



## Terms and conditions



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## 1. Definitions

In these General Terms and Conditions ("Terms and Conditions") the following terms shall have the following meanings:

- a. **"Application"** means a written request for a grant and/or tax exemption;
- b. **"Service(s)"** means the service(s) provided by Vindsubsidies to the Client under the Agreement, as described in the Agreement;
- c. **"Client"** means the natural or legal person to whom Vindsubsidies provides Services under an Agreement;
- d. **"Agreement"** means the agreement between Vindsubsidies and the Client detailing the Services to be provided by Vindsubsidies to the Client;
- e. **"Party/Parties"** means the contracting party or parties to the Agreement;
- f. **"Decision"** (also referred to as a 'grant decision') means a message to the Client, to (one of the) participants in a partnership of the Client or third parties, informing them that an Application has been given a positive decision in whole or in part;
- g. **"Written"** means on paper, by post or by email
- h. **"Confidential Information"** means the information of the Client or Vindsubsidies (a) designated in writing as confidential, (b) not generally known to the public, (c) not generally disclosed by a party to whom the information relates and/or from whom the information originated, and (d) information whose confidential nature is reasonably known;
- i. **"Vindsubsidies"** (also referred to as 'Contractor'): Vindsubsidies B.V. is located in Enschede, the Netherlands and registered with the Chamber of Commerce under number 08118410.

## 2. Applicability of Terms and Conditions

1. The Terms and Conditions shall apply to all Agreements and other legal acts between Vindsubsidies and the Client, unless expressly agreed otherwise in writing.
2. The applicability of any purchase or other conditions used by the Client is expressly excluded.
3. The Terms and Conditions shall also apply to the Client with respect to any third parties that Vindsubsidies may engage to execute Agreements.
4. Vindsubsidies reserves the right to change the Terms and Conditions from time to time. The amended Terms and Conditions will apply from the date specified in the notice of Vindsubsidies informing of the amendments. The amended Terms and Conditions shall apply to current Agreements. The Client may terminate the Agreement by the end of the current contract period if the changes are material and/or unreasonably onerous, by notifying Vindsubsidies in Writing of the termination within 14 days of the announcement of the proposed amendments.
5. No amendments, additions or changes to the Agreement shall be valid unless in writing and signed by both Parties.
6. In the event of a conflict between the Terms and Conditions and the Agreement, the provisions of the Agreement shall prevail.

## 3. Quotations

1. Quotations of Vindsubsidies shall be without obligation and revocable, unless the quotation indicates otherwise.
2. Offers, quotations and price agreements in Agreements do not automatically apply to future agreements.

## 4. Commencement, duration and termination of Agreement

1. The Agreement is entered into as of the start date stated in the Agreement.
2. The Agreement is for the duration specified in the Agreement. If no term is included, a term of 1 (one) year shall apply.
3. Unless otherwise agreed in Writing, after the end of the initial period, the Agreement shall be renewed for a period of 1 (one) year each time, unless one of the Parties notifies the other Party in Writing at least 2 (two) months before the end of the current contract period that it will terminate the Agreement.
4. The Agreement may be dissolved in writing, without judicial intervention, if the other Party, after having been given notice of default, fails to comply with its obligations under the Agreement within the reasonable period specified in the notice of default.
5. Vindsubsidies may terminate the Agreement in writing with immediate effect if: (a) the Client is in liquidation or has been granted suspension of payment or if suspension of payment has been applied for (b) the Client's company is liquidated; and (c) the Client ceases its activities.
6. Upon termination of the Agreement, for any reason, Client shall not make any further claim for the Services.
7. Termination of the Agreement shall not affect the Client's obligation to make payments for amounts due under the Agreement.

## 5. Execution of agreement

1. The Agreement shall be deemed to accurately and completely reflect the agreements between Vindsubsidies and the Client. If during the execution of an Agreement it appears that other or additional Services are necessary or desired, Parties will make further arrangements in mutual consultation and record them in Writing.
2. Vindsubsidies will perform the Services to the best of their knowledge and ability and will make every effort to achieve the best result for the Client in the performance of the Agreement.
3. Vindsubsidies has the right - after consultation with the Client - to engage third parties for the execution of the Agreement.
4. Vindsubsidies is not responsible for the substantive implementation of the project for which the grant/contribution was committed.
5. If a negative decision is taken on an Application, the Client and Vindsubsidies will decide in consultation whether to lodge an appeal or objection.
6. If there is an opportunity to resubmit the Application, Vindsubsidies has the right to resubmit the Application based on the agreements in the Agreement.
7. If, within 24 months of a negative decision, the Client decides to resubmit an Application itself or with a third party, Vindsubsidies has the right to invoice the Client in accordance with the agreements in the Agreement.
8. Vindsubsidies has the right to consider their assignment terminated if, in their opinion, there is no prospect of successful results within an acceptable time and with reasonable effort/cost. Vindsubsidies will then not be obliged to compensate the Client for any damage and/or costs.
9. If the Client decides, at any stage, not to submit and/or withdraw an Application prepared by Vindsubsidies, or decides not to continue with the project, the Client will reimburse Vindsubsidies for the hours actually spent by Vindsubsidies. Vindsubsidies will provide an overview and invoice for this purpose. The hourly rate agreed in the Agreement shall be used for this purpose. If no hourly rate

has been agreed upon, the current standard hourly rate of Vindsubsidies shall apply.

## **6. Obligations of Vindsubsidies**

1. Vindsubsidies will provide the Client news and background information on grants and other incentives from the various national and international organizations.
2. Vindsubsidies will identify grant opportunities for the Client, write Applications and/or provide administrative support, all as set forth in the Agreement.

## **7. Obligations of the Client**

1. The Client shall provide to Vindsubsidies, upon first request, all information required for the fulfilment of the requirements associated with the Application, so that the Contractor can properly take care of the Application. The Client warrants the accuracy, completeness and reliability of the data and information it provides to Vindsubsidies
2. The Client shall only make use of subsidy and/or tax (exemption) facilities independently or through third parties after prior written permission from Vindsubsidies. This is to avoid duplications and discrepancies. If the Client makes use of subsidy and/or tax (exemption) facilities without Vindsubsidies' permission, Vindsubsidies will receive as compensation an amount equal to the lost commission income.

## **8. Work on the Client's location**

1. If an employee of Vindsubsidies performs Services for the Client on the Client's premises, the Client shall provide proper and safe working conditions, in accordance with the Working Conditions Act. This includes the Client informing employees of Vindsubsidies about the Risk Inventory and Evaluation (RIE) used within the Client's organization. Unless otherwise agreed, the Client shall provide any necessary personal protective equipment to the employees of Vindsubsidies.

## **9. Force Majeure**

1. Force majeure (a non-attributable non-performance) (*overmacht, een niet toerekenbare tekortkoming*) in these Terms and Conditions shall in any case include: war, military action, government action and/or government measures, failure or malfunction of telecommunications and Internet connections, and strikes.
2. In the event of force majeure, Vindsubsidies has the right to suspend all or part of their obligations under the Agreement, without the Client being entitled to claim performance or compensation.
3. If the force majeure situation lasts longer than 3 (three) months or it seems impossible or unlikely that the Agreement can be complied with, either Party may choose to terminate the Agreement in Writing with due observance of a notice period of 2 (two) weeks, without any obligation to pay damages. If Vindsubsidies has partially fulfilled their obligations before or after the occurrence of the force majeure, it is entitled to a proportionate share of the compensation.

## **10. Prices, fees**

1. For the Services, the Client shall owe Vindsubsidies the fee as stated in the Agreement.
2. All prices and rates charged by Vindsubsidies are exclusive of VAT.
3. Vindsubsidies has the right to increase their prices and fees annually by 5% or the inflation correction based on the official figures provided by the Statistics Bureau Netherlands (CBS/ *Centraal Bureau voor de Statistiek*). Price increases within the meaning of this Article shall not be announced in advance. Vindsubsidies will inform the

Client prior to the occurrence of any other price adjustments.

## **11. Payment**

1. The payment term for Vindsubsidies invoices is 30 days from the invoice date. Payment shall be made without deduction, discount or set-off.
2. The obligation to pay exists regardless of: (a) the contents of any subsequent decisions, (b) the actual full or partial payment of the grant, and (c) the actual realization of the tax exemption/deduction.
3. If payment is not received within the agreed period, the Client is immediately in default and Vindsubsidies is entitled to late payment interest equal to the statutory commercial interest rate from the due date of the invoice until the date on which the amount owed is paid in full. Vindsubsidies also has the right to suspend its Services to the Client until full payment is received.
4. All judicial and extrajudicial costs reasonably incurred by Vindsubsidies as a result of non-performance by the Client shall be borne by the Client. Extrajudicial costs will be calculated on the basis of the Debt Collection Costs Act (*Wet Incasso Kosten*).

## **12. Confidentiality**

1. Neither Party shall disclose or use Confidential Information received from the other Party for (a) any purpose other than that for which it was obtained and/or (b) performance of obligations and/or exercise of rights under the Agreement.
2. Both Parties shall take all reasonable measures to comply with their confidentiality obligations and they guarantee that their employees and hired third parties will comply with them.
3. The confidentiality obligation does not apply to information or data that (a) was already in the lawful possession of the receiving party before it was received from the disclosing party; (b) was developed independently by the receiving party without the use of information or data from the disclosing party; (c) is or will become generally known or accessible, other than by an act or omission of the receiving party; or (d) was disclosed to the receiving party by a third party, without violating any confidentiality obligation to the disclosing party.
4. The confidentiality obligations do not apply if Confidential Information must be disclosed by law, regulation or court order or by decision of a governmental authority. The receiving party will make all efforts to limit mandatory disclosure and - where permitted - inform the disclosing party of the mandatory disclosure.

## **13. Privacy/Personal Data**

### **A. Personal data of the Client**

1. In connection with the performance of the Agreement, Vindsubsidies has the right to use personal data of the Client that may fall within the scope of national and/or - if applicable - international legislation regarding the protection of personal data. These include but are not limited to names, phone numbers and email addresses. Client is familiar with this. Client allows Vindsubsidies to use the Client's personal data for marketing related purposes. The Client may revoke the granted consent at any time via a Written notice to Vindsubsidies.
2. Vindsubsidies has the right to share personal data of the Client with third parties it engages for the performance of the Agreement. These third parties are prohibited from using this personal data for any other purpose. Also Vindsubsidies has the right to disclose personal data to third parties in connection with the sale, transfer or delivery of



(part of) Vindsubsidies' business or in the context of an audit. Vindsubsidies shall ensure that the third party will maintain confidentiality with respect to the personal data and will comply with the necessary security measures and instructions of Vindsubsidies.

3. For more information on how Vindsubsidies handles personal data, please refer to Vindsubsidies' Privacy Policy, to be accessed at <https://www.vindsubsidies.nl/en/privacy-cookie-policy/>

#### **B. Personal data processed on behalf of the Client**

1. If and insofar as Vindsubsidies processes personal data (of the Client and/or third parties, including employees of the Client) for the Client in the context of performing the Agreement, the following applies. The Client is the (Processing) Controller, Vindsubsidies is considered a Processor within the meaning of the applicable privacy legislation (including General Data Protection Regulation, GDPR) and the Agreement, including these Terms and Conditions, shall be deemed an agreement within the meaning of Article 28 (3) of the GDPR.

2. Vindsubsidies shall only process personal data on behalf of and in accordance with the instructions of the Client. The Client determines which personal data of which categories of persons are to be processed by Vindsubsidies on behalf of the Client. Vindsubsidies has the right to use sub-processors to perform the Agreement and facilitate Services. These sub-processors will be bound by the same rules as Vindsubsidies with respect to personal data.

3. With respect to personal data that the Client provides to Vindsubsidies for the performance of the Agreement, the following applies:

a. Client warrants that it will process, store and use the personal data in accordance with all applicable (privacy) laws, regulations and codes of conduct;

b. Client shall ensure that it has obtained all necessary consents and authorizations required to process and store personal data in Vindsubsidies or third party systems. Vindsubsidies shall not be responsible or liable to the Client for obtaining any necessary consents or authorizations on its behalf; and

c. The Client shall handle all requests from data subjects (including requests regarding rights of access, rectification, erasure, restriction of processing, objection and data portability) and/or regulatory authorities regarding personal data. If such requests from data subjects are received by Vindsubsidies, Vindsubsidies will refer the data subject(s) to the Client.

4. It is the Client's responsibility to ensure compliance with applicable legal (retention) periods of personal data provided to Vindsubsidies.

5. The Client shall fully indemnify Vindsubsidies against all claims, costs, (financial) damages, revenues, lawsuits and fines that Vindsubsidies has to incur or suffers or that may be imposed in connection with claims by the Client, its employees, agents, consultants, (potential) clients of the Client or any other third party, as well as by a supervisory authority, in relation to data processed by the Client and/or Vindsubsidies in the context of the Agreement (including as a result of claims that such processing violates local and/or international data protection legislation and/or other legislation concerning the processing of personal data). This

indemnification shall not apply to the extent that any matter complained of is reasonably and directly attributable to a failure of Vindsubsidies to perform their obligations under the Agreement.

6. Vindsubsidies will take appropriate technical and organizational measures against loss, damage, destruction and/or unauthorized or unlawful processing of personal data provided by the Client to Vindsubsidies or entered into Vindsubsidies' systems. At the request of the Client, an overview of the measures in force at that time will be provided to the Client. Client is responsible for taking the necessary security measures within its own organization to prevent the loss, damage, destruction and/or unauthorized or unlawful processing of personal data.

7. Vindsubsidies will not make any data available to third parties, except as expressly provided otherwise in the Agreement, in these Terms and Conditions and/or may be reasonably necessary to enable Vindsubsidies to fulfil their obligations under the Agreement and/or when Vindsubsidies is required to do so by law, by regulation, by court order or by order of a governmental authority.

8. Vindsubsidies will inform the Client without undue delay if there is a security breach of personal data that leads or may lead to a significant risk of serious adverse consequences for the protection of personal data. If possible, Vindsubsidies will also recommend measures to mitigate negative consequences of the breach. Reporting data breaches to the Dutch Data Protection Authority and, if necessary, to data subjects, will be done by the Client. In this respect Vindsubsidies shall be in no way responsible or liable.

9. Vindsubsidies may outsource portions of the processing of personal data in the performance of the Agreement to a third party in compliance with applicable laws and regulations, with Vindsubsidies remaining responsible for compliance with the Agreement and these Terms and Conditions. Vindsubsidies shall ensure that the third party observes confidentiality with respect to the personal data as well as the necessary instructions and appropriate technical and organizational security measures as provided for in the Agreement and these Terms and Conditions. The Client has the right to have an independent third party verify that Vindsubsidies and the third parties it engages are adhering to agreements made. The costs for this shall be borne by the Client.

10. Upon termination of the Agreement or upon the Client's written request, Vindsubsidies shall destroy the personal data or transfer it to the Client, at the Client's option.

#### **14. Intellectual Property Rights**

1. All copyrights, trade name rights, trademark rights and other intellectual property rights (hereinafter collectively: "Intellectual Property Rights") that exist or arise, related to Services provided by Vindsubsidies, are the exclusive property of Vindsubsidies or their licensor(s). This includes but is not limited to publications and systems made available by Vindsubsidies.

2. None of the provisions contained in the Agreement or these Terms and Conditions may be construed to result in a full or partial assignment of those rights to Client.

3. No part of the publications issued by Vindsubsidies may be made public or reproduced in any way, including storage in a computerized file.

4. The Client is not permitted to remove or change indications regarding Intellectual Property Rights from material.

#### **15. Complaints**

In the event of complaints about Services provided, the Client must notify Vindsubsidies in writing within 14 days of delivery of the Service(s). Complaints about invoices must be received in writing by Vindsubsidies within 14 days of the invoice date. Complaints submitted do not suspend the Client's payment obligation.

#### **16. Liability**

1. Vindsubsidies shall only be liable for damage resulting from a failure in the performance of the Agreement insofar as such failure is the result of a lack of care that is reasonably to be expected of Vindsubsidies or in the event of intentional act or omission or gross negligence (*opzet of grove schuld*).

2. Vindsubsidies is only liable for direct damages. These include only reasonable costs of determining the cause and extent of the damage, insofar as the determination relates to damage within the meaning of these Terms and Conditions, any reasonable costs incurred to have the faulty performance of Vindsubsidies conform to the Agreement, insofar as they can be attributed to Vindsubsidies, and reasonable costs incurred to prevent or limit damage, insofar as the Client demonstrates that these costs have resulted in the limitation of direct damage as referred to in these Terms and Conditions.

3. Vindsubsidies is not liable for any Service not being accessible, temporarily or otherwise, due to failure or malfunction of equipment, software and facilities of Vindsubsidies. Furthermore, Vindsubsidies is not liable for indirect damages, which shall in any event include consequential damages, lost profits, lost savings and damage due to business interruption.

4. Vindsubsidies shall never be liable for any damage resulting from incorrect, incomplete or late information provided by the Client.

5. If Vindsubsidies is liable for any damage suffered, the amount of compensation will be limited to the amount paid in the relevant case under Vindsubsidies' applicable liability insurance policy.

6. If for any reason no payment is made under Vindsubsidies' applicable liability insurance, Vindsubsidies' total liability shall be limited to a maximum of 100% of the agreed mediation fee.

7. The performance of the Agreement by Vindsubsidies is done exclusively for the benefit of the Client. Third parties cannot derive any rights from the Services. The Client shall indemnify Vindsubsidies against all third party claims arising from or related to the performance of the Agreement.

8. The limitation and exclusion of liability described in this Article is also stipulated on behalf of third parties engaged by Vindsubsidies for the performance of the Agreement.

9. Claims for alleged liability of Vindsubsidies must be made as soon as possible but no later than 12 (twelve) months after the termination of the Agreement.

#### **17. Applicable law**

1. All Agreements and legal acts between the Client and Vindsubsidies shall be governed by Dutch law.

2. Client and Vindsubsidies will prefer to resolve their disputes amicably.

3. If the Client and Vindsubsidies are unable to resolve a dispute amicably within a reasonable period of time, the dispute shall, at the request of either party, be settled by the court in the district of Overijssel, the Netherlands.

#### **18. Transfer**

1. The Client is not permitted to transfer rights and/or obligations under the Agreement or the entire Agreement to a third party without prior written permission from Vindsubsidies.

2. Vindsubsidies may subcontract obligations under the Agreement to third parties and assign the Agreement to third parties (under any title).

#### **19. Non-recruitment**

1. During the term of the Agreement and for a period of 12 months after its termination, the Client is not permitted, without the prior written consent of Vindsubsidies, to approach employees of Vindsubsidies directly or indirectly for employment with the Client, to employ such employees or to have such employees perform self-employed work or through the Client for third parties.

2. In the event of violation of the provisions of paragraph 1, the Client shall owe Vindsubsidies, without notice of default or judicial intervention being required, an immediately payable penalty of €25,000 per violation, increased by €500 for each day that the violation continues, as compensation for the investment in training and professionalism of the employee in question lost by Vindsubsidies. This penalty shall be without prejudice to Vindsubsidies' right to recover the full amount of damage suffered.

3. If the Client engages an employee of Vindsubsidies to perform work on behalf of third parties, the Client shall include in the agreement with the relevant third party a perpetual clause in favour of Vindsubsidies with similar content and purport as this article.

4. If prior to the Agreement, the Client intends to hire an employee of Vindsubsidies, the Client and Vindsubsidies will consult on the matter and record agreements in Writing.

#### **20. Other provisions**

1. Provisions of these Terms and Conditions and/or the Agreement that are expressly or impliedly intended to remain in effect after termination of the Agreement, such as but not limited to confidentiality, intellectual property rights and liability, will remain in effect after termination of the Agreement and will continue to bind the Client and Vindsubsidies.

2. In cases where a Party does not require strict compliance with these Terms and Conditions or any provision of the Agreement, such Party does not lose the right to require strict compliance in future cases, similar or otherwise.

3. If any provision of the Terms and Conditions and/or Agreement is found to be wholly or partly void, voidable or in conflict with the law, this will not affect the validity of the entire Terms and Conditions and/or Agreement. The parties shall adopt a new provision of similar effect by way of replacement, which is not, in whole or in part, void, voidable or in conflict with the law.

4. These Terms and Conditions have been drawn up in English for convenience. If there is a difference of opinion about the content or purport of these Terms and Conditions, the Dutch text will be binding.



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