideration for the work that it has already performed, and any other necessary direct expenses associated with licences, equipment and other goods procured for the project before the date of the Customer's Exit. In that case, all rights to such licences, equipment and other goods must be transferred to the Customer. If the Exit was initiated by the Contractor, the Contractor may claim reimbursement of direct expenses as mentioned if the Customer wants to take over such licences, equipment and goods. If the Exit was initiated by the Contractor, the Contractor cannot claim consideration for work that has already been performed.

### **2.7.2 Cancellation after the Exit opportunity**

After the Exit opportunity, as stipulated in clause 2.7.1, has lapsed, 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, limited to a maximum of 30 days.
- c) Other documented, necessary 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 Estimated total cost, or
- six (6) per cent of such part of the Estimated total cost as remains unpaid as per the cancellation date, and which has not been paid pursuant to letter a) above either.

In the case of partial cancellation, the cancellation fee shall be calculated on the basis of the share of the Estimated total cost accounted for by the cancelled items.

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

### **2.7.3 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 upon written notice from the Customer.

The Customer shall reimburse the Contractor for its documented and necessary 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 documented wage costs of the Contractor for such personnel, 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 clause 2.7.2 shall apply correspondingly.

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

Upon cancellation pursuant to clause 2.7.2, the Contractor shall Hand over to the Customer all specifications, Software with source code, and other materials that have been prepared 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**

The Customer has the right to order changes, in the form of increases or reductions in the scope, quality or delivery of the deliverables, as well as changes to the milestone plan, provided that such changes fall within the scope of what the parties could have reasonably expected upon the conclusion of the Agreement. See clause 1.4 concerning the relationship between the flexibility of the software development method and changes.

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 Estimated total cost, other than in the case of a disputed change order pursuant to clause 3.9.

If the overall consideration of the Contractor, net of all reductions and additions, is reduced by more than fifteen (15) per cent of the Estimated total cost, such reduction shall be dealt with as a partial cancellation.

Changes and additions to the Agreement must be made in writing, and must be signed by an authorised representative of the Customer. The changes shall be collated in Appendix 9.

### **3.2 CHANGE REQUEST**

If the Customer wants to execute a change, the Customer shall send the Contractor a change request in accordance with the procedure agreed in Appendix 9.

### **3.3 CHANGE ESTIMATE**

The Contractor shall, within a maximum of three (3) 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 larger changes, the parties shall agree an extension of the deadline with such number of days as is deemed to be reasonable.

At a minimum, the study shall include the following:

- a) description of the change
- b) description of the scope of work that needs to be carried out as a result of the change, and the time required for such work
- c) impact on other functional and Non-functional requirements, and Other components of the deliverables
- d) impact on Estimated total cost
- e) impact on Project and milestone plan, and ReleasePlan, cf. clause 3.6
- f) requirements concerning the Customer's participation
- g) changes to Test plans and test criteria
- h) consequences for future maintenance of the deliverables

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 the preparation of a change estimate does in itself necessitate changes to the milestone plan, the Contractor may request that the plan be adjusted.

The Contractor may propose changes and draw up a change estimate on its own initiative. The Contractor will only receive reimbursement of its costs if the Customer accepts the change proposal and the estimate, and sends a change order.

### **3.4 CHANGE ORDERS**

If the Customer accepts the study, price and adjustment of the milestone plan 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 an authorised representative of the Customer. The change order must show whether the Customer wants the change to be executed as part of the Agile software development process, or as an addition.

The Contractor will then have three (3) Working days to ensure that it updates relevant documents if no other deadline is agreed in connection with the specific change. Routines for this shall be set out in Appendix 9.

Other terms and conditions of the Agreement shall apply to change orders as well, unless otherwise explicitly stated in the change order.

### **3.5 DOCUMENTATION OF THE CHANGE**

The Contractor must keep a list of the changes ordered pursuant to this chapter, in accordance with the procedures in Appendix 9.

### **3.6 CONSEQUENCES OF CHANGE ORDERS**

If the Customer requires a change, the Contractor shall have the right to require adjustments to the Estimated total cost and milestone plan and other matters, cf. clause 3.3, caused by the change requirement of the Customer.

Adjustments to the Estimated total cost shall be calculated on the basis of the hourly rates 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 rates or unit prices have been specified.

In cases other than those mentioned in the previous paragraph, the Contractor must submit an offer, specifying the additions or reductions resulting from the changes.

The change shall be implemented when the Customer wishes, irrespective of whether the effect of the change order in terms of the Estimated total cost, milestone plan or other terms and conditions of the Agreement have been finally resolved, cf. clause 3.7.

### **3.7 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 Estimated total cost is concerned, the Customer shall pay a preliminary consideration calculated pursuant to the rules set out in clause 3.6. 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.

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

If the Customer requests, in the form of orders, specifications or otherwise, 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 3.3. Costs associated with drawing up a change estimate are not covered by the Customer if a change order in accordance with clause 3.4 is not issued.

If the Contractor fails to make such request without undue delay, 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.

### **3.9 DISPUTED CHANGE ORDER**

If the Contractor has requested the Customer to issue a change order pursuant to clause 3.8, the Customer shall, within a reasonable period of time, issue a change order pursuant to clause 3.4, 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 3.10 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.

### **3.10 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 8, the warranty period shall be three (3) months for Software, counting from the Delivery date, cf. clause 2.5.5. The guarantee period for equipment is one (1) year from the Delivery date.

Contingent upon normal, diligent use on the part of the Customer, the Contractor shall, during the warranty period and at no additional cost, rectify errors and defects, replace defect parts of equipment and rectify errors in Software such that the deliverables maintain the agreed performance and quality. The Customer must have complained about the matter at the latest prior to expiry of the warranty period.

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

If the interaction between the new Release and past Releases identifies errors that must be removed in previous Releases, they will need to be removed during the warranty period for the new Release.

#### **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.

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 5.2 shall apply correspondingly.

If the Contractor chooses to rectify errors and defects 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 REMEDY OF MATTERS CAUSED BY ISSUES ON THE PART OF THE CUSTOMER**

If errors or other problems arise before or during the warranty period that are due to issues for which the Customer bears the risk or responsibility, the Contractor must redeliver or help the Customer restore what was lost, if possible, including data, and at the ordinary rates for consideration stipulated in Appendix 7. Standard software and/or equipment must be redelivered at cost and according to time spent.

#### **4.4 ADDITIONAL CONSIDERATION**

If errors that ought to have been discovered during Acceptance testing or the approval period are not invoked until a later date, the Contractor may claim consideration for any additional costs incurred by the Contractor as a result of the late complaint.

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 prices for such services listed in Appendix 7 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 the deliverables covering the needs and solution specification in Appendices 1 and 2, with any changes in Appendix 9, albeit so that the detailed specification and Pass/fail criteria provide the final specification of what will be delivered for the areas they cover.

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

### **5.2 STANDARD LICENCE TERMS AND CONDITIONS**

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 Pass/fail 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 for Re-testing 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 2.5.2, paragraph one. 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.

### **5.3 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, cf. clause 2.2.1, and other key personnel are specified in Appendix 4.

Persons designated as key personnel in Appendix 4 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 progress or impose additional costs on the Customer.



#### **5.4 USE OF SUBCONTRACTORS**

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

Subcontractors that are approved shall be specified in Appendix 4.

#### **5.5 COOPERATION WITH THIRD PARTIES**

The Contractor undertakes to cooperate with third parties to the extent that the Customer deems this necessary for the purposes of performing the duties stipulated in this Agreement. The scope of such assistance, as well as any additional consideration, shall be specified in Appendix 4. 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.

#### **5.6 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 5.6 may be agreed in Appendix 4.

## **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, and for actively participating in the implementation of the deliverables in conformity with the software development method in Appendix 6.

The Software and other equipment with which it shall be compatible, and any Software and equipment that shall be used during the development and testing of the deliverables, are described in Appendix 3. If it is stated in Appendix 2 that the technical platform of the Customer needs to be upgraded, the Customer shall itself ensure such upgrading, unless otherwise stipulated in Appendices 1 and/or 2.

The Customer shall actively contribute to facilitating the performance of the Contractor's obligations under this Agreement, including ensuring that clarifications and decisions are made, so that the software development can be performed in accordance with the ReleasePlan, cf. clause 2.2.2.

If it is not possible for the Contractor to perform its contractual obligations due to a lack of participation by the Customer, the Contractor shall have the right to demand that the Customer temporarily suspend the Agreement pursuant to the provisions in clause 2.7.3.

### **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. 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.

### **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, provided that these are subjected to a confidentiality obligation corresponding to that stipulated in the present 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 4 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 inclusive of Value Added Tax, customs duties and any other indirect taxes. All prices are quoted in Norwegian kroner.

#### **8.2 BONUSSES**

The Customer shall set aside an amount for bonus payments that shall be additional to the ordinary consideration. The amount shall be specified in Appendix 7. Unless another bonus system is specified in Appendix 7, there shall be two main types of bonus: completion bonuses and bonuses that are paid out underway.

#### **8.3 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.

#### **8.4 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).

#### **8.5 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.

#### **8.6 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 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 4. 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 9.2.

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 RIGHTS TO SOFTWARE DEVELOPED PURSUANT TO THIS AGREEMENT**

#### **10.1.1 The rights of the Customer**

The right of ownership, copyright and other relevant material and intellectual property rights pertaining to the Software and associated source code, documentation, specifications and other materials that are produced and delivered pursuant to this Agreement shall accrue to the Customer, unless otherwise agreed in Appendix 8, 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.

The Customer is granted a perpetual, paid and non-exclusive right of disposal in relation to the methods, tools and preparatory works of the Contractor or its subcontractors that are used by the Contractor in the development work, to the extent that they form an integral part of the deliverables. The right of disposal includes a right to use, copy, modify and enhance the material, either by itself or with the assistance of a third party, as well as a right to licence and transfer in connection with the licensing and transfer of the actual Software.

Each party has the right to make use of general know-how acquired during execution of the deliverables.

#### **10.1.2 The rights of the Contractor**

Unless otherwise agreed in Appendix 8, the Contractor retains a perpetual, paid and non-exclusive right to use the individual parts of the Software developed and delivered pursuant to this Agreement (right of disposal). The right of disposal includes a right to use, copy, modify and enhance the material, as well as a right to internal and external licensing, either by itself or with the assistance of a third party as part of the further development and customisation of own standard solutions, or delivered together with own standard solutions.

The Contractor may nevertheless not distribute the entire, or virtually the entire, solution as such to other customers, without the consent of the Customer. The same applies to the parts of the solution that are excluded from the rights of the Contractor pursuant to this point, by special agreement.

The Contractor holds copyright to methods, tools and other material used by the Contractor in the development work.

### **10.1.3 Development of the Customer's software into new standard components**

To the extent that the Contractor uses its right of disposal pursuant to clause 10.1.2 to draw up one or more new standard components on the basis of components developed specifically for the Customer, and to the extent that it may be appropriate to replace the specially-developed software with the new standard components, the Customer will be entitled to such replacement without having to pay consideration for the new standard components. Installation and customisation must be paid for in the ordinary manner.

### **10.1.4 Rights upon termination of the Agreement**

Upon termination of the Agreement, regardless of the reason, the right of ownership, copyright and other material and intellectual property rights to all material, in its state as at the date of termination, will be transferred to the Customer in accordance with clause 10.1.

### **10.1.5 Access to source code and documentation**

The Contractor must give the Customer a copy of the complete source code, including configuration descriptions, resources, scripts, documentation and other relevant material related to the Software to which the Customer has rights pursuant to clause 10.1.1 within ten (10) Working days of approval of the Acceptance test for each Release, and upon Handover and on the Delivery date for the overall deliverables.

## **10.2 RIGHT OF DISPOSAL OF STANDARD SOFTWARE**

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.

## **10.3 FREE SOFTWARE**

### **10.3.1 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.

### **10.3.2 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.

### **10.3.3 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.

### **10.3.4 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.

### **10.3.5 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 10.3.6, 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.

### **10.3.6 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 rectification of any errors 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 errors 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 date of Handover or 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 on the part of the Customer, there is a delay on the part of the Contractor that triggers liquidated damages.

The liquidated damages shall accumulate automatically. If all of the deliverables shall be Handed over and Commissioned in one delivery, the total liquidated damages shall amount to 0.15 per cent of the Estimated total cost, excluding Value Added Tax Act, for each calendar day the delay lasts, but limited to a maximum of one hundred (100) calendar days.

If each Release is to be Handed over and Commissioned gradually, the liquidated damages will be 0.15 per cent of the value of each Release, exclusive of Value Added Tax, for each day of the delay, with a ceiling of one hundred (100) calendar days. The same applies to the final delivery, cf. clause 2.6.

If the date agreed for Other components of the deliverables that have not been assigned a specific Release is not met, the liquidated damages will be 0.15 per cent of the value of the applicable component of the deliverables.

Other rates for liquidated damages, a different calculation basis and other periods for liquidated damages may be agreed in Appendix 7. 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 or delay, 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 Release when the period for the liquidated damages for the specific Release 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 Estimated total cost, excluding Value Added Tax.

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

### **12.2 NOTIFICATION OBLIGATION**

If the Customer is unable to perform its duties under the Agreement, including 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.

See clause 6.1, final paragraph, of the Agreement regarding the Contractor's right to call for suspension of the project.

### **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, as set out in 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 deliverables entail 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 deliverables as before, without infringing any third-party rights, or
- b) providing corresponding deliverables that do 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 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 2.7.4 concerning the handing over 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 day of the Handover. 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**

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

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.

## **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 4, 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, if the parties so agree.

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 consideration 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 consideration 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.

## 17. GLOSSARY OF TERMS

The definitions in the list below mainly come from the Norwegian version of the International Software Testing Qualification Board ISTQB 2.2N glossary dated 20.03.2013. Other definitions appear in the contractual wording in the place in which the term first occurs.

Term	Definition
Acceptance criteria: ISTQB 2.2N	The Exit criteria that a component or system must satisfy in order to be accepted by a user, customer, or other authorised entity. [IEEE 610]
Acceptance testing: ISTQB 2.2N	Formal testing with respect to user needs, requirements, and business processes conducted to determine whether or not a system satisfies the Acceptance criteria and to enable the user, customers or other authorised entity to determine whether or not to accept the system. [IEEE 610]
The Agreement:	General contractual wording with appendices
Needs specifications:	Verbal description of needs, without using special notation or formats
Release:	One of several contractual Software deliverables (release).
Estimated total cost:	Estimated total cost for the Agreement. Equivalent to contract price in other SSAs.
Exit:	Conclusion of the Agreement before the Acceptance test for the first Release following the initiative of one of the parties.
Defect management: ISTQB 2.2N	The process of recognising, investigating, taking action and disposing of errors. It involves recording errors, classifying them and identifying the impact [IEEE 1044]
Functional testing: ISTQB 2.2N	Testing based on an analysis of the specification of the functionality of a component or system.
Functional requirement: ISTQB 2.2N	A requirement that specifies a function that a component or system must perform. [IEEE 610]
Pass/fail criteria: ISTQB 2.2N	Pass/fail criteria: Decision rules used to determine whether a test item (function) or feature has passed or failed a test (shall be considered approved). [IEEE 829]

Non-functional requirement: ISTQB 2.2N	A requirement that does not relate to functionality, but to attributes such as reliability, efficiency, usability, maintainability and portability.
Integration testing: ISTQB 2.2N	Testing performed to expose errors in the interfaces and in the interactions between integrated components or systems.
Component testing: ISTQB 2.2N	The testing of individual Software components. [IEEE 610]
Release Plan:	Plan for the Software deliverables in the Agreement
Handover:	Formal handing over of Software from the Contractor to the Customer pursuant to the Agreement
Commissioning:	Putting into regular operation
Software: ISTQB 2.2N	Computer programs, procedures, and possibly associated documentation and data pertaining to the operation of a computer system. [IEEE 610]
Re-testing: ISTQB 2.2N	Testing that runs test cases that failed the last time they were run, in order to verify the success of corrective actions.
Exit criteria: ISTQB 2.2N	The set of generic and specific conditions, agreed upon with the stakeholders, for permitting a process to be officially completed. The purpose of Exit criteria is to prevent a task from being considered completed when there are still outstanding parts of the task which have not been finished. Exit criteria are used by testing to report against and to plan when to stop testing. [Gilb and Graham]
Agile software development: ISTQB 2.2N	A group of software development methodologies based on iterative incremental development, where requirements and solutions evolve through collaboration between self-organising crossfunctional teams.
Standard software:	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.
Entry criteria: ISTQB 2.2N	The set of generic and specific conditions for permitting a process to go forward with a defined task, e.g. test phase. The purpose of Entry criteria is to prevent a task from starting which would entail more (wasted) effort compared to the effort needed to remove the failed Entry criteria. [Gilb and Graham]
System testing: ISTQB 2.2N	The process of testing an integrated system to verify that it meets specified requirements. [Hetzel]
Test ware: ISTQB 2.2N	Artefacts produced during the test process required to plan, design, and execute tests, such as documentation, scripts, inputs, expected results, set-up and clear-up procedures, files, databases, environment, and any additional Software or utilities used in testing. [Fewster and Graham]
Test environment: ISTQB 2.2N	An environment containing hardware, instrumentation, simulators, software tools, and other support elements needed to conduct a test. [IEEE 610]

Test plan: ISTQB 2.2N	A document describing the scope, approach, resources and schedule of intended test activities. It identifies amongst others test items, the features to be tested, the testing tasks, who will do each task, degree of tester independence, the Test environment, the test design techniques and entry and Exit criteria to be used, and the rationale for their choice, and any risks requiring contingency planning. It is a record of the test planning process. [IEEE 829]
Test strategy: ISTQB 2.2N	A high-level description of the test levels to be performed and the testing within those levels for an organisation or program (one or more projects).
Field testing:	Users outside the project organisation receive access to the Software developed in a Release to test it and provide feedback.
Development environment:	An environment that consists of hardware and Software that is used by developers to develop Software.
Working days:	Those days that are neither Saturdays, Sundays or public holidays, nor Christmas Eve or New Year's Eve.
Other components of the deliverables:	Components of the deliverables related to software development deliverables, but which are not part of it, for example, training, conversion, system integration, routine development.

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