

## Part 2 GENERAL CONDITIONS

### §1 Definition

- (1) The “Principal” means the organization awarding the Contract.
- (2) The “Consultant” means the organization or person(s), partnership(s) or company(ies) with whom the Contract is placed.
- (3) The “Consultant’s Personnel” means any person instructed pursuant to this Contract to undertake any of the Party’s obligations under this Contract, including the Party’s employees, agents and sub-contractors.
- (4) The “Client” refers to the main contracting body of the Principal, as defined in this Contract.
- (5) The “Recipient” means the entity or entities to whom the Services are being delivered as defined in the Main Contract.
- (6) The “Agreement” or the “Contract” means the contract between Parties consisting of the Service Agreement and the documents and references listed therein.
- (7) The “Services” means those activities more particularly defined in the Special Conditions.
- (8) The “Equipment” means any equipment, material, goods, vehicles and associated services financed by and purchased on behalf of the Project necessarily required for use in providing the Services.
- (9) The “EU4GRE Programme Action Manager” means the person named in the Special Conditions of the Agreement, who is responsible for issuing instructions and dealing with all Client correspondence in connection with the contractual aspects of the Contract.
- (10) The “Contract Price” means the total Contract price to be paid by the Principal to the Consultant for the delivery of all its obligations under this Contract.
- (14) Instructions to the Consultant for implementation may only be given by the EU4GRE Programme Action Manager.
- (15) The Consultant warrants to the Principal that its Personnel is suitably qualified, experienced, resourced and physically fit to carry out the work required.
- (16) In the event that any of the Consultant’s Personnel is deemed by the reasonable opinion of the Principal or the Recipient or the Client to be unsuitable, the EU4GRE Programme Action Manager may, notwithstanding any prior approval, so notify the Consultant in writing, giving reasons for unsuitability and this Consultant’s Person will be removed from the Project or the Contract will be terminated, as shall be decided by the Principal, in accordance with the provisions contained in this Agreement.
- (17) No variations in the terms or scope of the Contract shall be valid or binding unless previously expressly agreed in writing by the Principal and the Consultant. The Principal takes no responsibility for work outside the agreed Services and Scope of Work.
- (18) The Consultant, in its discrete decision, has proposed the Consultant’s Personnel as detailed in the Special Conditions of this Agreement to perform the Services. The Principal has accepted this proposal. No changes or substitutions may be made to the Consultant’s Personnel without the prior written approval of the Principal.
- (19) The Consultant is responsible for all its own acts and omissions whether or not in the course of performing the Services and for the health, safety and security of its Consultant’s Personnel and its property. The Consultant shall indemnify the Principal in respect of any claim, including legal costs incurred by the Principal in defending such a claim, made against the Principal except where the loss, damage or claim arises out of the negligence of the Principal.

### §2 The Consultant and the Consultant’s Personnel

- (11) Each Party commits itself to work together in good faith and amicably to fulfill all obligations of the Contract.
- (12) The Consultant shall perform the Services with all due diligence efficiency and economy, in a practical manner designed to promote the Principal and the objectives of the Services and its delivery to the Recipients, in accordance with the highest appropriate professional standards.
- (13) The Consultant shall furnish the Principal with such information related to the Project as the Principal may request for the management of the Project from time to time.
- (20) Notwithstanding the aforesaid, the Consultant is not the agent of the Principal or the Recipient or the Client and has no authority to represent or enter into any commitments on behalf of the Principal or the Recipient or the Client in any respect, without prior written permission of the Principal.
- (21) The Consultant shall render the Services as an independent service provider. Nothing contained in this Contract shall be construed or have effect as constituting a relationship of employer and employee between the Principal or the Recipient or the Client and the Consultant.

### §3 Sub-Contracting

- (22) The Consultant shall not sub-contract any of its obligations, without the prior written consent of the Principal.
- (23) If, having obtained the Principal's consent, the Consultant sub-contracts any of its obligations, the sub-contract shall include rights for the Consultant and obligations on the sub-contractor to ensure the Principal's rights to require replacement of personnel and the Principal's rights and the Consultant's obligations, as set forth in the paragraphs § 4, § 5, § 6 and § 7 of these General Conditions, can be enforced against the sub-contractor.

### §4 Confidentiality and data protection

- (24) The Consultant shall not, during or after the termination of the Agreement for a period of five years disclose to any third party other than the Client and Recipients any Confidential Information arising from the Agreement, other than in the proper performance of their duties hereunder, except with the prior written permission of the Principal.

For the purposes of this clause "Confidential Information" shall mean information relating to proprietary technological, economic, administrative business and technical matters of the Principal or the Client or the Recipient including but not limited to information disclosed orally, documents, drawings, diagrams, models, programs, data (including personal data) or any part or copy of such information.

Notwithstanding the aforesaid, the obligations of the Consultant above in relation to the whole or any part of the Confidential Information shall not apply or cease, as the case may be, if the information:

- (a) is publicly available or otherwise in the public domain at the time of disclosure or subsequently becomes publicly known other than through the disclosure of the Consultant or the Consultant's Personnel;
- (b) was available to the Consultant or the Consultant's Personnel receiving on a non-confidential basis prior to its being so furnished;
- (c) becomes available to the Consultant or the Consultant's Personnel on a non-confidential basis from a source other than the Principal, the Client or the Recipient if such source owes no duty of confidentiality to the Principal, the Client or the Recipient; or
- (d) is to be disclosed as required by law or as required by a court or arbitration panel of competent jurisdiction.
- (25) The Consultant confirms to obtain and maintain data protection according to the EU General Data Protection Regulation (GDPR, EU 2016/679) and the Austrian Data Protection Act, Federal Law

Gazette No 1 165/1999, as it may be amended from time to time.

Consultant shall instruct the Consultant's Personnel accordingly and shall ensure full compliance. The Consultant is fully liable for any deficits, omissions, violations and alike hereof.

- (26) If, in the scope of the present mandate, data is processed within the meaning of the EU General Data Protection Regulation (GDPR, 2016/679), the Principal, in its capacity as controller, must sign a separate data protection agreement with the Contractor, in its capacity as processor.
- (27) The Consultant has to ensure that in case of subcontracting the Contractor's Subcontractor is bound by the same obligations of secrecy and data protection.
- (28) Any personal data shall be used only for performing this Agreement. After the end of this Agreement data processing shall not be allowed and all personal data shall be deleted, except a legal obligation enforces to store them.
- (29) Any proven breach of the provisions of this paragraph § 4 shall entitle the Principal, in its sole discretion, to immediately terminate this Agreement upon written notice. The Consultant shall indemnify and hold the Principal harmless, including legal costs incurred by the Principal in defending such claim, for any losses and damages related hereto.

### §5 Intellectual property, ownership, title and publicity

- (30) The Principal, and the Recipient and the Client, as the case may be according to the terms and specifications of the Main Contract, shall have the title, interest, all intellectual property rights (including but not limited to copyright) of all rights of ownership to any drawings, documents, plans, measures, reports and other material, data or good prepared by itself as part of the Services hereunder.
- (31) The Consultant shall be responsible to ensure that the Services, working methods, know-how, operations or results do not violate the intellectual rights of any third party and shall indemnify and hold the Principal harmless, including legal costs incurred by the Principal in defending such a claim, from and against any and all claims in relation to such alleged or proven violations.
- (32) Anything supplied by the Principal for the use of the Consultant shall remain the exclusive property of the Principal and shall be promptly returned to the Principal upon completion of the Services or termination of this Contract without any cost to the Principal.
- (33) The Consultant shall deliver all original drawings, documents, plans, measures, reports and other material and data prepared by him under this Contract to the Principal in a timely manner as defined in the Special Conditions of this Contract or upon completion of all Services, at the latest.

- (34) In all references to the assignment made by the Consultant to a third party the Principal must be credited as the lead contractor. When requested by the Principal, the Principal logo shall be used on all reports produced by the Consultant.

## §6 Access and audit

- (35) The Consultant shall keep accurate and systematic accounts and records, hereafter referred to as the "Accounts and Records", in respect of the Services provided in such form and detail as detailed in the Main Contract, and disclosed as such by the Principal to the Consultant, or in this Agreement.
- (36) The Client's or the Principal's representatives or auditors shall, on giving reasonable notice to the Consultant, have the right at any time to visit the Consultant's offices to audit the Accounts and Records and to require the Consultant to produce such oral or written explanations of the Accounts and Records in connection to this Agreement as considered necessary by the Principal.
- (37) The Consultant shall make available to the persons carrying out the audit under this paragraph § 6 all Accounts and Records related to the Project and this Agreement held by the Consultant, or otherwise within the control of the Consultant, whether held on computer or in document or any other form, and make such copies of the Accounts and Records as these persons may reasonably require and shall give them the necessary facilities for verifying the accuracy of the Accounts and Records made available.
- (38) In the event that the results of an audit undertaken pursuant to this paragraph § 6 demonstrate that the Consultant has claimed any sums in excess of their entitlement, such as but not limited to fees or reimbursable expenses, under the terms of this Agreement, the Consultant shall within 21 days of a written demand by the Principal Project Leader reimburse the Principal in full in respect of any such overpayment. Any related penalty payments, which might be claimed against the Principal, are to be borne by the Consultant.

## §7 Business ethics

- (39) The Consultant and the Consultant's Personnel represents and warrants that in contemplation of entering into this Agreement it has taken appropriate advice from the counsel of its choice concerning its obligation to comply with applicable Laws, and in particular the requirements within this Agreement.
- (40) Neither the Consultant, nor the Consultant's Personnel, shall directly or indirectly make or cause to be made any offer, gift, payment, or consideration of any kind, which would or could be construed as an illegal or corrupt practice in relation to the execution and performance of this Agreement. In addition, not the Consultant, nor the Consultant's Personnel shall directly or indirectly do anything

which contravenes, or may cause the Principal to contravene, any laws and regulations enacted in any jurisdiction following or analogous to: (i) the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions or (ii) the United Nations Convention against Corruption.

- (41) Neither the Consultant nor the Consultant's Personnel shall misrepresent facts in order to influence a selection process or the execution of a contract to the detriment of the Principal, the Recipient or the Client and shall use collusive practices intended to stifle or reduce the benefits of free and open competition, or knowingly or recklessly mislead, or attempt to mislead, the Principal, the Recipient or the Client to obtain a financial benefit or to avoid an obligation.
- (42) Neither the Consultant nor the Consultant's Personnel shall accept for its own benefit any trade commission, discount or similar payment or benefit in connection with the Agreement.
- (43) The Consultant undertakes that neither the Consultant nor the Consultant's Personnel shall attempt or commit any fraud, deception, financial or procedural wrongdoing in relation to the performance by the Consultant of its obligations under the Agreement and shall immediately notify the Principal of any circumstances giving rise to a suspicion that such wrongful activity may occur or has occurred.
- (44) Any proven breach of the provisions of this paragraph § 7 shall entitle the Principal, in its sole discretion, to immediately terminate this Agreement upon written notice. The Consultant shall indemnify and hold the Principal harmless, including legal costs incurred by the Principal in defending such claim, for any losses and damages related hereto.
- (45) The Consultant shall not engage in any personal, business or professional activities, either during the course of or after the termination of this Agreement, which conflict with or could potentially conflict with the Services. The Consultant shall notify the Principal immediately of any such activities or circumstances which give rise to or could potentially give rise to a conflict of interest with the Services and shall report to the Principal how it intends to avoid such a conflict arising.
- In the event of a conflict of interest during the course of this Contract arises by the Consultant, the Principal reserve the right to immediately terminate the Agreement upon written notice and the Consultant shall indemnify and hold the Principal harmless for any losses and damages related hereto.
- (46) The Consultant shall not unlawfully discriminate as prohibited by laws of the place of performance of any of the Services.

## **§8 Insurance**

- (47) The Consultant warrants proper insurance for all of the Consultant's Personnel assigned to this project according to the applicable laws of Austria, the European Union and the place of performance of any of the Services, as the case may be. The Principal is in no circumstances liable for any insurance deficits or non-existent coverage of risks of the Consultant's Personnel.
- (48) It is the Consultant's responsibility, and not in whatsoever circumstances the responsibility of the Principal, to observe and react to travel warnings. The Consultant shall ensure that he is aware of the procedures to be followed according to travel warnings whilst the Consultant's Personnel is on assignment.
- (49) It is the Consultant's responsibility, and not in whatsoever circumstances the responsibility of the Principal, to meet the costs of medical care or make arrangements for the evacuation or care of the Consultant's Personnel in a medical emergency. The Consultant shall ensure that he is aware of the procedures to be followed should a medical emergency arise whilst the Consultant's Personnel is on assignment.
- (50) The Consultant warrants proper insurance in addition to the aforesaid according to the specifications of the Main Contract, as and when disclosed by the Principal.

## **§9 Defects and liabilities**

- (51) The Consultant shall be responsible for the quality and correctness of the Services provided. The Consultant shall indemnify and hold the Principal harmless, including legal costs incurred by the Principal in defending such claim, for all losses, damages or liability caused by the Consultant's error, omission or other negligent act in performing the Services or his other obligations under this Contract, hereafter referred to as "Defective Services". The Consultant is responsible to correct and re-perform Defective Services promptly and without any cost to the Principal. In case the Consultant fails to repeatedly comply with this obligation within the reasonable time of four weeks, starting from the third written request by the Principal, the Principal shall be entitled to have the Services corrected by any third party as selected by the Principal. All related such costs, including all related costs of the Principal, shall be borne by the Consultant.
- (52) The Principal's, the Recipients or the Clients acceptance of any part of the Services shall not release the Consultant from its liability. The Consultant's liability remains in force until the performance of all Services have been duly completed in accordance with this Contract and until the time for the Client to present any claims pursuant to the Project or otherwise has lapsed.

- (53) The Consultant will be responsible for compliance with all laws and regulations, as applicable for matters related to this Project and Contract, in the country in which Services are being provided or elsewhere, and the Consultant shall indemnify and hold the Principal harmless, including legal costs incurred by the Principal in defending such claim, for all losses and damages related hereto.
- (54) The Principal accepts no liabilities for the Consultant for any taxes or duties, such as company taxes, sales taxes, corporation taxes, VAT, social security taxes or personal income tax, wheresoever they may occur. Equally these taxes and duties, wheresoever they may occur, remain the responsibility of the Consultant at all times and the Consultant shall indemnify and hold the Principal harmless, including legal costs incurred by the Principal in defending such claim, for all losses and damages related hereto.

## **§10 Procurement and equipment**

- (55) No procurement shall be undertaken by the Consultant unless specifically authorized by the Principal in the Special Conditions of this Agreement or amended in writing as deemed necessary from time to time.
- (56) The Consultant shall use all reasonable endeavors to ensure that equipment of the Principal, or the Recipient or the Client is kept and treated in a proper and workmanlike manner. Equipment lost or damaged must be reported and the time of such loss or damage and the reasons immediately explained in writing to the EU4GRE Programme Action Manager Where it is concluded by the Principal that such loss has occurred as a result of the Consultant's or the Consultant's Personnel breach of contract or negligence, the Consultant shall be responsible for the costs of reinstatement or replacement.
- (57) The Consultant shall indemnify and keep indemnified the Principal in respect of any and all claims in respect of the use or operation of the Equipment including but not limited to any claims by or on behalf of third parties.

## **§11 Financial issues, invoicing, payment**

- (58) The total financial limit (maximum amount) of this Contract is defined in the Special Conditions of the Contract. No whatsoever expenditure may be incurred in excess of this limit and no virements between budgets are permitted without the prior written approval of the Principal and a respective contract amendment duly signed by both Parties.
- (59) Fees payable, as defined in the Special Conditions of the Contract, are understood as the all-inclusive remuneration for all costs and expenses incurred by the Consultant in connection with the Services and deemed to cover the cost, such as but not limited to, of salary, overseas or third country inducements, leave allowances, bonuses, labor costs, profit, daily

allowances, taxes, insurances, superannuation, non-working (including travel) days and all other costs including, but limited to, clothing, passports, visas and vacations, overheads and expenses of whatsoever nature that may be incurred except those otherwise specifically provided for in the Special Conditions of the Contract.

- (60) Payments shall only be made on the basis of invoices and those terms and conditions as defined in this Contract.

The invoice shall indicate this Contract and the Project for which the Services have been provided. The form and content of the invoice shall be sufficiently detailed and has to fulfill all administrative requirements of the Project, the administrative requirements of the European Union and Austria. The EU4GRE Programme Action Manager will provide a sample invoice on request.

- (61) All invoices should be signed by the Consultant.
- (62) The Consultant is responsible to bear all of its costs arising from transfers by its bank, such as but not limited to sending fees, receiving fees, currency exchange fees or account management fees.
- (63) The Principal reserves the right to request proof of payment in respect of any item and shall be entitled to refuse to meet a claim if this cannot be provided.
- (64) Any invoice not presented in accordance with the above may be rejected and in any event shall be liable to query and delay in payment.
- (65) Subject to the Principal's satisfaction that the Consultant is or has been carrying out its duties, obligations and responsibilities under the Contract, sums duly approved shall be paid by the Principal, after receiving the respective amount from the Client, not later than 30 days of receipt of a valid invoice.
- (66) Payment shall be made in the currency indicated in the Special Conditions of this Contract. Reimbursable expenses, if any, arising and accepted by the Principal in foreign currency, as agreed in the Special Conditions, shall be reimbursed at the exchange rate of the European Central Bank currency converter of the day of receipt of the invoice by the Principal.
- (67) If for any reason the Principal is dissatisfied with the performance of the Consultant fulfilling its contract obligations, an appropriate sum may be withheld from any payment otherwise due. In such event the Principal shall identify the particular Services with which it is dissatisfied together with the reasons for such dissatisfaction, and payment of the amount outstanding will be made upon remedy of any unsatisfactory work of resolution of outstanding queries.

- (68) The Consultant is solely responsible for any taxes, duties, levies, charges, insurances, social security or other impositions, hereafter jointly the "Charges", concerning any payment under this Agreement whether in the country of assignment, in the domicile of the Consultant or elsewhere. If any of

the aforementioned charges for whatever reasons becomes payable by the Principal, the Principal shall deduct the amount of such payments from any further payments due to the Consultant or the Consultant shall reimburse such payments to the Principal immediately upon request.

## §12 Force majeure

- (69) Only those acts and events, which shall constitute an event of force majeure under the Main Contract, shall be regarded as events of force majeure under this Agreement. The terms and effect of such force majeure events shall be as stipulated in the Main Contract.
- (70) In the event of the Main Contract being terminated by reason of force majeure, the Parties shall take such steps as are required to fulfill the specific regulations of the Main Contract and as stipulated in this Agreement.

## §13 Suspension or termination without default of the Consultant

- (71) The Principal may, at its sole discretion, suspend or terminate this Contract at any time by so notifying the Consultant and giving the reason(s) for such suspension or termination. Where this Contract has been suspended or terminated pursuant to this Clause, the Consultant shall:
- (a) Take such steps as are necessary to suspend or terminate the provision of the Services, (including suspending or terminating any Sub-Contracts) in a cost-effective, timely and orderly manner; and
  - (b) Provide to the Principal, not more than 30 days after the Principal notifies the Consultant of the suspension or termination of this Contract an account in writing, stating:
    - a. Any costs, if any, due before the date of suspension or termination;
    - b. Any costs to be expended after the date of suspension or termination which the Consultant necessarily incurred in the proper performance of this Contract and which it cannot reasonably be expected to avoid or recover.
- (72) Subject to the Client's and the Principal's approval the Principal shall pay the amount determined by the Consultant in accordance with Clause (71) to the Consultant within 30 days after receipt of invoice.

#### **§14 Suspension or termination with default of the Consultant**

- (73) The Principal may notify the Consultant of the suspension or termination of this Contract where the Services or any part of them are not provided to the satisfaction of the Principal or the Client or the Recipient, giving the reasons for such dissatisfaction and, in the case of suspension, the action required by the Consultant to remedy that dissatisfaction and the time within which it must be completed. Where this Contract is suspended under this Clause and the Consultant subsequently fails to remedy the dissatisfaction the Principal may terminate this Contract forthwith.
- (74) The Principal may, without prejudice to its other rights, including but not limited to the right to claim for costs and losses incurred, terminate this Contract forthwith where:
- (a) the Consultant or any member of the Consultant's Personnel either directly or by third party acting on their behalf breaches any of their obligations under this contract; or
  - (b) the Consultant is an individual or a partnership and at any time:
    - a. becomes bankrupt; or
    - b. is the subject of a receiving order or administration order; or
    - c. makes any composition or arrangement with or for the benefit of the Consultant's creditors; or
    - d. makes any conveyance or assignment for the benefit of the Consultant's creditors; or
  - (c) The Consultant is a company and:
    - a. An order is made or a resolution is passed for the winding up of the Consultant; or
    - b. A receiver or administrator is appointed in respect of the whole or any part of the undertaking of the Consultant; or
  - (d) The Consultant is a partnership or a company and there is a Change in Control. "Change in Control" in this respect means that the person(s) (including corporate bodies) directly or indirectly in Control of the Consultant at the time this Contract is entered into cease to be in Control. "Control" in this respect means the power of a person to secure that the affairs of the Consultant are conducted in accordance with the wishes of that person.
- (75) Where this Contract is terminated pursuant to Clause (73) and (74), the Consultant shall without prejudice to the Principal's other remedies, take any steps necessary to terminate the provisions of the Services in a timely and orderly manner and shall not be entitled to any further payments by the Principal in relation to this Contract.

#### **§15 Variation**

- (76) This Contract shall constitute the entire Agreement between the Parties, and may not be altered or amended except by the written agreement of the Parties. No other duties, obligations and liabilities or warranties than those expressly provided in this Contract and its attachments shall be applied.

#### **§16 Assignment, withdrawal, exclusion**

- (77) The Consultant shall not, without the prior written consent of the Principal, assign or transfer or cause to be assigned or transferred, whether actually or as the result of takeover, merger or other change of identity or character of Consultant, any of its rights or obligations under the Agreement or any part, share or interest therein. Upon any such assignment or transfer, this engagement may forthwith be terminated by the Principal.

#### **§17 Governing law and dispute resolution**

- (78) The rights and obligations of the Parties to this Contract shall be governed by, and the terms of this Contract shall be construed in accordance with the laws of Austria.
- (79) The competent court in Austria shall be the court of jurisdiction.
- (80) In the event of any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, one duly authorized representative of each Party in conflict shall meet and endeavor to settle the dispute in an amicable manner through mutual consultation. If such persons are unable to resolve the dispute in a satisfactory manner within at least two meetings in a period of forty (40) business days, each Party may seek mediation support or legal conflict resolution.
- (81) Factual and legal findings established in the context of a legal dispute or arbitration proceeding with the Client with reference to the Project and this Agreement shall also apply accordingly between the Parties.

#### **§18 Notice and request**

- (82) Any notice or request required or permitted to be given or made in this Contract shall be in writing. Such notice or request shall be deemed or be duly given or made when it shall have been delivered by hand, mail or facsimile to the Party to which it is required to be given or made, at such Party's address as specified in this Contract or at such other address as the Party shall have specified in writing or to the Party giving such notice or making such request.

**§19 Severability**

(83) In the event that any of the provisions, terms or conditions of this Agreement shall be declared

invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired.