

<b>Consultancy Assignment Agreement Part I</b>			
<b>Contract number: XX/XXXXX</b>			
The Consultancy Assignment Agreement, <b>XXXXXX XXXXXXXXX</b> , consists of the completed and signed Part I and the enclosed part II (general terms).			
All enquiries concerning this agreement should be addressed to:			
The Customer <b>XXXXXX</b>		The Consultant <b>XXXXXX</b>	
Name	<b>Complete</b>	Name	<b>Complete</b>
Position		Position	
Postal address		Postal address	
Telephone		Telephone	
E-mail		E-mail	
<b>Appendix 1: The customer's description of the Assignment</b>			
<b>XXXX XXXX XXXX.</b>			
<b>Appendix 2: The consultant's specification</b>			
<b>XXXX XXXXX XXXXX.</b>			
<b>Appendix 3: Project and progress plan</b>			
<b>XXX XX XXXXXX.</b>			
<b>Appendix 4: Administrative provisions</b>			
<b>XXXX XXXXX.</b>			
<b>Appendix 5: Total price and pricing provisions</b>			
<b>XXXXX XXXX XXXXX</b>			
<p>The Consultant must deliver electronic invoices and any credit note to the Customer in "Elektronisk handelsformat" (EHF), which is the selected standard format for billing to the government. The customer's invoice address is 9908:972417920 (of which the last 9 digits is the Customer organization number).</p> <p><i>Comment (to be removed before signing the contract): For suppliers who do not have a system for electronic invoicing, there are solutions for invoicing via banks and independent web portals. DIFI (Agency for Public Management and eGovernment) has more information about electronic invoice on their website <a href="http://www.anskaffelser.no/e-handel/faktura/om-elektronisk-faktura">http://www.anskaffelser.no/e-handel/faktura/om-elektronisk-faktura</a>.</i></p>			
<b>Appendix 6: Changes to the general contractual wording</b>			
<b>XXXX XXX XXXX.</b>			
<p><u>(New) Clause 12. Corruption, compliance with laws in the Agreement part II:</u> The Consultant shall refrain from any illegal or corrupt practices, hereunder, refuse any offer, gift, payment or benefit of any kind, which would or could, either directly or indirectly, be construed as an illegal or corrupt practice.</p> <p>The Consultant shall inform the Customer of any indication of corruption or misuse of public Norwegian funds that comes to his attention during the course of the assignment.</p> <p>The Consultant shall comply with the regulations on secrecy in the Norwegian Public Administration Act (Act of February 10, 1967).</p>			

The Consultant shall comply with any other applicable laws and regulations, and take prompt corrective action with regard to any violation thereof brought to his attention. Hereunder, the Consultant is responsible for fulfilling any applicable registration requirements, and is responsible for all payments, statements and reports required by the authorities in Norway or other countries in connection with the assignment.

**Appendix 7: Changes subsequent to the conclusion of the Agreement**

Xxxx xxxx xxxx.

**Other:** xxxx xxx xxxx.

Date: dd Month yyyy

Date: dd Month yyyy

Signature Customer

Signature Consultant

## Consultancy Assignment Agreement Part II

### The Norwegian Government's Standard Terms and Conditions for Research and Development Work to be Performed by a Consultant – Research and Development Agreement. The Agency for Public Management and eGovernment (Difi), July 2015

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# 1. GENERAL PROVISIONS

## 1.1 SCOPE OF THE AGREEMENT

The Agreement governs the provision of research and development-related services by the Consultant, with the Consultant undertaking to deliver, and assuming responsibility for, an original and final solution, hereafter referred to as the Assignment.

The Customer has specified its needs and requirements in Appendix 1.

The Consultant has specified the implementation of the Assignment in Appendix 2.

The scope and performance of the Assignment is described in more detail in the Appendices below included as part of 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: The Customer's description of the Assignment		
Appendix 2: The Consultant's specification of the Assignment		
Appendix 3: Project and progress plan		
Appendix 4: Administrative provisions		
Appendix 5: Total price and pricing provisions		
Appendix 6: Changes to the general contractual wording		
Appendix 7: Changes subsequent to the conclusion of the Agreement		
Other Appendices:		

## 1.3 INTERPRETATION – RANKING

Changes to the general contractual wording shall be set out in Appendix 6, 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 6 shall prevail over the general contractual wording.

- c) If the general contractual wording refers to changes to any other Appendix than Appendix 6, such changes shall prevail over the general contractual wording.
- d) Appendix 7 shall prevail over the other Appendices.

#### **1.4 PROGRESS PLAN AND DELIVERY DATE**

The Consultant shall perform the Assignment in accordance with the progress plan in Appendix 3.

If the Assignment comprises several deliveries or partial deliveries, the delivery date for each delivery shall be specified in Appendix 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 4.

#### **1.6 KEY PERSONNEL**

The key personnel of the Consultant in connection with the performance of the Assignment shall be specified in Appendix 4.

Any replacement of key personnel on the part of the Consultant requires the approval of the Customer. Approval shall not be unreasonably withheld.

In the case of the replacement of personnel due to circumstances relating to the Consultant, the costs associated with transferring expertise to the new personnel shall be for the account of the Consultant.

## **2. CHANGES, SUSPENSION AND CANCELLATION**

### **2.1 CHANGES TO THE DELIVERABLES SUBSEQUENT TO 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 Consultant may request, if changes are requested, adjustments to the consideration or progress plans if it demonstrates that it is probable that such adjustments are justified. Any request for adjusted consideration or progress plans must be submitted, at the latest, simultaneously with the Consultant's response to the Customer's request for a change agreement.

Changes or additions to the agreed deliverables shall be agreed in writing. The Consultant shall maintain a directory of such changes on an ongoing basis, which directory shall form Appendix 7, and shall without undue delay provide the Customer with an updated copy thereof.

The Customer may request that the Assignment be reduced or expanded to an extent corresponding to a maximum of twenty (20) per cent of the consideration payable for the entire Assignment. The price shall in such case be changed in line with the reduction or expansion. The Consultant shall not be entitled to any compensation in respect of any such reduction.

The Consultant may terminate the Agreement by giving thirty (30) days' notice if the Customer reduces or expands the scope or scale of the Assignment by more than twenty (20) per cent.

## **2.2 TEMPORARY SUSPENSION OF THE ASSIGNMENT**

The Customer may order the temporary suspension of the Assignment. Such an order shall be made in writing with a minimum of five (5) calendar days' notice. It shall be specified when the Assignment is to be suspended, and when it is planned to be resumed.

In the case of temporary suspension, the Customer shall reimburse:

- a) The documented costs incurred by the Consultant in relation to the reassignment of personnel.
- b) Other direct costs incurred by the Consultant as a result of the suspension.

## **2.3 CANCELLATION**

The Assignment may be cancelled by the Customer by giving thirty (30) days' written notice.

In the case of cancellation prior to the completion of the Assignment, the Customer shall pay:

- a) The amount owing to the Consultant for the work already performed.
- b) The documented additional costs incurred by the Consultant in relation to the reassignment of personnel.
- c) Other direct costs incurred by the Consultant as a result of the cancellation.
- d) A fee of four (4) per cent of the consideration agreed for the entire Assignment.

# **3. THE DUTIES OF THE CONSULTANT**

## **3.1 THE RESPONSIBILITIES AND EXPERTISE OF THE CONSULTANT**

The Assignment shall be completed in accordance with the Agreement, and shall be performed efficiently, effectively and to a high professional standard.

The Consultant shall cooperate with the Customer in good faith, and shall attend to the interests of the Customer.

Requests from the Customer shall be replied to without undue delay.

The Consultant shall, without undue delay, give notice of circumstances that the Consultant understands, or ought to understand, may be of relevance to the completion of the Assignment, including any expected delays.

### **3.2 USE OF STANDARDS/METHODS**

The Consultant shall apply any standards and/or methods, etc., specified by the Customer in Appendix 1.

The Customer shall be enabled to check and verify work performed by the Consultant, as well as adherence to the specified standards/methods.

### **3.3 USE OF SUBCONTRACTORS**

The Consultant's use and replacement of any subcontractors shall be approved in writing by the Customer. Approval shall not be unreasonably withheld.

Approved subcontractors must be named in Appendix 4.

### **3.4 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 Consultant shall ensure that its and any subcontractors' employees who contribute directly to the performance of the Consultant'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 Consultant 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 Consultant and that involve the performance of work that contributes directly to the performance of the Consultant's obligations under the Agreement shall include corresponding terms and conditions.

If the Consultant 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 Consultant, until it has been documented that compliance has been achieved.

Performance of the Consultant'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 Consultant's and any subcontractors' obligations.

The Consultant 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 Consultant 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 Consultant may require the third party to sign a declaration stating that the information will not be used for any other purpose than ensuring compliance with the obligations of the Consultant under this provision. The disclosure obligation shall also apply to subcontractors.

Further clarification concerning the implementation of this clause 3.4 may be agreed in Appendix 4.

### **3.5 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 Assignment, this shall be specified in Appendix 2, and a copy of the licence terms governing the relevant free software (free software licence) shall be appended thereto.

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

As regards those parts of the deliverables that are based on free software, including customisation and evolution thereof, the Customer shall be granted such rights as are necessary in order to pass on the results under the relevant free software licence, or under a compatible free software licence if this is specified in Appendix 2. The rights include access to source code, with associated specifications and documentation.

## **4. THE DUTIES OF THE CUSTOMER**

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

The Customer shall contribute to the completion of the Assignment in good faith.

Requests from the Consultant shall be replied to without undue delay.

The Customer shall, without undue delay, give notice of circumstances that the Customer understands, or ought to understand, may be of relevance to the completion of the Assignment, including any expected delays.

#### **4.2 USE OF A THIRD PARTY**

The Customer may freely appoint a third party to assist it in connection with its duties under the Agreement. The Consultant shall be notified of the appointment. The Consultant may reject the appointment if it demonstrates that this will entail a material commercial disadvantage to itself.

Any third party used shall be named in Appendix 4.

### **5. THE DUTIES OF THE PARTIES**

#### **5.1 MEETINGS**

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

Other deadlines and procedures for the meetings may be agreed in Appendix 4.

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

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

#### **5.3 RISK AND RESPONSIBILITY IN RELATION TO COMMUNICATION AND DOCUMENTATION**

Both parties shall ensure the proper communication, storage and backup copying of documents and other materials of relevance to the Assignment, irrespective of the format thereof, including emails and other electronically stored materials.

The Consultant assumes all risks relating to, and full responsibility for, all materials, irrespective of the format thereof, that are damaged or destroyed whilst under the control of the Consultant.

#### **5.4 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, provided that these are subjected to a confidentiality obligation corresponding to that stipulated in the present clause 5.4.

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.

## **5.5 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 3 for this type of enquiry.

## **6. CONSIDERATION AND PAYMENT TERMS**

### **6.1 CONSIDERATION**

All prices and the detailed terms governing the consideration to be paid by the Customer for the deliverables provided by the Consultant are set out in Appendix 5.

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 5.

Unless otherwise specified in Appendix 5, all prices are quoted exclusive of Value Added Tax. All prices are quoted in Norwegian kroner.

If the consideration is to be based on ongoing hours worked, an estimate of the number of hours shall be set out in Appendix 5. If the Consultant becomes aware that the estimate will be exceeded by more than ten (10) per cent, the Consultant shall immediately notify the Customer in writing thereof. The Consultant shall in its notice specify the reason for the overrun, as well as the estimated time needed to complete the remaining work. Any price reduction in case the estimate is exceeded shall be specified in Appendix 5.

## **6.2 INVOICING**

Consideration and disbursements shall be invoiced at the times set out in Appendix 5. Consideration based on ongoing hours worked shall be invoiced in arrears on a monthly basis, unless otherwise agreed in Appendix 5. The invoiced amount shall in such a case cover the time spent up to the invoicing date, as well as any reimbursement of expenses incurred over the same period.

Payment shall be made within thirty (30) calendar days of the invoice date. The invoices of the Consultant shall be specified and documented so as to make it easy for the Customer to check how the invoice conforms to the agreed consideration. All invoices relating to hours recorded on an ongoing basis shall be accompanied by a detailed specification of the hours accrued. Disbursements shall be specified separately.

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

The payment schedule and other payment terms, and any terms and conditions relating to the use of EHF, are set out in Appendix 5.

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

## **6.3 LATE PAYMENT INTEREST**

If the Customer fails to make payment by the agreed time, the Consultant 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).

## **6.4 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 Consultant 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.

## **6.5 PRICE ADJUSTMENTS**

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 Consultant.

The hourly rate may under any circumstance be adjusted as per the beginning of every calendar year, with an amount that shall not exceed 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 5.

Any other provisions pertaining to price adjustments are set out in Appendix 5.

## **7. COPYRIGHT AND RIGHT OF OWNERSHIP**

The right of ownership, the copyright and all other relevant rights, including all other relevant intellectual property rights, associated with the outcome of the Assignment shall accrue to the Customer when payment has been made, unless otherwise agreed in Appendix 6, and subject to any limitations laid down by other agreements or by mandatory law.

These rights also include the right to changes and the right to further assignment, cf. section 39b of the Act No. 2 of 12 May 1961 relating to Copyright in Literary, Scientific and Artistic Works, etc. (Copyright Act).

The Consultant shall retain the rights to its own tools and methods. Both parties may also utilise general know-how that they have accumulated in connection with the Assignment, provided that such know-how is not confidential.

## **8. BREACH OF CONTRACT ON THE PART OF THE CONSULTANT**

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

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

## **8.2 NOTIFICATION OBLIGATION**

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

## **8.3 EXTENSIONS OF DEADLINES**

The Consultant may request an extension of the deadline, which extension must have the written approval of the Customer in order to apply.

The Customer shall not be entitled to claim liquidated damages or ordinary damages in respect of the period encompassed by an extension of the deadline.

An extension of the deadline shall have no impact on the entitlement of the Customer to any liquidated damages or ordinary damages that accrue prior to the extension of the deadline.

## **8.4 CURE**

The Consultant 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.

## **8.5 REMEDIES FOR BREACH OF CONTRACT**

### **8.5.1 Suspension of performance**

In the event of breach of contract on the part of the Consultant, 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. The Consultant shall not suspend any performance as the result of breach of contract on the part of the Customer, unless the breach is material.

### **8.5.2 Liquidated damages in the case of delay**

If the agreed delivery date or other deadline in respect of which the parties have stipulated liquidated damages in Appendix 3, 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 Consultant that triggers liquidated damages.

If the Consultant prior to the agreed date of delivery is delayed with regard to milestones for which the parties have stipulated liquidated damages, later deadlines shall be extended corresponding to the number of calendar days of the liquidated damages. If the Consultant, through acceleration, manages to achieve a subsequent

milestone at the originally agreed time, the previously accrued liquidated damages shall be cancelled.

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 5.

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 Consultant or anyone for whom it is responsible.

If only parts of the agreed deliverables are delayed, the Consultant 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.

### **8.5.3 Price reduction**

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

### **8.5.4 Termination for breach**

If there is a material breach of contract, the Customer may, after having given the Consultant written notice and granted it 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.

If the services rendered prior to the termination date are of such a nature that the Customer has gained little or no benefit from the services rendered on the termination date, the Customer may, in connection with termination for breach, demand the repayment of consideration received by the Consultant in relation to ongoing hours worked and any expenses under the Agreement, with the addition of interest, at the rate of NIBOR plus one (1) per cent, as from the date on which payment was made. Apart from this, the Customer, to the extent that the Customer is able to utilise these services as intended, shall pay for the services rendered prior to the termination date after deducting a price reduction pursuant to clause 8.5.3.

### **8.5.5 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 8.1, unless the Consultant demonstrates that the Consultant 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.

#### **8.5.6 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 over the term of the Agreement are limited to an amount corresponding to the contract price, excluding Value Added Tax, or an agreed estimate for the Assignment.

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

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

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

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

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

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

### **9.2 NOTIFICATION OBLIGATION**

If the Customer is unable to perform its duties under the Agreement, including as to deadlines, the Customer shall notify the Consultant 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.

### **9.3 CURTAILMENT OF THE RIGHT OF RETENTION ON THE PART OF THE CONSULTANT**

The Consultant shall not suspend any performance as the result of breach of contract on the part of the Customer, unless the breach is material.



## **9.4 DAMAGES**

The Consultant may claim damages in respect of any direct loss that results from a breach of contract pursuant to clause 9.1, 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 in clause 8.5.6 of the Agreement shall apply correspondingly.

## **10. OTHER PROVISIONS**

### **10.1 INSURANCE POLICIES**

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

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

### **10.2 ASSIGNMENT OF RIGHTS AND OBLIGATIONS**

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

The Consultant may only assign its rights and obligations under the Agreement with the written consent of the Customer. The same shall apply if the Consultant 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 Consultant 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. Such assignment shall not release the relevant party from its obligations and responsibilities.

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

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

### **10.4 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 from the date on which the situation arose, and in such case only with fifteen (15) calendar days' notice.

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

## **11. DISPUTES**

### **11.1 GOVERNING LAW**

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

### **11.2 NEGOTIATIONS**

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

### **11.3 MEDIATION**

If a dispute related to this Agreement is not resolved after negotiations, the parties may attempt to resolve the dispute through mediation.

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

The detailed procedure for the mediation shall be determined by the mediator, in consultation with the parties.

#### **11.4 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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