

Trócaire General Terms and Conditions for Procurement

Version 2 – July 2019

1. Contractors Obligations

- 1.1 The Contractor undertakes to perform its obligations arising from this Agreement with due care, skill and diligence in the provision of the Services and generally in the carrying out of its obligations under this Agreement. The Contractor shall require its agents and subcontractors to exercise due care, skill and diligence in the provision of Services and generally in the carrying out of obligations allocated by the Contractor to its agents and subcontractors under this Agreement.
- 1.2 In consideration of the payment of the Charges and subject to clause 4 the Contractor shall:
- Provide the Services according to the specification detailed in the Agreement and in accordance with the terms of this Agreement;
 - Comply with and implement any policies, guidelines and/or any project governance protocols issued by the Client from time to time and notified to the Contractor in writing;
 - Provide the Services in accordance with good industry practice and comply with all applicable laws with particular but not exclusive regard to the requirements of the Safety Health and Welfare at Work Act 2005, the Waste Management Act 1996, the Data Protection Acts 1988 and 2003, Freedom of Information Acts 1997 and 2003 and Employment legislation. The Contractor will be responsible for compliance with all statutory requirements of an employer and be solely responsible in law for the employment, remuneration, taxes, immigration and work permits of all personnel retained for the purposes of complying with this Agreement;
 - Comply with the General Terms and Conditions as set out in this Schedule and any other Special Conditions, if any, as set out in other schedules.
- 1.3 The Contractor is the prime contractor under this Agreement and assumes all the duties, responsibilities and obligations associated with the position of prime contractor. The Contractor hereby assumes liability for its subcontractors and shall ensure that its subcontractors shall comply in all respects with the relevant terms of this Agreement.
- 1.4 During this Agreement the Contractor shall be an independent contractor and not the employee of the Client. Neither Party shall have any authority to bind or commit the other. Nothing herein shall be deemed or construed to create a joint venture, partnership, and/or fiduciary or other relationship between the Parties for any purpose. The officers, employees or agents of the Contractor are not and shall not hold themselves out to be (and shall not be held out by the Contractor as being) servants or agents of the Client for any purposes whatsoever.

2. Delivery of Services

- 2.1 The Contractor shall provide the Services at the time(s), to the location(s) and on the date(s) specified in the specification of the Agreement or otherwise agreed in writing between the Parties in accordance with clause 11.

- 2.2 The Client acknowledges that the Contractor may from time to time be dependent on the Client to facilitate the Contractor in the carrying out of its duties under this Agreement. The Client agrees to use its reasonable endeavours to so facilitate the Contractor within the timescales and in the manner agreed by it in writing in accordance with clause 11.

3. Key Personnel

The Contractor undertakes and acknowledges that it is responsible for ensuring that all key personnel, as specified in the Specification of Services, assigned by it to provide the Services shall be available for the term of this Agreement. In the event that any of the Key Personnel becomes unable to provide the Services for whatever reason then, the Contractor acknowledges and undertakes that it shall immediately notify the Client in writing of such and replace that person with a person of equivalent experience and expertise. The Client shall have absolute discretion as to the suitability of any proposed Replacement Personnel.

4. Payment

- 4.1 Subject to the provisions of this clause, the Client shall pay the Charges (plus any applicable VAT) in the manner agreed. Invoicing arrangements shall be on such terms as may be agreed between the Parties.
- 4.2 Unless otherwise agreed, payment shall be made within thirty (30) days of valid invoice.
- 4.3 Discharge of the Charges is subject to:
- Compliance by the Contractor with the provisions of this Agreement including but not limited to any milestones, compliance schedules and/or operational protocols in place pursuant to clause 11.1 from time to time;
 - The submission of a valid invoice to the Client's Contact and such supporting documentation as may be required by the Client from time to time. Any queries relating to the invoice and/or the Services must be raised by the Client within 14 calendar days of receipt of invoice or the invoice shall be deemed accepted. Upon resolution of any queries on the invoice to the satisfaction of the Client or upon such deemed acceptance the invoice shall be payable by the Client.
- 4.4 The Charges shall include any and all expenses incurred by the Contractor, its employees, servants and agents in the performance of the Services.

5. Warranties, Representations and Undertakings

- 5.1 The Contractor warrants, represents and undertakes that:
- It has the authority and right under law to enter into, and to carry out its obligations and responsibilities under this Agreement and to provide the Services hereunder;
 - It is entering into this Agreement with a full understanding of its material terms and risks and is capable of assuming those risks;

- It is entering into this Agreement with a full understanding of its obligations with regard to taxation, employment and environmental protection and is capable of assuming and fulfilling those obligations;
- It has acquainted itself with and shall comply with all legal requirements or such other laws, recommendations, guidance or practices as may affect the provision of the Services as they apply to the Contractor;
- It has taken all and any action necessary to ensure that it has the power to execute and enter into this Agreement;
- It owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights (as defined in clause 7 below) that are necessary for the performance of its obligations under this Agreement and for the Client to obtain the benefit of the Services for its business purposes;

5.2 The Contractor undertakes to notify the Client forthwith of any material change to the status of the Contractor with regard to the warranties, representations and undertakings as set out at clause 5.1 and to comply with all reasonable directions of the Client with regard thereto which may include termination of this Agreement.

6. Remedies

- 6.1 The Contractor shall be liable for and shall indemnify the Client for and in respect of all and any losses, claims, demands, damages or expenses which the Client may suffer due to and arising directly as a result of the negligence, act or omission, breach of contract, breach of duty, insolvency, recklessness, bad faith, wilful default or fraud of the Contractor, its employees, subcontractors or agents or any of them or as a result of the Contractor's failure to exercise care as outlined in clause 1. The terms of this clause 6.1 shall survive termination of this Agreement for any reason.
- 6.2 Save in respect of fraud (including fraudulent misrepresentation), personal injury or death, neither Party will be liable for any indirect losses (including loss of profit, loss of revenue, loss of goodwill, indirectly arising damages, costs and expenses) of any kind whatsoever and howsoever arising even if such Party has been advised of their possibility.
- 6.3 Should the Client find itself obliged to order elsewhere in consequence of the failure of the Contractor to deliver Services, the Client shall be entitled to recover from the Contractor any excess prices which may be paid by the Client.
- 6.4 Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

7. Intellectual Property

- 7.1 Intellectual Property Rights ("IPR") means all patents and patent rights, trademarks and trademark rights, trade names and trade name rights, service marks and service mark rights, service names and service name rights, brand names, copyrights and copyright rights, trade dress, business and product names, logos, slogans, trade secrets, industrial models, utility models, design models, designs, rights in confidential

information, know-how, rights in the nature of unfair competition rights and rights to sue for passing off, and all pending applications for and registrations of patents, trademarks, service marks, and copyrights together with all connected and similar or analogous rights in any country or jurisdiction for the full term thereof.

- 7.2 Pre-existing IPR means all IPR existing prior to the date of this Agreement and all IPR in any materials, acquired or developed by or for Contractor or Client independently of this Agreement, and any IPR in Contractor's standard hardware and software products or modifications or updates to such products.
- 7.3 All IPR title and interest in all reports, data manuals and/or other materials (other than software) (including without limitation all and any audio or audio visual recordings, transcripts, books, papers, records, notes, illustrations, photographs, diagrams) produced for the purposes of this Agreement (collectively "the Materials") (or any part or parts thereof) shall vest in the Client and the Contractor so acknowledges and confirms. For the avoidance of doubt the Contractor hereby assigns all Intellectual Property Rights, title and interest in the Materials (including by way of present assignment of future copyright) to the extent that any such Intellectual Property Rights title or interest may be deemed by law to reside in it in the Materials to the Client absolutely.
- 7.4 The Client grants to the Contractor a royalty-free non-exclusive licence to use the Client's Pre-existing IPR for the Term to the extent necessary to enable the Contractor to fulfil its obligations under this Agreement. Save as expressly set out in this clause 7 all Pre-Existing IPR shall remain the sole property of the party who owned, acquired or developed such intellectual property.
- 7.5 The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced under or in performance of this Agreement.
- 7.6 Nothing in this Agreement shall prohibit or be deemed to prohibit the Contractor from providing services similar to the Services to any party other than the Parties hereto. In no event shall the Contractor be precluded from independently developing for itself, or for others, materials which are competitive with, or similar to, the Services and to use its general knowledge, skills and experience, and any ideas, concepts, know-how, formats, templates, methodologies and techniques that are acquired or used in the course of providing the Services.
- 7.7 The Contractor shall ensure that all and any necessary consents and/or licences for any software, instrument, modality or methodology are obtained and in place before use for the purposes of this Agreement (to include but not be limited to ensuring that the Client shall be vested with all necessary rights so as to enable the Client to enjoy the benefit of the Services for its business purposes). The Contractor hereby indemnifies the Client and shall keep and hold the Client harmless from and in respect of all and any liability loss damages claims costs or expenses which arise by reason of any breach of third party Intellectual Property Rights in so far as any such rights are used for the purposes of this Agreement.

At the option of the Client for and in respect of any such breach, the Contractor shall at its expense and option:

- procure the necessary rights for the Client to continue use;

- replace the relevant deliverable with a non-infringing equivalent;
- replace the relevant deliverable to make it non-infringing while giving equivalent performance;
- if the Contractor cannot obtain the above remedies, it may direct the return of the deliverable and refund to the Client Charges paid for such deliverable less a reasonable amount for the Client's use of the deliverable up to the time of return, provided such reasonable amount is due to the owner of the said deliverable, together with all direct losses thereby accruing to the Client as a result of the breach.

7.8 Upon the termination of this Agreement for whatever reason, the Contractor shall immediately deliver up to the Client all the Materials prepared up to the date of termination. As an exception to its obligations under this clause 7H the Contractor may retain one copy of the Materials, in paper form, in the Contractor's legal files for the purpose of and only to the extent necessary for ensuring compliance with its obligations under this Agreement. The provisions of this clause 7 will survive the expiration or termination of this Agreement for any reason.

8. Confidentiality

8.1 Each of the parties to this Agreement agrees to hold confidential all information, documentation and other material received, provided or obtained under this Agreement or relating to this Agreement and shall not disclose it to any third Party without the written consent of the other Party except to:

- As may be required by law;
- As may be necessary to give effect to the terms of this Agreement;

8.2 The Contractor undertakes to comply with all reasonable directions of the Client with regard to use and application of any confidential information and, if applicable, shall comply with the Confidentiality Agreement as per schedule E attached.

8.3 This clause 8 does not apply to information:

- Which is or becomes public knowledge other than by breach of this clause;
- In the receiving Party's possession (with full right to disclose) before receiving it from the other Party;
- Lawfully received from a third party (with full right to disclose);
- Required to be disclosed by a Court or other competent authority;
- Properly disclosed to professional advisers;
- Properly disclosed for the purposes of the Agreement, to staff or agents of the respective party on a confidential basis.

8.4 The terms of this clause 8 shall survive expiry, completion or termination for whatever reason of this Agreement.

9. Force Majeure

9.1 In the event of any failure, interruption or delay in the performance of either Party's obligations resulting from any Force Majeure Event, the Affected Party shall promptly notify the other Party in writing specifying:

- The nature of the Force Majeure Event;
 - The anticipated delay in the performance of the obligations;
 - The action proposed to minimise the impact of the Force Majeure Event
- 9.2 The Affected Party shall not be liable or have any responsibility of any kind for any loss or damage thereby incurred or suffered by the other Party; provided always that the Affected Party shall use all reasonable efforts to minimise the effects of the same and shall resume the performance of its obligations as soon as reasonably possible after the removal of the cause.
- 9.3 If the Force Majeure Event continues for longer 60 days either Party may terminate forthwith on written notice.
- 9.4 In circumstances where the Contractor is the Affected Party, the Client shall be relieved from any obligation to make payments under this Agreement save to the extent that payments are properly due and payable for obligations actually fulfilled by the Contractor in accordance with the terms and conditions of this Agreement.

10. Termination

- 10.1 Notwithstanding the provisions of clause 12 and subject to the provisions of clause 10.2 this Agreement may be terminated by either Party by serving 30 days written notice to the other Party. Neither Party shall be entitled to any additional amounts or compensation in the event that the clause is terminated in accordance with clause 10.1.
- 10.2 Either Party shall have the right (in addition to any other rights which it has at law) to terminate this Agreement immediately and without liability for compensation or damages on the happening of any of the following:
- The other Party commits a fundamental breach of this Agreement;
 - The other Party commits a breach of this Agreement and fails to remedy such breach within 14 days after receipt of a written notice from the notifying party;
 - The other Party becomes insolvent, becomes bankrupt, is wound up, commences wounding up, makes any composition or arrangement with its creditors, becomes subject to compulsory liquidation, becomes subject to any receivership or administration order in respect of all or part of its business, ceases or threatens to cease its business.
- 10.3 Any right to terminate is without prejudice to other rights in respect of any relevant breach and to rights which accrued prior to termination.
- 10.4 On Completion or termination of this Agreement, howsoever arising, the contractor shall immediately return all confidential information, records, papers, materials, media and other property of the Client which is in its possession.

11. Contract Management

- 11.1 The Client's Contact and the Contractor's Contact shall liaise on a regular basis to address any issues arising which may impact on the performance of this Agreement and to agree milestones, compliance schedules and operational protocols as required

by the Client from time to time. If requested in writing by the Client, the Contractor shall meet formally with the Client to report on progress and shall comply with all written directions of the Client.

11.2 The Contractor agrees to:

- Liaise with and keep the Client's Contact fully informed of any matter which might affect the performance of the Contractor's obligations, including the time scale of completion of the key components of the Services;
- Comply with the reporting arrangements and protocols required by the Client from time to time;

11.3 The Client or its authorised representative may inspect the Contractor's premises, lands and facilities (or such part or parts thereof relating solely to this Agreement) with due access to relevant personnel and records upon reasonable notice in writing to ensure compliance with the terms of this Agreement. The Contractor shall comply with all reasonable directions of the Client thereby arising. The cost of inspection shall be borne by the Client.

12. Disputes

Subject to clause 13.1 and to the Parties' respective rights to apply to the courts upon any cause of action at any time, the Parties shall seek to resolve any disputes between them, arising out of or relating in any way to the issues covered by the Agreement, amicably. The Parties may agree procedures and protocols for dispute resolution from time to time.

13. Governing Law, Choice of Jurisdiction and Execution

13.1 This Agreement shall in all aspects be governed by and construed in accordance with the laws of Ireland and the Parties hereby agree that the courts of Ireland have exclusive jurisdiction to hear and determine any disputes arising out of or in connection with this Agreement.

13.2 This Agreement shall be executed in duplicate and each copy of the Agreement shall be signed by all the Parties hereto. Each of the Parties to this Agreement confirms that this Agreement is executed by their duly authorised officers.

14. Notices

Any notice or other written communication to be given under this Agreement shall either be delivered personally or sent by registered post or email or facsimile transmission. The Parties will from time to time agree primary and alternative contact persons and details for the purposes of this clause 14.

15. Assignment and Subcontracting

Subject to a Party's obligations at law, any assignment to a third party, subcontract or other transfer of a Party's rights or obligations under this Agreement requires the prior written consent of the other Party. Prior to any such assignments, the assignee will be obliged to sign an undertaking to comply with all obligations under this Agreement. Any attempted assignment not complied with in the manner prescribed herein shall be null and void.

16. Entire Agreement

This Agreement constitutes the entire agreement and understanding of the Parties, and any and all other previous agreements, arrangements and understandings (whether written or oral) between the Parties with regard to the subject matter of this Agreement are hereby excluded.

17. Severability

If any term or provision herein is found to be illegal or unenforceable, then such term or provision shall be deemed severed and all other terms and provisions shall remain in full force and effect.

18. Waiver

No failure or delay by either Party to exercise any right, power or remedy shall operate as a waiver of it, nor shall any partial exercise preclude further exercise of same or some other right, power or remedy.

19. Non-exclusivity

Nothing in this Agreement shall preclude the Client from purchasing services (or Services) from a third party at any time during the currency of the Agreement.

20. Media

No media releases, public announcements or public disclosures relating to this Agreement or its subject matter, including but not limited to promotional or marketing material, shall be made by the Contractor without the prior written consent of the Client.

21. Conflicts of Interests

The Contractor confirms that it has carried out a conflicts of interest check and is satisfied that it has no conflicts in relation to the Services and its obligations undertaken under this Agreement. The Contractor hereby undertakes to advise the Client forthwith should any conflict or potential conflict of interest come to its attention during the currency of this Agreement and to comply with the Client's directions in respect thereof.

22. Data protection and Privacy (if applicable)

- 21.1 The Contractor warrants that it has in place, in respect of any data as defined under current Irish data protection legislation, in respect of living individuals who can be identified from those Data which the Contractor processes or discloses for the purpose of this agreement, appropriate technical and organisational measures against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access and adequate security programs and procedures to ensure unauthorised persons are denied access to the Data.
- 21.2 Each party warrants that it shall maintain all the Data, while it is in its possession, in a complete and accurate manner and that each shall comply with all applicable legal requirements in relation to the Data, including (without prejudice to the generality) those arising under the Data Protection (Amendment) Act 2003.

- 21.3 The Client warrants that it will abide by all applicable legal requirements in relation to the Data and all other material supplied by, or on behalf of, the Client to the Contractor under this Agreement, including (without prejudice to the generality) applicable Data Protection legislation.

23. Supplier's Code of Conduct

TRÓCAIRE has established a code of conduct that all of its suppliers must adhere to. This includes information to advise on the Corporate Social Responsibility (CSR) element in our supplier relationships.