

## **1. Definitions**

For the purposes of the Contract:

*Annex* shall mean any annex identified in the main body of the Contract (as defined hereof).

*Contract* shall mean the main body of the Contract signed and executed between the Parties for services identified therein, this General Terms and Conditions and any Annexes jointly.

*Contractor* shall mean Stichting IHE Delft, based in Delft, the Netherlands.

*Contracted Party* shall mean the individual, institution, corporation, organization or partnership pursuant to the Contract, and its employees, directors, officers, partners, sub-Contractors and agents, as applicable, and any other representatives for whom the Contracted Party is responsible by law.

*Party* shall mean either the Contractor or the Contracted party and *Parties* shall mean the Contractor and the Contracted Party jointly.

*Third Party* shall mean any Party other than the Contractor and the Contracted Party.

*Project Leader* shall mean the person designated by the Contractor as the contact person for the execution of the Assignment.

*Assignment* shall mean the services for which the Contracted Party is receiving the Contract. Terms of reference of the assignment are normally included as an Annex.

*Donor* shall mean the organization/institution (if applicable) providing funds to the Contractor for services including, but not limited to the Assignment under the Contract. The terms and conditions between the Donor and the Contractor regarding such funds and services, if applicable, are attached as an Annex.

*Confidential Information* shall mean any and all technical and non-technical information including patent, copyright, trade secret, and proprietary information, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software sources documents, source codes, and formulae related to the current future, and proposed products and services of the Contractor, and includes, without limitation, the Contractor's physical premise, information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirement, purchasing, manufacturing, and marketing plans and information.

*Force Majeure* shall mean any unforeseeable and exceptional event which include hostilities, terrorist activity, revolution, civil commotion, strike, excluded strikes within the organisations of a Party, and epidemic or because of any other cause beyond the reasonable control of the Party affected and cannot be overcome despite its reasonable endeavors, and which event affects or is likely to affect such Party's fulfillment of any obligation under the Contract.

*Beneficiaries* shall mean the parties who will benefit from the project identified in the main body of the Contract.

### 2. Entire Contract

The Contract supersedes all previous contracts and correspondence, oral or written between the Contractor and Contracted Party, and represents the whole and entire understanding between the Parties.

Any changes to the scope of the Contract shall be made in writing and agreed by the Parties.

In case there are any conflicts between the main body of the Contract and this General Terms and Conditions, the former will prevail.

### 3. Conditions of Payment

If the Contract is based on actual costs, costs incurred for the implementation of the Assignment shall meet the following conditions in order to be considered eligible:

- a) They must be actual;
- b) They must be incurred by the Contracted Party;
- c) They must be indicated in the estimated overall budget included as an Annex.
- d) They must be incurred during the duration of the Assignment, with the exception of costs incurred in relation to final reports and reports corresponding to the last period as well as certificates on the financial statements when requested at the last period and final reviews if applicable, which may be incurred during the period of up to 60 days after the end of the Assignment or the date of termination whichever is earlier;
- e) They must be determined in accordance with the usual accounting and management principles and practices of the Contracted Party; and
- f) They must be used for the sole purpose of achieving the objectives of the Assignment and its expected results, in a manner consistent with the principles of economy, efficiency and effectiveness.

If the Contractor provided an advance payment to the Contracted Party for expenses, such advance must be deducted from subsequent invoice totals. If the amounts advanced exceed the final invoice total, the Contracted Party must refund the balance to the Contractor upon submitting the final invoice, which must be no later than thirty (30) calendar days following the termination of the Contract.

In case of a main contract between a Donor and the Contractor, payments to the Contracted Party will only be made when the Contractor has been paid by the Donor.

The specific amount stated in the main body of the Contract will always be the maximum amount due to the Contracted Party under the Contract. The payment schedule and reporting obligations outlined in the main body of the Contract shall apply.

The Contractor will not pay any fee nor any expenses incurred by the Contracted Party after the effective date of termination of the Contract, unless otherwise previously agreed by the Contractor in writing.

The Contracted Party must comply with the following conditions in order to ensure payment for services pursuant to the Contract:

- a) Satisfactory delivery of all contract outputs, including reporting obligations, as per the terms of reference specified in the main body of the Contract and/or in a specific Annex therein;
- b) Submission of invoice(s) specifying number of days worked and including supporting documentation in case of actual cost arrangement;
- c) The invoices must be sent to "Stichting IHE Delft, Finance Department, P.O. Box 3015, 2601 DA Delft" and should mention the Assignment title, number and the Project Leader.

Payments will be made by Stichting IHE Delft within 30 working days after receiving the invoice and subject to approval of the Project Leader.

#### **4. Tax Implications**

The Contracted Party will be solely responsible and liable for all possible income taxes, duties, fees, levies and other impositions with respect to all payments mentioned in the Contract. The Contracted Party shall indemnify the Contractor for all possible damages incurred by the Contractor arising out of all possible income taxes, duties, fees and other impositions in respect to all payments mentioned in the Contract.

#### **5. Duration**

The specific duration of this Assignment is mentioned in the main body of the Contract. Any extension to the date stated must be agreed by the Parties in writing.

#### **6. Air Travel Policy**

The Contracted Party must travel economy class by the most direct and economical routing. The Contracted Party is free to reroute or upgrade at his or her own expense and settle any additional costs directly with the travel agency or airline.

#### **7. Confidentiality**

During the Assignment and for a period of seven (7) years after its completion, the Contracted Party undertakes to preserve the confidentiality of any data, documents or other material that is identified as "confidential". The Contractor undertakes to preserve the confidentiality of "confidential information" until seven years after the completion of the Assignment.

Where confidential information was communicated orally, its confidential character must be confirmed by the Contractor in writing within fifteen (15) days after disclosure. The Contracted Party shall, on request, promptly return to the Contractor all of its proprietary materials together with any copies thereof.

This section shall survive the termination of the Contract.

## **8. Use of Contractor's Property**

During the implementation of the Assignment, the Contracted Party may be provided with access to the Contractor's information systems and electronic communication network. The Contracted Party, on behalf of its/his/her employees, sub-Contractors and representatives, agrees to abide by Stichting IHE Delft policies concerning use of such information systems and networks such as library and ICT. These can be requested from the Stichting IHE Delft HR department.

The parties agree that access to the Contractor's premises by Contracted Party's authorized personnel to the extent necessary for the performance of the services hereunder, in accordance with the terms of the Contract, shall be permitted during normal business hours of the Contractor's premises. The Contracted Party agrees to observe all Contractor's security requirements, code of conduct and measures in effect at the Contractor's premises to which access is permitted by this Contract.

## **9. Relationship with the Contractor**

The Contracted Party shall have no authority to assume or create any obligation, expressed or implied, in the name of the Contractor, or to bind the Contractor in any manner whatsoever.

## **10. Performance Obligations**

The Contracted Party agrees that it will provide its services in a diligent manner, with regard to the interests of the Parties and the Beneficiaries, and warrants that its personnel possesses the skills and experience necessary to the satisfactory performance of the work contracted for.

The Contracted Party will promptly notify the Project Leader of any significant information, event, problem or delay likely to affect the Assignment.

The Contracted Party shall not offer nor accept any gifts, remunerations, compensations or benefits of any kind from third parties, which could be interpreted as illegal or corrupt practice.

## **11. Liability**

The Parties are liable towards each other and towards the Donor for any and all claims, losses, costs, damages of any nature resulting from a default in the performance of the Assignment by their respective employees, agents, subcontractors and any other third parties providing resources to the Contracted Party under the Assignment.

The total aggregate liability shall be limited to the total value of the agreement

Each Party shall be liable for any and all claims, losses, costs, damages of any nature suffered by Third Parties, resulting from a default by that Party's employees, agents, subcontractors and any other third party providing resources to that Party.

## **12. Intellectual Property Rights**

Copyright and any other intellectual property rights which are created through the Assignment activities will belong to all Parties involved in the development of the product these rights pertain to, unless otherwise stated in the main body of the Contract.

The Contractor shall be entitled to make use, free of charge, of all documents and other products produced in connection with the Contract which may have intellectual property rights. The Contracted Party shall issue the necessary licenses free of charge.

The Contracted Party covenants that no services or materials to be provided to the Contractor under this Contract will infringe upon or violate the rights of any third parties, including such parties' intellectual property rights. Without limiting the generality of the foregoing, the Contracted Party represents and warrants that no services or materials provided pursuant to this Contract will infringe any existing patent, trade mark, trade secret or copyright registered or recognized in the Netherlands or elsewhere, with respect to or in connection with the intended use of the services or materials by the Contractor.

The Contracted Party agrees to indemnify and hold the Contractor harmless from and against any and all damages, costs, and expenses (including court costs and reasonable legal fees) incurred by the Contractor as a result of the infringement or alleged infringement of any third party intellectual property rights, and further agrees to defend and participant in the defense of any claim or suit alleging that the Contractor has a liability in this regard.

This section will survive termination of the Contract.

## **13. Sub-contracts, Successors and Assignees**

No Assignment activities under the Contract can be outsourced to third parties without prior approval in writing by the Contractor unless explicitly stated in the main body of the Contract and/or in the main Donor contract.

Any agreement with third parties regarding the implementation of the above activities shall - after the final draft of the respective agreement has been approved in writing by the contractor - be laid down in writing with a copy to the Contractor.

The Contractor does not acknowledge any contractual link between itself and any subcontractor(s) of the Contracted Party. The Contracted Party alone shall be accountable to the Contractor for the implementation of the Assignment.

Any subcontract executed by the Contracted Party pursuant and related to the Contract, the costs of which are to be claimed as an eligible cost under the Contract, must be awarded according to the principles of best value for money (best price-quality ratio), transparency and equal treatment.

## **14. Conflict of Interest**

The Contracted Party shall avoid participating in activities or being in situations that place it, him, or her, in a real, potential or apparent conflict of interest that has the potential of influencing the Contract outputs being contemplated by the Contract.

The Contracted Parties shall not accept, directly or indirectly, for themselves or on behalf of any person or organization, with whom they are in a close social, family or economic relationship, any gift, hospitality, or other benefit from any person, group, or organization, having dealings with the Contractor where such gift, hospitality, or other benefit could reasonably eventually influence the Contracted Party in the exercise of its, his or her official duties and responsibilities pursuant to the Contract.

### **15. Insurance, Personal Safety and Health**

The Contracted Party is responsible for taking out at its own expense any insurance (travel, hospitalization, medical or other) deemed necessary while executing the Assignment.

The Contracted Party has the exclusive responsibility for maintaining personal safety and good health during the period of the Contract. The Contractor strongly suggests that they consult the diplomatic and consular authorities of the country of their nationality with a view to observe the travel recommendations applicable in the countries to be visited under the Contract. It is the responsibility of the Contracted Party to seek information and advice from any other reliable sources.

Should travel to the destinations under the Contract not be advised by the authorities, the Contracted Party must immediately advise one of the Contractor's representatives who will, at his or her option, either terminate the Contract, or in agreement with the Contracted Party, defer performance until such time as the restrictions on travel are removed, or propose an alternative work plan of the Assignment.

The Contracted Party is ultimately and solely responsible for potential health risks in the areas to be visited, taking necessary precautions like vaccinations and obtaining proper insurances.

### **16. National Legislation**

In performing services under the Contract, the Contracted Party shall be responsible for complying with all legislation of the country/countries in which it, he or she must work (including but not limited to laws pertaining to immigration, taxation, customs, employment, foreign exchange control, invoicing and auditing).

It is the Contracted Party's responsibility to comply with the travel visa regulations for any country visited or in transit.

### **17. Severability**

If any article(s) of the Contract shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining articles shall not in any way be affected or impaired thereby.

### **18. Settlement of Disputes**

Dispute arising out of the implementation of the Assignment that cannot be settled amicably will be referred to the competent court in The Hague, The Netherlands.

## **19. Language**

All correspondence relating to the Contract shall be in the English language.

## **20. Force Majeure**

If any of the Parties performance under the Contract is subject to Force Majeure the so affected Party shall notify the other Party without delay, stating the nature, likely duration and foreseeable effects.

No party shall be considered to be in breach of its obligation to execute the Assignment if it has been prevented from complying by Force Majeure. In case the Contracted Party cannot fulfill the obligations to execute the Assignment due to force majeure, remuneration for accepted eligible costs incurred may be made only for tasks which have actually been executed up to the date of the event identified as force majeure. All necessary measures shall be taken by the Party affected by Force Majeure to limit damage to the minimum.

## **21. Termination**

Both Parties reserve the right to terminate the Contract at any time by giving no less than 30 days notice in writing to the other Party. Examples of cases where the Parties may terminate the Contract are:

- a) In case either Party does not comply to the Contract terms;
- b) In case of non-performance or poor performance in execution of the Assignment;
- c) In case either Party has contravened fundamental ethical principles;
- d) In case of Force Majeure notified in conformity with Article 19, where any reactivation of the project within a period of 60 days or such other period indicated by the Contractor, that would reasonably be required to ensure the completion of the activities within the timelines of Annex 1, is impossible;
- e) In case either Party is declared bankrupt or is being wound up;
- f) In case the main contract between the Donor and the Contractor is terminated.

Payment settlements will normally be done on the basis of costs that have already incurred and for reasonable commitments made for the immediate future. The Contractor may however terminate without paying compensation of any kind, if the Contracted Party fails, without reasonable justification, to fulfill its obligations as described in the Contract.

In the event that the Contracted Party does not complete all of the deliverables agreed upon under the Contract, the Contractor retains the right to terminate the Contract and withdraw, withhold or reclaim the payments for those activities that were not undertaken by the Contracted Party.

## **22. Review and Audit**

The Contractor may audit or instruct others to audit the activities carried out pursuant to the Contract, including the Contracted Party's financial accounts of the Assignment. The Contracted Party shall render any assistance necessary to the official(s) appointed by the Contractor to carry out such audit(s) and shall allow them access to the documents relating to the Contract.

The Contracted Party is responsible for keeping proper accounting of expenses for seven (7) years and abiding to rules of proper accounting.

Audits will be carried out in accordance with the Guidelines for audit reports annexed to the Contract (if applicable).

### **23. Format of the Contract**

Copies of the fully signed Contract, whether faxed or scanned, will be binding for a duration of one month starting from the last signature date. Only originals in hard copy are considered legally valid.