

## **APPENDIX IV– General terms and conditions of the contract**

### **Article 1 Performance of tasks**

- The contract shall be performed in accordance with the highest professional standards.
- The consultant shall identify, assess, and mitigate all relevant risks associated with the implementation of the contract, including the risk of corruption and other irregularities, risks related to sexual exploitation, abuse, and harassment (SEAH), and any other potential negative effects.
- The consultant shall ensure that all persons working under this contract have the professional qualifications and experience necessary to perform the tasks assigned to them.
- An expert responsible for performing tasks/services under this contract may be replaced at the written request of ATIBT. In this case, the consultant shall ensure, without undue delay, that the expert is replaced by a person with equivalent or superior qualifications and experience. The consultant shall seek the written agreement of ATIBT for any expert thus proposed. With the written agreement of ATIBT, the new expert shall be authorized to perform the tasks/services provided for in the contract.
- Neither the consultant nor any person performing tasks under the contract shall represent ATIBT or behave in a manner that could give that impression.
- Nothing in this contract is intended to make ATIBT the employer of the consultant or any person performing tasks under the contract, and shall not have that effect.
- All communications between the parties relating to the administration of the contract shall be in English.
- The consultant shall take all necessary measures for the performance of the tasks.

### **Article 2 General terms and conditions of payment**

- The currency of the contract is the euro (EUR). If necessary, costs shall be converted into euros using the monthly accounting rate for the month in which the costs were incurred, as indicated on [https://ec.europa.eu/info/funding-tenders/procedures-guidelines-tenders/information-contractors-and-beneficiaries/exchange-rate-infoeuro\\_en](https://ec.europa.eu/info/funding-tenders/procedures-guidelines-tenders/information-contractors-and-beneficiaries/exchange-rate-infoeuro_en).
- Payments will only be made after approval by ATIBT of the various supporting documents.
- Payment will be made by ATIBT within 14 calendar days of receipt of the invoice, but in any event only after approval of the conditions precedent to payment.
- ATIBT's obligation to make the payments provided for in the contract shall expire 6 months after the end of the implementation period, unless the contract is terminated before that date in accordance with these general terms and conditions.
- ATIBT is not required to make payments that would violate sanctions or restrictive measures imposed by a competent authority.
- ATIBT shall bear its own costs for bank commissions or other financial charges invoiced by banks or other financial institutions when sending or receiving payments provided for in this

contract. However, the consultant shall bear all fees charged to ATIBT by banks and other financial institutions when ATIBT is unable to transmit payments to the consultant due to incomplete or incorrect bank details provided by the consultant, if the consultant's bank does not accept the payment, or for other reasons beyond ATIBT's control. ATIBT may deduct these fees from payments due to the consultant under this contract.

- The consultant undertakes to reimburse ATIBT for all sums paid by ATIBT to the consultant for tasks to be performed and results to be provided which, on the date of termination of this Agreement, have not been performed or provided ("sums paid in advance"). The consultant undertakes to reimburse ATIBT for the amounts paid in advance within seven (7) days of the termination of this contract. ATIBT may recover the balance of any unreimbursed amounts paid in advance as a debt owed and payable by the consultant to ATIBT.
- The contract price is all-inclusive and ATIBT will therefore not pay any taxes, social security costs or similar costs in addition to this price. The consultant is responsible for and must pay taxes, social security contributions and any other charges in accordance with the legislation applicable to the consultant.
- The consultant undertakes to comply with applicable legislation with regard to any payment received from ATIBT, in particular with regard to taxation, social security, and labor law. ATIBT may inform any tax authority or other authority of any payment made under this contract.

#### **Article 3 Accounts, access, and financial controls**

- The consultant shall keep accurate, systematic and regular records and accounts of the implementation of the contract, ensuring that the information is accurate, complete, reliable and up to date. Financial transactions and financial statements shall be subject to the consultant internal and external audit procedures.
- The consultant authorizes ATIBT, or one of its authorized representatives, to carry out documentary checks and on-site verifications in connection with the contract, based on supporting accounting documents and any other documents related to the contract. The consultant shall cooperate fully with these documentary checks and on-site verifications.

#### **Article 4 Conflict of interest**

- In the performance of its duties, the consultant must act in the best interests of ATIBT, preserving its good reputation and reliability.
- The consultant undertakes to take all necessary measures to prevent, avoid, and resolve any conflicts of interest.
- A conflict of interest arises when the impartial and objective exercise of the duties of any person implementing the contract is compromised, in particular for reasons of common interests with a third party.
- ATIBT must be informed immediately of any situation that constitutes or could lead to a conflict of interest.
- ATIBT reserves the right to verify that the measures taken by the consultant to prevent, avoid, and resolve conflicts of interest are adequate and may require additional measures to be taken within a period of time to be determined by ATIBT.

#### **Article 5 Code of Conduct**

- The consultant must act at all times in an impartial manner and with appropriate discretion,

and refrain from making any public statements about the project or services without the prior consent of ATIBT.

- The consultant must respect human rights and undertake not to infringe upon the political, cultural, and religious practices in force in the country where the services are provided.
- The consultant must comply with applicable legislation and internationally agreed fundamental labor standards.
- The consultant must not support activities that contribute to money laundering, terrorist financing, tax evasion, tax fraud, or tax fraud.
- The consultant must not receive or agree to receive from anyone, nor offer or agree to give to anyone, nor procure for anyone, gifts, gratuities, commissions, or consideration of any kind as an inducement or reward for performing or refraining from performing an act related to the performance of the contract, or for favoring or disfavoring any person in connection with the contract. The consultant shall comply with all applicable anti-corruption laws, regulations, and codes.
- Payments made to the consultant under the contract constitute the only income or benefits it may derive from the contract. The consultant shall not engage in any activity or receive any benefit that is incompatible with their obligations under the contract.
- The consultant confirms that it has not participated and will not participate in any corrupt, fraudulent, collusive, coercive, or obstructionist practices in connection with the conclusion or performance of this contract, as defined below:
  - Corrupt practice: offering, giving, receiving, or soliciting, directly or indirectly, anything of value to improperly influence the actions of another party.
  - Fraudulent practice: any act or omission, including misrepresentation, that knowingly misleads or attempts to mislead a party in order to obtain a financial or other advantage or to avoid an obligation.
  - Coercive practice: harming or causing harm, or threatening to harm or cause harm, directly or indirectly, to a party or its property in order to unduly influence the actions of a party.
  - Collusive practice: an agreement between two or more parties to achieve an abusive objective, including improperly influencing the actions of another party.
  - Obstructive practices: impeding any investigation into allegations relating to one or more of the above prohibited practices, either by deliberately destroying, falsifying, or altering evidence relevant to the investigation, or by concealing such evidence, or by making false statements to investigators and/or threatening, harassing, or intimidating any party to prevent them from disclosing their knowledge of matters relevant to the investigation or from pursuing the investigation, or by obstructing ATIBT's rights of audit or access to information.
- The consultant must comply with all applicable national legislation relating to its activities.
- The consultant shall ensure in particular that its obligations under this article also apply to any subcontractors.

**Article 6 Measures to prevent and combat sexual exploitation, sexual abuse, and sexual harassment (SEAH)**

- The consultant recognizes and undertakes to prevent and actively combat sexual exploitation, sexual abuse, and sexual harassment (SEAH) as defined below.
- For the purposes of this agreement, the following definitions apply: a) Sexual exploitation: any actual or attempted abuse of a position of vulnerability, power imbalance, or relationship of trust for sexual purposes, including, but not limited to, profiting financially, socially, or politically from the sexual exploitation of others; b) Sexual abuse: any actual or threatened physical intrusion of a sexual nature, by force or under unequal or coercive conditions; c) Sexual harassment: any form of unwanted verbal, nonverbal, or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person.
- When the consultant becomes aware of suspicions or complaints of SEAH, it must take swift action to stop the harm, investigate, and report the facts to the competent authorities (for criminal matters) after taking into consideration the rights, needs, and wishes of the victim.
- The consultant must immediately report to ATIBT any allegation of SEAH that is credible enough to warrant an investigation related to this contract, as well as any allegation of SEAH that is not directly related to this contract but has a significant impact on the collaboration with ATIBT. The report shall be made without compromising the safety and due process rights of any person involved.

#### **Article 7 Exclusion from access to funding**

- The consultant guarantees and assures that neither it nor any person with powers of representation, decision-making or control over it, nor any member of its administrative, management or supervisory body, has been the subject of a final judgment or final administrative decision for any of the following reasons:
  - bankruptcy, insolvency, or liquidation proceedings
  - failure to meet obligations relating to the payment of taxes or social security contributions
  - serious professional misconduct, including false declarations
  - fraud
  - corruption
  - involvement in a criminal organization
  - money laundering or terrorist financing
  - terrorist offenses or offenses related to terrorist activities
  - child labor and other forms of human trafficking
  - irregularity
  - creation of or membership in a shell company
- The consultant shall provide, at its own expense and at the request of ATIBT, official documents issued by the authorities of the country in which it is established certifying that none of the above cases apply to it.
- ATIBT may terminate the contract with immediate effect if the consultant is found guilty of violating the preceding paragraphs, in which case ATIBT may also recover all sums paid to the consultant. Before the contract is terminated by ATIBT, the consultant shall have the

opportunity to submit its comments and clarifications to ATIBT within a period set by ATIBT.

#### **Article 8 Data protection**

- The consultant shall ensure adequate protection of personal data in accordance with the legislation applicable to it, but shall in any event ensure that personal data is:
  - processed fairly, equitably, and transparently in relation to the data subject; collected for specified, explicit, and legitimate purposes, and not further processed in a manner incompatible with those purposes;
  - adequate, relevant, and limited to what is necessary in relation to the purposes for which they are processed;
  - accurate and, where necessary, kept up to date;
  - kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; and
  - processed in a manner that ensures appropriate security of personal data.
- Personal data means any information relating to an identified or identifiable natural person (data subject).

#### **Article 9 Confidentiality**

- All information, in whatever form or mode of transmission, which has been disclosed by ATIBT to the consultant in connection with the performance of this Agreement and which has been explicitly designated as confidential, or which, when disclosed orally, has been identified as confidential at the time of disclosure, constitutes "Confidential Information." All results obtained in connection with the Contract, in whatever form, also constitute "Confidential Information."
- The consultant hereby undertakes to use the Confidential Information solely for the purpose of performing the Contract. The consultant further undertakes not to disclose any Confidential Information to any third party without the prior written consent of ATIBT.
- The above obligations shall not apply to the disclosure or use of Confidential Information if and to the extent that the consultant can demonstrate that:
  - ATIBT subsequently released the consultant from its confidentiality obligations in accordance with this article;
  - the confidential information has become publicly available through means other than a breach of the consultant's confidentiality obligations;
  - the disclosure of confidential information is necessary to comply with applicable laws or regulations.
- All confidential information must be stored and processed by the consultant in such a way that no unauthorized person has access to it and must be returned to ATIBT upon completion of the tasks provided for in this contract or upon termination of this contract.
- The consultant is required to maintain the aforementioned confidentiality even after completion of the tasks set out in this contract or termination of this contract for a period of five (5) years from the date of completion or termination.

#### **Article 10 Visibility**

- The consultant must follow all instructions given by ATIBT concerning the visibility of the tasks and results provided for in this Contract, including the use of specific disclaimers.
- ATIBT shall provide the consultant, if necessary, with the logos, texts, and emblems to be used for visibility purposes. The consultant may not use any other logo, text, or emblem without the written consent of ATIBT.
- The consultant may not use the name "Association Technique Internationale des Bois Tropicaux" (International Tropical Timber Technical Association), the abbreviation "ATIBT" or the ATIBT emblem without the written consent of ATIBT. The same applies to GIZ and German cooperation, and Comifac.

#### **Article 11 Responsibility**

- The consultant is solely responsible for complying with all legal obligations incumbent upon it.
- ATIBT declines all responsibility for any claims, debts, demands, damages or losses incurred by the consultant in connection with the performance of this contract, except in cases of wilful misconduct or gross negligence on the part of ATIBT.
- The consultant undertakes to indemnify ATIBT against any liability in respect of any claims that third parties may bring against ATIBT, including reasonable legal costs incurred by ATIBT in defending such claims, to the extent that the claim is related to a fault or negligence for which the consultant is responsible.

#### **Article 12 Liquidated damages**

- If the consultant fails to deliver the production on time, ATIBT shall be entitled to lump sum damages from the date on which delivery should have taken place.
- The damages shall be payable at a rate of 0.5% (zero point five percent) of the contract price for each calendar day of delay.
- The fixed damages shall be payable upon written request by ATIBT.
- ATIBT may deduct the lump-sum damages payable from any payment due to the consultant under this Contract.

#### **Article 13 Termination and suspension**

- ATIBT may, by written notice, terminate the Contract with immediate effect if ATIBT considers that circumstances make it impossible or excessively difficult to continue performing the Contract.
- If ATIBT considers that circumstances only temporarily make it impossible or excessively difficult to continue performing the Contract, ATIBT may, by written notice, suspend performance of the Contract with immediate effect. Such suspension shall remain in effect until ATIBT decides otherwise and shall not affect ATIBT's rights under the previous article. The consultant shall resume performance of the Contract as soon as it has been notified in writing by ATIBT. Before the consultant resumes performance of the Contract, the Parties shall negotiate the terms and conditions for performance of the Contract, taking into account the impact of the suspension.
- ATIBT may terminate this Agreement with immediate effect by written notice if:
  - The consultant or any subcontractor is declared bankrupt, is subject to receivership, has entered into an agreement with its creditors or has suspended its commercial activities,

or is subject to proceedings concerning these matters;

- The consultant fails to fulfill its obligations.
  - The consultant, after receiving written notice requiring it to comply with its obligations, specifying the nature of the alleged breach, and after having had the opportunity to remedy such breach, continues to fail to fulfill its contractual obligations;
  - Any information provided by the consultant in its bid proves to be false, or the consultant has otherwise made false statements or submitted false or incomplete statements or documents in order to enable ATIBT to enter into this contract, in which case ATIBT may also recover all sums paid to the consultant under the contract; or
  - The consultant fails to comply with its obligations regarding the code of conduct or measures to prevent and combat sexual exploitation, sexual abuse, and sexual harassment (SEAH), in which case ATIBT may also recover all sums paid to the consultant under the contract.
- No compensation shall be paid to the consultant in the event of termination or suspension of the contract.
  - Termination shall not affect the rights or responsibilities acquired by a party at the time of termination.