

**SERVICE AGREEMENT**

**Project 2016/018/Managing Entity Kenya**

**Reference N°.....**

By and between:

**INNOVATION ENERGIE DEVELOPPEMENT (IED)** A French private entity having its registered office at 2 chemin de la Chauderaie – 69340 Francheville - France, duly registered with the Trade and Companies Register in Lyon under no. 345 067 581, appointed Managing Entity of the AFD/DFID GMG Programme in Kenya, represented by Denis RAMBAUD-MEASSON, chairman, acting pursuant to the powers granted to him for this purpose,

Hereinafter referred to as the “Managing Entity”,

And

[.....], having its registered office at [.....], registered with [.....] under no. [.....] represented by [.....], duly authorised for the purposes.

Hereinafter referred to as the ‘Service Provider’.

The foregoing are referred to individually or jointly hereinafter as the ‘Party’ or the ‘Parties’.

## Recitals

INNOVATION ENERGIE DEVELOPPEMENT is a French private entity created in 1988 and governed by French law in its capacity as a specialised institution in energy consulting and engineering.

IED has been appointed by Agence Française de Développement (AFD) as Managing Entity for a financing program aiming at the promotion of private initiatives in Green Mini-Grids (GMG) improving access to electricity in Kenya.

The Managing Entity:

- Provides support to GMG project sponsors to develop and implement their project through (i) direct support or (ii) recruitment of Services Providers for technical assistance.
- Provides support to Kenyan institutions on GMG policy issues, through (i) direct support or (ii) recruitment of Services Providers for technical assistance.

The purpose of this agreement (hereinafter the 'Agreement') is to set out the conditions under which the Service Provider will provide services to the Managing Entity for the development and implementation of the [GMG project / Project sponsor]

Furthermore, in order to promote sustainable development, the Parties have both agreed on the need to encourage compliance with environmental and social standards that have been accepted at international level, in the form of the fundamental conventions of the International Labour Organisation (ILO) and international agreements on the protection of the environment.

It has been agreed as follows:

## **Article 1. Definitions**

Terms and expressions starting with a capital letter shall have the following meanings for the purposes of the Agreement.

### Acts of Corruption

It means abuse of entrusted power for private gain.

### Appendix

Refers to any appendix to the Agreement. The Appendices form an integral part of the Agreement.

### Beneficiary

It refers to the project sponsor which will benefit from the service agreement between the Service Provider and the Managing Entity. Such agreement in fact has been signed in order to give support to the beneficiary towards the implementation of its project.

### Committee

Refers to the committee set up to monitor the Services that shall operate as described in Article 3.5 of the Agreement.

### Confidential Information

Refers to:

- Any information, data or documents of any kind, regardless of the form or medium thereof, including, without being limited to, any written document, memorandum, report, document, research, analysis, drawing, letter, list, software program or content of data stored on a USB memory stick, specifications, figures or graphs transmitted by IED to the Service Provider in the context of the Agreement;
- The Agreement (including any information obtained during the negotiation and/or performance hereof) and, more generally, any information or document that the Service Provider could have obtained, directly or indirectly, in writing or in any other way, from IED for the requirements of or at the time of the Agreement, including, without being limited to, any technical, commercial, strategic or financial information, research, specifications, software programs or products;
- The Services (including the reports, works and research created or performed pursuant to the Services) and any information related thereto.
- See Appendix 4 for the Confidentiality and Non-Disclosure Agreement (NDA)

### Staff

Refers to the Service Provider's staff assigned by said Service Provider to perform the Services.

### Services

Refers to all the duties, activities, services deliverables and inputs to be performed by the Service Provider pursuant to the Agreement

## **Article 2. Purpose of the Agreement and contract documents**

### 2.1 Purpose of the Agreement

The purpose of the Agreement is to set out the terms and conditions under which the Service Provider undertakes to provide the Managing Entity and the Beneficiary, independently, [summary of the services]. Said Services are described in more detail in Appendix 1. The Services shall be performed and organised in accordance with the stipulations contained in the Agreement and in the Appendices hereto.

### 2.2 Documents that form the Agreement

1. The Agreement
2. The terms of reference of the Services (Appendix 1)
3. The commercial proposal submitted by the Service Provider and accepted by the Parties (Appendix 2)
4. Members of Staff allocated and work schedule (Appendix 3)
5. Confidentiality and Non-Disclosure Agreement (Appendix 4)

In the event of any discrepancy between the various documents, the order of precedence of the documents shall be as follows: The Agreement, the terms of reference and the commercial proposal.

## **Article 3. Performance of the Services**

### 3.1. Resources to be used

In the context of the performance of the Agreement, the Service Provider shall use all its knowhow and skills to perform the Services. It shall provide all the logistics and equipment required to perform the Services properly.

The Service Provider shall perform the Services professionally and in accordance with good practice.

The Service Provider shall allocate the appropriate Staff to carry out the various assignments required to perform the Services properly. The names of the members of Staff, including their duties and responsibilities in view of the Services, are shown in Appendix 3. The Service Provider shall provide the Managing Entity with the curriculum vitae of the members of its Staff allocated accordingly.

The Staff shall work under the supervision and under the legal, hierarchical and disciplinary responsibility of the Service Provider. The Service Provider therefore undertakes to carry out all the applicable formalities in view of the regulations in force that apply to employers, relating in particular to employment law, social security coverage and tax obligations. The Staff shall in all circumstances remain solely under the authority of the Service Provider and shall report on their activities solely and directly to the Service Provider.

The Service Provider undertakes to do whatever may be necessary to enable the Staff to carry out their assignments. It shall in particular carry out the administrative formalities required for the Staff, obtain visas and any document required in view of local regulations. The Service Provider also undertakes (i) that it will have taken all the necessary measures (insurance, additional health and social security coverage, etc.) to assist the Staff in the event of any local difficulties, such as, for example but not only, evacuation for health-related or political or security reasons and (ii) to provide all technical assistance the Staff may require in the context of the assignment.

The Service Provider may replace one or more member(s) of Staff in the event of any failure of said member(s) to perform as required provided that (i) the qualifications of the employee(s) proposed to

replace him/her/them are equivalent to or higher than those of the employee(s) to be replaced, (ii) that this replacement does not entail any delays for the Managing Entity in view of the Service performance schedule, and (iii) that it has obtained Managing Entity's prior written consent to the employee(s) proposed. In this case, the replacement shall take place immediately. The Service Provider shall bear all related costs.

3.2. Place of performance of the Services

The place where the Services are to be performed is Kenya

3.3. Service performance schedule

The Service Provider undertakes to provide Managing Entity with:

Deliverable	Nature (report; N°; electronic...)	Time schedule

Beyond electronic versions, one hard copy of each of these final reports shall be provided. The Service Provider shall send these reports electronically to the following address: ..... The reports shall be assessed in order to determine whether they comply with the terms of reference shown in Appendix 1. The Committee shall approve each report that complies with said terms of reference. Only the express and written approval of each report by the Managing Entity shall constitute proof of this compliance. If a report fails to comply with the terms of reference, the Managing Entity shall send its observations/comments, by any means, within a period of fifteen (15) days as from receipt of the report. These observations/comments shall be taken into account by the Service Provider and the Service Provider shall provide a duly amended report within a period of seven (7) days as from the date on which the Managing Entity sent its observations.

The Service Provider undertakes to perform the Services in accordance with the schedule set out above.

Any late delivery of a report because the Managing Entity failed to approve the first version of said report shall under no circumstances entail any late performance at the level of the Service performance schedule

Notwithstanding the foregoing, this schedule may be changed, solely by the Managing Entity, in the following cases:

- work cannot begin on the scheduled date or cannot take place as agreed for a reason that is attributable to the Managing Entity;
- the Managing Entity requests changes or additional work;
- the Service Provider cancels/postpones an assignment required for the Services to be performed in an area at risk, for safety reasons.

3.4. Penalties for late performance

Any late performance that has not been expressly approved by IED may give rise to penalties for late performance payable by the Service Provider in an amount 0.1% of the Contract Price per calendar day late, ten (10) days as from receipt of formal notice served by IED on the Service Provider in writing, where the late performance has not been remedied. IED shall deduct the amount of the penalties for

late performance from the amount of the balance to be paid and the remainder, if any, shall be paid by the Service Provider to AFD at the latter's first request.

Payment of these penalties shall not hinder the automatic termination of the Agreement without compensation for reasons attributable to the Service Provider.

3.5. Monitoring the performance of the Services

The committee is composed of:

- Mr. Denis Rambaud-Measson, President, IED
- Mr. Douglas Liner, Team leader of the Managing Entity
- Mr./Mrs. [Name.....], [position],

Its role shall be to discuss, comment, check reports submitted and approving them. If a report is not approved, it will send its observations/comments to the Service Provider within the period stipulated in Article 3.3.

[Name] [Position] shall be the Service Provider's contact. The Committee shall send him its observations, recommendations or decisions and/or shall reply to his/her requests. He can be reached at the following email address: [.....]

The Service Provider undertakes to take into account any recommendations and to make the changes requested, in accordance with the Agreement and the Appendices hereto.

**Article 4. Remuneration of the Service Provider**

4.1. Fixed remuneration

In remuneration for the proper performance of the Services pursuant to the Agreement, IED shall pay the Service Provider a total fixed amount of [.....] euros (Inclusive of all taxes whatsoever).

The Service Provider's remuneration shall be paid as follows:

[To be adapted]

A first instalment of 15% at reception of the inception report, i.e. the amount of [.....] euros

A 65% instalment when the draft report is approved by the Managing Entity, i.e. the amount of [.....] euros

A final instalment of 20% on approbation of the final deliverable, i.e. the amount of [.....] euros

This price is fixed and cannot be changed during the term of the Agreement. This price is deemed to be the full price. It includes, in particular, any tax charges, charges similar to tax charges or any other charges to which the Services are mandatorily subject. This fixed amount shall cover all the Services described in Appendix 1, including all fees, costs, charges and various expenses linked to the Services.

4.2. Terms and conditions of payment

Payments shall be made in Euro by bank transfer to the following account held by the Service Provider:

Address: [.....]

Name of account holder: [.....]

Bank: [.....]  
Account number (ID): [.....]  
IBAN No (or equivalent): [.....]  
Bank SWIFT Code: [.....]

Transfers costs shall be paid by the Managing Entity. However, if the service provider’s account is not in euro, exchange rate fees may occur and will be of the sole responsibility of the service provider.

Payments shall be made following the submission of an invoice and the following documents: [draft final report, final report] and in accordance with the schedule set out above. 2 copies of the invoices shall be issued and they shall be in English.

Invoices shall be sent to [.....] with copy to [.....] Payments shall be made within a period of 30 days from the end of the month in which the invoice and the aforementioned documents have been received, subject to the approval of the report that is the subject of the invoice.

**Article 5. Intellectual property**

5.1. Assignment of copyright

The Service Provider assigns the rights over the Services, and over any element of the Services which forms part or all of said Services, solely to IED. It irrevocably assigns to IED, exclusively, worldwide and for the legal term of copyright protection, the rights to exploit, represent, reproduce and adapt, whether for business purposes and/or otherwise, that it holds over the reports, works, research and documents provided or performed pursuant to the Services (hereinafter the ‘Assignment’).

More specifically, the Assignment includes the rights:

- 1. to use, reproduce, keep, distribute, transmit, perform, translate, exploit, circulate and represent the Services,
- 2. for promotional purposes, for commercial or non-commercial, public or private purposes and in particular but without being limited to exhibitions, operations involving the provision of information or public relations operations,
- 3. in whole or in part, on any existing or future medium, and in particular on paper, optical, digital or magnetic media or on any computerised, electronic or telecommunications media.

The Assignment shall take place as and when the reports, works, research and documents are produced or performed by the Service Provider pursuant to the Services.

The Service Provider also acknowledges that the Managing Entity shall have the right to transfer the right to use the reports, works, research and documents produced or performed by the Service Provider in the context of the Agreement to any third party.

5.2. Warranty of Assignment

Throughout the term of the Assignment, the Service Provider (i) undertakes to refrain from distributing the Services on any medium whatsoever without IED’s agreement and (ii) warrants full enjoyment of the ownership of the rights hereby assigned to IED. The Service Provider shall hold IED harmless from and against any outstanding circumstances, claims or dispossession whatsoever. In particular, the Service Provider warrants that it duly and properly acquired all rights, in particular intellectual property rights, required for the Assignment. The Service Provider shall therefore hold the Managing Entity

harmless from and against any action, claim, demand or objection from any person on the grounds of a property right, in particular an intellectual property right, an act of unfair competition or undue enrichment, which the Assignment may be asserted to breach.

The Service Provider warrants that the Services contain nothing that could constitute a breach of current laws and regulations, in particular relating to libel or slander and insults, breach of privacy, image rights, indecent behaviour, copyright violation or plagiarism.

### 5.3. Remuneration of the Assignment

The fixed and final price of the Assignment is included in the remuneration described in Article 4 of the Agreement. The Service Provider acknowledges that it is aware thereof and shall not be entitled to claim any further amount for the Assignment.

## **Article 6. The Service Provider's representations and obligations**

### 6.1. The Service Provider's representations

The Service Provider shall be responsible for obtaining the authorisations required for the Agreement and insurance relating to the Services. The Service Provider represents that it shall take out and maintain in effect, and ensure that its Staff are also covered by, insurance against all risks related to the performance of the Services, in particular where members of Staff travel abroad. The Service Provider shall provide IED, at its request, with the corresponding insurance certificate(s).

The Service Provider represents:

- that it has obtained, from the relevant authorities, all the authorisations required to perform its activity in its country of origin or the country where the Services are to be performed;
- that it has all the authorisations required for the Agreement to be valid and for the obligations arising therefrom to be fulfilled;
- that it employs its Staff in accordance with the employment regulations that apply to it.

If all or some of the Services are to be performed in an area that may be at risk, the Service Provider undertakes, prior to sending the Staff onsite to perform the Services, to seek information on possible risks. The Service Provider undertakes to decide whether to cancel or maintain the assignment after having received information about any possible risk. It shall inform in writing the Managing Entity immediately on its decision.

### 6.2. The Service Provider's obligations

The Service Provider shall provide, at the time of the signing of this Agreement, the following documents:

– A Certificate of Registration or equivalent official document confirming the legal existence of the Service Provider in Kenya or in its country of origin.

- A Tax Compliance certificate or equivalent official document confirming the Service Provider is compliant with its taxes obligations in Kenya or in its country of origin.

- A letter from its bank confirming the bank details of the service provider on which payments will be done

- A letter from its Auditor or any legal authority (or a self-declaration) confirming that the Service Provider is not in a state of bankruptcy or subject to insolvency or winding up procedure or any



other financial setup that would compromise its ability to execute its obligations described in this contract.

- If the service provider is of French or European nationality, it shall also provide a social certificate confirming being up to date with social contributions. For all other nationalities the service provider shall make a declaration on honour indicating being up to date with social obligations with its country of origin.

- Furthermore, if deemed necessary, the Managing Entity reserves the right of requesting the Service Provider to provide the last audited accounts in order to appreciate its financial situation.

All these documents shall be provided in French or English. When written in a different language, they will have to be translated in English, at the Service Provider cost.

If the Service Provider or a subcontractor has failed to carry out the required formalities, it shall serve formal notice on the Service Provider, in writing, and immediately rectify the situation. The release of the first instalment is subject to complete submission and approval of the above mentioned documents.

If formal notice is served on the Service Provider, it must provide proof that it has carried out the relevant formalities. If it fails to do so, IED may either impose contractual penalties or terminate the Agreement without compensation, at the Service Provider's cost and risk.

### 6.3. Confidentiality obligation

See the appendix 4 on the same.

### 6.4. The Service Provider's powers

The Service Provider shall have no power to act in the name and on behalf of IED or to bind IED, unless IED gives it an express and special authorisation on a case-by-case basis. IED shall remain solely responsible for any decisions to be taken as regards proposals submitted to it by the Service Provider at the end of the Services.

### 6.5. Integrity clause

The Service Provider represents and undertakes that:

- it has not committed any act that could affect the competitive process and in particular that no Anticompetitive Practices have occurred nor will any such practices occur;
- the negotiation, entry into and performance of the Agreement have not, do not and will not give rise to any Act of Corruption.
- It will not be involved in any money laundering activity

### 6.6. Insurance

The Service Provider will take all necessary measures to take professional risk indemnity insurance for itself and its staff, compliant with the Kenyan legislation.

## **Article 7. The Managing Entity's obligations**

In order to allow the Service Provider to perform its work properly, The Managing Entity shall:

- make available to the Service Provider all the elements in its possession that are required to understand the problem with a view to performing the Services;

- facilitate contacts between the Service Provider and AIEDFD employees involved in the Services.

## **Article 8. Entry into effect – Term of the Agreement**

The Agreement shall come into effect as from its signature by the Parties. The Services shall start as from the date of signature of the contract, that is on [DD month YYY], and shall end when all deliverables and services are provided and validated and at the latest the [DD month YYYY].

The Agreement may also end if it is terminated by one of the Parties in the cases and in accordance with the terms and conditions set out in Article 9 of the Agreement.

The stipulations of Article 5 (Intellectual property), Article 6.3 (Confidentiality), Article 12 (Governing law – Jurisdiction) and NDA (Appendix 4) shall continue to apply after the Agreement expires.

## **Article 9. Termination of the Agreement**

### 9.1. Termination for reasons of convenience

IED may terminate the Agreement at any time by notifying the other Party of its decision at least 30 (thirty) days beforehand in writing, without compensation for the other Party.

In this case, IED shall reimburse the Service Provider for the costs incurred by it until the date of termination and shall pay it, where applicable, the amount corresponding to the part of the Services that has been performed.

### 9.2. Termination in the event of failure to perform not attributable to the Parties

Where, for reasons of safety or security, one or more assignment(s) that is/are required and is/are included in the Services located in an area potentially at risk is/are cancelled, and this cancellation compromises the performance of the Services pursuant to the Agreement, either Party may terminate the Agreement by notifying the other Party of its decision at least 8 (eight) days beforehand by recorded delivery letter with advice of receipt, without compensation for the other Party.

In this case, IED shall reimburse the Service Provider for the costs incurred by it until the date of termination and shall pay it, where applicable, the amount corresponding to the part of the Services that has been performed.

### 9.3. Termination for breach

The Agreement may be terminated automatically by either Party, in writing, in the event the other Party breaches any of its obligations pursuant to the Agreement, and said breach has not been remedied within a period of fifteen (15) days as from formal notice, sent by recorded delivery letter with advice of receipt, requiring it to remedy said breach. Any termination may be decided without prejudice to any compensation that may be claimed in addition by the non-breaching Party.

The termination of the Agreement by IED shall be without compensation and this shall not affect IED's right to take advantage of the rights and obligations arising before the date of termination.

### 9.4 Termination due to a force majeure event

Where a force majeure event, as defined in the case law of French courts, prevents the Service Provider from fulfilling its obligations and continues more than one (1) month after it started, the Agreement may be terminated automatically by the Managing Entity, merely by notifying the Service Provider, without compensation for the Service Provider or notice being required.

9.5 In all the cases of termination stipulated in Article 9 of the Agreement:

- All the rights and obligations of the Parties shall automatically end, except for rights and obligations arising before the date of termination, and, in particular, rights relating to intellectual property (i) and confidentiality obligations (ii);
- In any event, when the Service Provider receives notice of termination, it shall provide Managing Entity with the works performed on the date of termination and all the documents, equipment and/or material provided to it.

**Article 10. Fees -Levies – Taxes**

Any fees, levies, tax and/or duties or withholdings of any kind whatsoever that may be payable as a result of entering into, performing or extending the Agreement shall be borne solely by the Service Provider.

**Article 11. Miscellaneous**

The Service Provider may not assign any of its rights and/or obligations pursuant to the Agreement without IED’s prior express consent.

Any notices, reports and other communications relating to the Agreement shall be delivered or sent to the respective address for service of the Parties referred to on the first page hereof. They shall become effective as from receipt at this address or at any new address of which the other Party has been duly notified in writing.

Any amendment of the terms and conditions of the Agreement, including changes to the type or volume of the Services or the amount of the Agreement, shall be the subject of a written agreement between the Parties.

The originals of the Agreement shall be drawn up and signed in English. If a translation of the Agreement is made, only the English version shall be authentic in the event of a discrepancy in interpretation of the provisions of the Agreement or in the event of a dispute between the Parties.

**Article 12. Governing law -Jurisdiction**

This Agreement shall be governed by French law. Any dispute relating to the validity, interpretation, performance or termination of any of the clauses of the Agreement shall be referred to the Paris courts having jurisdiction if it has not been possible to settle said dispute amicably.

In two (2) originals, one (1) of which is for Managing Entity

Executed in [.....] Executed in [.....],

On DD month YYYY on DD month YYYY

For IED for the Service Provider

By: Denis RAMBAUD-MEASSON By: [.....]

Position: Chairman Position: [.....]

## **Appendix 1: Terms of Reference**

To be developed

## **Appendix 2: Commercial Proposal**

The commercial proposal may be prepared in a different document. But it will be attached to this contract.

### **Appendix 3: Members of Staff allocated and work schedule**

Please list below the staff involved in this contract with a short description of their profile. Attached their corresponding CVs.

Please provide de work schedule (Gantt chart)

#### Appendix 4: CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Confidentiality and Non-Disclosure Agreement (the "NDA") is entered into as of the [.....], (the "Effective Date") by and between Innovation Energie Développement ("IED"), and the [.....] ("Service Provider"), "IED" and "Service Provider" are jointly or individually denominated as "Parties" or "Party".

With the purpose of evaluating documents for review for receipt of grant funds to Green Mini-Grids project sponsor in the context of the services financed by Agence Française de Développement ("AFD") for the Managing Entity for a financing programme aiming at the promotion of private initiatives in Green Mini-Grids improving access to electricity in Kenya ("**Purpose**"), IED has furnished or may furnish to the other Party certain information directly or indirectly relating to Green Mini-Grids project sponsor business operations and such information is Confidential Information, as is defined below.

For the purposes of this NDA, Confidential Information includes the following information, regardless of the form in which such information is communicated or maintained, that has been, is or will be disclosed by one party ("**Disclosing Party**") to another party ("**Receiving Party**"), its Representatives (as defined below), or to "AFD" as decision-maker for the Purpose: **(i)** all information related in any way to product, organizational, financial, and/or site location strategies and information, pricing policies, operational methods, and any other business affairs; **(ii)** all information related in any way to *know-how*, including but not limited to designs, reports, methods, techniques, processes, samples, materials, prototypes, patterns, sketches, models, photographs, computer records or software, specifications; **(iii)** all data, notes, reports, analyses, compilations, studies, files, interpretations, forecasts or records, and any other written or electronically stored documents or material prepared by either party, which are based on, contain, refer to, reflect, or are otherwise related to Confidential Information; and, **(iv)** the Purpose, the existence of this NDA and/or its terms and conditions.

For both Parties, the term "**Representative**" means any directors, officers, agents, employees and/or consultants of either party.

Parties acknowledge and agree that **(i)** all Confidential Information is and shall remain the exclusive property of Disclosing Party, and Receiving Party will not appropriate Confidential Information to its own use or the use of any third party; **(ii)** Disclosing Party shall have no liability to Receiving Party and any of its Representatives resulting from any use of Confidential Information by Receiving Party or any of its Representatives; **(iii)** Disclosing Party shall provide Receiving Party with such Confidential Information only for the period of time that will enable Receiving Party to achieve the Purpose.

Parties represent and warrant that any and all information disclosed under this NDA shall be true, complete and correct as of the date of such disclosure, and shall not fail to state a material fact necessary to make any of such information accurate and/or not misleading. Parties hereby acknowledge that the achievement of the Purpose hereunder depends upon the disclosure of accurate, correct and complete information.

Any unauthorized disclosure or use, whether intentional or unintentional, of any of the other party's Confidential Information will be detrimental to Disclosing Party. Accordingly, Receiving Party shall:

- hold Confidential Information in strict confidence in a manner adequate to protect Disclosing Party's rights, and not to disclose to third parties, including, but not limited to, its subcontractors, employers and related companies, potential investors, successors and/or assignees. In the event that Receiving Party is strictly required by law to disclose any Confidential Information, prior to such disclosure, it shall **(i)** immediately notify Disclosing Party of such request and all the particulars related therewith so that it may seek an appropriate protective order and **(ii)** furnish only that portion of Confidential Information which is legally required;
- use Confidential Information only for the Purpose;
- disclose only such portions of Confidential Information to AFD as is strictly required for the Purpose;
- disclose only such portions of Confidential Information to its Representatives as is strictly required for the Purpose and only to those Representatives who have a need to know the same and who have been informed at the time of disclosure of the confidential and proprietary nature of Confidential Information and of their obligations with respect thereto, and agreed in written to maintain the confidentiality of Confidential Information;
- indemnify Disclosing Party and hold it harmless for any breach of its obligations by it or any of its Representatives; and
- notify Disclosing Party immediately of any unauthorized disclosure or use of Confidential Information of which Receiving Party becomes aware and fully cooperate with Disclosing Party in any defense of its proprietary rights in Confidential Information.

Jointly created Confidential Information shall not be duplicated, reproduced, modified, changed, distributed, and/or enhanced, in whole or in part, without the corresponding party's prior consent.

Confidential Information shall not be duplicated, reproduced, modified, changed and/or enhanced, in whole or in part, by Receiving Party, without Disclosing Party's prior written consent. At any time and within five (5) business days of the request of Disclosing Party for any reason whatsoever, Confidential Information shall be returned or destroyed, together with all materials, extracts or any reproductions prepared and based on it. Receiving Party shall confirm in writing any destruction of documents and materials.

This NDA:

- does not create a relationship of –but not limited to- agency, partnership, joint venture between them nor grant the parties any right, title, interest or license in the other party's Confidential Information. Nothing in this NDA shall be construed as an obligation of the parties to enter into any other agreement between them or prohibit the parties from using its own Confidential Information in any way, or providing the same or similar information to other parties and entering into agreement with other parties. Parties reserve the rights, in their sole discretion, to reject any proposal made by the other party and to terminate discussions and negotiations regarding the Purpose at any time. Further agreements between Parties, if any, shall be in writing signed by them.
- shall become effective on the later date of signature by parties and shall terminate three (3) years after such effective date; providing, however, that where this NDA is incorporated in whole or in part to a further NDA signed by the Parties, the NDA shall terminate three (3) years after the termination or expiration date of the NDA in which it has been incorporated. Notwithstanding the foregoing, Receiving Party will not be released from its obligations of confidentiality, non-use and non-disclosure, and the obligations to return or destroy documents and materials, until



and unless **(i)** Confidential Information becomes a part of the public domain or **(ii)** Disclosing Party releases Receiving Party by written notice.

- is governed by the Law of France without regard to conflict of laws principles. Any action, dispute, controversy or claim arising out of or in connection with this NDA shall be finally settled by arbitration administered by arbitrators agreed by the Parties. Except as may be required by law, neither a Party nor the arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both Parties.
- is not assignable by the parties, and shall not be amended, except in writing signed by both parties. No failure or delay by Disclosing Party in exercising any right hereunder or any partial exercise thereof shall operate as a waiver or preclude any other or further exercise of any right hereunder. The invalidity or unenforceability of any provision of this NDA shall not affect the validity or enforceability of any other provisions of it, which shall remain in full force and effect.
- may be executed in counterparts, each of which shall be deemed to be an original, but all of which together will constitute one and the same NDA.
- may be executed and delivered by any party hereto by facsimile transmission or PDF electronic copy of the execution page hereof to the other parties. A party delivering this NDA by facsimile transmission or PDF electronic copy shall thereafter forthwith deliver to each of the other parties an original signed copy of the signature page of this NDA; provided, however, that any failure by a party to so deliver the original signed signature page shall not affect the validity or enforceability of this NDA by or against that party.

IN WITNESS WHEREOF, the Parties hereto have executed this NDA on the respective dates set forth below by their duly authorized representatives.

For and on behalf of IED  
[Name]  
[Position]

For and on behalf of Service Provider  
[Name]  
[Position]