General terms and conditions of NIIS Contracts

MTÜ Nordic Institute for Interoperability Solutions (NIIS)

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1 Terms

These general terms and conditions are valid for all contracts concluded by the MTÜ Nordic Institute of Interoperability Solutions (hereinafter also “NIIS”):

1.1 “Backlog” - a prioritised list of functionalities or other features initially planned to be included in the release(s) that the parties may agree to remove, add or change during iteration.

1.2 “Contract” – an agreement between NIIS and the Contractor in which the object of the Contract and specific terms and conditions related to performance are specified. The procurement documents, these general terms and conditions and other documents on which the parties have agreed shall form inseparable parts of the Contract. In case of conflicts between the terms of the documents mentioned above, the following prevalence shall apply:

1.2.1 Procurement contract; then
1.2.2 General terms and conditions; then
1.2.3 Procurement documents, then
1.2.4 Tender.

1.3 “Contracting Authority” – NIIS.

1.4 “Contractor” – a natural or legal person who has entered into a contract with NIIS.

1.5 “Delivery” – the tasks relating to the design, specification, implementation, testing and deployment of the releases or other tasks separately agreed in connection with a Project as a result of which the agreed releases will be delivered.

1.6 “Error” – a release or delivery does not correspond to what has been agreed by the Parties or a situation in which a release is not compatible with one or several releases included in the same delivery.

1.7 “General terms and conditions” – this document, which provides the general principles of the contractual relationship between the Parties to the Contract. The Parties may agree on terms and conditions that are different from the general terms and conditions.

1.8 “Instrument of Transfer and Receipt” (hereinafter also “ITR”) – a document signed by both Parties
which certifies the transfer and receipt of the object of the Contract or a part (stage) thereof.

1.9 “Iteration” – a part of the Project with a limited duration, such as a phase in accordance with the agile method used in the Project, in which functionalities or other features included in the Backlog or otherwise agreed upon will be implemented. The iterations can be described in more detail also in the Project plan.

1.10 “Location of Contracting Authority” – Hobujaama 4, Tallinn 10151, Estonia, unless another location is provided explicitly in the Contract.

1.11 “Moment of receipt” – the moment the object of the Contract is transferred by the Contractor and NIIS deems it proper in accordance with the Contract and receives the object of the Contract.

1.12 “NIIS” – MTÜ Nordic Institute of Interoperability Solutions, Estonia, registry code 80419486.

1.13 “Object of contract” – the service, result or thing that NIIS buys under the Contract.

1.14 “Order” – a written document to be submitted by NIIS to the Contractor based on the Contract, which includes NIIS’ proposal to make a tender to the Contractor for selling the things, providing the service or performing the work, or both determined by NIIS.

1.15 “Party” – depending on the context, either NIIS or the Contractor, together referred to as the “Parties”.

1.16 “Procurement documents” – documentation related to the procurement procedure carried out by NIIS in accordance with the Public Procurement Act. The procurement documents form an inseparable part of the Contract.

1.17 “Project” – a project consisting of one or several iterations implemented using an agile method where NIIS orders and the Contractor delivers the delivery. The Project can be described in more detail in the Project plan.

1.18 “Project plan” – a plan, if any, created for the Project by the parties that describes the Project, releases, iterations, resources and schedule, as well as the tasks of the parties relating to the delivery.

1.19 “Release” – software or part of a software or other outcome created as a result of one or several iterations.

1.20 “Standard software” – software or software component marketed or licensed to several customers and the instructions or other documentation and potential media related to the standard software in question.

1.21 “Tender” – the tender which has been submitted by the Contractor and declared successful; the tender is binding on the Contractor.

1.22 “Third-party” – any natural or legal person other than NIIS or the Contractor.

1.23 “Warranty” – the obligation of the Contractor to ensure the compliance of the transferred object of the Contract with the Contract and the elimination of shortcomings that have emerged at the cost of the Contractor during the period (“warranty period”) and under the terms and conditions provided for in the Contract.

1.24 “Working day” – calendar days from Monday to Friday, except public holidays that shall be defined in the Public Contract in accordance with the applicable law.

1.25 “Working method” – practices and procedures to be applied in the delivery of iterations as well as other methods used by the Parties in the Project

1.26 “Working time” – a period between 8:00 to 17:00 on working days that shall be defined in the Public Contract in accordance with the applicable law.

2 Interpretation of Contract and legislation in force

2.1 If the wording of the Contract can be interpreted in several ways, the Parties shall proceed from the actual intention of the Parties and how a reasonable person would understand the wording in the same circumstances.

2.2 The Contract will guide parties, and in any issues not provided for in the Contract, the Parties
shall follow the legislation in force in the Republic of Estonia and the principles of good faith and reasonableness.

3 Performance of Contract

3.1 Upon entry into the Contract, the Contractor shall assume the obligation of performing it correctly. In issues not regulated by the Contract, the Contractor shall follow the guidelines of NIIS, the appropriate requirements in force in the Republic of Estonia and, upon the lack thereof, corresponding and generally recognised international requirements and good practice.

3.2 Upon the performance of the contract, the Contractor undertakes to keep in mind the purpose of the Contract and, if necessary, seek additional explanations from NIIS. If any conflicts arise, the Contractor shall inform NIIS thereof immediately and, upon the performance of the Contract, follow the respective guidelines of NIIS.

3.3 The language used between the Parties upon the performance of the Framework Agreement or the Public Contract, or both shall be English. Any documents to be drawn up within the Contract shall be transferred to NIIS in English. Documents may be transferred in any other language only with the prior consent of NIIS. At the request of NIIS, the Contractor shall provide a translation at its own cost.

3.4 If necessary, NIIS shall provide the Contractor with access to the documentation, information, premises and/or technological environments important for the performance of the Contract. NIIS shall assess the need for access.

3.5 The Contractor is required to adhere to the procedure for the use of premises at the location of NIIS and other requirements and restrictions related to security that NIIS has introduced to the Contractor before starting to perform or during the performance, or both of the Contract.

3.6 If the Contractor comes into contact with NIIS assets during the performance of the contract, the contractor shall use the assets purposefully and prudently and ensure that the assets are protected and preserved.

3.7 The Contractor shall also perform such works and activities relating to or arising from the Contract (so-called coherent work), which have not been specifically described in the Contract and Procurement Documents, however, which are necessary for the full completion of the object of Contract and achievement of the outcome as foreseen with the Contract.

3.8 NIIS has the right to check, at any time, the compliance of the object of the Contract with the Contract and to require the Contractor to provide information about the performance of the Contract.

3.9 The Contractor is required to perform the work to a high degree of quality and in an efficient and timely manner. If NIIS has any justified doubt about the performance of the obligations above, NIIS shall have the right to sufficient for NIIS, NIIS shall have the right to seek the position of an independent third party.

3.10 If the Parties have entered into a framework agreement within the meaning of the Public Procurement Act, upon receipt of an order, the Contractor shall be obliged to submit a tender or a justification about the impossibility of submitting a tender.

3.11 Communication aimed by the Contractor at the public and related to the object of the contract or the performance thereof, including press releases, the use of NIIS name or reference to the insignia in a network publication or advertising materials, is permitted if NIIS has granted its explicit prior consent thereto.

3.12 NIIS shall have the right to involve in the Contract, on the NIIS side, third parties, including state authorities.

4 Delivery and receipt of object of the Contract

4.1 The object of the Contract shall be transferred by the Contractor to NIIS at the location of NIIS in accordance with the terms and conditions of the Contract. After delivering the object of the contract, the Contractor shall sign the ITR, which specifies the date of delivery, a detailed list of work submitted and/or services provided and/or products delivered and, if needed, any occurring deficiencies. Along with the ITR, the Contractor shall transfer to NIIS the technical and other
documentation required for the use and management of the object of the Contract on paper
and/or an electronic data medium (CD/DVD etc.) and/or by e-mail or install it in the environment
indicated by NIIS.

4.2 NIIS shall have seven working days to check the compliance of the work submitted from the ITR
with the terms and conditions of the Contract. NIIS may extend the term above if the extension
is justified, and the Contractor shall not have any right to refuse the extension without good
reason.

4.3 If NIIS has not signed the ITR or notified of extending the term within the term specified in clause
4.2, the object of the Contract shall be deemed as received, and the moment of receipt shall be
deemed to be the calendar day following the expiry of the term provided for in clause 4.2.

4.4 If NIIS detects any defects, shortcomings or other non-compliance with the terms and conditions
of the Contract in the object of the Contract submitted for the receipt, the Contractor is in breach
of the Contract, and the breach shall be eliminated based on the respective guidelines of NIIS.

4.5 If NIIS has no complaints in respect of the Object of the Contract, the Parties shall sign an ITR.
NIIS may issue an ITR upon the completion of any part of the work submitted or services provided
for the respective part. This type of receipt does not affect the Contractor’s obligation of fulfilling
all contractual obligations.

4.6 The Contractor shall have the right to require an expert assessment if it disagrees with the
complaints of NIIS concerning the quality of the object of the Contract. The expert shall be
selected upon agreement between the parties, and the costs of the expert assessment shall be
paid for by the Contractor. If it emerges as a result of expert assessment that the object of the
contract complies with the terms and conditions of the contract, the costs of conducting the expert
assessment shall be paid for by NIIS.

4.7 If the object of the Contract is development work and no ITR has been entered into for the transfer
of the development work and clause 4.3 does not apply, the moment of receipt of the
development work shall be deemed to be the day NIIS started to use the result of the
development work as a whole in the production environment (live).

4.8 The receipt of the object of the Contract by NIIS shall not relieve the Contractor of its liability for
defects not detected upon transfer and receipt of the Object of the Contractor for the non-
compliance thereof.

4.9 The right of ownership of the deliverables transfers from the Contractor to NIIS upon the receipt
of the delivery.

4.10 If the Services meets the terms and conditions set out in the Contract documents and is of
appropriate quality, the contact person of NIIS shall accept the service and sign the ITR within
the prescribed term.

5 Settlement

5.1 The prices set out in the Contract are without VAT, and VAT shall be added to them at the
applicable rate thereof. The currency to be used for fees and invoicing is the Euro.

5.2 The Contractor shall submit an invoice to NIIS. The invoice shall be issued after the Parties have
signed the ITR. If the Contract is performed in stages and respective payment in stages has been
agreed on, the Contractor shall submit to NIIS an invoice after signing an ITR of the respective
stage.

5.3 An invoice to be submitted by the Contractor shall refer clearly and unambiguously to the
Contract. The invoice must contain at least the following data: information regarding the invoicer;
information regarding the payer; reference to the Contract and the public procurement reference
number; name and description of accepted products/work/services; VAT; total sum. An invoice
not in compliance with the terms and conditions set out in this clause shall not be subject to
payment. The deadline for payment of an invoice is 30 calendar days.

5.4 The Contractor shall send an invoice in PDF format to the e-mail address finance@niis.org or in
e-invoice format via Omniva Invoice management (directly from the accounting programme, to
be uploaded as an XML file to the information system or to be drawn up directly in the operator’s
information system www.omniva.ee).
5.5 The prices provided for in the Contract cannot be increased in connection with inflation, a rise in prices or for any other reason.

5.6 If the parties have provided the maximum value of the Contract in the Contract, the parties shall regard this amount as indicative, i.e. if the contract is cancelled in accordance with the terms and conditions of the Contractor, by the moment of expiry of the Contract, NIIS has submitted orders based on the Contract in a smaller volume than the maximum value of the Contract, the difference between the maximum value and the actual value shall not be subject to payment to the Contractor or compensation in any other manner.

5.7 If NIIS has any grounds for demanding from the Contractor a contractual penalty or compensation, or both for damage, NIIS shall have the right to deduct the contractual penalty or damages, or both from the amount subject to payment to the Contractor based on the Contract.

5.8 Any amount paid by NIIS which exceeds the amount prescribed to the Contractor under the Contract shall be refunded to NIIS by the Contractor within 30 calendar days as of the receipt of a respective notice.

6 Warranty and elimination of shortcomings

6.1 The general principles of the warranty conditions provided for in this chapter only apply if the Parties have explicitly agreed on the application of the warranty.

6.2 The beginning of the warranty period is deemed to be the moment of receipt of the object of the Contract.

6.3 The duration of the warranty period and terms for the elimination of shortcomings shall be agreed on in the Contract.

6.4 The warranty does not cover shortcomings that arise as a result of NIIS’ negligence or intentional act or omission.

6.5 The Contractor undertakes to start, at its own cost, eliminating shortcomings that emerge on the object of the Contract during the warranty period as of the moment a corresponding claim is submitted to the Contractor by NIIS and in agreement with the Contract and not terminate the required activities until the shortcomings are eliminated.

6.6 Any costs related to the elimination of a shortcoming that is covered by the warranty and emerged during the warranty period, including transport, postal et al. expenses, shall be borne by the Contractor.

6.7 If the Contractor does not regard a shortcoming as being covered by the warranty, the Contractor shall have the right, within three (3) working days of the elimination of the defect, to submit to NIIS a respective notice along with the justifications, pointing out the volume of work required to eliminate the defect, and if NIIS agrees with the justifications of the Contractor, the Contractor shall have the right, according to the Contract, to document the time spent eliminating the defect and require compensation therefor in accordance with the Contract or if no hourly et al. applicable fee for the performance of the work has been agreed on in the Contract, the Parties shall agree on the compensation for the costs separately, the basis for the agreement shall be the price list usually submitted for such work by the Contractor.

6.8 If the Contractor does not start eliminating a shortcoming in accordance with the Contract, NIIS shall have the right to eliminate the shortcoming itself or use the help of a third party and require from the Contractor, in addition to a contractual penalty, compensation for costs related to the elimination.

6.9 If the object of the Contract is a thing and the warranty period of the manufacturer of the item or any component thereof is longer than the warranty period agreed on in the Contract, the expiry of the warranty period set out in the Contract shall not terminate the validity of the manufacturer’s warranty. The Contractor is required to transfer the documentation related to the manufacturer’s warranty set out in this clause to NIIS separately, but failure to perform the obligation to transfer the warranty documents shall not affect the validity of the warranty.

6.10 If the object of the Contract is a thing and the Contractor eliminates any non-compliance with the terms and conditions of the Contract that emerges on the object of the Contract through repairs, the warranty period shall be extended by the duration of the period of repairing the thing. If the
Contractor eliminates any non-compliance with the terms and conditions of the Contract that emerges on the object of the Contract or a component thereof by replacing the thing or component, the warranty period of the respective item or component shall start from the very beginning as of the date of replacement.

6.11 A party has the right to require an impartial expert assessment if there are any disagreements as to the application of the warranty. The impartial expert shall be selected upon agreement between the parties, and the costs of conducting the expert assessment shall generally be paid for by the Contractor. The costs of conducting the expert assessment shall be paid by NIIS if, as a result of the assessment, the object proves to be in compliance with the requirements.

7 Confidentiality requirements

7.1 Personal and security data that have become known upon entry into or performance, or both of the Contract and other information and circumstances whose disclosure may damage the interests of the parties constitute confidential information. Confidential information is also deemed to be information provided with the notation “confidential”, “for internal use”, etc. or about which a party has notified, or it can reasonably be presumed that it is confidential information.

7.2 A party undertakes to use confidential information only for the achievement of the purpose of the Contract.

7.3 Confidential information shall not be subject to disclosure to any third parties, and a party undertakes to make every effort for it not to fall into the possession of any third parties and for no such risk to arise. Confidential information may be disclosed only with the prior written consent of the Parties, in the cases explicitly provided for in the Contract or if this obligation arises from legislation, within the extent provided for in legislation.

7.4 The obligation to maintain the confidentiality of confidential information shall not depend on the validity of the Contract but shall remain in effect without a term following the expiry of the Contract. If a due date has been set for the confidentiality obligation, the confidentiality requirement in respect of the information above shall remain in effect until the due date.

7.5 The contractor shall ensure that confidentiality agreements that guarantee the maintenance of the confidentiality of the confidential information of NIIS and other involved parties under the same principles as provided for in the Contract, included in the general terms and conditions, have been entered into with all persons, including alternate members, involved by it in the performance of the Contract. The person responsible for the performance of the confidentiality agreement shall be the Contractor.

7.6 NIIS shall have the right to send information related to the Contract to state authorities without the consent of the Contractor.

8 Background check

8.1 Where necessary and justified, NIIS is entitled to conduct background checks on the Contractor’s team member during the whole period of validity of the Contract, which may include, inter alia, gathering information from public and non-public databases (including the criminal register, the commercial register) and inquiries to any national security authorities in the countries in which NIIS operates.

8.2 The Contractor is required to inform the entering team member of the possibility of a background check.

8.3 To conduct a background check, the Contractor must provide the written consent of the team member for the background check requested by NIIS at the request of NIIS within five (5) working days at the latest. In case the Contractor fails to provide consent within the time indicated, NIIS has the right to refuse to allow the team member concerned to work and to require the team member to be replaced.

8.4 NIIS has the right to refuse to allow the team member to carry out work if, as a result of the background check, the team member is not suitable for the work. Depending on the sensitivity of the information, NIIS is not entitled to request explanations for this refusal, including publication of background check data.
8.5 In case the team member does not consent to the background check or, as a result, is not suitable for the work, the Contractor undertakes to ensure immediate replacement of the team member.

8.6 Unless otherwise stated in a particular order or the Contract, for this reason, the replacement of the team member is not a reason for changing the delivery deadline.

9 Data (including personal data) security and back-up

9.1 Each party and its subcontractors shall comply with the measures agreed by the Parties in writing, and the legal requirements set out in applicable laws related to data security and backup requirements. To the extent the Parties have not agreed otherwise in writing regarding data security and backup requirements, the terms set out in sections 9.2–9.4 shall apply.

9.2 Each party shall ensure that the part of the deliverables and the Party’s environments, such as equipment, communications network, service production facilities and business premises, within that party's responsibility under the agreement, are protected against data security threats in accordance with the adequate data security procedures used by the party, and shall ensure that measures relating to data security and back-up are complied with. Neither party is responsible for the data security of the general communications network or any disturbance in the general communications network.

9.3 A party shall notify the other party without undue delay of any significant data security risks and data security breaches, actual or suspected, detected by such party that poses a threat to the product or its use. A party shall, for its part, take immediate action to eliminate or reduce the effect of any data security breach. A party shall be responsible for contributing to the investigation of data security breaches.

9.4 Each party shall be responsible for making backup copies of its data and data files and for verifying the functionality of such backup copies.

9.5 The Contractor shall:

9.5.1 Ensure the confidentiality of all personal data obtained in any form during the pre-contractual negotiations and the performance of the Contract and shall not transfer it or allow access to third parties without the prior written consent of NIIS.

9.5.2 Not transfer personal data mentioned above to a third country that is not a Member State of the European Union or member of the European Economic Area.

9.5.3 Use and process the personal data only for the Contract and on documented instructions from NIIS unless required to do so by law to which the Contractor is subject. In such a case, the Contractor shall inform NIIS of that legal requirement before processing unless that law prohibits such information on important grounds of public interest.

9.5.4 Disclose personal data only to these employees, who are directly connected with the performance of the Contract and shall ensure that these employees are aware of and comply with the requirements and legislation concerning personal data processing. The Contractor also ensures that these employees are aware of and comply with the confidentiality requirement specified in this clause.

9.5.5 Fulfil the requirements for data processing and data protection arising from the legislation of the European Union and the Republic of Estonia on the protection of personal data.

9.5.6 Implement the following technical and organisational measures concerning the protection of personal data:

9.5.6.1 prevent unauthorised access to the equipment used for the processing of personal data;

9.5.6.2 prevent unauthorised reading, copying and modifying of personal data in the data processing system, as well as the unauthorised removal of personal data;

9.5.6.3 prevent the unauthorised recording, modification and deletion of personal data and to ensure that it is possible to determine subsequently when, by whom and what personal data was recorded, modified or deleted or when by whom and on which personal data the access to the data processing system was obtained;

9.5.6.4 ensure that employees who use the data processing system for the fulfilment of their work
assignments have access only to the personal data authorised for processing to them;

9.5.6.5 ensure the availability of data on the transmission of personal data: when, to whom and what personal data were transmitted, as well as the unchanged preservation of such data;

9.5.6.6 ensure that personal data is not unauthorisedly read, copied, modified or deleted on the transmission of personal data by data communication equipment or data storage media;

9.5.6.7 maintain records of the equipment and software under the Contractor control for the processing of personal data by documenting the following:

   1) the name, type and location of the device and the name of the producer;

   2) name of the software, version of the software, manufacturer's name and contact information.

9.5.7 In the case of a breach of obligation of confidentiality specified in clause 9.5.1; breach of the technical and organisational security measures specified in clause 9.5.6 which is likely to lead or has led to accidental or unlawful destruction, loss, alteration, or unauthorised disclosure or access to personal data transmitted, stored or otherwise processed, the Contractor shall without undue delay after having become aware of it, notify the breach to NIIS. The notification shall at least:

   1) describe the nature of the personal data breach, including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;

   2) communicate the name and contact details of the data protection officer or another contact point where more information can be obtained;

   3) suggest the measures to be taken to address the personal data breach, including measures to mitigate possible adverse effects of the breach;

   4) describe the likely consequences and potential risks of the personal data breach;

   5) describe the measures taken or proposed to be taken by the Contractor (or its subcontractors) to address the personal data breach;

   6) provide other information that is reasonably required to enable NIIS to perform its obligations under the legislation of the European Union and the Republic of Estonia on the protection of personal data.

9.5.8 At the request of NIIS, the Contractor undertakes to terminate the breaches specified in clause 9.5.7 and apply measures for solving the personal data breach, including, where appropriate, measures to mitigate its possible adverse effects.

9.5.9 At the end of the contract, the Contractor shall delete all the personal data and its existing copies or return it to NIIS except for in cases prescribed by law.

9.5.10 The Contractor makes available to NIIS all information that is reasonably necessary and required by legislation to demonstrate compliance with the obligations laid down in clause 9.

9.5.11 The Contractor allows for and contributes to audits, including inspections, conducted by NIIS or another auditor mandated by NIIS.

9.5.12 The Contractor assists NIIS by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of NIIS's obligation to respond to requests for exercising the data subject's rights and to the operations arising from exercising these rights (rectification, erasure of personal data).

9.5.13 The confidentiality requirement given in clause 9 is valid during the performance of the Contract for an unspecified term.

9.5.14 Due to the nature of the personal data, NIIS has the right to set additional requirements or instructions, or both for the processing of personal data.

9.5.15 The Contractor shall establish all the obligations mentioned above to all third parties used in the fulfilment of its contractual obligations.
10  **Infringement of intellectual property rights**

10.1 The Contractor shall ensure that it (as well as its subcontractors) has the necessary scope of rights to conclude this Contract regarding any other copyrights and related objects (components or documentation, or both) protected by copyrights that will be used for the development and in the process of the Services performance/provision.

10.2 The Contractor warrants that the deliverables do not infringe third party intellectual property rights in the agreed country of delivery or use. Unless otherwise agreed in writing, the agreed country of delivery and use shall be Estonia.

10.3 The Contractor shall at its own expense indemnify NIIS against claims presented against NIIS that a deliverable infringes the third party intellectual property rights in the agreed country of delivery or use provided that NIIS promptly notifies the Contractor in writing of such presented claims and permits the Contractor to defend or settle the claims on behalf to NIIS and gives to the Contractor, at the request of the Contractor and the Contractor’s expense, all necessary information and assistance available and the necessary authorisations. The Contractor shall pay all damages awarded in a trial or agreed to be paid to a third party if NIIS has acted in accordance with the foregoing.

10.4 If in the reasonable opinion of the Contractor a deliverable infringes third party intellectual property rights in the agreed country of delivery or use or if such infringement has been confirmed in a trial, the Contractor shall and may at its own expense and discretion either (a) obtain the right to continue the use of the deliverable for NIIS; (b) replace the deliverable with a product or service that complies with the Contract and corresponds to the deliverables, or (c) modify the deliverable to eliminate the infringement in such a manner that the modified deliverable complies with the Contract. If none of those mentioned above alternatives is available to the Contractor on reasonable terms, NIIS shall, at the request of the Contractor, stop using the deliverable and return it. The Contractor shall refund the price paid by NIIS for the deliverable less the proportion of the price corresponding to the actual time of use.

10.5 The Contractor shall, however, not be liable if the claim (a) is asserted by a company, which exercises control over NIIS or which is controlled by NIIS within the definition of control laid down in the Public Procurement Act; (b) results from the alteration of the deliverable by NIIS or compliance with NIIS’ written instructions, (c) results from use of the deliverable in combination with any product or service not supplied or approved by the Contractor, or (d) could have been avoided by the use of a released product or service that complies with the Contract and corresponds with the deliverables and which product or service is offered for use to NIIS by the Contractor without separate charge.

10.6 The Contractor’s liability for infringement of intellectual property rights in the deliverables shall be limited to this section 11.

11  **Liability for damages and limitation of liability**

11.1 The Parties shall agree on liability for damages and limitation of such liability in writing. To the extent the Parties have not agreed otherwise in writing regarding liability for damages and limitation of liability, the terms set out in sections 11.2 – 11.12 shall apply.

11.2 The parties shall be liable for the accuracy of their representations and warranties and for the full and timely performance of their obligations in accordance with the Contract. The Contractor shall also be liable before NIIS in full if the breach arises from an act or omission of subcontractors or other partners involved by the Contractor.

11.3 If a contractual penalty or fine for delay applies in accordance with the terms and conditions of the contract, the maximum amount of the contractual penalty or fine for delay shall be limited to 30% of the Contract price in the case of each specific breach. If the Contract is performed based on orders to be submitted within the maximum value of the Contract, the maximum rate of the contractual penalty or fine for delay in the case of each order shall be limited to 30% of the order price in respect of which the breach occurred. The total amount of contractual penalties and interest on arrears may not exceed the Contract price. The upper limit shall not apply in the case of an intentional breach. A serious breach of the Contract shall be considered, among others, the following cases:
11.3.1 if a Party fails to fulfil a contractual obligation within the additional time given by the other Party for fulfilling the respective contractual obligation;

11.3.2 the Contractor has delayed fulfilling their contractual obligations for over 30 calendar days;

11.3.3 the Contractor does not eliminate deficiencies or delays eliminating the latter for over 30 calendar days;

11.3.4 the Party has breached the obligation of confidentiality or non-disclosure or both;

11.3.5 the Contractor has breached obligations related to personal data (clause 9);

11.3.6 the Contracting entity has delayed the deadline for payment for over 30 calendar days;

11.3.7 if the Contractor has breached the obligations related to Experts.

11.4 Claims for contractual penalties and fines for delay shall be submitted within a reasonable time and in writing.

11.5 If NIIS accepts the improper performance of an obligation, it may reduce the price subject to payment by it for the obligation proportionally with the ratio of the value of the improper performance of the obligation to the value of proper performance.

11.6 Payment of the contractual penalties arising from the Contract as well as compensation for the damage caused shall not release the defaulting party from the performance of its contractual obligations.

11.7 The parties shall do everything, within reason, to reduce the damage that is or may be the basis for any claim for compensation for damage under the Contract.

11.8 If one of the parties breaches the contract, the other party shall have the right to use, in respect of the defaulting party, as a legal remedy, in addition to that provided for elsewhere in the Contract, the right to refuse to perform its obligations until the performance of the obligation owed by the defaulting party.

11.9 Upon a delay in payment of a properly submitted invoice, the Contractor shall have the right to require from NIIS a fine for delay at the rate of 0,1% of the overdue amount per working day of delay, but no more than the overdue amount.

11.10 Neither Party shall be liable for any indirect or consequential damage. Indirect or consequential damage shall mean, inter alia, loss of profits or damage caused due to decrease or interruption in turnover or production.

11.11 Neither Party shall be liable for the destruction, loss or alteration of the other Party’s data or data files, nor for any damages and expenses incurred as a result, including costs involved in the reconstitution of data files. This section 11.4 shall not apply if a Party’s obligations under the Contract comprise taking back-up copies of the other Party’s data or data files or managing the other Party’s data security and that Party has not fulfilled this duty.

11.12 The limitations of liability shall not apply to liability under sections 7 and 10 or damages caused by (a) the transfer, copying or use of deliverables contrary to law or the terms and conditions of the Contract; or (b) wilful conduct or gross negligence.

11.13 The total amount of contractual penalties, interests and damage claims is limited with the total cost of the relevant Contract, but this limitation shall not apply in the case of an intentional breach.

12 Force majeure

12.1 The parties shall be liable for breaching their contractual obligations unless such a breach is excusable. A party’s breach of an obligation shall be excusable if it is caused by force majeure.

12.2 Under force majeure, the Parties understand circumstances which are beyond the control of a party and, following the principle of reasonableness, it could not have been expected that the party would take them into account, avoid them or overcome the impediment or consequences thereof at the time of entry into the Contract, particularly natural disasters, general power cuts, acts of war or blockade. Upon the occurrence of force majeure, the performance of obligations shall be postponed according to the duration of the impediment.
The party whose activities in performing their contractual obligations are hindered by force majeure shall notify the other party thereof as soon as possible by assessing the extent to and period in which it is unable to perform its obligations. Upon failure to perform the notification obligation, the party shall be liable for a breach of its contractual obligations in accordance with the procedure provided for in the Contract. Upon the cessation of the impediments caused by force majeure, the affected party shall notify the other party thereof immediately.

If, as a result of force majeure, the ability of a party to perform its contractual obligations is only partially affected, the party shall only assume liability for obligations whose performance was not hindered by force majeure.

Transfer of claims and obligations

The Contractor may not transfer its contractual obligations to any third parties without the written consent of NIIS.

The Parties may assign their contractual financial claims to third parties. The respective party is obligated to inform the other party regarding the assignment of the claim immediately in writing.

Amendment and cancellation of Contract

In addition to that provided for in the Public Procurement Act or elsewhere in the Contract, the parties may agree on amending the Contract if the amendments differ from the initial terms and conditions to a limited extent, e.g. changing the order of interim stages, changing the deadline to an insignificant extent, specifying the component related to the object of the Contract and other amendments that cannot be deemed, by way of reasonable interpretation, to constitute the amendment of the terms and conditions of the Contract to a significant extent.

NIIS has the right to cancel the Contract at any time by notifying the Contractor no less than 90 calendar days in advance. NIIS also has this right if the Parties have agreed on a fixed-term contract. Upon the cancellation of the contract based on this clause, NIIS shall pay the Contractor for the things that have been transferred or the services that have been provided by the time of cancellation; any other amounts shall not be subject to compensation.

A party has the right to premature unilateral cancellation of the Contract by notifying thereof in advance if:

1. the other party has breached the contract and has not eliminated the breach within the reasonable term determined by the party; or
2. this is a serious breach of Contract; or
3. the breach is recurrent.

Upon the cancellation of the Contract through the fault of the Contractor, the Contractor only has the right to require a fee for the things that have been transferred or the services that have been provided by the moment of termination and that NIIS can use in reality.

In addition to that provided for elsewhere, a party shall have the right to cancel the Contract at any time if:

1. the performance of the Contract is hindered due to force majeure, which has suspended the performance of the Contract for more than three months; or
2. bankruptcy proceedings have been commenced in respect of the other party, the bankruptcy of the other party has been declared, or its assets have been seized, or its financial situation has significantly deteriorated according to the justified assessment of the other party, and this deterioration makes the proper performance of the Contract unlikely.
3. The Contractor is required to notify of commencement of bankruptcy or liquidation proceedings in respect of it and of any other circumstances that may hinder or make the proper performance of the Contract by the Contractor impossible.
4. NIIS shall make the settlement related to the expiry of the contract within two months of the expiry of the Contract.
5. Rights and obligations which, due to their nature, do not depend on the validity of the Contract.
shall remain in effect following the expiry of the Contract.

14.9 If the parties have entered into a framework agreement within the meaning of the Public Procurement Act, NIIS shall have the right to submit orders on the basis thereof until the expiry of the Framework Agreement. Following the expiry of the Framework Agreement, contracts related to orders shall remain in effect in full accordance with the terms and conditions provided for therein; the Contract shall be subject to all the terms and conditions of the Framework Agreement and other documents of the Contract.

14.10 If the object of the Contract is a thing or if, in the course of performance of the Contract, such things are granted to the use of NIIS or delivered to the location of NIIS that are to be returned, due to the nature of the Contract, upon withdrawal from or cancellation of the Contract, NIIS shall return the thing to the Contractor as soon as possible, and the Contractor undertakes to take it back within three (3) working days of a corresponding claim of NIIS. If NIIS delays, without good reason, in returning a thing and the delay exceeds 20 working days, the Contractor shall have the right to require reasonable compensation in respect of the days delayed without good reason. If the Contractor does not perform its obligation within 20 working days of NIIS’ corresponding reminder, NIIS shall have the right to utilise the thing at its discretion, and the Contractor shall have no right to require any compensation for possible damage arising therefrom.

15 Communication of notices

15.1 The organisation of the performance of the contractual obligations of the parties, including signing the ITR and communicating the notices, claims and other documents prescribed in the Contract, shall take place via the contact persons determined by the Parties.

15.2 Any notices and complaints related to the Contract shall be submitted in writing, unless it arises otherwise from the nature of the notice or the terms and conditions of the contract, and they must be addressed, according to the nature of the notice, to the contact person specified in the Contract.

15.3 A notice communicated electronically shall be deemed to have been delivered as of the moment it is communicated using the contact details specified in the Contract or communicated in any other manner set out in the Contract.

15.4 The other party shall be notified of any changes to the contact persons or details as soon as possible. Until the receipt of a respective notice, a notice shall be deemed to have been properly communicated if it has been sent using the contact details known by the other party at the time.

16 Final provisions

16.1 If any term or condition of the Contract becomes contrary to legislation, the Contract shall remain in effect in relation to any other parts thereof. The provisions that have become contrary to legislation shall be replaced with new provisions in conformity with the general principles of the Contract by agreement between the parties. The invalidity of single provisions of the Contract shall not affect the validity of the Contract as a whole.

16.2 Attempts shall be made to settle any disputes arising from the contract by way of negotiations. If no agreement is reached, the dispute shall be resolved in Harju County Court.