

# **Research and Development Agreement (Pre-Commercial Procurement)**

## Research and Development Agreement (Pre-Commercial 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 the place and date here)

---

[Write the Customer's name here]

[The Contractor's name here]

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The Customer's signature

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The Contractor's signature

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

### Communications

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

#### On behalf of the Customer

Name:

Position:

Telephone:

Email:

#### On behalf of the Contractor

Name:

Position:

Telephone:

Email:

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# 1 GENERAL PROVISIONS

## 1.1 SCOPE OF THE AGREEMENT

This Research and Development Agreement for Pre-Commercial Procurement shall meet the needs and requirements the Customer has described in Appendix 1. The parties have entered into this Agreement based on the Contractor’s product idea, and the Agreement governs the further development and testing of the prototype. The Pre-Commercial Procurement includes the preparation of the proposed solution (Phase 1), development of a prototype (Phase 2) and field testing of the solution (Phase 3). This Agreement includes call-off agreements for Phase 2 and Phase 3. Provided that the Contractor takes part in Phase 2 and 3, the parties shall sign call-off agreements for these phases as specified in Appendix 5. Subsequent purchase of the solution is not part of this Agreement.

The Customer has specified its needs and requirements in Appendix 1. The Contractor has described its product idea in Appendix 2. If the Contractor finds that there are obvious errors or ambiguities in the Customer’s description of its needs and requirements, the Contractor shall specify these in Appendix 2.

If it is specified in Appendix 1 that the solution shall function together with the Customer’s technical platform, this shall be described in Appendix 3.

The Agreement means this general contractual wording, including Appendices. The Agreement is hereafter referred to as “the Agreement” or “this Agreement.”

## 1.2 APPENDICES TO THE AGREEMENT

All rows shall be ticked (Yes or No)	YES	NO
Appendix 1: The Customer’s description of the needs and requirements for the proposed solution, prototype and field testing		
Appendix 2: The Contractor’s product idea		
Appendix 3: The Customer’s technical platform		
Appendix 4: Overall progress plan		
Appendix 5: Call-off agreements for Phases 2 and 3		
Appendix 6: Administrative provisions		
Appendix 7: Price of the proposed solution, hourly rates, and pricing provisions		
Appendix 8: Changes to the general contractual wording before conclusion of the Agreement		
Appendix 9: <u>Changes subsequent to the conclusion of the Agreement</u> <del>Changes after the conclusion of the Agreement</del>		
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 another Appendix.

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

The general contractual wording shall prevail over the Appendices.

Appendix 1 shall prevail over the other Appendices.

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:

- Appendix 2 shall prevail over Appendix 1.
- Appendix 8 shall prevail over the general contractual wording.
- If the general contractual wording refers to changes to any other Appendix than Appendix 8, such changes shall prevail over the general contractual wording.
- The call-off agreements shall prevail over the other Appendices
- Appendix 9 shall prevail over the other Appendices.

### **1.4 THE PARTIES' REPRESENTATIVES**

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

### **1.5 THE PHASES OF THE AGREEMENT**

The deliveries are divided into the following phases:

Phase 1: Development of the proposed solution

Phase 2: Development of the prototype

Phase 3: Field testing of the prototype

## **2 IMPLEMENTATION OF THE PRE-COMMERCIAL PROCUREMENT**

### **2.1 PREPARATIONS AND ORGANISATION**

Appendix 4 shall provide an overall project and progress plan for the implementation of the Pre-Commercial Procurement. The Pre-Commercial Procurement shall be implemented within the framework of this plan. Requirements for the Customer's contribution to the implementation of the Pre-Commercial Procurement shall be stated in the progress plan and the call-off agreements.

A detailed progress plan for the implementation of Phases 2 and 3 shall be provided in the call-off agreements for the respective phases.

The organisation of the Pre-Commercial Procurement, including specification of roles, responsibilities, and authority, as well as who have been defined as key personnel, shall be specified in Appendix 6.

## **2.2 PHASE 1: DEVELOPMENT OF THE PROPOSED SOLUTION**

Based on the product idea, the Contractor shall prepare a proposed solution for the prototype based on the Customer's requirements set out in Appendix 1 and at the price set out in Appendix 7.

The Contractor's proposed solution will be evaluated based on the award criteria set out in the call-off agreement for Phase 2. If the parties do not sign the call-off agreement for Phase 2, the Agreement will be terminated immediately upon the Customer's written notice to the Contractor. The Contractor is not entitled to consideration beyond what is explicitly stated in Appendix 7.

## **2.3 PHASE 2: DEVELOPMENT OF A PROTOTYPE**

If the parties sign the call-off agreement for Phase 2, the proposed solution together with price, the Customer's possible clarification of its requirements and a detailed cooperation and progress plan for Phase 2 shall be included in the call-off agreement. The Contractor shall develop a prototype based on the needs and requirements specified in Appendix 1 and the terms and conditions set out in the call-off agreement for Phase 2.

The Contractor's prototype will be evaluated based on the award criteria set out in the call-off agreement for Phase 3. If the parties do not sign the call-off agreement for Phase 3, the Agreement will be terminated immediately upon the Customer's written notice to the Contractor. The Contractor is not entitled to consideration beyond what is explicitly stated in Appendix 7 and the call-off agreement for Phase 2.

## **2.4 PHASE 3: FIELD TESTING OF THE SOLUTION**

If the parties sign the call-off agreement for Phase 3, the description of the field testing together with price, the Customer's possible clarification of its requirements and a detailed cooperation and progress plan for Phase 3 shall be included in the call-off agreement. The Contractor shall field test its prototype based on the needs and requirements specified in Appendix 1 and the terms and conditions set out in the call-off agreement for Phase 3.

### **2.4.1 End of the agreement after Phase 3**

The agreement expires without further notice when the Contractor's field test has been conducted according to the Agreement.

### **3 CHANGES AND ADDITIONS AFTER THE CONCLUSION OF THE AGREEMENT**

#### **3.1 THE RIGHT TO CHANGE THE CONTENTS OF THE AGREEMENT**

If the Customer needs changes or additions that cannot be made by reassignment of priorities within the framework of what has been agreed, the Customer can request a change agreement.

The Contractor may request adjustments in consideration or schedules due to the change. A request for adjusted consideration or schedule must be submitted at the latest at the same time as the Contractor's response to the Customer's request for a change agreement and cannot be asserted thereafter.

Changes to the service shall be made in writing and signed by an authorised representative of the parties. The Contractor shall maintain an ongoing catalogue of the changes that make up Appendix 9 and give the Customer an updated copy without undue delay.

### **4 THE DUTIES OF THE CONTRACTOR**

#### **4.1 THE CONTRACTOR'S RESPONSIBILITY FOR ITS SERVICES**

The Contractor is responsible for ensuring that the services stated in Appendix 2 and the call-off agreements cover the functions and requirements specified in the Agreement.

#### **4.2 THE REQUIREMENTS FOR THE CONTRACTOR'S RESOURCES AND EXPERTISE**

The Contractor guarantees that the service will be delivered with sufficient qualitative and quantitative resources and expertise, based on the requirements in the Agreement. The Contractor's Project Manager and other key personnel are specified in Appendix 6.

Persons specified in Appendix 6 as key personnel shall not, within the framework of the Contractor's management prerogative as an employer, be replaced without prior approval from the Customer. Such approval shall not be unreasonably withheld.

Personnel that the Customer on a justifiable basis does not wish to use or wishes to be replaced, shall as soon as possible be replaced with other personnel with at least the equivalent ability.

Replacement of personnel shall not affect the progress or incur increased costs for the Customer.



#### 4.3 USE OF SUBCONTRACTORS

The Contractor's use and replacement of a Subcontractor who directly contributes to the fulfilment of the Agreement shall be approved in writing by the Customer. Approval shall not be unreasonably withheld.

Approved Subcontractors must be named in Appendix 6.

#### 4.4 WAGES AND WORKING CONDITIONS

The following shall apply to agreements governed by Regulation 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 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 does not meet this obligation, the Customer shall be entitled to retain part of the contract price corresponding to two times the savings of the Contractor, until it has been documented that compliance has been achieved.

Performance of the Contractor's obligations as mentioned above shall be documented in Appendix 6 using 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 and any Subcontractor's obligations.

The Contractor shall, at the request of the Customer, provide documentation concerning the wages and working conditions that are used. 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 stating that the information will not be used for any other purpose than ensuring compliance with the obligations of the Contractor under this provision. The documentation obligation also applies to Subcontractors.

Further clarification concerning the implementation of this clause 4.5 may be agreed upon in Appendix 6.

## **5 THE DUTIES OF THE CUSTOMER**

### **5.1 THE RESPONSIBILITIES AND CONTRIBUTIONS BY THE CUSTOMER**

The Customer shall contribute to the performance of the Agreement as specified in Appendix 2 and/or the call-off agreements according to the deadlines specified in Appendix 4.

### **5.2 USE OF A THIRD PARTY**

The Customer may freely appoint the third party to assist in connection with the Customer's duties under the Agreement. These are specified in Appendix 6.

## **6 THE DUTIES OF CUSTOMERS AND THE CONTRACTOR**

### **6.1 MEETINGS**

If a party considers it necessary, the party may, with at least 3 (three) working days' notice, convene a meeting with the other party to discuss the contractual relationship and how the contractual relationship is being handled. The parties may not demand payment for such meetings.

Other deadlines and procedures for the meetings may be agreed upon in Appendix 6.

### **6.2 RESPONSIBILITY FOR SUBCONTRACTORS AND THIRD PARTIES**

If one of the parties appoints a third party or Subcontractor 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 the party were performing the work itself.

### **6.3 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 under this provision shall not prevent the disclosure of information if such disclosure is demanded under laws or regulations, including any disclosure or right of access according 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 before 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 accessible to the public elsewhere.

The parties shall take all the 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 submit confidential information to such Subcontractors and third parties to the extent necessary for the implementation of the Agreement if these are subjected to a confidentiality obligation corresponding to that stipulated in the present clause 6.3.

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 also 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 also after their resignation as far as factors mentioned above are concerned. The confidentiality obligation shall lapse five (5) years after the delivery date unless otherwise laid down by law or regulation.

#### **6.4 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 on a different procedure in Appendix 6 for this type of enquiry.

## **7 CONSIDERATION AND PAYMENT TERMS**

### **7.1 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 and the call-off agreements. The Customer shall not pay in full for the preparation of the proposed solution and/or field testing of the solution. Appendix 7 and the call-off agreements shall state the contribution each party shall make.

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 according to the Government Travel Allowance Scale applicable at any given time unless otherwise agreed. Travel time shall only be invoiced if this is agreed in Appendix 7.

Unless otherwise specified in Appendix 7, all prices are quoted exclusive of Value Added Tax but include import duty and any other taxes.

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

## **7.2 INVOICING**

Payment shall be made within 30 (thirty) calendar days of the invoice date. The Contractor's invoices shall be specified and documented to make it easy for the Customer to check how 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.

Where facilitated by the Customer, the Contractor shall submit invoices, credit notes and reminders using 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 it incurs in respect of submitting electronic invoices.

## **7.3 LATE PAYMENT INTEREST**

If the Customer fails to make payment by the agreed time, the Contractor shall be entitled to claim interest on any overdue amount according to Act no. 100 of 17 December 1976 relating to interest on late payment, etc. (Late Payment Interest Act).

## **7.4 PAYMENT DEFAULT**

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

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

# **8 EXTERNAL LEGAL REQUIREMENTS, PRIVACY AND SECURITY**

## **8.1 EXTERNAL LEGAL REQUIREMENTS AND MEASURES IN GENERAL**

Each party is responsible for following up its respective tasks according to the external legal requirements (laws, regulations and other regulatory requirements). In Appendix 1, the Customer shall identify which legal or party-specific requirements are relevant for the conclusion and implementation of this Agreement.

Each party covers the costs of complying with legal requirements that apply to the party itself and the party's activities. In case of changes in legal or regulatory requirements that concern the Customer's activities, and which entail a need for changes in the Contractor's performance after entering into the Agreement, the Customer shall cover the costs of the changes and additional work.

## **8.2 INFORMATION SECURITY**

The Contractor shall act appropriately to address the information security requirements associated with the performance of the Agreement. This entails that the Contractor shall act appropriately to ensure the confidentiality of the Customer's data as well as measures to ensure that data does not fall into the hands of unauthorised persons. Furthermore, the Contractor shall act appropriately to protect against the unintended modification and deletion of data and virus and other malware attacks.

If the Customer has specific requirements for how information security is to be safeguarded by the Contractor, the Customer must state this in Appendix 1.

The Contractor will be obliged to keep the Customer's data separate from the data of any third parties to reduce the risk of impairment of data and/or access to data. Separate means ensuring that the necessary technical measures to secure data against unintended change or access are taken and maintained. Unintended changes or access also include access by the employees of the Contractor or others who do not need the information in their work for the Customer.

If the Customer has specific requirements for how the Contractor is to fulfil the requirement of separation of data, the Customer must specify this in Appendix 1.

The Contractor must ensure that suppliers of third-party deliverables provide sufficient and necessary protection of the Customer's data.

If the Customer has specific requirements for how the Contractor is to ensure that the suppliers of third-party deliverables provide sufficient and necessary protection of the Customer's data, the Customer must state this in Appendix 1.

## **8.3 PERSONAL DATA**

If the Contractor is to process personal data in connection with the Agreement, the Contractor shall describe in Appendix 2 and/or the call-off agreements how satisfactory processing in line with the personal data protection regulations will be achieved and performed. This includes privacy shield requirements. This applies irrespective of whether the Customer has set this requirement in Appendix 1.

If the Customer has any further documentation requirements relating to the information security system and security measures, the Customer must state this in Appendix 1.

Documentation that the information security system and security measures are satisfactory shall, upon request, be made available to the Customer and its auditors, as well as the Norwegian Data Protection Authority and the Privacy Appeals Board. If the Customer has any further documentation requirements relating to the information security system and the security measures, the Customer must state these in Appendix 1. If the Customer requests information to perform Data Protection Impact Assessments, the Contractor must assist in providing such information.

The Contractor may not entrust personal data to other parties for storage, reworking or deletion without prior special or general written permission for this from the Customer. The Contractor shall ensure that any Subcontractors used by the Contractor, and which process personal data, assume the same obligations as those set out in clause 8.3 of the Agreement. If special or general written permission has been obtained, the Contractor must notify the Customer of any plans to use other data processors or to replace data processors, and thereby allow the Customer to oppose such changes. Subcontractors that are approved by the Customer must be stated in Appendix 6.

Personal data may not be transferred to countries outside the EEA without any transfer basis and documentation proving that the terms for use of the transfer basis have been fulfilled. In such a case, the Contractor will document this in Appendix 2 and/or the call-off agreements.

If the assignment concerns the processing of personal data on behalf of the Customer, the Customer and the Contractor will be obliged to enter into a data processor agreement according to the personal data protection legislation. If the Customer has not prepared a draft data processor agreement, the Contractor will attach a draft as an attachment to Appendix 2. The data processor agreement must be entered into before the processing of personal data begins.

If the parties have entered into a data processor agreement, this data processor agreement will take precedence in case of any conflict with the Agreement's provisions relating to the processing of personal data.

The parties' liability for damage suffered by a data subject or other natural persons, which is due to a violation of the General Data Protection Regulation (Regulation 2016/679), the General Data Act with regulations or other regulations that implement the General Data Protection Regulation, will follow the provisions of Article 82 of the General Data Protection Regulation.

The limitation of liability in section 10.3.3 does not apply to liability arising from Article 82 of the General Data Protection Regulation.

The parties are individually liable for administrative fees imposed under Article 83 of the General Data Protection Regulation.

## **9 COPYRIGHT AND RIGHT OF OWNERSHIP**

### **9.1 THE RIGHTS TO WHAT IS BEING DEVELOPED**

#### **9.1.1 The Contractor's rights**

The Contractor retains all material and intellectual property rights to the software and all other results that are developed or prepared under this Agreement unless otherwise agreed in each case.

#### **9.1.2 The Customer's right of use**

The customer receives a free and non-exclusive right of disposal for the product idea and proposed solution generated under this Agreement. The right of disposal includes rights that are necessary for the Customer to be able to use the results as agreed, including having the right to use the results in subsequent tender processes. The right of disposal includes the right to use, copy, modify and further develop product ideas and proposed solution, either by the Customer itself or with the help of third parties.

### **9.2 FREE SOFTWARE**

If free software is to be used in connection with the Contractor's services, the Contractor shall prepare an overview of the relevant free software. The overview is to be included in a separate chapter in Appendix 2 and/or the call-off agreements. A copy of the licence terms governing the relevant free software is to be included in Appendix 2 and/or the call-off agreements.

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 also apply to the parts of the Contractor's services that consist of free software with the specifications and exceptions set out below.

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

If free software is to be used in connection with the Contractor's services, the Contractor shall prepare an overview of the relevant free software. The overview is included in a separate chapter in Appendix 2.

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 Contractor shall only use free software that, based on a sound assessment on the part of the Contractor, does not infringe third-party rights, and that is offered under generally recognised free software licences.

As regards those parts of the deliverables that are based on free software, including customisation and evolution thereof, the Customer shall be granted such rights as are necessary to pass on the results under the relevant free software licence or under a compatible free software licence if this is specified in Appendix 1. The rights include access to source code, with associated specifications and documentation.

If the Customer requires that free software is a part of the Contractor's services, the Customer shall cover any costs resulting from inadequate functionality caused by errors or flaws in the free software. The Customer bears the risk of defects in title of free software that the Customer requires shall be a part of the Contractor's services. To the extent that the Contractor is aware that free software required to be used by the Customer as part of the Contractor's services, does not meet the Customer's requirements or infringes or by someone is claimed to infringe third party copyright, the Contractor shall point this out in Appendix 2 and/or the call-off agreements. As a payable additional service, the Contractor shall assist the Customer by remedying any flaws or defects in title of free software that has been chosen by the Customer as specified above. Unless otherwise agreed in Appendix 7, the Contractor's standard hourly rate for consulting services is used in this Agreement. The Contractor may require an amendment to the agreement according to Chapter 3 if the work of remedying such flaws has consequences for the Contractor's other obligations under the agreement.

## **10 BREACH OF CONTRACT ON THE PART OF THE CONTRACTOR**

### **10.1 WHAT IS DEEMED TO CONSTITUTE A BREACH OF CONTRACT**

There is a breach of contract on the part of the Contractor if the deliverables do not conform with the agreed functions, requirements or deadlines.

However, 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.

### **10.2 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, as far as it is possible when performance can take place. A corresponding obligation shall apply if further delays are to be expected after the first notice has been given.



## **10.3 SANCTIONS FOR BREACH OF CONTRACT**

### **10.3.1 Termination**

If there is a material breach of contract, the Customer may, after having given the Contractor written notice and granted 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 performance is materially delayed. For example, there is a material delay if delivery has not taken place by the expiry of an extended deadline if this expires later.

If the delay is of such a nature that the Contractor's services must be considered materially delayed, e.g., because what has already been delivered or is to be delivered later cannot be used without what is covered by the right of cancellation, the Customer may terminate with effect for the entire performance.

### **10.3.2 Damages**

The Customer may claim damages for any direct loss, including loss due to overtime and other direct costs in connection with delay, defect, or other default according to clause 10.1 unless the Contractor proves that the breach or the cause of the breach is not due to the Contractor.

### **10.3.3 Limitation of damages**

No damage may be claimed in respect of an 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, except for liability for damages imposed according to clause 12.4.

Overall damages over the term of the Agreement are limited to the total consideration the Customer pays to the Contractor under this agreement excluding VAT.

If the Contractor or anyone for whom it is responsible has shown gross negligence or intent, the said limitation of damages will not apply.

## **11 BREACH OF CONTRACT ON THE PART OF THE CUSTOMER**

### **11.1 WHAT IS DEEMED TO CONSTITUTE A BREACH OF CONTRACT**

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

However, there is no breach of contract if the situation is due to circumstances related to the Contractor or circumstances considered to constitute a force majeure.

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

## **11.2 NOTIFICATION OBLIGATION**

If the Customer is unable to perform its duties under the Agreement, including as to deadlines, the Customer shall notify the Contractor of this in writing 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.

## **11.3 TERMINATION**

In case of non-payment, the Contractor may terminate the Agreement if the Customer has not settled undisputed consideration within 60 (sixty) calendar days after the Customer has received the Contractor's written notice according to clause 6.4.

In case of other material breaches, the Contractor may send the Customer a written notice that the Agreement will be terminated if the Customer does not within 60 (sixty) calendar days after the Customer received the notice, has terminated, or rectified the breach. Termination cannot take place if the Customer remedies the breach of contract situation before the deadline.

## **11.4 DAMAGES**

The Contractor may claim damages in respect of any direct loss that results from a breach of contract under clause 11.1 unless the Customer can prove that the breach of contract or the cause of the breach of contract is not attributable to the Customer. If the Customer is delayed in fulfilling its obligations under the Agreement, and this means that the Contractor spends more time performing its part of the agreement, the Contractor is entitled to an adjustment of the agreed consideration corresponding to the number of hours of additional work the Contractor has had because of the Customer's default.

The limitation of damages provision in clause 10.3.3 of the Agreement shall apply correspondingly.

## **12 INFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS (DEFECT IN TITLE)**

### **12.1 THE PARTIES' RISK AND RESPONSIBILITY FOR A DEFECT IN TITLE**

Each party bears the risk and responsibility that their services do not infringe third party copyrights or other intellectual property rights. If the performance entails such an infringement, there is a defect in title.

### **12.2 CLAIMS FROM THIRD PARTIES**

If a third party submits a claim to one of the parties that the service involves a defect in title, the other party shall be informed in writing as soon as possible.

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

One party shall begin and conduct the work of remedying the defect in title without undue delay by

- a) ensuring that the other party can use the service as before, without infringing the rights of a third party, or
- b) or delivering another similar service that does not infringe the rights of a third party.

### **12.3 TERMINATION**

A defect of title that is not remedied and which is of such a nature that it is of material importance to the other party gives the affected party the right to terminate the Agreement immediately.

### **12.4 DAMAGES FOR LOSSES DUE TO A DEFECT OF TITLE**

A party may claim full damages against a third party and any legal costs, including the party's costs associated with managing the case, which are due to a defect in title. The party may also claim damages for other losses according to the provisions of clauses 10.3.2 and 11.4.

## **13 TERMINATION SETTLEMENT**

Upon termination, the Customer receives such rights as specified in Chapter 9 to what has been prepared or made available to the Customer, and the Customer shall pay the agreed consideration for services that were performed according to the Agreement before the time of termination.

## **14 OTHER PROVISIONS**

### **14.1 ASSIGNMENT OF RIGHTS AND OBLIGATIONS**

To the extent that the Customer is a public enterprise, the Customer may, in whole or part, transfer its rights and obligations under this agreement to another public enterprise as part of an organisational change. The enterprise to which the rights and obligations are assigned shall be entitled to corresponding terms and conditions.

The Contractor may only assign its rights and obligations under the Agreement with the written consent of the Customer and if it is compatible with law and regulations on public procurement. This also applies if the Contractor is divided into several companies if the assignment takes place to a subsidiary or other company in the same group, or the Contractor is merged with another company. The consent shall not be unreasonably withheld.

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

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

In case of debt rescheduling proceedings, composition with a creditor, 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.

#### **14.3 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, if the situation prevails or is expected to prevail for more than 60 (sixty) days from the date on which the situation arose and, in such case, only with 15 (fifteen) calendar days' notice. Each party covers its costs related to the termination of the contractual relationship. The Customer pays the agreed price for the part of the performance that was contractually delivered before the Agreement was terminated. The parties may not make other claims against each other because of a termination of the agreement according to this provision.

In connection with force majeure situations, the parties have a mutual duty to inform each other about all matters that must be assumed to be of significance to the other party. Such information shall be provided as soon as possible.

### **15 DISPUTES**

#### **15.1 GOVERNING LAW**

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

#### **15.2 NEGOTIATIONS AND MEDIATION**

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

**15.3 LITIGATION OR ARBITRATION**

If a dispute is not resolved through negotiations or mediation, each party may require the dispute to be resolved with final effect before the Norwegian courts.

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

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

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