

TECHNICAL SUPPORT AND SERVICE AGREEMENT

THIS AGREEMENT made as of the 1st day of January 2018 by and between

Trans-African Hydro-Meteorological Observatory (here in referred to as “TAHMO Kenya”) of P.O. Box 25969-00100, Nairobi, Kenya, a non-governmental organization incorporated under the laws of the Republic of Kenya, and having its principal place of business in sub-Saharan Africa:

and

Stichting Trans-African Hydro-Meteorological Observatory (here in referred to as “Stichting TAHMO”) of Brabantse Turfmarkt 16, 2611 CN Delft, the Netherlands, a foundation incorporated under the laws of the Netherlands with KVK Number Den Haag 60544481 which has expertise in water and weather (hydro-meteorological instrumentation, installations and data management):

together referred to as the Parties do hereby conclude an agreement of collaboration in witness of the following:

- Working together for the purpose of improving hydro-meteorological observations in Africa and beyond;
- Set up a plan to install 20,000 weather and hydrological stations;
- Support the development of database, portals and other data infrastructure for clients including National Meteorological and Hydrological Services (NMHSs).

NOW THEREFORE in consideration of the mutual interest of both parties hereto agree as follows:

Article 1 Technical Support and Services

Both parties have agreed to offer at all times faithfully, industriously, and to the best of their skills, ability, experience and talents, duties required of them from the requesting party to carry out any or all hydro-meteorological services for which they have the capabilities. In carrying out these duties and responsibilities, all Parties shall comply with all each other’s policies, procedures, rules and regulations, both written and oral, as are announced from time to time. It is also understood and agreed by both parties that assignments, duties, responsibilities, and reporting arrangements may be changed by each other without causing termination of this Agreement.

Article 2 Terms of Agreement

The term of this engagement is for a period of five (5) years from the date of this agreement. Variations in schedule may be applied dependent on the task required.

Article 3 Exclusivity

The Parties agree that during the tenure of this agreement, they will not advise or provide technical support to any other party that is in direct competition with any of the parties in this agreement for a contract, grant nor a bid.

Article 4 First Right of Refusal

The Parties agree that during the tenure of this agreement, as the case may be, they shall both have the “first right of refusal” for any service that will be sub-contracted by any of them. All Parties confirm to keep the other informed of such opportunities, advertisement or intention to engage with a feedback expected within fourteen (14) days given orally, by email or official letter.

Article 5 Payment

Both Parties agree to use remuneration rates commensurate with the TU Delft guideline in terms of market rates (“Bijlage 3: Richtlijn markconforme tarieven”) to remain very competitive and provide value for money. These rates are updated from time to time based on inflation rate correction so the most current version of the hourly/daily rates will be used at all times during the validity of this agreement. The payment schedule shall follow that of the head-contract and internal invoices issued accordingly. However, transfers/payments shall be made after the annual accounts of both Parties are prepared or by mutual agreement on a case-by-case basis.

Article 6 Taxation

TAHMO Kenya is a subsidiary of TAHMO Netherlands although both are independent organisations with different board compositions. It should be noted that grants sent to TAHMO Kenya are not Income to the NGO for tax purposes. Each party can be a participant in grants awarded to the other party and act as an implementing entity organ for the programme for which the grant has been received. Each party will be responsible, in its country of origin as in the country or countries where the assignment is carried out, for tax declarations and payment, if any, of all taxes, levies and duties if applicable.

Article 7 Confidentiality

The Parties agree to observe absolute confidentiality in respect of all information known to it concerning each Party and the activities of the Parties, their Clients, and enterprises/natural persons affiliated to them during this Agreement and after its termination. This confidentiality obligation encompasses all information about customers or other associates of the Parties which they have knowledge of on account of their positions. The parties are in particular obligated to:

- Not to disclose the nature, extent and objective of this agreement to any other party;
- To keep all technical and other information (such as business secrets etc.) received from the other party under this agreement strictly confidential;
- Not to disclose or convey any such confidential information to any third party without the prior written consent of the disclosing party;
- The confidentiality obligations under this article shall not apply to information which
 - Was already in possession of one party and not presently subject to an obligation of confidentiality prior to its receipt from the other party; or
 - Becomes available to the general public through no fault of either party; or
 - Is rightfully disclosed to either Stichting TAHMO or TAHMO Kenya by a third party without a present obligation of confidentiality; or
 - Is explicitly approved for release by prior written authorization of Stichting TAHMO and TAHMO Kenya.
- The confidentiality obligations under this clause shall not be affected by the termination of this agreement and shall continue in full force and effect for a period of five (5) years after termination of this agreement.

Article 8 Property

- All items, including written documents, automated files and other data carriers that each Party has at their disposal for the benefit of their Clients or an enterprise associated with their Clients during the period of the Agreement are and remain the property of the Party associated with the Client;
- The Parties are obliged at the first request of each other, and in default of this, at the very latest on the day on which this Agreement is terminated to return all these items to the Party concerned.

Article 9 Applicable law and disputes

The laws of the Republic of Kenya and the Netherlands govern this Agreement. The Judiciary of Kenya or the Netherlands shall settle all disputes arising from or associated with this Agreement or agreements.

Article 10 Entire Contract

This Agreement contains the entire agreement between the Parties, superseding in all respects any and all prior oral or written agreements or understandings pertaining to the rendering of services or technical support and shall be amended or modified only by written instrument signed by both of the parties hereto.

Article 11 Severability

The parties hereto agree that in the event any article or part thereof of this Agreement is held to be unenforceable or invalid then said article or part shall be struck and all remaining provision shall remain in full force and effect.

Article 12 Termination

The Parties may at any time terminate this Agreement with a notice of 30 days. This Agreement also terminates in the following cases:

- Completion of the Agreement;
- Closure of any Party;
- Mutual consent;
- Bankruptcy; and
- Dissolution under the law.

Article 13 Execution

SIGNED, SEALED AND DELIVERED in the presence of:



January 1st 2018

Rebecca Hochreutener, Director of Operations – Stichting TAHMO



01-01-2018



Frank Annor, TAHMO Kenya CEO