

# Maintenance Agreement

Agreement governing the maintenance and servicing of software and equipment

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

# Agreement governing the maintenance and servicing of software and equipment

An agreement governing  
CPE Procurement

**has been concluded between:**

[Write here]

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

**and**

Vegfinans E134 Buskerud AS

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

**Place and date:**

[Write place and date here]

\_\_\_\_\_

[The Customer's name here]

[The Contractor's name here]

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

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

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

Unless otherwise is specified in Appendix 4, the **commencement date** shall be:  
[date]

## Communications

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

**On behalf of the Customer:**

Name:

Position:

Telephone:

Email:

**On behalf of the Contractor:**

Name:

Position:

Telephone:

Email:

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## 1. GENERAL PROVISIONS

### 1.1 SCOPE OF THE AGREEMENT

The Agreement governs the provision of maintenance services for software and any equipment as specified in more detail in the Appendices.

### 1.2 APPENDICES TO THE AGREEMENT

All rows shall be ticked (Yes or No):	YES	NO
Appendix 1: Customer requirements specification (requirements for the maintenance services)	X	
Appendix 2: Contractor solution specification (description of the maintenance services)	X	
Appendix 3: Software and/or equipment to be maintained	X	
Appendix 4: Project and progress plan for the establishment phase	X	
Appendix 5: Service level with standardised price reductions	X	
Appendix 6: Administrative provisions	X	
Appendix 7: Total price and pricing provisions	X	
Appendix 8: Changes to the general contractual wording	X	
Appendix 9: Changes subsequent to the conclusion of the Agreement	X	
Appendix 10: Third party's terms and conditions for the maintenance of third party's software	X	
Other Appendices:		
Appendix 11: Code of Conduct	X	
Appendix 12: Data Processor Agreement	X	

### 1.3 INTERPRETATION – RANKING

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

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

1. The general contractual wording shall prevail over the Appendices.
2. Appendix 1 shall prevail over the other Appendices.
3. To the extent that the clause or clauses that have been changed, replaced or supplemented, are clearly and unequivocally specified, the following principles of precedence shall apply:

- a) Appendix 2 shall prevail over Appendix 1.
- b) Appendix 8 shall prevail over the general contractual wording.
- c) If the general contractual wording refers to 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.

A third party's terms and conditions governing the maintenance of third party software shall not release the Contractor's from any obligations under the Agreement to any extent greater than that set out in clause 2.2.5.

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

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

#### **1.5 THE REPRESENTATIVES OF THE PARTIES**

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

#### **1.6 PHASES OF THE AGREEMENT**

The Agreement consists of three phases: the establishment phase (clause 2.1), ordinary maintenance (clause 2.2) and the discharge phase (clauses 4.2 and 4.3).

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

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

#### **2.1.1 Plan for the establishment phase**

The Contractor shall prepare, in collaboration with the Customer, a plan with a description of purpose, organisation, activities, detailed plans concerning progress, etc., for establishing the maintenance services. The plan shall include a description of roles and responsibilities, as well as a progress plan, including the need for information and deliveries from any previous maintenance contractors. The plan shall conform to the limits set out in Appendix 2.

#### **2.1.2 Cooperation plan**

The Contractor shall prepare, or make available, a cooperation plan. The cooperation plan shall be finalised in consultation with the Customer. The cooperation plan shall contain the routines and procedures necessary for the interaction between the Customer and the Contractor, including:

- procedures for error handling (also see clause 2.2.5),
- procedures for change handling, for the software being maintained and for changes to the platform, respectively,
- any routines and plans for meetings, and
- cooperation with the Customer's other providers (such as the provider of operational services).

The cooperation plan shall be based on the cooperation requirements the Customer has specified in Appendix 6 and the requirements for the maintenance services in Appendix 1.

### **2.2 PERFORMANCE OF ORDINARY MAINTENANCE**

#### **2.2.1 Scope of the maintenance services**

The Contract shall provide the maintenance services for software and equipment as specified in more detail in Appendices 1 and 2.

Unless otherwise is specified in Appendix 1 or Appendix 2, the maintenance services shall, as a minimum, include error handling and the services required to maintain the software's interaction with other software covered by the maintenance services (see Appendix 3).

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

Appendices 1 and 2 may describe how old versions of the relevant software and equipment should be maintained.

## **2.2.2 Reporting performed maintenance**

The Contractor shall, on a regular basis, provide the Customer with a readily understandable report that describes what maintenance and what servicing has been performed. Unless otherwise is agreed in Appendix 6, the Contractor's standard format and level shall be used for such reporting. The reporting obligation may be described in more detail in the cooperation plan.

## **2.2.3 Updating of documentation**

To the extent that performed maintenance is of importance in relation to the associated documentation, documentation updates shall be made available to the Customer without undue delay. The scope of the updating obligation may be specified in more detail in Appendices 1 and 2.

## **2.2.4 User support**

If the Agreement includes user support, such services shall be described in Appendix 6. The users or user groups at the Customer who may seek assistance may also be agreed in Appendix 6. A maximum annual volume of enquiries that shall be covered by the fixed price may also be agreed. If the Contractor guarantees a response within certain deadlines, this shall be set out in the service level agreement in Appendix 5.

## **2.2.5 Error handling**

The Customer shall report any errors without undue delay. The Contractor shall assist with identifying and rectifying errors within the framework defined in Appendix 2, and based on the framework set out in the service level agreement in Appendix 5. If the agreed deadlines are not complied with, the Customer may demand standardised compensation as stipulated in the service level agreement in Appendix 5.

Unless otherwise is agreed in Appendix 5, the following error definitions shall apply:



<b>Level</b>	<b>Category</b>	<b>Description</b>
<b>A</b>	Critical error	<ul style="list-style-type: none"> <li>- Error that results in the stoppage of the software or equipment, a loss of data, or in other functions that, based on an objective assessment, are of critical importance to the Customer not working as agreed.</li> <li>- The documentation being so incomplete or misleading that the Customer is unable to use the software or the equipment, or material parts thereof.</li> </ul>
<b>B</b>	Serious error	<ul style="list-style-type: none"> <li>- Error that results in functions that, based on an objective assessment, are of importance to the Customer not working as described in the agreement, and which it is time-consuming and costly to work around.</li> <li>- The documentation being incomplete or misleading, and this resulting in the Customer being unable to use functions that, based on an objective assessment, are of importance to the Customer.</li> </ul>
<b>C</b>	Less serious error	<ul style="list-style-type: none"> <li>- Error that results in individual functions not working as intended, but which can be worked around with relative ease by the Customer.</li> <li>- The documentation being incomplete or imprecise.</li> </ul>

To the extent that the services include the maintenance of standard software that the Contractor has not developed itself or does not maintain itself, or where elements of the services are in some other manner delivered by a third party and the Customer has not itself concluded a maintenance agreement with the software producer, the Contractor shall conclude the necessary agreement with the software producer. The terms and conditions for the maintenance that are agreed between the Contractor and the software producer shall be explicitly specified in a separate chapter in Appendix 2, and copies of the terms and conditions for the maintenance shall be appended as Appendix 10. If the Customer has itself concluded a maintenance agreement with the aforementioned software producer, these shall be appended to the Agreement as Appendix 10. The Contractor may request that the Customer assert or, with the agreement with the Customer, itself assert the Customer's rights in relation to the software producer under the standard maintenance agreement for the third party software.

If deviations in the deliverables are caused by errors in standard software and access to the standard software's source code is required in order to rectify these, and the Contractor does not itself have access to the source code, the Contractor's obligation to rectify the errors is limited to reporting the error to the software producer, seeking to the best of its ability to make rectification of the error a priority, keeping the Customer informed about the status of the error rectification, and ensuring correct installation after the error in the standard software has been rectified by the software producer, or alternatively making the update that rectifies the error available to the Customer if the Contractor is not responsible for installation pursuant to clause 2.2.6.

The Contractor shall make a reasonable effort to find a temporary solution while the software producer rectifies the error. A maximum financial limit for the Contractor's obligation to work out temporary solutions that work around errors in standard software can be agreed in Appendix 7.

If errors that are covered by paragraph four of this provision (errors in standard software that require access to the source code in order to rectify them) result in delays or deviations in respect of the agreed service criteria in Appendix 5, the Contractor shall not be liable for that part of the deviation that can be attributed to the error in the standard software, including deficient error rectification by a third party. However, the Contractor shall be liable for delays and deviations in respect of the agreed service level that are caused by the Contractor failing to perform its obligation to follow up the error rectification and install, or make available, updates that rectify the error as stipulated in paragraph four.

#### **2.2.6 Installation of patches, etc.**

The Contractor is responsible for installing patches unless Appendix 1 specifies that this shall be performed by the Customer itself or the Customer's provider of operational services. The provisions governing the installation of new versions in clause 2.2.7, paragraph two, shall also apply to the installation of patches. The installation of patches shall be covered by the fixed consideration for maintenance, unless this has been priced separately in Appendix 7.

If it has been agreed in Appendix 5 that the Contractor may rectify an error by sending or making available a patch to the Customer, it shall do so in accordance with agreed procedures set out in Appendix 5 or Appendix 6. The Contractor shall in such a case furnish the Customer with instructions as to how the patch, etc., shall be installed. The Customer shall install the patch, etc., as soon as possible, or as per the instructions of the Contractor. Any deadlines shall be set out in Appendix 5.

If the rectification of an error consists of a new version of the software, the new version shall also be covered by the fixed consideration for maintenance. The Contractor may only rectify errors by delivering a new version if the Customer can utilise it on the Customer's existing technical platform. If the new version can only be utilised if an upgrade of the Customer's technical platform is performed or if changes are made to the Customer's other systems, the Customer shall have the right to demand that the error be rectified in some other manner, unless otherwise is specified in Appendix 1.

#### **2.2.7 New versions**

New versions of the software specified in Appendix 3 shall be covered by the Agreement, unless otherwise is stipulated in Appendix 1 or Appendix 2. New versions shall be covered by the fixed consideration for maintenance, unless this is priced separately in Appendix 7 (for example, in the case of larger upgrades).

When a new version of software can be made available to the Customer, the Contractor shall notify the Customer of this. The Customer shall have the right to ask the Contractor for assistance with installing the new version. The Contractor shall charge the hourly rates for performing the installation work that are set out for such work in Appendix 7, unless otherwise is specified in Appendix 7.

Any modifications that were made for the Customer in the version being replaced shall be implemented by the Contractor in the new version before it is made available to the Customer. The Contractor shall charge the hourly rates for performing the modification and implementation work that are set out for such work in Appendix 7, unless otherwise is specified in Appendix 7.

The Contractor shall have an obligation, for a minimum of four (4) years after the agreement has come into force, to make new versions of software, etc. covered by the Agreement, cf. Appendix 3, available regularly such that the Customer can comply with the recommended upgrade schedule for new versions of commonly used software that is utilised as part of the Customer's technical platform. Specific deadlines may be agreed in Appendix 5 and software that is exempt from this provision may be specified in Appendix 5.

#### **2.2.8 Further development**

The Customer may order the further development of software that is covered by the maintenance agreement within the framework described in Appendices 1 and 2. This includes the development of additional functionality that is moderate in scope. The consideration for such further development shall be the Contractor's ordinary hourly rate set out in Appendix 7, unless another model for consideration is set out in Appendix 7. The parties shall agree a progress plan for such development and acceptance criteria. The parties may choose to utilise SSA-O or SSA-B for the performance of such development.

Software that is developed pursuant to this clause shall become part of the software that shall be maintained under the Agreement. If the consideration for maintenance shall be adjusted, this shall be clearly set out in the agreement governing the development assignment.

#### **2.2.9 Supplementary purchases**

The Customer may, throughout the entire term of the Agreement, carry out supplementary purchases and extend or expand its licensing within the limits of, and to the extent that is required to maintain or achieve, the overall goal of the deliverables as described in Appendix 1.

"Supplementary purchases" means replacements or additions of equipment that forms part of the solution that shall be maintained when such replacements or additions are required to maintain the reliability of the solution or keep it up-to-date, and in connection with expansions to new premises and similar. This shall also apply in the case of replacements that are required to fulfil new statutory or regulatory requirements to which the solution that shall be maintained is subject.

"Extend or expand its licensing" means securing the rights in respect of previously procured software (including new versions) that are required for more users and entities to use it, for it to be used in more locations, or to expand the scope of its use beyond what was originally agreed, as well as the purchase of new licences when such licences are otherwise necessary to ensure continued interaction with the solution, to fulfil new statutory or regulatory requirements to which the solution that shall be maintained is subject, or to supplement the solution within the framework of the overall goal as set out in Appendix 1.

In the case of supplementary purchases and licensing extensions and expansions, the Customer shall pay the Contractor's list price on the date of the purchase after the deduction of the discount set out in Appendix 7. In the case of extensions to existing licences, the Customer's existing agreement governing the right of disposal in respect of the licence concerned shall apply, unless otherwise is agreed in each instance. In the case of the purchase of new licences pursuant to paragraph three, the licensor's standard terms and conditions for such purchases shall apply, unless otherwise follows from another agreement or is agreed in each instance.

Software and equipment that is procured pursuant to this clause shall become part of what shall be maintained under the Agreement. If the maintenance consideration shall be adjusted, this shall be clearly set out in the agreement governing supplementary purchases or licensing extensions and expansions.

#### **2.2.10 Additional services**

The Customer may order those additional services naturally associated with the maintenance; for example, periods of expanded standby services, monitoring, assistance with testing changes and new versions, etc. The services and the consideration relating thereto shall be described in the Contractor's service directory, which forms part of Appendix 7.

Additional services shall be registered in Appendix 9.

### **2.3 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 SUBSEQUENT TO THE CONCLUSION OF THE AGREEMENT**

If the Customer needs, subsequent to the conclusion of the Agreement, to change the requirements applicable to the deliverables, or other stipulations underpinning the Agreement, in such a manner that the nature or scope of the deliverables will differ from that which is agreed, the Customer may request a change agreement.

The Contractor may request adjustments to the consideration or progress plans due to such a change. Any request for adjusted consideration or progress plans must be submitted, at the latest, simultaneously with the Contractor's response to the Customer's request for an amendment agreement.

Changes to the deliverables 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.

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

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

Unless another term of duration or a different commencement date is agreed in Appendix 4, the Agreement shall be for a term of three (3) years starting from the date set out on page two of the Agreement (commencement date). The Agreement shall thereafter be automatically renewed for a term of one (1) year at a time, unless the Customer terminates the Agreement without cause by giving three (3) months' notice prior to the renewal date. The Contractor may terminate the Agreement without cause by giving twelve (12) months' notice prior to the renewal date. If in practice the Contractor is the sole provider of maintenance services for material elements of the software covered by the Agreement, it may terminate the Agreement without cause by giving twenty-four (24) months' notice, but not during the initial four (4) years, such that the total term of the Agreement shall be a minimum of six (6) years.

#### **4.2 CANCELLATION**

The Customer may cancel, in whole or in part, the deliverables contracted under this Agreement giving three (3) 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 fee of four (4) per cent of the annual consideration.

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

In the case of partial cancellation, the cancellation fee shall be calculated on the basis of the share of the contract price accounted for by the cancelled items. The consequences that partial cancellation has in respect of the remaining parts of the deliverables, including the effect on the contract price, shall be handled as a change pursuant to chapter 3.

The total cancellation consideration may never exceed the remainder of the amount the Contractor would be entitled to prior to the next ordinary renewal of the Agreement.

### **4.3 DISCHARGE PERIOD**

The discharge period runs from the date of the notification of termination without cause, cancellation or termination for breach until the Agreement comes to an end (including any extension pursuant to clause 4.4). In addition, the Customer shall have a right to follow-up assistance for up to sixty (60) calendar days after the maintenance services have been established at a new contractor or the Customer itself, even where this is after when the Agreement otherwise comes to an end.

The maintenance services shall remain fully adequate during the discharge period, irrespective of the reason why the Agreement has come to an end.

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 discharge period and cooperate with any new contractor, in order that necessary actions may be carried out with the minimum possible interruption to the Customer's activities. The Contractor is also obliged to contribute to the necessary transfer of expertise to the new maintenance contractor, taking the nature of the services into account. The Contractor shall not have an obligation to assist with the transfer of basic skills or with the transfer of expertise linked to the Contractor's business secrets.

The Customer shall prepare a progress plan for the discharge period called the "discharge plan". The Customer may allow a new contractor to produce such a plan on behalf of the Customer. The Contractor shall, without undue delay, contribute the information and expertise necessary to ensure the Customer is able to prepare the plan, including proposing specific activities that are necessary on the part of the Contractor, the time frame for these, and otherwise describing the cooperation required between the Contractor and the Customer upon discharge of the Agreement. Furthermore, the Contractor shall make sure that the Customer is given access, without undue delay, to any information the Customer requires from any of the Contractor's subcontractors.

The Contractor shall 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 Contractor shall, without undue delay, supplement and update the maintenance documentation and, without undue delay, transfer to the Customer all the data and materials that the Contractor has in its possession and that belong to the Customer.

The Customer shall pay a consideration for the deliverables mentioned under this clause pursuant to the Contractor's hourly rates 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 a consideration if the Agreement is terminated due to a material breach of contract on the part of the Contractor.

For the 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 one (1) month's consideration for up to two (2) months after the Agreement comes to an end.

#### **4.4 TEMPORARY EXTENSION OF THE AGREEMENT**

The Contractor is obliged to extend the Agreement on otherwise equal terms by up to six (6) months as of 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.

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 one (1) 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 the personnel who perform the maintenance and services possess the necessary expertise.

## **5.2 KEY PERSONNEL**

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.

## **5.3 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. 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.

The Contractor's use and replacement of subcontractors that directly participate in the performance of the deliverables must be approved in writing by the Customer. Approval shall not be unreasonably withheld.

The Contractor shall cooperate with the Customer's other contractors and third parties, including any provider of operational services and providers of third-party software that is covered by the maintenance agreement. The cooperation shall be described in more detail in the cooperation plan, cf. clause 2.1.2.

## **5.4 WAGES AND WORKING CONDITIONS**

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

In respect of areas covered by the Regulations relating to Generalised Collective Wage Agreements, the Contractor shall ensure that its and any subcontractors' employees who contribute directly to the performance of the Contractor's obligations under the Agreement do not receive wages or have working conditions that are inferior to those stipulated in the Regulations relating to Generalised Collective Wage Agreements. In areas not covered by generalised collective wage agreements, the Contractor shall ensure that the same employees do not receive wages or have working conditions that are inferior to those stipulated in any applicable nationwide collective wage agreements relating to the relevant trade. This applies to work performed in Norway.

All agreements that are entered into by the Contractor and that involve the performance of work that contributes directly to the performance of the Contractor's obligations under the Agreement shall include corresponding terms and conditions.

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



The Contractor's obligations as mentioned above shall be documented in Appendix 6 by means of either a self-declaration or a third-party declaration showing conformity between the relevant collective wage agreement and the actual wages and working conditions relating to compliance with the Contractor's and any subcontractors' obligations.

The Contractor shall, at the request of the Customer, disclose documentation relating to the wages and working conditions which are used. Each of the Customer and the Contractor may request that the information be submitted to an independent third party appointed by the Customer to examine whether the requirements of this provision have been complied with. The Contractor may require the third party to sign a declaration that the information will not be used for any purpose other than to ensure fulfilment of the Contractor's obligations pursuant to this provision. The disclosure obligation shall also apply to subcontractors.

Further clarification concerning the implementation of this clause 5.4 may be agreed in Appendix 6.

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

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

The Customer shall perform daily follow-up actions. This includes making 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 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 equipment that is of importance to the deliverables. More detailed requirements in respect of the Customer's participation may be specified in Appendix 2.

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

### **7.1 CONFIDENTIALITY OBLIGATION**

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

If the Customer is a public body, the scope of the confidentiality obligation under this provision shall not go beyond that laid down by the Act of 10 February 1967 relating to Procedure in Cases concerning the Public Administration (Public Administration Act) or corresponding sector-specific regulations.

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

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

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

The confidentiality obligation shall apply to the parties' employees, subcontractors and other third parties who act on behalf of the parties in connection with the implementation of the Agreement. The parties may only transmit confidential information to such subcontractors and third parties to the extent necessary for the implementation of the Agreement, and provided that they are subjected to a confidentiality obligation corresponding to that stipulated in this clause 7.1.

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

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

## **7.2 FORM OF COMMUNICATION - IN WRITING**

All notices, demands or other communications relating to the Agreement shall be submitted in writing to the postal address or electronic address stated on the first page of the Agreement, unless the parties have agreed a different procedure in Appendix 6 for this type of enquiry.

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

### **8.1 CONSIDERATION**

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

Disbursements, including travel and subsistence costs, shall only be reimbursed to the extent agreed. Travel and subsistence costs shall be specified separately, and

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

If the Contractor is of the view that maintenance and servicing falling outside the scope of the Agreement should be carried out, the prior consent of the Customer shall be obtained in respect thereof if such maintenance shall be invoiced over and above the consideration specified in the Agreement.

## **8.2 PAYMENT TERMS**

Periodic consideration shall fall due for payment within thirty (30) calendar days of the invoice date, with the initial payment due date being no earlier than thirty (30) calendar days after the maintenance agreement comes into effect.

If special pricing and/or payment terms and conditions shall apply for the Agreement, these shall be specified in Appendix 7.

When the Customer has made arrangements for such, the Contractor shall submit invoices, credit notes and reminders in accordance with the Electronic Trading Format (EHF) that has been determined.

Other payment terms, and any terms and conditions relating to the use of EHF, shall be set out in Appendix 7.

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

## **8.3 LATE PAYMENT INTEREST**

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

## **8.4 PAYMENT DEFAULT**

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

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

## **8.5 PRICE ADJUSTMENTS**

The maintenance consideration and hourly rates may be adjusted at the beginning of every calendar year by an amount equivalent to the increase in the retail price index (the main index) of Statistics Norway, with the initial reference index value being the index value for the month in which the Agreement was formed, unless a different index value is agreed in Appendix 7.

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

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

## **9. EXTERNAL LEGAL REQUIREMENTS, SECURITY AND DATA PROTECTION**

### **9.1 GENERAL EXTERNAL LEGAL REQUIREMENTS AND MEASURES**

Each party is responsible for fulfilling its respective duties pursuant to external legal requirements (acts, regulations, other regulatory 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. The Customer shall be responsible for specifying the relevant requirements for the maintenance services in Appendix 1.

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 changes to legal requirements or official requirements that affect the activities of the Customer and 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.

### **9.2 INFORMATION SECURITY**

The Contractor shall implement proportionate measures to address the information security requirements associated with the performance of the deliverables.

### **9.3 PERSONAL DATA**

If the Contractor shall process personal data on behalf of the Customer in connection with the performance of the deliverables, the Contractor will be acting as a data processor. As a data processor acting on behalf of the Customer, the Contractor shall process the personal data in accordance with the Agreement. The Contractor may not process personal data in any other manner.

The Contractor shall, through planned and systematic measures, ensure adequate information security with respect to confidentiality, integrity and accessibility when processing personal data, cf. section 13 of the Personal Data Act. The Contractor shall document the information system and security measures. Such documentation shall be made available, upon request, to the Customer and its auditors, as well as the Norwegian Data Protection Authority and the Privacy Appeals Board.

Further provisions governing how personal data shall be processed, including relevant security measures and requirements for storage times and deletion, etc. shall be set out in Appendices 1 and 2. The parties may have concluded a separate data processor agreement. In the case of conflict, the data processor agreement shall prevail over the Agreement with respect to the processing of personal data.

The Contractor may not transfer personal data to others for storage, processing or deletion without the consent of the Customer. Subcontractors that are approved by the Customer shall be named in Appendix 6. The Contractor shall ensure that any subcontractors used by the Contractor, and that process personal data, assume the same obligations as those set out in clause 9.3.

Personal data shall not be transferred to countries outside the European Economic Area (EEA) without the prior written consent of the Customer.

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

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

The Customer is granted the same rights in respect of new equipment supplied under this Agreement as it was granted in respect of the original equipment, unless otherwise is agreed in Appendix 7.

### **10.2 RIGHT OF DISPOSAL OF SOFTWARE, DOCUMENTATION, ETC.**

The Customer is granted a right of disposal in respect of software in accordance with the concluded agreement governing rights of disposal. If maintenance is performed by software being replaced, the Customer is granted the same rights in respect of the new software as it had in respect of the software being replaced.

The Customer is granted a right of disposal in respect of any documentation and reports that the Customer receives pursuant to the concluded agreement governing rights of disposal. If no such agreement exists, the Customer is granted the right of disposal necessary to utilise the documentation for its activities and for the cooperation necessary with the Customer's contractual partners. When documentation and reports are updated, the Customer is granted the same rights in respect of the updated documentation or reports as it had in respect of the originals.

### **10.3 EXPANDED RIGHT OF DISPOSAL OF CHANGES AND SOFTWARE EXPANSIONS THAT ARE DEVELOPED FOR THE CUSTOMER**

The Customer is granted, free of charge, a perpetual and non-exclusive right to utilise changes and software expansions that are developed or customised specifically for the Customer (expanded right of disposal) pursuant to the Agreement. The expanded right of disposal includes the right to use, copy, modify and develop the customisations, either on its own or with the assistance of a third party. The Customer is entitled to confer a corresponding expanded right of disposal on any other public body.

Source code and associated specifications and documentation of the development and customisations shall be handed over to the Customer within ten (10) working days after the change or software expansion has been approved by the Customer, unless otherwise is agreed in each instance.

## **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 Contractor fails to perform its duties under the Agreement and this is not 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 is unable to perform its duties as agreed, the Contractor shall give the Customer written notice of this as soon as possible. The notice shall specify the reason for the problem and, insofar as it is possible, when the deliverables can be performed. A corresponding obligation shall apply if additional delays are to be expected after the first notice has been given.

### **11.3 CURE**

The Contractor shall commence and complete the effort of curing the breach of contract as quickly as possible after the Contractor has been notified of the breach.

## **11.4 REMEDIES FOR BREACH OF CONTRACT**

### **11.4.1 Withheld payment**

In the event of a breach of contract on the part of the Contractor, 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.

### **11.4.2 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.

### **11.4.3 Standardised damages and hourly liquidated damages**

In the case of overrun deadlines or another failure to perform on the part of the Contractor, the Customer shall have the right to standardised compensation as stipulated in Appendix 5.

If standardised damages have *not* been agreed in Appendix 5, the Customer may demand hourly liquidated damages in accordance with the provisions below:

If any agreed deadline for rectifying A or B level errors 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.

The hourly liquidated damages shall accumulate automatically and amount to 0.2 per cent 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. The liability for accumulated hourly liquidated damages may not exceed 5 per cent of the annual consideration per instance of breach of contract and 15 per cent of the annual consideration per year.

Other rates and other periods for hourly liquidated damages, as well as the deliverables to which these shall apply, may be agreed in Appendix 1.

If only parts of the maintenance deliverables are delayed, the Contractor may request a reduction in the hourly liquidated damages proportional to the ability of the Customer to utilise the software and equipment.

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.

### **11.4.4 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 if the accumulated hourly liquidated damages reach the maximum ceiling of 15 per cent within a one (1) year period.

#### **11.4.5 Damages**

The Customer may claim damages in respect of any direct loss, including additional costs the Customer incurs due to substitute purchases, any loss caused by additional work and other direct costs in connection with delays, deficiencies or other breaches of contract pursuant to clause 11.1, unless the Contractor demonstrates that the Contractor did not cause the breach of contract or the reason for the breach of contract.

Any accumulated hourly liquidated damages and standardised damages shall be deducted from any other damages in respect of the same delay/breach.

#### **11.4.6 Limitation of damages**

No damages may be claimed in respect of indirect loss. Indirect loss includes, but is not limited to, lost earnings of any kind, lost savings, loss of data, and claims from third parties, with the exception of liability for damages imposed as a result of defects in title.

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, and this is not caused by circumstances related to the Contractor or by 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 as agreed, 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 deliverables as the result of breach of contract on the part of the Customer, unless the breach is material.

### **12.4 TERMINATION FOR BREACH**

If there is a material breach of contract, the Contractor may, after having given the Customer written notice and granted it a reasonable deadline for remedying the situation, terminate all or parts of the Agreement for breach with immediate effect.

### **12.5 DAMAGES**

The Contractor may claim damages in respect of any direct loss that results from a breach of contract pursuant to clause 12.1, including any loss caused by additional work and other direct costs, unless the Customer is able to demonstrate 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 11.4.6, shall apply correspondingly.

## **13. OTHER PROVISIONS**

### **13.1 RISK IN RESPECT OF SOFTWARE AND EQUIPMENT**

The Customer assumes the risk relating to equipment and software that fall within the scope of the Agreement, cf. Appendix 3. The Contractor assumes the risk relating to any other equipment or software, for example, spare equipment, which it has placed on the premises of the Customer, unless otherwise agreed.

### **13.2 ASSIGNMENT OF RIGHTS AND OBLIGATIONS**

To the extent that the Customer is a public body, the Customer may assign, in full or in part, its rights and obligations under this Agreement to another public body, which shall then be entitled to corresponding terms and conditions.

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

The right to assignment in the paragraph above shall only apply if the new contractor meets the original qualification requirements, no other material changes are made to the contract, and the assignment is not made to circumvent the regulations concerning public procurement.

The right to consideration under this Agreement may be assigned freely, but shall not release the Contractor from its obligations and responsibilities.

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

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

### **13.4 FORCE MAJEURE**

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

In force majeure situations, the other party may only terminate the Agreement for breach with the consent of the affected party, or if the situation prevails or is expected to prevail for more than ninety (90) calendar days as from the date on which such situation arose, and in such case only with fifteen (15) calendar days' notice. Each of the parties shall cover their own costs associated with the ending of the contractual relationship. The Customer shall pay the agreed price for the part of the deliverables that was performed prior to the Agreement coming to an end. The parties may not present other claims against each other due to the Agreement coming to an end pursuant to this provision.

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.

## **14. DISPUTES**

### **14.1 GOVERNING LAW**

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

### **14.2 NEGOTIATIONS AND MEDIATION**

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

### **14.3 LITIGATION OR ARBITRATION**

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

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

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

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