

Terms of Reference (24600167 & 24600207)

Consultancy: External Audit for SC Finland funded Project

1. Background

Save the Children (SC) is a rights-based organisation with a vision of a world in which every child attains the right to survival, protection, development and participation. In Turkey, SC's programming focuses on child protection, access to education and livelihoods in line with the Country Strategic Plan. As part of this framework, SC has an anti-bullying project, funded by SC Finland, aiming to provide awareness about and prevent peer bullying in schools which is the primary reason for school drop-out both among host and refugee children. Within the context, Phase 1 of the project ran between March 31st 2020 and July 30th 2021, and "Evrenler Arası Macera/Inter Universe Adventure" board and digital game was developed to provide primary school aged children an awareness on peer bullying and prevention of it. The game was developed with child participation and in collaboration with Istanbul Avclar Leyla Bayram Primary School. Afterwards, Phase 2 of the project ran between November 1st, 2021 and January 31st, 2023, with an aim to upgrade the board and digital game based on the feedbacks to increase effectiveness and to provide accessibility to children with disabilities in collaboration with Türkan Sabancı Primary school for Children with Visual Disabilities and Leyla Bayram Primary School. Alongside, it was aimed to integrate the game into a game-based intervention model piloted in schools targeting teachers, parents/caregivers and children.

The purpose of the Terms of Reference (ToR) is to provide a description of the requirements for the commissioning, conduct and documentation of an audit for the project including Phase 1 and Phase 2.

2. Definition Of Terms

Following terms are used, in some cases as synonyms:

- (External, independent) auditor, auditing firm, Chartered Accountant ,hereinafter referred to as the **auditor**.
- **Audit** generally refers to the examination of processes, activities, financial results and internal control systems. This involves fulfilling/adhering to defined requirements and standards.
- **Audit report, audit certificate** the report prepared by the auditor and has to be in English and include the findings of all of the agreed-upon procedures
- "**Local project country**" stands for the organization that is based in the project country and that is responsible for implementing the project in the project region.

The utilization of funds in a project can be substantiated using the following two possibilities:

- By presenting a financial report for revenues and for expenditure eligible under the grant funding with a **receipt list** (in order to the positions in the budget and chronologically within this). Original receipts ought to be submitted promptly.
- By presenting the financial report for revenues and expenditure eligible under the grant funding with an **original audit certificate** (dated and signed by the external auditor) based on an independent, officially

recognized external audit **and a receipt list** (in order to the positions in the budget and chronologically within this). This possibility must be considered when original receipts from the partner country are not permitted to leave the country. However, it is possible to finalize the accounts for each project with an audit certificate submitted with a receipt list. The basic requirement for both of these possibilities is an impeccable accounting by the project partner on site.

Under certain circumstances, it may be necessary that, in addition to the certificate by the independent auditor and the receipt list, **receipts and documents** must be submitted by the local project partner. As a rule, such receipts and documents must first be requested in scanned form. However, the **requirement to submit** documents can be extended to include these documents in original form. In case these documents may not be allowed to leave the country, an attested copy must be submitted instead.

The following section gives an overview of the procedure in the event of an audit by an external auditor.

3. Selection of External Auditor

Following points need to be considered when selecting an external auditor:

- The external auditor must be **independent** They should work to an internationally recognized standard.
- The audit should be carried out in accordance with the International Standards on Related Services 4400 applicable to agreed-upon procedures engagements taking into account the conditions set out in the discretionary government transfer decision and in the additional conditions for programme/project support and relevant national legislation and standards
- The external auditor is to be selected **on a competitive basis**, i.e. **contract award regulations** are to be complied with.

4. Contract and Audit Preparation

After external auditor is selected, the **local project partner** enters into a **contract** with the external auditor. The contract regulates the following points:

- Subject of audit (project)
- Period to be audited
- Place of audit
- Audit costs
- Timing line
- Duties of the external auditor and of the local project partner
- Scope of audit

Once work on the external audit has commenced, all **project-relevant documentation** is to be made available to the auditor, e.g.:

Project application

- Project agreement (including budget)
- Any changes to the budget
- Guidelines for external audits of projects.

- All project-relevant receipts (regarding revenues, expenditure, transfer of funds, exchange, etc.)
- All project-relevant contracts (personnel and service contracts, rental agreements, construction contracts, etc.)
- All project-relevant contract award documentation (including notes on contracts awarded to service providers)
- Further project-relevant documents requested in the course of the external audit.

The **contract** should be closed within **the project term**. As a rule, the independent auditor **conducts the audit and prepares the audit certificate after the project has come to an end** so that all documents can be accessed.

5. Scope of external audit

The external audit should include the following auditing and control measures.

- Verifying accounting records for **correctness and completeness**.
- Verifying the financial report in which all project-related revenues and expenditure must be shown and for which it must be confirmed that **receipts are provided for all revenues and expenditure**.
- Verifying how the provided project funds have been managed. This includes:
 - . **Project funds** transferred to the project partner in the current budget year or during the project term
 - . **Interest earned** in the current budget year or during the project term from project funds transferred to the project partner
 - . **Other revenues from the project activity**.
- Verifying to what extent the funds have been **used appropriately** for the purpose of carrying out the planned project objectives and activities.
- Verifying the **cost-effectiveness of expenditure** with regard to financial resources (to be used economically and as effectively as possible).
- Verifying the **personnel costs and social security contributions** to ensure that they are in line with local standards, legal in the respective project country and, above all, that they comply with contracts and that the contributions required by law are being withheld.
- Verifying that the cost plan is being adhered to by means of a **comparison of objectives and effects** (based on the most recent valid budget).
- Verifying the economic use of project equipment.
- Verifying the procured inventory, where it is being held and whether it has been/is being used appropriately for the purpose of carrying out the planned project objectives and activities.
- Verifying and confirming that project-relevant documentation is complete and correct.
- The project will be audited is started on 01-Feb-2020 and ended on 31-Jan-2023.
- The total spending is around €900k.
- Approximate number of transaction is around 6000 entry.

6. Audit certificate

The report of the external audit must include the following:

- Presentation of the **audit assignment and scope** with extensive comments on the audit find-ings. The auditor must also state **which documents were used for the audit** of appropriate use of funds and compliance within the project term.
- **Recommendations** in case of complaints.
- Comment on **how audit observations from previous years were followed up on**, if required
- **Budget (most recent version), with the structure used for the financial report, provided for the final report.**The comparison of planned and actual expenditure is shown in the **currency in which the expenditure was incurred**. The audit will **not convert these amounts to Euros**.
- **Deviations** of actual expenditure from the planned expenditure in the most recent budget category **that exceed 15% of individual budget items**, must be explained and reasoned.
- The final audit opinion in the audit certificate must state the following (**minimum requirement**), which is to be worded clearly by the external auditor and adapted if appropriate:

7. Audit costs

The incurred **external audit costs** to manage the grant can be financed through project funds provided that this has been applied for **and approved** by donor Engagement Global beforehand.

The **auditor is paid based on services rendered**. The expenditure incurred for this (based on ap-proved project time) can be charged to the project.

8. Obligations for local project partner/information

In order to ensure that the external auditor can conduct an adequate audit, the project partner must ensure basic conditions. Here, it should be noted that any infringements and/or failure to adhere to deadlines can lead to the cancellation of ongoing project agreements or, at the very least, to considerable delays in making project funds available.

- In the event of an external audit, the local project partner is obliged to **provide the auditor with all necessary documents and information**.
- The local project partner is required to organize its project management, financial accounting and commissioning of the external audit in such a way, that the **deadlines for submitting the fund utilization report to Engagement Global can be met**.

9. Duration of the consultancy

SAMPLE TIMETABLE (APPLICANT TO SUBMIT THEIR OWN TIMETABLE)

March 2023

Apr 2023

Activity	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9

Based on above Timetable, applicant is requested to provide detail timetable. The service is expected to start on March and it is expected to be finalized end of Apr.2023.

10. Standards and Procedures

The following standards should be mainstreamed throughout the assignment:

- All forms of data gathering (such as participant lists or content) should be conducted in a safe and ethical manner, with the Best Interests of the Child at the centre. Save the Children will be consulting with the Consultant Firm on a regular basis to ensure and support the implementation of this standard.
- The principles of Inclusiveness, Non-Discrimination, meaningful Participation as well as Accountability, should be central throughout the process.
- Adherence by all staff to Save the Children’s Code of conduct, Child Safeguarding policy and practices and confidentiality throughout the process (including when interviewing or photographing children).
- All data (hard and soft copy alike) should be safely stored and access should be limited to the data set based on the role of the staff.
- Regular briefings will take place between the consultant and Save the Children, to reflect on any adjustments necessary or the developments that occur in the area (i.e. safety and security related updates, unavoidable edits within the questionnaire, reach of targets).

11. Organizational Roles and responsibilities

Save the Children's responsibility:

Save the Children, through its focal point (backed up by a Steering Committee, overseen by the Manager for Finance), will be involved throughout the process, and provide technical assistance (i.e. provision of the necessary documents and information sign-off of critical mile stones (Inception Report, incl. Work Plan). Practical assistance will not be provided (i.e. in-country travel, accommodation).

Applicant's responsibility:

The consultancy will be conducted by an experienced multi-disciplinary consultant firm with experience in Project Audit

12. Qualifications and Requirements

The Applicant should have the necessary expertise to undertake the tasks as per this ToR of highest possible quality. The technical expertise and practical experience should consist of one that can deliver the scope of work and deliverables, in particular, with regards to:

Technical skills: The Applicant must propose a multi-sectoral team, with technical expertise and excellency in Project Audit.

Organizational experience: The Applicant must show **evidence** of previous and successful provision of similar services as presented under this ToR.

Language Skills: The Applicant must possess advanced English and Turkish writing and speaking skills.

Working on youth-friendly materials: The Applicant must have proven experience and knowledge in the use of youth friendly tools and methodologies. The applicant must complete a self-declaration about previous convictions, investigations or disciplinary action in relation to inappropriate behaviour towards children or vulnerable adults.

Country experience: The Applicant or the proposed team must be familiar with the Turkish context and the wider system affecting refugee and migrant children and young people in Turkey.

Legality in Turkey: The Applicant must verify ability to legally conduct the consultancy and invoice the service fees pursuant to the accountancy practices applicable in Turkey.

Guiding Principles and Values: The Applicant must commit to adherence to Save the Children's Code of conduct, Child Safeguarding practices, confidentiality and Best Interests of the Child at all times.

Skills and personal traits: The Applicant must demonstrate respect for diversity and the principle of non-discrimination.

13. Submission of Bid

Quotations must be submitted latest by **08 January 2023, 17:00 (local time; GMT+2)** electronically to the below address OR via Prosave. If the mail server does not allow you to attach all documents, you can send them in separate e-mails. procurement.turkey@savethechildren.org

a) Documents to be Submitted

- Financial proposal including a detailed budget breakdown of estimated costs (i.e. accommodation, plane tickets, translation).
- Copy of signed and stamped administrative and technical terms of reference (ToR- PR224556)
- An overview of the qualifications of the key individuals who will be participating in the assignment, specification of the activities they will be carrying out, and a summary of their relevant qualifications/experience.
- Cover letter and outline of familiarity with the topic, context and of relevant past performance (max 5 pages). The outline should include descriptions of relevant past work, including project scope, location, methods utilized, and results.
- Complete and updated CVs of the named individuals and covering letter.
- Technical Proposal (max 5 pages) articulating the proposed approach and method for the assignment. The Technical Proposal should demonstrate the Applicant's technical expertise in the area.
- Financial proposal including a detailed budget breakdown, including tax (currency unit: TRY). This should realistically and adequately present specific items, frequencies and costs.
- A sample of a relevant past experience in Turkish or English.
- At least two (2) professional references able to speak to the Applicant's success in conducting similar assignments in the past. Please include name, title, organization, location, telephone, and email address.

b) Request for Clarifications

We kindly request you to contact us @ procurement.turkey@savethechildren.org for any clarification request until **04 January 2023, 13:00 (local time; GMT+2)**.

14. Evaluation Criteria

ESSENTIAL CRITERIA

Bidder must meet the following criteria;

- Bidder's main line of business activity shall be education, research or consultancy (SCI has the right to request further documentation such as trial balance).
- Financial statement of 2021 and 2022.
- Please provide the necessary documentation for proof of your registration in-country (Trade Registry Gazette, Chamber of Commerce Registration, Tax Documentation, Circular of Signature for signatory person for the offer submitted).

- Full compliance with SCI standard policies (Please sign and stamp the document namely SCI Policies and send it together with your proposal).
- Full compliance with the technical and administrative terms of reference. Please provide a confirmation letter and/or submission of signed and stamped ToRs.
- Offers shall provide the CV of the key personnel for the requested services along with a cover letter and a detailed financial statement.
- Offers must be in Turkish Lira. The supplier will receive payments within 30 days after the completion of each project.

CAPABILITY CRITERIA (50%)

- 3 references within the similar scope of work in the last 3 years with the document of the proof invoice, purchase order, contract etc. (preferably NGOs, international institutions, consulates) (10%).
- Invoices, proof of work etc. (completed in the last 3 years) that are equal to 150% of the submitted offers. Could be submitted as multiple documents. (10%)
- The quality of the technical proposal and compliance with the proposal that was requested by the Save the Children team. (20%)
- The bidder demonstrates experience and understanding of the local context and community. (10%)

FINANCIAL CRITERIA (40%)

- Proposals should be sent in a detailed breakdown. Proposals should be all inclusive (VAT and other costs shall be included and detailed) (%40).

SUSTAINABILITY (10%)

- The bidder has their own sustainability policy, guideline etc. Please submit a copy if available. (5%)
- Bidder has incorporated sustainability into their project methodology. (5%)



GENERAL TERMS AND CONDITIONS FOR SUPPLY OF SERVICES

1. Definitions and Interpretation

1.1 Definitions. In these Conditions, the following definitions apply:

- (a) **Agreement:** the document entitled "Agreement for the Supply of Services", between the Customer and the Supplier.
- (b) **Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with Condition 16.6.
- (c) **Contract:** the contract between Customer and Supplier consisting of the Agreement, these Conditions and, where applicable, the Order. Should there be any inconsistency between the documents comprising the Contract, these Conditions shall have precedence unless otherwise stated in the Agreement or the Order.
- (d) **Deliverables:** all documents, products and materials developed by the supplier or its agents, contractors and employees as part of or in relation to the Services in any form of media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).
- (e) **Force Majeure Event:** has the meaning given in Condition 15.
- (f) **Order:** The Customer's order for the supply of Services, as set out in the Customer's purchase order form.
- (g) **Services:** the services to be provided by the Supplier (or any part of them) as set out in the Order
- (h) **Specification:** any specification for the Services, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier.

1.2 Interpretation. In these Conditions, unless the context requires otherwise, the following rules apply:

- (a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors or permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

- (d) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. The Services

2.1 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by the Customer.

2.2 In providing the Services, the Supplier shall:

- (a) ensure that the Services and Deliverables correspond with their description in the Order and any applicable Specification, and that they comply with all applicable statutory and regulatory requirements;
- (b) co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;
- (c) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (d) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
- (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design;
- (g) observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises;
- (h) not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services; and
- (i) not infringe the rights of any third party or cause the Customer to infringe any such rights.

2.3 The Supplier represents and warrants that it has obtained and shall make available to the Customer all licences, clearances, permissions, authorisations, consents and permits necessary for the supply of the Services to the Customer and that the Deliverables shall be fit for all purposes for which the Supplier is or ought reasonably to be aware that they are required by the Customer.

- 2.4 The Customer reserves the right at any time to inspect work being undertaken in relation to supply of the Services, test the Services and inspect the premises where the Deliverables are being manufactured or stored. The Customer's inspector may adopt any reasonable means to satisfy himself or herself that the correct materials, workmanship and/or care and skill are or have been used.
- 2.5 If following such inspection or testing the Customer considers that the Services do not conform or are unlikely to comply with the Supplier's undertakings at Condition 2.2, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 2.6 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Services and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Customer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.
- 3. Ethical Standards and Audit Requirements**
- 3.1 The Supplier, its suppliers and sub-contractors shall observe the highest ethical standards and comply with all applicable laws, statutes, regulations and codes (including environmental regulations and the International Labour Organisation's international labour standards on child labour and forced labour) from time to time in force.
- 3.2 The Supplier, its suppliers and sub-contractors shall not in any way be involved directly or indirectly with terrorism, in the manufacture or sale of arms or have any business relations with armed groups or governments for any war related purpose or transport the Goods together with any military equipment. The Supplier shall also warrant that it has checked and will continue to check its staff, suppliers and sub-contractors against the United Kingdom Treasury List of Financial Sanctions Targets, the European Commission's List of Persons and Entities Subject to Financial Sanctions and the list of specially designated individuals and blocked persons maintained by the Office of Foreign Assets Control ('OFAC') of the Department of the Treasury of the United States of America (and any similar list of prohibited persons and entities) and will immediately inform the Customer of any apparent correlation.
- 3.3 The Supplier shall ensure that its employees, suppliers and sub-contractors are aware of, understand, and adhere to the Customer's:
- (a) Child Safeguarding policy;
 - (b) Fraud, Bribery and Corruption policy; and
 - (c) Human Trafficking and Modern Slavery policy,
- (together, the "Mandatory Policies"), attached to these Conditions.
- 3.4 The Supplier, its suppliers and sub-contractors shall be subject to, and shall in relation to the Contract act in accordance with, the IAPG Code of Conduct and any local or international standards which are applicable to the Goods.

- 3.5 The Supplier is taking reasonable steps (including but not limited to having in place adequate policies and procedures) to ensure it conducts its business (including its relationship with any contractor, employee, or other agent of the Supplier) in such a way as to comply with the Mandatory Policies, and shall upon request provide the Customer with information confirming its compliance.
- 3.6 The Supplier shall notify the Customer as soon as it becomes aware of any breach, or suspected or attempted breach, of the Mandatory Policies, and shall inform the Customer of full details of any action taken in relation to the reported breach.
- 3.7 The Supplier agrees to allow the Customer's employees, agents, professional advisers or other duly authorized representatives to inspect and audit all the Supplier's books, documents, papers and records and other information, including information in electronic format, for the purpose of making audits, examinations, excerpts and transcriptions. The Supplier agrees the extension of such rights to duly authorized representatives of the European Commission, the European Court of Auditors and the European Anti-Fraud Office (OLAF), the United States Government, the Controller General of the United States and any other such representatives instructed by a donor organization of the Customer to carry an audit of the Supplier's operations.

4. Performance

- 4.1 The Supplier shall perform the Services in accordance with the timing specified in the Agreement. Time shall be of the essence in respect of this Condition 4.1.
- 4.2 If the Supplier fails to comply with the time requirement referred to in Condition 4.1 the Customer, without prejudice to its other rights under the Contract, shall be under no obligation to make payment in respect of any Services which are not accepted.
- 4.3 The Services shall be supplied at the destination and on the date or within the period specified in the Agreement and, in any event, during the Customer's usual business hours or as instructed by the Customer.
- 4.4 The Customer shall not be deemed to have accepted any Services until the Customer has had reasonable time to inspect them following performance.
- 4.5 The Customer shall be entitled to reject any Services supplied which are not in accordance with the Agreement. If any goods that belong to the Customer or that the Customer has agreed to purchase are being transported as part of the Services, such goods shall be returned to the Customer without delay.
- 4.6 If any Services are so rejected, at the Customer's option, the Supplier shall forthwith re-supply substitute Services which conform with the Contract. Alternatively, the Customer may cancel the Contract, return any Deliverables to the Supplier at the Supplier's expense and claim costs and direct damages from the Supplier.
- 4.7 The Supplier shall ensure that it is available at the request of the Customer outside normal business hours, in order to address the requirements of any emergency in a timely fashion.

5. Indemnity

- 5.1** The Supplier shall keep the Customer indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with:
- (a)** breach of any warranty given by the Supplier in Condition 9;
 - (b)** personal injury, death or damage to property caused to the Customer or its employees arising out of, or in connection with, defects in the supply of the Services, to the extent that the defect in the Services is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
 - (c)** any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
 - (d)** any claim made against the Customer by a third party arising out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors;
 - (e)** any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the supply of the Services, to the extent that the defect in the Services is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
 - (f)** any claim in respect of death or personal injury howsoever caused to any of the employees of the Supplier whilst at the premises of the Customer save where caused by the direct negligence of the Customer or its respective employees or agents.

6. Price and Payment

- 6.1** The price of the Services shall be the price set out in the Order which includes packing, labelling, carriage, insurance, delivery, royalties and licence fees (if applicable) and all other charges, taxes, duties and impositions and is not subject to alteration for any reason whatsoever.
- 6.2** The Customer reserves the right to withhold payment in respect of Services supplied which are defective, rejected or otherwise not in accordance with the requirements of the Contract.
- 6.3** The Customer may, without limiting any other rights or remedies it may have, set off any amount owed to it by the Supplier against any amounts payable by it to the Supplier under the Contract.

7. Termination

- 7.1** The Customer may terminate the Contract in whole or in part at any time and for any reason whatsoever by giving the Supplier at least one month's written notice.
- 7.2** The Customer may terminate the Contract with immediate effect by giving written notice to the Supplier and claim any losses (including all associated costs, liabilities and expenses including legal costs) back from the Supplier at any time if:
- (a)** the Supplier is in material breach of its obligations under the Contract; or
 - (b)** the Supplier is in breach of its obligations under the Contract and fails to remedy such breach (where the breach is capable of remedy) within 14 days of written request; or
 - (c)** the Supplier becomes insolvent or makes any voluntary arrangement with its creditors or (being an individual or corporate entity) becomes subject to an administration order or goes into liquidation or the Supplier ceases, or threatens to cease, to carry on business; or
 - (d)** the Customer reasonably believes that any of the events mentioned above in sub-sections (a) through (c) is about to occur in relation to the Supplier and notifies the Supplier accordingly; or
 - (e)** the Customer reasonably believes that continuing contractual relations with the Supplier may damage the reputation of the Customer; or
 - (f)** the Customer reasonably believes that the Supplier has or is engaged in corrupt, fraudulent, collusive or coercive practices.
- 7.3** Termination of the Contract shall not affect Conditions 2.2, 4.2(a), 4.4, 4.5, 4.6, 5, 8, 9, 12, 13, 14, and 16.7 which shall continue without limit in time. Termination of the Contract shall not affect any rights, liabilities or remedies arising under the Contract prior to such termination.

8. Customer's Name, Branding and Logo

The Supplier shall not use the Customer's name, branding or logo other than in accordance with the Customer's written instructions or authorization.

9. The Supplier's Warranties

- 9.1** The Supplier warrants to the Customer that:
- (a)** the Services will be performed by appropriately qualified and trained personnel, with the best care, skill and diligence and to such high standards of quality as it is reasonable for the Customer to expect in all the circumstances;
 - (b)** it has all authorisations from all relevant third parties to enable it to supply the Services without infringing any applicable law, regulation, code or practice or any third party's rights and has all necessary internal authorisations to approve the

execution and performance under the Contract and will produce evidence of that action to the Customer on its request;

- (c) it will ensure that the Customer is made aware of all relevant requirements of any applicable law, regulation or code of practice which applies or is relevant to the supply of the Services to the Customer;
- (d) information in written or electronic format supplied by, or on behalf of, the Supplier to the Customer at any stage during the tender process, the negotiation process, the due diligence process or the term of the Contract was complete and accurate in all material respects at the time it was supplied, and any amendments or changes to the previously supplied information will be provided to the Customer without delay;
- (e) it will not and will procure that none of its employees will accept any commission, gift, inducement or other financial benefit from any supplier or potential supplier of the Customer;
- (f) none of its directors or officers or any of the employees of the Supplier has any interest in any supplier or potential supplier of the Customer or is a party to, or are otherwise interested in, any transaction or arrangement with the Customer; and

9.2 In case of any situation constituting or likely to lead to a breach of a warranty in Clause 9.1 during the term of this Contract, the Supplier shall:

- (a) notify the Customer in writing and without delay of such breach; and
- (b) take all necessary steps to rectify this situation.

The Customer reserves the right to verify that the measures taken are appropriate and to request additional steps are taken with a specified time period. Failure to implement the requested measures may lead to the termination of the Contract. These rights are without prejudice to the Customer's rights in Clause 9.1

10. Re-tendering

The Supplier undertakes to fully co-operate with the Customer in relation to any tender process which may, at the option of the Customer, be carried out at any time in relation to the supply of any of the Services.

11. Insurance

During the term of the Contract, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover such heads of liability as may arise under or in connection with the Contract, and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

12. Confidentiality

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, Specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to, or otherwise obtained by, the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain (the "**Confidential Information**"). The Receiving Party shall restrict disclosure of such Confidential Information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.

13. Customer property

The Supplier acknowledges that all materials, equipment and tools, drawings, Specifications, and data supplied by the Customer to the Supplier (**Customer Materials**) and all rights in the Customer Materials are and shall remain the exclusive property of the Customer. The Supplier shall keep the Customer Materials in safe custody at its own risk, maintain them in good condition until returned to the Customer, and not dispose or use the same other than in accordance with the Customer's written instructions or authorisation.

14. Notices

14.1 Any notice under or in connection with the Contract shall be given in writing to the address specified in the Agreement or to such other address as shall be notified from time to time in accordance with this Condition and shall be sent by prepaid first-class post, recorded delivery, e-mail, fax or by commercial courier. All notices sent internationally shall be sent by courier or e-mail.

14.2 Any notice shall be deemed to have been duly received if sent by prepaid first-class post or recorded delivery, on the second day after posting, or if delivered by commercial courier, on the date that the courier's delivery receipt is signed.

14.3 This Condition 14 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this Condition, "writing" shall include e-mails and faxes.

15. Force majeure

15.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event provided that the Supplier shall use best endeavours to cure such Force Majeure Event and resume performance under the Contract.

15.2 A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, armed conflict, malicious damage, nuclear, chemical or biological

contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters, or extreme adverse weather conditions.

15.3 If any events or circumstances prevent the Supplier from carrying out its obligations under the Contract for a continuous period of more than 14 days, the Customer may terminate the Contract immediately by giving written notice to the Supplier.

16. General

16.1 Assignment and subcontracting:

(a) The Customer may at any time assign, transfer, charge, subcontract, novate or deal in any other manner with any or all of its rights or obligations under the Contract.

(b) The Supplier may not assign, transfer, charge, subcontract, novate or deal in any other manner with any or all of its rights or obligations under the Contract without the Customer's prior written consent.

16.2 Severance:

(a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

(b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

16.3 Waiver and cumulative remedies:

(a) No waiver of any right or remedy under the Contract shall be effective unless it is in writing and signed by both parties. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

(b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

16.4 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

16.5 Third party rights: A person who is not a party to the Contract shall not have any rights under or in connection with it.

- 16.6 Variation: Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Customer. The Customer reserves the right to conduct a formal review of the Contract after 12 months. For the avoidance of doubt, no terms and conditions produced by the Supplier, including, but not limited to, those forming part of the Supplier's quotation, shall supersede and take precedence over these Conditions and the Contract.
- 16.7 Governing law and jurisdiction: The Contract shall be governed by and construed in accordance with English law. The parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

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