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SSA-D 2024

Operational Services Agreement

The Norwegian Government’s Standard Agreement for the Purchase of Operational Services SSA-D

Agreement for the Purchase of Operational Services

**An agreement concerning**

[name of procurement]

**has been entered into between:**

[Enter here]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(hereinafter referred to as the Supplier)

**and**

[Enter here]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(hereinafter referred to as the Customer)

(individually referred to as a Party and jointly as the Parties)

**Place and date:**

[Please enter the place and date]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |  |
| --- | --- |
| [Customer name][Customer business registration number] | [Supplier name][The Supplier’s business registration number] |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_The Customer’s signature | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_The Supplier’s signature |

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

**Enquiries**

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

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# General Provisions

## Scope of the Agreement

The Agreement applies to the delivery of services associated with the operation of IT solutions, hereinafter referred to as the (“operational service”), as specified further in the appendices.

The Customer has specified its needs and requirements in Appendix 1 (The Customer’s specification of needs and specification of requirements).

In Appendix 3, the Customer has specified the software covered by the operational services under this Agreement. If the Supplier will assume operation of any of the Customer’s equipment, this will be specified separately. Appendix 3 may also include a specification of the overall architecture and the system environment the operational service will be part of and interface with.

The Supplier has specified its solution and relevant assumptions for delivery in Appendix 2 (The Supplier’s solution specification).

If, in the opinion of the Supplier, there are obvious errors or ambiguities in the Customer’s specification of requirements, this must be clearly specified in Appendix 2.

The scope and execution of the delivery have been described in further detail in the general agreement text and the appendices, which form part of the Agreement.

“The Agreement” refers to this general agreement text with appendices.

## Appendices to the Agreement

|  |  |  |
| --- | --- | --- |
| All columns must be checked (Yes or No) | Yes  | No |
| Appendix 1: The Customer’s specification of needs and specification of requirements*To be completed by the Customer.* |  |  |
| Appendix 2: The Supplier’s solution specification*To be completed by the Supplier.* |  |  |
| Appendix 3: Specification of the services that will be managed *To be completed by the Customer* |  |  |
| Appendix 4: Project and progress schedule for the establishment phase*To be completed by the Supplier based on the overall instructions set down by the Customer.*  |  |  |
| Appendix 5: Service level and standardised compensations*To be completed by the Supplier based on the overall instructions and requirements set down by the Customer*  |  |  |
| Appendix 6: Administrative provisions*Administrative provisions and other information of relevance to the Parties’ relationship. To be completed by the Supplier based on the overall instructions set down by the Customer in the appendix.*  |  |  |
| Appendix 7: Total price and price provisions*Overview of all price elements linked to the implementation of this Agreement. To be completed by the Supplier based on the overall instructions set down by the Customer in the appendix.*  |  |  |
| Appendix 8: Amendments to the general agreement text |  |  |
| Appendix 9: Changes to the operational service after the Agreement has been entered into |  |  |
| Appendix 10: Standard license terms/standard terms and conditions for standard software (third-party deliveries)*Copy of or reference to standard terms and conditions.*  |  |  |
| Appendix 11: Data processing agreement*Data processing agreement between the Supplier and the Customer and any other data processing agreements entered into by the Customer in connection with the Customer’s use of standard software other than as included in Appendix 10.* |  |  |
| Other appendices: |  |  |

## Interpretation – Ranking

Amendments to the general agreement text must be collated in Appendix 8, unless the general agreement text refers such amendments to a different appendix. The following interpretation principles shall be used:

1. The general agreement text takes precedence over the appendices
2. Appendix 1 takes precedence over the other appendices
3. To the extent that it is clearly and unambiguously stated which clause or clauses have been amended, replaced or added to, the following principles shall apply:
	1. Appendix 2 takes precedence over Appendix 1
	2. Appendix 8 takes precedence over the general agreement text
	3. If the general agreement text refers such amendments to an appendix other than Appendix 8, such amendments shall take precedence over the general agreement text
	4. Appendix 9 takes precedence over the other appendices.
4. Standard terms and conditions for standard software (Appendix 10) shall apply between the manufacturer of standard services and the Customer. The Supplier’s responsibility shall be limited to following up on such deliveries in accordance with what is set out in Section 5.1.1. Standard deliveries refers to standardised services developed for delivery to multiple users and for which the right to use can be acquired independently of other services from the manufacturer.
5. Appendix 11, the Data Processing Agreement, shall take precedence over the general agreement text and other appendices with regard to provisions that are clearly and unambiguously linked to the regulation of personal data protection.

# Implementation of the Agreement

## The Parties’ representatives

Upon entering into the Agreement, each Party shall appoint a representative that is authorised to act on behalf of the Party in matters relating to the Agreement. The authorised representatives of the Parties, as well as the procedures and notification deadlines for any replacement of such representatives, shall be further specified in Appendix 6.

## Phases and main milestones under the contract

The Agreement has been divided into 3 (three) phases:

The establishment phase (Chapter 2.3), ordinary operation (Chapter 2.4) and the conclusion phase (Chapter 2.5).

## Establishing the operational service

### Activities and partial deliveries during the establishment phase

#### Activities

The establishment phase consists of the following parts:

1. Planning (2.3.2)
2. Implementation (2.3.3)
3. Testing prior to the start-up date (2.3.4)
4. Start-up period and start-up date (2.3.5)
5. Approval period (2.3.6)

The establishment phase is followed by ordinary operation (Chapter 2.4).

The following documents will be produced during the planning phase:

1. Project schedule (2.3.2.1)
2. Detailed plan for the establishment phase (2.3.2.2)
3. Test schedules (2.3.2.3)
4. Coordination plan and operations specification (2.3.2.4)
5. Change log (2.4.3)
6. Activity and follow-up schedule for the approval period (2.3.2.5)

#### Partial deliveries

The establishment of the operational service may be divided into partial deliveries. If partial deliveries are used, these shall be specified in further detail in Appendix 4.

Partial deliveries can be put into use together or on an ongoing basis in line with being fully established. If two or more partial deliveries are put into use together, a joint test must be conducted prior to the start-up date and approval period for the partial deliveries, unless otherwise specified in Appendix 4.

If partial deliveries are commissioned on an ongoing basis in line with being fully established, the test prior to the start-up date and approval period for each new partial delivery shall include checking that any partial deliveries that have already been put into use continue to work in accordance with the agreed requirements. Additionally, during the approval period for the final partial delivery, it must also be checked that the overall performance, capacity and stability of the operational service is in accordance with the agreed requirements.

Unless otherwise set out in Appendix 4, the approval period shall be 1 (one) month for each partial delivery and 2 (two) months in connection with the final partial delivery, cf. Section 2.3.6.1.

If one or more partial deliveries shall be exempt from the overall testing, this shall be specified in Appendix 4.

### Planning the establishment phase

#### Project schedule

In consultation with the Customer, the Supplier shall draw up a project schedule for the work to establish the operational service. The project schedule shall include a specification of main activities, roles and responsibilities, as well as a progress schedule with milestones that will further build on the overall progress schedule set out in Appendix 4, including whether partial deliveries are used.

#### Detailed plan for the establishment phase

The Supplier shall draw up a detailed progress plan for the establishment phase, referred to as the “detailed plan for the establishment phase”. The Customer shall contribute the necessary information and expertise for the Supplier to draw up such a plan. Furthermore, the Customer shall ensure that the Supplier has access to the information it requires from any third parties.

If partial deliveries are used, a detailed plan shall be drawn up for each partial delivery.

The detailed plan for the establishment phase shall describe the scope of the Customer’s contributions. The aspects of the schedule relating to the Customer’s contributions shall be approved by the Customer. Such approval shall not reduce the Supplier’s liability.

The Customer may not refuse to approve the detailed plan without justified grounds, i.e. the detailed plan not being in accordance with the requirements set out in Appendix 1, not being in accordance with the project schedule or entailing significant negative impact on the part of the Customer.

#### Test schedules

By the deadlines specified in Appendix 4, the Supplier shall draw up a plan for the testing of the operational service before the start-up date, cf. Section 2.3.4.

The plan shall specify the tests that must be performed, how testing will be carried out and the acceptance criteria for the test. Upon request from the Supplier, the Customer shall participate in the work on the test schedule. The Customer may have specified requirements for the acceptance criteria and other test schedule frameworks in Appendix 4, including whether the Customer wishes to participate in the work on the test schedule. The Customer’s participation in the work shall not reduce the Supplier’s responsibility to manage the process and draw up the test schedule.

Unless otherwise specified in Appendix 4, the Supplier’s proposed test schedule shall be presented to the Customer for approval no later than four weeks before the planned start of the test.

If the Customer objects to the test schedule, the Customer shall notify the Supplier in writing no later than 7 (seven) days after the Customer has received the test schedule. Such notice shall be issued in writing and include a specification of what needs to be corrected. The Supplier shall correct the test schedule and re-submit it to the Customer within 7 (seven) working days of the Supplier having received notice from the Customer.

If partial deliveries are used, the schedule shall, to the extent relevant as part of the test for each partial delivery, specify how the Supplier will verify that partial deliveries that have already been put into service continue to work in accordance with the Agreement. To the extent possible, the test should also include overall testing of performance, capacity and stability for all parts of the operational service delivered so far.

#### Coordination plan and operations specification

The Supplier shall draw up or make available a coordination plan and operations specification for the start of the approval period.

The coordination plan shall be finalised in consultation with the Customer. The coordination plan shall include the necessary procedures for coordination between the Customer and Supplier, including procedures for change management and the management of adverse events and shall be based on the coordination requirements specified by the Customer in Appendix 5.

The operations specification shall describe the operational service delivered and shall be updated continuously as a result of changes to operations (cf. 2.4.3). The level of detail shall take into account the type of operation and may be specified in further detail in Appendix 5.

#### Activity and follow-up schedule for the approval period

The Supplier shall assist the Customer in drawing up an activity and follow-up schedule for the approval period as specified in Section 2.3.1.1, third paragraph no. 6 and Section 2.3.6.5. The schedule shall be completed before the start of the approval period.

#### The Supplier’s takeover of the Customer’s infrastructure – verification, etc.

If the Supplier will take over all or parts of the Customer’s existing equipment, software and infrastructure (assets), the Supplier shall be entitled to inspect whether the Customer’s assets are in accordance with the information provided by the Customer prior to the conclusion of the contract and the assumptions specified by the Supplier in Appendix 2 as the basis for its tender. The content, scope and time of inspection shall be specified in Appendix 4.

If, following an objective assessment, the inspection shows that the information provided by the Customer is incorrect or that the assumptions set out by the Supplier in Appendix 2 are not correct, the Supplier may request that a change request be issued. Such a change request may apply to changes to requirements relating to service level, coverage of additional costs or necessary infrastructure upgrades to achieve the agreed service level requirements.

### Implementation of the establishment phase

#### The Supplier’s implementation

The Supplier shall implement the establishment of the operational service in accordance with the detailed plan for the establishment phase (cf. 2.3.2.2).

#### The Customer’s facilitation

The Customer shall ensure that the Supplier has access to the necessary information and expertise from the Customer, existing operational service providers and the Customer’s other contractual parties in connection with the establishment of operations. Further requirements relating to the Customer’s contributions, including necessary information from third parties, may be specified in Appendix 6.

### Testing prior to the start-up date

Once the operational service or a partial delivery has been established and is ready for use, the Parties shall carry out the tests specified in the test schedule to verify whether the operational service is ready for use by the Customer.

The Supplier shall draw up a test report and submit this report to the Customer. Unless otherwise specified in the test schedule, the Customer shall, within 10 (ten) working days, consider the report and give the Supplier written notice of whether or not the test has been approved.

If such notice is not issued within the specified number of days, the test shall be deemed to have been approved. If the Customer rejects the test, the Customer shall specify the grounds for rejection with reference to the requirements in the Agreement that have not been met.

Unless other acceptance criteria have been agreed in the test schedule, the following shall apply: The Customer may not refuse to approve the test due to factors that are insignificant to the Customer’s ability to put the operational service into use.

If the test is rejected, the Supplier shall rectify the factors that constituted grounds for the test being rejected. After these factors have been rectified, any affected parts of the test shall be retested so that it is possible to verify that the relevant part of the service works as a whole. A report from the new test shall be drawn up.

If the test cannot be approved due to factors for which the Customer is contractually responsible, the Supplier shall be entitled to payment for any additional work incurred by the Supplier as a result of the Customer’s circumstances. The Supplier shall implement reasonable measures to avoid delaying the start-up date. The Supplier shall be entitled to payment for such acceleration measures. Payment shall be determined based on the ordinary prices for additional services under the Agreement.

### Start-up period and start-up date

After the operational service has been tested and approved, a start-up period shall be conducted in which the operational service is prepared for ordinary use by the Customer. The scope and sequence of activities during the start-up period shall be specified in the detailed plan for the establishment phase.

The Supplier shall give the Customer written notice when the operational service is ready for further inspection by the Customer by way of an approval period, cf. Section 2.3.6. The day after notice has been issued shall be referred to as the start-up date and the operational service can be put into ordinary operation by the Customer.

Partial deliveries that are commissioned on an ongoing basis in line with being fully established shall be subject to separate start-up dates. If partial deliveries are put into use together, the start-up date shall be determined based on when the final partial delivery is ready for the approval period.

### Approval period

#### Duration of the approval period

An approval period of 2 (two) months shall run from the start-up date, unless otherwise agreed in Appendix 4.

If the start-up date is delayed due to circumstances for which the Customer is responsible, the approval period shall still run from the agreed date, unless the Customer requests a change to the progress schedule in accordance with Chapter 3.

#### Purpose and assumptions relating to the approval period

The goal of the approval period is to verify that the operational service works in accordance with the Agreement during ordinary operation and that the operations specification and coordination plan work and are in accordance with the Agreement.

The coordination plan and operations specification shall be updated during the approval period.

#### The Customer’s examinations

During the approval period, the Customer shall examine whether the delivery conforms to what was agreed. The Customer’s examination during the approval period shall (as a minimum) be implemented based on ordinary, day-to-day operations and duties.

Further specification of the content of the approval period, with a concrete specification of the minimum examinations the Customer must carry out and the approval criteria for the approval period, shall be specified in the activity and follow-up schedule for the approval period.

#### Managing errors and faults

During the approval period, the Customer shall continuously and without undue delay give the Supplier written notice of any errors and faults, including a description of the faults, in line with the coordination plan.

The Supplier shall rectify errors and faults as soon as possible. Errors and faults shall be corrected in prioritised order. Unless otherwise agreed in Appendix 4, any errors and faults shall be rectified no later than by the expiration of the approval period.

If, during the approval period, errors, faults or deviations arise in connection with the operational service that preclude the Customer’s examination of the operational service, the Customer shall be entitled to an extension of the approval period corresponding to the duration of the error, fault or deviation.

#### Approval – delivery date

Prior to the expiration of the approval period, the Supplier will have issued written notice as to whether or not the results of the examination and whether the operational service is deemed to conform to what was agreed and whether or not approval can be given. If such a notification has not been issued by the expiration of the approval period, the operational service shall still be deemed to have been approved (passively).

The Customer may not refuse to approve the operational service due to circumstances that are not significant to the Customer’s use of the operational service. The approval criteria for the approval period have been specified in further detail in the activity and follow-up plan for the approval period.

Unless other approval criteria have been agreed in the activity and follow-up plan for the approval period, the following shall apply:

* + - 1. The Customer has the right to reject the approval period if, during the final 5 (five) working days of the approval period, one or more critical incidents have occurred or
1. if three or more serious incidents have occurred (see classification of adverse events in Section 2.4.2). If the Customer rejects the approval period, the approval period shall be extended until the terms and conditions for approval have been met.

If, upon the expiration of the approval period, the operational service has such faults, errors and non-conformities that would entitle the Customer to reject the approval period, the Customer may still elect to approve with reservations.

If the Customer elects to approve the operational service with reservations with reference to the agreed correction plan and the correction plan is not complied with for the faults and errors that preclude approval, the same sanctions shall apply as if the approval period had been extended (delayed).

The first working day after the operational service has or should have been approved shall be considered the delivery date.

Faults and errors that occur after the expiration of the approval period shall be managed as adverse events under the procedures in Section 2.4.2.

## Ordinary operation after approval

### Service level requirements

The Supplier shall be responsible for ensuring that the operational service is in accordance with the service level requirements set out in Appendix 5. For services for which no explicit service level requirements have been specified, the service level shall correspond to what can be expected for a correspondingly good service in the market.

The Supplier shall not be responsible for non-fulfilment of the service level if caused by:

* 1. faults or stoppages in the Customer’s applications, or
	2. faults or errors in standard software licensed by manufacturers the Supplier depends on to deliver the operational service, provided that the Supplier can document having taken reasonable precautions.

### Adverse events

Adverse events shall be managed by the deadlines set out in Appendix 5. If the agreed deadlines are not met, the Customer may claim standardised compensation as specified in Appendix 5.

The procedures for reporting adverse events to the Supplier shall be specified in the coordination plan, cf. Section 2.3.2.4.

The Customer shall classify faults, errors and non-conformities as specified in the coordination plan and report adverse events to the Supplier without undue delay. Notice shall be issued as specified in the coordination plan.

Unless otherwise specified in Appendix 5, the following classification of adverse events shall be used:

|  |  |  |
| --- | --- | --- |
| Level | Category | Description |
| A | Critical | All or significant parts of the operational service are unavailable. |
| B | Serious | Some critical functions do not work or work with significantly poorer response times than agreed. |
| C | Less serious | Non-critical functions do not work, reduced response time compared to what was agreed. |

If the Supplier is subsequently able to document that the Customer’s classification was incorrect and such incorrect classification has resulted in the Supplier incurring costs, the Customer shall be required to cover the Supplier’s direct documentable and necessary costs associated with incorrect classification.

### Changes to the operating environment initiated by the Supplier

In this context, change shall refer to all types of changes related to the operational service initiated by the Supplier.

The Supplier shall inform the Customer of changes that may be of significance to the Customer’s use of the operational service or the security of the solution before such changes are implemented. Further rules relating to the changes that must be communicated and the associated notification procedures may be agreed in Appendix 6 and in the coordination plan.

All changes related to the operational service shall be recorded in a change log. The Customer may request access to the change log pursuant to the rules relating to auditing in Section 2.4.8. The Supplier shall be responsible for updating the operations specification without undue delay after a change relevant to the operations specification has been implemented, cf. Section 2.3.2.4.

### Ordering additional services

The Customer shall have the opportunity to order additional services in connection with ordinary operation. The services and associated price shall be described in the Supplier’s service directory, which forms part of Appendix 7.

Additional services shall be recorded in Appendix 9.

### Reporting

Unless otherwise provided for in Appendix 5, the Supplier shall report to the Customer about the operational service on a monthly basis, including about the achieved service level and any adverse events and issues. Requirements relating to the monitoring of the service level shall be specified in Appendix 5.

### Documentation

The Supplier shall make available to the Customer any documentation specified in Appendix 6.

The Customer may request access to other documentation pursuant to the rules relating to auditing in Section 2.4.8.

### Emergency preparedness and disaster plans and drills

The Supplier shall have emergency preparedness and disaster plans in place for the operational service. Unless otherwise specified in Appendix 1, the Supplier shall implement the necessary emergency preparedness and disaster drills annually as a minimum.

The Supplier shall, by further agreement, contribute to the implementation of the Customer’s own emergency preparedness and disaster drills once per year, unless otherwise specified in Appendix 1. Unless another price is agreed in Appendix 7, the payment for the Supplier’s work in connection with such drills shall be measured based on the hourly rates specified in Appendix 7.

Information relating to planned emergency and disaster drills and information from evaluation reports of relevance to the operational service, including any proposals for improvements, shall be made available to the Customer upon request. Evaluation reports shall be completed within 30 (thirty) days of a drill having taken place.

### Audits

The Customer shall be entitled to conduct audits and verifications to ensure that the Supplier is fulfilling its contractual obligations in relation to the operational service.

The Supplier shall provide assistance if the Customer needs to involve the Supplier in the implementation of quality audits or other reviews of aspects associated with operation, such as in connection with the Customer’s compliance with legal requirements specified in Chapter 9 or in connection with the Customer’s certification. The Supplier may claim payment for this in accordance with its hourly rates specified in Appendix 7.

The time and method for conducting audits and associated assistance shall be agreed on a case-by-case basis. Unless otherwise agreed in Appendix 6, audits shall be conducted no more than once per year. Nevertheless, this shall not preclude the Customer from requesting access and audits as necessary to fulfil specific orders from public supervisory authorities.

Unless specific deadlines are set out in Appendix 6, the Customer shall give the Supplier reasonable notice of audits and the Supplier shall accept such audits within a reasonable period of time. Audits shall be conducted in such a way as to cause minimal disruption to ordinary operation and service deliveries on the part of the Supplier and its subcontractors.

The Customer may appoint third parties to perform audits and verification under this provision. The Contractor may object to a direct competitor of the Contractor being appointed as a third party.

In the event that the audit discovers non-compliance with the terms of the Agreement or legal requirements for which the Supplier is responsible, the Supplier shall be obliged to change the operational service so that the terms of the Agreement are met. In the event that the non-conformities are material in nature or can be attributed to negligence on the part of the Supplier, the Supplier shall be obliged to reimburse the Customer for any necessary costs associated with the implementation of the audit.

The Supplier shall ensure that any agreements the Supplier enters into with subcontractors that are of significance to the delivery of the operational service and as mentioned in Appendix 6 incorporate the right of the Customer to participate in the Supplier’s audits and reviews with subcontractor(s) to the extent necessary to verify that the Supplier complies with agreed obligations for the operational service. In the event that the Customer wishes to carry out an audit at the Supplier’s subcontractor, the Supplier shall be obliged to cooperate with the Customer in order to carry out such an audit.

In Appendix 6, the Parties may agree on deadlines for the announcement of audits and further procedures for implementation, including any use of auditors.

### New versions of software

Unless otherwise set out in Appendix 1, new versions of software (including software patches) used to deliver the operational service shall be in accordance with the Supplier’s ordinary upgrade cycle.

If the Supplier incurs additional costs of significance as a result of the Customer not following the recommended upgrade cycle for the applications that are managed, the Supplier can claim that any additional costs associated with maintaining the operation of the Customer’s existing version of the software be covered. The recommended upgrade cycle can be specified in Appendix 2. Claims for coverage of costs pursuant to this provision shall be managed as a change pursuant to Chapter 3.

New versions of software that, according to Appendix 3, are covered by the operational service shall be tested and commissioned in accordance with the procedures set out in Appendix 6 and the coordination plan. Unless otherwise agreed in Appendix 7, the commissioning of software audits and patching shall be included in the running service fee. Plans and prices for the operation of new versions shall be determined in accordance with the provisions relating to changes in Chapter 3.

Security updates shall always be implemented without undue delay.

Prior to installing software patches, new versions, etc. of operating systems, databases and other basic software used to deliver the operational service, the Supplier shall verify that the upgrade and/or change does not cause any issues for relevant/affected applications/software covered by or interacting with the operational service pursuant to Appendix 3. To the extent necessary, the Supplier may request assistance from the Customer to conduct such verification. The procedures for the above can be incorporated in the coordination plan.

### Life cycle management – up-to-dateness

Unless otherwise specified in Appendix 1, the Supplier shall have the overall responsibility for the life cycle management of equipment, software and other services necessary to maintain the agreed service level, see Section 5.1.1, fourth paragraph.

If the Supplier manages the Customer’s infrastructure, the necessary upgrades shall be managed in accordance with Chapter 3 of the Agreement relating to changes.

If the Customer has purchased the Supplier’s standard service supplied by the Supplier to multiple customers using the same infrastructure, the responsibility for life cycle management entails the Supplier actively ensuring that the delivery is up-to-date for the commissioning and throughout the term of the contract. Up-to-dateness means that the delivery, throughout the term of the contract, shall be as effective and of the same quality as at the time of conclusion of the contract compared to other similar service deliveries in the market (proportionality).

Furthermore, the Supplier shall actively contribute to the delivery meeting the Customer’s needs for the term of the contract. Changes to the Customer’s needs shall be managed in accordance with Chapter 3 of the Agreement concerning changes if this entails changes to agreed requirements.

## Termination of the Agreement

### General information about the termination of the Agreement

These termination provisions shall apply when a Delivery is terminated in full or in part in accordance with the provisions set out on termination and cancellation in this Agreement.

Additionally, the Customer shall be entitled to follow-up assistance for 60 (sixty) days after the operational service has been established with a new Supplier or the Customer itself, even if this takes place after the Agreement has been terminated.

The Supplier shall assist the Customer in connection with preparations to enter into such a new operational agreement and provide the necessary information for such preparations.

The Customer may specify in Appendix 1 any information the Supplier shall, as a minimum, provide in connection with such preparations and when this shall take place. Such specification in Appendix 1 shall not be considered exhaustive.

### Termination schedule

The Customer shall draw up a progress schedule for the termination period, referred to as the “termination schedule”. The termination schedule shall be presented to the Supplier within a reasonable period after commencement of the termination period. The Customer may permit a new supplier to create or supplement such a schedule on behalf of the Customer.

Without undue delay, the Supplier shall assist with:

1. Information and expertise required for the Customer to draw up such a schedule;
2. input on specific activities required on the part of the Supplier,
3. the timeframes for activities and otherwise describe the necessary interactions between the Supplier and the Customer in connection with termination
4. Furthermore, the Supplier shall ensure that the Customer receives access to the necessary information from any of the Supplier’s subcontractors without undue delay.

### Other obligations on the part of the Supplier

The Supplier shall provide personnel with the same expertise and availability and provide services with the same quality as equivalent services in ordinary operation for the duration of the termination period to ensure that the operational service is complete until termination of the Agreement, while the Customer or any new operational supplier will be fully supported in the handover process.

The Supplier shall be obliged to provide the necessary services to the Customer during the termination period and cooperate with any new suppliers to ensure that the transition can be implemented with minimal disruption to the Customer’s operations.

The Supplier shall also be obliged to contribute to the necessary transfer of expertise to a new operational organisation, with consideration for the delivered method of operation The Supplier shall not be required to assist with fundamental transfer of expertise or transfer of expertise relating to the Supplier’s business secrets.

The Supplier shall be obliged to facilitate the transfer of the following to the Customer or a third party appointed by the Customer:

1. The Customer’s data, including security back-ups of the Customer’s data as requested by the Customer
2. Licenses (right of use) that the Supplier manages on behalf of the Customer, when the Customer is the licensee
3. Other contracts managed by the Supplier on behalf of the Customer
4. An overview of external and internal users associated with the Customer’s solution, as maintained by the Supplier on behalf of the Customer
5. All other data and materials belonging to the Customer
6. A copy of configuration specifications, scripts and similar used by the Supplier that are necessary for the Customer’s establishment and operation of the service with the Customer or a new supplier.

### Payment in connection with the termination of the Agreement

The Customer shall be obliged to make payment for the services mentioned above in accordance with the Supplier’s hourly rates as specified in Appendix 7. If the Customer requires additional services, the price calculation shall be in accordance with the general price level for the operational service agreement in general. Nevertheless, the Customer shall not make any payment as described in this section if the termination of the Agreement is due to significant breach of contract on the part of the Supplier.

In order to allow for any sanctioning due to inadequate service in connection with the termination of the Agreement, the Customer may withhold payment for the final instalment for 1 (one) month after the termination of the Agreement, unless the Agreement is terminated due to breach of contract on the part of the Customer.

The Customer shall be obliged to return any documentation and other assets belonging to the Supplier.

# Changes after conclusion of the Agreement

## Right to changes - change request

After the conclusion of the Agreement, the Customer shall be entitled to impose amendments regarding an increase or decrease in scope, character, nature, quality or performance of the delivery, as well as changes to the progress schedule, provided that such changes fall within the boundaries of what the parties could reasonably have expected at the time of entering into the Agreement. The Customer shall issue a change request in the event of such changes.

Nevertheless, the Supplier shall not be required to perform any amendments that represent more than 15% in total of the net addition to the original contract price per year, unless this relates to a disputed change request pursuant to Section 3.5.2. This limitation shall also not apply to changes that are necessary as a result of changed legal requirements.

For operational services that are included and priced based on actual consumption, increases or reductions within any specified boundaries shall not constitute changes under this Chapter 3. Additional services priced in Appendix 7 shall be governed by Section 2.4.4.

Changes and supplements to the Agreement may be agreed during all contract phases.

The Customer cannot request changes that, for technical reasons, cannot be implemented without the Supplier also changing its standard platform or standard services that are also supplied to other customers.

In Appendix 6, the Parties may agree other or further limitations to the Customer’s right to request changes.

## Change management

Change management shall be in accordance with the procedure and deadlines specified in Appendix 6.

The Supplier shall draw up an impact assessment based on the Customer’s change request. Unless otherwise agreed, the impact assessment shall cover the points specified in Appendix 6 concerning change management.

The change request shall be approved by an authorised representative of the Parties. The Supplier shall keep an ongoing directory of amendments, which shall constitute Appendix 9, and shall provide the Customer with an updated copy without delay.

The provisions set out in this Agreement shall also apply to change work, unless something else is expressly stated in the change request.

Unless otherwise agreed, the Supplier shall implement the change in accordance with the change request without undue delay. This shall also apply if the impact of the change request on the payment, etc., plans or other conditions of the Agreement is yet to be finally determined, see Section 3.4.

## Costs and other consequences of changes

The Supplier shall be entitled to request changes to payment, the progress schedule or other circumstances caused by the Customer’s request for change.

If the change is to be implemented during the establishment phase, any impact on the detailed plan for the establishment phase must be examined (cf. Section 2.3.2.2). If such an assessment finds that the implementation of the change would lead to delays in relation to the detailed plan for the establishment phase, the Supplier may request an adjustment to the plan.

In the event that the preparation of a change estimate requires adjustments to the progress plan in Appendix 4 or the detailed plan for the establishment phase, the Supplier may request adjustments to the plan(s).

Documented costs incurred in connection with the preparation of the Supplier’s assessment report shall be covered by the Customer in accordance with the Supplier’s applicable hourly rates, see Appendix 7. If standard prices have been specified in Appendix 7 concerning the preparation of assessment reports, the Supplier shall not be entitled to have additional costs covered unless the Customer has pre-approved a more extensive estimate in writing.

Changes to the price shall be calculated based on the hourly rates or other unit rates specified in Appendix 7, provided the change work is largely similar to works for which hourly rates or unit rates have been established.

If the adjustment of the price cannot be calculated based on hourly rates or unit rates specified in Appendix 7, the Supplier’s assessment report shall include the presentation of a quote for any additions or deductions arising from the changes. The quote shall reflect the general price level of this Agreement.

In the event that the changes requested would generally result in changes to the agreed start-up date or delivery date, the Supplier shall, as far as practically possible, strive to accelerate the implementation to meet the agreed delivery date. Acceleration shall be considered a change that must be considered in accordance with the rules set out in Chapter 3.

In its assessment report, the Supplier shall document all costs associated with the change, including any adjustment to prices for other services affected by the change and an estimate of the Supplier’s hours.

## Disagreement concerning the impact of a change

If the Parties agree that there is a change, but disagree about the impact and costs associated with the change, the Customer shall pay a preliminary price calculated in accordance with the rules set out in Section 3.3.

If no decision from an independent expert or mediator has been requested and no legal action has been brought in relation to the change work within 6 (six) months of the delivery date or the date on which notice of termination or cancellation was received by the Supplier, the price paid shall be considered final.

The Supplier shall provide collateral for the disputed part of the price or elect to receive half of the disputed price until the time at which the price is considered to have been finally determined.

## Disagreement over whether a change exists (disputed change)

### Disagreement over whether a change exists - general

If an authorised representative of the Customer requests that specific work be performed by way of an instruction, specification or otherwise and the Supplier believes that such work is not part of its obligations under the Agreement, the Supplier shall request, in writing, that the Customer issues a change request.

Together with the request for a change request, the Supplier shall also provide the Customer with an assessment of relevant risks and change impact and provide a price estimate (change estimate) in accordance with Section 3.2. Any costs incurred in connection with the preparation of the change estimate shall be covered by the Customer if the Supplier’s request for a change request is upheld.

If the Supplier fails to submit a request for a change request within a reasonable period of time, the work shall be considered to form part of the Supplier’s obligations under the Agreement and the Supplier shall lose its right to invoke the work as grounds for deadline extensions, additional payment or compensation until such a time that a request for a change request is submitted. Nevertheless, such requests shall be submitted within 6 (six) months of the work commencing.

### Disputed change requests

If the Supplier has requested that the Customer issues a change request in accordance with Section 3.5.1, the Customer shall issue a change request pursuant to Section 3.3 or waive the claim in writing within a reasonable period of time.

If the Customer disputes that a change request can be requested, the Customer shall expressly state that the change request is disputed (disputed change request). The change request shall include a justification of why the Customer considers the change request to be disputed.

### Consequences of a disputed change request

Even if a change request is disputed, the Supplier shall still have an obligation to implement the requested change in exchange for the Customer paying a preliminary payment corresponding to half the amount the Supplier believes it is entitled to receive. If the Supplier does not request a decision on the disputed change in accordance with Section 3.6 of the Agreement within 3 (three) months of the payment having been made or if the work is found to fall within the scope of the contract, the preliminary payment shall be offset in the subsequent payment milestone. If the work is considered a change, the determined price for the change, corrected for the preliminary payment, shall be incorporated into the ordinary payment schedule.

### The Supplier’s right to dispute the obligation to implement a disputed change request

The Supplier may dispute the obligation to implement work by requesting a decision from an independent expert or mediator, bringing legal action before the courts or bringing the dispute for arbitration to reach a final decision on the claim, cf. Chapter 16.

The claim shall be brought without undue delay after the Customer has reported that the change is disputed. The Supplier shall bear the risk of any consequences that may arise as a result of deferred work if it is determined that the work is covered under the Agreement. The exception in this section shall not apply to work linked to services of significance to life and health or the delivery of services that are critical to society.

## Dispute resolution – disputed change requests

If the Supplier has received a disputed change request, the Supplier shall, within 6 (six) months of receiving the disputed change request, either demand a decision from an independent expert or mediator, bring legal action or bring the dispute for arbitration in order for its claim to be finally settled, cf. Chapter 12. The work shall otherwise be deemed to form part of the Supplier’s obligations under the Agreement.

# Duration , cancellation and temporary extension

## Duration

The Agreement shall enter into force on the date on which it is signed by the Parties.

The term of the Agreement shall include an establishment phase as specified in Appendix 4. The start-up date for ordinary operation shall be specified in Appendix 4.

Unless another duration has been agreed in Appendix 4, the Agreement shall remain in force for 3 (three) years from the start-up date for ordinary operation. The Agreement shall subsequently renew automatically for 1 (one) year at a time unless terminated by the Customer subject to a notice period of 6 (six) months or by the Supplier subject to a notice period of 12 (twelve) months before the renewal date.

## Cancellation

### Cancellation during the establishment phase

The Customer may cancel the operational service during the establishment phase subject to a written notice period of one (1) month.

In the event of such cancellation, the Customer shall pay the amount stipulated in Appendix 7 for cancellations during this phase or, if such an amount has not been stipulated:

1. the amount owed to the Supplier for the part(s) of the service that have already been completed during the establishment phase
2. the Supplier’s necessary and documented direct costs linked to redistribution of personnel
3. other documented direct costs incurred by the Supplier as a result of the cancellation, including expenses and costs, that the Supplier incurred before the cancellation was received and that the Supplier cannot otherwise utilise in other contexts.

The total cancellation fee for work and restructuring costs during the establishment phase cannot exceed the payment agreed for work during the establishment phase in Appendix 7.

### Cancellation during ordinary operation

Subject to a written notice period of 3 (three) months, the Customer may also cancel the operational service in part or in full during the initial three-year period.

In the event of such cancellation, the Customer shall pay the amount specified in Appendix 7 or, if such an amount is not specified, the Customer shall pay:

1. the amount owed to the Supplier for the part of the operational service already completed,
2. the Supplier’s necessary and documented direct costs linked to redistribution of personnel,
3. other documented direct costs that the Supplier incurs as a result of the cancellation, including expenses and costs, incurred by the Supplier prior to cancellation and that the Supplier cannot utilise in other contexts, and
4. a cancellation fee equal to 4% of the annual fee.

In the event of partial cancellation, the cancellation fee shall be calculated based on the cancelled part’s share of the contract price. The consequences of partial cancellation for the outstanding parts of the delivery, including the impact on the contract price, shall be managed in accordance with the provisions set out in Chapter 3.

## Temporary extension of the Agreement

The Supplier shall be obliged to extend the Agreement on equal terms for up to 6 (six) months after the expiration of the Agreement if requested by the Customer. The Customer shall issue the Supplier with notice of such a request no later than 60 (sixty) days before the expiration of the Agreement. The Supplier shall be entitled to a proportionate payment for operational services during the extension period.

If the Customer terminates the Agreement due to breach on the part of the Supplier, such aforementioned notice may be provided at the same time as notice of termination. If the termination of the Agreement is due to the Supplier terminating due to breach on the part of the Customer, such notice may be provided within 1 (one) week of the Customer receiving notice of termination. In these cases, the Customer’s right to an extension shall be subject to the Customer making advance payment for the extended period as specified in the first paragraph above.

Sections 2.5 and 4.3 shall apply correspondingly in the event of partial cancellation pursuant to Sections 4.2.1 and 4.2.2.

# The Parties’ obligations

## Overall responsibilities

### The Supplier’s responsibility for the delivery – general

The Supplier shall be responsible for ensuring that the overall delivery (the complete solution) covers the functions and requirements specified in the Agreement.

Any requirements for the Supplier to adhere to specific standards or quality systems shall be specified in Appendix 1. The same shall apply to requirements for the Supplier to document how standards or quality systems are adhered to.

In connection with establishment, testing and operation, the Supplier shall be responsible for coordinating and managing the work between different stakeholders/suppliers of significance to the operational service. The coordination tasks have been described in further detail in Appendix 1.

In the event that the operational services include the use of cloud services or other standard deliveries from manufacturers with which the Customer has entered into separate agreements, the Supplier’s liability shall be limited to following up on such agreements with manufacturers, including complying with any information security requirements. The same shall apply if the Customer has expressly accepted such a limitation to the Supplier’s liability for standard deliveries supplied by manufacturers and included as part of the operational service but with which the Supplier entered into the agreement. In this case, the standard terms and conditions in question shall be expressly specified in a separate chapter in Appendix 2 and copies of the terms and conditions of agreement shall be enclosed as Appendix 10.

### The Customer’s responsibilities and contributions

The Customer shall not carry out any operational tasks that shall be carried out by the Supplier’s authorised personnel under the Agreement.

The Customer shall facilitate the Supplier performing its duties, for example by providing the Supplier with the necessary access, physically and/or electronically. Further requirements relating to the Customer’s contributions can be specified in Appendix 2.

## Requirements relating to resources and expertise

### The Supplier’s responsibilities for its resourcees

The Supplier shall ensure that personnel undertaking operational services have the necessary expertise and have received adequate training on the content and service level of the operational service.

###  Key personnel

Resources specified as key personnel in Appendix 6 shall, within the framework of the Supplier’s management prerogative as an employer, not be replaced without the prior approval of the Customer. Such approval shall not be denied without justified grounds. The actual participation of key personnel in the implementation of the delivery cannot be reduced without the Customer’s prior approval.

###  Replacement of resources

Any personnel that the Customer, on justified grounds, does not wish to use or wishes to replace shall be replaced as soon as possible with other personnel with the same level of expertise as a minimum.

The replacement of personnel shall not affect project progress or incur increased costs on the part of the Customer. If progress is still affected, the matter shall be managed as a delay.

### The Customer’s responsibilities for its resources

The Customer shall ensure that the Customer’s resources responsible for contributing to the implementation of the delivery have the necessary expertise. Any special expertise requirements shall be specified in Appendix 2.

## Use of subcontractors and third parties

### The Supplier’s use of subcontractors

If the Supplier uses a subcontractor that contributes directly to the delivery of the Supplier’s services under this Agreement, the Supplier shall be fully responsible for the execution of the subcontractor’s duties as though the Supplier was executing the duties itself. The Supplier’s subcontractors that have been approved by the Customer are listed in Appendix 6.

The Supplier cannot replace subcontractors that contribute directly to the delivery of the Supplier’s services without the prior written consent of the Customer, unless otherwise agreed in Appendix 6.

Groups of subcontractors or services from subcontractors may be approved, i.e. the Customer may elect to pre-approve the use of other data centres within the EU/EEA.

The Customer cannot refuse such replacements without justified grounds.

### The Customer’s use of third parties

The Customer shall be free to engage third parties for assistance in connection with the execution of its duties under this Agreement. The Customer shall be fully responsible for the execution of these duties in the same way as if the Customer itself was executing these duties.

The Customer’s third parties are listed in Appendix 6. The Supplier shall be notified of any changes to or selection of new third parties on the part of the Customer.

The Supplier shall be required to collaborate with the Customer’s third parties to the extent deemed necessary for the execution of this Agreement. Any provisions relating to payment for the Supplier’s collaboration with the Customer’s third parties shall be stipulated in Appendix 7.

Nevertheless, the Supplier shall be relieved of such duties if it can demonstrate that such collaboration would entail a significant disadvantage to its existing subcontractors or other business associates or it can demonstrate that this would entail a significant business disadvantage on the part of the Supplier.

## Disclosure and notification requirement

The Supplier shall provide the Customer with information of a preventive nature relating to any special factors associated with the operational service that may be of importance in avoiding error situations, downtime and losses. The Supplier shall also be subject to a notification requirement in the event that there is a risk of such situations occurring.

## Access to information

The Supplier shall provide the Customer with access to such information about operations that the Customer requires access to due to legislative, regulatory and statutory requirements.

## Meetings

Regular meetings shall be convened between the Customer’s and Supplier’s contact persons during the contract period. The frequency, notice requirements, the Parties’ participants and meeting types shall be agreed in Appendix 6.

If there is a need to discuss matters relating to the contractual relationship and the way in which the Agreement is implemented that cannot await the next scheduled meeting, either Party shall be entitled to convene a meeting with the other Party, subject to a notice period of 3 (three) working days.

## Pay and working conditions

### General

The following shall apply to agreements subject to the regulations of 8 February 2008 no. 112 on pay and working conditions in public contracts:

1. In areas covered by the regulations on general collective agreements, the Supplier shall ensure that its own employees and employees of any subcontractors that contribute directly to the fulfilment of the Supplier’s obligations under this Agreement do not have worse pay and working conditions than what follows from the regulations under which the collective agreement has been applied.
2. In areas not covered by the regulations on general application of collective agreements, the Supplier shall ensure that the same employees do not have worse pay and working conditions than what follows from the applicable nationwide collective agreement for the industry in question.

This applies to work performed in Norway.

All agreements entered into by the Supplier that involve the execution of work that contributes directly to the fulfilment of the Supplier’s obligations under this Agreement shall include corresponding conditions.

### Documentation

Upon written request from the Customer, the Supplier shall submit documentation of the pay and working conditions that are applied. The Customer and Supplier may separately require that information be presented to an independent third party that the Supplier has commissioned to examine whether the requirements set down in this provision have been met. The Supplier may require the third party to have also signed a declaration stating that the information shall not be used for purposes other than ensuring the fulfilment of the Supplier’s obligations under this provision. This documentation requirement shall also apply to subcontractors.

Upon written request and subject to a reasonable deadline, the Supplier shall be required to document the pay and working conditions of its own employees, as well as any subcontractors’ employees (including contractors) who directly contribute to the fulfilment of the contract.

In the event of a breach of the documentation duty, the Customer shall be entitled to impose a daily penalty that shall not be less than NOK 1,500 per day. Higher daily penalties can be agreed in Appendix 6.

### Non-compliance

In the event of non-compliance with the requirements relating to pay and working conditions, the Supplier shall remedy the matter. In the event of non-compliance on the part of a subcontractor (including staffing companies), the duty to remedy shall be limited to any requests submitted in writing within three months of the salary due date for claims arising both under general collective agreements and nationwide collective agreements. The conditions and limitations arising from Section 13 of the act relating to general application of wage agreements etc. of 4 June 1993 shall apply in both cases.

If the Supplier fails to comply with this requirement, the Customer shall be entitled to withhold parts of the contract sum, corresponding to 2 (two) times the Supplier’s saving. The right to withhold shall lapse as soon as remediation pursuant to the previous paragraph has been documented.

Compliance with the Supplier’s requirements as mentioned above shall be documented in Appendix 6. If documentation has been submitted before an independent third party, a statement from the third party may be accepted as documentation of compliance between the collective agreement in question and the actual pay and working conditions to demonstrate compliance with the Supplier’s and any subcontractors’ obligations.

Further details concerning the implementation of this Section 5.7 may be agreed in Appendix 6.

## Duty of confidentiality

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

If the Customer is a public sector enterprise, the Customer’s duty of confidentiality under this provision shall be no more extensive than what arises from the Act of 10 February 1967 on public administration (Public Administration Act) or equivalent sector-specific regulations.

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

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

The duty of confidentiality shall lapse five (5) years after the termination of the Agreement, unless otherwise agreed in Appendix 6 or stipulated by laws or regulations.

## Written form requirements

All notifications, claims or other messages linked to this Agreement shall be issued in writing to the postal address or electronic address specified in Appendix 6 for the enquiry type in question.

# Payment and terms of payment

## Payment

All prices and further terms and conditions for the payment due from the Customer for the delivery shall be specified in Appendix 7.

Expenses, including travel and per diem expenses, shall be covered only to the extent agreed. Any such agreed travel and per diem expenses shall be specified separately and shall be covered in accordance with the government’s applicable rates, unless otherwise agreed. Travel time shall be covered only if agreed in Appendix 7.

Unless otherwise specified in Appendix 7, all prices shall be stipulated in Norwegian kroner, exclusive of value-added tax but inclusive of customs duties and other taxes.

## Invoicing

Payment shall take place within 30 (thirty) days of receipt of invoice. The Supplier’s invoices shall be itemised and documented so that the Customer can easily verify the invoice in relation to the agreed payment. All invoices for hours elapsed shall be accompanied by a detailed specification of the hours accrued. Expenses shall be specified separately.

If the Customer is a public sector enterprise, the Supplier shall be required to use electronic invoicing in an approved standard format in accordance with the regulations dated 2 April 2019 concerning electronic invoicing in public procurements.

If the Supplier is unable to fulfil the requirements concerning the use of electronic invoices, the Customer may withhold payment until an electronic invoice in an approved standard format is submitted. The Customer shall notify the Supplier of this without undue delay. If such a notification has been issued, the payment deadline shall run from the date on which the electronic invoice is submitted in an approved standard format.

If the information contained in the invoice or invoice specification includes information that is subject to statutory confidentiality and there will be a risk of disclosure of such information, the electronic invoice requirements may be waived, unless there are satisfactory technical security solutions that can ensure that confidentiality is maintained.

The Supplier shall bear any costs associated with electronic invoicing itself.

The payment schedule and other terms of payment shall be specified in Appendix 7.

## Interest on overdue payment

If the Customer fails to make payment at the agreed time, the Supplier shall be entitled to interest on the amount overdue for payment pursuant to the act of 17 December 1976, no. 100 relating to interest on overdue payments, etc.

## Payment default

If overdue payment plus interest is not made within 30 (thirty) days of the due date, the Supplier may issue written notice to the Customer that the Agreement will be terminated if settlement has not been made within 60 (sixty) days of the notice having been received.

The Agreement cannot be terminated if the Customer settles the overdue payment plus interest by the expiration of the deadline.

## Price changes

### Index adjustment

The prices for the operational service and hourly rates for services can be changed at the end of each year in accordance with the increase in Statistics Norway’s consumer price index (the total index), initially based on the index for the month in which the Agreement was entered into, unless another index has been agreed in Appendix 7.

### Changes to public fees

The Supplier’s prices can also be changed to the extent that rules or decisions on public fees are changed with effect on the Supplier’s payment or costs. The Supplier must submit and document such requirements in writing.

# External legal requirements, data protection and security

## External legal requirements and initiatives – general

In Appendix 1, the Customer shall identify any legal or party-specific requirements that are of relevance to the conclusion and execution of this Agreement. The Customer shall be responsible for specifying relevant functional, safety and security requirements applicable to the delivery in Appendix 1.

In Appendix 2, the Supplier shall describe how the Supplier will comply with these requirements in its solution.

Each Party shall be responsible for following up on its respective duties pursuant to such legal requirements.

In general, each Party shall cover the costs associated with legal requirements relating to the Party and its activities. In the event of changes to legal requirements or statutory requirements relating to the Customer’s business activities that entail a need for changes to the delivery after conclusion of the Agreement, any costs incurred in connection with changes and additional work shall be covered by the Customer, cf. Chapter 3.

## Information security

### General information about information security

The Supplier shall take proportionate measures to fulfil the requirements relating to information security in connection with the implementation of this Agreement.

This means that the Supplier shall take proportionate measures to ensure the availability and confidentiality of the Customer’s data, as well as measures to ensure that data does not end up in the hands of unauthorised parties. The Supplier shall take proportionate measures to prevent accidental alteration and deletion of data, as well as measures to prevent attacks from viruses and other malware.

The Supplier shall ensure that suppliers of third-party deliveries carry out adequate and necessary protection of the Customer’s data.

If the Customer has further requirements for information security management on the part of the Supplier, these shall be specified in Appendix 1.

### The Supplier’s obligation to keep the Customer’s data separate

Unless otherwise agreed in Appendix 1, the Supplier shall have a duty to keep the Customer’s data separate from any data belonging to other parties in order to reduce the risk of data corruption and/or unauthorised access in connection with the delivery of the operational service.

Separate shall be understood to mean taking necessary technical measures to secure data against unwanted alteration and access. Access by the Supplier’s employees or others that do not need the information for their work for the Customer shall also be considered unwanted alteration and access.

If the Customer wishes to impose further requirements relating to how the Supplier must comply with the requirement relating to data separation, this must be specified in Appendix 1.

## Personal data

### Duty to enter into data processing agreements

If the Supplier will process personal data on behalf of the Customer, the Customer and Supplier shall be required to enter into a data processing agreement in accordance with the general data protection regulation (GDPR) and any sector-specific personal data legislation relevant to the Supplier’s activities.

A draft data processing agreement has been enclosed as Appendix 11. If a separate data processing agreement is entered into between the software manufacturer and the Customer, this shall be explicitly specified in Appendix 10 and any data processing agreements included as part of standard terms and conditions for the maintenance of third-party software shall apply.

The data processing agreement shall be entered into before any processing of personal data may commence.

### Other duties

#### General

Personal data that is processed under this Agreement shall not be entrusted to other parties for storage, processing or deletion without the prior special or general written consent of the Customer. Pre-approved subcontractors shall be specified in Appendix 6.

The Supplier shall ensure that any subcontractors used by the Supplier that process personal data assume corresponding obligations to those set out in this provision.

Personal data shall not be transferred to countries outside the EU/EEA without a legal basis for transfer and documentation demonstrating that the conditions for the application of the basis for transfer have been met. In such cases, this shall be documented by the Supplier in Appendix 11.

#### Compensation resulting from GDPR violations

The Parties’ liability for damages that affect data subjects or other natural persons and that result from violation of the GDPR (Regulation 2016/679), the Norwegian Personal Data Act and regulations or other regulations that implement the GDPR shall be in accordance with the provisions of Article 82 of the GDPR.

The limitation of liability in 9.6.2 shall not apply to liability resulting from Article 82 of the GDPR.

The Parties shall be individually liable for administrative fines imposed in accordance with Article 83 of the GDPR.

# Rights of ownership and use

## The Parties’ rights

### General information about the Parties’ rights

This Agreement shall not affect the copyright, right of use or ownership held by the Parties prior to the implementation of the Agreement and that they retain during the implementation of the Agreement, unless otherwise specified below or in the appendices.

### The Customer’s rights of use

The Customer shall be granted limited right of use to all equipment and software provided to the Customer by the Supplier in connection with the delivery of the service. The right of use shall include all remedies necessary for use of the service in accordance with the purposes of the Agreement.

The copyright of either Party shall not preclude the other Party from utilising the coordination plan. Nevertheless, this shall not apply to the parts of the coordination plan that are subject to a duty of confidentiality.

## Associated responsibilities

Each Party shall be responsible for ensuring that they hold the necessary authorisations and rights, etc. to hardware, infrastructure, software and documentation used under this Agreement.

If either Party wishes to utilise equipment or software, etc. that the Party does not own or hold rights to, the Party shall ensure that the necessary authorisation in the form of underlying agreements with the owner or rightsholder is available before such equipment or software, etc. can be used for operations pursuant to this Agreement.

In the event of any modifications, improvements or similar in connection with the services under this Agreement, the Supplier shall be responsible for ensuring that the Customer is granted the right of use necessary for equipment and software to still be used without prejudice to the copyright or other rights of others.

## Rights to data

The Customer (and its rightsholders) shall retain the rights to all data that is collected, transferred, edited, stored or otherwise processed under this Agreement. The same shall apply to the results of the processing of such data.

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

Under no circumstances shall the Supplier be entitled to exercise withholding rights relating to the Customer’s data.

# Breach of contract

## What is considered breach of contract

### The Supplier’s breach of contract

A breach of contract on the part of the Supplier shall be deemed to exist if the operational service is not in accordance with the agreed functions, requirements and deadlines. A breach of contract shall also be deemed to exist if the Contractor fails to fulfil other obligations under the Agreement.

Material breach shall be deemed to exist if the operational service and/or other factors for which the Supplier is responsible under this Agreement deviate significantly from what has been agreed or are significantly delayed.

Breach of contract shall not be deemed to exist if the situation is due to circumstances for which the Customer is responsible or force majeure.

The Customer shall lodge any complaints without undue delay after the breach of contract has been or should have been discovered.

### The Customer’s breach of contract

Breach of contract on the part of the Customer shall be deemed to exist if the Customer fails to fulfil its obligations under this Agreement.

However, breach of contract shall not be deemed to exist if the situation is due to circumstances for which the Supplier is responsible or force majeure.

The Supplier shall lodge any complaints without undue delay after the breach of contract has been or should have been discovered.

## Notification requirement

### The Supplier’s notification requirement

If the establishment project, cf. Section 2.3 or the ordinary operational service, cf. Section 2.4, or other of the Supplier’s services cannot be delivered as agreed, the Supplier shall notify the Customer in writing as soon as possible.

The notification shall specify the cause of the issue and, if at all possible, specify when the different parts of the operational service will be delivered or made available. The same shall apply if further delays must be expected after the initial notice has been issued.

### The Customer’s notification requirement

If the Customer is unable to fulfil its obligations under the Agreement, the Customer shall notify the Supplier of this in writing as soon as possible.

The notification shall specify the cause of the issue and, to the extent possible, specify when the Customer will be able to fulfil its obligations again. The same shall apply if further delays must be expected after the initial notice has been issued.

## The Supplier’s request for an extended deadline

The Supplier may request an extended deadline, which must be approved by the Customer in writing to be applicable. The Customer may impose requirements in connection with the granting of an extended deadline.

During the period in which the extended deadline is running, the Customer may not invoke any daily penalties, compensation or other remedies for breach of contract.

The extended deadline shall not affect the Customer’s right to daily penalties or compensation accrued before the extended deadline was granted.

## Remedial action in respect of breach of contract

### The Supplier’s remedial action in the event of breach of contract

The Supplier shall commence and complete the work to remedy the Supplier’s breach of contract without undue delay.

One goal of remediation shall be for the operational service or other obligations for which the Supplier is responsible under this Agreement to fulfil the agreed requirements and specifications and otherwise be in accordance with what was agreed. Remedial action may, for example, take place through repair, redelivery or additional deliveries.

If the Supplier fails to remedy the breach by the agreed deadline or if the terms for termination have been met, the Supplier shall cover the Customer’s expenses associated with remedial action performed by third-party suppliers. Nevertheless, the Customer may not use a third party to remedy breach of contract before the expiration of any extended deadline.

The Customer shall notify the Supplier in writing before the Customer engages a third-party supplier.

### The Customer’s remedial action in the event of breach of contract

The Customer shall commence and complete the work to remedy the Customer’s breach of contract without undue delay.

The Customer shall be responsible for remedying any breach of contract in such a way that any matters for which the Customer is responsible under this Agreement are in accordance with what was agreed.

## Sanctions in the event of breach of contract

### Price reductions

If the Supplier, despite repeated attempts at remediation, for example through repairs, redelivery or additional delivery, is still unable to remedy the breach of contract, the Customer shall be entitled to demand a proportionate reduction in price.

### Right to withhold

#### The Customer’s withholding of payment

In the event of breach of contract on the part of the Supplier, the Customer may withhold payment, but not obviously more than what is necessary to secure the Customer’s claims resulting from the breach of contract.

#### Limitations to the Supplier’s right to withhold

The Supplier may not withhold the operational service as a result of the Customer’s breach of contract unless the breach of contract is material.

Nevertheless, the Supplier cannot withhold the operational service if the Customer exercises its right to temporarily extend the Agreement subject to advance payment as specified in Section 4.3.

### Daily penalties

#### Basis for daily penalties

If the agreed start-up date or delivery date or another deadline to which the Parties have linked daily penalties in Appendix 4 is not met and this is not due to force majeure or circumstances for which the Customer is responsible, a delay shall be deemed to exist on the part of the Supplier that provides grounds for daily penalties.

If the Supplier is delayed in relation to the milestone ‘start-up date’ or later milestones to which the Parties have linked daily penalties, the later deadlines shall be deferred by the number of days for which daily penalties have been accruing. If, by accelerating, the Supplier manages to achieve delivery of the start-up date on the originally agreed date, any previously incurred daily penalties shall lapse.

Daily penalties shall be incurred automatically for each calendar day for which the delay persists, subject to a maximum limitation of 100 (one hundred) days. Other terms relating to daily penalties may be agreed in Appendix 4.

If only part of the agreed delivery is delayed in relation to a Delivery Deadline subject to daily penalties, the Supplier may request a reduction in the daily penalty relative to the Customer’s ability to utilise the parts of the agreed delivery that have been delivered.

#### Calculation of daily penalties

The daily penalty shall amount to 0.15% of the contract sum for the establishment phase, excluding value-added tax, for each calendar day for which the delay persists.

If the delay relates to a partial delivery, the daily penalty shall amount to 0.15% of the total payment (exclusive of value-added tax) for the partial delivery in question for each calendar day for which the delay persists, subject to a maximum limitation of 100 (one hundred) days per partial delivery.

If no price has been stipulated for the partial delivery in Appendix 7, the daily penalty shall be calculated based on the partial delivery’s relative share of the payment for the delivery as a whole.

Other daily penalty amounts, other calculation data and other daily penalty terms can be agreed in Appendix 4. Unless otherwise explicitly stated in Appendix 4, total daily penalties shall not exceed 15% of the total price of the delivery.

The Customer cannot terminate the Agreement while daily penalties are running. Nevertheless, this time limit shall not apply if the delay is due to the Supplier, or anyone for which the Supplier is responsible, having acted with wilful intent or gross negligence.

### Financial compensation for breaches of the agreed service levels

In the event of breaches of the agreed service levels, the Customer may claim financial compensation in accordance with the standardised rates agreed in Appendix 5.

If, despite repeated attempts, the Supplier has been unable to remedy inadequate operations, the Customer may demand a proportionate reduction in price.

### Termination

#### The Customer’s right to terminate

In the event of material breach of contract, the Customer may, after providing the Supplier with reasonable written notice to rectify the matter, terminate the Agreement in full or in part with immediate effect.

The Customer may terminate all or parts of the Agreement with immediate effect if the operational service is significantly delayed.

In the event of delays, material breach of contract shall be deemed to exist if delivery has not occurred when the maximum daily penalty limit has been reached or after the expiration of an extended deadline, if this occurs later. Significant delay shall also be deemed to exist if, after repeated remediation attempts, significant parts of the operational service are still not in accordance with the Agreement.

The Customer may terminate the Agreement for a partial delivery when the daily penalty period for the partial delivery in question has expired. If the delay is of such a nature that the delivery as a whole must be considered significantly delayed, e.g. because what has already been delivered or will be delivered later cannot be used without the elements covered under the right of termination, the Customer may terminate with effect for the entire delivery.

#### The Supplier’s right to terminate

In the event of payment default, the Supplier may terminate the Agreement if the Customer fails to settle the overdue payment within 60 (sixty) days of the Customer receiving the Supplier’s written notice pursuant to Section 6.4.

In the event of other material breach of contract, the Supplier may give the Customer written notice that the Agreement will be terminated if the Customer has not rectified the breach within 60 (sixty) days of receiving notice.

Termination may not take place if the Customer rectifies the breach before the expiration of the deadline.

### Termination settlement

In the event of termination during the establishment phase due to breach of contract on behalf of the Supplier, the Customer may claim repayment of what has already been paid, plus interest corresponding to NIBOR plus 1 (one) per cent from the time at which payment was made.

If termination takes place after the start-up date, the Supplier shall nevertheless be entitled to retain the operational service fee for the period during which the operational service has been in ordinary operation with the Customer, less any price reduction pursuant to Section 9.5.4(2).

In the event of termination during ordinary operation, the Supplier shall be entitled to payment for operational services contractually delivered until the termination date.

If it is necessary for the sake of the Customer’s business activities, the Customer shall also be entitled to utilise the operational services as agreed after termination but shall be required to find an alternative solution to replace the operational service as soon as possible. If the termination is due to breach of contract on the part of the Customer, the Supplier may require continued utilisation to be conditional upon the Customer providing adequate security. Sections 2.5 and 4.3 on extensions, termination or transfer of the agreement, etc. shall apply accordingly in the event of termination.

If required by the Supplier, all systems and all materials owned by the Supplier, in electronic or other formats, regardless of media, shall be returned, erased or destroyed securely. The Supplier may request confirmation from an independent auditor that this has taken place. If termination is due to breach of contract on the part of the Customer, the auditor’s fee shall be covered by the Customer. The fee shall otherwise be covered by the Supplier.

## Compensation

### The Parties’ claims for compensation

The Parties may claim compensation for any direct loss, including additional costs incurred by the Parties due to cover purchases, losses incurred due to additional work and other direct costs incurred in connection with delays, defects or other breach of contract arising from breach on the part of the other Party.

Daily penalties and standardised financial compensation agreed in Appendix 5 shall be deducted from any compensation payable for the same delay or incident.

Each Party shall, to the best of their ability, implement loss-mitigating measures in accordance with the general rules relating to loyalty in contractual relationships.

### Limitation of compensation

The Parties cannot claim compensation for indirect losses. Indirect losses include but are not limited to lost earnings of any kind, lost savings and claims from third parties, with the exception of any imposed liability for compensation pursuant to Section 10.4.

Loss of data shall be considered indirect loss, with the exception of additional costs incurred in connection with the reconstruction of data pursuant to Section 9.7 and other direct costs incurred by the Customer as a result of data loss.

Total compensation during the term of the Agreement shall be limited to an amount corresponding to the contract sum, excluding value-added tax.

Compensation for losses related to the establishment phase shall be limited to an amount corresponding to the contract sum for the establishment phase, excluding value-added tax.

The total compensation per calendar year for losses incurred after the delivery date shall be limited to an amount corresponding to the total annual payment for the operational service, excluding value-added tax.

If the Supplier or anyone for which it is responsible has displayed gross negligent or wilful intent, the aforementioned limitations shall not apply.

## Reconstruction of data

In the event of loss or destruction of data, the Supplier shall without undue delay restore and, if necessary, reconstruct such data.

To the extent that loss or destruction of data is due to factors for which the Supplier is responsible, restoration and reconstruction shall take place at no additional cost. Unless otherwise agreed in Appendix 1 and 2, the Supplier’s responsibility for costs shall be limited to restoring data from the latest security back-up, as well as responsibility for any additional costs incurred if the Supplier has failed to make security back-ups pursuant to the Agreement.

Costs related to the reconstruction of data after the latest security back-up under the Agreement can otherwise only be borne by the Supplier if the cause of data being lost is negligence on the part of the Supplier. If the reason for the loss of data indicates that the Customer shall pay for reconstruction, the Supplier shall clarify the scope with the Customer prior to work commencing. If reconstruction is necessary for the Customer’s solution to work in ordinary operation, work shall commence without undue delay while clarification of the scope is still ongoing.

If it is impossible for the Supplier to reconstruct data independently, data may, in some cases as mentioned above, be reconstructed in collaboration between the Parties or with the help of a third party. If the Customer’s personnel fully or partially undertake the reconstruction, the Supplier shall cover direct payroll costs and other direct costs incurred, as well as the Customer’s expenses and other direct costs if a third party is used for the work, as well as any other direct costs associated with reconstruction, to the extent that loss or destruction of data is due to circumstances for which the Supplier is liable.

In the event of loss or destruction of data due to circumstances for which the Customer is responsible, the Customer shall cover the Supplier’s documented additional costs incurred as a result of such circumstances. Nevertheless, this shall not apply if reconstruction is more difficult or time-intensive as a result of the Supplier not having adhered to the agreed procedures for security back-ups. In the event that the Customer shall cover the Supplier’s additional costs, the Supplier shall continuously inform the Customer of the costs incurred and the Customer shall be entitled to order the Supplier to suspend work on the reconstruction.

# Infringement of the intellectual property rights of others (legal defects)

## The Parties’ risk and liability relating to legal defects

Each Party shall bear the risk and liability for ensuring that its services do not infringe upon the copyright or other intellectual property rights of others. A legal defect shall be deemed to exist if the service leads to such infringement.

## Third-party claims

If a third party asserts to either Party that the service entails a legal defect, the other Party shall be notified in writing without undue delay.

The liable Party shall manage the claim at its own expense. The other Party shall provide reasonable assistance.

A party shall initiate and complete the work to rectify legal defects without undue delay by:

* 1. ensuring that the other Party can use the service as before, without infringing upon the rights of third parties, or
	2. providing another equivalent service that does not infringe upon the rights of others

In the event that the legal defect cannot be resolved as specified in the third paragraph, the Customer shall suspend any further use of the solution and delete the software components in question.

## Termination

A legal defect that is not rectified and that is of such a nature that it is of significant importance to the other party shall provide the affected party with the right to terminate the Agreement.

## Compensation of losses resulting from legal defects

A Party may lodge a claim for imposing full liability for compensation in respect of third parties and any legal costs, including the Party’s own costs associated with the management of the case. The Party may also claim compensation for other losses in accordance with the provisions set down in Section 9.6.

# Other provisions

## Insurance

### The Customer’s insurance

If the Customer is a public sector enterprise, the Customer shall be a self-insurer. The Customer shall take out the necessary insurance to cover any claims from the Supplier that arise in relation to the Customer’s risk or liability under this Agreement within the framework of general terms and conditions of insurance if the Customer is not a self-insurer.

###  The Supplier’s insurance

The Supplier shall take out the necessary insurance to cover any claims from the Customer that arise in relation to the Supplier’s risk or liability under this Agreement within the framework of general terms and conditions of insurance. This obligation shall be deemed to have been satisfied if the Supplier takes out liability and risk insurance on terms and conditions that are considered common within Norwegian insurance activities.

Upon request from the Customer, the Supplier shall describe and document any of the Supplier’s insurance that is relevant to the fulfilment of this provision.

## Transfer of rights and obligations

### The Customer’s transfer

If the Customer is a public sector enterprise, the Customer may transfer its rights and obligations under this Agreement to another public sector enterprise.

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

### The Supplier’s transfer

The Supplier may only transfer its rights and obligations under the Agreement subject to the written consent of the Customer.

This shall also apply if the Supplier is divided into multiple undertakings or if the transfer is made to a subsidiary or other undertaking within the same group, but not if the Supplier merges with another company. Consent shall not be refused without justified grounds.

If the Customer is a public sector enterprise, the Supplier’s right to transfer in the section above shall apply only if the new supplier meets the original qualification requirements, there are no other material changes to the contract and transfer does not take place for the purpose of circumventing the regulations relating to public procurements.

The right to remuneration under this Agreement may be freely transferred. Such transfer shall not relieve the transferring party from its obligations and liabilities.

## Bankruptcy, composition of debt, etc.

In the event that debt negotiations or composition of debt or bankruptcy proceedings are opened in connection with the Supplier’s activities or if other forms of creditor control apply, the Customer shall be entitled to terminate the Agreement with immediate effect, unless otherwise provided for in mandatory law.

## Force majeure

In the event of an extraordinary situation that falls outside the Parties’ control and that makes it impossible or disproportionately difficult to fulfil obligations under this Agreement and that must be considered force majeure under Norwegian law, the counterparty shall be notified of the matter as soon as possible.

The affected Party’s obligations shall be suspended for as long as the extraordinary situation persists. The other Party’s return service shall be suspended for the same period of time.

In force majeure situations, the counterparty may only terminate the Agreement subject to the consent of the affected Party or if the situation persists or is expected to persist for more than 90 (ninety) calendar days, calculated from the time at which the situation arose and then only subject to a notice period of 15 (fifteen) calendar days.

Each Party shall cover its own costs associated with the termination of the Agreement. The Customer shall pay the agreed price for the part of the service contractually delivered before the Agreement was terminated. The Parties may not raise any other claims against one another as a result of termination of the Agreement under this provision.

In connection with force majeure situations, the Parties shall have a mutual duty to provide information to each other regarding all matters that must be assumed to be of importance to the other Party. Such information shall be provided as soon as possible.

## Risk

Risk related to hardware, infrastructure and software shall be borne by the Party who physically holds the equipment or software or is in control thereof.

# Disputes

## Negotiations

In the event of any disputes between the Parties concerning the interpretation or legal effects of this Agreement, attempts should initially be made to resolve such disputes through negotiations.

In the event that such negotiations are not successful within 10 (ten) working days or another period agreed between the Parties, either Party may take the initiative to settle the dispute with the help of an independent expert or mediation.

## Independent expert

When entering into the Agreement, the Parties shall appoint an independent expert to be specified in Appendix 6, with the expertise deemed by the Parties to be most suitable in relation to the Agreement. If this has not been done, the Parties may agree to appoint an independent expert at the time of the dispute.

The Parties shall, in advance, choose either

1. to make the expert’s recommended solution binding or
2. to use the expert’s recommendation as the basis for finding a solution (advisory).

Further procedures for this work shall be determined by the independent expert in consultation with the Parties.

## Mediation

In the event that a dispute arising in connection with this Agreement cannot be resolved through negotiations, the Parties may attempt to resolve the dispute through mediation.

Mediation may also be carried out without the prior use of an independent expert.

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

## Court or arbitration proceedings

The Parties’ rights and obligations under this Agreement shall be determined in full by Norwegian law.

In the event that a dispute cannot be resolved through negotiations or mediation, either Party may request that the dispute be settled with final effect in the Norwegian courts.

The legal venue shall correspond to the Customer’s business address.

The Parties may alternatively agree that the dispute will be settled with final effect through arbitration.

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