

## LUMINUS GENERAL TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

### **1 Scope of application of the Terms and Conditions**

*Scope of application of the Terms and Conditions* - These Terms and Conditions shall apply to all Agreements with respect to the purchase of Professional Services.

*Entire Agreement* - The Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter thereof and supersedes and replaces all prior agreements or understandings, written or oral, with respect to the same subject matter still in force between the Parties.

*Supplier's terms and conditions* - By concluding the Agreement, the Supplier shall waive all its general or specific terms and conditions, whenever and in whatever form these are communicated, even when these state that they apply exclusively. Notwithstanding any provision to the contrary in any contractual document, if Luminus' Purchase Order(s), Specific Agreement(s) and/or Frame Agreement refer(s) to an offer received by the Supplier, such reference shall always exclude any reference to the terms and conditions of Supplier in Supplier's offer.

*Order of precedence* - If and to the extent that there is any conflict between the provisions of the documents constituting the Agreement the conflict shall be resolved in accordance with the following order of precedence: the Specific Agreement(s) (if any), the Frame Agreement (if any), the Purchase Order(s) (except for any reference to the terms and conditions of Supplier in Supplier's offer), the Terms and Conditions, the Specifications.

### **2 Definitions**

In the Agreement, unless the context evidently requires otherwise, the following expressions have the following meaning:

**Agreement:** the entirety of contractual documents constituting the agreement between Luminus and Supplier, consisting of the (i) Frame Agreement, the Specific Agreement(s) (if any), the Purchase Order(s), these Terms and Conditions and the Specifications, or (ii) these Terms and Conditions, the Purchase Order or Purchase Orders with the same subject matter and the Specifications;

**Business Days:** every day except Saturdays, Sundays and official public holidays in Belgium;

**Confidential Information:** (i) information that is designated as "confidential"; (ii) information which by its nature is to be reasonably considered as confidential; (iii) any Luminus Data or Supplier Data; and/or (iv) the provisions of the Agreement;

**Day:** a calendar day;

**Deliverable:** any output (in whatever form) of Professional Services which may be developed, created or modified by the Supplier pursuant to the Agreement;

**Documentation:** instructions and manuals supplied with or to be supplied with the Professional Services in accordance with the Agreement, whether intended for support and/or technical staff or for end-users, and whether in printed or in electronic form;

**Luminus:** Luminus SA/NV, a company incorporated and existing under the law of Belgium, with its registered office at Boulevard Roi Albert II/Koning Albert II-laan 7, 1210 Brussels and registered with RPM Brussels under number 0471.811.661;

**Luminus Affiliate:** any entity, whether incorporated or not, that is controlled by, is under common control with, or controls Luminus, where "control" means the ability, whether directly or indirectly, to direct the affairs of another by means of majority ownership, contract, or otherwise.

**Luminus Data:** any data provided by Luminus to the Supplier and/or data related to Luminus or its activities and/or any data relating to Luminus or data generated by the Supplier in the framework of the supply of the Professional Services, including data relating to Luminus' customer database, procedures and knowledge, which may include personal data;

**Luminus Material:** any document, methodology or process, documentation, data, software or other material in whatever form for which the Intellectual Property Rights are owned by or licensed to Luminus, together with any modifications or enhancements thereto;

**Luminus Supplier Portal** or **LSP:** a cloud-based platform to which the Supplier shall be granted access as part of the Luminus supplier onboarding process;

**Fees:** the charges paid or payable by Luminus to Supplier for the provision of the Professional Services in accordance with the provisions of the Agreement;

**Final Acceptance:** means the milestone of final acceptance of the Deliverable under the Agreement.

**Final Acceptance Criteria:** means the criteria set forth in the Frame Agreement, the Specific Agreement(s) and/or the Purchase Order that need to be fulfilled in order to achieve the milestone of Final Acceptance in accordance with the acceptance procedure set forth under clause 17 of these Terms and Conditions.

**Force Majeure Event:** any event beyond the control of the affected Party, the occurrence of which could not reasonably have been foreseen and the consequences of which could not be overcome, which prevents the affected Party from performing some or all of its obligations under the Agreement. Supplier's Staff shortage or labor disputes shall not be considered Force Majeure Events;

**Frame Agreement:** any contractual document signed by duly authorized representatives of both Parties, (i) under which one or multiple Purchase Orders are issued by Luminus or (ii) under which one or multiple Specific Agreements are signed, which refers to these Terms and Conditions, regardless of the title given to the contractual document by the Parties; the Framework Agreement shall not be considered as a Purchase Order or any commitment to purchase Professional Services;



**Guarantee Period:** the period between Provisional Acceptance and Final Acceptance which should be of three (3) months unless otherwise agreed in the Agreement, whereas the Guarantee Period shall never expire before the Final Acceptance and, as a consequence, be extended if necessary;

**Intellectual Property Rights:** all industrial and intellectual property rights, including, but not limited to copyright, software protection rights, database rights, rights in unregistered trade marks, unregistered design rights, patents, utility models, supplementary protection certificates, registered trade marks, designs, and any other similar rights in any part of the world;

**Party or Parties:** Luminus and/or the Supplier, as applicable;

**Professional Services:** all professional services provided by the Supplier to Luminus under the Agreement including, but not limited to, consultancy services, development services, installation services, implementation services; the term Professional Services shall always include the Deliverable(s) set forth in the Agreement;

**Provisional Acceptance:** means the milestone of provisional acceptance of the Deliverable under the Agreement.

**Provisional Acceptance Criteria:** means the criteria set forth in the Frame Agreement, the Specific Agreement(s) and/or the Purchase Order that need to be fulfilled in order to achieve the milestone of Provisional Acceptance in accordance with the acceptance procedure set forth under clause 17 of these Terms and Conditions.

**Purchase Order:** document sent by Luminus via the Luminus Supplier Portal and to be acknowledged by the Supplier in accordance with clause 8.1, which sets out the Professional Services purchased under the Agreement and which refers to these Terms and Conditions;

**Specifications:** the contractual and/or technical specifications with respect to the Professional Services purchased by Luminus, including but not limited to service level agreements, statement of works and technical details, which are stated (i) in (a) document(s) referred to in the Purchase Order(s), the Specific Agreement(s) and/or Frame Agreement which, and/or (ii) in the Purchase Order itself;

**Specific Agreement:** any contractual document signed by duly authorized representatives of both Parties which refers to a Frame Agreement and under which one or multiple Purchase Orders are issued by Luminus, regardless of the title given to the contractual document by the Parties.

**Supplier:** the natural or legal person or association with whom Luminus has concluded the Agreement, as indicated in the Frame Agreement, the Specific Agreement(s) and/or the Purchase Order(s);

**Supplier Data:** any data provided by Supplier to Luminus and/or data related to Supplier or its activities and/or any data relating to Supplier or data generated by Luminus in the framework of this Agreement, including data relating to Suppliers' customer database, procedures and knowledge, which may include personal data;

**Supplier Material:** any document, methodology or process, documentation, data, software or other material in whatever form for which the Intellectual Property Rights are owned by or licensed to Supplier;

**Staff:** those persons employed or engaged by the Supplier on a self-employed basis from time to time to provide the Professional Services. The definition of "Staff" will also include the staff of any subcontractor of Supplier appointed under the Agreement who are providing the Professional Services from time to time;

**Terms and Conditions:** the terms and conditions set forth in this document.

### **3 Object and performance of the Agreement**

The Supplier agrees to provide to Luminus the Professional Services strictly in accordance with the provisions of the Agreement.

### **4 Amendments to the Agreement**

When Luminus, before or during the performance of the Agreement, wants to change the content of the Agreement, it notifies the Supplier as soon as possible. Parties must, within a reasonable period of time, but in any case not exceeding thirty (30) Days after the date of receipt of the aforementioned notification, try to reach an understanding about these changes to the Agreement, which can only be materialized in writing (i) by the issuance by Luminus of an addendum to the relevant Agreement(s), and/or (ii) by the signature of an addendum to the relevant Frame Agreement and/or Specific Agreement(s) by duly authorized representatives of both Parties.

### **5 Relief event**

The Supplier shall notify Luminus in writing without delay (and in any case no later than within ten (10) Business Days after Supplier has become aware or should reasonably have been aware of any non-compliance by Luminus) if Luminus fails to, or threatens to fail to, comply with any of its obligations under the Agreement. This notification shall be addressed according to the specific rules on governance or to the contact person, as mentioned in the Agreement. Unless Supplier has duly notified Luminus of this in the manner as stated above, and has used all reasonably efforts to perform its obligations (and/or mitigate the impact of Luminus' failure), Supplier cannot invoke such non-compliance by Luminus in order to justify non-compliance with any of its own obligations.

### **6 Fees, invoicing and payment**

6.1 *Fees* - In consideration for the due and proper provision of the Professional Services, Luminus agrees to pay the Supplier the Fees as set out in the Agreement.

The Fees (i) can only be changed in accordance with clause 4 of the Terms and Conditions (with the exception of indexation as stated below); (ii) include all costs and expenses incurred by the Supplier, its Staff and its subcontractors (if any) in the performance of the Agreement; and (iii) include all taxes, duties and other royalties, and are exclusive of value added tax.

For Professional Services based on a single daily rate or multiple rates according to profile based rate cards and if the duration of the Agreement, including all extensions, exceeds one (1) year, Supplier has the right to adjust the rates yearly on January 1<sup>st</sup> on the basis of

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the following formula:  $P1 = P0 * (0,2 + 0,8 * I1/I0)$  (where P1 = the new periodical Fee (e.g.: hourly, daily or monthly), P0 = the initial periodical Fee, I1 = the Agoria index for wages of the month of December before the price increase and I0 = the Agoria index for wages of the month in which the concerned Services concerned came into force). This paragraph does not apply to existing Purchase Orders but only upon extension of Time and Material Purchase Orders or upon agreement of new specific agreements under a frame agreement. Supplier shall not be entitled to make any other price increase or indexation.

Unless otherwise agreed in the Agreement and only at the specific prior written request or prior written approval from Luminus, in case of (i) overtime outside normal business hours (normal business hours = 7am-7pm on weekdays) or on a Saturday, the Supplier is requested to charge that overtime at 120% of the agreed daily rates and (ii) overtime on a Sunday or on Belgian public holidays, the Supplier is entitled to charge that overtime at 150% of the agreed daily rates.

Unless otherwise agreed in the Agreement and only at the specific prior written request or prior written approval from Luminus, in case of on call duty outside normal business hours as stated above and for a minimum duration of 2 subsequent hours, the Supplier is entitled to receive a fixed fee of 60 EUR per day on which such on call duty is requested.

No amounts will be payable to the Supplier for the provision of Professional Services unless and to the extent expressly provided in the Agreement and unless ordered by means of a Purchase Order sent to the Supplier.

The Fees for the provision of Professional Services shall be deemed to include (i) any services, functions and responsibilities (including incidental services, functions or responsibilities) not expressly specified in the Agreement as within the scope of Supplier's responsibilities, but reasonably and necessarily required for, or inherently related to, the proper performance and provision of the Professional Services; (ii) any assistance Luminus may reasonably request in respect of the supply and/or receipt of the Deliverable(s) and/or the Professional Services.

**6.2 Invoicing** – All exchanges and communication between Luminus and the Supplier with respect to invoicing and related documentation under the Agreement shall take place via the Luminus Supplier Portal (LSP). The Supplier will submit via the LSP the Fees to be invoiced for the performance of its obligations under the Agreement, the time reports (if applicable) and a description of the performed tasks and, if applicable, the Documentation to Luminus for approval prior to actual invoicing. After approval by Luminus via the LSP, the Supplier will send the invoice to Luminus via the LSP.

The Supplier shall invoice Luminus in accordance with the payment schedule and provisions set out in the Agreement.

**6.3 Payment** - Undisputed invoices submitted in accordance with clause 6 are payable within sixty (60) Days as from the date of the invoice.

The Supplier may verify the payment status of its invoices via the LSP. If any payment to the Supplier is delayed, the Supplier shall notify Luminus either by registered letter accompanied by a copy of the relevant invoice, or via the LSP. If Luminus fails to pay the undisputed invoice or part thereof within thirty (30) Business Days of receiving such notice, then the Supplier will be entitled to charge interest to an outstanding amount at a rate equal to the interbank offered rate for one month in the euro zone (EURIBOR-one month). The interbank rate applicable shall be the rate in force on the last Business Day of the month preceding the month of issue of the invoices, increased by 3 interest points.

Payment by Luminus will not affect any claims or rights which Luminus may have against the Supplier. Payment will not amount to any admission by Luminus that the Supplier has satisfactorily performed its obligations under the Agreement. If, after payment, should appear that the invoices were not correct, the Supplier must make the corrections, up to three (3) years retroactively.

**6.4 Fixed price** – Except as otherwise agreed between the Parties in the Agreement, the Fees for the provision of Professional Services are deemed to be at a fixed price for the entire term of the Agreement including any extension/renewal of the Agreement.

**6.5 Training** – The Parties agree that time spent by Supplier and/or Supplier's Staff on training including but not limited to training courses, project inductions, refresher trainings or acclimation programs, (i) shall never be considered as Professional Services and (ii) shall never be invoiced to Luminus. All costs and charges in relation to such training shall always be at Supplier's exclusive charge.

## **7 Follow-up agreements and Luminus Affiliates**

**7.1 Follow-up agreements** – Supplier commits, at Luminus' request, to negotiate in good faith with Luminus to enter into follow-up agreements that are in relation to the Agreement and to propose conditions that are at least at arm's length with the conditions in the related Agreement.

**7.2 Luminus Affiliates** – Supplier expressly authorizes Luminus Affiliates to make reference to and use this Agreement without having to negotiate new conditions. For this purpose any reference to Luminus will be interpreted as a reference to the Luminus Affiliate.

## **8 Term and termination**

**8.1 Term** - The Agreement shall enter into force (i) at the moment the Frame Agreement is signed or (ii) if no Frame Agreement is signed, at the moment the Purchase Order is acknowledged by the Supplier in accordance with this clause 8.1, or (iii) if no Frame Agreement is signed but multiple Purchase Orders have the same subject matter, at the moment the first Purchase Order of these related Purchase Orders is acknowledged by the Supplier in accordance with this clause 8.1. The Supplier shall confirm, via the Luminus Supplier Portal, his acknowledgment of the Purchase Order within the time-period specified therein, or within 5 (five) calendar days if no such period is specified. If the Supplier's acknowledgment is not confirmed within such time-limit, the Purchase Order will be deemed unconditionally accepted by the Supplier. In case of time and material based Professional Services, Luminus shall be entitled to extend the initial term of the Agreement for a maximum additional period of twelve (12) months by sending to the Supplier a written notice at least one (1) month before the end of the initial term of the Agreement.

**8.2 Termination for convenience** - If the Agreement indicates an undefined term, Luminus may terminate the Agreement, in whole or in part, for convenience at any time upon providing thirty (30) Days' notice without any compensation being due to the Supplier. Unless otherwise agreed by Luminus in writing, if the Agreement indicates a defined term, Luminus may terminate the Agreement, in whole or in

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part, prior to its expiration for convenience at any time upon providing thirty (30) Days' notice without any compensation being due to the Supplier.

8.3 *Termination for cause* - Either Party may terminate the Agreement immediately, without intervention of a judge, by written notice to the other Party, if the other Party (i) fails to remedy its breach of its obligations under the Agreement within thirty (30) Days of receipt of written notice of the breach; (ii) commits a breach of the Agreement and the breach is not capable of remedy; or (iii) ceases to trade or is unable to pay its debts as they fall due, makes an arrangement with its creditors or goes into administration, receivership, liquidation (other than as part of a solvent reorganisation), bankruptcy, judicial factory or any analogous insolvency proceedings in any jurisdiction.

8.4 *Consequences of termination* - Termination by Luminus in accordance with the terms of the Agreement or termination by the Supplier in violation of the terms of the Agreement shall not give rise to any obligation to compensate the Supplier other than for the Services ordered and delivered before the termination of the Agreement or to pay any penalty on behalf of Luminus.

Upon termination of the Agreement, for any reason whatsoever, the Supplier shall immediately and promptly (i) vacate and restore to their original state Luminus' premises; and (ii) return to Luminus any Luminus Data, Luminus Material, Deliverables in the process of producing, Documentation, Luminus' Confidential Information etc.

8.5 *Exit assistance and Business continuity* - Upon termination of the Agreement for whatever reason, Supplier shall use its best endeavours to cooperate with Luminus and to assist Luminus during and for the purpose of (i) the migration of Luminus Data, Luminus Material, Documentation and all other data in which Luminus have proprietary or license rights, and (ii) business continuity. Except if the Agreement is terminated following cause of the Supplier or for convenience by the Supplier (if explicitly foreseen), the reasonable costs for such exit assistance will be borne by Luminus. Prior to the exit assistance, both Parties must agree on the costs for such exit assistance, if possible, based on the Supplier's rate cards.

## **9 Force Majeure and hardship**

9.1 *Force Majeure* - Neither Party will be liable for any delay in performing their obligations under the Agreement where such delay is directly caused by a Force Majeure Event that has been notified to the other Party in writing as soon as reasonably possible the other Party of the reasons for the delay and the likely duration of the delay. The latter Party may, if that delay continues for more than one (1) month, terminate the Agreement immediately, in whole or in part, by giving notice in writing to the affected Party without any compensation or indemnity being due to the affected Party.

9.2 *Hardship* - In the event of unforeseen circumstances, the consequences and effects of which (i) are fundamentally different to what was contemplated by Luminus at the time of entering into Agreement and (ii) prejudicing Luminus' commercial and/or financial interests, Luminus reserves the right to demand a global revision of the Agreement. If, after a period of one (1) month from the revision request, the Parties do not reach an agreement on the amendment of the Agreement, Luminus may, without compensation or notice, unilaterally terminate the Agreement wholly or partially with immediate effect and without any indemnity, cost or expense.

## **10 Intellectual Property Rights**

10.1 *Luminus Material* - Luminus (and/or its third party licensors) shall retain all rights (including Intellectual Property Rights), title and interest in Luminus Material. The Supplier shall have no rights in Luminus Material, except for the non-exclusive and non-transferable right to use Luminus Material only as is strictly necessary for the performance of the Agreement.

10.2 *Supplier Material* - The Supplier (and/or its third party licensors) shall retain all rights (including Intellectual Property Rights), title and interest in the Supplier Material.

10.3 *Supplier warranty* - The Supplier declares that it is the rightful owner of the Intellectual Property Rights to all Professional Services (including Deliverables) under the Agreement, and that it is entitled to assign or license those rights in accordance with the terms of the Agreement. If those Intellectual Property Rights are the property of third parties, the Supplier shall inform Luminus thereof in advance and guarantees that it has requested and obtained those third parties' written authorisation to grant to Luminus the assignment or license of their Intellectual Property Rights in accordance with the terms of the Agreement. The Supplier shall be solely responsible for taking the necessary steps, under the laws and regulations in force, to ensure the opposability to third parties of the assignments or licenses granted to Luminus by the Supplier or by such third parties. The Supplier guarantees that the Professional Services purchased under the Agreement and used by Luminus' for its intended purpose do not infringe any third party's rights including third party's Intellectual Property Rights.

10.4 *Indemnification* - The Supplier shall defend and indemnify at its own expense Luminus against any claim, loss, damage or cause of action based on an infringement of any third party's Intellectual Property Rights by the Professional Services.

The Supplier will have sole control of the defence and defend at its sole expense Luminus against any suits or proceeding arising out of the foregoing. The Supplier shall obtain Luminus' prior authorisation for any decision having an impact on Luminus' image or involving any consequences whatsoever for Luminus.

If the Professional Services are subject to an action for infringement from a third party such as mentioned above, the Supplier shall, at its own expenses and within a reasonable timeframe to be agreed by Luminus in light of the impacts caused by such action on Luminus' commercial and operational use of the Professional Services, either (i) procure for Luminus the right to continue using the Professional Services, or (ii) modify the Professional Services or replace the Professional Services by a non-infringing functional equivalent. If such is not feasible within the timeframe agreed by Luminus, Luminus may immediately terminate the Agreement for breach without court intervention upon written notice and the Supplier shall refund to Luminus any amounts paid under the Agreement without prejudice to any damages that Luminus could claim.

Supplier shall not be held liable if the infringement of the third party's Intellectual Property Rights is exclusively based on one of the following situations: (i) modification of any Professional Services by parties not authorized by Supplier, (ii) use of any Professional Services in combination with other products prohibited by Supplier, or (iii), Luminus' continued use of Professional Services after having received written notice from Supplier to discontinue only to the extent that such notice has been made in accordance with the terms of the

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Agreement.

10.5 *Intellectual Property Rights in the Deliverable* – Unless otherwise agreed in the Agreement, without prejudice to clause 10, the Supplier assigns, worldwide and perpetually, as from the date of creation the ownership and Intellectual Property Rights in all Deliverables to Luminus, such that Luminus has the sole right to obtain, hold and renew, in its own name and/or for its own benefit, Intellectual Property Rights or other titles in respect of such Deliverables. Without limiting the generality of the foregoing, in the event the Deliverables contain Supplier Material, the Supplier will grant to Luminus a perpetual, worldwide, non-exclusive, transferable, sublicenseable and non-revocable license to use, copy, modify, and adapt the Supplier Material as incorporated into the Deliverable so as to gain the full benefit of the Professional Services and Deliverables provided by the Supplier.

10.6 *Third party material* - The Supplier shall not incorporate any third party material in any Deliverable unless Luminus has expressly agreed to the same. In such event, the Supplier shall ensure that it is able to grant and does then grant to Luminus a license in the same terms as set out in clause 10.5 save as may expressly be agreed to the contrary in the Agreement.

## **11 Luminus Data and personal data**

11.1 Luminus Data shall be considered private and confidential. Luminus shall retain all rights, title and interest in Luminus Data.

As part of the provision of the Professional Services and for the entire duration thereof, Supplier will be led to process (use, modify, store, ...) personal data within the meaning of applicable data protection law and the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

With respect to such processing, Supplier shall:

- (a) process such personal data only for the specific fulfilment of its contractual obligations arising from the Agreement and in accordance with Luminus' documented instructions,
- (b) only process such personal data in a Member State of the European Union or European Economic Area, unless specifically authorised in writing by Luminus;
- (c) ensure that persons authorised to process such personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- (d) implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, taking into account in particular the risks that are presented by processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data transmitted, stored or otherwise processed, and ensure that any natural person acting under the authority of Supplier who has access to personal data does not process them except on instructions from Luminus, unless he or she is required to do so by Union or Member State law;
- (e) respect the following conditions for engaging another processor:
  - Supplier shall not engage another processor without prior specific or general written authorisation of Luminus. In the case of general written authorisation, Supplier shall inform Luminus of any intended changes concerning the addition or replacement of other processors, thereby giving Luminus the opportunity to object to such changes.
  - Where Supplier engages another processor for carrying out specific processing activities on behalf of Luminus, Supplier shall impose on that other processor the same data protection obligations as set out in this Clause 11, by way of a contract or other legal act under Union or Member State law. Where that other processor fails to fulfil its data protection obligations, Supplier shall remain fully liable to Luminus for the performance of that other processor's obligations.
- (f) taking into account the nature of the processing, assist Luminus by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of Luminus's obligation to respond to requests for exercising the data subject's rights under applicable data protection legislation;
- (g) taking into account the nature of processing and the information available to Supplier, assist Luminus in ensuring compliance with the obligations under applicable data protection legislation in relation to security of processing, to the notification of any breach of personal data to supervisory authorities and data subjects where relevant, to the carrying out of data protection impact assessments where required and to prior consultation of the supervisory authority;
- (h) at the choice of Luminus, delete or returns all such personal data to Luminus after the end of the provision of the Professional Services and delete existing copies unless European Union or Member State law requires storage of the personal data;
- (i) make available to Luminus all information necessary to demonstrate compliance with these obligations and allow for and contribute to audits, including inspections, conducted by Luminus or another auditor mandated by Luminus.

The Supplier shall indemnify Luminus for claims of any third party that arise as a result of Supplier's breach of this clause 11 and the applicable European and Member State law and regulation regarding data protection and/or privacy.

11.2 the Supplier represents and warrants, including for any (parts of a) Deliverable created prior to the signing of this Agreement, that it has complied with the ENISA principles of privacy by design and has integrated them to the extent relevant within the Deliverable.

To the extent that any (part of a) Deliverable is created subsequently, the Supplier shall comply with such principles in their creation or configuration.

Upon delivery of any Documentation related to the Deliverable in accordance with this Agreement and at the latest upon submission of the Deliverable for Luminus's approval, the Supplier shall provide Luminus with a report documenting how each such ENISA principle (to the extent relevant) is taken into account in the Deliverable and its configuration.

## **12 Liability**

Notwithstanding any provision to the contrary in the Agreement, nothing in the Agreement excludes or limits either Party's liability for (i) fraud, wilful misconduct, gross negligence, damage to material or real property (real estate and tangible property), death and/or bodily injury, and (ii) Supplier's non-compliance with clauses 10, 11, 14 and 16.5 of the Terms and Conditions.

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Without prejudice to the first paragraph of this clause 12, the total liability of either Party to the other shall not exceed the greater of (i) one million euros (1.000.000 EUR), or (ii) the Fees under the Agreement.

Without prejudice to the first paragraph of this clause 12, neither Party shall be liable to the other for loss of profit or revenue, loss of customers or business interruption costs.

### **13 Insurance**

The Supplier warrants that, during the entire term of the Agreement, it has taken out insurance to cover its general liability (including without limitation public liability, contractual liability and liability for property and personal injury) in the context of the performance of the Agreement. The Supplier also warrants that this insurance is contracted with a respectable insurance company and for amounts normally practicable in the sector. Upon request of Luminus, the Supplier shall furnish to Luminus a certificate of insurance evidencing such coverage.

### **14 Confidentiality**

The Parties undertake to keep strictly confidential and safe all Confidential Information. Without the disclosing Party's prior written consent, the receiving Party shall not use, copy, adapt, alter, disclose or grant access to Confidential Information, except to its personnel, authorized subcontractors or other third parties to the extent required to perform its obligations under the Agreement provided that these persons have been instructed as to the confidential nature of the Confidential Information and have been informed of their obligations of confidentiality that are no less onerous than those described in this clause 14. The receiving Party shall promptly notify the disclosing Party of any unauthorised possession, use or knowledge, or attempt thereof, of the Confidential Information by any third party of which the receiving Party becomes aware.

The receiving Party shall return or destroy all Confidential Information it received in connection with the Agreement upon request of the disclosing Party within thirty (30) Days of such request and, in the case of destruction of Confidential Information, certify, on reasonable notice, that such destruction has taken place.

The Supplier and Supplier's Staff shall agree in writing that Supplier's Staff must keep Confidential Information strictly confidential in accordance with the terms and conditions of the Agreement. Supplier shall provide Luminus with a copy of the written agreement with its Staff at Luminus' first request

The obligations of the receiving Party under this clause 14 shall be valid for the duration of the Agreement and shall remain in effect five (5) years after the Agreement is terminated for whatever reason.

### **15 Inspections and audits**

Subject to ten (10) Days prior notice and during normal business hours as stated above, Luminus and/or Luminus' supervising authorities or auditors have the right to conduct an audit, with a maximum of one (1) per calendar year, in order to ascertain whether the Supplier fulfils and is able to fulfill its obligations towards Luminus, more particularly with regard to the quality, state and nature of the Professional Services to be provided and their timely delivery and/or provision. Any direct costs related to the inspection and audits shall be borne by Luminus, unless the audit reveals a breach of its obligations by Supplier.

### **16 Supplier and Supplier Staff**

**16.1 Authority and obligations** - In no case shall Luminus exercise, or be deemed to exercise, a partial or complete employer's authority on members of the Staff. The members of the Staff shall never receive instructions from Luminus (other than general guidelines relating to well-being at the work place and safety) concerning the actual execution of the Agreement. Notwithstanding the above, in application of article 31 of the Act of 24 July 1987 on temporary and interim work as well as the putting of workers at the disposal of third-party users, Luminus shall be entitled to give instructions to the Supplier's employees solely in connection with the execution of the Agreement with regards to the technical, operational and practical aspects (including "well-being at work place / safety" aspects) of the performance of the Professional Services, which (i) include planning and scheduling the Professional Services, opening and closing times of Luminus site/workplace, access to Luminus locations, premises and/or facilities, access to Luminus IT infrastructure and related IT security processes, and (ii) can be listed further in writing without a need for an amendment of the Agreement. The Parties acknowledge that giving such instructions will not be considered exercising any employer's authority by any means. In case a Supplier or a member of its Staff is providing the Professional Services on a self-employed basis, they shall not receive any instructions from Luminus (other than general guidelines relating to well-being at the work place and safety) in relation to the provision of the Professional Services, nor will Luminus perform any complete or partial employer's authority.

**16.2 Supplier's representation** - The Supplier warrants that no member of the Staff shall, under any circumstance or at any time, be presented or considered as an employee of Luminus. As a consequence, no member of the Staff or any Supplier will be able to initiate a claim against Luminus based on any alleged employer's authority.

**16.3 Social security, tax, Limosa** - The Supplier shall be solely responsible for the payment of social security contributions and taxes related to himself or the members of the Staff. The Supplier shall complete the obligations with respect to foreign Staff members, including the Limosa obligations and Supplier will comply with every current and future obligation regarding its activities in Belgium. Particularly, in order to guarantee the implementation of the Agreement, the Supplier will be responsible for this affiliation to ONSS in Belgium and will have to comply with every corresponding obligation with regard to his Staff in Belgium. Moreover, the Supplier shall respect the applicable legislation regarding the employment and residence of non-EU nationals: the Supplier will, inter alia, perform the legal duties relating to the assignment in Belgium of foreign Staff members (for example the Law of 11 February 2013 on sanctions and measures towards employers of illegal foreign nationals) or foreign self-employed workers (for example the said Limosa obligation); the Supplier will also strictly comply with the legislation on residence in Belgium and the work permits. More specifically, the Supplier confirms explicitly that it and/or any of its subcontractors do(es) not and shall not employ any undocumented individual (i.e. any individual not holding valid work

and/or residence permits, authorising them to work and reside in Belgium).

**16.4 Luminus' internal rules and policies** - The Supplier guarantees that the Staff will comply with Luminus' internal rules and policies, which are required to be respected for the good performance of the Professional Services, particularly as far as safety and well-being at work are concerned. The Supplier states and acknowledges that it has received every relevant document on this subject from Luminus.

**16.5 Indemnification** - The Supplier shall indemnify, defend and hold Luminus harmless from and against any and all third party claims, liabilities, losses, and expenses associated with any infringement of this clause 16 by itself and/or its subcontractor and/or any member of their Staff. The Supplier shall be fully responsible for the management of, and the acts and omissions of, all Staff in the provision of the Professional Services and shall indemnify Luminus in relation to any liabilities it incurs in relation to any such acts or omissions.

**16.6 Quality and replacement** - The Supplier undertakes that it will only use technically competent and properly trained and qualified persons as Supplier Staff in the provision and performance of the Professional Services. The Professional Services the Supplier provides, the reports it drafts, the conclusion it draws, the advices it issues shall be done in compliance with the most stringent rules of good practice, with the description set out in the Agreement with all applicable legal and regulatory provisions, and within the set deadlines. The Supplier will render its Professional Services in continued and structured consultation with Luminus. Luminus and the Supplier will each appoint a contact person as authorized representative regarding the proper performance of the Professional Services.

In the event that the performance of the Professional Services by the Supplier is found to be unacceptable by Luminus, the authorized representative of Luminus will inform the authorized representative of Supplier in writing thereof. If so requested by Luminus, the Supplier will provide a replacement within five (5) Days of said notice.

The Supplier agrees to ensure a continuous assignment of Staff to perform Professional Services hereunder. Should a member of the Supplier's Staff assigned to performance of the Professional Services leave temporarily or permanently, the Supplier agrees to inform Luminus of such leaving and to replace such member promptly. Any removal or reassignment by the Supplier of its Staff assigned to perform Professional Services under the Agreement must be with one month's prior notice to and/or prior consultation with Luminus and the replacement Staff shall have substantially equivalent or better qualifications than the member of the Staff being replaced. Furthermore, the Supplier agrees to ensure that the transfer of knowledge between the person(s) newly assigned and the person(s) who may have left is correctly done, so that Luminus does not suffer in any way from the change of Staff. Luminus will not be charged for any replacement or costs related thereto – even if such a replacement has taken place in accordance with the above paragraphs – while the replacement acquires the necessary orientation and the Supplier shall indemnify Luminus against all liabilities that may arise as a result of such replacement. Supplier will bear all costs, expenses and charges in relation to the aforementioned replacement.

## **17 Deliverable acceptance procedure**

**17.1 General provision** - If the Agreement indicates that a Deliverable shall be provided by Supplier to Luminus, the acceptance procedure set out in this clause 17 shall apply. The Deliverable shall never be deemed to have been accepted tacitly.

**17.2 Provisional Acceptance** - The Provisional Acceptance Criteria shall be specified in the Frame Agreement, the Specific Agreement(s) and/or the Purchase Order. If Supplier believes that the Deliverable is ready for Provisional Acceptance, Supplier shall notify Luminus thereof and Luminus shall control within a reasonable period of time whether the Deliverable respect the Provisional Acceptance Criteria. If the Deliverable is not in conformity with Provisional Acceptance Criteria, Supplier shall immediately re-perform the Professional Services at its own costs in order to ensure that the Deliverable is in compliance with the Provisional Acceptance Criteria.

**17.3 Final Acceptance** - The Final Acceptance Criteria shall be specified in the Frame Agreement, the Specific Agreement(s) and/or the Purchase Order. If, at the end of the Guarantee Period, Supplier believes that the Deliverable is ready for Final Acceptance, Supplier shall notify Luminus thereof and Luminus shall control within a reasonable period of time whether the Deliverable respect the Final Acceptance Criteria. If the Deliverable is not in conformity with Final Acceptance Criteria, Supplier shall immediately re-perform the Professional Services at its own costs in order to ensure that the Deliverable is in compliance with the Provisional Acceptance Criteria.

**17.4 Termination** – If during two subsequent acceptance procedures, the same Deliverable is found not to be in conformity with the Provisional Acceptance Criteria and/or Final Acceptance Criteria, Luminus may, without prejudice to its other rights and remedies under the Agreement, terminate the Agreement, in whole or in part, without paying any indemnity to the Supplier for such termination.

## **18 Service level agreement**

**18.1 General provision** - If the Agreement indicates that the Professional Services shall be provided by Supplier to Luminus in accordance with the services levels set forth in the service level agreement provided in the Specifications, the present clause 18 shall apply.

**18.2 Fee reduction** – The Parties agree that a fee reduction shall not be the sole and exclusive remedy in relation to the missing service levels and shall be without prejudice to Luminus' other rights and remedies under the Agreement, including the right of Luminus to claim compensation for the actual damages suffered.. If the Supplier fails to provide the Professional Services in compliance with the service levels, Luminus shall be entitled, except otherwise agreed in the service level agreement, (i) to receive a Fee reduction on its next invoice equivalent to the amount of ten (10) % of the monthly Fee under the Agreement or (ii) to be reimbursed part of the Fees prepaid for the Professional Services equivalent to the amount of ten (10) % of the monthly Fee under the Agreement. The Parties agree that the fee reduction is not a private penalty but a reduction of the amounts due to the Supplier following the decreased value of the Services rendered by the Supplier.

**18.3 Reporting** – Supplier shall be obliged to provide Luminus on a monthly basis with a written report detailing the service levels achieved during the last month. If Supplier does not comply with this clause, the Supplier is deemed to have not complied with the service levels.

**18.4 Termination** - If during two subsequent months the Supplier does not comply with the service levels, Luminus may, without prejudice

to its other rights and remedies under the Agreement, terminate the Agreement, in whole or in part, without paying any indemnity to the Supplier for such termination.

## **19 Professional Services warranty**

19.1 *Professional Services* - The Supplier warrants to perform the Professional Services (i) with the relevant and necessary expertise, diligence and professionalism; (ii) in accordance with the quality and industry standards that reasonably can be expected from a supplier active in the same field; (iii) strictly in accordance with the Agreement, including the Specifications including the service level agreement; and (iv) in accordance with any applicable laws and regulations.

19.2 *Remedy for breach of warranty* – Without prejudice to Luminus' other rights and remedies, for a breach of the Professional Services warranty, Supplier shall, at Luminus' sole choice: (i) re-perform the Professional Services at Supplier's sole costs, or (ii) refund the portion of the Fees paid by Luminus that relate to the non-conforming Professional Services.

19.3 *Business continuity* - Supplier will ensure that information and data, including Luminus Data, located in systems under its responsibility is properly backed up and also that arrangements are made for recovery processes to be installed to minimize any potential disruption to Luminus' business. The Supplier is required to ensure that proper measures are in place to enable continuation of Professional Services in the event of unexpected disruptive events.

## **20 Corporate Social Responsibility**

20.1 *Environmental clause* - To respond to sustainable development issues, Luminus has set the target of controlling environmental impact and maintaining NF EN ISO 14001 certification for all its activities (IT, production, distribution, engineering, etc.).

Under its environmental policy, Luminus has undertaken commitments, particularly for:

- saving non-renewable resources;
- preventing pollution and controlling greenhouse gas emissions;
- improving health and safety.

In particular, Luminus is a stakeholder in this approach for continuous improvement by also maintaining ISO 14001 certification for its main sites.

Luminus has therefore undertaken, in the process of contracting and execution of its contracts, to identify the key points regarding respect for the environment and in particular those relating to waste control and the use of chemical products.

As a result, the Supplier shall be reminded, and shall pass this on to its subcontractors and suppliers, that the execution of the Agreement must strictly comply with the applicable regulations in that respect.

As part of its duty as an advisor to Luminus and to allow Luminus to respect its commitments regarding ISO 14001 certification, the Supplier is also requested, in the context of execution of the Agreement, to send to Luminus any relevant information regarding respect for the environment (existing commitments, planned action for progress, reduction or prevention of impacts obtained, etc.) and to warn Luminus of any circumstance likely to have a significant impact on the environment.

The duty of advisor, like the obligations required of the Supplier pursuant to the present clause, shall be assessed with regard to and within the limits of the missions entrusted to Supplier in accordance with its specific competences.

20.2 *Social clause* - According to its commitments on ethics, Luminus has particularly obliged itself to respect the fundamental principles and rights stated in the United Nations Declaration of Human Rights, the European Union Charter of Fundamental Rights and the Conventions made under the International Labour Organization. In this context, Luminus applies these principles –and, particularly, those relating to child labour and forced or obligatory labour– to its purchases.

The Supplier declares that he shall adhere to the fundamental principles and rights stated above. The Supplier shall respect and implement the industrial and human resources required to ensure their application, by its own Staff, its subcontractors and its suppliers. The Supplier shall also undertake to provide proof of their layout to Luminus at the latter's first request. Luminus reserves the right to verify, through a competent and authorized organization, that the working conditions that are applied by the Supplier, its subcontractors and its suppliers do not violate these principles.

20.3 *Commitment to integrity* - Luminus is committed to respect ethical behaviour in all its relationships with customers, suppliers and others. In return, Luminus expects ethical conduct of its partners. In particular, both Parties warrant to respect at all times all the applicable, national and international law relating to the combating of fraud and corruption in all of its forms, whether public or private, active or passive, by any person acting on their behalf, as well as any trade embargoes which may be applicable to their contractual relationship. Both Parties warrant that they have given no commissions, payments, gifts of substantial value, kickbacks, extensive entertainment or other things of substantial value to any employee or agent of the other Party in connection with this Contract or any other contract between the Parties. Both Parties guarantee that their personnel, representatives, subcontractors and/or any other person for whom they are responsible, will respect this clause at all times.

20.4 *Ethical Reporting* - The confidential Luminus Ethical Reporting e-mail address is a method for reporting conduct that may be unethical, in violation of professional standards, relating to employment, labour, work environment, information management, environmental protection, possible conflicts of interest, unfair trade practices, thefts or for seeking guidance about possible violations of laws related to existing or expected contracts. The Supplier can contact Luminus by sending an e-mail to [ethics@luminus.be](mailto:ethics@luminus.be).

## **21 Miscellaneous provisions**

21.1 *No exclusivity* - Nothing in the Agreement shall be deemed to confer the Supplier with any kind of exclusivity in the provision of similar or identical Professional Services nor shall restrict Luminus from dealing with third parties other than the Supplier in respect of the Professional Services similar or identical to those described in the Agreement.

[www.luminus.be](http://www.luminus.be)

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21.2 *Assignment and subcontracting* – Neither Party can assign to a third party any of its rights and obligations under the Agreement without the express prior written consent of the other Party, which consent shall not be unreasonably withheld. The affiliates of the Parties will not be qualified as third parties for this clause 21.2. In this latter case, the assignment to the affiliate must be notified to the other Party. Except after prior written approval by Luminus, which approval shall not be unreasonably withheld, the Supplier is not allowed to hire subcontractors to carry out any of its obligations under the Agreement. The Supplier will be responsible for any acts, or failures to act, of its subcontractors as if they were the Supplier's acts or failures to act. The Supplier shall procure that any subcontractor complies with the terms of the Agreement, and for these purposes all references to the Supplier should therefore be read as if they were references to the subcontractor concerned.

21.3 *Supplier identity* - The Agreement is concluded taking into account the identity of the Supplier. In case of change of identity of the Supplier, for example by merger or change of control, Supplier shall inform Luminus thereof in writing and Luminus will have the right to terminate the Agreement immediately for reasonable grounds without any compensation and without court intervention. Luminus has to notify this termination within thirty (30) Days of its knowledge of the change of identity of the Supplier.

21.4 *Severability* - If one of the Agreement's provisions shall be deemed null and void in part or in whole, or shall be cancelled, this shall in no way affect the validity of the remaining provisions. In this case each Party will endeavour to negotiate, immediately and in good faith, a valid provision to replace it.

21.5 *Conflict of interest* - If the Supplier or its Staff has a directly or indirectly, through business, investment or family a financial interest in any entity or individual with which Luminus has an Agreement and this financial interest could reasonably be considered to imply a possible conflict of interest within the performance of its missions under the Agreement, then the Supplier must disclose this interest to Luminus.

21.6 *Survival* - Those clauses that by their nature are expressly or impliedly intended to survive the termination or expiry of the Agreement shall so survive.

21.7 *No reference* – Unless otherwise agreed by Luminus in writing, Supplier shall not (i) use Luminus' logos and trademarks or (ii) make news releases, public announcements or other general public disclosures relating to the Agreement, its existence, its subject matter, or its terms and conditions.

21.8 *Governing law* - The Agreement shall be governed by Belgian law.

21.9 *Jurisdiction* - All disputes or claims regarding the interpretation or execution of the Agreement not amicably settled shall be subject to the exclusive jurisdiction of the Brussels Courts.

21.10 *Clerical Errors* – Both Parties may correct clerical errors in the Agreement by providing notice by email and a reasonable opportunity for the other Party to object to the correction. Clerical errors include minor mistakes, unintentional additions and omissions. This provision does not apply to material terms, such as the identity, quantity or price of Software, Hardware or Professional Services ordered under the Agreement.