

SIDA'S GENERAL TERMS AND CONDITIONS FOR CONSULTING SERVICES, 2015

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1 APPLICABILITY

Unless otherwise agreed by the Parties, the following terms and conditions shall apply to Sida's Contract for Consulting Services (the Contract).

2 DEFINITIONS

All terminology and expressions in these terms and conditions shall be interpreted as per the definitions given in the Contract.

“The Country” is the country in which the Assignment shall be primarily carried out.

“Accompanying Persons” refers to the accompanying spouse/cohabitant and any children under the age of 19 for whom the employee has a maintenance liability. A registered partner in accordance with the Registered Partnership Act (1994:1117) is equated with a spouse. A cohabitant is considered herein to be a person living together with the employee under circumstances similar to that of a marriage or registered partnership.

3 POSITION OF THE CONSULTANT

The consultant is independent from Sida. The Contract does not constitute terms of employment between the Consultant or their employees and Sida.

Under no circumstances does the Contract authorise the Consultant to enter Sida into an agreement with a third party or otherwise represent Sida in any context whatsoever, unless otherwise explicitly stated in the Assignment or the Contract.

4 THE ASSIGNMENT

4.1 Execution

The Consultant must carry out the Assignment in accordance with the Contract. When carrying out the Assignment, the Consultant must use competent and suitable personnel, and ensure that the Assignment is executed with skill and care and in a professional manner.

During the contractual period, the Consultant may not carry out activities nor have financial or other interests that may undermine confidence in the Consultant or their execution of the Assignment.

Unless otherwise agreed between the Parties, the Assignment will include the obtaining of all statements, approvals and permits necessary for completion of the Assignment in accordance with statutes applicable in the country/countries in which it is to be carried out.

If the Consultant makes the assessment that the Assignment cannot be carried out within the agreed budget, time frame or in accordance with any other terms agreed upon, the Consultant shall inform Sida thereof without delay. The Consultant is entitled to no increase in compensation without a written agreement with Sida.

4.2 Error rectification and discounts

The Consultant shall remedy errors and deficiencies in the Assignment within thirty days of receiving a written request from Sida and at their own expense.

If the errors or deficiencies are not remedied within the aforementioned time frame, Sida is entitled to a reasonable discount. Sida's right to a discount does not disentitle Sida from claiming damages or a fine, or from cancelling or taking other measures on the grounds of the errors or deficiencies in the Assignment.

4.3 Personnel

The Consultant may not replace the persons who are to carry out the Assignment as specified in the Contract without prior written consent from Sida.

Should any of the persons specified in the Contract to carry out the Assignment be unable to execute the Assignment or part thereof due to illness, death or other reasons, the Consultant may replace this individual with a new person, following written approval of this person from Sida. The replacement must be done without delay and at no cost to Sida, and the new person must have the equivalent competence, suitability and experience.

If Sida is dissatisfied with any of the Consultant's personnel or, where applicable, the sub-consultant's personnel, the Consultant shall, following written request from Sida, replace them with a new person who shall be approved in writing by Sida. The replacement must be done without delay and at no cost to Sida, and the new person must have the equivalent competence, suitability and experience.

5 SUB-CONSULTANT

The Consultant may not hire a sub-consultant without prior written consent from Sida. The Consultant is responsible for any work performed by a sub-consultant as if it was their own work. Unless otherwise agreed between the Parties, the Consultant is responsible for payments to the sub-consultant.

When hiring a sub-consultant, the Consultant undertakes to enter an agreement on the reservation of Sida's rights in accordance with Section 10.3 below. The Consultant guarantees that the sub-consultant is insured in accordance with Section 8.4 below.

Unless otherwise agreed between the parties, the Consultant is not entitled to compensation for increased administration costs associated with hiring a sub-consultant.

6 BUDGET, REMUNERATION AND COSTS

6.1 Budget

The Consultant's budget (Appendix C) must be divided into recoverable costs and remuneration. For remuneration, the type of service to be carried out must be specified, as well as whether it is the Consultant or sub-consultant who is to carry out the Assignment or parts thereof, and the number of hours and the hourly rate for the Consultant's personnel per person. Recoverable costs must be specified per type of cost.

If the Consultant wishes to receive remuneration or compensation for costs (including allowance for expenses) not specified in the budget, the Parties must come to a special agreement in this regard.

6.2 Remuneration and costs

The Consultant is only compensated for the actual number of hours worked by persons specified in the Contract, and for costs actually incurred. Compensation will not be paid for costs that are not explicitly recoverable in accordance with the Contract; these are included in the remuneration.

Remuneration will be calculated per whole hour worked. For work based on weeks or months, one week shall correspond to 40 hours and one month to 160 hours. The Consultant may charge a maximum 8 hours per day and 40 hours per week. Unless otherwise agreed between the Parties, the Consultant is not entitled to overtime pay.

The Consultant is not entitled to remuneration for travel time. Exceptions to this rule can be found in Section 14.2.1.

The Consultant is entitled to compensation for business travel within Sweden in accordance with the terms and conditions that apply to civil servants in general (see "Villkorsavtal" as per its wording at any given time).

Unless otherwise agreed between the parties, the Consultant is only entitled to compensation for the cheapest form of transport and reasonable accommodation costs.

7 INVOICING AND PAYMENT

The Consultant must send an original copy of the invoice to Sida. The invoice must be addressed to the person specified in the Contract.

The invoice must include: invoiced amount excluding VAT, VAT amount per VAT category, type of service carried out, whether it is the Consultant or a sub-consultant who has carried out the service, and the name of the individual, the number of hours worked, the account to which payment is to be made, the Contract number, date and number of the invoice, the Consultant's corporate identity number (or personal identity number if the Consultant does not have a corporate identity number), as well as the Consultant's VAT registration number.

Recoverable costs must be given in SEK and specified in reference to the budget. Original receipts must be stored with the Consultant for seven years. The Consultant's charging of the invoiced amount must be documented by means of timesheets and accounts. Sida has the right to access all of the Consultant's supporting documentation, including original receipts, that is required to assess the Consultant's invoicing.

Sida must pay the invoice within thirty days of the invoicing date. No invoicing fees shall be charged for invoices in accordance with the Contract.

8 LIABILITY AND INSURANCE

8.1 The Consultant's liability

The Consultant is liable for damages incurred to Sida as a result of the Consultant's actions or those of a party enlisted by the Consultant.

In relation to Sida, the Consultant takes on Sida's liability to pay damages to a third party, wherever these are a result of the Assignment. The Consultant is however exempt from liability to pay damages if the Consultant can show that they were unable to prevent or limit the damages.

Apart from cases of intent or gross negligence, the Consultant's liability for damages is limited to the total of the upper limit for remuneration and the upper limit for recoverable costs. The limitation of the liability for damages must be calculated without taking into account the Consultant's liability to pay a delay charge.

The limitation of liability does not apply, however, if the liability for damages relates to encroachment on another party's rights in accordance with Section 10.3 below.

8.2 Sida's liability

Sida is not liable for damages, unless in the case of intent or gross negligence. Sida is not liable for indirect losses such as, but not limited to, loss of profits.

8.3 Damages

Damage claims must be made in writing to the counterparty within six months of the damages being discovered, and no later than three years after the Contract has been terminated. These time limits shall not apply, however, in cases of intent or gross negligence.

8.4 Insurance

The Consultant must have professional liability insurance, which during the contractual period comes to an amount at least equivalent to the agreed liability for damages (see Section 8.1 above). At Sida's request, the Consultant shall provide proof that this insurance has been obtained.

9 FINE FOR DELAYS

If part or all of the Assignment is delayed, the Consultant shall pay a fine of 1% of the total of the upper limit for remuneration and the upper limit for

recoverable costs for each new week of delay commenced, unless the delay is due to factors beyond the Consultant's control. The maximum fine is 10% of the total of the upper limits.

A demand to pay a fine must be made in writing to the Consultant within six months of the delay.

The Consultant's liability to pay the fine does not remove Sida's right to claim damages or take other measures on the grounds of the delay.

10 GENERAL PROVISIONS

10.1 Liability to inform

The Parties shall immediately inform one another in writing of any events or situations that may entail changes or delays in the completion of the undertakings agreed between the Parties.

10.2 Secrecy

The Consultant undertakes to follow the Public Access to Information and Secrecy Act (2009:400) in applicable parts.

The Consultant also undertakes to adhere to any other rules issued by Sida relating to the handling of information.

10.3 Intellectual property rights, etc.

Unless otherwise agreed between the Parties, Sida has ownership rights to all work, material and results used or produced by the Consultant in connection with executing the Assignment (the Results). Ownership rights do not cover development tools or methods used in the execution of the Assignment and which are owned by the Consultant or a third party. All copyright, patent rights or other intellectual property rights pertaining to the Results shall be owned by Sida. Sida has the right to freely change, adapt and transfer the Results.

The Consultant does not have the right to utilise the Results without a prior written agreement with Sida.

The Consultant is responsible for ensuring that the Results do not encroach on the rights of another party (copyright, patent rights, right to a trademark, etc.). The Consultant must compensate Sida for damages and other costs incurred to Sida as a result of a claim on the grounds of encroachment on another party's rights. This provision applies even after the Contract has otherwise come to an end.

If a third party makes a claim against Sida on the grounds of encroachment on their rights, Sida shall immediately inform the Consultant of the claim.

Technical data transferred by Sida or belonging to a third party, which Sida has transferred to the Consultant, remains the property of Sida or the third party.

10.4 Documentation

The Consultant shall acquire and document material and other relevant information related to the Assignment in a satisfactory manner.

10.5 Evaluation

Sida has the right to carry out evaluations, audits or other follow-ups related to the Assignment. The Consultant undertakes to cooperate in such evaluations or follow-ups, both during the course of the Assignment and after its completion.

10.6 Transferral of rights and responsibilities

The Consultant may not transfer rights or responsibilities in accordance with this Contract without written consent from Sida.

10.7 Messages

All messages between the Parties shall be considered to have reached the recipient

- (a) if they have been delivered personally or via courier: on the same day they are handed over to the recipient,
- (b) if sent via e-mail: once the recipient has confirmed receipt in writing, via e-mail or other means,
- (c) if sent via fax: once the sender has received confirmation that the fax has reached the recipient,
- (d) if sent via letter: the day after sending.

In the event of a change of address, each Party must immediately inform the other in writing.

Requests in accordance with Section 4.2 (Error rectification and discounts), demands in accordance with Section 8.3 (Damages), demands in accordance with Section 9 (Fine for delays), notice of termination in accordance with Section 11.1, and cancellation in accordance with Section 11.2, shall always be sent via post.

10.8 Corruption

When carrying out its assignment, the Consultant shall specifically prevent, identify and rectify any impropriety and corruption. Sida defines corruption as abuse of trust, power or position for improper gain.

The Consultant is aware that the giving and receiving of bribes, trading in influence and negligent financing of bribery are punishable in accordance with Swedish law and may also be punishable according to the law of other countries.

The Consultant must immediately inform Sida of any impropriety and corruption related to the Assignment that comes to the Consultant's attention.

11 NOTICE OF TERMINATION AND CANCELLATION

11.1 Notice of termination

Sida has the right to issue written notice of termination for parts of the Assignment not yet completed.

If Sida issues a notice of termination of the Assignment in accordance with the current Section 11.1, the Consultant shall immediately take measures to phase out the assignment or, where applicable; the terminated parts of the Assignment, at minimum cost.

In the event of termination, the Consultant is entitled to compensation for work carried out, associated costs and reasonable costs for phasing out the Assignment. Compensation for reasonable costs may only cover actual number of hours worked and actual costs, and is limited to a maximum amount corresponding to compensation for ten working days and necessary costs.

Requests for compensation based on the above must be made in writing to Sida within two months of the Consultant receiving the notice of termination. In other cases, the right to such compensation is lost.

11.2 Cancellation

Sida has the right to cancel the Contract with immediate effect under one or more of the following circumstances:

- (a) the Assignment, whether part of all of it, is delayed, and the delay considerably affects Sida
- (b) the Consultant is declared bankrupt, enters into a composition with creditors, stops their payments, goes into liquidation or undergoes company reorganisation, and as a result is unable to complete the Assignment or provide an adequate guarantee for its completion
- (c) the Consultant has been sentenced for a crime related to their business in a legally binding court judgment or, where such a judgment has not been made, Sida considers it likely that such judgment will either gain legal force or not be changed by a higher court

- (d) the Consultant has, as per legally binding court judgement or corresponding, not fulfilled their obligations in terms of social security contributions or taxes,
- (e) the Consultant has, before or after signing the Contract, neglected to provide information on the company, which objectively speaking is essential to the existence and continued validity of the Contract. The same applies if the Consultant has neglected to provide information that the Consultant is obligated to submit to Sida in accordance with the Contract, or if such information is inaccurate,
- (f) an error related to intellectual property rights is not rectified within a reasonable time from the Consultant receiving a message from Sida concerning a third party's allegations of encroachment,
- (g) the Consultant is guilty of a material breach of contract and fails to make rectifications following a written request.

When cancelling the Contract, Sida is entitled to damages.

In the event of notice of termination or a cancellation, the Consultant must immediately transfer the Results (see Section 10.3 above) to Sida. Sida has the right to use the Results in the same way as if the Assignment had been completed.

12 FORCE MAJEURE

A breach of contract is excusable if contractual performance is hindered by circumstances outside of the party's control and which they could not reasonably have foreseen or taken into account at the time of entering the contract, and the consequences of which they could not reasonably have avoided or overcome, including but not limited to the outbreak of hostilities, riots, civil unrest, acts of terror, fires, explosions, flooding, changes to the Country's acts or ordinances, or the decisions of courts, government or authorities in the Country.

If the hindrance is only temporary, the breach of contract is excusable only for as long as can be considered reasonable in relation to the consequences of the hindrance in terms of the party's capacity for contractual performance.

A party whose performance is not in line with the contract, and is excused in accordance with the above paragraphs, must immediately inform the counterparty of the hindrance in writing and how it affects their capacity for contractual performance. If this information is not provided within a reasonable time after the party has been notified or can be reasonably expected to have received notice of the hindrance, the party is liable to pay compensation for the damages that the counterparty could have avoided if the information had been given in time.

In the event of an excusable breach of contract, the Parties shall discuss whether, and if so, which measures shall be taken. If an excusable hindrance exists for longer than forty-five days, both parties are entitled to terminate the Contract with immediate effect. Notice of this termination must be sent by letter in order to be valid.

13 DISPUTE SETTLEMENT

Swedish law shall apply to the contract, with the exception of its conflict of law rules. Disputes over the Contract shall be finally settled by a Swedish court.

14 SPECIAL TERMS AND CONDITIONS

If the Consultant is to carry out the Assignment outside of Sweden, the following special terms and conditions apply in addition to what is otherwise stipulated in the Contract.

14.1 Cooperation

14.1.1 Cooperation with the embassy of Sweden

The Consultant and their personnel and, where applicable, the sub-consultant's personnel shall follow the instructions issued by the Swedish Embassy in the Country concerning personal safety, diplomatic relations between Sweden and the Country, and other matters for which the embassy has issued instructions. The Consultant shall include the equivalent liability in a contract with its personnel.

The Consultant shall constantly keep the embassy informed of how the Assignment is progressing.

14.1.2 Cooperation with the Cooperation Partner specified in the Terms of Reference

The Consultant undertakes to cooperate with the Cooperation Partner specified in the Terms of Reference.

The Consultant, their personnel, and where applicable the sub-consultant's personnel, as well as any Accompanying Persons, shall follow the Country's laws and morality, respect its culture and traditions, and in their behaviour and in their way of living take into consideration the fact that they are part of the development collaboration between Sweden and the Country.

Sida undertakes to come to an agreement with the Cooperation Partner specified in the Terms of Reference that the latter shall cooperate with the Consultant and provide the Consultant with the information and assistance necessary for the Consultant to carry out the Assignment, at no cost. If such information and assistance is not provided or is delayed, the Consultant shall nevertheless endeavour to carry out the Assignment. The

Consultant shall inform Sida without delay, and the Parties shall discuss whether, and if so, which measures shall be taken.

14.2 Remuneration and costs

14.2.1 Remuneration for travel time

For intercontinental travel, the Consultant has the right to remuneration for a maximum eight hours' work for the outbound journey and a maximum eight hour's work for the return journey. Time spent by the Consultant travelling within the Country or within Sweden, or otherwise between countries in one and the same continent, do not entail entitlement to remuneration.

14.2.2 Allowance for expenses and accommodation

For business travel outside of Sweden, the Consultant is entitled to compensation for costs of accommodation and allowance for expenses during the time the Consultant's personnel is staying in a country other than the one where the Consultant is based or lives, in accordance with "Avtal om ersättning m.m. vid tjänsteresa och förrättning utomlands", as per its wording at any given time, with a deduction of 30% for allowance for expenses after ninety days.

The Consultant is only entitled to compensation for reasonable accommodation costs.

14.2.3 Travel

The Consultant is entitled to compensation for costs for business travel to and from the Country. Travel shall be conducted with suitable means of transport and the closest route shall be selected. If the mode of transport is air travel, the Consultant is only entitled to compensation for an economy class flight. The Consultant is entitled to compensation for airport taxes and minor fees for excess weight where this is due to equipment and material necessary for the execution of the Assignment. Other costs such as those related to passport, visa and vaccinations are not recoverable.

14.2.4 Communications and postage

The Consultant is entitled to compensation for international communications and postage used in carrying out the Assignment. The Parties may agree on a fixed amount for such compensation. Compensation for international datacommunication and telecommunication is however only provided for the cheapest possible means of communication.

14.3 Currency

Where it is necessary to decide the value of another currency in SEK, the value shall be calculated based on the market selling rate used by the

bank currently chosen by Sida on the date of transaction or, if such a rate cannot be established, at a reasonable rate decided by Sida following consultations with the Consultant.

Payments made under the Contract must be in SEK.