Difi
Direktoratet for forvaltning og ikt

SSA-K 2018

Purchasing Agreement

Agreement governing the purchase of software and equipment

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

Tender for delivery of Unit Dose Dispensing and Packaging Machine for the Hospital Pharmacies Enterprise – South Eastern Norway

Case number: 2019/0009

CC BY

Agreement governing the purchase of software and equipment

An agreement governing
[designation of the procurement]

has been concluded between:

[Write here]

_____

(hereafter referred to as the Contractor)

and

[Write here]

_____

(hereafter referred to as the Customer)

Place and date:

[Write place and date here]

_____

[The Customer's name here]	[The Contractor's name here]
_____	_____
Signature of the Customer	Signature of the Contractor

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

Short name of the Agreement

[Write short name here]

_____

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

On behalf of the Customer:	**On behalf of the Contractor:**
Name:	Name:
Position:	Position:
Telephone:	Telephone:
Email:	Email:

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1. GENERAL PROVISIONS

1.1 SCOPE OF THE AGREEMENT

The Agreement governs the delivery of standard components in the form of software, equipment and other deliverables ("the deliverables") that have been specified with final effect and developed prior to the conclusion of the Agreement, and which can be used as developed by the manufacturer and/or assembled by the Contractor to meet the Customer's needs.

The Customer has, based on its purposes and needs, specified its requirements in Appendix 1 (Customer requirements specification). The Contractor has described the deliverables, based on the Customer requirements specification, in Appendix 2 (Contractor description of the deliverables). If the Contractor is of the view that there are obvious errors or ambiguities in the Customer requirements specification, the Contractor shall also point this out in Appendix 2.

If Appendix 1 stipulates that the deliverables shall function together with the Customer's current technical platform, the Customer shall describe this in Appendix 3. If the Customer's technical platform needs to be upgraded in order to enable the Customer to utilise the deliverables, the Contractor shall point this out in Appendix 2.

If Customer participation is a requirement for the Contractor to be able to deliver according to the agreement, the Contractor must, in appendix 2, describe the Customer’s participation in sufficient detail as to enable the Customer to prepare and provide specified expertise at the specified time according to the agreement.

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

1.2 APPENDICES TO THE AGREEMENT

All rows shall be ticked (Yes or No)	Yes	No
Appendix 1: Customer requirements specification	X	
Appendix 2: Contractor description of the deliverables	X	
Appendix 3: Customer technical platform	X	
Appendix 4: Delivery date and other deadlines	X	
Appendix 5: Approval test	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: Licence terms and conditions for standard software and free software	X	
Other Appendices:		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.
4. The standard licence terms and conditions (Appendix 10) shall apply between the producer of any standard software (licensor) and the Customer, but these shall not change the Contractor's obligations under this Agreement to an extent greater than that which is stipulated in clause 2.1 (The duties of the Contractor) and clause 4.3 (Free software). "Standard software" means software that is produced for delivery to multiple users, where a licence (right of disposal) may be acquired independent of services from the software producer.

1.4 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 shall form Appendix 9, and shall without delay provide the Customer with an updated copy thereof.

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.

2. PERFORMANCE OF THE DELIVERABLES

2.1 THE DUTIES OF THE CONTRACTOR

2.1.1 Software and equipment

The Contractor shall be responsible for ensuring that the software and equipment delivered under this Agreement meets the requirements and descriptions specified in Appendices 1 and 2. Unless otherwise is stipulated in Appendices 1 and 2, the software and equipment shall have the functions, properties and quality stipulated in the standard product description/specification, user manual, etc. that the Contractor includes upon sales of these products. In the event of conflicts between the product descriptions, etc. as described above and Appendices 1 and 2, Appendices 1 and 2 shall prevail, cf. clause 1.3.

The Contractor shall also be responsible for ensuring that the software and equipment individually function as agreed (cf. clause 2.1.3, paragraphs four and five) and function together in the same ways described in the Agreement.

If it is necessary to upgrade the technical platform of the Customer, as described in Appendix 3, in order for the deliverables due from the Contractor to work as agreed, this is to be specified in Appendix 2. The Customer may demand that the Contractor covers any additional costs incurred by the Customer if the Contractor has neglected to specify in Appendix 2 that the Customer's technical platform must be upgraded.

2.1.2 Customisations and installation, etc.

The Contractor shall not be responsible for performing customer customisations, installations, or other tasks that shall be performed after the software and equipment has been handed over or made available to the Customer, unless this is explicitly stipulated in Appendices 1 and 2. Unless otherwise is agreed, such services shall be delivered as assistance (contribution obligation) and paid for on the basis of time spent charged at the Contractor's hourly rates in Appendix 7.

If it is agreed that the Contractor shall deliver services pursuant to this clause 2.1.2, and errors occur in the software covered by clause 2.1.3, paragraph six, the Contractor shall in reasonable scope seek to find a temporary solution, without any additional consideration, 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 also be agreed in Appendix 7.

2.1.3 Applicability of standard licence and agreement terms and conditions

To the extent that standard software included in the deliverables must be delivered under standard licence terms and conditions and agreement terms and conditions (licence terms and conditions), this shall be explicitly stated in a separate chapter in Appendix 2, and copies of the licence terms and conditions shall be appended as Appendix 10.

The provisions of the licence terms and conditions governing right of disposal shall prevail over the provisions governing right of disposal in this Agreement, unless otherwise is explicitly stated in Appendix 8. The Contractor shall ensure that standard software is offered under licence terms and conditions with a right of disposal that satisfy the requirements in respect of the deliverables and their area of use stipulated by the Customer in Appendix 1, and this Agreement's provisions governing right of disposal. To the extent that the provisions of licence terms and conditions governing right of disposal differ from this Agreement's provisions governing right of disposal, the Contractor shall describe this clearly in Appendix 2. In the event of defects in title, the Contractor shall not be liable for damages for defects in title associated with standard software beyond 1) that which follows from licence terms and conditions included in Appendix 10, and 2) the coverage of any liability for damages imposed on it in relation to a third party (the rightsholder(s)).

The deliverables shall be tested and approved pursuant to this Agreement's provisions governing testing and approval (cf. clause 2.2.2), independent of what may follow from the software's licence terms and conditions.

The Contractor shall be responsible for ensuring the Contractor's deliverables comply with the agreed requirements and descriptions under this Agreement, irrespective of the provisions of the particular licence terms and conditions.

If errors in standard software result in the deliverables deviating from what was agreed under this Agreement, it shall be the responsibility of the Contractor to rectify the error in such a way as to make the deliverables conform to what was agreed, even if such standard software might be subject to licence conditions that include different provisions on the rectification of errors. The rectification of errors in, or errors caused by, standard software may be effected in any manner that makes the deliverables conform to the requirements under the Agreement.

If the Contractor documents that deviations in the deliverables such as those mentioned in the preceding paragraph are due to the behaviour of the standard software not matching the software producer's specifications, and that access to the standard software's source code is required in order rectify the errors, the Contractor's obligation to rectify the errors is limited to reporting the error to the software producer, seeking to the best of its ability to make rectification of the error a priority, keeping the Customer informed about the status of the error rectification, and making the rectified version available to the Customer once the error in the standard software has been rectified by the software producer. To the extent it follows from clause 2.1.2, last paragraph, the Contractor shall make a reasonable effort to find a temporary solution while the software producer rectifies the error.

Errors in standard software such as those mentioned in the second to last paragraph shall not be included in the assessment of whether or not the approval criteria have been fulfilled, unless the Contractor has failed to perform its duties in respect of following up the error rectification and making error rectifications available to the Customer. If the errors in the standard software are not rectified by the expiry of the warranty period, the Customer may demand a price reduction and possible damages pursuant to the Agreement's chapter 6.

2.1.4 Documentation and training

Unless otherwise is agreed, the Customer shall, as part of the agreed consideration for the software and equipment, be provided with, or given electronic access to, such standard product descriptions, user manuals and other documentation as the Contractor usually includes upon sales of the applicable products.

The documentation shall be made available to the Customer by no later than at the same time as the software and equipment, cf. Appendix 4. It shall be dated and be the most recently updated version.

Further documentation requirements may be set out in Appendices 1 and 2.

The Contractor's shall assist with the necessary training of the Customer's personnel, to the extent that this is agreed in Appendices 1 or 2, and priced in Appendix 7.

2.1.5 Time and place for the Contractor's performance

Software and equipment shall be delivered by the deadlines set out in Appendix 4. Unless otherwise is stipulated in Appendix 4, any objections on the part of the Customer shall be submitted in writing by no later than five (5) working days after all the software and equipment covered by the Agreement has been physically delivered to the agreed address. In the case of software, it is sufficient that the software has been made available to the Customer for digital downloading, unless such downloading cannot be performed pursuant to the Contractor's specifications, with this not being due to circumstances related to the Customer, and the Customer

notifies the Contractor of this within a reasonable period of time. If the Customer has not submitted objections by the deadline, the delivery date shall be deemed to have taken place on the day the last component of the software and equipment was physically delivered.

If a specific approval test has been agreed pursuant to clause 2.2.2, delivery shall not be deemed to have taken place until the approval test has been completed and approved by the Customer.

2.1.6 Warranty period and guaranteed performance

Unless otherwise agreed in Appendix 7, the warranty period shall be one (1) year for software and two (2) years for equipment, starting from the date delivery is deemed to have taken place pursuant to clause 2.1.5.

Contingent upon normal, diligent use on the part of the Customer, the Contractor shall, at no additional cost, rectify errors and defects, replace defect parts of equipment and rectify errors in software governed by this Agreement and which the Customer has complained about before the expiry of the warranty period. No damages or other remedies for breach of contract may be claimed for defects that are rectified pursuant to the warranty. The error rectification of software shall be deemed fulfilled once the error rectification is made available to the Customer.

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

Rectifications shall be performed without undue delay. The second to last paragraph of clause 2.1.3 shall apply correspondingly.

The Contractor is free to choose if errors shall be rectified through rectifications, redelivery or additional deliveries. If the Contractor chooses to rectify errors during the warranty period by delivering a new version of the software, the Contractor shall not be entitled to any consideration in respect of the new version, even if it contains improvements. The Contractor may only rectify errors and defects by way of the delivery of a new version if the Customer is able to utilise such new version on the Customer's existing technical platform.

2.2 THE DUTIES OF THE CUSTOMER

2.2.1 Contributions

The Customer shall contribute to facilitating the Contractor’s performance of its duties under this Agreement.

2.2.2 Duty to examine

The Customer shall examine the deliverables in accordance with the normal legal rules for the sale of goods and pursuant to good business practice.

If Appendix 1 stipulates that a specific approval test shall be performed, the type and scope of this test shall be described in detail in Appendix 5 (cf. clause 2.1.5). The provisions below shall also apply.

Unless Appendix 5 specifies otherwise, the following error definitions shall apply:

Level	Category	Description
A	Critical error	- 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 being delivered or not working as agreed. - The documentation being so incomplete or misleading that the Customer is unable to use the software or the equipment, or material parts thereof.
B	Serious error	- 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. - 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.
C	Less serious error	- Error that results in individual functions not working as agreed, but which can be worked around with relative ease by the Customer. - The documentation being incomplete or imprecise.

The Customer may not refuse to approve the deliverables if the reported errors are immaterial to the Customer's use. A and B errors shall be deemed individually material, with the exception of B errors that are not of material importance to the ability of the Customer to make ordinary use of the software and equipment while error rectification takes places. C errors are deemed to be immaterial, unless several C errors imply, in aggregate, that approval would be clearly unreasonable. Other approval criteria may be agreed in Appendix 5.

If the Customer approves the deliverables, the Customer shall notify the Contractor of this in writing. The delivery date shall be deemed to have taken place on the first working day after the notice has been sent. If the Customer rejects the deliverables, notification of this shall be sent to the Contractor by no later than ten (10) working days after the end of the approval test. If such notice is not sent by the deadline, the delivery date shall be deemed to have taken place on the first working day after the end of the approval test. Other deadlines may be agreed in Appendix 5.

2.3 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.

2.4 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 2.4 may be agreed in Appendix 6.

2.5 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 2.5.

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

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

2.6 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.

2.7 EXTERNAL LEGAL 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, in Appendix 1, any relevant functional and security requirements that are applicable to the deliverables.

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

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

Each party shall, as a general rule, pay the costs of complying with legal requirements applicable to the party and its activities.

If legal requirements that are applicable to the deliverables are changed after the Agreement has been concluded, but before the delivery date, the Customer may request that the necessary changes be made to ensure compliance with the new requirements. The Contractor shall, as soon as possible, clarify the cost and progress related consequences of the changes and present these to the Customer. The Customer shall then make a decision about whether or not the change should be implemented.

3. CONSIDERATION AND PAYMENT TERMS

3.1 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 unless the Customer has, in Appendix 7, agreed that prices for components that are delivered from abroad may be stated in a foreign currency.

Unless otherwise is stipulated in Appendix 7, the software and equipment shall be delivered DDP (Incoterms) to the address stipulated on the first page of the Agreement.

3.2 INVOICING DATES AND PAYMENT TERMS

Consideration payable in respect of software and equipment shall be invoiced when delivery is deemed to have taken place pursuant to clause 2.1.5, unless otherwise is stipulated in Appendix 7. Training and other assistance shall be invoiced when the services have been performed, in arrears per month.

Payment shall be made within thirty (30) calendar days of the invoice date. The invoices of the Contractor shall be specified and documented so that the Customer can easily check whether the invoice conforms to the agreed consideration. All invoices relating to hours recorded on an ongoing basis shall be accompanied by a detailed specification of the hours accrued. Disbursements shall be specified separately.

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

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.

Any other payment terms and conditions may be agreed in Appendix 7.

3.3 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).

3.4 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.

3.5 PRICE ADJUSTMENTS

The price may only 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.

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

4. RIGHT OF OWNERSHIP AND RIGHT OF DISPOSAL

4.1 RIGHT OF OWNERSHIP OF EQUIPMENT

Any equipment delivered pursuant to this Agreement shall become the property of the Customer from the date on which the equipment has been delivered as agreed and the purchase price has been paid.

Any purchase-money security interest may be agreed in Appendix 7.

4.2 RIGHT OF DISPOSAL OF SOFTWARE, ETC.

4.2.1 Limited right of disposal

The Customer is granted a limited right of disposal in respect of the software and documentation that forms part of the deliverables. The right of disposal comprises the rights that are necessary for the Customer to be able to utilise the deliverables as agreed, including a right to make such number of copies of the software as follows from ordinary operational and safety procedures.

The right of disposal shall apply as from signing of the Agreement, without any time limitation or right of termination, unless otherwise agreed in Appendix 7.

The consideration for the right of disposal in respect of the software, including any prerequisites and limitations, for example, in relation to the number of users or the place where the right of disposal is exercised/the equipment used to do so, is described in Appendix 7. In those cases where such limitations are agreed, the Contractor shall have the right to conduct audits at the Customer in order to verify compliance with the limitations. Reasonable notice of such audits shall be provided and they shall be conducted with the least possible inconvenience to the Customer.

The Customer shall not be entitled to transfer software or copies of software to third parties without the written consent of the Contractor, unless this takes place in connection with operational services provided by an operational services provider.

4.2.2 Return or destruction upon termination of the right of disposal

The Customer shall, upon the termination of an agreed, time-limited right of disposal in respect of software pursuant to clause 4.2.1, paragraph two, return or delete all copies of the software that fall within the scope of the Agreement and are located on the premises of the Customer. The same shall apply to all copies of documentation.

4.3 FREE SOFTWARE

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

If free software is to be used in connection with the deliverables, the Contractor shall prepare an overview of the relevant free software. The overview shall be included as a separate chapter in Appendix 2. Copies of the applicable licence terms and conditions for the relevant free software shall be appended in Appendix 10.

The Contractor shall ensure that no free software is being used under licence terms that are incompatible with the requirements applicable to the deliverables, or incompatible with the licence terms governing other software that forms part of the deliverables.

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

As regards the parts of the deliverables that are based on free software, including customisations and further developments of the free software, the Customer shall be granted the rights that are necessary to distribute the results further under the relevant free software licence or under a compatible free software licence if this is stipulated in Appendix 1. The rights include access to source code, with associated specifications and documentation.

If the Customer requires free software to be part of the deliverables, the Customer shall itself pay any costs resulting from inadequate functionality caused by errors or defects in the free software. The Customer shall itself carry the risk of defects in title relating to free software that the Customer has requested be used as part of the deliverables. To the extent that the Contractor is aware that free software that the Customer has requested be used as part of the deliverables, is unsuited to satisfying the Customer's requirements or, infringes, or is alleged by anyone to infringe, third party copyrights, the Contractor shall point this out in Appendix 2, cf. clause 1.1 of the Agreement. The Contractor shall, as a supplementary and chargeable service, assist the Customer with the remediation of any defects or defects in title in free software that is chosen by the Customer as mentioned above. The Contractor's standard hourly rate for consultancy services under this Agreement shall apply, unless otherwise agreed in Appendix 7. The Contractor may

request a change to the Agreement pursuant to chapter 3 if the effort to remedy such defects has implications for the other obligations of the Contractor under the Agreement.

5. BREACH OF CONTRACT

5.1 BREACH OF CONTRACT ON THE PART OF THE CONTRACTOR

5.1.1 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 with the agreed functions, requirements or deadlines. There is also a breach of contract if the Contractor fails to perform other duties under the Agreement.

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

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

5.1.2 Cure

The Contractor shall commence and complete the effort of curing the breach of contract without undue delay, by way of repair, redelivery or supplementary delivery, at no additional cost to the Customer.

5.1.3 Infringement of the intellectual property rights of third parties (defect in title)

If the delivered deliverables infringe any copyrights or other intellectual property rights of third parties, the Contractor shall secure the missing rights or secure a right of disposal for the Customer of at least equal benefit. If this is not possible, the Customer shall be entitled to return the relevant component of the deliverables and be refunded the associated share of the purchase price.

If a third party asserts to the Customer that the deliverables entail a defect in title, the Customer shall inform the Contractor in writing as soon as possible.

The Contractor shall deal with the claim at its own expense. The Customer shall, to a reasonable extent, assist the Contractor with this.

5.2 BREACH OF CONTRACT ON THE PART OF THE CUSTOMER

There is breach of contract on the part of the Customer if the Customer fails to perform its duties under the Agreement. In the event of late payment, the Contractor shall be entitled to late payment interest pursuant to clause 3.3.

Nevertheless, there is no breach of contract if the situation is 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.

5.3 NOTIFICATION OBLIGATION

If one of the parties is unable to perform its duties as agreed, such party shall give the other party written notice of this 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.

No damages or other remedies for breach of contract may be claimed for circumstances that have not been notified at the latest prior to the expiry of the warranty period. Nevertheless, this shall not apply to any liability for damages imposed in relation to a third party in respect of defects in title pursuant to clause 5.1.3.

6. REMEDIES FOR BREACH OF CONTRACT

6.1 SUSPENSION OF PERFORMANCE

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

6.2 LIQUIDATED DAMAGES IN THE CASE OF DELAY

If the agreed date of delivery (delivery date) or other deadline in respect of which the parties have stipulated liquidated damages in Appendix 4 is not complied with, and this is not caused by force majeure or circumstances on the part of the Customer, there is a delay on the part of the Contractor that triggers liquidated damages.

The liquidated damages shall accumulate automatically. The liquidated damages amount to 0.15 per cent 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 liquidated damages, a different calculation basis and other periods for 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 liquidated damages continue to accumulate. However, this time

restriction shall not apply in the case of wilful misconduct or gross negligence on the part of the Contractor or anyone for whom it is responsible.

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

6.3 PRICE REDUCTION

If the Contractor has not succeeded, despite repeated attempts, in curing a defect, the Customer shall have the right to a proportional reduction in price. The price reduction shall compensate for the reduced value of what has been delivered, and shall be independent of any damages.

6.4 TERMINATION FOR BREACH

If there is a material breach of contract, the other party may, after giving the party that is in breach of contract 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 deliverables are materially delayed. There is a material delay if delivery has not taken place by the time liquidated damages reach their maximum limit, or by the expiry of an extended deadline, if this expires later.

6.5 DAMAGES

A party may claim damages in respect of any direct loss, including additional costs incurred by the Customer 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 clauses 5.1.1 or 5.2, unless the defaulting party demonstrates that the defaulting party did not cause the breach of contract or the reason for the breach of contract.

Liquidated damages shall be deducted from any other damages in respect of the same delay.

6.6 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.

Overall damages over the term of the Agreement are limited to an amount corresponding to the contract price, excluding Value Added Tax.

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

The limitations shall also not apply in the case of liability for defects in title imposed on the Contractor.

7. OTHER PROVISIONS

7.1 RISK ASSOCIATED WITH EQUIPMENT AND SOFTWARE

The risk of damage to equipment and delivered software copies, etc., due to an accidental occurrence, shall pass from the Contractor to the Customer upon actual delivery.

7.2 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 Norwegian 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.

7.3 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.

7.4 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 end the Agreement 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 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.

8. DISPUTES

8.1 GOVERNING LAW

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

8.2 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 reach agreement through negotiations and/or mediation.

8.3 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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