

Supplementary terms and conditions for supplying services in development partnerships with the private sector (EPW-EVB)

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1. General provisions for supplying work and services

- 1.1. Components of the contract and applicable law**
- The components of the contract are
1. the contract with its annexes (including the documents available on the internet)
 2. the present general provisions and their annexes.
- In the event that there is any discrepancy or contradiction between the components of the contract, the above components of the contract shall apply in the order shown. In the event of any discrepancy or contradictions between annexes, the provision in the annex with the lower number shall apply. The PRIVATE COMPANY'S general terms and conditions of business or payment shall not apply.
- The contract shall be governed by the laws of the Federal Republic of Germany.
- 1.2. Subcontracts**
- Any subcontracting of work and services by the PRIVATE COMPANY to third parties shall require the prior written approval of GIZ, unless the contract stipulates that such work or services be procured by the PRIVATE COMPANY.
- 1.3. Obligation of an assigned expert and a subcontractor**
- The PRIVATE COMPANY shall ensure that the staff it employs as well as its subcontractors comply with the provisions of these Terms and Conditions and the contract, where applicable.
- 1.4. Confidentiality**
- Any and all data relating to the contract as well as any other information of which the PRIVATE CONTRACTOR becomes aware in the course of performing the contract must be treated as confidential even beyond the term of the contract. The PRIVATE COMPANY shall not be permitted to make use of any such data and information for its own purposes.
- 1.5. Requirement for GIZ's approval for publications**
- Any publications regarding the measure require prior written approval by GIZ, even after the contract has come to an end. A brief description of the contract and scope of activity for the PRIVATE COMPANY PR purposes shall not require GIZ's approval. A statement on the content of the contract and the key results constitutes a brief description for the purposes of these Terms and Conditions. The PRIVATE COMPANY must always express in an appropriate way that its activities are on behalf of GIZ, and must also name the ultimate commissioning party/client and any further financing parties.
- 1.6. Rights of use**
- Unless otherwise agreed in the contract, the PRIVATE COMPANY shall assign to GIZ an irrevocable, worldwide, non-exclusive right of use – waiving its right to be identified as the author, for the duration of statutory copyright and other property rights – including commercial use outside the measure, for all studies, drafts, documentation, articles, information, records, illustrations, drawings, plans, calculations, materials, computer programs, photos, slides, image files and other visual presentations and results which are created or procured in performance of the contract. The PRIVATE COMPANY warrants that the relevant copyright holder has waived copy- right.

1.6.1. Work results

Work results shall also include any computer programs which the PRIVATE COMPANY produces, modifies, procures or makes available in the performance of the contract. The right of use assigned to GIZ under the following provisions specifically includes the right to load, display, run, transmit, save, modify, translate, edit and reproduce the programs in unlimited quantities. For the purposes of processing, the PRIVATE COMPANY shall provide GIZ with the respective source code and program documentation, copies of which GIZ shall also be entitled to pass on to third parties.

1.6.2. Existing work products

The granting of rights of use pursuant to section 1.6 outlined here shall also apply to studies, drafts, documentation, articles, information, records, illustrations, drawings, plans, calculations and other materials supplied from the PRIVATE COMPANY's existing work products.

1.6.3. Scope of right of use

GIZ's rights of use pursuant to section 1.6 outlined here shall include the right to use the work results and existing work products without limitations with respect to time, content and location. In particular, GIZ shall be entitled to make use of these rights in the following manner:

- (a) duplication, distribution and making accessible to the public through any printed materials and media in any number of editions and for print-on-demand services;
- (b) intangible reproduction by oral presentation and public reproduction thereof, including on radio and television;
- (c) digitisation, electronic duplication, distribution and making accessible to the public, in particular through recording on image and audio storage media, including audiovisual storage media, and the use of machine-readable storage media (e.g. disks, CDs, DVDs, flash media), including storage, incorporation into computer programs, transfer to other data storage media and installations, processing for and entry in machine-readable databases; distribution and making accessible to the public may be in physical or intangible form, including online use, in particular through the internet or intranets, display on monitors and downloads;
- (d) adaptation (including shortened and supplemented versions), redesign and translation or transfer into other languages or forms of presentation, including the right to produce audio, image or text formats, subtitling and duplication, distribution, making accessible to the public, publication or public reproduction of such versions, including on radio and television, by GIZ or by third parties contracted by GIZ;
- (e) adaptation for film, radio broadcasting and television broadcasting purposes, in particular through corresponding adaptation for the purpose of filming and refilming, including on video, DVD, cine film and other technical processes, transmission on radio and television in any communication form and public reproduction, including repeated reproduction or reproduction outside the event, including through oral presentation, screening or performance, also for recording, transfer and reproduction on image or audio storage media and audiovisual media, in unprocessed or processed form, for reproduction, distribution and making accessible to the public in any version, number, edition or issue, for public performance, for public screening/presentation or reproduction.

1.6.4. Rights of use also to extend to forms of use unknown at the time of entry into the contract

The PRIVATE COMPANY shall further assign to GIZ an irrevocable, worldwide and non-exclusive right for the duration of statutory copyright and other property rights to use the work results within the meaning of section 1.6 outlined above in ways still unknown at the time of entry into the contract, including commercial use outside the measure. The right to use existing work product in unknown ways is also non-exclusive. If GIZ avails itself of such forms of use, GIZ and the PRIVATE COMPANY shall agree separate appropriate remuneration for this purpose.

- 1.6.5. Assignment to third parties by GIZ** GIZ is further entitled to assign to third parties the rights of use granted or to grant sublicences for these rights of use to third parties.
- 1.6.6. Freedom from third-party rights** The PRIVATE COMPANY warrants that the work results are free from any copyright or other third party rights that would prejudice the use of the work results to the extent described above. The PRIVATE COMPANY indemnifies GIZ against all third party claims arising from the granting or exercise of the right of use under this provision and shall reimburse GIZ for all costs incurred in connection with corresponding legal defence.
- 1.6.7. Compensation** The contractually agreed remuneration also includes the granting of rights of use.
- 1.7. Keeping of contract-related records** The PRIVATE COMPANY must keep contract-related records and work results for ten years after acceptance of the final report or, as the case may be, of the work, and must provide them for inspection at GIZ's request.
- 1.8. Reporting obligation relating to the provision of services** The PRIVATE COMPANY shall submit the reports specified in the contract according to type and frequency, in the agreed format and language, to GIZ on time. Unless otherwise agreed in the contract, the PRIVATE COMPANY shall prepare the reports in German and forward them in electronic form (both in a format that is MS Word compatible and as PDF) to GIZ, as well as three printouts (hard copy). The PRIVATE COMPANY shall supply further copies on written request against reimbursement of reasonable prime costs.
- 1.8.1. Required content** All reports and the associated documents must clearly indicate the ultimate commissioning party/client, any other financing parties and GIZ. The reports must be concise and limited to information directly relevant to the contract. The reports should state the degree to which objectives are achieved. They must be dated and hard copies need to be signed. Any sources and references must be stated.
- 1.8.2. Special reports** The PRIVATE COMPANY shall produce special reports without delay or prior request if there is an important reason. For this purpose, an important reason shall include substantial changes in the risk assessment of the measure, substantial changes in time, financial, technical or development policy aspects, and risks to the safety or health of assigned staff. GIZ may also request special reports on specific procedures/incidents and issues at any time. No additional remuneration shall be payable for such special reports.
- 1.9. Use of GIZ's corporate design** When designing materials relating to the measure which are intended for use with third parties (e.g. business cards, letterhead, emails, publications, presentations), the specifications in GIZ's corporate design manual (annex to the contract) must be followed. The design must also be agreed with GIZ's technical contact person or person responsible for the contract and cooperation, and in the event of direct cooperation also with the responsible partner institution in the country of assignment.
- 1.10. Obligation of the PRIVATE COMPANY to report obstacles to the performance of contract** The PRIVATE COMPANY must notify GIZ in writing without delay of all events and results which delay performance of the contract or make it impossible, or necessitate modification of the contract, the agreed obligations or the conditions. This applies in particular to the conducting of a feasibility study on investment measures if the PRIVATE COMPANY reaches the conclusion that the feasibility study will show that the investment measure would be uneconomical.

1.11. Obligation of the PRIVATE COMPANY to report on the status of the measure

GIZ can at any time inspect the status and results of the performance of contract including project accounting and project-related special accounts. The PRIVATE COMPANY must keep the necessary records available and provide the necessary information for this purpose. At the request of GIZ the PRIVATE COMPANY shall also provide information to other institutions or persons and organisations commissioned by GIZ as well as making audits possible, and agreeing to cooperate appropriately in any such audits.

1.12. Person-related data

GIZ processes personal data under this agreement only in accordance with the EU General Data Protection Regulation (EU GDPR) and other applicable data protection regulations. GIZ stores and processes personal data only to the extent required in connection with this agreement. The PRIVATE COMPANY has the right to access the personal data, to have it erased and rectified. The PRIVATE COMPANY is entitled to contact GIZ (datenschutzbeauftragter@giz.de) or the responsible public authority for the purpose of enforcing these rights.

The PRIVATE COMPANY shall comply with the requirements stipulated in the applicable data protection regulations and shall require its employees to maintain the strict confidentiality of all data.

If the applicable data protection law contains specific principles that must be applied to how the work or service is performed (e.g. a data protection by design or by default approach in order to ensure the data protection-friendly implementation of technical requirements), the parties shall prioritise practical implementation.

If the PRIVATE COMPANY processes personal data on behalf of GIZ in accordance with Article 28 of the GDPR, the processing shall be performed on the basis of an agreement concluded for this purpose.

1.13. Code of Conduct

The PRIVATE COMPANY shall be obligated to respect the rules and guidelines contained in the Code of Conduct (annex to the contract) in its dealings with GIZ employees.

1.14. Conflict of interest

The PRIVATE COMPANY shall at all times act in an impartial and loyal manner. The PRIVATE COMPANY shall not be permitted to accept any additional remuneration from third parties in connection with the contract. During the term of the contract the PRIVATE COMPANY shall not accept other orders where a conflict of interest is to be anticipated due to the nature of the order or due to the PRIVATE COMPANY's personal or financial connections with a third party unless prior written consent has been given by GIZ.

The PRIVATE COMPANY must not enter into any contracts with natural or legal persons with whom it has personal or financial ties in connection with contract-related procurements unless GIZ has previously agreed to this in writing.

In the event that a conflict of interest arises in the course of an existing contractual relationship, the PRIVATE COMPANY must disclose this to GIZ without delay and discuss and agree with GIZ any further steps to be taken. If the parties are unable to reach an agreement in such a case and GIZ terminates the contract, then the PRIVATE COMPANY is responsible for the termination. The same shall apply in the event that a conflict of interest is not disclosed immediately to GIZ, or if the PRIVATE COMPANY places a contract-related order for procurement with a legal or natural person with whom it is associated without GIZ having given its prior approval.

1.15. Violations of the Code of Conduct

The PRIVATE COMPANY may not

- directly or through a third party offer or give to a third party any gift or grant any other pecuniary and nonpecuniary advantages in connection with the award and/or performance of the contract; this shall also include any facilitation fees;
- directly or through a third party accept or demand gifts or any other pecuniary and nonpecuniary advantages for itself or others in connection with the award and/or performance of the contract.
- If the PRIVATE COMPANY violates one of these prohibitions and GIZ as a result terminates the contract, then such termination shall be deemed to be the responsibility of the PRIVATE COMPANY. The same applies if the PRIVATE COMPANY
- has directly or indirectly through a third party offered or given any gift or granted any other pecuniary and/or nonpecuniary advantage to a GIZ employee, relative or other person closely associated with GIZ for the PRIVATE COMPANY or a third party in connection with the award or performance of the contract;
- has agreed with one or more other companies to restrict the competition.

This provision shall not apply to low-value token gifts. Small or token gifts are occasional presents and other benefits which are granted in an appropriate and standard business framework and whose value per giver, recipient and calendar year does not exceed EUR 35.00.

1.16. Social Standards

For the implementation of the project, the development policy guidelines of the German government shall apply. The PRIVATE COMPANY shall therefore observe human rights due diligence in the context of the project and adhere to minimum social standards. In this respect the PRIVATE COMPANY shall consider the OECD Guidelines for Multinational Enterprises, in particular Chapter II and Chapter IV, the ILO's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, including ILO core labour standards, and the UN Guiding Principles on Business and Human Rights. Within the context of contract performance, the PRIVATE COMPANY is specifically obliged to comply with the regulations implementing the relevant ILO core labour standards in the law of the country of assignment. If the country of assignment has not ratified one or more core labour standards or not enacted them in national legislation, the PRIVATE COMPANY shall be obliged to comply with such regulations in the country of assignment which pursue the same goal as the core labour standard.

If, within the framework of the project, especially in the context of its supply chains, the PRIVATE COMPANY identifies a risk that may lead to human rights and minimum social standards being either abused or compromised, then it shall inform the GIZ without delay and begin whatever steps are necessary to eliminate or prevent these negative consequences. Should that not be possible, the PRIVATE COMPANY shall terminate its collaboration with the supplier.

1.17. Consequences of violations and contractual penalties

In each of the scenarios set out in sections 1.14 to 1.16 above, GIZ shall be entitled to exclude the PRIVATE COMPANY from future tenders for a limited period and to a reasonable extent.

In the event of violations of an obligation under the above provisions, the PRIVATE COMPANY shall be obliged to pay a contractual penalty of EUR 25,000 for each violation. If the pecuniary advantage given is greater than EUR 25,000, then the PRIVATE COMPANY shall owe a contractual penalty equal to the amount of the pecuniary advantage. This is without prejudice to any further claims for damages by GIZ. However, the contractual penalty shall be deducted from such claims for damages.

1.18. Environmental protection

The PRIVATE COMPANY shall undertake, within the framework of the project, in compliance with the OECD Guidelines for Multinational Enterprises, in particular Chapter VI, and in keeping with the laws, decrees and administrative practices of the target country, to do proper justice to the need to protect the environment, public health and security – including worker and building safety – and to observe recognised technology standards. This also includes the elaboration of emergency plans for buildings used in the context of the project.

The PRIVATE COMPANY shall avoid, mitigate or remove serious environmental and health hazards, and strive to achieve a constant improvement in its environmental outcomes.

If, especially in the context of its supply chains, the PRIVATE COMPANY identifies a risk that will have a negative impact on the environment or on public health and safety, including worker and building safety, it shall inform the GIZ immediately and take the necessary steps to remove or prevent these negative consequences. Should that not be possible, the company shall terminate its collaboration with the supplier.

1.19. Avoiding large-scale environmental impacts

In general

The PRIVATE COMPANY shall undertake to set up and maintain an environmental management system, and to make sure its employees have access to enough schooling and training in environmental, health and safety aspects, both with regard to handling dangerous substances and preventing environmental disasters, and with regard to more general aspects of environmental management, e.g. environmental testing procedures, PR work and environmental technologies.

Pollutants

The PRIVATE COMPANY shall undertake to avoid emitting pollutants and, where avoidance is not possible, to minimise emissions and/or monitor the amounts and intensity of the pollutants emitted. Pollutants in this context are substances that, due to recurrent, occasional or chance circumstances, end up in the air, water or soil and have local, regional and/or cross-border impacts.

Waste

The PRIVATE COMPANY shall undertake to avoid hazardous and non-hazardous waste and, where avoidance is not possible, to reduce the amount of waste produced so far that it does not pose a danger for health or for the environment. In cases where waste cannot be recycled or reused, the PRIVATE COMPANY shall treat and dispose of it in a way that does not harm the environment.

1.20. Training projects

The PRIVATE COMPANY shall undertake to ensure for its activities that access to education and training is made possible without discrimination, and that special account is paid to particularly disadvantaged groups (e.g. women, people with disabilities, members of indigenous peoples).

1.21. Agricultural projects

For agricultural projects, the PRIVATE COMPANY shall undertake not to use any genetically modified organisms or seed.

The PRIVATE COMPANY shall undertake to implement integrated pest management (IPM). Where chemical pesticides need to be used for pest control, the COMPANY shall choose chemical pesticides that are known to be effective against the target species but that have a low toxicity for humans and minimum effects on non-target species and on the environment. If the PRIVATE COMPANY uses chemical pesticides, they must be stored in secure containers, be labelled to ensure safe and proper use, and they must be produced by companies licensed by the pertinent authorities.

Should resettlement prove to be unavoidable in connection with the project, the PRIVATE COMPANY shall undertake to observe valid laws and pertinent human rights standards and principles for the protection of the people affected.

1.22. Check

The commitment made by the PRIVATE COMPANY with this agreement to observe human rights due diligence, and to adhere to environmental and social standards (pursuant to sections 1.16 to 1.21) can be reviewed if good reason can be shown. The PRIVATE COMPANY shall provide information and facilitate checks if requested by the GIZ and/or persons commissioned by the GIZ, and shall undertake to cooperate with any checks.

If the PRIVATE COMPANY violates any of the undertakings outlined in sections 1.16-1.21 and GIZ terminates the contract as a result, such termination shall be deemed to be the PRIVATE COMPANY'S responsibility.

1.23. Supplementary performance

If the PRIVATE COMPANY's performance is defective, GIZ may require supplementary performance; however, requiring supplementary performance is not a prerequisite for asserting other rights.

1.24. Liability

Contractual liability of the PRIVATE COMPANY is limited to EUR 300,000. If total remuneration exceeds this figure, the contractual liability of the PRIVATE COMPANY is limited to the amount of total remuneration. This limitation of liability shall not apply in the event of the PRIVATE COMPANY's intent or gross negligence. It further does not apply to loss of life, bodily injury or damage to health.

GIZ is entitled to claim for loss or damage suffered by the recipient of the work and services as a result of non-compliance with the PRIVATE COMPANY'S contractual obligations.

1.25. Prohibition of assignment by the PRIVATE COMPANY

The PRIVATE COMPANY is not entitled to assign claims under the contract unless it has obtained GIZ's prior written approval.

1.26. Partial invalidity

Should individual provisions of this contract be or become invalid or unenforceable, the validity of all other provisions under the contract shall remain unaffected. The invalid or unenforceable provision is to be replaced by a valid and enforceable rule, the effects of which most closely replicate the economic objective which was pursued by the contractual parties with the invalid or unenforceable provision. This shall apply accordingly if it emerges that the contract has gaps or omissions.

2. Special obligations for performance of the contract in the country of assignment

2.1. Security precautions and crisis management

The PRIVATE COMPANY shall give each assigned expert, his or her family members of legal age and any persons of legal age permanently living in their household who will be travelling to the country of assignment a copy of the 'Information sheet on security precautions and on emergency and crisis incidents abroad' (annex to this contract) before their departure. The PRIVATE COMPANY warrants that the above persons will comply with the rules contained in the information sheet.

The PRIVATE COMPANY is obliged to provide information to GIZ on request at any time with respect to the assigned expert and his/her family members who are currently residing in the country of assignment under the contract with GIZ, using GIZ's data sheets for this purpose (annex to the contract). These data must be reported within six hours of informal request by GIZ directly to GIZ's crisis officer (krisenbeauftragter@giz.de, fax: ++49 619679-7321).

To ensure rapid local response in emergency and crisis, it is recommended that the PRIVATE COMPANY and the assigned expert enter the most important information in a Personal Data Sheet (annex to the contract) and deposit this with GIZ in the country of assignment for the term of the assignment.

2.2. Conduct in a crisis

GIZ may order the immediate departure from the country of assignment if political reasons or crises make this necessary. In a crisis the PRIVATE COMPANY and the assigned expert must obey GIZ's instructions without delay and possibly participate in evacuation measures. In the event of a withdrawal from the crisis area, any official return is subject to prior written approval by GIZ.

If the PRIVATE COMPANY and/or the assigned expert do not comply with the obligations under this provision, GIZ may suspend payments to the PRIVATE COMPANY and may demand that the PRIVATE COMPANY reimburse any additional expenses incurred by GIZ and/or the German Federal Government as a result of such failure to comply.

3. Pricing, remuneration and invoicing

- 3.1. Pricing**
- In its commissions to GIZ, the German Federal Government requires the application of Regulation PR 30/53 on the Prices for Public Contracts of 21 November 1953 – *Bundesanzeiger* (federal gazette) No. 244 of 18 December 1953 – with the Guiding Principles for Pricing on the Basis of Prime Costs. The price in the contract is a maximum price and includes pro-rata payment of the PRIVATE COMPANY's overall costs up to an agreed maximum limit. In addition to the contractually agreed price the PRIVATE COMPANY may invoice value added tax (VAT) at the statutory rate.
- 3.2. Price reductions**
- Rebates, discounts, refunds, tax concessions or refunds and all other price reductions obtained by the PRIVATE COMPANY in providing work and services at costs reimbursed by GIZ must be taken and passed on to GIZ or deducted from the invoice.
- 3.3. Principles of remuneration**
- Remuneration is paid for the contractually agreed remuneration items at the contractually agreed percentage; the amounts agreed are the maximum amounts in each case. Only prime costs are eligible for reimbursement.
- Creation of a separate cost unit**
Only costs posted to the separate cost unit are eligible for reimbursement.
- 3.4. Remuneration items**
- The following regulations apply to determining costs eligible for reimbursement (in accordance with the annex to the contract 'Guidelines on costs eligible for reimbursement and financial processing in development partnerships with the private sector')
- 3.4.1. Remuneration for the PRIVATE COMPANY's own employees**
- Prime costs are eligible for reimbursement. These include direct personnel costs including the statutory ancillary personnel costs.
- 3.4.2. Fees for external experts**
- If the PRIVATE COMPANY assigns external experts, only the amounts invoiced to and paid by the PRIVATE COMPANY are eligible for reimbursement.
- 3.4.3. Travel costs, air tickets**
- Travel costs for the PRIVATE COMPANY's own and external experts are billed on the basis of per-diem and overnight accommodation allowances in accordance with section 4 (5) of the German Income Tax Act (EStG) and the published table of rates for foreign business trips.
- Only economy class air tickets are to be booked as a general rule. Advantage must be taken of any air fare reductions. Rebates, discounts, refunds and any other price reductions must be taken into account when posting costs.
- 3.4.4. Costs of materials and equipment**
- Purchase of materials and equipment**
If the PRIVATE COMPANY procures new materials and equipment, the purchase price is eligible for reimbursement.
- Self-manufactured materials and equipment**
For self-manufactured materials and equipment, only the prime costs (not including mark-up or development costs) are eligible for reimbursement.
- Used machinery**
If the PRIVATE COMPANY acquires used machinery from third parties, only the amounts invoiced to and paid by the PRIVATE COMPANY are eligible for reimbursement.
- If a used machine is brought in from the PRIVATE COMPANY's existing inventory, only the book value for which evidence can be provided is eligible for reimbursement.

3.4.5. Fixed assets

In the case of fixed assets still available to the PRIVATE COMPANY for commercial use after the term of the contract, only the depreciation accrued during the term of the contract are eligible for reimbursement.

In all cases, the PRIVATE COMPANY is to guarantee that all equipment is in good working order for the term of the contract, and it is obliged to cover the cost of maintenance and any necessary repairs during this time.

3.4.6. Other costs

Other costs are eligible for reimbursement as contractually agreed.

3.5. Offsetting costs

On submission of the final invoice, overruns on individual items may be offset against omitted or reduced remuneration items if GIZ has approved the offset in writing before the costs in question are incurred. GIZ's approval is not required for offsetting up to EUR 2,500 for each remuneration item.

An increase in the individual rates or agreed prices is not possible.

3.6. Payment terms

The PRIVATE COMPANY's claims are due after receipt of an invoice containing all the required details (together with all necessary receipts/vouchers). Payment shall be made by GIZ no later than 30 days after justified claims fall due.

3.7. Annexes to the general provisions

The following annexes constitute an integral part of these Supplementary Terms and Conditions:

1. Guidelines on costs eligible for reimbursement and financial processing in development partnerships with the private sector
2. Binding Terms of Reference for engaging a public auditor/auditing firm
3. GIZ Corporate Design Manual (for contractors)
4. GIZ Code of Conduct
5. Information sheet on security precautions
6. Contact information in the event of an emergency or crisis (to be completed by contractors)
7. Reachability form (to be completed by assigned experts)
8. Personal data sheet (optional, may be completed by assigned experts)
9. HIV/AIDS workplace programme
10. GIZ rules for inventorising and handing over equipment and materials
11. Record of surrender of equipment and materials
12. Justification of contract award
13. Guarantees
 - 13.1 Performance guarantee (template)
 - 13.2 Advance payment guarantee (template)
 - 13.3 Defects liability guarantee (template)

The relevant forms, documents and explanations of the above annexes to the Supplementary Terms and Conditions can be found on the GIZ website www.giz.de under Procurement, Important documents.