

SSA-F 2022

Research Agreement

The Norwegian Government’s standard agreement for research and investigation projects

Agreement for research and investigation projects

**Agreement concerning**

[name of procurement]

has been entered into between:

[Please enter]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Hereinafter referred to as the Contracting Authority)

**and**

[Please enter]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Hereinafter referred to as the Contractor)

**Place and date:**

[Please enter the place and date]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |  |
| --- | --- |
| [Name of the Contracting Authority] | [Name of the Contractor] |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  The Contracting Authority’s Signature | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  The Contractor’s Signature |

This Agreement shall be signed in two copies, one for each Party.

**Enquiries**

All enquiries relating to this Agreement must be directed to the individual or role listed as the authorised representative in Appendix 4.

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# General Provisions

## Scope of the Agreement

This Agreement applies to research and investigation projects under which the Contractor will deliver and be responsible for an independent end result, hereinafter referred to as the Project.

The Contracting Authority has specified its needs and requirements in Appendix 1 to this Agreement.

The Contracting Authority has described the implementation of the Project in Appendix 2 to this Agreement.

If Appendix 2, in the opinion of the Contractor, contains deviations from the requirements set down in Appendix 1, this must be clearly specified in Appendix 2, see Clause 1.3 no. 3 below.

“Agreement” refers to this general agreement text with appendices.

## Appendix to the Agreement

|  |  |  |
| --- | --- | --- |
| All columns must be checked (Yes or No): | Yes | No |
| **Appendix 1: The Contracting Authority’s description of the Project**  *To be filled in by the Contracting Authority.* |  |  |
| **Appendix 2: The Contractor’s specification of the Project**  *To filled in by the Contractor.* |  |  |
| **Appendix 3: Project and progress plan**  *To be filled in by the Contractor based on the overall guidelines issued by the Contracting Authority.* |  |  |
| **Appendix 4: Administrative Provisions**  *Administrative provisions and other information of relevance to the Parties’ relationship. To be filled in by the Contractor based on the overall guidelines set down in the appendix by the Contracting Authority.* |  |  |
| **Appendix 5: Price and price provisions**  *Overview of all price elements linked to the implementation of this Agreement. To be filled in by the Contractor based on the overall guidelines set down in the appendix by the Contracting Authority.* |  |  |
| **Appendix 6: Changes to the general agreement text** |  |  |
| **Appendix 7: Amendments to the Agreement after the Agreement has been entered into** |  |  |
| **Appendix 8: Data Processing Agreement(s)** |  |  |
| Other appendices: |  |  |

## Interpretation – Ranking

Changes to the general agreement text must be collated in Appendix 6, unless the general agreement text references such changes to a different appendix. The following interpretation principles shall be used:

1. The general agreement text takes precedence over the appendices.
2. Appendix 1 takes precedence over the other appendices.
3. To the extent that it is clearly and unambiguously stated which Clause or Clauses have been amended, replaced or added to, the following incompatibility provisions shall apply:
   1. Appendix 2 takes precedence over Appendix 1.
   2. Appendix 6 takes precedence over the general agreement text.
   3. If the general agreement text references such changes to a different appendix than Appendix 6, such changes shall take precedence over the general agreement text.
   4. Appendix 7 takes precedence over the other appendices.
4. Appendix 8, the Data Processing Agreement(s), shall take precedence over the general agreement text and other appendices with regard to provisions that are clearly and unambiguously linked to the regulation of the personal data protection.

## Progress plan and delivery date

The Contractor shall execute the Project in accordance with the progress plan set out in Appendix 3. If the Project includes multiple deliveries or partial deliveries, the delivery dates for each delivery shall be specified in Appendix 3.

## The Parties’ representatives

Upon entering into the Agreement, each Party shall appoint a representative that is authorised to act on behalf of the Party in matters relating to the Agreement. The authorised representatives of the Parties, as well as the procedures and notification deadlines for any replacement of such representatives, shall be further specified in Appendix 4.

## Key personnel

The Contractor’s key personnel in connection with the execution of the Project shall be specified in Appendix 4.

Any changes to the Contractor’s key personnel shall be approved by the Contracting Authority. Approval shall not be denied without justified grounds.

In the event of a change of personnel due to circumstances for which the Contractor is responsible, the Contractor shall bear the costs associated with the transfer of competence to the new personnel.

# Amendments and termination

## Amendments to the project after the Agreement has been entered into

The Parties may request amendments to the Agreement and the Project in the event that circumstances arise that significantly change the preconditions for the Project. Such amendments shall be approved by both Parties. Amendments to the Agreement shall be dated, agreed in writing, and incorporated into Appendix 7.

## Termination

In the event of material changes to the preconditions for the Project, either Party may request the termination of the Project subject to a written notice period of 30 (thirty) calendar days.

Any termination shall be executed in such a way that the Project achieves appropriate completion of any parts of the work that have been initiated. The completion of such work shall be in accordance with an agreed plan drawn up by the Parties.

In the event of termination, the Contracting Authority shall be obliged to pay for any work performed by the Contractor until the Project is stopped.

The Contracting Authority’s right to research results under Chapter 5 shall apply to any results available at the time of termination.

Clause 8.4 shall apply in the event of force majeure.

# The Parties’ obligations

## Research ethics and academic freedom

The Project shall be conducted in accordance with recognised research ethics standards and good scientific practices. The principles relating to academic freedom shall be applied within the framework of the agreement relating to the subject matter and methodologies set down in this Agreement. This means that the Contractor cannot be instructed to ensure that the Project leads to a specific conclusion.

The results from the Project shall, unless otherwise stated, be published after handover to the Contracting Authority, see Clause 5.3.

The Contractor shall make relevant research data available to the Contracting Authority in accordance with good practices in the field.

## Use of methods and quality assurance

The Contractor shall select the data, methodology, conclusions, and presentation of results. In cases where it is a requirement for the execution of the Project, the methodology and other approaches relating to the Project may be determined by the Contracting Authority and set out in Appendix 1.

The Contractor shall ensure the scientific quality of the Project and shall be obliged to execute the Project in accordance with the Agreement and with high professional standards. When the research matter and methodology have been determined, the Contractor shall have the right and duty to manage the scientific activities relating to the execution of the Project. Further provisions relating to the quality assurance of the Project may be agreed in Appendix 3.

If the execution of the Project requires permits, the Contractor shall ensure that any such permits are obtained.

## Participation

Both Parties shall contribute loyally to the execution of the Project.

If the Contracting Authority has described its own participation in the execution of the Project in Appendix 1, such participation shall be within the framework arising from Clause 3.1. Further provisions relating to participation and the practical execution thereof can be agreed in Appendix 3.

## Confidentiality

Information that the Parties become aware of in connection with the Agreement and the execution of the Agreement shall be treated confidentially and shall not be disclosed to third parties without the consent of the other Party.

If the Contracting Authority is a public body, confidentiality under this provision shall be no more extensive than what arises from the Act of 10 February 1967 on public administration (Public Administration Act) or equivalent sector-specific regulations.

Confidentiality under this provision shall not preclude the disclosure of information required pursuant to laws or regulations, including public disclosure and access pursuant to the Act of 19 May 2006 relating to access to documents held by public authorities and public undertakings (Freedom of Information Act). If possible, the other Party shall be notified before such information is disclosed.

The duty of confidentiality shall not preclude the use of the information when no legitimate interests dictate that such information shall be kept secret, i.e. when information is publicly known or generally available elsewhere.

The Parties shall take the necessary precautions to ensure that unauthorised parties do not gain access to or knowledge of confidential information.

The duty of confidentiality shall apply to the Parties’ employees, subcontractors and third parties acting on behalf of the Parties in connection with the execution of the Agreement. The Parties may transfer confidential information to such subcontractors and third parties only to the extent necessary for the execution of the Agreement and provided that these parties are subject to a duty of confidentiality corresponding to this Clause 3.4.

The duty of confidentiality shall not preclude the Parties from utilising experience and expertise acquired in connection with the implementation of the Agreement.

The duty of confidentiality shall continue to apply after the expiration of the Agreement. Employees or others who leave their service with either of the Parties shall continue to be subject to a duty of confidentiality relating to matters mentioned above after leaving the Party. The duty of confidentiality shall lapse 5 (five) years after the delivery date, unless otherwise provided by laws or regulations.

The Contractor shall be responsible for ensuring that informants are ensured anonymity in accordance with the declaration of consent and good research practices, including in relation to the Contractor.

## Mutual disclosure obligation

Any enquiries from the other Party shall be answered without undue delay.

The Parties shall notify one another without undue delay of any matters that the Parties understand or should understand may have an impact on the execution of the Project.

If deemed necessary by a Party, the Party may, subject to a notice period of at least 5 (five) working days, convene a meeting with the other Party to discuss the contractual relationship and the way in which the Agreement is being executed. Other deadlines and procedures for meetings can be agreed in Appendix 4.

## Risk and responsibility for communication and documentation

Both Parties shall ensure proper communication, storage and security back-ups of documents and other materials of importance to the project, regardless of format, including e-mail and other electronically stored materials.

The Contractor shall bear the risk and responsibility for all materials that are damaged or misused while under the Contractor’s control.

## The Contractor’s use of subcontractors

The Contractor’s use and replacement of subcontractors shall be approved in writing by the Contracting Authority. Approval shall not be denied without justified grounds. Approved subcontractors shall be specified in Appendix 4.

The Contractor shall be fully responsible for the execution of the subcontractors’ tasks in the same way as if the Contractor itself was responsible for the execution.

The Contractor shall subject subcontractors to the same duty of confidentiality that applies to the Party itself under Clause 3.4. The Contracting Authority may require that non-disclosure agreements are signed.

## The Contracting Authority’s use of third parties

The Contracting Authority may freely engage third parties for assistance with its duties under the Agreement. The Contractor shall be notified of such engagement. The Contractor may oppose such engagement if it can demonstrate that it would lead to significant business disadvantages on the part of the Contractor.

The Contracting Authority shall be fully responsible for the execution of third parties’ tasks in the same way as if the Contracting Authority itself was executing the tasks.

Third parties that are used shall be specified in Appendix 4.

## Pay and Working Conditions

For agreements covered by the regulations of 8 February 2008, no. 112 on pay and working conditions in public contracts, the following shall apply:

In areas covered by the regulations on general collective agreements, the Contractor shall ensure that its own employees and employees of any subcontractors that directly contribute to the fulfilment of the Contractor’s obligations under this Agreement do not have worse pay and working conditions that what follows from the regulations under which the collective agreement has been applied. In areas not covered by the regulations on general application of collective agreements, the Contractor shall ensure that the same employees do not have worse pay and working conditions than what follows from the applicable nationwide collective agreement for the industry in question. This applies to work performed in Norway.

All agreements entered into by the Contractor that involve the execution of work that directly contributes to the fulfilment of the Contractor’s obligations under this Agreement shall include corresponding conditions.

If the Contractor fails to fulfil this obligation, the Contracting Authority shall be entitled to withhold parts of the contract sum equivalent to 2 (two) times the Contractor’s savings until it has been documented that the matter has been rectified.

Fulfilment of the Contractor’s obligations as mentioned above shall be documented in Appendix 4, either through a self-declaration or a third-party declaration showing compliance between the collective agreement in question and the actual pay and working conditions for the fulfilment of the Contractor’s and any subcontractor’s obligations.

Upon request from the Contracting Authority, the Contractor shall submit documentation of the pay and working conditions that are applied. The Parties may separately require that information be presented to an independent third party that the Contracting Authority has commissioned to examine whether the requirements set down in this provision have been met. The Contractor may require the third party to sign a declaration stating that the information shall not be used for purposes other than ensuring the fulfilment of the Contractor’s obligations under this provision. This documentation requirement shall also apply to subcontractors.

Further details concerning the implementation of this Clause 3.9 may be agreed in Appendix 4.

## Others’ rights

The Contractor shall be obliged to ensure that the Project and the execution of the Project do not infringe upon rights of ownership or intellectual property rights that are held or controlled by parties other than the Contractor. In this connection, the Contractor shall be obliged to enter into agreements with its employees and subcontractors to ensure that the Contractor holds the rights required for the fulfilment of the Agreement.

If the Contractor becomes aware that the use of the results of the Project, including any final reports and interim reports, may violate the rights of others, the Contractor shall notify the Contracting Authority in writing immediately.

## Personal data and information security

### General information about information security

The Contractor shall take adequate measures to fulfil the requirements relating to information security in connection with the implementation of the Project.

This means that the Contractor shall take proportionate measures to ensure the availability and confidentiality of the Contracting Authority’s data, as well as measures to ensure that data does not fall astray. The Contractor shall take proportionate measures to prevent accidental alteration and deletion of data, as well as measures to prevent attacks from viruses and other malware.

If the Contracting Authority has additional requirements relating to how information security must be maintained by the Contractor, the details of these requirements must be included in Appendix 1.

### Duty to enter into Data Processing Agreements

If the Contractor processes personal data on behalf of the Contracting Authority, the Contracting Authority and Contractor shall be required to enter into a Data Processing Agreement in accordance with the Personal Data Act and any sector-specific personal data legislation relevant to the Contractor’s activities. The same shall apply to personal data obtained by the Contractor from sources other than the Contracting Authority.

The Data Processing Agreement shall be enclosed as Appendix 8.

The Data Processing Agreement shall be entered into before any processing of personal data may commence.

### Other duties

#### General

Personal data processed under this Agreement shall not be entrusted to other parties for storage, processing, or deletion without the prior special or general written consent of the Contracting Authority.

The Contractor shall ensure that any subcontractors used by the Contractor that process personal data assume corresponding obligations to those set out in this Clause 3.11.

Personal data shall not be transferred to countries outside the EU/EEA without a legal basis for transfer and documentation demonstrating that the conditions for the application of the basis for transfer have been met. In such cases, this shall be documented by the Contractor in Appendix 8.

#### Damages resulting from GDPR violations

The Parties’ liability for damages that affect data subjects or other natural persons and that result from violation of the GDPR (Regulation 2016/679), the Norwegian Personal Data Act and regulations or other regulations that implement the GDPR shall be in accordance with the provisions of Article 82 of the GDPR.

The limitation of liability in Clause 6.5.6 shall not apply to liability resulting from Article 82 of the GDPR.

The Parties shall be individually liable for administrative fines imposed in accordance with Article 83 of the GDPR.

# Payment and terms of payment

## Payment

All prices and further terms of payment to be paid by the Contracting Authority for the Project shall be specified in Appendix 5. All prices shall be specified exclusive of value-added tax and in Norwegian kroner (NOK).

Expenses shall be covered only to the extent agreed. Travel and per diem expenses shall be specified separately and shall be covered in accordance with the Government’s applicable rates, unless otherwise agreed. Travel time shall be covered only if agreed in Appendix 5.

If payment shall be based on running hours, an estimated number of hours shall be specified in Appendix 5. If the Contractor sees that the estimate will be exceeded by more than 5 (five) per cent, the Contractor shall notify the Contracting Authority in writing immediately. The notification shall specify the cause of the exceedance, as well as the estimated time required for outstanding work. The management of such exceedance may be agreed in Appendix 5.

## Invoicing

Payments and expenses shall be invoiced at the times specified in Appendix 5. Payments based on running hours shall be invoiced monthly in arrears, unless otherwise agreed in Appendix 5. In such a case, the invoiced amount shall apply to the time used until the invoice date, as well as coverage of any expenses incurred during the same period.

Payment shall take place within 30 (thirty) calendar days of receipt of invoice. The Contractor’s invoices shall be specified and documented so that the Contracting Authority can easily verify the invoice in relation to the payment agreed. All invoices for running hours shall be accompanied by a detailed specification of the hours incurred. Expenses shall be specified separately.

The Contractor shall use electronic invoicing in an approved standard format in accordance with the regulations of 2 April 2019 concerning electronic invoicing in public procurements.

If the Contractor is unable to fulfil the requirements concerning the use of electronic invoices, the Contracting Authority may withhold payment until an electronic invoice in an approved standard format is submitted. The Contracting Authority shall notify the Contractor of this without undue delay. If such a notification has been issued, the payment deadline shall run from the date on which the electronic invoice is submitted in an approved standard format.

If the information contained in the invoice or invoice specification includes information that is subject to statutory confidentiality and there will be a risk of disclosure of such information, the electronic invoice requirements may be waived, unless there are satisfactory technical security solutions that can ensure that confidentiality is maintained.

The payment plan and other terms of payment shall be specified in Appendix 5.

The Contractor shall bear any costs it incurs in connection with the delivery of electronic invoices.

## Interest on overdue payments

If the Contracting Authority fails to make payment at the agreed time, the Contractor shall be entitled to interest on the amount overdue for payment, see Act of 17 December 1976 no. 100 relating to Interest on Overdue Payments, etc.

## Payment default

If overdue payment plus interest is not paid within 30 (thirty) calendar days of the due date, the Contractor may issue a written notice to the Contracting Authority that the Agreement will be terminated if settlement has not been made within 30 (thirty) calendar days of the notice having been received.

The Agreement cannot be terminated if the Contracting Authority settles the overdue payment plus interest by the expiration of the deadline.

# Rights, publication and sharing of data

## Data sharing

This Agreement shall encourage the sharing of data when such sharing is not precluded by laws, regulations, binding agreements or otherwise. The data shall be findable, accessible, interoperable, and re-usable with other data. Data sharing shall be responsible and ethical and in line with recognised standards and principles relating to research ethics. The requirements relating to data sharing shall be regulated further in Appendix 1.

## Right of ownership and intellectual property rights (“rights”)

The applicable rules relating to questions about rights in the contractual relationship can be agreed between the Parties in Appendix 6. Unless otherwise agreed, the following shall apply:

The Contractor shall retain the rights to the results of the Project, with the limitations that arise from the Contracting Authority’s right of use.

The Contracting Authority shall be entitled to use the results of the Project in its activities and to assign corresponding rights of use to the results to others. The right of use shall include the right to produce copies of any final reports and interim investigations created in the Project, the right to publish the results of the Project in accordance with Clause 5.3 and the right to use the results in further research and investigation activities. The right of use shall not include commercial use, unless otherwise agreed.

Unless otherwise agreed in Appendix 6, the rights under the second and third paragraphs shall also apply to raw data that is produced in connection with the execution of the Project.

In connection with the Project, the Contracting Authority or Contractor may bring in knowledge, information, or materials (“background knowledge”) that are protected by right of ownership, intellectual property rights or business secrets and that have been produced independently of the Project. Examples of background knowledge include analytical tools, methodological data, and raw data. The Contractor may use such protected background knowledge provided by the Contracting Authority to the extent necessary to conduct the Project and may also use the Contracting Authority’s raw data in research that does not take place on behalf of the Contracting Authority. The Contracting Authority shall be able to use such protected background knowledge from the Contractor to the extent necessary to utilise the rights to the results of the Project under this Agreement.

The Contracting Authority and Contractor may not use the results of the Project, background knowledge or raw data in such a way that the duty of confidentiality under Clause 3.4 or laws or other agreements is violated or if such use violates the rights of third parties.

Copyright holders shall be entitled to be named as dictated by good practices, cf. Clause   
 5 of the Norwegian Copyright Act. All use of the results of the Project shall take place within the framework of good research practices. In the results, the Contractor shall also be required to specify the extent to which the Project has been funded by the Contracting Authority.

## Publication

The results of the Project shall be published after handover to the Contracting Authority. If the Contracting Authority does not publish the results within six weeks of handover, the Contractor shall be entitled to publish such results. The Party that publishes determines where and how such publication will take place, unless otherwise agreed in Appendix 6.

To the extent dictated by legitimate interests, a Party may request the postponement of publication. Legitimate interests may include a Party requiring reasonable time to ensure the protection of the results through a patent application or because it is necessary for competitive reasons or out of consideration for other ongoing research work or if there are grounds for postponement of publication pursuant to the Freedom of Information Act of 19 May 2006, no. 16. Any patent applications shall be submitted no later than six months after the completion of the Project.

The Contractor and the Contractor’s employees who have contributed to the execution of the Project may publish scientific results from the Project. It shall be specified that the publication has been prepared in connection with a Project funded by the Contracting Authority.

The Contractor shall be obliged to name copyright holders in external information about the results of the Project as required by good practices, see Clause 5 of the Copyright Act. The extent to which the Project has been funded by the Contracting Authority shall also be specified.

# The Contractor’s breach of contract

## What is considered breach of contract

A breach of contract on the part of the Contractor shall be deemed to exist if the Project is not in accordance with the Agreement. A breach of contract shall also be deemed to exist if the Contractor fails to fulfil other obligations under the Agreement.

Nevertheless, breach of contract shall not be deemed to exist if the situation is due to circumstances for which the Contracting Authority is responsible or force majeure, see Clause 8.4 of the Agreement.

The Contracting Authority shall lodge any complaints in writing as soon as possible after the breach of contract was or should have been discovered. Complaints cannot be lodged more than one (1) year after handover.

## Notification requirement

If the Project cannot be delivered as agreed, the Contractor shall notify the Contracting Authority in writing as soon as possible. The notification shall specify the cause of the issue and, to the extent possible, specify when the Project can be delivered. The same shall apply if further delays must be expected after the initial notice has been issued.

## Extension of deadlines

The Contractor may request an extension of deadlines in the event that the project and progress plans overrun. Such extensions shall be approved by the Contracting Authority in writing in order to apply.

For the extended time period, the Contracting Authority shall not be entitled to claim liquidated damages or damages as a result of delay.

The extension of deadlines shall not affect the Contracting Authority’s right to liquidated damages or damages accrued before the extension of deadlines was granted.

## Remedial action

The Contractor shall initiate and complete the work to remedy breach of the Project without undue delay by performing remedial action, redelivery, or additional deliveries at no additional cost to the Contracting Authority.

## Sanctions in the event of breach of contract

### Withholding of services

In the event of breach of contract on the part of the Contractor, the Contracting Authority shall be entitled to withhold payment, but no more than what is clearly necessary to safeguard the Contracting Authority’s claims arising from the breach.

### Liquidated damages in the event of delays

If the deadlines that the Parties have linked to liquidated damages in Appendix 3 are not met and this is not due to force majeure or circumstances for which the Contracting Authority is responsible, a delay that provides grounds for liquidated damages shall be deemed to exist.

If, prior to delivery, the Contractor is delayed in relation to milestones that the Parties have linked liquidated damages to, the later deadlines shall be correspondingly shifted in accordance with the number of calendar days for which liquidated damages have been incurred. If, by accelerating, the Contractor manages to achieve a later milestone at the originally agreed time, any previously incurred liquidated damages shall lapse.

Liquidated damages shall be accrued without any claims needing to be issued. The daily penalty shall amount to 0.15 percent of the total payment for the Project, excluding value-added tax, for each calendar day for which the delay persists, but shall be limited to a maximum of 100 (one hundred) calendar days.

Other liquidated damages and daily fine terms may be agreed in Appendix 5.

The Contracting Authority cannot terminate the Agreement while liquidated damages are running. This time limit shall not apply in the event that the delay is a result of intent or gross negligence on the part of the Contractor or anyone for which it is responsible.

If only a part of the Project is delayed, the Contractor may request a reduction to the liquidated damages that is proportional to the Contracting Authority’s possibility of utilising the parts of the Project that have been delivered.

### Price reductions

If the Contractor fails to remedy a defect within a reasonable period of time, the Contracting Authority shall be entitled to demand a proportionate reduction to the contract sum.

### Termination

In the event of material breach of contract, the Contracting Authority may, after issuing the Contractor with written notice and adequate time to rectify the matter, terminate the Agreement with immediate effect.

In the event of delays, material breach of contract shall be deemed to exist if delivery has not occurred when the maximum liquidated damages limit has been reached or after the expiration of an extension of deadlines if this occurs later.

If the breach is of such nature that the Contracting Authority has little or no use for what has been delivered, the Contracting Authority may, in connection with termination, request reimbursement of payments for running hours and any expenses paid to the Contractor under the Agreement, plus interest corresponding to NIBOR plus 1 percentage point from the time at which payment was made. The Contracting Authority shall otherwise pay for the part of the Project that was contractually delivered before the termination date, to the extent that this part of the Project can be used by the Contracting Authority as intended.

### Damages

The Contracting Authority may claim damages for any direct losses that can reasonably be attributed to delays, defects, and other breach on the part of the Contractor.

Liquidated damages shall be deducted from any damages for the same delay.

### Limitation of liability

Damages cannot be claimed for indirect losses. Indirect losses include but are not limited to lost earnings of any kind, lost savings and claims from third parties, with the exception of any imposed liability for damages for legal defects. Loss of data shall be considered indirect loss, unless due to data management for which the Contractor is responsible under the Agreement.

Total damages during the term of the Agreement shall be limited to an amount corresponding to the contract sum, excluding value-added tax or an agreed estimate for the Project.

The limitations in the first and second paragraph shall not apply if the Contractor or someone for which it is responsible has acted with wilful intent or gross negligence.

# The Contracting Authority’s breach of contract

## What is considered breach of contract

A breach of contract on the part of the Contracting Authority shall be deemed to exist if the Contracting Authority does not fulfil its obligations under this Agreement.

Nevertheless, breach of contract shall not be deemed to exist if the situation is due to circumstances for which the Contracting Authority is responsible or force majeure, see Clause 8.4.

The Contracting Authority shall lodge any complaints in writing as soon as possible after the breach of contract was or should have been discovered.

## Notification requirement and complaints

If the Contracting Authority is unable to fulfil its duties under the Agreement, including meeting deadlines, the Contracting Authority shall notify the Contractor in writing as soon as possible. The notification shall specify the cause of the issue and, to the extent possible, specify when the Contracting Authority will be able to fulfil its duties.

## Limitations to the Contractor’s right to withhold services

The Contractor cannot withhold services as a result of breach on the part of the Contracting Authority, unless such breach is material in nature.

## Damages

The Contractor may claim damages for any direct losses that can reasonably be attributed to the breach, unless the Contracting Authority can demonstrate that the breach cannot be attributed to the Contracting Authority.

The limitation of liability in Clause 6.5.6 shall apply accordingly.

# Other provisions

## Insurance

A Party that is a public body shall be a self-insurer. If the Party is not a self-insurer, the Party shall have insurance covering any claims from the counterparty arising from the risks or liabilities of the Party under the Agreement. This duty shall be deemed to have been met if the Party takes out liability and risk insurance on terms and conditions that are common within Norwegian insurance activities.

## Transfer of rights and obligations

If the Contracting Authority is a public body, it may transfer its rights and obligations under this Agreement to another public body. The enterprise that assumes the rights and obligations under such a transfer shall be entitled to the same terms, provided that the rights and obligations under the Agreement are transferred collectively.

A Party may only transfer its rights and obligations under the Agreement subject to the written consent of the other Party. This shall also apply in the event of mergers and demergers on the part of a Party. Consent shall not be refused without justified grounds.

The right to remuneration under this Agreement may be freely transferred. Such transfer shall not relieve the Party in question of its obligations and liability.

The Contractor’s right to transfer in the Clause above shall apply only if the new contractor meets the original qualification requirements, there are no other material changes to the contract and transfer does not take place for the purpose of circumventing the regulations relating to public procurements.

## Bankruptcy, composition of debt

In the event that debt negotiations, composition of debt or bankruptcy proceedings are opened in connection with the Contractor’s activities or if other forms of creditor control apply, the Contracting Authority shall be entitled to terminate the Agreement with immediate effect, unless otherwise provided by mandatory law.

## Force majeure

In the event of an extraordinary situation that falls outside the Parties’ control and that makes it impossible to fulfil obligations under this Agreement and that must be considered force majeure under Norwegian law, the counterparty shall be notified of the matter as soon as possible. The affected Party’s obligations shall be suspended for as long as the extraordinary situation persists. The other Party’s return service shall be suspended for the same period of time.

In force majeure situations, the counterparty may only terminate the Agreement subject to the consent of the affected Party or, if the situation persists or is expected to persist for more than 90 (ninety) calendar days, calculated from the time at which the situation arose and then only subject to a notice period of 15 (fifteen) calendar days.

In connection with force majeure situations, the Parties shall have a mutual duty to provide information to each other regarding all matters that must be assumed to be of importance to the other Party. Such information shall be provided as soon as possible.

# Disputes

## Choice of law

The Parties’ rights and obligations under this Agreement shall be determined in full by Norwegian law.

## Negotiations

In the event of any disputes between the Parties concerning the interpretation or legal effects of this Agreement, attempts should initially be made to resolve such disputes through negotiations.

## Mediation

In the event that a dispute arising in connection with this Agreement cannot be resolved through negotiations, the Parties may attempt to resolve the dispute through mediation.

The Parties may choose to apply the Norwegian Bar Association’s rules for mediation via legal counsel as the basis for mediation, modified as required by the Parties. The Parties shall agree upon a mediator that possesses the expertise that the Parties consider to be most suited in relation to the dispute.

The further procedure for mediation shall be determined by the mediator in consultation with the Parties.

## Court or arbitration proceedings

In the event that a dispute cannot be resolved through negotiations or mediation, either Party may request that the dispute is settled with final effect in the Norwegian courts.

The legal venue shall correspond to the Contracting Authority’s business address.

The Parties may alternatively agree that the dispute will be settled with final effect through arbitration in Norway pursuant to the Act of 14 May 2004 no. 25 on Arbitration.

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