

**CONTRACT**

**no XX/5096/2018**

**on**

**[subject]**

BETWEEN

**European Forest Institute, Yliopistokatu 6, 80100 Joensuu, Finland ("EFI"),**

**with contact details: redd@efi.int ; phone +358 10 773 4300**

on the one hand

AND

**[Official name in full], [Official address in full] (the "Contractor")**

**with contact details: (email) ; phone (number)**

on the other hand

*[for consortium, all consortium members will be added, together with the statement that "The consortium members identified above are hereinafter collectively referred to as the 'Contractor' shall be jointly and severally liable towards EFI for the performance of this Contract"]*

**together hereafter referred to as "Parties", and individually as "Party"**

**THE PARTIES HAVE NOW AGREED AS FOLLOWS:**

**Article 1 Subject**

- 1.1.** This Contract has been awarded following procurement process EFI Procurement reference number (reference). The Invitation to tender and the Tender specifications are annexed as Annex 1.
- 1.2.** The Contractor undertakes to perform the tasks and deliver the outputs as specified in the Terms of reference in the Tender specifications (Annex 1). Where not otherwise agreed or stated in the Terms of reference in the Tender specifications (Annex 1), all outputs under the Contract shall be in English.
- 1.3.** The implementation period of this Contract is from its entry into force until [date].
- 1.4.** The Contractor may subcontract tasks under this Contract as stated in the Contractor's tender (Annex 2). No further subcontracting of those tasks is allowed.
- 1.5.** The Experts performing tasks under this Contract have been identified as:
  - a. [name]
  - b. [name]
  - ....

**Article 2 Contract price and specific payment terms**

- 2.1. The maximum total amount to be paid by EFI under this Contract (“Contract price”) is EUR [sum] (sum in letters euro), covering performance of all tasks and delivery of all outputs under the Contract, as further specified in the Budget (Annex 3).
- 2.2. No transfers within the Budget (Annex 3) are allowed unless agreed with EFI in writing.
- 2.3. EFI will execute payments of the Contract price in the following instalments:
  - **XX %** upon this Contract entering into force and following a request for payment (invoice) stated in euro
  - Cost incurred up to entry into force of the contract until acceptance by EFI of ( **output**) and following a request for payment (invoice) stated in euro
  - Cost incurred from acceptance of the (**output**) until (**output**)
  - The remainder upon acceptance by EFI of **Final Report** and following request for payment (invoice) stated in euro
- 2.4. All payments from EFI to the Contractor shall be made to the following bank account:

<b>Account holder:</b>	
<b>Bank name:</b>	
<b>SWIFT-BIC:</b>	
<b>IBAN:</b>	
Outside EU-> <b>Branch address:</b>	
Outside EU-> <b>Account number:</b>	
USA-> <b>ABA routing number (9 digits):</b>	
Canada-> <b>Bank transit number (8 digits):</b>	

- 2.5. Changes of bank account to which payment shall be made may be done through notification in writing by the Contractor to EFI. Such changes will take effect from EFI’s written reply confirming receipt of the notification.
- 2.6. Requests for payment (invoices) shall clearly indicate the bank account details and “Serial number 16801706”.

**Article 3 Financial reporting**

- 3.1. The Contractor shall submit a brief and precise financial report with all requests for payment (invoices), except for the the first request for payment (invoice).
- 3.2. *[Following award of the contract EFI will decide on one of the following alternatives:]*
  - Alt. 1* Financial reports shall:
    - be stated in English;

EFI Procurement reference number 3-15.2-2018-R

- be laid out in such a way as to allow comparison with the Budget (Annex 3). The level of detail should match that of the Budget. The final financial report shall also include a summary of all fees, reimbursable cost and per diems claimed under this Contract;
- include copies of the supporting documentation related to the reimbursement of costs and payment of per diem; and
- include a declaration by an accountant authorized under national law, confirming that the cost statements are based on official bookkeeping and the costs have been incurred in accordance with the terms set to their use in this Contract with EFI, and the provisions thereof.

*[This will be number as article 3.3. with corresponding changes in the following articles]* All originals of supporting documentation, relating to claims for reimbursement of costs and per diem under this Contract shall be kept by the Contractor without limitation in time and they shall be delivered to EFI at request.

The Contractor shall apply the same degree of care with regard to the originals of supporting documentation as with its own confidential and/or proprietary information, but in no case less than reasonable care.

Following prior notification, and in accordance with instructions from EFI following such notification, the Contractor can at any time send the originals of supporting documentation to EFI.

EFI may recover all sums corresponding to any original of supporting documentation not being received by EFI, within a time as decided by EFI (that shall be reasonable), according to the preceding.

*Alt. 2* Financial reports shall:

- be stated in English;
- be laid out in such a way as to allow comparison with the Budget (Annex 3). The level of detail should match that of the Budget. The final financial report shall also include a summary of all fees, reimbursable cost and per diems claimed under this Contract; and
- include all originals of supporting documentation, relating to claims for reimbursement of costs and payment of per diem.

**3.3.** The Contractor shall provide an explanation of any financial report or parts of it if requested by EFI, within a time limit that EFI shall set. If no such explanation is given by the Contractor within this time limit, EFI shall be absolved from any obligation to make payments relating to that financial report.

**3.4.** EFI has the right to audit or to nominate any third party to audit the Contractor's records relating to amounts claimed under this Contract during its term and any extension, and thereafter without any limitation in time.

**3.5.** All communication between the Parties relating to the administration of this Contract shall be in English.

**Article 4 General payment terms**

- 4.1. EFI will only execute payments if the Contractor has fulfilled all contractual obligations in relation to the tasks/output for which the request for payment (invoice) is submitted. For this purpose, the Contractor shall not submit a request for payment (invoice) regarding those tasks or that output until EFI has approved the tasks or output in question.
- 4.2. When necessary, costs shall be converted to euro using the monthly accounting rate for the month in which the cost is incurred as stated on <http://ec.europa.eu/budget/inforeuro/>.
- 4.3. Payments shall not be executed until EFI has approved the financial report for the payment requested.
- 4.4. Payment shall be made by EFI within 30 calendar days from EFI approving the output, when such approval is a precondition for payment, and otherwise within 30 calendar days from EFI receiving the request for payment (invoice).
- 4.5. The Parties shall bear their own costs for any service fees charged by banks or other financial institutions when payments under this Contract are sent or received. The Contractor shall however bear all costs charged to EFI by banks and other financial institutions when EFI is unable to transmit payments to the Contractor due to incomplete or incorrect banking details given by the Contractor or for other reasons independent of EFI. EFI may deduct such costs from payments made to the Contractor under this Contract.
- 4.6. The Contractor recognizes that EFI is exempt from value-added tax (VAT) in the European Union and may also otherwise be exempt from VAT. The Contractor shall as applicable present all requests for payment excluding VAT.
- 4.7. The Contractor undertakes to refund to EFI any amounts paid by EFI to the Contractor for tasks to be performed and outputs to be delivered which at the date of termination of this Contract have not been performed or delivered ("amounts paid in advance"). The Contractor undertakes to refund to EFI amounts paid in advance, within seven (7) days of termination of this Contract. EFI may recover the balance of any amounts paid in advance not refunded as a debt due and payable by the Contractor to EFI.
- 4.8. The Contractor commits to respect applicable legislation with regard to any payment received from EFI and with regard in particular to taxation, social security matters and working rights. EFI may inform any tax authority or other authority about any payment made under this Contract.

**Article 5 Eligibility of fees, per diem and reimbursable costs**

**5.1. General**

- 5.1.1. Fees, per diem and reimbursable costs must, to be considered eligible under this Contract, have been incurred during the implementation period as defined in article 1.
- 5.1.2. Fees, per diem and reimbursable costs are not eligible while performance under the Contract is suspended.

**5.2. Fee**

- 5.2.1. The fee is all-inclusive; EFI however pays per diem and reimburses costs according to the provisions below where such per diem and reimbursable costs are explicitly identified in the Budget (Annex 3).

5.2.2. Fee is only paid for days when work is done.

**5.3. Reimbursable costs**

5.3.1. To be considered eligible for reimbursement, costs have to be:

- actually incurred, individually identifiable and verifiable, as backed by originals of supporting evidence, as the case may be in the Contractor's official bookkeeping; this means that no lump sums will be eligible for reimbursement;
- necessary in order to perform the tasks as specified in the Terms of reference in the Tender specifications (Annex 1); and
- cost effective and providing value for money

5.3.2. The following costs are never eligible for reimbursement:

- costs for excess baggage;
- costs that are covered by the per diem; and
- costs that are covered from a source other than his Contract

5.3.3. Travel tickets are reimbursed by EFI up to the cost of economy class level on basis of the most cost efficient itinerary, taking into account ticket price, travel duration, number of connections and safety of the transporting company.

5.3.4. For travel tickets, EFI requires the following documentation as supporting evidence: tickets or electronic reservation, invoices and boarding cards. This documentation must clearly show the class of travel used, the time of travel and the amount paid.

**5.4. Per diem**

5.4.1. Per diem is paid when the tasks to be performed by an Expert, as stated in the Terms of Reference in the Tender specifications (Annex 1), are performed more than fifty (50) kilometres away from the Expert's normal place of work.

5.4.2. Full per diem is paid if performance of the tasks requires an overnight stay away from the normal place of work and the overnight stay has been in a hotel (or equivalent). 50% of the per diem is paid if performance of the tasks does not require an overnight stay away from the normal place of work or if a required overnight stay away from the normal place of work has not been in a hotel (or equivalent).

5.4.3. A full per diem will cover accommodation, meals, local travel (including, but not limited to, travel to and from airports) and sundry expenses. 50% per diem will cover meals, local travel (including, but not limited to, travel to and from airports) and sundry expenses.

5.4.4. A per diem concerns one day of travel. A day of travel is 24 hours from the beginning of the travel, or 24 hours from the end of the preceding day of travel.

5.4.5. The Contractor shall supply EFI with documentation supporting a claim for a certain per diem.

**Article 6 Performance**

- 6.1. The Contract shall be performed under the highest professional standards. All persons working under this Contract shall have the professional qualifications and experience necessary to carry out assigned tasks.
- 6.2. Neither the Contractor nor any person performing tasks under the Contract shall represent EFI or the European Commission, or behave in a way that would give such an impression.
- 6.3. Nothing in this Contract is intended to make, nor shall it make, EFI the employer of any person performing tasks under the Contract.
- 6.4. No change of the Contractor's staff identified as an Expert performing tasks under this Contract can be made without the prior written consent of EFI.
- 6.5. Should it become necessary to replace any person identified as an Expert performing tasks under this Contract, the Contractor shall ensure that the Expert is replaced with a person of equal or better qualifications and experience.

**Article 7 Ownership to output and Intellectual Property Rights**

- 7.1. The services rendered by the Contractor to EFI under this Contract, are rendered on a work for hire basis. All output and intellectual property rights to that output, including copyright and other intellectual or industrial property rights, obtained in performance of the Contract, shall be owned solely by EFI, which shall have an unlimited right to use (including but not limited to altering and publishing), assign or transfer them as it sees fit, without a separate consideration payable to the Contractor.
- 7.2. The Contractor represents and warrants that all output under this Contract is unique and original, is clear of any claims, and does not infringe upon the rights of any third parties.
- 7.3. The Contractor agrees to cooperate with EFI, at EFI's expense, in obtaining statutory protection for any output under this Contract.

**Article 8 Visibility**

- 8.1. Any document or publication made by the Contractor under this Contract shall include the following disclaimer: *"This document has been produced with the financial assistance of the European Union. The views expressed herein can in no way be taken to reflect the official opinion of the European Union"*.
- 8.2. Information given to the press, all related publicity material, official notices, reports and publications shall acknowledge that the tasks were carried out and the documents produced *"with funding by the European Union"* and shall display in an appropriate way the European logo (twelve yellow stars on a blue background).
- 8.3. The Contractor shall furthermore take all other appropriate measures to publicize the fact that the tasks have been commissioned by the European Forest Institute's EU REDD Facility, which is funded by the European Union, the Governments of France, the United Kingdom, Ireland, Spain, and EFI.
- 8.4. When the Contractor requires visibility material for a certain task under this Contract, EFI will provide the Contractor with logos, texts and emblems to be used for this purpose. The Contractor may not use any other logos, texts and emblems unless agreed in writing by EFI.

**EFI Procurement reference number 3-15.2-2018-R**

- 8.5.** The Contractor has to obtain EFI's prior approval regarding specific publicity material where logos, texts and emblems thus provided by EFI are to be used.

**Article 9 Conflict of interests**

- 9.1.** The Contractor undertakes to take all necessary action to prevent, avoid and resolve any conflict of interests.
- 9.2.** There is a conflict of interests where the impartial and objective exercise of the functions of any person under this Contract is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with another party.
- 9.3.** EFI shall without delay be informed of any situation constituting or being likely to lead to a conflict of interests.
- 9.4.** EFI reserves the right to verify that the action taken by the Contractor to prevent, avoid and resolve conflict of interests is adequate and may require additional action to be taken, within a time limit that it shall set.

**Article 10 Confidentiality**

- 10.1.** All information in whatever form or mode of transmission, which has been disclosed by EFI to the Contractor in connection with the performance of this Contract and which has been explicitly indicated as confidential, or when disclosed orally, has been identified as confidential at the time of disclosure is "Confidential Information".
- 10.2.** All output under the Contract, in whatever form, is "Confidential Output".
- 10.3.** The Contractor hereby undertakes:
- not to disclose Confidential Information or Confidential Output to any third party without the prior written consent by EFI;
  - not to use Confidential Information or Confidential Output otherwise than for the purpose of performance under this Contract; and
  - to return to EFI on demand all Confidential Information which has been disclosed by EFI.
- 10.4.** The above stated obligations shall not apply for disclosure or use of Confidential Information, if and in so far as the Contractor can show that:
- the Confidential Information has become publicly available by means other than a breach of the Contractor's confidentiality obligations;
  - EFI subsequently has informed the Contractor that the Confidential Information is no longer confidential;
  - the disclosure of the Confidential Information is foreseen by the Terms of Reference in the Tender specifications (Annex 1);
  - the Confidential Information has been communicated to the Contractor without any obligation of confidence by a third party who is in lawful possession thereof and under no obligation of confidence to EFI;

**EFI Procurement reference number 3-15.2-2018-R**

- the Confidential Information, at any time, was developed by the Contractor completely independently of disclosure by EFI or the Contractor's obligations under this Contract; or
  - the Confidential Information was already known to the Contractor prior to disclosure by EFI.
- 10.5.** The above stated obligations shall not apply for disclosure or use of Confidential Output, if and in so far as the Contractor can show that:
- the Confidential Output has become publicly available by means other than a breach of the Contractor's confidentiality obligations;
  - EFI subsequently has informed the Contractor that the Confidential Output is no longer confidential; or
  - the disclosure of the Confidential Output is foreseen by the Terms of Reference in the Tender specifications (Annex 1).
- 10.6.** The Contractor shall immediately advise EFI in writing of any unauthorised disclosure, misappropriation or misuse of Confidential Information or Confidential Output after it becomes aware of such unauthorised disclosure, misappropriation or misuse.
- 10.7.** In case of unauthorized use or disclosure of Confidential Information or Confidential Output, EFI shall be entitled to liquidated damages in the amount of EUR 10,000 (ten thousand euros) for each such use or disclosure. Notwithstanding the right to liquidated damages, EFI has the right to take any measures available and to claim and receive a higher amount of compensation if EFI can prove that the actual damage sustained will exceed the amount of liquidated damages.
- 10.8.** The Contractor shall be bound by the above stated confidentiality also after completion of the tasks under this Contract or termination of this Contract for a period of seven (7) years from the time of such completion or termination.

**Article 11 Liability**

- 11.1.** The Contractor shall have sole responsibility for complying with any legal obligation incumbent on it.
- 11.2.** EFI shall not accept any responsibility or liability for any claims, debts, demands, damage or loss sustained by the Contractor in performance of this Contract except in the event of wilful misconduct or gross negligence on the part of EFI.
- 11.3.** The Contractor undertakes to hold EFI harmless of all claims that any third party may present against EFI, including EFI's reasonable legal costs, to the extent the presented claim relates to fault or negligence that is duly at the responsibility of the Contractor or its subcontractors.

**Article 12 Subcontracting and Assignment of rights and obligations**

- 12.1.** The Contractor shall not without EFI's prior written consent subcontract any tasks under this Contract nor cause this Contract to be performed in fact by third parties.
- 12.2.** Where EFI has approved subcontracting of tasks under this Contract, the Contractor shall still be bound by the obligations of under this Contract. EFI will treat all contractual matters exclusively with the Contractor, whether or not individual tasks are performed by a subcontractor. The Contractor

can under no circumstances avoid liability towards EFI on the grounds that the subcontractor is at fault.

- 12.3.** The Contractor shall ensure that the subcontracting of tasks under this Contract does not affect the rights and guarantees to which EFI is entitled by virtue of this Contract, and that the conditions applicable to it under this Contract also are applicable to any third party performing tasks under the Contract.
- 12.4.** The Contractor may not without the prior written consent of EFI assign or transfer any rights or obligations under this Contract. This shall also apply where the Contractor's legal identity has changed as a result of a takeover, merger or for any other reason. Any unauthorized assignment of rights or obligations shall have no effect on EFI.

**Article 13 Force majeure**

- 13.1.** Force majeure shall mean an exceptional circumstance or event beyond the control of the non-performing party, which was not due to error or negligence on their part or on the part of a subcontractor, and could not have been avoided by the exercise of due diligence. Labour disputes, strikes and financial problems shall not constitute force majeure, unless they stem directly from a relevant case of force majeure.
- 13.2.** Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Contractor is unable to perform contractual obligations due to force majeure, he shall have the right to remuneration only for tasks actually executed.
- 13.3.** If either contracting party is faced with force majeure, it shall notify the other party without delay stating the nature, likely duration and foreseeable effects.

**Article 14 Liquidated damages**

- 14.1.** If the Contractor does not deliver output on time EFI is entitled to liquidated damages from the date on which delivery should have taken place.
- 14.2.** The liquidated damages shall be payable in the amount of 0.25 % (zero point twenty-five percent) of the Contract price for each calendar day of delay.
- 14.3.** The liquidated damages become due at EFI's written demand.
- 14.4.** EFI may deduct liquidated damages that are due from any payment due to the Contractor under this Contract.

**Article 15 Use and transfer of equipment**

- 15.1.** The Contractor shall exercise due care in the use and storage of all equipment and supplies purchased with funding from EFI under this Contract. The Contractor may not dispose of any equipment and supplies purchased with funding from EFI under this Contract without the written approval by EFI.
- 15.2.** Ownership of the equipment and supplies purchased with funding from EFI under this Contract shall at the end of the Contract be transferred as instructed by EFI. The Contractor shall provide EFI with originals of supporting documentation verifying such transfers of ownership.

**Article 16 Termination and suspension**

- 16.1.** EFI may by written notice, with immediate effect, terminate the Contract if EFI determines that circumstances make it impossible or excessively difficult to continue implementation of the Contract.
- 16.2.** If EFI determines that circumstances only temporarily make it impossible or excessively difficult to continue implementation of the Contract EFI may by written notice, with immediate effect, suspend performance under the Contract. Any such suspension shall be in force until EFI notifies otherwise and is without prejudice to EFI's rights according to the preceding article. The Contractor shall resume performance under the Contract when thus notified in writing by EFI. The Parties shall, before the Contractor resumes performance, negotiate on ways to implement the Contract, taking the impact of the suspension into consideration.
- 16.3.** EFI may by written notice with immediate effect terminate this Contract where:
- the Contractor or any subcontractor is declared bankrupt, is having its affairs or person administered by the courts, has entered into arrangements with creditors or has suspended its business activities, or is the subject of proceedings concerning such matters;
  - the Contractor is in breach of its obligations regarding Confidentiality or regarding Subcontracting and Assignment of Rights and Obligations;
  - the Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after having been given the opportunity to remedy the failure, remains in breach of its contractual obligations; or
  - any information given by the Contractor in its tender (Annex 2) proves to be false or any illegal or corrupt practices have been connected with negotiating, signing or executing this Contract, in which case EFI can also recover any funds paid to the Contractor.
- 16.4.** No damages will be paid to the Contractor in case the Contract is terminated or suspended.
- 16.5.** Termination shall not affect any accrued rights or liabilities of a Party at the time of termination.

**Article 17 Final provisions**

- 17.1.** This Contract shall be governed by Finnish law, excluding its rules on conflict of laws.
- 17.2.** The Parties shall seek to settle amicably any differences of opinion and disputes arising from or related to the implementation of this Contract. Should this fail, any dispute, controversy or claim arising out of or relating to this Contract, or the breach, termination or validity thereof shall be finally settled in accordance with the Arbitration Rules of the Finland Chamber of Commerce. Article 36 on Interim measures of protection shall not apply. The language of the proceedings shall be English. The place of arbitration shall be Helsinki, Finland.
- 17.3.** Any modification to this Contract has to be in writing and be duly signed by the Parties to be valid.
- 17.4.** This Contract shall enter into force on the date when the last of the Parties sign.

**The following annexes form an integral part of this Contract:**

**Annex 8: Model contract**

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**EFI Procurement reference number 3-15.2-2018-R**

- Annex 1 Invitation to tender and Tender specifications
- Annex 2 The Contractor's tender
- Annex 3 Budget

This Contract is made in two originals, one for each Party.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto, have signed this Contract.

**On behalf of EFI**

Name: Marc Palahí

Position: Director

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**On behalf of the Contractor**

Name:

Position:

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Annex 1**

**Invitation to tender and Tender specifications**

**Annex 2**

**The Contractor's tender**

**Annex 3**

**Budget**