

# Innovation Partnership Agreement

## An agreement governing an Innovation Partnership

**entered into between:**

[Write here]

---

(hereafter referred to as the Partner)

**and**

[Write here]

---

(hereafter referred to as the Contracting Authority)

**Place and date:**

[Write place and date here]

---

[Name of Contracting Authority here] [Name of Partner here]

---

Contracting Authority's signature

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Partner's signature

Two copies of the Agreement are to be signed, with each party receiving one original.

Short name for the Agreement

**The Partnership Contract**

**Enquiries**

Unless otherwise specified in Appendix 6, all communication concerning this Agreement shall be directed to:

**At the Contracting Authority**

Name:

Position:

Telephone:

Email:

**At the Partner**

Name:

Position:

Telephone:

Email:

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## 1.GENERAL PROVISIONS

### 1.1SCOPE OF THE AGREEMENT

The Innovation Partnership Agreement shall meet the needs and objectives as described by the Contracting Authority in Appendix 1 (Contracting Authority's demand description). The Innovation Partnership covers development and eventual purchase of a solution. If the Innovation Partnership is successful and the Contracting Authority wishes to purchase the solution, this shall be done in accordance with the terms set out in Appendix 11.

The Contracting Authority's objectives for the service are set out in Appendix 1. The Partner has described how they will develop a solution and deliver a service that satisfies the demand description in their offer in Appendix 2. If, in the Partner's opinion, there are obvious errors or uncertainties in the Contracting Authority's demand description and requirements, the Partner shall refer to this in Appendix 2.

If it is specified in Appendix 1 that the solution shall work together with the Contracting Authority's technical platform, it will be described in Appendix 3.

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

### 1.2APPENDICES TO THE AGREEMENT

All rows must be ticked (Yes or No)	YES	NO
Appendix 1 including 1A, 1B: The Contracting Authority's description of needs and objectives	x	
Appendix 2: Description of the Partner's solution	x	
Appendix 3: The Contracting Authority's technical platform	x	
Appendix 4: Progress Plan	x	
Appendix 5: Testing and approval	x	
Appendix 6: Administrative provisions	x	
Appendix 7: Total price and pricing provisions	x	
Appendix 8: Amendments to the Agreement before entering into a contract		x
Appendix 9: Amendments to the Agreement after entering into a contract	x	
Appendix 10: Licence terms and conditions for standard software and free software	x	
Appendix 11: Terms of the Agreement for purchase – option	x	
Other appendices:		

### **1.3 INTERPRETATION – RANKING**

Changes to the general contractual wording are to 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 event of conflict:

1. The general contractual wording will prevail over the Appendices.
2. Appendix 1 will 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 will prevail over Appendix 1.
  - b. Appendix 8 will prevail over the general contractual wording.
  - c. If the general contractual wording refers to changes in an appendix other than Appendix 8, such changes will prevail over the general contractual wording.
  - d. Appendix 9 will prevail over the other appendices.
4. Standard Licence Terms and Conditions (Appendix 10) shall apply between the producer of any standard software (licensor) and the Contracting Authority, but will not change the Partner's obligations under this Agreement to a greater extent than as stipulated in clause 5.1 (the Partner's responsibility for their performance). "Standard software" means software that is produced for delivery to several users where a licence (right of disposal) may be acquired independently of services from the Partner.

### **1.4 REPRESENTATIVES OF THE PARTIES**

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

### **1.5 THE PHASES AND MAIN MILESTONES OF THE AGREEMENT**

The Agreement is divided into the following phases:

Phase 1: The development in the form of partial deliveries

Phase 2: The Partner's development and testing of the solution

Phase 3 The Contracting Authority's testing and approval of the solution

Phase 4: Acquisition of the solution

## **2.IMPLEMENTATION OF THE INNOVATION PARTNERSHIP**

### **2.1PREPARATIONS AND ORGANISATION**

An overall project and milestone plan for the implementation of the Innovation Partnership is presented in Appendix 4. The Innovation Partnership shall be implemented within the framework of this plan. Requirements for the participation from the Contracting Authority in the implementation of the Innovation Partnership will be stated in the progress plan.

After entering into the contract, the Contracting Authority and the Partner shall create a detailed progress plan for the implementation of the Innovation Partnership in accordance with the method as described by the Partner in their offer in Appendix 2.

The detailed progress plan must be approved in writing by all parties. It is the responsibility of the Partner to document any subsequent amendments to the plan. The amendments cannot go beyond the Agreement's framework for time and resources, unless it is described how the increased use of time and resources can be recovered in later phases. All amendments to the detailed progress plan must be approved in writing by both parties and documented in Appendix 9.

Organisation of the Innovation Partnership, including specifying roles, responsibilities and powers, as well as defining key personnel, must be stated in Appendix 6.

### **2.2PHASE 1 DEVELOPMENT IN THE FORM OF PARTIAL DELIVERIES**

#### **2.2.1Partial deliveries**

The development phase can be divided into partial deliveries. The Contracting Authority and the Partner prepare a detailed plan for the development phase that describes which partial deliveries the phase will be divided into, and when they will be implemented.

If appropriate, partial deliveries can be conducted in parallel.

The Contracting Authority can choose, clarify and reprioritise within the framework of the demand description in the implementation of a partial delivery. The Contracting Authority is responsible for ensuring that choosing, clarifying and reprioritising does not exceed the agreed time and resource framework. The Partner is responsible for ensuring that the development happens within the agreed framework for time and resources. The Partner is also responsible for documenting the choices, clarifications and re-prioritisations that are made.

#### **2.2.2Implementation of a partial delivery**

Each partial delivery consists of 4 stages:

1. The Contracting Authority and the Partner prepare a detailed plan for the partial delivery within the framework of the progress plan in Appendix 4, setting targets

for the partial delivery, and agreeing how to verify that the objectives for the partial delivery have been fulfilled.

2. The Partner develops a solution design for the partial delivery in collaboration with the Contracting Authority.
3. The Partner develops the prototype. Several partial deliveries can be included in a prototype. This shall be stated in the detail plan for partial delivery, and the Partner shall, in this case, develop the partial delivery required to assemble and test the prototype.
4. The Contracting Authority and the Partner implement user testing or otherwise agree that the prototype meets the targets that are set for the partial delivery/deliveries in step 1.

The partial deliveries as indicated in clause 2.2.2 above are to be repeated a number of times as necessary to develop a final prototype that satisfies the Contracting Authority's demand description as stated in Appendix 1.

### **2.2.3 The termination of the partnership if the targets are not met**

The Contracting Authority may terminate the Innovation Partnership if the goals for a partial delivery cf. clause 2.2.2 above, step 4, are not fulfilled, and the Contracting Authority considers that this makes it unlikely that the sub-objectives for the development phase will be reached within the planned framework for time and resources.

## **2.3 PHASE 2: THE PARTNER'S PREPARATION AND TEST OF THE FINAL PROTOTYPE**

Based on the final prototype as given in clause 2.2.2, final paragraph, the Partner will develop a solution, test it and prepare a report or otherwise document that the solution does not contain serious errors. The Partner will then send confirmation in writing to the Contracting Authority that the solution is ready for the Contracting Authority's test.

### **2.3.1 Termination of the partnership if the Phase 2 targets are not fulfilled**

The Contracting Authority may terminate the Innovation Partnership if the solution is not ready for the Contracting Authority's test within the framework for time and resources as stated in the detailed progress plan, cf. Appendix 4, or that the solution contains so many errors that the Contracting Authority's test cannot be carried out in an appropriate manner for the Contracting Authority, or that the Partner does not otherwise meet the targets for the phase.

## **2.4 PHASE 3: THE CONTRACTING AUTHORITY'S TEST AND APPROVAL OF THE SOLUTION**

Before the Contracting Authority's test starts, the Partner must have sent notice as indicated in the last sentence of clause 2.3.



The Contracting Authority will set out a plan for the testing of the solution. The Partner will provide any test plans and other test materials that they have prepared for use in their own testing for the disposal of the Contracting Authority, so that the Contracting Authority can use them in the planning and implementation of their test.

The Contracting Authority's and the Partner's tasks and duties for the Contracting Authority's test of the solution are stated in Appendix 5. The same applies to error definitions and criteria for accepting the solution.

#### **2.4.1 Termination of the Partnership if the Phase 3 objectives are not met**

The Contracting Authority may terminate the Innovation Partnership if the results of the Contracting Authority's test show that the solution does not meet the requirements of the demand description in Appendix 1 (with any amendments that the parties have agreed to during the Innovation Partnership), or that the Partner does not otherwise meet the requirements for the phase.

#### **2.5 PHASE 4: ACQUISITION OF THE SOLUTION**

It shall be clearly and unequivocally stated in the tender documents or Appendix 1 whether the Contracting Authority has committed to acquire the solution, or if the acquisition of the solution is an option.

It is a prerequisite for the acquisition of the solution that the terms and agreed remuneration for the acquisition are set out in Appendix 11: Terms of the Agreement for acquisition – option.

If the Contracting Authority does not approve the solution cf. clause 2.4, the Contracting Authority has no obligation for the acquisition. The Contracting Authority also cannot exercise an option.

If the Contracting Authority wishes to exercise an option to acquire the solution, the Contracting Authority shall notify the Partner in writing within 90 days of the solution being approved, cf. clause 2.4 above. If a partnership is entered into with several Partners, the deadline shall run in parallel from the time the last solution has been approved.

#### **2.6 TERMINATION OF THE PARTNERSHIP**

The Contracting Authority may terminate the partnership after each of the first three phases if the terms set out in clauses 2.2.3, 2.3.1 and 2.4.1 have been met, or if the costs of the development turn out to be disproportionate to the value of the performance. "Terminating the Partnership" means terminating this Agreement with immediate effect. Such termination shall be given in writing to the Partner within a reasonable time after the condition of the termination has been met.

The Contracting Authority may also terminate the partnership after each of the three first phases, if another partnership in the same acquisition is more qualitatively and economically advantageous.

Funds intended for the Innovation Partnership may, with the termination of the partnership, be transferred in whole or in part to other Innovation Partnerships participating in the same development process.

In the event of termination as stated in this clause, the Partner is only entitled to the agreed remuneration and coverage of the agreed expenses up to the date of the termination. Remuneration and accrued expenses must be documented.

### **3.AMENDMENTS AND ADDITIONS TO THE DELIVERABLE AFTER AGREEMENT HAS BEEN ENTERED INTO**

#### **3.1 RIGHT TO AMEND THE CONTENT OF THE AGREEMENT (CHANGE TO THE DELIVERABLE)**

If the Contracting Authority needs minor changes, or additions that cannot be handled by reprioritising within the agreed framework for the time and resources of the demand description, the Contracting Authority may request an amendment agreement.

The Partner may demand adjustments to the remuneration or timeframe following such an amendment. Any request for adjusted remuneration or timeframe must be submitted, at the latest, at same time as the Contracting Authority's response for an amendment agreement.

Changes to the Service shall be made in writing, and must be signed by authorised representatives of the parties. The Partner shall maintain a directory of ongoing amendments forming Appendix 9, and must provide an updated copy to Contracting Authority without delay. The amendments must not collectively amount to more than a 10 (ten) percent net addition to the original contract price.

Any additional costs covered by the Partner are stated in the provision in clause 12.6 below.

### **4.ACCESS TO CONFIDENTIAL INFORMATION**

The Contracting Authorities may, upon written acceptance of the Partner, give the other Partners access to solutions or confidential information of which the individual Partner has the rights to.

## **5.THE PARTNER'S OBLIGATIONS**

### **5.1THE PARTNER IS RESPONSIBLE FOR THEIR PERFORMANCE**

The Partner is responsible for ensuring that the deliverable as a whole (the integrated solution) provides the functions and requirements as specified in the Agreement.

It is the Partner's responsibility that the deliverable is suitable for the technical platform as specified in Appendices 2 and 3, cf. clause 1.1, and that the deliverable is compatible with other software as specified in Appendices 1 and 2.

To the extent that standard software included in the deliverable 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 Partner shall ensure, however, that the standard software is offered under licence terms with a right of disposal that satisfies the requirements the Contracting Authority have covered in Appendix 1 for the deliverable and its usage, and this Agreement's provisions on the right of disposal. If there are discrepancies between the terms of the licence provisions on the right of disposal and this Agreement's provisions on right of disposal, the Partner shall clearly describe this in Appendix 2. In the event of defects in title, the Partner shall not be liable for damages for defects in title associated with standard software beyond that which follow from licence terms and conditions included in Appendix 10, and the coverage of any liability for damages imposed on it in relation to a third party (the rightsholder(s)) in accordance with clause 13.4.

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

The Partner is responsible for the deliverable (the overall solution) meeting the requirements in this Agreement, regardless of what may result from individual licence terms and conditions.

If the deliverable deviates from what has been agreed in this Agreement, it is the Partner's responsibility to rectify the deviation in such a way that the deliverable conforms to what has been agreed, even if such a deviation is caused by factors in standard software subject to licence terms and conditions, with different provisions for rectification of errors. The rectification of errors in, or errors caused by, standard software may be effected in any manner that makes the deliverable conform to the requirements under the Agreement.

If the Partner documents that the discrepancies in the deliverable are due to standard software not adhering to the software producer's specifications, and that access to the standard software's source code is required in order to rectify the errors, the Partner's obligation to remedy the errors is limited to reporting the error to the software producer, prioritising the correction of the error to the best of their ability, keeping the Contracting Authority informed of the status of the error rectification, and making the corrected version available for the Contracting Authority once the error in the standard software has been rectified by the software producer. The Partner shall assist with the installation at the request of the Contracting Authority without additional remuneration. The Partner shall make a reasonable effort in order to find an interim solution while the software producer rectifies the error. An upper financial limit for the Partner's obligation to work out interim solutions that work around errors in standard software can be agreed in Appendix 7.

Errors in the standard software, such as those mentioned in the second to last paragraph, shall not be included in the assessment of the criteria or approval criteria have been fulfilled, unless the Partner has failed to perform its duties of following up the rectification of an error and the installation of the rectified version. As soon as the errors in the standard software have been rectified, the corrected version has been installed, and the Partner has otherwise performed all of the necessary tasks for the deliverable to match what has been agreed, the Contracting Authority shall have reasonable time to retest the deliverable.

## **5.2 REQUIREMENTS FOR THE PARTNER'S RESOURCES AND COMPETENCE**

The Partner guarantees that the deliverable is being executed with adequate qualitative and quantitative Resources and Competence based on the requirements in the Agreement. The Partner's project manager and other key personnel are stated in Appendix 6.

Persons designated as key personnel in Appendix 6 shall not be replaced without prior approval of the Contracting Authority, as within the framework of the Partner's managerial right as employer. Such approval cannot be unreasonably withheld. The key personnel's actual participation in the provision of the deliverable cannot be scaled back without the approval of the Contracting Authority.

Personnel who the Contracting Authority do not wish to use or wishes to replace on a reasonable basis, will be replaced as soon as possible with alternative personnel with at least the equivalent competence.

Replacement of personnel shall not affect the project's progress plan or cause increased costs for the Contracting Authority.

## **5.3 USE OF SUBCONTRACTORS**

The Partner's use and replacement of subcontractors who directly participate in the fulfilment of the deliverable must be approved in writing by the Contracting Authority. Approval may only be withheld on objective grounds.

Subcontractors that are approved shall be specified in Appendix 6.

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

The Partner is obliged to cooperate with third parties to the extent that the Contracting Authority finds it necessary for the purposes of performing the duties stipulated in this Agreement. The scope of such assistance shall be specified in Appendix 6. Any remuneration for such assistance shall be specified in Appendix 7. In such cases, the Partner is obliged to adopt an independent position and act in consultation with the Contracting Authority.

However, the Partner is exempt from the duties mentioned in this clause if the Partner proves that such a collaboration will be of a material disadvantage to the Partner's relationships with its existing subcontractors or other business contacts.

#### **5.5 PAY AND WORKING CONDITIONS**

For agreements that are subject to Regulation no. 112 of 8 February 2008 concerning Pay and Working Conditions in Public Contracts, the following applies:

In areas covered by the Generalised Collective Wage Agreements, the Partner shall ensure that its own and any subcontractors' employees who contribute directly in the fulfilment of the Partner's obligations under this Agreement do not have worse Pay and Working Conditions than those stipulated in the Regulations relating to Generalised Collective Wage Agreements. In areas not covered by the Generalised Collective Wage Agreements, the Partner shall ensure that the same employees do not receive worse Pay and Working Conditions than those stipulated in any applicable national collective wage agreement for the relevant industry. This applies to work performed in Norway.

All Agreements that are entered into by the Partner, and that involve the performance of work that directly contributes to the fulfilment of the Partner's obligations during this Agreement, shall include corresponding terms and conditions.

If the Partner does not fulfil this obligation, the Contracting Authority has the right to withhold part of the total remuneration, corresponding to approximately 2 (two) times the savings for the Partner, until it is documented that the issue has been remedied.

The fulfilment of the Partner's obligations as mentioned above shall be documented in Appendix 6 by either a self-declaration or third-party declaration showing conformity between the relevant Collective Wage Agreements and actual Pay and Working Conditions relating to compliance with the Partner's and any subcontractor's obligations.

The Partner shall, at the request of the Contracting Authority, submit documentation on the Pay and Working Conditions used. The Contracting Authority and the Partner may each require that the information be submitted to an independent third party that the Contracting Authority has hired to examine whether the requirements of this provision have been met. The Partner may require that the third party signs a declaration stating that the information will not be used for any other purpose other than ensuring compliance with the Partner's obligations under this provision. The documentation obligation also applies to subcontractors.

Further clarification concerning the implementation of this clause 5.5 may be agreed in Appendix 6.

## **6.THE OBLIGATIONS OF THE CONTRACTING AUTHORITY**

### **6.1THE RESPONSIBILITY AND PARTICIPATION OF THE CONTRACTING AUTHORITY**

If it is stated in Appendix 2 that the Contracting Authority's technical platform needs to be upgraded, cf. Appendix 3, the Contracting Authority shall provide such upgrading themselves, unless otherwise stipulated in Appendix 1 and/or 2.

The Contracting Authority shall contribute to facilitating the conditions for the Partner to perform their duties under this Agreement.

The Contracting Authority shall participate in the implementation of the deliverable as specified in Appendix 2, in accordance with the deadlines set out in Appendix 4.

### **6.2THE CONTRACTING AUTHORITY'S USE OF THIRD PARTIES**

The Contracting Authority may freely appoint third parties to assist in their duties under the Agreement. These are stated in Appendix 6. The Partner must be notified of the Contracting Authority's choice of third party, and may object to the involvement if the Partner is able to show that this entails a material commercial disadvantage for the Partner.

## **7.DUTIES APPLICABLE TO THE CONTRACTING AUTHORITY AND THE PARTNER**

### **7.1MEETINGS**

If it so deems necessary, a party may with at least three (3) working days' notice call a meeting with the other party to discuss the contractual relationship and the way in which the contractual relationship is executed.

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

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

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

### **7.3CONFIDENTIALITY 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 Contracting Authority is a public body, the scope of the confidentiality obligation under this provision shall not go beyond that laid down by the 10 February 1967 Act on the manner of handling administrative matters (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 applies to the parties' employees, subcontractors and any third parties who act on behalf of the parties relating to 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 clause 7.3.

The confidentiality obligation does not preclude the parties from using the experience and expertise gained in conjunction with the performance of the Agreement.

The confidentiality obligation will continue to apply after the expiry of the Agreement. Employees or other persons who resign from a position with one of the parties will, following their resignation, continue to be subject to the confidentiality obligation concerning the aforementioned circumstances. The duty of confidentiality will lapse five (5) years after the Delivery Day, unless otherwise stipulated in legislation.

#### **7.4 COMMUNICATION IN WRITING**

All notices, demands or other communications relating to this Agreement shall be sent 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 for this type of enquiry in Appendix 6.

## **8.REMUNERATION AND PAYMENT TERMS**

### **8.1REMUNERATION**

All prices and the specific terms governing the remuneration to be paid by the Contracting Authority for the services provided by the Partner are stipulated in Appendix 7.

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 unless otherwise agreed in writing. Travel time will only be invoiced if this is agreed in Appendix 7.

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

All prices are in Norwegian kronor unless the Contracting Authority has agreed in Appendix 7 that the prices for components delivered from abroad may be stated in a foreign currency.

### **8.2INVOICING**

Payment shall be made within thirty (30) calendar days of the invoice date. The Partner's invoices must be specified and documented so that the Contracting Authority can easily check whether the invoice corresponds to the agreed remuneration. All invoices for running hours must be accompanied by a detailed specification of accrued hours. Expenses should be specified separately.

When the Contracting Authority has made arrangements for this, the Partner 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 7.

The Partner must cover any costs it incurs in respect of submitting electronic invoices.

### **8.3LATE PAYMENT INTEREST**

If the Contracting Authority fails to make payment by the agreed time, the Partner may claim interest on the amount due for payment, in relation to Act 100 of 17 December 1976 concerning interest on late payments, etc. (the Norwegian Interest Act).

### **8.4PAYMENT DEFAULT**

If undisputed overdue remuneration plus late payment interest is not paid within 30 (thirty) calendar days from due date, the Partner may send written notice to the Contracting Authority that the Agreement will be terminated if settlement has not been made within 60 (sixty) calendar days after the notice has been received.



Termination may not take place if the Contracting Authority settles the overdue remuneration, with the addition of the late payment interest, before the deadline.

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

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

The Contracting Authority shall, in Appendix 1, identify which legal or party-specific requirements are of relevance to the entering into and implementation of this Agreement. The Contracting Authority is responsible for specifying any relevant functional and security requirements applicable to the deliverable in Appendix 1.

The Partner shall describe how their solution will meet these requirements in Appendix 2.

Each party is responsible for following up its own obligations pursuant to such legal requirements.

As a general rule, each party must pay the costs of complying with legal requirements applicable to the party as such and its activities. In the event of amendments to the legal or official requirements that affect the activity of the Contracting Authority, and necessitate amendments to the deliverable after the conclusion of the Agreement, the Contracting Authority shall cover the costs associated with such amendments and additional work, cf. Chapter 3.

### **9.2 INFORMATION SECURITY**

The Partner shall implement appropriate measures in order to address information security requirements related to the implementation of the deliverable.

### **9.3 PERSONAL DATA**

If the Partner is to process personal data on behalf of the Contracting Authority in connection with the implementation of the deliverable (for example, when converting data), the Partner will act as the data processor. As a data processor for the Contracting Authority, the Partner shall process personal data in accordance with this Agreement. The Partner may not process the personal data in any other way. The parties may also have entered 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 Partner shall, through planned and systematic measures, ensure that adequate information security with respect to confidentiality, integrity and accessibility when processing personal data, cf. section 13 of the Personal Data Act. The Partner will document the information system and security measures. The documentation shall be made available upon request to the Contracting Authority 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, and/or in the detailed specification or specification for the conversion work.

The Partner may not transfer personal data to others for storage, processing or deletion without the consent of the Contracting Authority. Subcontractors approved by the Contracting Authority are stated in Appendix 6. The Partner will ensure that any subcontractors used by the Partner, and who process personal data, assume the same obligations as those set out in clause 9.3.

Personal data must not be transferred to countries outside the European Economic Area without the prior written consent of the Contracting Authority.

## **10. INTELLECTUAL PROPERTY RIGHTS**

### **10.1 BACKGROUND AND ENHANCEMENTS AND DEVELOPMENTS OF BACKGROUND**

The Parties acknowledge that they each may possess intellectual property rights ("IPR"), and proprietary technology created, developed or acquired prior to entering into this Agreement ("Background IPR"). Schedule [xx] contains a list of the Partner's Background IPR considered relevant for the Project at its commencement. For the purposes of this Article 10, the term "IPR" shall include, but not be limited to, any and all patents, patent applications, trade secrets, know-how, copyrights, design rights, trademarks and processes and other intellectual property rights and rights in technology, software and solutions, etc., whether registered or not.

Each Party shall remain the sole owner of its own Background IPR including any Enhancements or Developments thereto and nothing herein shall imply any transfer of ownership of such Background IPR to the other Party, Sponsors or any third party.

For the purpose of this Agreement, the term "Enhancement or Developments" in relation to Background IPR shall mean any and all improvement, augmentation, betterment, modification, maturation or advancement of that Background IPR, whether made individually or jointly by the Parties during and in relation to the Project and irrespective of such improvement, augmentation, betterment, modification, maturation or advancement representing an adaptation of that Background IPR to the other Party's Background IPR.

Notwithstanding the above, if an Enhancement or Development relates to both Parties' Background IPR, it shall be regarded a jointly developed Enhancement or Development, to which the ownership shall be shared between the Parties with equal parts.

The Partner shall grant to the Contracting Authority a non-exclusive, irrevocable, royalty free, non-transferable worldwide license to use its Background IPR including any Enhancements or Developments to the extent needed for the Contracting Authority to use or utilize Project Results by itself or by its affiliates and/or in cooperation with the Partner or another supplier (third Party). If this Agreement is terminated pursuant to Sections 2, 8.4, 11.4, 11.5.3, 12.4, 13.3, 15.4 or on any other lawful basis, the license provided by the Partner in this sub-paragraph shall continue on a non-exclusive, irrevocable basis, but may be made subject to payment of an ordinary license-fee no higher than what is generally paid in the market for similar licenses.

## **10.2 PROJECT RESULTS**

Both parties accept and acknowledge and hereby agree that, in consideration of their joint economic and other investments in the project, all Project Results shall be owned by the parties jointly, with equal shares.

For the purpose of this Agreement, "Project Results" shall mean any and all IPR, technology, applications, trade secrets, solutions, know-how, copyrights, designs, trademarks, processes and other results discovered, developed or created individually or jointly by the Parties as part of the project governed by the Agreement during the term of this Agreement.

Before the end of the term of this agreement, the Parties shall in good faith formalize a separate written agreement with all applicable and reasonable terms relating to ownership and exploitation/use of Project Results, taking into account the binding obligations undertaken by the parties in this sub-section 10.2

## **10.3 CONFIDENTIALITY**

All results of and information on the Project obtained in the course of its execution shall be treated as confidential by the Parties and the Parties agree to restrict access to such information to the Parties' respective affiliated companies, managers, directors, officers, partners, employees, agents, subcontractors who will have a specific need to know such information in connection with the Project and who are obligated to abide by the terms stated herein regarding the information.

The confidentiality obligation imposed upon each Party by this Agreement does not apply to information which:

- a) is or becomes part of the public domain through no fault of the receiving Party;
- b) is proved to have been in the possession of the receiving Party or in the possession of one of his Affiliates prior to the receipt of the information under this Agreement and which is not subject to any obligation of confidentiality owed to the disclosing Party;
- c) is proved to have been received by the receiving Party or one of its Affiliates from a third party without a confidentiality obligation;
- d) is developed by a Party or one of his Affiliates as a result of activities carried out independently of the Project, and without access to technical information made available under the Agreement; or

e) is required to be disclosed in order to comply with the requirements of any law, rule or regulation of any governmental or regulatory body having jurisdiction over the Parties or the Work, or of any relevant stock exchange.

During the confidentiality period each Party has the right upon receiving prior written consent from the other Party to divulge data from the Project to clients, consultants, contractors, members of production groups for which he is operator or technical assistant, relevant regulatory authorities and certifying agencies to the extent necessary for their participation in the Project. A Party making use of this right shall require the recipient to sign a confidentiality agreement limiting the use and divulgence of Project data to such a specific and named project only.

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

### **10.4.1 Making of copies (copying)**

The Contracting Authority can provide documentation for the solution for their own use. No remuneration is payable in this case.

### **10.4.2 Changes to the documentation**

The Contracting Authority may, at its own risk, make such changes, additions, etc., to the documentation for its own use as deemed appropriate by the Contracting Authority.

### **10.4.3 Utilisation of the specifications**

Each party may utilise all types of specifications that appear under this Agreement, unimpeded by any other party's copyright. The right of utilisation includes the right to reuse the specification in other projects, and to make it available to others, including for their reuse. This provision does not provide a right to distribute information that is covered by a confidentiality obligation pursuant to clause 7.3.

## **10.5 FREE SOFTWARE**

### **10.5.1 General provisions pertaining to free software**

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

A free software licence permits, for example, the Contracting Authority the right to use the software for any purpose and on any scale, access to the software's source code and documentation, right to examine and change software, to make copies of the software and to make changes and improvements to the software available to the general public.

If free software is to be used in connection with the deliverable, the Partner 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 Partner shall ensure that no free software is being used under licence terms which are incompatible with the requirements applicable to the deliverable, or incompatible with the licence terms applicable for other software forming part of the deliverable.

The general terms and conditions of the Agreement will also apply to the parts of the deliverable that consist of free software, with the specifications and exceptions set out below.

#### **10.5.2 The Partner's responsibility for the overall functionality of the deliverable when using free software**

The Partner is responsible for the deliverable (the overall solution) meeting all requirements of the Agreement, cf. clause 5.1, irrespective of the provisions of any particular free software licence.

If errors in the free software result in the deliverable deviating from what was agreed under this Agreement, it is the Partner's responsibility to rectify the errors in such a way as to make the deliverable adhere to what was agreed, even if such free software may be subject to separate licence terms and conditions that include different provisions on the rectification of errors. Defects in free software may be removed in any manner that makes the deliverable conform to the contractual requirements.

#### **10.5.3 The Contracting Authority's rights in relation to the parts of the deliverable that are based on free software**

For the parts of the deliverable that are based on free software, including adaptation and the further developments of the free software, the Contracting Authority shall be granted the rights necessary to fulfil the terms of the applicable free software licence.

The rights include access to source code, with the associated specifications and documentation.

#### **10.5.4 The effects of redistributing free software**

If the deliverable is to be distributed to others, the terms of the relevant free software licence shall apply. If redistribution, or other ways of making the deliverable available, implies that the other parts of the deliverable than those that originally were free software will be governed by the terms of a free software licence, the Partner must specify this in Appendix 2.

#### **10.5.5 The partner's responsibility for defects in title of free software**

The Partner shall only use the free software that is offered under a widely-recognised free software licence, and that does not infringe third-party rights based on a sound assessment by the Partner. The assessment shall take into consideration, inter alia, how well established the relevant free software in the market is, the Partner's knowledge of the software's history and origins, and whether it is known in the relevant market that there are claims that the software violates their rights. The Partner must give an account of their assessment in Appendix 2.

If the free software used by the Partner in relation to the deliverable infringes third-party rights, the Partner shall, within the limitations of clause 10.7.6, remedy the errors as specified in clause 13.2.

The Partner shall indemnify the Contracting Authority for any liability for damages caused by legal deficiencies in the free software that the Partner has offered, or chosen themselves, to use in connection with the deliverable, cf. clause 13.4.

#### **10.5.6 The Contracting Authority's responsibility for the use of free software**

If the Contracting Authority requires the use of specific free software as a part of the deliverable, the Contracting Authority will cover any cost resulting from inadequate functionality caused by errors or defects in the free software.

The Contracting Authority bears the risk of defects in title of the free software that the Contracting Authority has requested to be part of the deliverable. The Contracting Authority shall indemnify the Partner for any liability for damages as a result of their defects in title of the free software as chosen by the Contracting Authority, cf. clause 13.4 of the Agreement.

To the extent that the Partner is aware that free software as requested by the Contracting Authority to be used as part of the deliverables is unsuited to fulfilling the Contracting Authority's requirements, or infringes, or is alleged by anyone to infringe the third-party copyrights, the Partner must make this known in Appendix 2 cf. clause 1.1 of the Agreement.

The Partner shall, as a supplementary and chargeable service, assist the Contracting Authority with the remediation of any defects, or defects in title in the free software as chosen by the Contracting Authority as mentioned above. Unless otherwise agreed in Appendix 7, the Partner's standard hourly rate for consultancy services in this Agreement will be used. The Partner may request an amendment to the Agreement pursuant to Chapter 3, if the work to remedy such defects has implications for the Partner's other obligations under the Agreement.

## **11. THE PARTNER'S BREACH OF CONTRACT**

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

A breach of contract from the Partner occurs if the deliverable does not conform to the agreed functions, requirements or deadlines. There is also a breach of contract if the Partner does not fulfil other duties under the Agreement.

However, there is no breach of contract if the situation is caused by circumstances relating to the Contracting Authority or due to force majeure.

The Contracting Authority shall make a complaint within a reasonable amount of time after the breach of contract has been discovered or should have been detected.

## **11.2 DUTY OF NOTIFICATION**

If the Partner's services cannot be delivered as agreed, the Partner must give the Client written notice of this as soon as possible. The notice shall specify the reason for the problem and, insofar as possible, when the services can be delivered. The same will apply if it can be assumed that further delays will occur after the first notice was given.

No compensation or other breach of contract charges may be claimed for matters not notified at the latest by the end of the Contracting Authority's test. 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 13.4.

## **11.3 EXTENSIONS OF DEADLINES**

The Partner may request an extension of the deadline, which is only valid with written consent from the Contracting Authority.

For the duration of the extended period, the Contracting Authority shall not be entitled to claim compensation for damages or other non-compliance.

An extension to the deadline has no effect on the Contracting Authority's right to liquidated damages, or compensation awarded prior to the extended deadline.

## **11.4 REMEDIATION**

The Partner shall commence and carry out the work to remedy the breach of contract without undue delay.

The aim of the measures shall be for the deliverable to satisfy the agreed requirements and specifications, and for the deliverable to work as agreed. Remedy may, for example, take the form of removal, redelivery or additional delivery.

To the extent that no measures are provided, the Contracting Authority may request a proportional price reduction or terminate the Agreement provided that the conditions for this in clause 11.5.3 or 11.5.4 are met.

If the Partner has failed to remedy the breach of contract within the stipulated or agreed timeframe, or if the conditions for the termination for the breach are met, the Partner shall pay all expenses incurred by the Contracting Authority in obtaining help from a third party. The Contracting Authority cannot, however, allow a third party to remedy the defect before any extended deadline has expired.

The Contracting Authority shall notify the Partner in writing before the Contracting Authority engages with a third party.

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

### **11.5.1 Withheld payment**

In the event of a breach of contract, the Contracting Authority may withhold payment, although the amount withheld must obviously not be greater than what is necessary to secure the Contracting Authority's claim of a breach of contract.

### **11.5.2 Price reduction**

If, despite repeated attempts, the Partner has not succeeded in remedying a defect, the Contracting Authority may claim a proportionate reduction in total remuneration (the contract amount). The discount is compensation for the reduced value of the deliverable, and is independent of any damages.

### **11.5.3 Termination**

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

The Contracting Authority may cancel all of parts of the Agreement with immediate effect if the service is materially delayed. Significant delays exist, for example, when delivery has not occurred after the expiry of an extended deadline.

If the delay is such that the deliverable as a whole must be considered to be substantially delayed, for example, because what has already been delivered or shall be delivered later, cannot be used without what is covered by the right to revocation, the Contracting Authority may terminate the entire deliverable for the breach.

### **11.5.4 Compensatory damages**

The Contracting Authority may claim damages in respect to any direct loss, including additional costs the Contracting Authority 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 Partner can demonstrate that Partner did not cause the breach of contract nor the reason for the breach of contract.

### **11.5.5 Limitation of liability**

No compensation for indirect losses may be claimed. 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 pursuant to clause 13.4.

The total compensation of this Agreement period is limited to an amount equal to the total remuneration for this Agreement without the option (the contract amount, excluding VAT).

The aforementioned limitations of damages do not apply if the gross negligence or intent of misconduct is due to the Partner or anyone the Partner is responsible for.



## **12.THE CONTRACTING AUTHORITY'S BREACH OF CONTRACT**

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

There is a breach of contract on the part of the Contracting Authority if the Contracting Authority fails to fulfil their duties under the Agreement.

However, there is no breach of contract if the situation is caused by the Partner's circumstances, or if the circumstances are considered to be due to force majeure.

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

### **12.2NOTICE OBLIGATION**

If the Contracting Authority is unable to comply with its obligations, including deadlines, under the Agreement, the Contracting Authority shall provide written notice to the Partner as soon as possible. The notice shall specify the reason for the problem and, as far as possible, indicate when the Contracting Authority can comply again with the agreed obligation.

### **12.3LIMITATION OF THE PARTNER'S RIGHT OF RETENTION**

The Partner shall not suspend any services as a result of the Contracting Authority's breach of contract, unless the breach of contract is material, cf. clause 12.4.

### **12.4TERMINATION**

In the event of payment default, the Partner may terminate the Agreement if the Contracting Authority has not settled overdue consideration within 60 (sixty) calendar days after the Contracting Authority has received the Partner's written notice pursuant to clause 8.4.

In the event of other material breach, the Partner can send the Contracting Authority a written notice that the Agreement will be terminated if the Contracting Authority has not, within 60 (sixty) calendar days of the Contracting Authority receiving the notice, terminated or rectified the breach of contract. Termination for breach of contract shall not take place if the Contracting Authority has rectified the breach of contract situation before the expiration of the deadline.

## **12.5 COMPENSATORY DAMAGES**

The Partner may claim compensation for any direct losses arising from the breach of contract pursuant to clause 12.1, unless the Contracting Authority can demonstrate that the breach of contract or the cause of the breach of contract is not attributable to the Contracting Authority. If the Contracting Authority is delayed with the fulfilment of their duties during the Agreement, and this results in the Partner spending more time implementing its part of the deliverable, the Partner is entitled to an adjustment of the agreed remuneration, corresponding to the amount of hours the Partner has incurred, caused by the additional work as a result of the Contracting Authority's breach of contract.

The limitation of damages provision of the Agreement, cf. clause 11.5.6, shall apply correspondingly.

## **12.6 THE PARTNER'S ADDITIONAL WORK AND OTHER ADDITIONAL EXPENSES RESULTING FROM UNFORESEEN EVENTS NOT DUE TO THE PARTNER**

The Partner's additional work and additional expenses as a result of delays caused by the Contracting Authority, or unforeseen events not caused by the Partner are covered as stated in Appendix 7. Such additional work and additional expenses must be documented.

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

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

Each party is responsible for ensuring that its deliverable does not infringe the copyright or other intellectual property rights of third parties, and will bear all risks in this respect. There is a defect in title if the deliverable entails such an infringement.

### **13.2 THIRD-PARTY CLAIMS**

If a third party asserts to one of the parties that the deliverable entails a defect in title, the other party must be informed of this in writing as soon as possible.

The party responsible will deal with the claim at own cost. The other party will assist the party with this task to a reasonable extent.

A party must begin and complete the work of remedying defects in title without undue delay by

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

### **13.3 TERMINATION**

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

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

A party may claim full indemnification from a third party and any costs of the case, including the party's own costs associated with handling the case, in connection with a defect in title. The party may also claim damages in respect of other loss pursuant to the provisions of clauses 11.5.5, 11.5.6 and 12.5.

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

Upon termination, the Contracting Authority shall have the rights stipulated in Chapter 10 to what has been produced and made available for the Contracting Authority, and the Contracting Authority shall pay the agreed consideration for services that were performed prior to the date of the termination for the breach with the deduction of a price reduction in accordance with clause 11.5.3.

## **15. OTHER PROVISIONS**

### **15.1 RISK**

The risk of damage to the equipment and delivered software copies, etc., due to an accident, shall pass to the Contracting Authority at the time they are physically handed over to or downloaded by the Contracting Authority. It is the Partner's responsibility to have insurance policies that cover the period up until this date.

If delivered copies of the software are destroyed after the risk has passed to the Contracting Authority, the Contracting Authority will nevertheless be entitled to new copies in return for payment of the direct costs incurred by the Partner in making them available.

### **15.2 INSURANCE POLICIES**

If the Contracting Authority is a public body, the Contracting Authority stands as a self-insurer. If the Contracting Authority is not self-insured, the Contracting Authority is obliged to have insurance policies that sufficiently cover any claims from the Partner resulting from the Contracting Authority's risk or liability under this Agreement within the framework of ordinary insurance terms.

The Partner must hold insurance policies that are sufficient, within the limits defined by ordinary insurance terms and conditions, to cover claims from the Contracting Authority that may arise on the basis of the risk and responsibilities assumed by the Partner pursuant to this Agreement. This obligation shall be deemed to be met if the Partner takes out liability and risk insurance on terms and conditions that are deemed to be ordinary within the Norwegian insurance industry.

The Partner shall, at the request of the Client, clarify and document that the Partner's insurance policies are relevant to the fulfilment of this provision.

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

If the Contracting Authority is a public body, the Contracting Authority may assign its rights and obligations under this Agreement to another public body's activities as part of an organisational change. 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 Partner may only assert its rights and obligations under the Agreement with the written consent of the Contracting Authority, and if it is compatible with the law and regulations on public procurement. The same shall apply if the Partner is split into several companies, transferred to a subsidiary or other company in the same group, or the Partner is merged with another company. Consent shall not be denied without a valid reason.

The right to remuneration pursuant to this Agreement may be transferred freely. Such assignment shall not release the relevant party from its obligations and responsibilities.

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

In the case of debt negotiation, agreement or bankruptcy, or any other form of credit management being filed in respect of the business of the Partner, the Contracting Authority has the right to terminate the agreement with immediate effect, unless otherwise required by mandatory law.

### **15.5 FORCE MAJEURE**

If an extraordinary situation should arise which is outside the control of the parties and which makes performance of the obligations 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 Contracting Authority shall pay the agreed price for the part of the deliverable what was contractually delivered before the Agreement is terminated. The parties may not present other claims against each other due to the expiry of the Agreement in accordance with this provision.

In connection with force majeure situations, the parties have a mutual disclosure obligation towards each other regarding all matters that must be deemed to be relevant to the other party. This information must be provided as quickly as possible.

## **16.DISPUTES**

### **16.1GOVERNING LAW**

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

### **16.2NEGOTIATIONS**

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

If such negotiations do not succeed within ten (10) working days, or a different period agreed by the parties, either party may request that the dispute be heard with the help of either an independent expert or mediation.

### **16.3LITIGATION OR ARBITRATION**

If a dispute is not resolved through negotiations, either party may demand that the dispute be resolved with final effect by the Norwegian courts of law.

The legal venue is the Contracting Authority's usual legal venue.

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