

# GENERAL TERMS AND CONDITIONS FOR PROCUREMENT (V4)

## 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. The Contractor shall at all times be and remain responsible and liable for the acts and omissions of its agents and subcontractors.
- 1.2 In consideration of the payment of the Charges and subject to clause 4 the Contractor shall:
  - 1.2.1 Provide the Services according to the Specification detailed in Schedule B and in accordance with the terms of this Agreement.
  - 1.2.2 Comply with and implement any policies, guidelines and/or any project governance protocols issued by Trócaire from time to time and notified to the Contractor in writing.
  - 1.2.3 Provide the Services in accordance with good industry practice and comply with all applicable laws including but not limited to the requirements of the Safety Health and Welfare at Work Act 2005, the Waste Management Act 1996, the European Union General Data Protection Regulation (Regulation (EU) 2016/679) and applicable subordinate legislation and regulation implementing that law including but not limited to the Data Protection Act 2018, Freedom of Information Act 2014 and all applicable 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.
- 1.3 During the term of this Agreement the Contractor shall be an independent contractor and not the employee of Trócaire. 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 Trócaire 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 or otherwise agreed in writing between the Parties in accordance with clause 11.
- 2.2 Trócaire acknowledges that the Contractor may from time to time be dependent on Trócaire to facilitate the Contractor in the carrying out of its duties under this Agreement. Trócaire 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 (the “**Key Personnel**”), 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 Trócaire in writing of such and replace that person with a person of equivalent experience and expertise. Trócaire shall have absolute discretion as to the suitability of any proposed replacement personnel.

## 4. Payment

- 4.1 Subject to the provisions of this clause, Trócaire shall pay the Charges (plus any applicable VAT) in the manner set out in Schedule C. Invoicing arrangements shall be set out in Schedule C or, if not, on such terms as may be agreed between the Parties.
- 4.2 Unless otherwise agreed in Schedule C, payment of any undisputed amounts shall be made within thirty (30) days of receipt of a valid invoice.
- 4.3 Discharge of invoices is subject to:
  - 4.3.1 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.
  - 4.3.2 The submission of a valid invoice to Trócaire's Contact and such supporting documentation as may be required by Trócaire from time to time. Any queries relating to the invoice and/or the Services must be raised by Trócaire 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 Trócaire or upon such deemed acceptance the invoice shall be payable by Trócaire.
- 4.4 The Charges shall include any and all agreed and allowed 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:
  - 5.1.1 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.
  - 5.1.2 It is entering into this Agreement with a full understanding of its material terms and risks and is capable of assuming those risks.
  - 5.1.3 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.
  - 5.1.4 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.
  - 5.1.5 It has taken all and any action necessary to ensure that it has the power to execute and enter into this Agreement.
  - 5.1.6 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 Trócaire to obtain the benefit of the Services for its business purposes.
- 5.2 The Contractor undertakes to notify Trócaire 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 Trócaire with regard thereto which may include termination of this Agreement.

## 6. Liability, Insurance and Indemnity

- 6.1 The Contractor shall maintain in force appropriate insurance policies with reputable insurance companies to cover its relevant potential liabilities in connection with this Agreement.

- 6.2 The Contractor shall be liable for and shall indemnify Trócaire for and in respect of all and any losses, claims, demands, damages or expenses which Trócaire may suffer due to and arising directly as a result of the negligence, acts or omissions, breach of contract, breach of duty, 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 **Error! Reference source not found**. The terms of this clause 6.1 shall survive termination of this Agreement for any reason.
- 6.3 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.
- 6.4 Subject to clause 6.3 Trócaire's total aggregate liability to the Contractor relating to this Agreement or otherwise shall not exceed five thousand euro (€5,000).
- 6.5 Should Trócaire need to procure services from a third party in consequence of the failure of the Contractor to deliver the Services or any part of the Services, Trócaire shall be entitled to recover from the Contractor any excess prices which may be paid by Trócaire.
- 6.6 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 Trócaire 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 (excluding Pre-existing IPR) and title and interest in that IPR and all 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 Trócaire and the Contractor so acknowledges and confirms. In consideration for the Charges and for other good and valuable consideration, Contractor hereby assigns all IPR, title and interest in the Materials (including by way of present assignment of future copyright) to Trócaire absolutely.
- 7.4 Trócaire grants to the Contractor a royalty-free non-exclusive licence to use Trócaire's Pre-existing IPR for the term of this Agreement 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 IPR.
- 7.5 The Contractor shall waive or procure a waiver of any and all 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 Trócaire shall be vested with all necessary rights so as to enable Trócaire to enjoy the benefit of the Services for the purpose of receiving and using the Services). The Contractor hereby indemnifies Trócaire and shall keep and hold Trócaire 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 IPR in so far as any such rights are used for the purposes of this Agreement.
- 7.8 At the option of Trócaire for and in respect of any such breach, the Contractor shall at its expense and option:
- 7.8.1 procure the necessary rights for Trócaire to continue use.
  - 7.8.2 replace the relevant deliverable with a non-infringing equivalent.
  - 7.8.3 replace the relevant deliverable to make it non-infringing while giving equivalent performance.
  - 7.8.4 if the Contractor cannot obtain the above remedies, it may direct the return of the deliverable and refund to Trócaire Charges paid for such deliverable less a reasonable amount for Trócaire'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 Trócaire as a result of the breach.
- 7.9 Upon the termination of this Agreement for whatever reason, the Contractor shall immediately deliver up to Trócaire all the Materials prepared and not yet complete up to the date of termination. As an exception to its obligations under this clause 7.9 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 **"Confidential Information"** means all confidential information relating to the Services and the purpose of this Agreement which a Party directly or indirectly discloses, or makes available, to the other Party before, on or after the date of this agreement. This includes: (i) all confidential or proprietary information relating to: (a) the business, assets, affairs, customers, clients, suppliers, plans or intentions of the disclosing Party; and (b) the operations, processes, know-how, technical information, designs, or trade secrets of the disclosing party; (ii) any information, findings, data, or analysis derived from Confidential Information; and (iii) any other information that is identified as being of a confidential or proprietary nature.
- 8.2 Except to the extent set out in this clause 8 or where disclosure is expressly permitted elsewhere in this Agreement, each Party shall:
- 8.2.1 treat the other party's Confidential Information as confidential.
  - 8.2.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 8.3 Clause 8.1 shall not apply to the extent that:

- 8.3.1 such information was in the possession of the Party making the disclosure, without obligation of confidentiality, prior to its disclosure.
  - 8.3.2 such information was obtained from a third party without obligation of confidentiality.
  - 8.3.3 such information was already in the public domain at the time of disclosure otherwise than through a breach of this Agreement.
  - 8.3.4 such information was independently developed without access to the other Party's Confidential Information.
- 8.4 The Contractor may only disclose Trócaire Confidential Information to the Contractor's Key Personnel who are directly involved in the provision of the Services and who need to know the information. The Contractor shall ensure that such Key Personnel are aware of, and comply with, these confidentiality obligations.
- 8.5 The Contractor shall not, and shall procure that the Key Personnel do not, use any of Trócaire's Confidential Information received otherwise than for the purposes of this Agreement.
- 8.6 Nothing in this clause 8 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPRs.
- 8.7 On termination or expiry, each Party shall:
- 8.7.1 return to the other Party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other Party's Confidential Information.
  - 8.7.2 at the election of the other Party, erase all the other Party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically practicable).
  - 8.7.3 certify in writing to the other Party that it has complied with the requirements of this clause 8, provided that a recipient Party may retain documents and materials containing, reflecting, incorporating or based on the other Party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this clause shall continue to apply to any such documents and materials retained by a recipient Party.
  - 8.7.4 Except as expressly stated in this Agreement, no Party makes any express or implied warranty or representation concerning its Confidential Information.

## 9. Force Majeure

- 9.1 **"Force Majeure Event"** means any circumstance not within a Party's reasonable control including, without limitation:
- 9.1.1 acts of God, flood, drought, earthquake, or other natural disaster.
  - 9.1.2 epidemic or pandemic.
  - 9.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations.
  - 9.1.4 collapse of buildings, fire, explosion or accident.
  - 9.1.5 any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the Party seeking to rely on this clause, or companies in the same group as that Party).
  - 9.1.6 interruption or failure of utility service.
- 9.2 The Contractor acknowledges and agrees that it is normal working practice for it to continue to perform the Services despite a Force Majeure Event because of the nature of the Services and the typical areas, environments and political and economic circumstances in which it is agreed to deliver the Services. The Contractor accordingly agrees to use best endeavours to continue to deliver the

Services uninterrupted during a Force Majeure Event. In the event of any failure, interruption or delay in the performance of either Party's obligations resulting from any Force Majeure Event (and in the case of the Contractor, following its best efforts to continue to provide the Services), the Party affected (the "**Affected Party**") shall promptly notify the other Party in writing specifying:

- 9.2.1 The nature of the Force Majeure Event.
  - 9.2.2 The anticipated delay in the performance of the obligations.
  - 9.2.3 The action proposed to minimise the impact of the Force Majeure Event.
- 9.3 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.
- 9.4 If the Force Majeure Event continues for more than sixty (60) days, either Party may immediately terminate this Agreement on written notice to the other Party.
- 9.5 In circumstances where the Contractor is the Affected Party, Trócaire 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 already 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 Trócaire by serving not less than 30 days written notice to the Contractor for any or no reason. The Contractor shall not be entitled to any additional amounts or compensation in the event that the Agreement is terminated in accordance with this clause 10.1, other than Charges already invoiced.
- 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:
- 10.2.1 The other Party commits a fundamental breach of this Agreement.
  - 10.2.2 The other Party commits a breach of this Agreement and fails to remedy such breach within fourteen (14) days after receipt of a written notice from the notifying Party.
  - 10.2.3 The other Party becomes insolvent, becomes bankrupt, is wound up, commences a winding up action, 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, or ceases or threatens to cease its business.
- 10.3 Any right to terminate is without prejudice to other rights in respect of any breach and to rights which accrued prior to termination.
- 10.4 On expiry or termination of this Agreement, howsoever arising, the Contractor shall immediately return all confidential information, records, papers, materials, media and other property of Trócaire which is in its possession.

## 11. Contract Management

- 11.1 Trócaire'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 the Services or this Agreement and to agree milestones, compliance schedules and operational protocols as required by Trócaire from time to time. If requested in writing by Trócaire, the Contractor shall meet formally with Trócaire to report on progress and shall comply with all written directions of Trócaire.

11.2 The Contractor agrees to:

11.2.1 Liaise with and keep Trócaire'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.

11.2.2 Comply with the reporting arrangements and protocols required by Trócaire from time to time.

11.3 Trócaire 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 Trócaire thereby arising. The reasonable pre-agreed cost of the inspection shall be borne by Trócaire unless the result of the inspection reveals breaches of this Agreement.

## 12. Disputes

12.1. If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it ("**Dispute**") then except as expressly provided in this Agreement, the Parties shall follow the procedure set out in this clause:

12.1.1. either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, Trócaire's Contact and Contractor's Contact shall attempt in good faith to resolve the Dispute.

12.1.2. if Trócaire's Contact and Contractor's Contact are for any reason unable to resolve the Dispute within thirty (30) days of service of the Dispute Notice, the Dispute shall be referred to the applicable country manager of Trócaire and the CEO of the Contractor who shall attempt in good faith to resolve it.

12.1.3. if the applicable country manager of Trócaire and the CEO of the Contractor are for any reason unable to resolve the Dispute within thirty (30) days of it being referred to them, the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing ("**ADR notice**") to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than fifteen (15) days after the date of the ADR notice.

12.2. The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under Clause 13 (Jurisdiction) which clause shall apply at all times.

## 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 The Parties may execute this agreement in any number of counterparts, including electronic counterparts. Each counterpart constitutes an original executed counterpart, and all counterparts together constitute one document. This agreement is not effective until each party has executed at least one counterpart. Transmission of a physical or electronic copy of an executed counterpart of this agreement, whether executed by wet ink or electronic signature, shall take effect as delivery of an original executed counterpart of this agreement. If this method of delivery is adopted, each party that has executed a counterpart by wet ink signature must provide the other parties with the wet ink

counterpart as soon as reasonably practicable after delivery (but failure to do so shall not affect the validity, enforceability, or binding effect of this agreement).

#### 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. The assignor undertakes that the assignee will be bound in writing 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 Trócaire from purchasing services the same as or similar to the 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 Trócaire.

#### 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 Trócaire forthwith should any conflict or potential conflict of interest come to its attention during the currency of this Agreement and to comply with Trócaire's directions in respect thereof.

#### 22. Data protection and Privacy (if applicable)

22.1 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.

- 22.2 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.
- 22.3 Trócaire 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, Trócaire to the Contractor under this Agreement, including (without prejudice to the generality) applicable Data Protection legislation.
- 22.4 If applicable, a separate GDPR Agreement will be included as Schedule E of this contract, including details on the data being processed and requirements for data processor and data controller.

### 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 advice on the Corporate Social Responsibility (CSR) element in our supplier relationships.

The Supplier's Code of Contact can be found on <https://www.trocaire.org/procurement/>