



TERMS OF REFERENCE

FOR FACILITATION OF GIVE PROJECT STRATEGIC CLUSTER PARTNERSHIP

AND

ELLABORATION OF INTELLIGENCE MARKET REPORT

Project: Green ICT Development

Acronym: GIVE

Work package	2
Activity	Subcontracting
Deliverable	Facilitation; Facilitation reports; Market Intelligence Report
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Terms of Reference (ToR)

Reference: 783398 — GIVE — COS-CLUSINT-2016-03-01

Subject: Facilitation of give project strategic cluster partnership and elaboration of intelligence market report

Countries: Albania, Bulgaria, Macedonia, Latvia, Romania, Serbia

Description of Assignment: Facilitation of three international workshops and elaboration of a market intelligence report

Project: Green ICT Development (GIVE)

Period of Assignment/Services: June 2018 – December 2018

Submission: Proposal must be submitted by email to contact@clujit.ro or diana.campian@clujit.ro starting from May 31st, 2018 included to June 12th, 2018 included. Applications received before or after the indicated dates will be disregarded unless ToR is dully amended. For the format and content of the proposal please consult the appropriate section in this ToR.

Contract: a draft contract is provided as an annex to this ToR. Formal beneficiary of the Contract si Asociatia Cluj IT, a legally registered Romanian not-for-profit organization.

Any request for clarification must be sent in writing, or by standard electronic communication to both e-mails indicated above. Cluj IT Cluster, coordinator of the Work Package 2 of project GIVE, will respond in writing, by standard electronic mail.

Disclaimer

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1. BACKGROUND AND CONTEXT

Europe 2020 and its flagship incentives underline the importance of Europe's reindustrialization and increase of its global competitiveness by boosting the emerging industries development and supporting SMEs performance on emerging markets outside Europe.

SMEs are the backbone of the European economy. The EU's strategy for SMEs, laid out in the Small Business Act for Europe, called on the EU and the Member States to support SMEs and encourage them to benefit from the emerging markets outside the EU in order to achieve sustainable growth. The Small Business Act pointed out the access to market and internationalization as a basic priority for SMEs development.

Small and medium-sized enterprises (SMEs) need to be able to withstand increasing competition from developed and emerging economies and to plug into the market opportunities these countries provide. International activities reinforce growth and employment, enhance competitiveness and support the long-term sustainability of companies. In its communication "Small Business, Big World - a new partnership to help SMEs seize global opportunities" the Commissions underlines that promotion and support of SMEs economic activities outside the EU market is the important part of Union's overall competitiveness strategy. Boosting SME internationalization is pointed as a main priority in flagship incentive on the Integrated Industrial Policy of Europe 2020.

In a globalized economy, SMEs are subject to international competition and need to pursue international collaboration in order to access knowledge and develop commercial opportunities. SMEs do not have possibilities to start international cooperation, as they have limited financial and operative capacity (e.g. skilled human resources).

Clusters and business support organizations are facilitators for development and enhancement of emerging industries on one side and springboards for fostering SMEs internationalization and global competitiveness on the other. They could play an important role in helping SMEs to find the right partners and to produce globally competitive products and services. SMEs - members can benefit from contacts, business connections and formal and informal knowledge flowing within a cluster as well as from customized services provided by clusters and networks. Cross-cluster and cross-industry collaboration facilitate the development of partnership abroad and help SMEs to get access to new global value chains, exchange know-how, develop new research partnership.

The general objective of **Green Ict deVElopment (GIVE)** is to build up strategic cluster partnership in the field of green smart technologies in the field of automotive and transport sectors among the three industries: automotive, green technologies and ICT.

The term green smart technology encompasses all industrial and human activities which generate positive impact to the environment applying Information and Communication Technologies. In recent decades, ICT plays crucial role to change traditional manufacturing industries by implementing environmentally-friendly technologies and applications reducing negative environmental impact.



The project's general objective addresses the COSME financial instrument's challenge to support clusters as a tools to SME internationalization and market access. The GIVE partnership will be based on cross-clusters, cross- border, cross - regional and cross - industry collaboration and it is very challenging because it has 8 partners from 6 different countries, 2 different European regions and 3 vital industries.

The specific objectives of the GIVE project are:

- to create new value chain and favourable framework for establishing a sustainable cross-industry strategic cluster partnership(GIVE) in the field of green smart technologies focusing on automotive and transport sectors (under one visual identity , partnership agreement and common internationalization strategy)
- to create common knowledge base for internationalization and marketing in cluster managers and SMEs members and to establish strong links among GIVE partners and SMEs members by organization of 6 B2B event, 1 final conference and training webinar on internationalization and online marketing;
- to build up sustainable strategic cluster partnership based on development of GIVE internationalization strategy and implementation roadmap .
- to promote GIVE strategic cluster partnership on a European, regional and national level in order to extend the partnership in different regions and industries and to create links to other ESCPs.

*The GIVE project implementation will create the background for strategic collaboration among GIVE partners. **The target group will be advised and facilitated by the external experts and subcontractors to identify common goals regarding cross-cutting areas of technological interest and common target third markets and common barriers, which companies facing to go international.** The project will create strong links among partners through common trainings on internationalization and marketing, B2B events and focus groups. All events and meetings will be good opportunity for more deep cooperation and links. **The GIVE internationalization strategy will help the target group to have strategic plan for collaboration, tailored implementation action plan and clear responsibilities. The elaborated marketing identity and promotional actions will present the GIVE partners under the common promotional framework.***

2. OBJECTIVE AND SCOPE OF THE ASSIGNMENT

The project consortium is composed of:

Consortium Coordinator (responsible for the overall project management): Foundation "Cluster Information and Communication Technologies" (ICT Cluster), Bulgaria

Partner 1: Albanian ICT Cluster (AITA), Albania

Partner 2: Automotive Cluster Serbia (ACS), Serbia

Partner 3: Automotive Cluster Bulgaria (ACB), Bulgaria

Partner 4: Cluj IT Cluster (Cluj IT), Romania

Partner 5: MASIT ICT Chamber of Commerce (MASIT), Macedonia



Partner 6: ICT Cluster Central Serbia (ICT Cluster Central Serbia), Serbia

Partner 7: Green and Smart Technology Cluster (Green Tech Cluster), Latvia

Project tasks have been divided in 5 work packages, each having a designated leader. The working packages (and their respective coordinators) are:

- WP1 Project Management, Foundation “Cluster Information and Communication Technologies” (ICT Cluster)
- WP2 Mapping needs and find complementarities and common interests, Cluj IT Cluster (Cluj IT)
- WP3 GIVE partnership building, Automotive Cluster Bulgaria (ACB)
- WP4 Promotion of GIVE ESCP, MASIT ICT Chamber of Commerce (MASIT)
- WP5 Internationalization Strategy, Foundation “Cluster Information and Communication Technologies” (ICT Cluster)

The proposed task is foreseen under ***WP Mapping needs and find complementarities and common interests.***

3. DUTIES AND RESPONSIBILITIES

The action is intended to achieve the following:

3.1. Facilitation of three focus groups with the participation of GIVE project partners representatives.

3.1.1. General characteristics and requirements

- In each focus group we expect the participation of approximately **15 individuals**, representing all three sectors targeted by the project. Individuals will be proposed by the project consortium members.
- Each focus group will last for one full working day.
- Travel will be required as each focus group is organized in different locations (see below). Indicative travel costs need to be included in the financial offer.
- Costs for the organization of the events and for travel of participants are provided from project resources and is the responsibility of the project consortium.

3.1.2. Specific characteristics and requirements

Focus group on cross-industry collaboration

Actions: draft agenda, facilitation

Location: Cluj, Romania

Time: please see 4. TIMEFRAME OF THE WORK

Expected content and outcomes: *during the focus group on cross – industry collaboration, GIVE partners will discuss possible technological niches of cross-industry*

collaboration, demand for new products, services and innovation processes. The partners will take into consideration the results from the online survey from the previous task and the opinion of SME members. The report will include recommendations related to technological trends in the automotive and green energy, while also looking into possible products and services required on the market that the ICT sector might be able to provide.

Deliverable: Report (as above)

Focus group on barriers of SME internationalization

Actions: draft agenda, facilitation

Location: Sofia, Bulgaria

Time: please see point 4. TIMEFRAME OF THE WORK

Expected content and outcomes: *SMEs face a number of important obstacles before being able to tap into the global market potential such as: information / profiling of foreign markets, location of possible customers, compliance with foreign laws, procedures and rules specific to customers in that particular country, standards, technical regulations, protection of intellectual and industrial property rights, lack of financing, language barriers etc. The main aim of this focus group will be to discuss and identify such barriers sectors that are common for the ICT, automotive and renewable energy. In order to boost SMEs internationalization GIVE clusters should find tools to address the main obstacles of internationalization in respective industries. The report of the focus group will include the common main barriers of internationalization for SMEs of GIVE partnership and recommendations for tools which should be applied in order to be overcome.*

Deliverable: Report (as above)

Focus group on internationalization potential and interested third markets

Actions: draft agenda, facilitation

Location: Belgrade, Serbia

Time: please see 4. TIMEFRAME OF THE WORK

Expected content and outcomes: *The focus group will try to identify and discuss about the best tools for assessment of SMEs readiness to go international in order to provide them with appropriate services or tools. The focus group will discuss and find common interested third markets on which GIVE partnership to focus their efforts. The final report will highlight findings of the discussions carried out in this focus groups with emphasis on third markets.*

Deliverable: Report (as above)

3.2. Intelligence Market Report

The document will include intelligence gathering, assessment of market trends and opportunities in conjunction with the consortium capabilities and needs. It will use and incorporate findings and results from the previous tasks in the WP (Task 1.1. and Task 1.2.). The document will include recommendations on:

- Internationalization readiness of cluster managers and SMEs
- GIVE areas of cooperation and complementarity among partners (technological, business, R&D, innovation)
- Target markets outside Europe

The Market Intelligence Report will be used as a core document for the development of the GIVE internationalization strategy and roadmap for implementation.

4. TIMEFRAME OF THE WORK

No.	Activity	Work Package	Dependency	Month
1	Focus group organization - on cross-industry collaboration	WP2	List of participants and actual participation	M7 – 27 th and 28 th June, 2018
2	Focus group organization - on barriers of SME internationalization	WP2	List of participants and actual participation	M9 – August 2018 ¹
3	Focus group organization - on internationalization potential and interested third markets	WP2	List of participants and actual participation	M11 – October 2018 ²
4	Intelligence market report	WP2	GIVE project survey, reports on the focus groups findings	M13 – December 2018
5	Final Reporting	WP2	All previous activities and results	January 2019

5. DELIVERABLES AND REPORTING

Deliverables to be provided by the service provider:

The service provider will be responsible for delivering and facilitating **the one-and-half days focus groups** as described under point 3. Duties and Responsibilities and therefore required to provide all educational and support materials used during the seminars.

Also, the service provider will have to deliver:

- Hard and soft copies of the agendas proposed for the focus groups
- Hard and soft copies of the Reports (one for each focus group) and all other annexed outputs.
- Hard and soft copy of the Market Intelligence Report as described under pt. 3.

¹ Exact dates will be agreed with the service provider

² Exact dates will be agreed with the service provider



- Hard and soft copy of an aggregated Report on the contracted services.

The deliverables shall be submitted to Asociatia Cluj IT as Work Package coordinator for initial approval. Final approval will be requested from the Strategic Committee. All of the deliverables are subject to approval the project Strategic Committee in order to finalize the payment to the expert.

6. TERMS AND PAYMENT

The following applies:

An advance payment, equal to 20% of the contract amount, will be paid to the selected service provider upon signature of the contract. The balance, as lump sum payment, will be made upon approval of all deliverables by Asociatia Cluj IT and the project Strategic Committee.

The lump sum will include all costs beard by the service provider, including travelling to the seminar venues.

Payments will be made in Euro. The amount paid to the expert(s) shall be gross and inclusive of all associated costs such as social security, income tax, VAT, travel costs, other expenditures etc.

7. QUALIFICATIONS AND SKILLS

General Qualifications of the proposed expert / experts:

- University degree in economics / business administration, political science, European studies, public administration or related field
- Full proficiency in writing, reading and understanding of English (to be demonstrated by an internationally recognized certificate or by a finalized program / studies in English language in a higher educational institution)
- Knowledge of a regional language³ is an asset, but not mandatory.
- Excellent command of office software, such as word, excel, power point processors, spreadsheets (to be proven with presentation examples).
- Advanced university degree (i.e. Master or PhD) is an asset.

Professional Experience and Qualifications:

- Minimum 10 years of work experience out of which minimum 5 years work experience in a leadership / management position

³ By regional language we understand one of the languages of the countries involved in the GIVE project



- Previous experience in innovation management and/or innovation policies is an asset.
- Previous experience in working with sectors such as ICT, smart manufacturing in automotive, energy management is an asset.

Specific Experience and Qualifications:

- Experience with delivering seminars, workshops or trainings and speeches at events and conferences (at least 3 similar previous experiences).
- Experience with analyzing different sectors and in-depth knowledge of strategy elaboration.
- Experience in projects about business internationalization or cross-sectoral collaboration.
- Experience in smart specialization at regional / national / international level.

8. EVALUATION OF PROPOSALS

The evaluation will be based on cumulative analysis (i.e. personal qualifications, technical proposal and price proposal). The evaluation will be based on the following weights:

- Personal qualifications (C.V. – education and personal experience of the proposed expert / experts): max 30 points
- Technical proposal: max 30 points
- Price proposal: max 40 points

Total max score per proposal: 100 points.

Proposals that obtain a minimum of 75 pts out of a maximum 100 pts will be considered for the assignment. Proposals that do not meet the minimum requirements will be disqualified.

The proposals will be ranked based on the score obtained. In case of a tie (equal final points), the proposal with a lower price offered will be considered.

The evaluation of received offers will be performed by the Asociatia Cluj IT, as WP leader. Three members of the Jury will be appointed (2 representatives of the business sector and 1 of the R&D sector).

Each member will rank the 3 components of the cumulative analysis, assigning his/her personal score to the each of the 3 components. The final score assigned to each candidate will be the average of the 3 rankings given by the Steering Committee members.

9. APPLICATION PROCEDURE

Interested organizations must submit the following application documents by preferably stating the reference of this ToR in the subject of the e-mail (783398 — GIVE), from May 31st, 2018 included to June 12, 2018 included. All documents and information provided must be in English and duly signed by the authorized person. *If possible please bundle the application in one single pdf file, respecting the order below (this is not a mandatory requirement).*

- A one-page Letter of Interest, containing details of the organization forwarding the proposal, including contact details of the legal representative (full name, mobile telephone, e-mail address, tax code and VAT number, if applicable), stating the reasons why the organization is equipped for carrying out the Task.
- A one-page Letter of Interest, containing contact details of the proposed expert / experts (full name, mobile telephone, e-mail address), explaining why they are qualified for the work.
- Technical proposal for indicating methodology, timing, duty stations and actions that the expert will implement to achieve the results as described under point 3. Duties and Responsibilities. Technical proposal must not exceed 2 pages.
- Financial Proposal, as a lump sum including expert fee and all costs for travelling or other activities related to the performance of the task assigned. A breakdown in sub-categories of the lump sum is required. Financial proposal must not exceed 1 page.
- A declaration of honor about availability to deliver a one-and-half seminar in Cluj-Napoca (Romania) in June 2018, a one-and-half seminar in Sofia (Bulgaria) in August 2018 and a one-and-half seminar in Belgrade (Serbia) in October 2018, and commitment to terminate the task assigned within the deadline indicated in art. 4 Timeframe of the work (*no template is provided*).
- Personal CV (Europass preferred) reflecting the qualifications and professional experience that recommends the experts / experts for the task, including past experience in similar undertakings and at least 1 reference, for the proposed expert / experts.
- A declaration of honor about personal absence of judgment of conviction (*no template is provided*).

Proposals must be forwarded to diana.campian@clujit.ro or contact@clujit.ro by June 12, 12.00 p.m. Proposals submitted after deadline will be disregarded. Also, proposals missing one or more of the documents above will be disregarded as incomplete. Asociatia Cluj IT will ask for completion of the application file only if the application is received with more than 24 hours before deadline.

10. PRICE PROPOSAL GUIDELINES

The prospective organizations should take the following explanations into account during submission of their proposals:

- The lump sum price proposal and related breakdown must be in Euro (€).



- Total price proposal should not exceed 14,838 Euro (VAT included if applicable).
- The price proposal should be indicated in gross values and should be inclusive of costs related to tax, social security, visa (if needed), travel, accommodation and any other expenditure needed to perform the task with the exceptions provided under point 3 Duties and Responsibilities.
- Asociatia Cluj IT will not make any further clarification on costs related to tax, social security premium, visa etc. It is the applicant's responsibility to make necessary inquiries on these matters.

11. ANNEXES

This Terms of Reference has 1 (one) annex: Draft for service agreement.

POINT OF CONTACT

For questions regarding this ToR, you are welcome to contact:

Diana Campian, Cluj IT Cluster

Email: diana.campian@clujit.ro; contact@clujit.ro

Please be advised that only written inquiries are accepted. Inquiries received 24 hours before deadline submission will not be answered.

SERVICE AGREEMENT

within the Project Green ICT Development (GIVE)

No. _____ / dd.mm.yyyy

Parties

1.1. This agreement is made between:

Asociatia Cluj IT, located in Romania, Cluj-Napoca, str. Memorandumului no. 28., zip code 1400114, telephone _____, VAT number _____, account IBAN EURO: _____, open at the bank _____, SWIFT Code: _____, Sort Code: _____, represented by [name and position], as Beneficiary, on the other hand, hereafter referred to as "*Cluj IT*" as beneficiary on one hand and

_____, located in _____, zip code _____, telephone _____, VAT number _____, account IBAN EURO: _____, open at the bank _____, SWIFT Code: _____, Sort Code: _____, represented by _____, as Service provider, on the other hand, hereafter referred to as "**[SERVICE PROVIDER NAME]**".

2. Purpose of the service agreement

Cluj IT wishes to enter into service agreement with the **[SERVICE PROVIDER NAME]** for the execution of the following task(s):

2.1. Facilitation of three focus groups with the participation of GIVE project partners representatives:

Focus group 1 on cross-industry collaboration

Actions: draft agenda, facilitation

Location: Cluj, Romania

Deliverable: Report (as above)

Focus group 2 on barriers of SME internationalization

Actions: draft agenda, facilitation

Location: Sofia, Bulgaria

Deliverable: Report

Focus group 3 on internationalization potential and interested third markets

Actions: draft agenda, facilitation

Location: Belgrade, Serbia

Deliverable: Report

2.2. Intelligence Market Report - the document will include assessment of market trends and opportunities in conjunction with the consortium capabilities and needs. The Market Intelligence Report will be used as a core document for the development of the GIVE internationalization strategy and roadmap for implementation.

Actions: desktop research, data analysis, engagement with project stakeholders.

Location: NA

Deliverable: Report

The [SERVICE PROVIDER NAME] has agreed to accept such agreement and shall develop such task for Cluj IT subject to the terms of this Agreement.

3. Definitions and interpretation

In this Agreement, the following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins as such words (that is, cognate words) shall bear corresponding meanings:

“**Agreement**” means this agreement, including the Appendices;

“**Business Day**” means any day other than a Saturday, Sunday or national public holiday in the country of Romania;

“**Commencement Date**” means **date when task starts**;

“**Contract Price**” means the contract price payable by Cluj IT to the [SERVICE PROVIDER NAME] for the full and proper performance of the [SERVICE PROVIDER NAME]’s obligations under this Agreement;

“**Company name**” means [SERVICE PROVIDER NAME], registration number [REDACTED], a private company incorporated in [REDACTED];

“**Euro**” or “**€**” means European Euro;

“**Intellectual Property**” means rights in and to intellectual property of whatsoever nature, whether registered or not, including trade names, trademarks, trade mark applications, logos, designs, patents, copyright and know-how;

“**Parties**” means the parties to this Agreement: [SERVICE PROVIDER NAME] and Cluj IT;

“**Project**” means the “**GIVE Project**”;



“**Deliverable**” means the documentation and associated results after finishing of the Task;

“**Signature Date**” means, when this Agreement has been signed by each Party (whether or not in counterpart), the latest of the dates on which this Agreement (or any counterpart) was signed by any Party;

“**Cluj IT**” means Asociatia Cluj IT, a Romanian, legally registered, not-for-profit organization.

4. Appointment

Cluj IT appoints the [SERVICE PROVIDER NAME] to complete the Task on the terms and conditions set out in this Agreement, and the [SERVICE PROVIDER NAME] accepts such appointment. The appointment is based on the technical proposal forwarded by the [SERVICE PROVIDER NAME] during tendering which is an integral part of the Service Contract.

4.1 Any standard terms and conditions of supply of the [SERVICE PROVIDER NAME] or any other terms and conditions which the [SERVICE PROVIDER NAME] purports to apply to the execution of the Task or any obligation to be performed pursuant to this Agreement are expressly excluded.

4.2 This Agreement shall not be construed to create a legal relationship of partnership, agency or a joint venture between the Parties.

4.3 The [SERVICE PROVIDER NAME] shall not, without Cluj IT prior consent and written approval:

- assign or otherwise transfer any of its rights, obligations or liabilities under or in connection with this Agreement;
- sub-contract obligations arising under the Agreement to subcontractors. Any written approval of subcontracting by Cluj IT shall under no circumstances be construed as a waiver by Cluj IT of any breach by the [SERVICE PROVIDER NAME] of its obligations under this Agreement. The [SERVICE PROVIDER NAME] remains responsible for all work done by [SERVICE PROVIDER NAME] and shall ensure that it puts in place written confidentiality agreements when subcontracting.

5. Commencement and duration

5.1 Notwithstanding the Signature Date, the Agreement shall commence on the Commencement Date and shall endure until the completion of the Task according to the milestone planning.

5.2 Parties agree that Cluj IT may at any time terminate this Agreement without cause upon the giving of 1 month prior written notice to this effect, subject to Cluj IT paying [SERVICE PROVIDER NAME] in full for all work completed and for paying for all purchase orders placed by [SERVICE PROVIDER NAME] that cannot be reasonably revoked or cancelled and paying for any non-refundable travel costs committed to before cancellation.

6. Contract Price

6.1 The [SERVICE PROVIDER NAME] shall finish the Task for the Contract Price which is agreed in Euro [REDACTED].

6.2 An advance payment, equal to 20% of the contract amount, will be paid to the selected service provider upon signature of the contract. The balance, as lump sum payment, will be made upon approval of all deliverables.

6.3 Cluj IT shall make payments of the Contract Price to the [SERVICE PROVIDER NAME] within thirty (30) days of the date of issue, provided valid invoices are submitted for work properly completed under the terms of this agreement.

6.4 The [SERVICE PROVIDER NAME] confirms that it has conducted the necessary inspections prior to the commencement of the Task and that the Contract Price is sufficient for the purpose of the Task.

6.5. Task will be completed at no later than January 2019.

7. Task Plan and change request control

7.1 Before the commencement of the Task, the Parties shall develop and sign a Task Plan which shall set out key activities and time frames relating to the execution of the Task. The Task is to be executed in accordance with the terms and conditions of this Agreement and the Task Plan.

7.2 A variation to the Task and/or the Task Plan can occur by a notification in writing by [SERVICE PROVIDER NAME] at any time prior to the completion of the Task, subject of approval by Cluj IT.

8. Service standards

8.1 In carrying out its obligations in terms of this Agreement, [SERVICE PROVIDER NAME] shall conform to the good practice rules agreed by both parts.

8.2 [SERVICE PROVIDER NAME] shall ensure that its personnel is qualified for completion of Task requirements.

8.3 [SERVICE PROVIDER NAME] shall carry out its obligations in terms of this Agreement in accordance with the Task Plan.

8.4 [SERVICE PROVIDER NAME] and shall comply with all applicable legislation, rules, actions, regulations and industry standards that may now or hereafter be applicable.

9. Liability

9.1 [SERVICE PROVIDER NAME] hereby indemnifies Cluj IT, its shareholders, member companies, employees, customers, suppliers and/or agents ("the Indemnified Parties") and holds the Indemnified Parties harmless against any liability, loss, proceeding, damages, expense and/or costs arising from or in connection with any claim brought against Cluj IT by any person in respect of any loss and/or damages suffered by such person in relation to the performance of the [SERVICE PROVIDER NAME]'s obligations in terms of this Agreement, or due to a failure or defective fulfillment by the [SERVICE PROVIDER NAME] to perform any task in terms of this Agreement.

9.2 It is agreed that each party's liability to the other party under this Agreement shall not extend to any indirect losses suffered by the other party, including any loss of anticipated profits, goodwill, reputation, business receipts or potential contracts or business.



9.3 Nothing in this Agreement shall exclude or restrict either party's liability for death or personal injury resulting from the negligence of that party or of its employees while acting in the course of their employment or any other liability that may not be excluded by law.

10. Confidentiality

10.1 The Parties acknowledge that during the currency of this Agreement each may come into contact with confidential information and trade secrets belonging to each other and undertake that, both during the duration of this Agreement and at all times thereafter, each will refrain from disclosing any such information to any third party in any manner, whether directly or indirectly, for any purpose other than to fulfill its obligations under this Agreement.

10.2 Without the prior written consent of each other, the Parties will keep confidential and will not disclose to any person:

10.2.1 The details of this Agreement, as well as the details of all the transactions or agreements contemplated in this Agreement; and

10.2.2 All information relating to the business or the operations and affairs of the Parties, (together, "**Confidential Information**").

10.3 The Parties agree to keep all Confidential Information confidential and to disclose it only to their officers, directors, employees, consultants and professional advisers who:

10.3.1 Have a need to know (and then only to the extent that each such person requires the Confidential Information in order to fulfill his or her functions properly);

10.3.2 Are aware that the Confidential Information should be kept confidential;

10.3.3 Are aware of the disclosing party's undertaking in relation to such Confidential Information in terms of this Agreement; and

10.3.4 Have been directed by the disclosing party to keep the Confidential Information confidential and have undertaken to keep the Confidential Information confidential.

10.4 The obligations of the Parties in relation to the maintenance and non-disclosure of Confidential Information in terms of this Agreement do not extend to information that:

10.4.1 Is disclosed in terms of clause 10.3 to a recipient which has given a written confidentiality undertaking

10.4.2 Is or becomes public knowledge, otherwise than pursuant to a breach of this Agreement;

10.4.3 Is required by the provisions of any law, statute or regulation, or during any court proceedings.

10.5 Before any announcement or statement is made as required in terms of clause 10.4, the Party shall use its best endeavors to provide the other Party with a written draft of the proposed announcement at least 48 hours before the proposed time of the announcement and the parties shall also use their best endeavors to agree the wording and timing of all public announcements and statements relating to confidential information. If a written draft of the proposed announcement cannot be provided to the other Party or agreement cannot be reached by the time that any such announcement or statement must be made, the Party in question shall be free to make the relevant announcement or statement, notwithstanding that such agreement has not been reached, but in so doing it shall not disclose more than the minimum information that it is

compelled to disclose. Copies of any public announcement or statement shall be given to the other Party in the most expeditious manner reasonably available.

11. Breach

11.1 Should any of the Parties ("the Defaulting Party"), commit any material breach of any term, condition, undertaking or representation contained in this Agreement and:

11.2.1 Should such breach be incapable of being remedied; or

11.2.2 Should such breach be capable of being remedied, and should the Defaulting Party fail to remedy such breach within fifteen (15) days after receipt of a written notice to that effect from the non-Defaulting Party requiring the breach to be remedied,

11.3 Then the non-Defaulting Party shall be entitled, without prejudice to any other rights which it may have in terms of this Agreement or at law, either:

11.3.1 To claim payment of an amount equal to the extent of the damage resulting to the non-Defaulting Party from such breach; or

11.3.2 To claim specific performance of the Defaulting Party's obligations in terms of this Agreement.

12. Termination

12.1 Cluj IT may immediately terminate this Agreement without prejudice at any time by giving written notice to the [SERVICE PROVIDER NAME] if:

12.1.1 [SERVICE PROVIDER NAME] is placed under voluntary or compulsory liquidation (whether provisional or final) or under judicial management or under the equivalent of any of the foregoing;

12.1.2 [SERVICE PROVIDER NAME] commits a material breach of this Agreement that is either not capable of being remedied or has not been remedied within fifteen (15) Business Days or more after receiving a written notice of Cluj IT relating to the breach and requiring it to be remedied;

12.1.3 [SERVICE PROVIDER NAME] is unable to pay its debts in the normal course of business;

12.1.4 [SERVICE PROVIDER NAME] is amalgamated with, purchased by or through any corporate reconstruction becomes a part or member of or associated with, a competitor of Cluj IT;

12.1.5 An event of Force Majeure occurs and endures for more than 4 (four) consecutive weeks.

12.2 Any termination of this Agreement pursuant to the provisions of clause 12.1 shall be without prejudice to any claim which Cluj IT may have in respect of any prior breach of the terms and conditions of this Agreement by [SERVICE PROVIDER NAME].

12.3 Each Party shall, within fifteen (15) Business Days after termination of this Agreement, deliver up to the other Party all correspondence, client material and (intellectual) property belonging to that Party which may be in its possession or under its control, or in the possession of any of its personnel or under their control, together with all Confidential Information. Any express and implied licenses that [SERVICE PROVIDER NAME] has under this Agreement to use any Cluj IT Intellectual Property shall immediately end.



12.4 The rights and obligations with regard to Intellectual Property and Confidentiality remain in full force and effect after termination of this Agreement, irrespective of the cause thereof.

13. Governing Law and Jurisdiction

13.1 These Agreement in governed by the law of Romania.

13.2 In the event a dispute arises out of this Agreement or in connection therewith, the parties shall first endeavor to reach an amicable settlement. If the parties fail to reach such settlement within twenty (20) days from the occurrence of the dispute, it shall be finally settled by the Cluj-Napoca Courts, Romania.

14. Official Language of the Agreement

14.1 This Agreement has been negotiated and executed by the Parties in English. In the event any translation of this Agreement is prepared for convenience or any other purpose, the provisions of the English version shall prevail.

Dated ____/____/____

Witness for [SERVICE PROVIDER NAME] duly authorized and warranting such authority

Witness for Cluj IT duly authorized and warranting such authority

Asociatia Cluj IT

Name, _____
 Position _____