



MEMORANDUM OF AGREEMENT

between

Fundación Instituto de Hidráulica Ambiental (IH Cantabria)

and

for the execution of the project

**“PREPARATION OF A DRAFT UPDATED INTEGRATED COASTAL ZONE MANAGEMENT
PLAN AND AMENDMENT OF THE COASTAL ZONE MANAGEMENT ACT AND
PREPARATION OF CZM REGULATIONS INCORPORATING DISASTER RISK MANAGEMENT
AND CLIMATE CHANGE ADAPTATION PRINCIPLES”**



MEMORANDUM OF AGREEMENT

BETWEEN Fundación Instituto de Hidráulica Ambiental ("the Client"), with fiscal code number, G-39655170, whose registered office is at C/ Isabel Torres nº 15, Parque Científico y Tecnológico de Cantabria, 39011, Santander, Cantabria, Spain, and ("the Consultant") whose registered office is at

WHEREAS the Client has requested the Consultant to provide professional services (clause 2 "Services" of Terms and Conditions below), comprising some services required for the "PREPARATION OF A DRAFT UPDATED INTEGRATED COASTAL ZONE MANAGEMENT PLAN AND AMENDMENT OF THE COASTAL ZONE MANAGEMENT ACT AND PREPARATION OF CZM REGULATIONS INCORPORATING DISASTER RISK MANAGEMENT AND CLIMATE CHANGE ADAPTATION PRINCIPLES" hereinafter referred as "BID CZM BARBADOS".

IT IS AGREED that this Memorandum of Agreement, the Terms and Conditions and Annexes overleaf shall together constitute the Contract between the Client and the Consultant.

Signed on behalf of Fundación Instituto de
Hidráulica Ambiental

Signed on behalf of

Director

Raúl Medina Santamaría
Vice-president and Legal Representative

Santander, 1st February 2019

Contract date being date of receipt by Fundación Instituto de Hidráulica Ambiental of copy signed by the Consultant.

TERMS AND CONDITIONS

1. GENERAL

Unless expressly agreed in writing to the contrary, the following Terms and Conditions will apply to the Memorandum of Agreement (together in these Terms and Conditions called “the Agreement”) and any additional work carried out pursuant to clause 3.6 below and shall prevail notwithstanding any printed or other conditions which may appear in any proposal, purchase order or letter of acceptance from the Client.

2. SERVICES

The purpose of this agreement is to establish a partnership for the implementation of the project “BID CZM BARBADOS” comprising some the services described in the Terms of Reference included in this MoA as Annex A and more particularly set out in the Technical Proposal dated on the 13th June 2018, included in this MoA as Annex B.

The Client will be responsible for:

- Administrative and financial coordination of the activities of the project and the work of the different participating institutions/experts.
- Reporting to the Coastal Zone Management Unit (CZMU).
- Monitoring and evaluation of all the activities and products developed within the implementation of the project.
- Coordination-development of the following activities:
 - Act. 1.1 Preparation of the Inception Report.
 - Act. 2.1 Revision of CRMP data.
 - Act. 2.4 Analysis of sectoral plans.
 - Act. 3.1 Updating coastal diagnosis.
 - Act. 3.2 Revision of criteria for the definition of the CZM Area.
 - Act. 3.3 Redefinition of the CZM Area.
 - Act. 3.4 Field surveys.
 - Task 4. Legal and institutional diagnosis.
 - Act. 5.1 Updating the Policy framework.
 - Act. 5.2 Updating CZM Plans for the Caribbean and Atlantic coasts.
 - Act. 5.3 ICZM Plan implementation strategy.
 - Task 6. Participation and communication.

The Consultant, as Team leader, will be responsible for:

- Technical coordination of project tasks and activities.
- Technical coordination of Barbadian experts.
- Communication with the CZMU for technical issues.
- Development of the following activities:
 - Act 1.2 Mapping of stakeholders.
 - Act 1.3 Data collection.
 - Act. 2.1 Analysis of existing CZM Plan and current studies.
 - Act. 2.3 Preparation of the Baseline Knowledge Report.
 - Act. 5.1 Updating the governance framework.
 - Task 7 Transfer of knowledge.
- Collaboration in the following activities:
 - Act. 1.1 Preparation of the Inception Report.
 - Act. 2.1 Revision of CRMP data.
 - Act. 2.4 Analysis of sectoral plans.
 - Act. 3.1 Updating coastal diagnosis.
 - Act. 3.2 Revision of criteria for the definition of the CZM Area.
 - Act. 3.3 Redefinition of the CZM Area.
 - Act. 3.4 Field surveys.
 - Task 4. Legal and institutional diagnosis.
 - Act. 5.1 Updating the Policy framework.
 - Act. 5.2 Updating CZM Plans for the Caribbean and Atlantic coasts.
 - Act. 5.3 ICZM Plan implementation strategy.
 - Task 6. Participation and communication.
- Elaboration of monthly progress reports and attendance to bi-weekly online progress meetings.
- Attendance to workshops and meetings in Barbados:
 - Pre-engagement activity
 - Mission 1: Inception meeting (month 1).
 - Mission 2: workshop 1 (month 2).

- Mission 3: workshop 2 (month 4).
- Mission 4: workshop 3 (month 6).

The expected number of working days to develop these activities is 120. 48 days of the 120 shall be in Barbados and all incurred expenses shall be covered by Client (flights/car hire in Barbados/accommodation/food costs etc.).

3. FEES

3.1. The Fees stated in the Agreement are for the Services as specified therein.

3.2. Fees payable by the Client for the Services are

3.3. It is assumed that payment for these studies will be made according to the payment schedule below, based on project milestones or deliverables:

Payment in %age	Deliverable
10%	Approval of the Inception Report (Del.1)
10%	Approval of the Baseline Knowledge Report (Del.2).
20%	Approval of Description and Revised Draft Order (Del.5).
40%	Approval of the Draft ICZM Plan (Del.8).
5%	Approval of the Schedule of Public Meetings (Del.11).
10%	Approval of the Draft Policy Paper (Del.6).
5%	Approval of the Final Policy Paper (Del.7).

3.4. Before the payment, the corresponding invoices will be sent by the Consultant and approved by the Client.

3.5. All expenses incurred during the Consultant's stays/missions in Barbados will be covered by the Client (flights/rentals of cars in Barbados/accommodation/food costs etc.). The Client must approve in advance any stay or mission of the Consultant in Barbados and a preliminary budget. To the extent possible, the Client's staff will cover expenses during the Client's stay in Barbados.

3.6. The payment will be made by bank transfer against invoice to the following account in US Dollars.

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The account holder is the Consultant.

- 3.7. The Consultant may, at its discretion and subject always to the Agreement, carry out additional work for the Client, or variations or amendments to the Services requested by the Client, provided that details of the additional services, together with the applicable fees, are set out in a separate variation order, and signed by a duly authorized representative of each party.
- 3.8. All sums payable under the Agreement unless otherwise stated are inclusive of Value Added Tax and any overseas withholding taxes, service taxes and levies.

4. VALIDITY OF OFFER AND DURATION OF CONTRACT

- 4.1. The terms contained in the Agreement remain open for a period of thirty days from the date of dispatch of the Agreement and may be accepted within this period by the Client's completing and returning the Agreement to the Consultant.
- 4.2. Without prejudice to any accrued rights and obligations of the parties hereunder including their continuing duties under clause 7.4 the Agreement shall commence on the date when a copy of the Agreement, duly signed by the Consultant, is received by the Client and shall, unless earlier terminated in accordance with clause 10 below continue until the Services (and any amendments, variations or additions to the same) are completed.

5. PAYMENT

- 5.1. The Consultant shall be entitled to raise invoices for work done on completion of each milestone as described in clause 3.3.
- 5.2. Payment shall be made within 30 days of the date of dispatch shown on the Consultant's invoices.
- 5.3. If the Consultant fails to complete any milestone on the due date then, without prejudice to any other right or remedy available to the Client, the Client will be entitled to:
- cancel the Agreement and/or suspend any further work from the Consultant; and / or
 - charge the Consultant interest (both before and after any judgement) on the amount related to the deliverable/activity at the rate of 3% per annum above the base rate of IPC (Spanish Retail price index).
 - Unless otherwise stated in the Agreement payment shall be made in US Dollars.

6. CANCELLATION AND DEFERMENT OF THE CONTRACT

- 6.1. The Consultant shall not after acceptance be entitled to cancel the Agreement or any part of the Services (including any variations or amendments to the same) except with the Client's agreement in writing and on condition that the Consultant will indemnify the Client in full against all loss (including loss of profits) costs damages and expenses incurred by the Client as a result of cancellation.
- 6.2. If a deferment is for a period longer than 30 days, the Client shall be entitled at its discretion to reduce the Fees payable under the Agreement or to cancel the Agreement. If the Client exercises its discretion to cancel the Agreement the Consultant shall indemnify the Client in full against all loss (including loss of profits) costs damages and expenses incurred by the Client as a result of cancellation.

7. CONFIDENTIALITY

- 7.1. For the purpose of this clause 7 "Confidential Information" shall mean all trade secrets and confidential or proprietary information including but not limited to data, instructions, information concerning products, customers, business accounts, financial or contractual arrangements or other dealings, transactions or affairs of either party, whether or not the same are specifically identified as being confidential to that party.
- 7.2. Each party hereby acknowledges and agrees that it shall:
- keep in strict confidence and in safe custody any Confidential Information belonging to the other party;
 - not use, copy or reproduce any Confidential Information of the other party except to the extent strictly necessary to enable it to perform its obligations under the Agreement;
 - not disclose any Confidential Information of the other party without prior written agreement from that party to any third party except to those of its employees who have a need to know the Confidential Information to perform that party's obligations under the Agreement.
- 7.3. Clause 7.2 shall not apply to any information which:
- either party is required by law to disclose; or
 - is in the public domain other than as a result of a breach by the party disclosing the Confidential Information of any of its obligations under the Agreement.
- 7.4. The obligations of confidentiality in this clause 7 shall continue without limit in point of time and shall survive the termination of the Agreement.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1. Any know-how developed by the Consultant prior to or during the course of the Agreement, including but not limited to any discovery, invention, techniques, plans, designs, trademarks,

standards, systems methods, procedures or processes (“the Know-How”) shall belong to and remain vested in the Consultant and the Consultant shall be entitled to use the Know-How in performing services for any other clients in the future.

8.2. Where any Know-How forms part of the material produced by the Consultant for the Client, the Consultant hereby grants to the Client a perpetual, non-exclusive, non-transferable license to use the same for its own business purposes.

8.3. The Client shall not be entitled to sub-license any of the rights granted to it in this clause 8.

9. WARRANTIES AND LIMITATION OF LIABILITY

9.1. The Consultant warrants that it will perform the Services with reasonable skill and care up to the amount of 332.100 USD.

9.2. The Client will be under no liability under the above warranty in the following circumstances:

- any failure by the Consultant to follow the Client’s instructions or recommendations;
- if the Consultant gives inaccurate, misleading or incomplete data or information to the Client.

9.3. The Consultant will be under no liability under the above warranty in the following circumstances:

- if any invoice is not paid by the due date for payment.
- if the Client gives inaccurate, misleading or incomplete data, information, or instructions to the Consultant.

9.4. All other warranties, whether express or implied by statute, contract or otherwise, are hereby expressly excluded to the fullest extent permitted by law.

9.5. The Client shall not be liable to the Consultant for loss of profits or revenue, loss of use of facilities, services or downtime cost or claims or loss of contracts or any indirect or incidental or consequential losses whether arising from negligence breach of contract or howsoever. For the avoidance of doubt each limitation of liability contained within this clause 9.5 shall be construed as a separate limitation of liability.

9.6. In the case where the Client is not the sole person for whose benefit or ultimate benefit the Services are to be performed, the Client warrants that it is authorized by all such persons to accept, in consideration of the Consultant entering into the Agreement with the Client, the limitations and exclusions of liability contained herein on behalf of and so as to bind all such persons.

9.7. The benefit of the restrictions and exclusions in this clause 9 shall extend to all the directors and employees, agents, consultants and subcontractors engaged by the Consultant with the performance of the work under the Agreement, who shall each be entitled to every defence, exemption or limitation of liability to which the Consultant is entitled hereunder. For this purpose, only, the Consultant contracts as agent for and on behalf of all such directors and employees agents consultants group members and sub-contractors as well as on its own

behalf. The permission of the persons entitled to the benefit of this clause shall not be required to any variation to the Agreement.

10. TERMINATION

10.1. The Agreement may be terminated immediately by either party by written notice to the other if:

- the other party commits any repudiatory or continuing breach of any of the terms of the Agreement and in the case of a breach which is capable of remedy, fails to remedy the same within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;
- an encumbrancer takes possession or a receiver is appointed over any of the property or assets of the other party;
- the other party makes a voluntary arrangement with its creditors or becomes subject to an administration order;
- the other party goes into liquidation (except for the purposes of an amalgamation, reconstruction or other reorganization and in such manner that the Consultant resulting from the reorganization effectively agrees to be bound by or to assume the obligations imposed on that other party under this contract); or
- the other party ceases, or threatens to cease, to carry on business.

10.2. On termination of the Agreement, the Client shall immediately pay all sums due to the Consultant.

10.3. Termination of the Agreement shall be without prejudice to any accrued rights or obligations of either party.

11. GOVERNING LAW AND JURISDICTION

11.1. The terms of the Agreement shall be governed by Spanish Law and the parties hereby agree that the Courts of Cantabria (Spain) shall have exclusive jurisdiction to decide any dispute concerning the Agreement or the subject matter hereof.

12. MISCELLANEOUS

12.1. The Consultant shall be entitled to sub contract any of its duties and responsibilities arising under the Agreement.

12.2. No waiver by the Consultant of any breach of the Agreement by the Client shall constitute or imply a waiver of any subsequent breach of the same or any other provisions.

- 12.3. If any provision of the Agreement is declared by any judicial or any other competent authority to be void, voidable, illegal or otherwise unenforceable or a written notice to that effect is received by either party from any Counsel (jointly instructed by the Consultant and the Client) specializing in the point at issue then that provision shall be amended limited or eliminated to the minimum extent necessary whilst preserving the overall commercial intent of the Agreement. The Agreement shall otherwise remain in full force and effect and enforceable.
- 12.4. Each party acknowledges this contract contains the whole agreement between the parties and that the Client has not relied upon any oral or written representations made to it by the Consultant or its employees or agents.
- 12.5. The Agreement supersedes any prior agreement between the parties whether written or oral.
- 12.6. Any notice or other information required or permitted to be given by either party under the Agreement shall be deemed to have been validly given if served personally upon that party or is sent by first class pre-paid post to the last known address of that party. If sent by first class pre-paid post the notice shall be deemed unless the contrary is shown to have been received 2 working days after the date of posting. If any such notice or other information is given by means of facsimile, telex or other immediate form of communication, then notice shall be deemed to have been received on the same day, provided it is sent within normal working hours.

13. OTHER INFORMATION

- 13.1. Any notice or request required to be given or made under this MoA shall have been dully made or given by email followed by hand or by certified mail to the party addressed as follows:

Client: IHCantabria:

C/ Isabel Torres nº 15, Parque Científico y Tecnológico de Cantabria, 39011, Santander, Cantabria, España.

Attention: Raúl Medina, Vice-President

Email: medinar@unican.es

Consultant:

- 13.2. The Consultant holds appropriate Professional Insurance to cover its potential liabilities.