

Annex 4 – Draft Contract Somapep

Public service contract for the execution of preparatory studies for rehabilitation and extension of drinking water systems in secondary centres of the concession of SOMAPEP-SA (ARVODI 2018)

Contract number: 202102040/D2B18ML02

The undersigned:

1. Invest International Public Programmes B.V., registered with the chamber of commerce under number 83526617, which has its seat in The Hague, legally represented in this matter by H.J.M. Oorthuizen, CEO Invest International, hereinafter referred to as the Contracting Authority,

and

2. *[Contractor's full name and legal form]*, registered with the chamber of commerce under number ..., which has its registered office in ..., legally represented in this matter by ... *[and ...]* *[signatory's name]*, hereinafter referred to as the Contractor,

WHEREAS:

- The Contracting Authority requires preparatory studies for the rehabilitation and extension of drinking water systems in secondary centres of the concession of SOMAPEP-SA;
- The Contracting Authority has published a tender document for this purpose;
- The Contractor submitted a tender on *[day month year]*;
- The Contracting Authority has awarded the contract to the Contractor based on this tender;
- The Contractor has sufficiently familiarised itself with what the Contracting Authority wishes to achieve;
- The Parties wish to lay down the ensuing legal relationship in a written Contract;

AGREE AS FOLLOWS:

A number of terms in this Contract are written with initial capitals. The meanings of these terms are defined in article 1 of the General Government Terms and Conditions for Public Service Contracts 2018 (ARVODI 2018). Invest International has chosen to declare these conditions applicable.

1. Object of the Contract

- 1.1 The Contracting Authority hereby commissions the Contractor to perform services as described in the tender submitted by the Contractor on *[date]* (ref.

...) based on the tender issued by the Contracting Authority on 13 December 2021 (ref. 202102040/D2B18ML02), in so far as this Contract does not contain any provisions to the contrary. The Contractor hereby agrees to perform these Services.

1.2 The following documents are an integral part of this Contract. In the event of inconsistencies, a higher ranked document takes precedence over a lower ranked document:

1. this document including schedules;
2. the Memorandum of Information
3. the tender documents;
4. the ARVODI 2018;
5. the tender issued by the Contractor to the Contracting Authority on [date], ref ...

1.3 The results of the Services will be delivered in the form of or concluded with the submission of a final report. The final report will in any event contain a description of the results achieved, the methods and techniques used to generate them, and the conclusions derived from them. The final report must be written in the French language, and contains an English summary. The final report must be submitted in electronic form.

1.4 The final report will be preceded by intermediary reports. The intermediary reports will be written in the French language.

1.5 The Parties will consult with a view to deciding on the format of the final report. The final report will in any event state that the Contracting Authority is the copyright owner.

2. Formation and duration of the Contract

2.1 This Contract comes into effect on <date> 2022 and has an initial contract period of two (2) years with an option to extend this Contract, to be exercised unilaterally by the Contracting Authority, under the same conditions, each time with a maximum period of one (1) year. The total duration of the Contract is therefore maximum three (3) years, including extension options.

If the Contracting Authority does not wish to make use of an extension option, he will notify the Contractor in writing of this no later than three (3) months before the expiry of the initial or current contract period. In that case, the Contract will end by operation of law after the initial contract period or the contract period applicable at that time. In the absence of such a message from the Contracting Authority, an option to extend takes effect automatically, if and insofar as such an option is still open.

2.2 The agreed services will be performed in the period of 18 months.

- 2.3 <OPTIONAL> If the Services have not been performed in full in accordance with the Contract within the agreed or extended term, the Contractor will immediately pay a penalty of 0.1% of the total or maximum price specified in the Contract for each day that it fails to perform the Services as agreed, up to a maximum of 10% thereof. If, other than through force majeure, the Contractor is permanently unable to perform the Services as agreed, the penalty will be immediately payable in full.
- The penalty will be payable to the Contracting Authority, without prejudice to all other rights and claims, including:
- a. the right to demand that the Services be performed as agreed;
 - b. the right to damages.

The penalty will be set off against amounts payable by the Contracting Authority regardless of whether the claim for payment of such amounts has been transferred to a third party.

3. Price and other financial provisions

- 3.1 The Contractor will perform the Services for a fixed aggregate fee of €... (excluding VAT and including travel, accommodation and any other costs).
- 3.2 It is expressly agreed that if the Contractor does not charge VAT but some or all of the Services are not exempt from VAT, the Contracting Authority will not be liable to pay the VAT in question.
- 3.3 The fee covers all Services to be performed by the Contractor under this Contract, plus any materials needed for this purpose.
- 3.4 In the case of significant changes to the provisional intervention area on which the BE had based its offer, an amendment to the contract may be negotiated with the Contracting Authority. The negotiations will refer to the rates and unit prices proposed in the offer.
- 3.5 The agreed rates are fixed and invariable during the term of this Contract.
- 3.6 The following payment schedule applies:
- Advance Payment: not higher than 15% of the Contract value, payable after Contract signing;
 - Intermediary Payments: according to the approved Disbursement Schedule, based on a proposition of the Tenderer;
 - Final Payment: not lower than 10% of the Contract value, payable after completion and acceptance of the full assignment by the Contracting Authority. The remainder will be paid after the results of the Services have been accepted.
- 3.7 Invoicing by the Contractor must submit invoices electronically in the manner prescribed in the tender document.

- 3.8 The Contractor must send the invoices electronically in pdf per mail to:

XXX@investinternational.nl,

PO (purchase order) number: <<PO nummer>>

attn. <<financial administration>>, <<contactperson>>.

For questions regarding e-invoicing , please contact
procurement@investinternational.nl

- 3.9 The paragraph concerning e-invoicing also applies to companies located outside of the Netherlands.

4. Contacts

- 4.1 The Contracting Authority's contact is <name>

The Contractor's contact is <name>

- 4.2 Notwithstanding the provisions of article 10.2 of the ARVODI 2018, the contacts named above cannot make legally binding agreements on the Parties' behalf.

- 4.3 At least [...], the contacts of the two Parties will hold consultations on the way in which this Agreement is being implemented (interim evaluation(s)).

5. Time and place

- 5.1 In principle, the Services will be performed in Mali.

6. Other Terms and Conditions

- 6.1 This Contract is governed exclusively by the General Government Terms and Conditions for Public Service Contracts 2018 (ARVODI 2018) of which the Parties have already received a copy, in so far as this Contract does not contain any provisions to the contrary. Any general and special terms and conditions drawn up by the Contractor do not apply to this Contract.

- 6.2 A steering committee has been formed in accordance with article 11 of the ARVODI 2018, whose duties and powers are laid down in Schedule 1 (the tender document) to this Contract.

- 6.3 Article 19 of the ARVODI 2018 does not apply.

- 6.4 In addition to article 21 of the ARVODI 2018 the following applies: if the Contractor considers that the physical integrity of its personnel, in connection with the performance of the Contract, is seriously and imminently threatened, he will have full discretion to suspend the execution of his mission in accordance with the Special Conditions of Contract for Studies and Technical Assistance to be performed in an area with security risks (see Annex 7).

- 6.5 **<OPTIONAL>** In addition to article 21 of the ARVODI 2018, the Contractor indemnifies the Contracting Authority against any claims for damages brought by third parties as a result of its failure to discharge its obligations as referred to in article 21.3 of the ARVODI 2018. The liability amounts set out in article 21.3 of the ARVODI 2018 apply *mutatis mutandis*.
- 6.6 In addition to the provisions of article 22 of the ARVODI 2018, the Contracting Authority may cancel this Contract forthwith out of court by registered letter, without giving any warning or notice of default, in the following cases:
- a. if the Contractor has been convicted, by final and unappealable judgment, of discrimination within the meaning of articles 137c to 137g and article 429 quater of the Criminal Code; or
 - b. if a member of the Contractor's Staff has been convicted, by final and unappealable judgment, of discrimination within the meaning of articles 137c to 137g and article 429 quater of the Criminal Code and that staff member is on the Contractor's executive, management or supervisory board or has representative, decision-making or audit powers.
- In the cases set out under (a) and (b) the right to cancellation expires three years after the judgment becomes unappealable.
- 6.7 **<OPTIONAL>** In addition to article 24 of the ARVODI 2018, the Contracting Authority has sole authority to publish reports or parts thereof. The Contractor will be cited as the implementing organisation if the Contracting Authority decides to do so. If the Contracting Authority wishes to publish explanatory notes or a commentary to coincide with the publication of the final report, it will consult the Contractor before doing so.

7. Declaration of integrity

The Contractor hereby declares that it has not offered or given members of the Contracting Authority's Staff any benefit in order to obtain the contract nor arranged for them to be offered or given any such benefit. It undertakes not to do so in the future with a view to inducing any members of the Contracting Authority's Staff to perform or refrain from performing any act.

8. Final provisions

- 8.1 Any derogations from this Contract are binding only if they have been expressly agreed by the Parties in writing.
- 8.2 Any written or oral agreements previously made by the Parties about the Services that are the object of this Contract are nullified by the signature of this Contract.

Done and signed in duplicate.

The Hague,
[date]:

[place],
[date]:

Invest International Public Programmes B.V.

[name Contractor]

H.JM Oorthuizen
CEO Invest International

[signatory's name]
[signatory's position]

Attachments:

- Data Processing Agreement