

# Maintenance Agreement

## Agreement for the maintenance and servicing of equipment and software

Government Standard Terms and Conditions  
for IT Procurement  
SSA-V

## **Agreement for the maintenance and servicing of equipment and software**

**An agreement governing**  
(designation of the procurement)

**has been concluded by:**

\_\_\_\_\_  
(hereafter referred to as the Contractor)  
**and**

\_\_\_\_\_  
(hereafter referred to as the Customer)

**Place and date:**

\_\_\_\_\_

(Name of the Customer)

(Name of the Contractor)

\_\_\_\_\_  
Signature of the Customer

\_\_\_\_\_  
Signature of the Contractor

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

**Commencement date:**

\_\_\_\_\_

**Address(es) for delivery and installation**

\_\_\_\_\_

### **Communications**

All communications respecting this Agreement shall be addressed to:

On the part of the Customer:

Name

Position

Telephone

E-mail

On the part of the Contractor:

Name

Position

Telephone

E-mail

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## 1. GENERAL PROVISIONS

### 1.1 SCOPE OF THE AGREEMENT

The Agreement governs the provision of maintenance services by the Contractor to the Customer, as specified in more detail in the Appendices.

The Customer has, based on its purposes and needs, specified its requirements in Appendix 1 (Customer requirement specification). In Appendix 3, the Customer has described its technical platform, and specified the equipment and the software that are subject to maintenance under this Agreement. The Contractor has described its deliverables, based on the Customer requirement specification, in Appendix 2 (Contractor solution specification). If the Contractor is of the view that there are obvious errors, defects or ambiguities in the Customer requirement specification, the Contractor shall point this out in Appendix 2.

The scope and delivery of the deliverables are described in more detail in the Appendices included as part of the Agreement below.

The Agreement is means this general contractual wording, including Appendices.

### 1.2 APPENDICES TO THE AGREEMENT

All rows are to be ticked (Yes or No)	YES	NO
Appendix 1: Customer requirement specification		
Appendix 2: Contractor solution specification		
Appendix 3: Customer technical platform		
Appendix 4: Project and progress plan		
Appendix 5: Service level with standardised price reductions		
Appendix 6: Administrative provisions		
Appendix 7: Total price and pricing provisions		
Appendix 8: Change to the general contractual wording		
Appendix 9: Changes subsequent to the conclusion of the Agreement		
Other Appendices:		

### 1.3 INTERPRETATION – RANKING

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

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

1. The general contractual wording shall prevail over the Appendices.
2. Appendix 1 shall prevail over the other Appendices.

3. To the extent that it is clearly and unequivocally specified which Clause or Clauses have been changed, replaced or supplemented, the following principles of precedence shall apply:
  - a) Appendix 2 shall prevail over Appendix 1.
  - b) Appendix 8 shall prevail over the general contractual wording.
  - c) If the general contractual wording refers to changes to any other Appendix than Appendix 8, such changes shall prevail over the general contractual wording.
  - d) Appendix 9 shall prevail over the other Appendices.

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

Changes to the deliverables subsequent to the conclusion of the Agreement shall be made in accordance with the procedures in Chapter 3.

#### **1.5 DEFINITIONS**

**Maintenance** means changes to a system to rectify errors or improve the deliverables.

**Servicing** means the physical preventative or restorative maintenance of computer equipment

**User support** means assistance with user problems, whether due to errors or inadequate knowledge on the part of users.

**Service level** means the more detailed regulation of the content, scope and characteristics of the maintenance deliverables, as well as how to measure the extent to which the services provided are in accordance with those agreed.

**Upgrade** means the installation of a more recent version, the scope of which may be major or minor, of an operating system and/or other software.

#### **1.6 RELATIONSHIP TO CONTRACTUAL AND STATUTORY WARRANTIES**

The Contractor is not entitled to (another) payment in respect of any issues that are covered by contractual or statutory warranties associated with another agreement existing between the Contractor and the Customer.

The Customer shall inform the Contractor of relevant contractual and statutory warranties enjoyed by the Customer on the basis of an agreement with a different provider. If an issue arises that is covered by such contractual or statutory warranties, the Contractor shall, at its own behest, notify the Customer thereof, and the Customer shall, without undue delay, decide whether it will approach the provider that is liable under the contractual and statutory warranty, or request the Contractor to perform maintenance and servicing pursuant to this Agreement. Any additional payment shall be agreed specifically in the particular case. In such a case it is irrelevant to the Contractor whether or not the Customer holds any claim in relation to another provider.

#### **1.7 THE REPRESENTATIVES OF THE PARTIES**

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

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

### **2.1 ESTABLISHMENT OF THE MAINTENANCE SERVICES**

The establishment of the maintenance services shall be organised as a project, with one project organisation on the part of the Customer and one on the part of the Contractor. The Contractor shall prepare, in dialogue with the Customer, a project plan with a description of the purpose, organisation, activities, detailed plans concerning progress, etc., of the establishment project. The project plan shall include a description of roles and responsibilities, as well as a progress plan with defined milestones, which shall be based on the general progress plan in Appendix 4.

The Contractor shall give written notice to the Customer when all preparations have been completed and the maintenance services are ready to commence, cf. Clause 11.5.3.

### **2.2 DOCUMENTATION OF THE MAINTENANCE SERVICES**

The Contractor shall prepare and keep updated a specification of the maintenance deliverables, to be labelled the maintenance documentation, containing all information concerning the maintenance deliverables that is of relevance to the Customer. All changes shall be logged, and the Contractor shall be responsible for keeping the change log updated and for updating relevant parts of the maintenance documentation without undue delay after the implementation of a change. Changes to the configuration as the result of debugging, upgrades, etc., which do not influence the functional content of the deliverable shall also be documented. This may be achieved in the form of updates to systems overviews or similar.

The Contractor shall, on a regular basis, provide the Customer with readily understandable documentation that describes, in a manner satisfactory to the Customer, what maintenance and what servicing has been performed.

The Contractor shall update systems and user documentation if this is necessary as the result of maintenance carried out. The updates shall be made available to the Customer without undue delay.

More detailed documentation requirements are set out in Appendices 1 and 2.

### **2.3 USER SUPPORT**

If the Agreement comprises user support, such services shall be described in Appendix 1 and/or Appendix 2. Administrative procedures shall be described in Appendix 6. If only named persons are to be authorised to request user support, this shall be made clear in Appendix 6, with their names and contact details. If the Contractor guarantees a response within certain time limits, this shall be made clear in Appendix 5. If such time limits are not complied with, the Customer may demand compensation as stipulated in Appendix 5.

Unless otherwise agreed in Appendices 1 and 2, user support shall be available on working days from 8.00 a.m. until 4.00 p.m. By working days are meant all days that are neither Saturdays, Sundays or public holidays, nor Christmas Eve or New Year's Eve.

### **2.4 NOTIFICATION OF ERRORS**

The procedure for notifying errors shall be set out in Appendix 6.

The Customer shall notify any errors without undue delay. If such notices are only to be given by named persons on the part of the Customer, this shall be set out in Appendix 6, together with their names and contact details. The Contractor shall assist with rectifying the error within the framework defined in Appendix 5, and pursuant to the procedures set out in Appendix 6. If agreed time limits are not complied with, the Customer may demand a price reduction as stipulated in Appendix 5.

Unless otherwise agreed, the errors shall be categorised in the following manner:

<b>Level</b>	<b>Category</b>	<b>Description</b>
<b>A</b>	Critical error	- Error that results in the stoppage of the system, the loss of data, or in other functions that are of critical importance to the Customer not working as agreed. - The documentation being incomplete or misleading, and this resulting in the Customer being unable to use the system or material parts thereof.
<b>B</b>	Serious error	- Error that results in functions of importance to the Customer not working as agreed, and which it is time-consuming or costly to avoid. - The documentation being incomplete or misleading, and this resulting in the Customer being unable to use functions that are of importance to the Customer.
<b>C</b>	Less serious error	- Error that results in individual functions not working as intended, but which can be avoided with relative ease by the Customer. - The documentation being incomplete, imprecise or easily misunderstood.

## **2.5 RECTIFICATION OF ERRORS**

Unless otherwise agreed, the Contractor shall commence the identification and rectification of errors without undue delay. The Contractor's effort to rectify A-errors shall be pursued continuously from the receipt of notice of the error until such error has been rectified. The Customer shall on a regular basis receive feedback as to the status for rectification of A- and B-errors.

## **2.6 SOFTWARE PATCHES**

The Contractor shall, as far as the software specified in Appendix 3 is concerned, give the Customer access to the patches released on a periodical basis.

The Customer shall install the supplied patch, etc., as soon as possible. The Contractor shall provide the Customer with instructions as to how the patch is to be installed. Time limits and procedures shall be set out in Appendix 5 or Appendix 6.

If the Contractor is responsible, pursuant to Appendix 1 or Appendix 2, for installing patches, etc., such installation shall take place on all units of the Customer's system that feature the relevant software and that fall within the scope of the Agreement. This shall be effected within a specific time limit if agreed in Appendix 5.



## **2.7 NEW VERSIONS**

New versions of software that is specified in Appendix 3 are comprised by the Agreement, unless otherwise stipulated in Appendices 1 and 2. When new versions of software are released, the Contractor shall send these to the Customer as soon as possible. If this is to be effected within a specific time limit, such time limit will be stipulated in more detail in Appendix 5.

When a new version of software is to be made available to the Customer, the Contractor shall, unless otherwise stipulated in Appendices 1 and 2, install such new version on all units requested by the Customer, provided that these fall within the scope of the Agreement. If this is to be effected within a specific time limit, such time limit will be stipulated in more detail in Appendix 5. The Customer may refuse the installation of a new version of the software if this entails the upgrading of the Customer's existing technical platform.

The Contractor is obliged to make new versions of any software, etc., comprised by the Agreement, cf. Appendix 1 and 2, available in a timely fashion, thus enabling the Customer to comply with the recommended upgrade schedule as far as new versions of the basic software and standard software, which are comprised in the Customer's technical platform, are concerned. Appendix 3 shall specify to which basic software and standard software this obligation applies.

If the Contractor chooses to rectify errors by delivering a new version of the software, the Contractor shall under no circumstance be entitled to any consideration in respect of the new version, even if it contains improvements. The Contractor may only rectify errors by way of the delivery of a new version if the Customer is able to utilise such new version on the Customer's existing technical platform.

New versions shall be delivered together with such documentation as is necessary to enable the Customer to prepare for the receipt and use of the deliverables as intended. More detailed documentation requirements may be set out in Appendices 1 and 2.

If the documentation is published, it shall be made available to the Customer, in the number of copies requested by the Customer, and at prices agreed in Appendix 7. If the Contractor is unable to make available the requested number of copies, or if the documentation is not published, the Customer may itself prepare copies for its own use. No consideration is payable in respect of such copies.

## **2.8 REPORTING**

If the service level applicable to the maintenance deliverables is agreed in Appendix 5, the Customer shall on a regular basis receive reports documenting that the deliverables are in conformity with the agreed level and specifying any deviations. Unless otherwise stipulated, the reporting shall take place on a monthly basis. The reporting shall address all material aspects of the regulation of the service level. The report shall specify how the measurement of the service level has been carried out. In addition, it shall contain the following:

- The number of reported errors, including a description thereof and specification of the response time and the amount of time elapsed before such errors had been rectified.
- Description of any upgrades and other changes made during the reporting period.
- If user support falls within the scope of the Agreement, the number of user support requests, including a description thereof and specification of the response times and outcomes.

### **3. CHANGES TO THE DELIVERABLES SUBSEQUENT TO CONCLUSION OF THE AGREEMENT**

#### **3.1 RIGHT TO CHANGE THE CONTENTS OF THE AGREEMENT (CHANGE TO THE DELIVERABLES)**

The Customer has the right to order changes, in the form of increases or reductions in the scope, nature, type, quality or delivery of the deliverables, as well as changes to the progress plan, provided that such changes fall within the scope of what the parties could have reasonably expected upon the conclusion of the Agreement.

However, the Contractor shall not be obliged to carry out additional work that represents, in aggregate, a net addition of more than fifteen (15) percent to the original annual contract price, other than in the case of a disputed change order pursuant to Clause 3.8.

If the overall consideration of the Contractor, net of all reductions and additions, is reduced by more than fifteen (15) percent of the original annual contract price, such reduction shall be dealt with as a partial cancellation, cf. Clause 4.2.

#### **3.2 CHANGE ESTIMATE**

The Contractor shall, within a maximum of ten (10) working days from receipt of a written request for a change, submit a study of potential risk and change consequences, as well as a price estimate. In the event of a request for major changes, the parties shall agree on an extension of the time limit with such number of days as is deemed to be reasonable.

At a minimum, the study shall include the following:

- a) description of the change
- b) description of the scope of work that needs to be carried out as a result of the change, and the time required for such work
- c) implications for the requirement specification and the solution specification
- d) implications for the requirements applicable to the Customer's technical platform
- e) implications for the contract price, with a detailed specification of the calculation basis, cf. Clause 3.5
- f) implications for the progress plan, cf. Clause 3.5

Documented costs in connection with the preparation of change estimates shall be carried by the Customer in accordance with the prices and terms applicable to supplementary work, cf. Appendix 7. If standard prices for the preparation of change estimates are set out in Appendix, the Contractor shall not be entitled to the reimbursement of any costs in excess thereof, unless the Customer has given its prior written approval of a larger estimate.

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

#### **3.3 CHANGE ORDERS**

If the Customer accepts the study and the price submitted by the Contractor, the Customer shall inform the Contractor, by issuing a change order, that the Customer wishes the change to be implemented. The change order shall be signed by the Customer.

Thereafter, the Contractor shall, within ten (10) working days of the Contractor receiving the signed change order, ensure that the change order is incorporated into the Agreement, with changes to specifications, the progress plan, the technical platform, as well as changes to the

contract price, being set out in the Agreement.

The changes shall be presented to the Customer for its approval.

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

### **3.4 DOCUMENTATION OF THE CHANGE**

Changes to the deliverables as referred to in Chapter 3 shall be made in writing, and shall be signed by an authorised representative of the parties. The Contractor shall maintain a directory of the changes on an ongoing basis, which directory shall form Appendix 9, and shall without undue delay provide the Customer with an updated copy thereof.

### **3.5 CONSEQUENCES OF CHANGE ORDERS**

If the Customer requires a change, the Contractor shall have the right to require adjustments to the contract price and progress plan or other matters, cf. Clause 3.2, caused by the change requirement of the Customer.

Adjustments to the contract price shall be calculated on the basis of the hourly charges or other unit prices set out in Appendix 7, provided that the work occasioned by the change is, in the main, similar to work for which hourly charges or unit prices have been specified.

In other cases than those mentioned in the preceding paragraph, the Contractor shall make an offer, specifying the additions or reductions resulting from the changes. The offer shall reflect the general price level of this Agreement.

If any changes and/or additions requested would, as a general rule, have resulted in an adjustment to the agreed commencement date, the Contractor shall, to the extent practicable, seek to accelerate implementation in order that the agreed commencement date may nevertheless be observed. In such a case, acceleration shall be deemed to constitute a change to be dealt with pursuant to the rules set out in Chapter 3.

The change order shall be implemented without undue delay when received by the Contractor. This shall apply irrespective of whether the effect of the change order in terms of the contract price, the progress plan or other terms and conditions of the Agreement have been finally resolved, cf. Clause 3.6.

### **3.6 DISPUTE CONCERNING THE CONSEQUENCES OF A CHANGE**

If the parties agree that there is a change, but disagree on the effect of such change as far as the contract price is concerned, the Customer shall pay a preliminary consideration calculated pursuant to the rules set out in Clause 3.5. If no ruling from an independent expert or mediator has been requested and no legal proceedings have been instituted in respect of the work occasioned by the change within six (6) months after the issuance of the change order, the consideration paid shall be deemed to be final. The Contractor shall provide security in respect of the consideration up to such date as the consideration is deemed to have been determined with final effect.

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

If the Customer requests, in the form of orders, specifications or otherwise, the performance of certain specific work that the Contractor believes to fall outside the scope of his obligations pursuant to the Agreement, the Contractor shall, in writing, request the Customer

to issue a change order.

Together with the change order request, the Contractor shall provide the Customer with a study of relevant risk and change consequences, as well as a price estimate (change estimate) pursuant to Clause 3.2. Costs in connection with the preparation of the change estimate shall not be covered by the Customer unless a change order is issued pursuant to Clause 3.3.

If the Contractor fails to make such request without undue delay, the work shall be deemed to form part of the Contractor's obligations pursuant to the Agreement, and the Contractor waives its right to invoke such work as grounds for extension of time limits, additional consideration or damages.

### **3.8 DISPUTED CHANGE ORDER**

If the Contractor has requested the Customer to issue a change order pursuant to Clause 3.7, the Customer shall, within a reasonable period of time, issue a change order pursuant to Clause 3.3, or issue a written waiver of the request.

If the Customer deems the work to form part of the deliverables, it shall be explicitly stated that the change order is disputed (disputed change order). The change order shall include an explanation as to why the Customer deems the change order to be disputed.

Although the change order is disputed, the Contractor shall be obliged to perform the work ordered, provided that security is provided by the Customer. The requirement for the providing of security shall not apply if the Customer is a Norwegian public body.

### **3.9 DISPUTE RESOLUTION – DISPUTED CHANGE ORDER**

If the Contractor has received a disputed change order, the Contractor shall, within six (6) months of having received the disputed change order, either request a ruling from an independent expert or mediator or institute legal proceedings or submit the dispute for arbitration in order to have its claim resolved with final effect, cf. Chapter 16. If the Contractor fails to do so, the work shall be deemed to fall within the scope of the Contractor's duties under the Agreement.

## **4. DURATION, TERMINATION WITHOUT CAUSE, DISCHARGE AND ASSIGNMENT OF THE AGREEMENT**

### **4.1 DURATION AND TERMINATION WITHOUT CAUSE**

The Agreement enters into force as of the date on which it is signed by the parties.

The agreement term includes an establishment phase, as described in Appendix 4. The commencement date for regular maintenance is specified in Appendix 4.

The Agreement shall be for a term of one (1) year as of the commencement date for regular maintenance, and shall thereafter be automatically renewed for one (1) year at a time, subject to a mutual right for the parties to terminate the Agreement without cause on three (3) months' written notice prior to the end of each period.

Nevertheless, the Contractor shall not be entitled to terminate the Agreement without cause during the initial three-year period.

Other regulations pertaining to duration, if any, may be agreed in Appendix 8.

More detailed provisions on the rights and obligations of the parties upon the termination of the contractual relationship are set out in Clause 4.3.

## **4.2 CANCELLATION**

The Customer may cancel, in whole or in part, the deliverables contracted under this Agreement giving one (1) month's written notice.

In the event of such cancellation, the Customer shall pay:

- a) Any amount due to the Contractor in respect of the part of the maintenance deliverables that has already been performed.
- b) The Contractor's necessary and documented direct costs in relation to the reassignment of personnel.
- c) Other documented direct costs incurred by the Contractor as the result of the cancellation, hereunder disbursements and costs that have been incurred by the Contractor prior to its receipt of the notice of cancellation, and which the Contractor is unable to make use of for other purposes.

In addition, the Customer shall pay a cancellation charge equal to the lower of:

- four (4) percent of the annual consideration, or
- six (6) percent of such part of the annual consideration as remains unpaid as per the cancellation date, and which has not been paid pursuant to Sub-clause a) above either.

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

In the event of partial cancellation, the cancellation charge shall be calculated on the basis of the share of the contract price accounted for by the cancelled items.

## **4.3 DISCHARGE OR ASSIGNMENT OF THE AGREEMENT**

### **4.3.1 The duty of the Contractor to assist**

Upon discharge of the Agreement, irrespective of the reason therefore, the Contractor shall, as part of the deliverables, make available the necessary services during the phase-out period, in order that necessary actions may be carried out with the minimum possible operational interruptions for the Customer.

The Contractor shall also assist the Customer in connection with the preparations for the conclusion of a new agreement, and shall provide such information as is necessary in connection with such preparations. The Customer may specify, in Appendix 1, what information is to be provided, as a minimum, by the Contractor in connection with such preparations, and when it shall be provided. The specification in Appendix 1 is not exhaustive.

The phase-out period shall last for up to six (6) months before and sixty (60) calendar days after the maintenance services have been established on the part of the Customer or a new contractor.

The Contractor shall make available personnel with the same competency and availability, and render services of the same quality, as defined and practised for corresponding services during the agreement term, in order that the maintenance services remain fully adequate until the Agreement comes to an end, whilst the Customer or any new maintenance contractor receives fully adequate support during the changeover process.

The Contractor is also obliged to contribute to the transfer of competency to the new maintenance organisation. Necessary assistance may, *inter alia*, include:

- Assistance in the planning of the changeover project
- Assistance with the final changeover to a different contractor

In addition, the Contractor shall, without undue delay, complete and update maintenance documentation for transfer to the Customer or a new provider, and shall, without undue delay, transfer to the Customer all equipment, software, documentation, data, back-ups and other materials that are in the possession of the Contractor and that belong to the Customer.

If the Customer is to be entitled to purchase equipment and software that have only been used for the Customer, the applicable prices and terms shall be set out in Appendix 7.

The Customer shall pay a consideration for the deliverables mentioned under this Clause pursuant to the Contractor's hourly charges as stipulated in Appendix 7 or, alternatively, pursuant to special prices applicable to such services as specified in Appendix 7. Nevertheless, the Customer shall not pay such consideration if the discharge of the Agreement was caused by a material breach of contract on the part of the Contractor.

For purposes of facilitating the potential sanctioning of inadequate deliveries in connection with the discharge of the Agreement, the Customer shall be entitled to withhold an amount corresponding to two (2) months' maintenance consideration for up to two (2) months after the expiry of the Agreement.

This Clause 4.3.1 shall apply correspondingly in the case of partial cancellation pursuant to Clause 4.2.

#### **4.3.2 Temporary extension of the Agreement**

The Contractor is obliged to extend the Agreement by up to six (6) months after the date of discharge of the Agreement, if thus requested by the Customer. The Customer shall give notice to such effect no less than sixty (60) days prior to the discharge of the Agreement. The Contractor shall be entitled to a proportional consideration for the duration of the extended term.

If the Customer terminates the Agreement for breach by the Contractor, notice as mentioned in the above paragraph may be given simultaneously with the notice of termination for breach. If the discharge of the Agreement results from the Contractor terminating for breach by the Customer, such notice may be given within 1 (one) week of the Customer having received the notice of termination for breach. The right of the Customer to an extension shall in these cases be conditional upon the Customer prepaying consideration for the extended term as stipulated in the above paragraph.

## **5. THE DUTIES OF THE CONTRACTOR**

### **5.1 THE RESPONSIBILITY OF THE CONTRACTOR FOR ITS PERFORMANCE**

The deliveries from the Contractor shall, in an integrated manner, serve the functions and meet the requirements specified in the Agreement.

The Contractor is responsible for ensuring that it holds the necessary authorisations and rights, etc., in relation to the software and equipment for which maintenance is to be provided.

The Contractor shall take all necessary precautions to prevent the Customer's equipment/software from being infected by viruses through the Contractor's deliverables pursuant to this Agreement. This includes responsibility for implementing updated virus scans and any countermeasures in relation to the maintenance and servicing where relevant.

### **5.2 REQUIREMENTS AS TO THE RESOURCES AND EXPERTISE OF THE CONTRACTOR**

The Contractor shall ensure that the personnel performing the maintenance and servicing has the necessary competency. The Contractor's key personnel are specified in Appendix 6.

Persons designated as key personnel in Appendix 6 shall not, within the scope of the Contractor's managerial prerogative as employer, be replaced without the prior approval of the Customer. Such approval shall not be unreasonably withheld. The actual participation of the key personnel in the provision of the services shall not be scaled back without the prior approval of the Customer.

Personnel that the Customer, for justifiable reasons, does not wish to use, or wishes to have replaced, shall as soon as possible be replaced by alternative personnel with at least corresponding expertise. Personnel replacements shall not affect the progress of the project or impose additional costs on the Customer.

### **5.3 USE OF SUBCONTRACTORS**

The Contractor's use and replacement of a subcontractor requires the written approval of the Customer. Approval shall not be unreasonably withheld.

Subcontractors that are approved shall be specified in Appendix 6.

### **5.4 COOPERATION WITH THIRD PARTIES**

The Contractor undertakes to cooperate with third parties to the extent that the parties deem this to be necessary for purposes of performing the duties stipulated in the Agreement. The scope and unit price applicable to such assistance, if any, are agreed in Appendix 6, and the overall consideration and payment terms are agreed in Appendix 7.

The Contractor shall in such a cases adopt an independent position, and act in consultation with the Customer.

However, the Contractor shall be released from the duties mentioned in this Clause if it demonstrates that it is probable that such cooperation would be of material disadvantage to

its relationship with existing subcontractors or other business contacts.

## **5.5 DISCLOSURE OBLIGATION**

The Contractor shall disclose to the Customer any special circumstances relating to its deliverables that may be of relevance in avoiding situations that result in errors, shutdown or loss.

## **5.6 WAGES AND WORKING CONDITIONS**

The following shall apply to agreements governed by the Regulations of 8 February 2008 No. 112 relating to Wages and Working Conditions under Public Contracts:

The Contractor shall ensure that employees in its own organisation and the employees of any subcontractors do not have wages or working conditions that are inferior to those stipulated by any applicable collective bargaining agreement or those that are normal for the relevant location and trade. This only applies to employees who contribute directly to the performance of the Contractor's obligations under the Agreement.

All agreements that are entered into by the Contractor and that involve the performance of work under this Agreement shall include corresponding obligations.

If the Contractor fails to meet this obligation, the Customer shall be entitled to retain part of the contract price, corresponding to approximately two (2) times the savings of the Contractor, until it has been documented that compliance has been achieved.

The Contractors shall, at the request of the Customer, disclose documentation relating to the relevant wages and working conditions. Each of the Customer and the Contractor may request that the information be submitted to an independent third party appointed by the Customer to examine whether the requirements of this provision have been complied with. The Contractor may request the third party to sign a declaration stating that the information will not be used for any other purpose than ensuring compliance with the obligations of the Contractor under this provision. The disclosure obligation shall apply to subcontractors as well.

If an independent third party concludes that the requirements under these provisions are not complied with, and this is disputed by the Contractor, the Customer may request the Contractor and its subcontractors to disclose to the Customer documentation relating to the applicable wages and working conditions.

# **6. THE DUTIES OF THE CUSTOMER**

## **6.1 THE RESPONSIBILITIES AND CONTRIBUTIONS OF THE CUSTOMER**

The Customer shall perform daily follow-up actions. This comprises the making of back-up copies of software and data, as well as ensuring that equipment and software are utilised and stored as prescribed by the equipment or software provider.

The Customer shall ensure that necessary rights in respect of the equipment and software are in place. The Customer shall obtain all necessary approvals from the owner if the Customer is not itself the owner of the entire system.

Unless otherwise agreed, the Customer is responsible for ensuring that the equipment comprised by the Agreement is connected to the public telecommunications network in



accordance with the specifications of the Contractor if this is necessary to enable the Contractor to perform the agreed maintenance and servicing.

## **6.2 TRAINING**

The Customer shall ensure that the personnel using equipment and software have received the training, and are in possession of the competency necessary to perform the tasks for which equipment and software are used. Any special competency requirements are agreed in more detail in Appendix 2.

## **6.3 FACILITATION**

The Customer shall facilitate the Contractor's performance of its duties by, *inter alia*, granting the Contractor the necessary access to its premises and giving written notice of any relocation of the equipment that is of importance to the deliverables.

## **6.4 USE OF A THIRD PARTY**

The Customer may freely appoint a third party to assist it in connection with its duties under the Agreement. Such third parties shall be specified in Appendix 6. The Contractor shall be notified of any third party selected by the Customer, and may reject the assignment if the Contractor is able to demonstrate that this will entail a material commercial disadvantage to the Contractor.

# **7. DUTIES OF THE CUSTOMER AND THE CONTRACTOR**

## **7.1 MEETINGS**

A party may, if deemed necessary by it, convene, with no less than three (3) working days' notice, a meeting with the other party to discuss the contractual relationship and how the contractual relationship is being handled.

Other time limits and procedures for the meetings may be agreed in Appendix 6.

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

If the Contractor appoints a subcontractor or the Customer appoints a third party to perform work occasioned by this Agreement, the relevant party shall remain fully responsible for the performance of such work in the same manner as if said party was performing the work itself.

## **7.3 CONFIDENTIALITY OBLIGATION**

Information that comes into the possession of the parties in connection with the Agreement and the implementation of the Agreement shall be kept confidential, and shall not be disclosed to any third party without the consent of the other party.

If the Customer is a public body, the scope of the confidentiality obligation under these provisions shall not be wider than the obligation imposed by the Act of 10 February 1967 relating to Procedure in Cases concerning the Public Administration (the Public Administration Act) or corresponding sector-specific regulations.

The confidentiality obligation pursuant to this provision shall not prevent the disclosure of information if such disclosure is required pursuant to laws or regulations, including disclosure and a right of access pursuant to the Act of 19 May 2006 relating to the Right of Access to Documents in the Public Administration (the Freedom of Information Act). The other party shall, if possible, be notified prior to the disclosure of such information.

The confidentiality obligation shall not prevent the information from being used when there is no legitimate interest in keeping it confidential, for example when it is in the public domain or is accessible to the public elsewhere.

The parties shall take all necessary precautions to prevent unauthorised persons from gaining access to, or knowledge of, confidential information.

The confidentiality obligation shall apply to the employees, subcontractors and other third parties who act on behalf of the parties in connection with the implementation of the Agreement. The parties may only transmit confidential information to such subcontractors and third parties to the extent necessary for the implementation of the Agreement, and provided that they are subjected to a confidentiality obligation corresponding to that stipulated in this Clause 7.3.

The confidentiality obligation shall not prevent the parties from utilising experience and competency developed in connection with the implementation of the Agreement.

The confidentiality obligation shall continue to apply after the expiry of the Agreement. Employees or others who resign from their positions with one of the parties shall be subjected to a confidentiality obligation following their resignation as well, as far as circumstance mentioned above are concerned. The confidentiality obligation shall lapse five (5) years after the delivery date, unless otherwise stipulated by law or regulation.

## **8. CONSIDERATION AND PAYMENT TERMS**

### **8.1 CONSIDERATION**

All prices and the detailed terms governing the consideration to be paid by the Customer for the deliverables provided by the Contractor are set out in Appendix 7.

Disbursements shall only be reimbursed to the extent agreed. Travel and subsistence costs shall be specified separately, and shall be paid pursuant to the Government Travel Allowance Scale applicable at any given time, unless otherwise agreed. Travel time shall only be invoiced if this is agreed in Appendix 7.

Unless otherwise specified in Appendix 7, all prices are quoted exclusive of Value Added Tax, but inclusive of customs duties and any other indirect taxes. All prices are quoted in Norwegian kroner.

The prices also include the Contractor's insurance.

### **8.2 PRICING OF ADDITIONAL WORK**

If the Contractor is of the view that maintenance and/or servicing falling outside the scope of this Agreement should be carried out, the prior written consent of the Customer shall be obtained in respect thereof if such deliverables are to be invoiced over and above the consideration agreed under the Agreement.

### **8.3 INVOICING**

Payment shall be made within thirty (30) calendar days of the invoice date.

The payment schedule and other payment terms are set out in Appendix 7.

### **8.4 LATE PAYMENT INTEREST**

If the Customer fails to pay at the agreed time, the Contractor shall be entitled to claim interest on any overdue amount, pursuant to the Act of 17 December 1976 No. 100 relating to Interest on Overdue Payments, etc. (the Late Payment Interest Act).

### **8.5 PAYMENT DEFAULT**

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

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

### **8.6 PRICE ADJUSTMENTS**

The price may be adjusted to the extent that rules or resolutions pertaining to indirect taxes are amended in a way that affects the consideration or costs of the Contractor.

Exchange rate changes that affect costs incurred by the Contractor in connection with the deliverables may be invoked in relation to the Customer on one (1) month's written notice. If exchange rate increases give rise to changes in the consideration payable, the consideration shall be reduced correspondingly, without the Customer having to request it, if the exchange rates subsequently drop.

The price may be adjusted upon the renewal of the Agreement, with an amount that shall not exceed the increase in the retail price index (the main index) of Statistics Norway, with the reference index value being the index value for the month in which the Agreement was concluded, unless a different index value is agreed in Appendix 7.

Any other provisions pertaining to price adjustments are set out in Appendix 7.

## **9. EXTERNAL LEGAL REQUIREMENTS**

### **9.1 GOVERNMENT REQUIREMENTS**

The Customer shall identify in Appendix 1 which legal requirements, or requirements that are specific to the party in question, are of relevance to the conclusion and implementation of this Agreement. Such requirements may be contained in general regulatory frameworks, such as the Act of 14 April 2000 No. 31 relating to the Processing of Personal Data (the Personal Data Act) and the Regulations of 15 December 2000 No. 1265 relating to the Processing of Personal Data (the Personal Data Regulations), the Freedom of Information Act, the Public Administration Act, the Regulations of 25 June 2004 No. 988 relating to Electronic Communications with and within the Public Administration (the eGovernment Regulations), or in sector-specific regulatory frameworks. The Customer shall examine whether any

requirements relating to standards specified in the *Reference Manual for IT Standards within the Public Sector* have to be accommodated by the deliverables.

The Customer shall be responsible for specifying, in Appendix 1, any relevant requirements that are applicable to the deliverables.

The Contractor shall in Appendix 2 describe how the Contractor takes account of these requirements.

Each party is responsible for the follow-up of its own duties pursuant to such legal requirements.

Each party shall, as a general rule, pay the costs of complying with legal requirements applicable to the party and its activities. In the event of amendments to legal requirements or official requirements that affect the activities of the Customer that occasion a need for changes to the deliverables subsequent to the conclusion of the Agreement, the Customer shall cover the costs associated with such changes and any additional work, cf. Chapter 3.

## **9.2 PERSONAL DATA**

If relevant to the Agreement, the parties shall in Appendices 1 and 2 clarify how personal data shall be handled, as well as whether and, if applicable, how such data may be transferred to others for storage and processing. The parties shall in Appendices 1 and 2 specify the regulation of relevant measures required pursuant to the Personal Data Act and Regulations, hereunder compliance with the requirements pertaining to security objectives, security strategy, risk assessment and proportional safeguarding of the data.

## **9.3 ELECTRONIC COMMUNICATION AND PROCESSING REQUIREMENTS**

If the Customer is a public body and needs to formulate requirements relating to electronic communication or case processing in its requirement specification (Appendix 1), the Customer shall refer to, and base its specification on, the requirements set out in the eGovernment Regulations under the Public Administration Act, including the requirements relating to security objectives and security strategy. Correspondingly, the Contractor shall in Appendix 2 clarify how any such requirements may be satisfied.

## **9.4 SECURITY-CLASSIFIED MATERIALS**

If there is a need for access to materials (information and objects) that are security classified at any of the top three levels, the detailed handling of the need (including the timing implications of security clearance, etc.), shall be specified in Appendices 1 and 2, respectively. This shall apply to the extent that compliance with the requirements laid down in the Security Act and the related regulations ( on the grounds of concern for the security of the realm and other vital national security interests, etc.) is relevant to the Agreement.

## **10. RIGHT OF OWNERSHIP AND RIGHT OF DISPOSAL**

### **10.1 RIGHT OF OWNERSHIP OF EQUIPMENT**

The Customer is granted the same rights in respect of new equipment and new components supplied under this Agreement as it was granted in respect of the original equipment or the original components, unless otherwise agreed in an Appendix. This shall also apply in case the Contractor is not the original supplier of the relevant equipment or component.

The Contractor may only take ownership of replaced equipment or components if this would not be contrary to any statute, regulation, agreement or other legal impediment.

Components that have been used for the storage of data shall always be retained by, or returned to, the Customer no later than upon the discharge of the Agreement, unless the parties have agreed procedures for secure deletion.

### **10.2 RIGHT OF OWNERSHIP OF MAINTENANCE AND SERVICING MATERIALS**

Diagnostic software and appurtenant media, documentation, equipment and other materials used by the Contractor's personnel at the location of installation shall remain the property of the Contractor, and shall not be used or removed by the Customer, or be made available to any third party, without the prior written consent of the Contractor.

The Contractor is entitled to collect the materials referred to in the above Sub-clause if the maintenance and servicing agreement has been terminated. This shall also apply to any remote diagnosis products installed on the equipment.

### **10.3 SOFTWARE RIGHTS**

#### **10.3.1 Original rights**

Any maintenance services performed, such as changes, new versions and other software-related work, shall in no way affect the rights acquired by the Customer pursuant to any other agreement.

#### **10.3.2 The Contractor's responsibility in relation to the Customer's rights**

If any changes, improvements, etc., are made to the software in relation to the deliverables under this Agreement, the Contractor is responsible for ensuring that the Customer is granted rights to the outcome of such work that correspond to the rights held by the Customer in respect of the remainder of the software.

#### **10.3.3 The right of the Customer to make changes to software**

If the Customer has been granted, by agreement, access to source code, the Customer may, at its own risk, make changes and modifications to the software, unless the opposite has been agreed in an appendix to this Agreement. The Contractor shall not be responsible for any changes or modifications made by the Customer, unless this is expressly agreed in an Appendix or in the particular case.

#### **10.4 RIGHT OF DISPOSAL OF DOCUMENTATION**

The Customer is granted a right of disposal in respect of any documentation it receives pursuant to the Agreement. The Customer may make copies for internal use, and may, at its own risk, make such changes, additions, etc., to the documentation for its own use as are deemed appropriate by the Customer.

### **11. BREACH OF CONTRACT ON THE PART OF THE CONTRACTOR**

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

There is a breach of contract on the part of the Contractor if the deliverables do not conform to the agreed functions, requirements or time limits. There is also a breach of contract if the Contractor fails to perform other duties under the Agreement.

Nevertheless, there is no breach of contract if the situation is caused by circumstances related to the Customer or by force majeure.

The Customer shall submit a written complaint without undue delay after the breach of contract has been discovered or ought to have been discovered.

#### **11.2 NOTIFICATION OBLIGATION**

If the Contractor's deliverables cannot be delivered as agreed, the Contractor shall give the Customer written notice thereof as soon as possible. The notice shall specify the reason for the problem and, to the extent possible, when the deliverable can be delivered. A corresponding obligation shall apply if additional delays are to be expected after the first notice has been given.

#### **11.3 EXTENSION OF THE TIME LIMIT**

The Contractor may request an extension of the time limit, which extension must have the written approval of the Customer in order to apply.

The Customer shall not be entitled to claim daily liquidated damages, hourly liquidated damages or ordinary damages in respect of the period comprised by an extension of the time limit.

An extension of the time limit shall have no impact on the entitlement of the Customer to any daily liquidated damages, hourly liquidated damages or ordinary damages that accrue prior to the extension of the time limit.

#### **11.4 CURE**

The Contractor shall commence and complete the effort of curing the breach of contract without undue delay.

The cure may take the form of repair, redelivery or supplementary delivery.

To the extent that no cure is provided, the Customer may request a proportional price reduction or terminate the Agreement for breach, cf. Clause 11.5.

If the Contractor has failed to cure the breach of contract within the stipulated or agreed time limit, or if the conditions for termination for breach are met, the Contractor shall pay all expenses incurred by the Customer in obtaining a cure from a third party. Nevertheless, the Customer may not allow a third party to cure the defect until any extended time limit has expired.

The Customer shall give written notice to the Contractor prior to appointing a third party.

## **11.5 REMEDIES FOR BREACH OF CONTRACT**

### **11.5.1 Price reduction/standardised price reduction**

If the Contractor has not succeeded, despite repeated attempts, in curing the breach of contract, the Customer may claim a proportional price reduction.

If a standardised price reduction has been agreed in relation to all or some of the maintenance services, such standardised price reduction shall be specified in Appendix 5.

The price reduction shall compensate for the reduced value of what has been delivered, and shall be independent of any damages. Nor shall a price reduction affect the right of the Customer to invoke cure or termination for breach.

### **11.5.2 Withheld payment**

In the event of a breach of contract, the Customer may withhold payment, although the amount withheld shall not be obviously higher than what is necessary to secure the Customer's claim resulting from the breach of contract.

### **11.5.3 Daily liquidated damages in the case of delay**

If the agreed maintenance commencement date or other time limit in respect of which the parties have stipulated daily liquidated damages in Appendix 4 is not complied with, and this is not caused by force majeure or circumstances related to the Customer, there is a delay on the part of the Contractor that triggers daily liquidated damages.

The daily liquidated damages shall accumulate automatically. The liquidated damages amount to 0.15 percent of the total consideration payable for the deliverables (the contract price), excluding Value Added Tax, for each calendar day of delay, but albeit limited to a maximum of one hundred (100) calendar days.

Other rates for daily liquidated damages and other periods for daily liquidated damages may be agreed in Appendix 4.

The Customer shall not have the right to terminate the Agreement for breach for as long as the daily liquidated damages continue to accumulate. However, this time restriction shall not apply in the case of wilful misconduct or gross negligence on the part of the Contractor or anyone for whom it is responsible.

If only parts of the agreed deliverables are delayed, the Contractor may request a reduction in the daily liquidated damages proportional to the ability of the Customer to utilise the part of the deliverables that has been delivered.

### **11.5.4 Hourly liquidated damages**

If any agreed time limit pertaining to the deliverables is not complied with, and this is not caused by force majeure or circumstances related to the Customer, there is a delay on the part of the Contractor that triggers hourly liquidated damages. If standardised price

reductions have been agreed in Appendix 5, such price reductions shall apply instead of hourly liquidated damages as far as concerns those matters to which the standardised price reductions apply directly.

The hourly liquidated damages shall accumulate automatically. The liquidated damages amount to 0.2 percent of the overall annual consideration, excluding Value Added Tax, for each hour, or part thereof, of delay. The hourly liquidated damages shall only accumulate during ordinary working hours on working days, and for a maximum of twenty (20) working days.

Other rates and other periods for hourly liquidated damages, as well as the deliverables to which these shall apply, may be agreed in Appendix 7.

The Customer shall not have the right to terminate the Agreement for breach for as long as the hourly liquidated damages continue to accumulate. However, such restriction as to the timing of termination for breach shall not apply in the case of wilful misconduct or gross negligence on the part of the Contractor or anyone for whom it is responsible.

#### **11.5.5 Termination for breach**

If there is a material breach of contract, the Customer may, after giving the Contractor written notice and a reasonable deadline for remedying the situation, terminate the Agreement for breach with immediate effect.

The Customer may terminate all or part of the Agreement for breach with immediate effect once the period for accumulation of daily liquidated damages or hourly liquidated damages has expired, or following the expiry of an extended time limit, if this expires later.

#### **11.5.6 Damages**

The Customer may claim damages in respect of any direct loss, hereunder any loss caused by additional work or other direct costs connected to delayed commencement of operations or operational interruptions, which can be reasonably attributed to delays, defects or other breaches of contract on the part of the Contractor, unless the Contractor demonstrates that the Contractor did not cause the breach of contract or the reason for the breach of contract.

Daily liquidated damages and hourly liquidated damages shall be deducted from any other damages in respect of the same delay.

#### **11.5.7 Limitation of damages**

No damages may be claimed in respect of indirect loss. Loss of data is classified as indirect loss, unless such loss is caused by data handling that is the responsibility of the Contractor under the Agreement.

Overall damages per calendar year are limited to an amount corresponding to the overall annual consideration under the Agreement, excluding Value Added Tax.

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



## **12. BREACH OF CONTRACT ON THE PART OF THE CUSTOMER**

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

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

Nevertheless, there is no breach of contract if the situation is caused by circumstances related to the Contractor, or by circumstances deemed to constitute force majeure.

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

### **12.2 NOTIFICATION OBLIGATION**

If the Customer is unable to perform its duties under the Agreement, hereunder to observe any time limits, the Customer shall notify the Contractor in writing accordingly as soon as possible. The notice shall specify the reason for the problem and, to the extent possible, when the Customer will again be able to perform the agreed duty.

### **12.3 CURTAILMENT OF THE RIGHT OF RETENTION ON THE PART OF THE CONTRACTOR**

The Contractor shall not suspend any operational services as the result of breach of contract on the part of the Customer, unless the breach is material and the Customer has acknowledged the breach of contract in writing or the breach of contract has been established through one of the dispute resolution mechanisms in Chapter 16.

### **12.4 TERMINATION FOR BREACH**

In the event of payment default, the Contractor may terminate the Agreement for breach if the Customer has failed to settle overdue payments within sixty (60) calendar days of the Customer having received the Contractor's written notice pursuant to Clause 8.5.

In the event of other material breach of contract, the Contractor may send a written notice to the Customer stating that the Agreement will be terminated for breach unless the Customer has discontinued or remedied the breach of contract within sixty (60) calendar days after it received the notice. Termination for breach shall not take place if the Customer has discontinued the breach of contract situation before the expiry of the time limit.

### **12.5 DAMAGES**

The Contractor may claim damages in respect of any direct loss that can be reasonably attributed to the breach of contract, unless the Customer demonstrates that the breach of contract or the cause of the breach of contract is not attributable to the Customer.

The limitation of damages provision of the Agreement, as set out in Clause 11.5.7, shall apply correspondingly.

## **13. INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES (DEFECT IN TITLE)**

### **13.1 THE RISKS AND RESPONSIBILITIES OF THE PARTIES IN RELATION TO DEFECTS IN TITLE**

Each party shall be responsible for ensuring that its deliverables do not infringe the copyrights or other intellectual property rights of third parties, and shall carry all risks in this respect. There is a defect in title if the deliverable entails such infringement.

### **13.2 THIRD PARTY CLAIMS**

If a third party asserts to one of the parties that the maintenance service entails a defect in title, the other party shall be informed thereof as soon as possible.

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

The relevant party shall commence and complete the effort of curing defects in title without undue delay, by

- a) ensuring that the other party is able to use the deliverable as before, without infringing any third party rights, or
- a) providing a corresponding deliverable that does not infringe any third party rights

### **13.3 TERMINATION FOR BREACH**

A defect in title that is not cured, and that is of such a nature as to be of material importance to the other party, shall give the other party the right to terminate the Agreement for breach.

### **13.4 INDEMNIFICATION OF LOSS RESULTING FROM A DEFECT IN TITLE**

A party shall be fully indemnified in respect of any liability for damages imposed on it in relation to a third party and any legal costs incurred, (including the party's own costs connected to dealing with the case), in connection with a defect in title. The party may also claim damages in respect of other loss pursuant to the provisions of Clauses 11.5.6, 11.5.7 and 12.5.

## **14. SETTLEMENT UPON TERMINATION FOR BREACH**

Upon the Agreement being terminated for breach by the Contractor, the Customer may claim the repayment of all amounts paid, with the addition of interest, at the NIBOR rate plus one (1) percent, as of the date on which payment was made.

Upon termination for breach during regular maintenance, the Contractor shall nevertheless be entitled to consideration for deliverables that have been provided in a contractual manner prior to the date of termination for breach.

Upon the discharge of the Agreement, all equipment and software and all other materials, whether in an electronic or other format, and irrespective of the medium, shall be handed back or deleted or destroyed in a proper manner. The parties may request confirmation from an impartial auditor stating that this has been done.

## **15. OTHER PROVISIONS**

### **15.1 RISK**

The Customer assumes the risk relating to equipment and software that fall within the scope of this Agreement, cf. Appendix 3. If the Customer owns equipment and holds a right of disposal in respect of software for purposes of network control, the Customer also assumes the risk relating thereto. The Contractor assumes the risk relating to any other equipment or software, e.g. spare equipment, that it has placed on the premises of the Customer, unless otherwise agreed.

### **15.2 INSURANCE POLICIES**

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

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

The Contractor shall, at the request of the Customer, explain and document those of the insurance policies of the Contractor that are of relevance to the compliance with this provision.

### **15.3 ASSIGNMENT OF RIGHTS AND OBLIGATIONS**

To the extent that the Customer is a public body, the Customer may assign its rights and obligations under this Agreement to another public body. The body to which the rights and obligations are assigned shall be entitled to corresponding terms and conditions, provided that the rights and obligations under the Agreement are assigned jointly.

The Contractor may only assign its rights and obligations under the Agreement with the written consent of the Customer. The same shall apply if the Contractor is merged with another company, de-merged into several companies, or if assignment is to a subsidiary or another company within the same group. Consent shall not be unreasonably withheld.

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

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

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

## **15.5 FORCE MAJEURE**

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

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

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

## **16. DISPUTES**

### **16.1 GOVERNING LAW**

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

### **16.2 NEGOTIATIONS**

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

If such negotiations do not succeed within ten (10) working days, or a different period agreed by the parties, each of the parties may request that the dispute be brought before an independent expert or submitted for mediation.

### **16.3 INDEPENDENT EXPERT**

The parties shall in connection with the conclusion of the Agreement appoint an independent expert, whose name shall be specified in Appendix 6, and who shall hold such qualifications as the parties believe to be the most appropriate in the light of the Agreement. If this has not been done, the parties may agree on the appointment of an independent expert at the time of a dispute.

The parties shall in advance choose either to

- a) comply with the solution proposed by the expert (binding), or
- b) use the solution proposed by the expert as a basis for reaching a solution themselves (advisory)

The detailed approach to these efforts shall be determined by the independent expert, in consultation with the parties.

## **16.4 MEDIATION**

If a dispute related to this Agreement has not been resolved by negotiations or by an independent expert, the parties may attempt to resolve the dispute through mediation.

Mediation may also be used without the prior use of an independent expert, if this is agreed by the parties.

The parties may elect to adopt the rules of the Norwegian Bar Association for mediation by advocate, modified, if applicable, to suit the preferences of the parties. If so, the parties shall agree on a mediator who shall hold such qualifications as the parties believe to be the most appropriate for resolving the dispute.

The detailed approach to mediation shall be determined by the mediator, in consultation with the parties.

## **16.5 JOINT RULES FOR INDEPENDENT EXPERT AND MEDIATION**

The independent expert and/or mediator shall act impartially and independently in the performance of his or her duties. Prior to accepting an assignment, the expert/mediator shall notify the parties of any potential circumstances that are likely to give rise to a suspicion of insufficient impartiality or independence on his or her part. The expert/mediator shall also give the parties such notice during the assignment if the parties have not previously received such information, or if the relevant circumstances arise during the assignment.

At the start of mediation, the expert/mediator shall inform the parties of the basis on which his or her remuneration will be calculated. Unless otherwise agreed, each party shall pay its own costs and half of the costs of the expert/mediator. The expert/mediator has the right to request the parties to pay a sufficient advance to cover the costs and remuneration of the mediator/expert, or to request the parties to provide sufficient security.

The assignment of the independent expert or mediator shall be concluded in one of the following ways:

- a) through a proposed solution from the expert that the parties have agreed in advance shall be binding
- b) through a written settlement or agreement between the parties, based on the solution proposed by the expert/mediator
- c) through the expert/mediator informing the parties that he or she does not deem it appropriate to continue the assignment, or
- d) through a party informing the expert or the mediator that such party wishes to conclude the assignment

## **16.6 LITIGATION OR ARBITRATION**

If a dispute is not resolved through negotiations, through mediation or by an independent expert, each party may require such dispute to be resolved with final effect before the Norwegian courts of law.

The venue shall be the registered address of the Customer.

The parties may alternatively agree that the dispute shall be resolved with final effect through arbitration in Norway pursuant to the Act of 14 May 2004 No. 25 relating to Arbitration (the Arbitration Act).