

## **Terms and Conditions of NGO Benchmarking Services**

### **1. General**

These terms and conditions govern the assessment of the Client's compliance against Best Practices criteria consolidated by SGS Société Générale de Surveillance SA (the "Company") and known as the "NGO Benchmarking Standard".

### **2. Appointment and Scope**

2.1 Subject to and in accordance with the terms and conditions set forth herein, the Company shall perform those services specified in the attached Proposal (the "Services").

2.2 Neither of the Parties' employees shall have any authority to make decisions for the other Party or otherwise bind or engage the other Party in any way (including the execution of agreements for the provision of services by or for the other Party with third parties).

2.3 Neither of the Parties' employees shall be entitled to represent itself/themselves to any third parties, whether verbally or on business cards or letterhead, as the agents of the other Party. Nothing in this Agreement shall constitute or create or be deemed to constitute or create a partnership, joint venture or relationship of principal and agent or employer and employee between the Parties or any of their respective employees and neither of the Parties nor any of their respective employees shall so represent themselves to any third party. Under no circumstances shall the SGS employees be deemed to be employees of the Client or vice versa nor shall either Party be liable for any compensation or benefits for the other Party's employees. In addition, neither Party shall use any of the other Party's trademarks without the prior written approval of such other Party.

### **3. Responsibilities of the Client**

3.1 Providing the Company with all necessary and requested access to Client books, records, information systems and facilities such that the Company may perform the rating of the Client in accordance with the Standard.

3.2 Complying with the Company's requests to conduct interviews, meetings or discussions with Client's employees and agents on any matters relating to the Services, within such deadlines as the Company shall establish.

3.3 Complying with SGS' reasonable requests for the supply of any equipment and personnel necessary for the performance of the Services.

3.4 Ensuring that all necessary measures are taken for the safety and security of the Client's working conditions, sites and installations during performance of the Services and not rely, in this respect, on the Company's advice whether required or not.

3.5 Informing the Company in advance of any known hazards or dangers, actual or potential, associated with any site including, for example, presence or risk of radiation, toxic or noxious or explosive elements or materials, environmental pollution or poisons.

### **4. Rights and Responsibilities of the Company**

In addition to performing the Services detailed in the Proposal attached hereto, the Company shall:

4.1 Issue an audit report (the "Report") attesting the results of the assessment of the Client's compliance against Best Practices. Furthermore, provided that (a) the assessment has not identified any major non-conformances and (b) its score reaches a minimum of 70%, a certificate will also be issued (collectively, the "Deliverables").

4.2 The Company shall be entitled to consult with attorneys, engineers, analysts, accountants, or other parties deemed by the Company to have the qualifications necessary to assist in the performance of the Services (collectively, the "Advisors"). The Company may select and engage such persons without the Client's prior approval save that, should the Client advise the Company that a conflict of interest exists, the Company will take all necessary measures to engage alternate Advisors.

4.3 The Company shall perform the Services in an efficient, prompt, skilful and careful manner in accordance with current industry standards, practices and procedures. In performing the Services, the Company shall observe and obey all applicable laws, regulations, rules and standards imposed by any government or other duly constituted authority having jurisdiction with respect to the Services.

4.4 The contents of the Deliverables represent the Company's review of facts and documents in existence at the time of the provision of the Services only and within the limits of the information received.

### **5. Use of the Deliverables; Suspension, Revocation or Expiration of the Deliverables**

#### **5.1 Use of the Deliverables.**

(a) The Deliverables in their entirety will be presented to the Client. In the event the Proposal encompasses multiple sites (such as headquarters and operational branches), the Company shall assess each site individually but issue one Report and one Certificate only.

(b) The Deliverables may be included by Client in its annual report or may be issued by Client in any separate report that it may publish or be provided to any other interested parties or entities. However, Client shall refrain from publishing only parts of the Deliverables which would tend to lead to misinterpretations.

(c) The Client may physically post the Certificate in a prominent location of the site to which it refers and may further scan the Certificate for display on its web site save that, if the web page on which the Certificate is displayed refers to both assessed and non-assessed sites, the Certificate may not be used in such a way as to suggest that all sites being advertised were assessed.

(d) The Client shall ensure that in its publications and advertising material no confusion arises between the assessed and non-assessed sites. The Client shall make no statement that could mislead third parties into believing that certain sites have been assessed when, in fact, they have not.

#### **5.2 Suspension, Revocation or Expiration of Deliverables**

(a) **Suspension of:** The Deliverable may be suspended by the Company for such period as the Company deems necessary in the event:

(1) the Client is in breach of the provisions set forth in Section 5.1 above and fails to remedy such breach within ten (10) days from the date notified of such breach by the Company; and/or

(2) the Client is otherwise in breach of the terms and conditions set forth herein and/or the Proposal and fails to remedy said breach within thirty (30) days from the date notified of such breach by the Company; and/or

(3) the Client fails to notify the Company of any major change in its organizational structure within thirty (30) days from the date the Client first implements such change or becomes aware of any such change.

(b) **Revocation of:** The Deliverables will be revoked in the event the Client fails to comply with the time periods allowed by the Company to cure a breach after suspension of the Deliverable as provided for in Section 5.2(a) above.

(c) **Expiration of:** The Deliverables will expire:

(1) on the date set forth on the face of the Certificate;

(2) in the event the Client goes out of business or otherwise substantially modifies its method of working such that the scope of the Deliverable no longer applies;

(3) in the event the Client advises the Company that it does not wish to re-apply for assessment upon expiration of the term set forth on the Certificate or otherwise fails to apply for re-assessment by not later than thirty (30) days prior to the date of expiration of the Deliverables.

(d) Upon revocation or expiration of the Deliverables, the Certificate and the Report must be returned to the Company.

### **6. Fees and Payment**

6.1 The Company shall be entitled to receive compensation for the provision of the Services and as further described in the Proposal.

6.2 The Client shall pay to the Company the compensation and related expenses directly within thirty (30) days from the date of receipt of any invoice (the "Due Date") in EURO or in such other currency as the Parties may have agreed, failing which interest will become due at a rate of 8% per month from the Due Date up to and including the date payment is actually received. The invoice will be submitted immediately upon completion of the assessment and the Deliverables will be delivered upon due receipt of payment.

6.3 All fees and charges payable to the Company shall be net of any and all taxes, including VAT, charged or which may be imposed in the future in relation to the Company's Services, directly in relation to the rendering of the Services, and Client agrees that it will be responsible for the payment of all such taxes.

6.4 Client shall not be entitled to retain or defer payment of any sums due to the Company on account of any dispute, counterclaim or set off which it may allege against the Company.

6.5 In the event any unforeseen problems or expenses arise in the course of carrying out the Services, the Company shall endeavour to inform the

Client and shall be entitled to charge additional fees to cover extra time and cost necessarily incurred to complete the Services

## **7. Suspension or Termination of Services**

7.1 The Company shall be entitled to resign from its duties for any reason and without cause by written notice served on the Client at least 30 days prior to the proposed effective date of such resignation.

7.2 The Client may remove the Company for any reason and without cause by written notice served upon the Company at least 30 days prior to the proposed effective date of such removal.

7.3 Upon resignation or removal, all fees then due and payable shall be paid to the Company. Client acknowledges that, should the Company resign or be removed prior to delivery of the Deliverable, no portion of said Deliverable which may be in the possession of the Client may be used in any publication or as the basis for any work performed by any substitute service provider and Client shall indemnify and hold the Company harmless from and against any claims which may be brought against the Company by any such misuse.

## **8. Liability and Indemnification**

### **8.1 Limitation of Liability:**

(a) The Company, when providing the Services in accordance with these Conditions, shall not be personally liable to any person except for the Company's acts or omissions that constitute fraud, wilful misconduct, bad faith or negligence.

(b) The Deliverable is issued on the basis of information, documents and / or discussions provided by the Client, or on behalf of the Client by its authorized representatives. Neither the Company nor any of its officers, employees, agents or subcontractors shall be liable to the Client nor to any third party for any actions taken or not taken on the basis of such Deliverables due to any incorrect results arising from unclear, erroneous, incomplete, misleading or false information provided to the Company by, or on behalf of, the Client.

(c) The Company shall not be liable for any delayed, partial or total non-performance of the Services arising directly or indirectly from any event outside the Company's control including failure by the Client to comply with any of its obligations hereunder.

(d) The Company's liability in respect of any claim for loss, damage or expense of any nature and howsoever arising shall in no circumstances exceed a total aggregate sum equal to one (1) time the fee paid in respect of the Services or USD 5,000, whichever is lesser.

(e) The Company shall have no liability for any direct or consequential loss (including loss of profits).

### **8.2 Indemnification:**

Except in those situations in which the Company is not exonerated of personal liability as provided for in subsection 8.1(a) above, the Client shall indemnify the Company and hold the Company harmless from and against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Services, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defence of, any claim, whether or not resulting in any liability, to the extent such losses, claims, damages, liabilities, or expenses arise from the misfeasance, gross negligence, or wilful or wanton acts of bad faith by the Client or any of its officers, directors, employees, agents or other authorized representatives.

## **9. Confidentiality**

9.1 As used herein, "Confidential Information" shall include any and all oral and written information provided to the Company by the Client (the "Client Information") as well as the financial terms set forth in the Proposal (the "Company Information"), provided, however, that Confidential Information shall not include any information which (i) is, or hereafter becomes (but not in violation of this Agreement), generally known to the public, (ii) was available to the Company on a non-confidential basis prior to the time it was disclosed by the Client, or (iii) is disclosed by an independent third party with a right to make such disclosure. Unless required by law, the Company shall not disclose the Confidential Information to any person or entity except for its directors, employees or outside consultants retained by it in connection with this Agreement.

9.2 The Company agrees that the Client Information will not be used for any purpose other than in connection with the performance of its duties and obligations under this Agreement. The Company shall use reasonable efforts to prevent access by unauthorised persons to the Client Information, such efforts to reflect at least the same degree of security that the Company

accords its own confidential information. The Company shall ensure that any outside consultant retained by the Company is made aware of, and is bound by, this Section 9.

9.3 The Client agrees that the Company Information (the NGO Benchmarking Standard in particular) will not be disclosed to any third party save if the Client is compelled to do so in accordance with the provisions of Section 9.4 below. Nothing in this Section shall prevent the Client from providing a copy of this Agreement (including the Proposal but excluding the Company Information) to any third party that may request it.

9.4 In the event that the Company and/or the Client, or anyone to whom Confidential Information is disclosed pursuant to this Agreement, becomes legally compelled to disclose any of the Confidential Information (the "Compelled Party"), the Compelled Party shall provide the other Party with prompt notice so that such Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Section. In the event that such protective order or other remedy is not obtained or in the event that the Party waives compliance with the provisions of this Section, the Compelled Party will furnish only that portion of the Confidential Information which the Compelled Party is legally required to disclose and will seek to obtain reasonable assurance that confidential treatment will be accorded the Confidential Information so disclosed.

9.5 The Parties acknowledge and agree that the undertakings set forth in this Section 9 shall survive the termination of this Agreement.

## **10. Governing Law and Jurisdiction**

10.1 This Agreement shall be governed by, and interpreted in accordance with the substantive laws of Switzerland exclusive of any rules with respect to conflicts of laws.

10.2 Any disputes arising in connection with these Conditions or the Proposal shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The proceedings shall take place in Switzerland and shall be conducted in English.

## **11. Miscellaneous**

11.1 Any communications required or permitted to be given by any Party to the others under this Agreement shall be sent to the other Parties at the address shown in the introduction to this Agreement or any other address subsequently notified by any Party to the others. Unless a particular method has been required by any provision of this Agreement, facsimile communications shall be accepted. The Company accepts no liability for any errors in transmission or falsifications which are inherent to this type of communication.

11.2 Save as expressly provided for in this Agreement, no Party shall assign this Agreement in whole or in part without the prior written consent of the other Parties, except that the Company may without such consent assign all or any of its rights and obligations hereunder to any company controlling it, controlled by it or under joint control with it.

11.3 The failure of any Party hereto to enforce at any time any of the provisions of this Agreement or to exercise any right or option which is herein provided shall in no way be construed to be a waiver of such provisions nor in any way affect the validity of this Agreement or any part thereof or the right of any Party to enforce thereafter each and every such right or option. No waiver of any breach of this Agreement shall be considered or held to be a waiver of any other or subsequent breach. Nothing shall constitute, or have the effect of, a waiver except an instrument in writing signed by a duly authorised officer or representative of the Party against whom such waiver is sought to be enforced which expressly, and not impliedly, waives a right or rights or an option or options under this Agreement.

11.4 These Terms and Conditions and the Deliverables shall constitute the entire agreement between the Parties with respect to its subject matter. All prior contracts, proposals, representations, negotiations and understandings, either orally or in writing are hereby superseded. Any amendment or modification hereof shall only be binding if it is made in writing and signed on behalf of each Party by its duly authorised representative(s).