

## Appendix 4.1: General Terms & Conditions

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### 1. INTRODUCTION

- 1.1 This Appendix 4.1 (*General Terms & Conditions*) sets out mandatory terms and conditions for deliveries under Call-Off Contracts entered into under this Framework Agreement

### 2. TERM

- 2.1 The term of the Call-Off Contract and individual Services under the Call-Off Contract shall be as specified in the Order Form.

### 3. NON-EXCLUSIVE AGREEMENT

- 3.1 The Call-Off Contract is a non-exclusive agreement, and the Customer is free to procure and contract for identical or similar services from other suppliers both within, and outside the scope of the respective Call-Off Contract.

### 4. CUSTOMER EXHAUSTIVE OBLIGATIONS

- 4.1 The Customer shall not have any obligations other than those set out under the Call-Off Contract, including paying Charges due and using the services in accordance with the acceptable use policy in the Call-Off Contract.
- 4.2 If Customer or any of the third parties assisting Customer fails to perform any of Customer's obligations, the Supplier shall as soon as reasonably possible and to the extent the Supplier knew or should have known about such failure, notify in writing the Customer authorised contact person as specified in the Order Form, of such failure. If such notice in writing has not been provided, then the Supplier cannot in respect of any subsequent disputes on the performance of the Call-Off Contract excuse its performance or lack thereof by any acts or omissions of the Customer or any of its contractors.
- 4.3 In the event of a default for which the Customer is responsible, and it can reasonably be determined that such a default shall have a measurable impact on the Supplier's performance of its obligations, the Supplier shall in good faith cooperate with the Customer to perform such activities in a manner that shall minimise impact on the Customer and mitigate the cost impact on the Supplier. When such activities are performed and the Supplier incurs a loss directly caused by the default, the Supplier may charge the Customer for (i) any reasonable and documented direct costs as identified and documented without any profits or mark up, and (ii) reasonable fees for necessary additional work. The charging of such costs and fees shall be the exclusive remedy, except for situations of gross negligence or wilful misconduct, of the Supplier on account of such default and Customer's liability is limited in accordance with the Call-Off Contract otherwise.

### 5. GOVERNANCE UNDER THE CALL-OFF CONTRACT

- 5.1 The Supplier shall comply with the governance and reporting obligations as specified in the Order Form.

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- 5.2 The Customer may convene a meeting with the Supplier on 7 (seven) days' notice if there is a need to discuss matters relating to the contractual relationship and how the contractual relationship is being handled, and such matters cannot, in the reasonable opinion of the Customer, wait until the next scheduled meeting.

### 6. COLLABORATION WITH OTHER SUPPLIERS

- 6.1 Where requested by the Customer, the Supplier shall work collaboratively and in good faith, with the Customer and any other supplier of the Customer. Where information to be provided by the Supplier to any other supplier of the Customer is commercially sensitive, the Supplier may require the other supplier to enter into a confidentiality agreement on terms equivalent to those set out in this agreement.
- 6.2 The Customer may set out their responsibility to other suppliers. If so, the Supplier shall cooperate with the Customer's other suppliers in accordance with clause 6.1 above.

### 7. COMMUNICATION

- 7.1 All notices and communication (with the exception of routine communications) concerning the Call-Off Contract shall be directed to the contact person or role appointed as authorised in the Call-Off Contract.
- 7.2 For clarification: written notices or communications include email to the email address of the appropriate authorised person or role.

### 8. REGULATORY AND ETHICAL REQUIREMENTS

- 8.1 The Supplier (and any person or entity acting on its behalf, including Subcontractors, and any Affiliate) shall throughout the term of the Call-Off Contract;
- a) comply with all Laws applicable to the Supplier (and any person or entity acting on its behalf, including Subcontractors, and any Affiliate) in general, including without limitation those concerning security, bribery, corruption, and fraud;
  - b) offer and provide Services that are in accordance with applicable Laws and that will enable the Customers to comply with applicable Laws relevant for use or receipt of the Services, hereunder the GDPR (where applicable) and the Norwegian Personal Data Act;
  - c) comply with the requirements set out in the Framework Agreement [Appendix 4.3](#) (*Ethical Requirements*);
  - d) comply with the requirements set out in the Framework Agreement [Appendix 4.4](#) (*Environmental Requirements*); and
  - e) comply with the highest standards of business ethics, hereunder establish and maintain robust processes and controls to ensure ethical compliance for itself and throughout its supply chain.
- 8.2 Upon written request from the Customer, the Supplier shall, within 30 (thirty) days, provide (i) reasonable written documentation verifying that the Supplier complies with clause 8.1a)8.1b), 8.1c) and 8.1d) above, and (ii) a statement that, to the best knowledge of the Supplier, it complies with clauses 8.1a) and 8.1e)

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8.3 For Call-Off Contracts governed by the Regulations No 112 of 8 February 2008 relating to Wages and Working Conditions under Government Contracts, the conditions set out in clause 6 of Appendix 4.3 (*Ethical requirements*) shall apply.

### 9. INFORMATION SECURITY AND DATA PROTECTION

9.1 The Supplier shall ensure that all security risks are managed in a vigilant manner and take all necessary measures to protect the offered Services from all levels of threats, including, but not limited to, network and intelligence operations.

9.2 The Supplier shall in general and while performing under Call-Off Contracts achieve and maintain information security and data protection on a continuous basis in accordance with best industry practice and at least in line with:

- a) the security and data protection requirements as set out in Appendix 4.2 (*Special terms & Conditions*); and
- b) the requirements set out in Appendix 1 (*Services*).

9.3 Upon written request from the Customer the Supplier shall, within 30 (thirty) days, provide reasonable written documentation verifying that, the Supplier complies with 9.2 above.

### 10. CHANGE TO THE CALL-OFF CONTRACT

10.1 The Call-Off Contract can only be amended:

- a) by written agreement between the Parties;
- b) as a part of a general amendment under the Framework Agreement in accordance with clause 10 of the Framework Agreement; or
- c) in accordance with Appendix 4.2 (*Special Terms & Conditions*).

10.2 The Parties may, acting reasonably, request a change to a Call-Off Contract by sending a written request to the other Party ("Change Request"). The Change Request shall include sufficient details to assess the extent of the proposed change and any additional cost that may be incurred, and a reasonable time frame for response. The Supplier shall respond to any Change Request from the Customer within reasonable time and in no event later than within 10 (ten) days.

10.3 A non-response from Customer to the Supplier's Change Request within the set time frame is not an acceptance of the proposed change.

10.4 The Supplier shall provide an Impact Assessment to the Customer within the time limit set out in the Customer's Change Request, or together with their own proposed Change Request.

10.5 If the Change Request cannot be agreed or resolved by the Parties, the Customer can either:

- a) agree that the Call-Off Contract continues without the Change Request; or
- b) refer the dispute to be resolved by MPS and the Supplier in accordance with clause 22.2.

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10.6 Under no circumstances can the Call-Off Contract be amended by accepting updated online terms of the Supplier Standard Terms & Conditions.

### 11. BREACH

11.1 The rights and remedies (in Norwegian: "misligholdsbeføyelser") available under Norwegian law apply to the Call-Off Contract with respect to breach except as derogated from in the Call-Off Contract.

### 12. TERMINATION

#### 12.1 Termination for convenience

12.1.1 Termination for Convenience is regulated in [Appendix 4.2](#) (*Special Terms & Conditions*).

#### 12.2 Termination for cause

12.2.1 A Customer shall always be entitled to terminate the Call-Off Contract for cause (Norwegian; heve) if;

- a) the Supplier is in a material breach of the Call-Off Contract;
- b) the Supplier is in breach of any of its obligations under clause 8 (*Regulatory and ethical requirements*) or clause 9 (*Information security and Data Protection*), and the breach is not insignificant;
- c) the Supplier is the subject of debt rescheduling proceedings, composition with creditors, bankruptcy, or any other form of creditor intervention; or
- d) DFØ terminates the Framework Agreement for cause.

#### 12.3 Supplier's termination rights

12.3.1 The Supplier may not terminate the Call-Off Contract, in whole or in part, for breach of the Call-Off Contract unless the breach is material according to Norwegian background law and the Customer is notified in writing of the breach and granted a reasonable period of time of at least 60 (sixty) days to rectify the breach before the termination right under the applicable Call-Off Contract may be exercised.

12.3.2 A breach of payment obligations by the Customer can under no circumstances be regarded as material unless:

- a) the Customer fails to pay material undisputed Charges which are due and payable to the Supplier and have been overdue for at least a period of 30 days;
- b) a written demand has been made by the Supplier which clearly states that the amount has been overdue under the applicable Call-Off Contract or an individual and specific Service unless the Charges are paid within the following 30 days; and
- c) the Customer fails to pay or dispute the overdue amount within the deadline specified in b) directly above.

#### 12.4 Consequences of termination or expiry

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- 12.4.1 The Supplier shall comply with exit obligations specified in Appendix 4.2 (*Special Terms & Conditions*) and in the Order Form.
- 12.4.2 Within 7 days, or sooner if requested by Customer, of the date of termination or expiry of the Call-Off Contract, or after fulfilling the exit obligations towards the Customer, the Supplier shall delete any and all Confidential Information in the Supplier's possession, save that it may keep 1 (one) copy of any such Confidential information to the extent reasonably necessary to comply with its obligations under any applicable law.
- 12.4.3 Without prejudice to any remedies available for either Party, expiry or termination of the Call-Off Contract will not affect:
- a) any rights, remedies or obligations accrued before its termination or expiry (as applicable); and
  - b) the right of either Party to recover any amount outstanding at the time of termination or expiry (as applicable).
- 12.4.4 If Customer terminates the Call-Off Contract due to material breach, the Supplier shall reimburse any payments by the Customer for Services that has not yet accrued e.g. prepaid license cost.

## 13. SUSPENSION

- 13.1 The Supplier may not suspend the Services, partially or completely unless:
- a) specifically asked by the Customer in writing; or
  - b) to the extent such suspension rights are clearly granted in Appendix 4.2 (*Special Terms & Conditions*).

## 14. LIMITATION OF LIABILITY

- 14.1 Liability for damages under the Call-Off Contract is limited only to direct loss. Direct loss is not limited to but shall always include:
- a) regulatory fines arising from the Supplier's breach of any applicable Laws;
  - b) costs related to recovery or reconstruction of data; and
  - c) costs incurred by Customer in connection with procuring an alternative Supplier for the Services as a result of any default by the Supplier.
- 14.2 Except as provided for in clause 16 (*Intellectual Property and Customer Data*) and liability which is subject to clauses 14.4 below, each Party's total maximum aggregated liability each contract year under the Call-Off Contract shall be limited to the higher of (i) the amount equalling the aggregated Charges paid or payable under the applicable Call-Off Contract prior to the applicable liability arising; and (ii) 40.000 NOK.
- 14.3 Except as provided for in clause 14.4 below, the Supplier's total aggregated liability each contract year for breach of the Data Processing Agreement entered into with a Customer and any data protection provisions shall be limited to the higher of (i) the amount equalling the aggregated Charges paid or payable under the applicable Call-Off Contract prior to the applicable liability arising; and (ii) 40.000 NOK.

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14.4 Notwithstanding this clause 14.4, the Customer or Supplier's liability for damages suffered by a data subject or other natural persons and which is due to a violation of the GDPR, the Norwegian Personal Data Act or other regulations that implement the GDPR, shall be as provided for in GDPR Art. 82 and section 30 of the Norwegian Personal Data Act.

14.5 When calculating the maximum liability under clause 14.2, any items specified in clauses 14.3, 14.4 and 14.5 will not be taken into consideration.

### **15. AUDIT RIGHTS**

15.1 The Customer shall, by itself or by use of a third party, have the right to carry out audits of the Supplier in order to:

- a) verify that the Supplier is complying with its obligations under the Call-Off Contract, including, but not limited to compliance with any applicable Laws, information security and data protection regulation;
- b) accommodate requests from Norwegian security authorities and for reasonable compliance with Laws, hereunder the Norwegian Security Act; or
- c) accommodate requests from other Norwegian authorities, such as the National Audit Office (in Norwegian: "Riksrevisjonen") and for reasonable compliance with laws, hereunder the Norwegian Office of the Auditor General Act.

15.2 When reasonably possible, the Supplier shall be given 14 (fourteen) days' prior written notice before the audit starts. Third parties acting on behalf of the Customer shall not be direct competitors of the Supplier unless the Supplier approves the use of such competing third party.

15.3 The Supplier shall grant access to all relevant documentation and information hereunder offices records and materials, including on-premises access to all relevant sites, locations, datacentres as reasonably requested.

15.4 The audit shall, to the extent reasonable and possible, be carried out during Supplier's normal business hours. To the extent the audit requires access to business sensitive information, the audit shall be subject to a separate written confidentiality agreement reasonably acceptable to the Supplier.

15.5 If the audit reveals any breach of the Call-Off Contract by the Supplier, the Supplier shall reimburse the Customer the costs of the audit.

15.6 An audit may only be requested once per year. Supplier may refer to audit reports performed by DFØ or other third-parties in the last 12 months to the extent the scope of the audit is covered by that report.

### **16. INTELLECTUAL PROPERTY AND CUSTOMER DATA**

#### **16.1 Intellectual property and Customer Data**

16.1.1 All Intellectual Property Rights belonging to a Party prior to signing of the Call-Off Contract or developed by either Party during the term of the Call-Off Contract shall remain vested in and remain the property of that Party. Any derivative works, modifications, enhancements or improvements to Intellectual Property Rights owned by a Party shall vest with that Party.

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- 16.1.2 All Intellectual Property Rights developed by the Supplier specifically for the Customer as a part of Professional Services, shall vest with the Customer.
- 16.1.3 The Supplier must own or have a valid license for any Intellectual Property Rights used to perform its obligations and grant the necessary rights to Customers under the Call-Off Contract.
- 16.1.4 The Supplier grants Customer all necessary rights and authorisations to fully utilise the Services with no restrictions other than those set out in Supplier's service terms or Acceptable Use Policy, including all "not-for-profit" public services as mandated and instructed through laws, regulations and government policy, and such rights shall include rights to use outsourcing partners, systems integrators, consultants and other subcontractors to utilise the services on behalf of the Customer, and, for the avoidance of doubt, there shall be no limitation that the Services may only be used for internal use or for the purpose of Customer's regular activities.
- 16.1.5 The Customer retains all rights, title and interest to Customer Data. The Supplier shall only be entitled to use Customer Data (even in aggregated and anonymised form) as reasonably necessary to perform the Service(s). The Supplier shall under no circumstance have the right to withhold Customer Data. Customer Data shall not be used for testing, developing and training activities.

### **16.2 Indemnities for third-party claims**

- 16.2.1 Notwithstanding clause 14 (*Limitation of liability*), the Supplier shall fully indemnify the Customer and keep the Customer indemnified from and against any and all losses suffered or incurred by the Customer arising from or in connection with any claim that the use or exploitation of the Services infringes the Intellectual Property Rights of any third party.
- 16.2.2 The Customer shall provide written notice as soon as possible of any such IPR Claim.
- 16.2.3 The parties shall cooperate in the defence of a IPR Claim at Supplier's expense.
- 16.2.4 The Customer shall always have the right to appoint its own independent counsel to monitor the proceedings relating to any IPR Claim and to ensure its interests are adequately represented. The Customer shall promptly notify the Supplier of its intention to retain independent counsel and shall provide the Supplier with relevant information and updates.
- 16.2.5 The Supplier shall have sole control of the defence, however the Supplier may not settle any IPR Claim in a manner that adversely affects the Customer's rights, interests, or obligations under any Call-Off Contract without the Customer's prior written consent, which shall not be unreasonably withheld, delayed, or conditioned.
- 16.2.6 The Supplier shall be responsible for all costs and expenses incurred in the defence of the IPR Claim, including attorney's fees, settlements, damages awarded by court of law, provided that such costs and expenses are reasonable and directly related to the defence of the claim. Customer shall carry their cost for their own independent counsel.

### **17. CONFIDENTIALITY**

- 17.1 Confidential Information of which the relevant Parties become aware in connection with the Call-Off Contract must be kept confidential and may not be disclosed to any third party without the consent of the other Party.

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- 17.2 The confidentiality obligation shall not prevent:
- a) the disclosure of information if such disclosure is demanded pursuant to Norwegian or EU/EEA or Member State laws or regulations, hereunder the Norwegian Public Administration Act and the Norwegian Freedom of Information Act. The other Party shall, if possible, be notified prior to the disclosure of such information;
  - b) information from being used when there is no legitimate interest in keeping it confidential, for example when such information is in the public domain or is accessible to the public elsewhere due to no fault of the receiving Party;
  - c) the parties from sharing information on a need-to-know basis with Party's employees, representatives, superiors, parent ministries, any entity that the party directly or indirectly controls, is controlled by or is under common control with, etc. to be able to perform their obligation under agreement or comply with reporting obligations;
  - d) the Parties from utilising experience and expertise developed in connection with the implementation of the Call-Off Contract;
  - e) a Customer from sharing any Confidential Information with DFØ or other public bodies on a confidential basis; and
  - f) a Customer from sharing Confidential Information as necessary in regard to deliveries to the Customer by other vendors and in relation to tenders for services.
- 17.3 The Parties shall take all necessary precautions to prevent unauthorised persons from gaining access to, or knowledge of, Confidential Information of the other Party. The other Party's Confidential Information shall only be used for purposes of the Parties' business relationship.
- 17.4 The confidentiality obligations shall also apply to information that has been exchanged between the Parties before the Call-Off Contract came into force, to the extent that the information was exchanged for the purpose of entering into the Call-Off Contract, such as in connection with submission of offers, invitations to tender and contract negotiations.
- 17.5 The obligations in this clause 17 shall apply for 5 (five) years after the receipt of Confidential Information, except for Customer Data where the obligations apply until the data is deleted. .

## 18. SUBCONTRACTORS

- 18.1 If the Supplier uses a Subcontractor, the Supplier is liable for the performance of these tasks, in the same way as if the Supplier was performing the tasks itself and shall procure full compliance by the Subcontractor(s) with the terms of this Call-Off Contract.
- 18.2 The Supplier shall maintain a list of Subcontractors that participates directly in the delivery of the Services with information regarding country of incorporation and country of incorporation of ultimate owner which shall be available to the Customer upon request. The Supplier shall notify the Customer promptly in writing of any changes or additions to the list of Subcontractors. If requested by the Customer, the Supplier shall further provide the following information for each Subcontractor and the ultimate owner: (i) name of the managing director and members of the board of directors, (ii) ownership structure and (iii) where production facilities are located.



## **19. TRANSFER OF RIGHTS AND OBLIGATIONS**

- 19.1 The Supplier may assign its rights and obligations under the Call-Off Contract with the written consent of the Customer.
- 19.2 The Supplier shall notify DFØ in writing as soon as possible of any novation or assignment, and no later than 60 (sixty) prior to the novation or assignment taking effect. The notification shall as a minimum include information about:
- a) Who the contract will be assigned or novated to;
  - b) Country of origin for the company;
  - c) Ownership structure, including ultimate beneficial owner(s);
  - d) Where production facilities are located; and
  - e) Reasons for assignment and novation.

DFØ may request additional information.

- 19.3 The Supplier shall notify in writing as soon as possible of any changes to the Supplier's corporate structure and ownership, including, but not limited to, changes to parent companies, Affiliates and Subsidiaries. The written notice shall include information as set out in section 19.2 as well as information about percentage of ownership. If the Supplier or parent company is listed at a stock exchange, the Supplier must only inform of changes in ownership where the change is substantial, and always where the change entails a Change of Control. Clause 11.2 b) Change of Control of [Appendix 4.2](#) (Special Terms & Conditions) applies mutatis mutandis for situations where the Supplier transfer or novates any rights and obligations to another party.
- 19.4 The Customer is a public body and may assign its rights and obligations under this Call-Off Contract to another public body on written notice to the Supplier.

## **20. TRADE RESTRICTIONS**

- 20.1 The Supplier shall make available a list of their available Services to the Customer that are, or may become, subject to any Trade Restrictions. The list shall be continuously updated and any changes shall immediately be notified in writing to the Customer.
- 20.2 If the Customer procures or is already consuming a Service that is or may become subject to a Trade Restriction, the Supplier shall contact the Customer as soon as possible, with the necessary information as to which use of the Service that infringes the Trade Restriction and contribute and enable the Customer to modify the use of the Services to be in compliance with the Trade Restriction, for example by migrating to other Services.

## **21. FORCE MAJEURE**

- 21.1 Any act, event, omission, happening or non-happening shall only be deemed Force Majeure if it is attributable to circumstances beyond the control of the affected Party which they could not reasonably be expected to take into account or prevent or to avoid or overcome the consequences of and provided that written notice of the Force Majeure is provided by the Party affected by it as soon as it becomes aware, providing full details of the applicable circumstances.

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- 21.2 The obligations of the affected Party with respect to circumstances deemed to be Force Majeure pursuant to clause 21.1 shall be suspended following written notice by the affected Party and for as long as the extraordinary situation prevails. The corresponding obligations of the other Party shall be suspended for the same period.
- 21.3 In Force Majeure situations, the Customer may terminate the Call-Off Contract effect immediately upon written notice to the Supplier without any liability if the situation prevails or is expected to prevail for more than 15 days as from the date on which such situation arose.
- 21.4 Each of the Parties shall cover their own costs associated with the Force Majeure including termination of the contractual relationship. The Customer shall pay the agreed price for any deliveries made prior to the termination of the Call-Off Contract. The Parties may not present other claims against each other due to the termination of the Call-Off Contract pursuant to this clause 21.
- 21.5 The Parties shall, in connection with Force Majeure situations, have a mutual disclosure obligation towards each other concerning all matters that must be deemed relevant to the other Party. Such information shall be disclosed as soon as possible.

#### **22. GOVERNING LAW, VENUE AND DISPUTE RESOLUTION**

- 22.1 The Parties' rights and obligations under the Call-Off Contract are governed exclusively and in their entirety by Norwegian law.
- 22.2 If a dispute is not resolved through negotiations, it shall be escalated to DFØ, for further negotiations between the Parties. A dispute shall not be brought before a court of law or arbitration before it has been escalated to DFØ.
- 22.3 Each Party may require the dispute to be resolved with final effect exclusively before the Norwegian courts of law. Legal venue shall be the venue of the Customer.
- 22.4 Notwithstanding the foregoing, the Customer may require that the dispute shall instead be solved by arbitration in Norway. The arbitration shall be held in Oslo, Norway, and shall be conducted in Norwegian or English language. The award or decision made by the arbitral tribunal shall be final and conclusive and have binding effect upon the parties to the arbitration and may be enforced in the same manner as a judgment or order of a court of competent jurisdiction. The costs of the arbitration shall be fixed and paid as specified in the award.
- 22.5 If a dispute is resolved through clause 22.3 or 22.4, DFØ have the right to co-counsel the Customer, or on the Customer's request, resolve the dispute on behalf of the Customer.