

# SIG SERVICES TERMS – EU

Version November 2020

## 1. DEFINITIONS

The following wording(s) in these Terms and related documents have the following meaning:

*'Agreement'*: any agreement and/or legal relationship(s) of any nature between Parties in respect of the provision of Services, any amendment thereof or supplement thereto, as well as all acts related to performance of the Agreement(s);

*'Business Day'*: a calendar day from 08.30 until 17.30 CET, except for weekends and national holidays in the Netherlands and in the country where the respective SIG subsidiary (as indicated in the relevant Services Exhibit) is registered;

*'Customer'*: any (legal) entity with whom SIG wishes to enter into, enters into or has entered into a legal relationship;

*'Deliverables'*: certain deliverables in any way resulting from the Services, as and to the extent explicitly described and agreed upon between Parties in the relevant Services Exhibit;

*'Information'*: any data, information, system, software or online portal access and other details, as well as documentation (to be) provided by Customer;

*'Fee'*: the fee(s) due and owed by Customer to SIG as consideration arising from the Agreement or as otherwise described in these Terms;

*'Order'*: any request by Customer to SIG to enter into an Agreement;

*'Parties'*: respectively *Party*: Customer and SIG, respectively Customer or SIG;

*'Project Services'*: services regarding e.g. consultancy, due diligence and other professional services provided or to be provided by or on behalf of SIG on a project by project basis;

*'Proposal'*: any proposal and/or offer by SIG to Customer concerning the provision of Services as well as matters relating thereto;

*'Services'*: Project Services and/or Subscription Services;

*'SIG'*: the Software Improvement Group B.V., a company under the laws of the Netherlands, or one of its subsidiaries as indicated in the relevant Services Exhibit;

*'Subscription Services'*: subscription services for a certain period of time, regarding e.g. monitoring, consultancy, due diligence and other professional services made or to be made available and otherwise (to be) provided during the Initial Duration and subsequent period(s) as set forth in the Services Exhibit, in any way by or on behalf of SIG or activities to be carried out, of whatever nature in for Customer, not being Project Services;

## 2. TERMS & AGREEMENT

2.1 These Terms shall apply to all Proposals, Orders and/or Agreements. Parties agree and recognize explicitly that no other general (and/or special) purchasing, delivery or other conditions shall apply thereto than these Terms.

2.2 All Proposals shall be without engagement and shall consequently only be deemed to be an invitation to place an Order. The previous sentence shall not apply if a term of validity is stated expressly in the Proposal.

2.3 An Agreement shall only be considered as valid and concluded when and after SIG has expressly confirmed said Agreement by mail, email and/or other means of electronic communication customary in the market.

## 3. SERVICES

3.1 SIG will make commercially reasonable efforts to make available qualified persons for the performance of Services and will make commercially reasonable efforts to carry out Services as described in the relevant Exhibit to the agreement (*'Services Exhibit'*) to the best of their knowledge and ability. The Services will be rendered at a location to be determined by SIG, unless it has been agreed otherwise in writing between Parties. SIG will deliver the Subscription Services on an 'as-is' basis.

3.2 For communication purposes related to the implementation, execution and management of a Services Exhibit, each Party will designate a project leader, to be set forth in such Services Exhibit. At the discretion of the one Party, a project leader of that one Party may be changed from time to time subject to prior written notice to the other Party.

3.3 In engaging and instructing third parties, SIG will in any event reasonably exercise the necessary due care. SIG is not liable for damage which is the consequence of failures of such third parties. The Customer hereby authorises SIG to accept any limitations of liability of third parties on the behalf of Customer. Customer acknowledges that any communication by SIG will generally be on Business Days.

3.4 SIG will deliver the Subscription Services on an 'as-is' basis. All schedules and terms mentioned by SIG and/or agreed with SIG have been described and planned to the best of their knowledge on the basis of the Information and circumstances known to SIG when the related Services Exhibit was concluded. The occasional exceeding of such term or schedule shall not be considered an attributable shortcoming of SIG. In the case that there is a risk of exceeding such term or it has already been exceeded, Parties shall consult as soon as possible.

#### **4. FEE & PAYMENT**

4.1 Fees, prices and rates are expressed in Euro (EUR), unless explicitly stated otherwise, and are exclusive of expenses, VAT and other government levies and taxes that are or may be due, where required. SIG's invoices shall be paid at the latest within thirty (30) days after the invoice date on the invoice. Payment shall take place without any set-off, deduction and/or suspension.

4.2 Customer shall owe Fee(s) for the Services according to the rates and prices established and annually updated by SIG for said Services. Invoices from SIG concerning the Subscription Services are due and payable each contract year in advance. SIG is authorised to adjust the applicable Fee(s) per contract year within reasonable limits.

4.3 If Customer fails to pay any Services fees owed within the term of payment SIG shall have the right (notwithstanding all other rights accruing to them) – without any further notice of default being required – to suspend execution of any Agreement and SIG shall have the right to charge Customer for any expenses incurred thereby in this

respect, and Customer shall owe interest over said due fees of at least one (1%) percent per month.

#### **5. OBLIGATIONS CUSTOMER**

5.1 Customer is obliged to timely and adequately provide (and to have its relevant third parties provide) all access, facilities, information, documentation, code, software and necessary license and access thereto and other means which SIG will reasonably need for the proper execution of any Agreement, without charging SIG in this respect.

5.2 Customer represents and warrants that any information provided by Customer is correct and accurate. Customer shall procure to advise SIG immediately of any material or other relevant changes in such information. Parties will work together in good consultation and support each other in order to carry out the Agreement.

5.3 If Customer does not adequately and timely comply with the provisions of Article 5.1 and 5.2, SIG is entitled to suspend execution of the relevant part of the Agreement and to charge for the costs thereby incurred according to the current prices and fees valid at that time.

5.4 Customer has the obligation to only use the Services within the boundaries of the Agreement, these Terms and the applicable laws. Customer shall be exclusively responsible for the selection, use, security, back-up action, application and its use of the Services provided by SIG within Customer's organization or outside, unless previously and unambiguously otherwise agreed between Parties in writing.

#### **6. CONFIDENTIALITY, IPR & NON-ACQUISITION**

6.1 Each Party will treat all information as well as other data and know how that it obtains from the other Party with respect to the Services as well as commercial, strategic, technical data, knowledge and/or other information connected with that other Party strictly confidential and shall make no statements concerning this to third parties. Such information shall in any case be considered as confidential if this is so indicated by one of the Parties. Deliverables, if any, are considered to be confidential information of Customer, subject to the condition precedent that Customer has paid any and all Fees to SIG related to those specific Deliverables. Parties shall reciprocally be held to take adequate measures and precautions to maintain the secrecy of such confidential information.

6.2 It is only allowed to deviate from the provisions in article 6.1 if (i) the relevant deviation has been explicitly provided for in the Agreement, (ii) said information was already generally known without any breach of confidence by a Party or any third party before the Agreement or relevant Services Exhibit was executed, (iii) said information is disclosed with prior written permission from the other Party, or (iv) said information must be made available to satisfy a mandatory order by a legal authority, in the latter event the Party concerned will inform the other Party in advance.

6.3 To the extent that personal data of Customer, SIG and/or third parties are involved, such information shall be processed in a proper, careful and safe manner within the limits of the statutory regulations and the rightful objectives of SIG and Customer respectively. Beyond the normal business activities of the one Party, that one Party shall otherwise not process any personal data of any nature and/or provide these to third parties other than with the prior and unambiguous permission of the other Party and/or to the extent that the law provides otherwise. Each Party shall arrange for its own appropriate technical and organizational measures to protect personal data from loss or from any form of unlawful processing.

6.4 All rights of intellectual property of Customer to data and information of Customer are and will remain the property of Customer. All rights of intellectual property of SIG to data and information of SIG, including without limitation the Deliverables to the extent it does not concern data or information of Customer, are and will remain the property of SIG. Customer shall acquire no rights whatsoever other than explicitly described in these Terms and/or the Agreement. Customer is entitled to use the Deliverables within scope of the Agreement and respective Services Exhibit.

6.5 Each Party engages in respect of the other Party, during the term of any Agreement and for one (1) year after termination (irrespective of the reason for termination and/or who initiated such termination) and/or expiry thereof, not to employ, either directly or indirectly (either for himself or for the benefit of others) staff or other co-workers of the other Party who have been involved in execution of said Agreement, nor to have aforementioned staff or co-workers work for them in any other manner, such with the exceptions of prior explicit written permission from and agreement with that other Party, or if such person has responded to a generic and customary job opening advertisement of the one Party. In the case of infringement

of the provisions of this article 6.5 the infringing Party shall owe other Party, among other things, an immediately due and payable fine equal to one (1) gross annual salary per staff member or co-worker concerned, without prejudice to the right of said other Party to recover the entire damage from the infringing Party.

## 7. LIMITATION OF LIABILITY

7.1 Except in cases of intention or gross negligence on the part of SIG, SIG shall not be liable for (i) indirect damage (including but not limited to consequential loss, loss of profit, missed savings, loss of data, damage to data files and damage due to business interruption) or (ii) any other damage exceeding the total sum (excluding VAT) invoiced by SIG to Customer and paid by Customer to SIG, pursuant to the relevant Services Exhibit or the amount of EUR 100.000 (in writing: hundred thousand Euro) per calendar year, whichever is lower. Under 'other damage' as referred to in the previous sentence shall exclusively be understood (i) reasonable costs incurred by Customer (a) in order to determine the cause and extent of that 'other damage', (b) to prevent or limit such 'other damage', and (c) to ensure that the performance of SIG meets the Agreement, to the extent that the Agreement has not been dissolved by Customer, and (ii) material damage to goods belonging to Customer and/or third parties that are directly connected to Services delivered by SIG, such excluding damage to Deliverables and Information.

7.2 The performed Services by SIG and Deliverables under assignment of the Customer shall be for the benefit of the Customer, and third parties shall have no rights relating thereto. Customer indemnifies and holds SIG harmless from and against any and all claims of third parties (including reasonable costs of legal assistance) relating to or arising in whatsoever manner from the activities carried out for the Customer.

7.3 A right of Customer to compensation will only arise if Customer has informed SIG accordingly in writing within thirty (30) days or immediately after Customer could discover in reason the arising thereof.

## 8. TERMINATION

8.1 Each Party may terminate this Agreement without cause when there are no outstanding Services Exhibits. Each Party will be entitled to terminate the Agreement with immediate effect, without any further declaration of default and without any prior legal intervention, by

registered letter if the other Party (i) becomes insolvent, enters into liquidation (whether voluntary or otherwise), becomes unable to pay its debts as they fall due or any event similar to any of the foregoing occurs to that other Party and/or (ii) ceases or threatens to cease carrying on its business.

8.2 A Services Exhibit cannot be terminated without cause. Upon any termination of any Services Exhibit, Customer shall be immediately due the full payment under and as set forth in the respective Services Exhibit. The Agreement or a Services Exhibit can be terminated however in writing by SIG, without any further declaration of default to Customer and without any legal intervention, if Customer fails in (timely) observing any obligation on account of the Agreement or Services Exhibit (including but not limited to payment of amounts due by the Customer) and after fourteen (14) days have passed after the date of a written declaration of default to Customer, all this without prejudice to the other rights SIG is entitled to.

## **9. MISCELLANEOUS**

9.1 This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective legal representatives, successors and assigns. This Agreement shall not be deemed or construed to be modified, amended or waived, in whole or in part, except by written agreement of both Parties to this Agreement. This Agreement may only be modified by a further written document signed by authorized representatives of both Parties. No failure or delay by either Party in exercising any right, power or remedy under this Agreement, except as specifically provided herein, will operate as a waiver of any such right, power or remedy.

9.2 The laws of the Netherlands shall exclusively apply to these Terms, Proposals, Agreements and related matters, without giving effect to the principles of conflict of laws. All disputes arising from the Terms, Proposals and Agreements and related matters, and any action or proceeding arising out of, to interpret, or to enforce this Agreement shall be exclusively laid before the competent court in Amsterdam, The Netherlands, without prejudice to the right of either Party to apply for disposition by summary proceedings and unless (i) SIG as plaintiff or petitioning Party elects for the competent court of the domicile or place of business of Customer or unless (ii) Parties specifically agree in writing on a binding ruling or arbitration in the relevant case.