



GENERAL CONDITIONS OF BUSINESS (GCB) FOR PROJECT IMPLEMENTATION MANDATES

1. Phase prior to Contract conclusion

1.1. In the case of invitations to tender, the offer, including presentations, shall not be subject to payment, unless the invitation to tender explicitly provides for compensation. After submission of the offer, the Contractor is obligated to honour the offer during the period defined in the invitation to tender. If no period is defined, the Contractor is obligated to honour the offer for six months. These General Conditions of Business (GCB) shall be deemed accepted by the Contractor on submission of the offer.

1.2. Up to conclusion of the Contract, withdrawal from the negotiations by either party shall entail no financial obligations.

2. General conditions

2.1. Sub-contracting agreements

2.1.1. The Contractor shall inform SDC in advance in writing regarding the conclusion of any sub-contracting agreement that relates to the execution of the Contract as a whole or a significant part of it. Every sub-contracting agreement must comply with this Contract, particularly in respect of the agreed fees.

2.1.2 The Contractor shall adhere to the free competition principle when selecting sub-contractors. Sub-contractors shall be chosen on the basis of the best quality/price ratio. The same legal procurement rules apply to the Contractor as to the FDFA (SDC). The Contractor follows the Procurement Guideline for the FDFA (SDC) Contractors, which are available at www.fdfa.admin.ch > FDFA > Mandates > Information and downloads for contractors and contribution recipients > Information for contractors > Procurement guideline for FDFA contractors. Any departure from these rules must be justified and authorized beforehand in writing by the SDC.

2.1.3 SDC is obligated only to the Contractor. Agreements concluded by the Contractor, e.g. sub-contracting agreements, entail no obligation on the part of SDC.

2.1.4 If SDC so requests, the Contractor must supply copies of contracts and terms of reference agreed with its sub-contractor(s).

2.2. Duty of loyalty

2.2.1. The Contractor undertakes to execute this Contract with the required care and diligence and to fully safeguard SDC's interests. The Contractor shall comply with the applicable legislation, rules and regulations.

2.2.2. In executing the project, the Contractor is making a contribution to relations between Switzerland and the Partner Country. It undertakes to refrain from all interference in the internal affairs of the Partner Country and to cooperate constructively with the authorities of the country concerned.

2.2.3. The Contractor and its project staff undertake not to engage in accessory activities, either paid or unpaid, which might be detrimental to the execution of the Contract and to relations between SDC and the Partner Country.

2.2.4. The Contractor undertakes to inform SDC of any suspected incidence of corruption.

2.3. Applicable provisions

The Contractor undertakes to comply with the applicable laws of Switzerland and the host country, as well as the standards governing this Contract. It undertakes to adhere to the employment principles as well as the relevant national and thematic strategies of the Federal Department of Foreign Affairs (FDFA) and SDC in the execution of this Contract, and to respect the related Project Agreement between SDC and the Partner Country.

For services provided in Switzerland within the framework of contract performance, the Contractor shall comply with the provisions of Swiss environmental law applicable at the place of performance, namely the Environmental Protection Act (EPA)¹, the Waters Protection Act (WPA)², the Nature and Cultural Heritage Act (NCHA)³, the Forest Act (ForA)⁴ and the Chemicals Act (ChemA)⁵, as well as the ordinances based thereon.

For services provided abroad within the framework of contract performance, the Contractor shall comply with the environmental protection provisions applicable at the place of performance, but at least with the agreements on the environment in accordance with Annex 2 of the PPO⁶ that are relevant for the service provider's performance.

The Contractor is obliged to contractually impose the requirements above on any third party.

If the contractor itself or a third party engaged by it violates obligations arising from environmental law, it shall be liable to pay a contract penalty unless it proves that it is not at fault. The penalty shall amount to 10% of the agreed maximum total remuneration including optional goods/services, but at least CHF 3,000 per violation and no more than a total of CHF 100,000. Payment of the contract penalty shall not release the contractor from compliance with contractual obligations and shall be offset against any claims for damages.

2.4. Liability

2.4.1. The Contractor shall be exclusively liable for the conduct of its auxiliary personnel and sub-contractors [pursuant to the Swiss Code of Obligations (SCO)].

2.4.2. The Contractor shall not be liable to SDC for damage arising as a result of force majeure or unpredictable events.

2.5. Consortium

Should SDC conclude the Contract with several Contractors (consortium), all parties must sign, having first designated a person to represent the consortium vis-à-vis SDC. The representative is expressly authorized to act for and on behalf of the consortium members. The consortium members shall be jointly and severally liable.

¹ SR 814.01

² SR 814.20

³ SR 451

⁴ SR 921.0

⁵ SR 813.1

⁶ SR 172.056.11

2.6 Communication, visual identity

The Contractor must at all times clearly state that it is acting within the framework of Swiss international cooperation and humanitarian aid. Official publications must refer to the project as an “SDC project implemented by the Contractor” and comply with the Swiss federal administration Corporate Design guidelines. These guidelines are available at www.bk.admin.ch > Dokumentation > CD Bund , from the Field Office as well as from the SDC Unit in Bern.

2.7 Transfer of the Contract or claims arising from it

The Contractor may not transfer or pledge neither the Contract nor any claims arising from it.

2.8 Keeping of documents

The Contractor undertakes to keep all documents for 10 years after completion of the project.

3. Collaboration between the SDC and the Contractor

3.1. SDC may act through a Field Office, which may represent it in the Partner Country.

3.2. In performing the Contract, the Contractor shall receive instructions only from SDC or its representatives as specified above. SDC shall also be responsible for all decisions relating to the project concept (its integration with the national programme, objectives of new phases, assessments, continuation or termination of the project, etc.). The Contractor shall contribute to the elaboration of appropriate solutions and make proposals on changes to the concept if necessary.

3.3. If the mandate is concerned with administered project funds, the Contractor shall designate a Project Manager responsible for maintaining professional relations with SDC and providing regular information on the progress of the mandate.

3.4 The Contractor must immediately inform SDC in writing of any exceptional circumstance arising from the execution of the Contract which might jeopardize its completion and/or result in a significant change in its objectives. In the event of imminent risk of irreparable damage, the necessary preventive measures shall be taken immediately.

3.5. The Contractor shall designate its Project Manager in the Partner Country (hereafter referred to as “the Project Manager”)

3.6. The head of the Field Office (hereafter referred to as “the Coordinator”) and the Project Manager undertake to support, advise and inform each other with regard to project-related issues and general questions relating to Switzerland’s international cooperation activities in the Partner Country.

3.7. The Contractor shall be responsible for the safety of its project staff and for setting up an appropriate security management system. In particular, the Contractor is responsible for implementing the minimum security requirements and, if necessary, taking any additional measures required by the context. In the event of a crisis situation (war, civil unrest, natural disaster, danger to experts’ lives, etc.), the Project Manager shall immediately contact the Coordinator. The Coordinator shall inform the nearest Swiss representation. In the absence of any local Field Office, the Project Manager shall inform the nearest Swiss representation of the security conditions and any measures already taken. In the event of a crisis situation, the Coordinator may at any time order the withdrawal of the Contractor’s staff for security reasons. If possible, the Project Manager shall be consulted before the order is given. The Contractor undertakes to comply with the Coordinator’s instructions. SDC shall provide assistance in

withdrawing the Contractor's staff. However, the Contractor remains responsible for the safety of its personnel until completion of the withdrawal.

3.8. SDC shall support the Contractor, its personnel on assignment abroad and their families in the following areas:

- procurement of the necessary documents for travel to and from, and residence and employment in, the country of assignment,
- import, export and customs formalities for personal effects and material required for the project,
- emergency withdrawal,
- free access to the principal project locations, and
- access to other organizations and information.

4. Project personnel

4.1. The Contractor shall be responsible for the recruitment of project personnel. The recruitment process shall be based on the principles of transparency and fair competition. Objective criteria shall be used when making the final decision. The Contractor shall hire only carefully selected employees who have appropriate training and qualifications. It shall favour applications from the under-represented sex in order to achieve an equitable staff balance. Upon request, the Contractor shall submit to SDC for perusal copies of contracts with personnel living abroad and with local project management.

Any changes in scientific and managerial staff as featured in the budget must first be approved by SDC.

4.2. The Contractor shall conclude written contracts of employment with project personnel and follow the working conditions and safety regulations.

For services provided in Switzerland within the framework of contract performance, the Contractor shall comply with the workplace health and safety provisions and employment conditions applicable at the place of performance, the notification and authorisation duties in accordance with the Federal Act of 17 June 2005 on Measures to Combat Illegal Employment (IEA)⁷, the provisions on the equal treatment of men and women in terms of equal pay. The employment conditions shall be deemed to encompass collective and standard employment contracts or, where no such contracts exist, the actual employment conditions customary for the location and occupation.

For services provided abroad within the framework of contract performance, the Contractor shall comply with the provisions applicable at the place of performance, but as a minimum with the Core Conventions of the International Labour Organization (ILO), in accordance with Annex 6 to the PPA⁸.

4.3. The Contractor shall guarantee gender equality, in particular with regard to equal pay, terms and conditions of employment and workplace safety conditions. Overall, the employment conditions must not be more favourable than those offered by SDC, and must provide for adequate social benefits (insurance, vacation, etc.).

4.4. The Contractor shall impose the obligations according to art. 4.2. and 4.3. contractually on third parties.

4.5. If the contractor itself or a third party engaged by it violates obligations arising from articles 4.2., 4.3 or 4.4., it shall be liable to pay a contract penalty unless it proves that

⁷ SR 822.41

⁸ SR 172.056.1

it is not at fault. The penalty shall amount to 10% of the agreed maximum total remuneration including optional goods/services, but at least CHF 3,000 per violation and no more than a total of CHF 100,000. Payment of the contract penalty shall not release the contractor from compliance with contractual obligations and shall be offset against any claims for damages.

4.6. SDC shall bear the cost of training project personnel to the extent it considers this to be essential, and in compliance with the budget.

4.7. The Contractor shall be responsible for its personnel and for ensuring that they respect the laws of the Partner Country, refrain from any interference in local politics, and in no way whatsoever engage in activities that harm relations between Switzerland and the Partner Country.

5. Material

5.1. The Contractor acting in their own name shall be responsible for purchasing the project material including project vehicles and IT material (hereinafter referred to as 'material') defined in the budget for the account of SDC or the Partner Country, in accordance with the provisions of this Contract and the Project Agreement unless otherwise specified in the contract. Invoices must be addressed to the Contractor. Thereby, the SDC shall decide upon possible country-specific registration terms (e.g. project vehicles).

5.2. The Contractor is responsible for procuring the material. When procuring material, the Contractor shall observe the principles of free competition and transparency and order material from the supplier that offers the best price/performance ratio, with due consideration of delivery times and guarantees. The provisions stated under art. 2.1.2 apply.

5.3. The properties and quality of the material must meet the effective requirements of the project. At the request of SDC, the Contractor must provide information on the technical and financial attributes of the procured material. The Contractor shall request information from the Field Office with regard to the type of material used in other Swiss projects in the same country, as well as the maintenance facilities.

5.4. The Contractor shall take all necessary precautions, in particular with regard to prepayments and guarantees.

5.5. Rebates, discounts and the like shall be regarded as cost reductions and must be declared as such. Cost allocation for use of material or amortization is not permitted, as far as the material is financed by project funds. The same applies to material, which was procured in previous phases of the project and financed by project funds.

5.6. The Contractor is the owner of the material provided there are no other contractual provisions (e.g. rental of material). If there is a breach of contract, in particular an infringement of the rules under art. 5.7 and 5.8, or any other risk to the material, the Contractor agrees to transfer upon written request from the SDC any ownership purchased via project funds to the SDC or another organisation. The Contractor is obliged to make this transfer immediately and to draw up a handover protocol for the material.

5.7. The material must be handled with care and, to the extent that it is financed by project funds, be used for the project only. The Contractor shall keep a detailed inventory of the material. The use of diplomatic licence plates (CD) for vehicles is not permitted.

5.8. The Contractor is responsible for importing and registering the material and ensures that it is used in accordance with the law and contractual provisions. The Contractor is also responsible for keeping vehicle logbooks. The Contractor shall immediately notify the SDC of any exceptional circumstances in relation to importing, registering and/or using the material

(e.g. unforeseeable import taxes). For project vehicles, the provisions stated under art. 9 also apply.

5.9. Decisions regarding the sale of material must be made in agreement with SDC. The proceeds from such sales shall be credited to the project account. Sales must comply with local conditions and be concluded via written purchase agreement.

5.10. Unless otherwise agreed, on completion of the project, the Contractor shall hand over all the material and/or property purchased with project funds to the organisation(s) approved by the SDC and draw up a handover protocol for the material for the SDC and the organisation(s) involved.

6. Direct and indirect taxes, including VAT

6.1. The Contractor knows and follows the applicable law. As a general rule, SDC mandates performed abroad fall within a framework agreement and/or project agreement providing for total or partial tax exemption. If, however, the competent authorities declare that project-related services or procurements of material are subject to taxation, the Contractor shall immediately inform SDC with a view to the necessary changes being made to the budget. Any changes to the budget are subject to examination and approval by the SDC.

6.2 If subject to taxation, the Contractor alone is responsible for paying taxes and other expenses, including VAT. For services provided by third parties which are subject to VAT, the Contractor shall make a pre-tax deduction.

7. Financial aspects

7.1 Budget

7.1.1. The overall budget shall be drawn up in accordance with the Annex to this Contract and is binding. It must contain:

- the budget for services (payment of services provided by the Contractor; see Budget Parts 1-3): this includes all services provided by the Contractor that are essential for implementation of the project; and
- the budget for administered project funds (see Budget Part 4); it must be shown in Swiss francs or, if in another currency, with indication of the exchange rate.

7.1.2. The lump-sum amounts may not be increased. In the event of changes to the budget, the same rates for fees shall apply as in the original budget.

7.1.3. The overall project budget comprises the budget as specified in Article 7.1 and the Annex of the same name, as well as the funds made available by third parties for implementation of the project. The overall budget is an integral part of the "Project Document" (Annex).

7.2 Accounts of the Contractor – external financial review

7.2.1. The Contractor shall maintain consolidated accounts at its head office which shall include the accounts maintained at the project site as well as the accounts for all other activities.

7.2.2. If the Contractor's head office is in Switzerland, the accounts must comply with the relevant accounting principles of Swiss GAAP FER. In the case of non-profit organisations, Swiss GAAP FER 21, "Accounting Standards for Social Non-Profit Organisations" shall apply. If the Contractor's head office is not located in Switzerland, the corresponding national legal provisions and/or the requirements of International Financial Reporting Standards (IFRS) shall apply.

7.2.3. The project accounts are the subject of the external review. These accounts must be prepared at the Contractor's head office, and encompass all financial transactions that are carried out at the Contractor's head office for the project, as well as all income and expenditure associated with the implementation of the project in the Partner Country.

7.2.4. The project accounts shall be reviewed annually or on a periodical basis by a firm of auditors approved by SDC. The auditors shall examine the quality of the internal auditing system and the correctness of the accounting, and confirm that the involved resources have been deployed expediently, economically and in accordance with the declared objective of the project (based on the specifications concerning the external review of the project accounts at the head office of the contractual party).

7.2.5. The majority of the overall costs associated with the project are by nature incurred in the Partner Country, and thus have to be entered in the local project accounts, which must be audited on site by the local auditors according to the FDFA standard terms of reference.

7.2.6. The financial auditors shall therefore base their findings on the review and report of the local auditors, and shall draw attention to this fact in their own report (indicating the corresponding extent where deemed necessary).

7.2.7. Should any inaccuracies be identified in the accounts and should the Contractor fail to take the corrective measures which SDC regards as necessary, SDC shall suspend payments until the matter is resolved. Any expenses which do not meet the criteria of careful use of funds shall be paid by the Contractor.

7.2.8. The Contractor shall provide SDC with a copy of its business report upon request.

7.3. Local project accounting

7.3.1. Accounting organisation and internal audit

As a rule, the majority of the costs associated with the project are incurred on site in the Partner Country. This means that high requirements have to be placed on the personnel responsible for keeping the accounts, and it is necessary to ensure that the accounts are appropriately structured so that they can be kept completely and accurately. The on-site Project Manager of the Contractor thus bears a high degree of responsibility for ensuring that the accounts are kept in a transparent and accurate manner. It is the duty of the project management to actively supervise the local personnel and the local organisation. Here, it is essential to ensure that the accounting structure is suitable and the internal review system is effective and of the necessary quality (structure and processes, 4-eyes principle).

In this connection, the aspects of contracts, auditing of project material, compliance of social security contributions and VAT with the relevant legal provisions, and the suitability of the procurement procedure, are of particular importance. The project management also has to pay sufficient attention to cash management. The purpose of these organisational aspects and prerequisites is to ensure that all financial resources deployed for the project are used circumspectly and efficiently.

7.3.2. Accounting and evaluation principles

The accounting and evaluation principles to be applied are another aspect of accounting in the Partner Country that has to be defined and monitored by the Contractor. This includes specifying the basis for converting the local currency into Swiss francs, the definition and methodology relating to the applicable principles for the cash basis of accounting, and the formulation of directives relating to tangible assets/inventories.

7.3.3. Local auditors

The Contractor is responsible for local audits. For the appointment of the local auditors by the Contractor, SDC expects the selection procedure to be implemented in co-operation with the local Field Office. For this purpose the Field Office may take account of its experience with local auditors or make the necessary enquiries. In any case, the selection of local auditors may only be made with the approval of the Field Office.

Local auditors must be fully independent of the project management, must possess the necessary professional qualifications and provide evidence of the necessary experience in auditing projects of non-profit organisations.

7.4. Bank Accounts

7.4.1. SDC shall designate one of the following options (art. 3.1 of the contract):

- a) The Contractor shall open, at its head office location and in its name, an interest-bearing account for the project into which the funds intended for the project shall be paid.
- b) SDC may request the Contractor to submit a bank guarantee once the latter has opened a bank account under the terms of art. 7.4.1, lit. a) above.
- c) SDC may, at the request of the Contractor, authorise the latter to manage a single account in its own name covering several projects.

7.4.2. In addition, the Contractor shall open a bank account in the Partner Country with a trustworthy financial institution. All funds transferred to the Partner Country by the Contractor must be deposited at the official rate of exchange recognised by the government of the Partner Country or, failing this, at a rate of exchange approved by SDC on the date of payment, or as foreign currency. The funds made available in this account must be used exclusively for the project. The Contractor shall take all measures necessary to guarantee the security of the funds and shall ensure, in particular, that such local bank accounts contain only such funds as are effectively required for implementation of the project.

7.4.3. The Contractor is obliged to submit an electronic bill to the FDFA, except for local Contractors of the FDFA representations abroad. Information on the electronic billing system is available at www.e-rechnung.admin.ch.

8. Operational reports

8.1. Operational reports must contain information regarding the progress of the project and project-related activities, the extent to which the project objectives have been achieved and its impact, as well as an account of any problems and proposals for resolving them.

8.2. The report must be drafted to be read by people who do not have scientific expertise. It must be fit for use and open to empirical verification. Issues not appropriate for a report intended for the government of the country concerned must be recorded in a separate report intended for SDC.

9. Insurance

9.1. The Contractor shall ensure that its staff are insured against the economic consequences of illness, accident, invalidity and death, both in Switzerland and abroad, and that the obligatory social security premiums are paid. The costs shall be borne by the Contractor.

9.2. The Contractor shall, at its own expense, take out appropriate and adequate commercial liability insurance.

9.3. The Contractor shall be responsible for the insurance of project vehicles (including third-party and passenger insurance). Such insurance costs shall be borne by the project and are provided for in the budget.

9.4. All other insurance policies deemed necessary for the project shall be borne by the project and are provided for in the budget.

10. Remuneration

10.1. Fees

10.1.1. Offers shall be presented on the basis of fee rates, which shall be calculated as follows:

- Services performed in the Partner Country shall be charged on the basis of a daily rate, one day consisting of 8 hours' work. Travel on business to and within the Partner Country shall count as working time.
- For uninterrupted assignments of more than two months in the Partner Country, monthly fees shall be payable.
- Services performed in Switzerland shall be charged on an hourly-rate basis. For business trips within Switzerland, three hours maximum may be charged per trip as working hours.

10.1.2. The Contractor shall provide the services at the agreed rates. Inflation and price rises shall be taken into consideration only in exceptional cases and by written agreement.

10.1.3. SDC shall pay the Contractor on the basis of the rectified budget. Fees shall be paid according to the documented hours worked, and other mandate-related expenses incurred by the Contractor shall be reimbursed.

10.2. Other expenses (e.g. travel, accommodation, meals, etc.)

If the Contractor is domiciled in a state which is a member of the OECD, then the reimbursement of expenses such as travel, accommodation and meals is regulated by art. 10.2.1 below. If the Contractor's domicile is located in another state, then the reimbursement is governed by art. 10.2.2 below.

10.2.1. Contractors domiciled in an OECD state

10.2.1.1. For business trips in Switzerland, the equivalent of 50% of a second class rail ticket may be charged without submission of a receipt. The actual cost of travel by public transport shall be refunded on submission of a receipt.

10.2.1.2. The Contractor must normally order plane tickets from the Travel Office (BRZ) of the Federal Department of Foreign Affairs (FDFA). In all other cases, the FDFA shall reimburse documented flight costs up to the equivalent of the price of a ticket ordered from the BRZ. The flight class shall be determined by SDC. A lump-sum amount shall be agreed to cover incidental travel expenses (communication, visas, taxes, etc.), equivalent to 2% of the fee budgeted for services abroad, but no higher than CHF 1,000.

10.2.1.3. Expenses for accommodation and meals are according to the Fact sheet on compensation for fees and expenses of December 2015, which is part of the contract (available at: www.fdfa.admin.ch > FDFA > Mandates > Information and downloads for Contractors and contribution recipients > Information for Contractors > Submission of offer). The rates are offered by the Contractor.

10.2.2. Contractors not domiciled in an OECD state

The rates for reimbursement of expenses such as travel costs, accommodation, meals, etc., of a Contractor whose domicile is not located in an OECD-member state are offered by the Contractor.

11. Property rights

11.1. Within the framework of the Contract, the results of the Contractor's work, rights of use and exploitation of intellectual property as well as all associated rights, including copyright and their disclosure, are reserved by SDC. SDC may, at the express request of the Contractor, mention the latter's involvement. SDC may also authorize the Contractor to use or exploit such intellectual property rights.

11.2. The Contractor undertakes not to violate the rights of third parties. Failing this, the Contractor undertakes to meet all claims by third parties arising from any violation of intellectual property rights for which it bears responsibility, and to bear the costs of any such violation, including its own legal costs and those of the Confederation, and any damage compensation.

11.3. SDC undertakes to inform the Contractor immediately of any damage compensation claim and to make available to the Contractor all the necessary documents for its defence, subject to SDC's obligation to maintain confidentiality.

12. Confidentiality

12.1. All verbal and written information exchanged in connection with the contract shall be treated as confidential and may not be made available to third parties not associated with the contract or used for purposes other than those for which it was provided or produced. The Contractor shall make its personnel aware of this confidentiality obligation.

12.2 The confidentiality obligation will not apply for the SDC if it is obliged to publish any information relating to the contract, as well as following facts and information: name and address of the contractor, item(s) procured and mandate value, award procedure carried out, date of contract conclusion and commencement, and timeframe of contract execution. This shall be without prejudice to the mandatory duties of disclosure under Swiss law (e.g. as per the Freedom of Information Act⁹, the Public Procurement Act¹⁰ and the Public Procurement Ordinance¹¹).

12.3 Any publication or communication to third parties that would constitute a departure from the provisions of the preceding paragraph requires the prior written consent of SDC. If SDC gives such consent, the Contractor undertakes to provide such information accurately and to mention SDC as the contracting party.

12.4. The obligation set out in this article shall remain in force after termination of the contract.

12.5. The Contractor shall impose the obligations regarding confidentiality contractually on third parties.

12.6. If one of the parties violates the confidentiality obligations above, it shall be liable to pay a contract penalty to the other party unless it proves that it is not at fault. Per violation, the penalty shall amount to 10% of the maximum total agreed remuneration including optional goods/services, but no more than CHF 50,000 in total per case.

⁹ SR 152.3

¹⁰ SR 172.056.1

¹¹ SR 172.056.11

Payment of the contract penalty shall not imply release from compliance with contractual obligations and shall be offset against any claims for damages.

12.7. Irrespective of these confidentiality agreements, the contractor and persons acting on its behalf may be deemed auxiliaries of an authority and thus be subject to official secrecy. A breach of official secrecy is punishable under Article 320 of the SCC¹².

13. Data protection and data security

13.1. The parties undertake to comply with the provisions of Swiss data protection legislation and to effectively protect data arising in the framework of contract performance against unauthorised access by third parties.

13.2. If the contractor is provided with data of the SDC within the scope of contract performance, the contractor shall be obliged to return such data after termination of the contract and to irrevocably delete or destroy it on both primary and secondary media (test or backup media, etc.). The deletion or destruction of the data shall be carried out in accordance with the currently recognised state of the art and shall be confirmed to SDC in writing upon request. The return, deletion or destruction of the data must take place within 30 days after contract termination. If the data on backup media cannot be deleted, the backups must be protected in accordance with the recognised state of the art and must be deleted or destroyed within one year at the latest. If the contractor is subject to a legal obligation to retain data, the return, deletion or destruction of the data subject to this retention obligation must take place within 30 days after the end of the retention period.

13.3. Any right of SDC to audit the contractor's security measures with regard to data protection and data security shall be the subject of a separate contractual agreement between the parties.

13.4. The Contractor shall impose the obligations regarding data protection and data security on third parties.

13.5. The Contractor takes note that SDC will evaluate the quality of the services provided and agrees that this data may be processed within the FDFA in accordance with the Federal Law on Data Protection of 20 September 2020¹³.

14. Termination of the Contract

14.1 Consequences of delays

14.1.1 If, on expiry of a contractual deadline or on expiry of a subsequent reminder, the Contractor has still failed to provide the service concerned, it shall immediately be deemed to be in default and SDC shall be entitled to withdraw from the Contract by giving written notification. Services provided up to the termination of the Contract pursuant to the declaration of withdrawal shall be indemnified.

14.1.2. If the contractor is in default, it shall be liable to pay a contract penalty unless it proves that it is not at fault. The penalty shall amount to 0,1% per commenced calendar day of delay, but no more than a total of 10% of the maximum total remuneration including optional goods/services per contract and case of default. It shall be owed even if the goods/services are accepted subject to a corresponding reservation. Payment of the contract penalty shall not imply release from compliance with contractual obligations and shall be offset against any claims for damages.

¹² SR 331.0

¹³ SR 235.1

In the event of force majeure, or should the Contractor prove that neither it nor its auxiliaries are at fault, no contractual penalty shall be charged.

14.2 Other grounds for termination

14.2.1. In addition to termination following formal notice, if one of the parties fails to fulfil a contractual obligation, the other party may terminate the Contract with immediate effect, having first given warning and allowed reasonable time for the situation to be remedied.

14.2.2. This Contract may be terminated by either party without explanation. The prior notice period shall be six months.

14.2.3. If performance of the Contract is prevented due to force majeure (natural disasters, etc.), political unrest, outbreak of armed conflict, significant deterioration of the security situation or similar circumstances, each party has the right to withdraw from the Contract with effect from the moment when it becomes impossible to perform.

14.2.4. If the credit assigned to the work of cooperation and development by Parliament is curtailed to the extent that the Swiss Confederation is unable to meet its contractual obligations in full or in part, SDC reserves the right to withdraw from the Contract or amend it accordingly with immediate effect, and undertakes to inform the Contractor immediately.

14.2.5. In the event of applicability of art. 14.2.1 to 14.2.4., both parties shall undertake to make every effort to minimize the cost of terminating the Contract. They shall furthermore refrain from making any claims for damages, with the exception of payment of expenses effectively incurred.

14.2.6. In the event of applicability of art. 14.2.1 to 14.2.4, the Contractor must draw up a final report and final accounts detailing the project costs, including the costs arising from the premature conclusion of the Contract.