



Rijksinstituut voor Volksgezondheid  
en Milieu  
*Ministerie van Volksgezondheid,  
Welzijn en Sport*

AVOA  
**General Terms and Conditions For  
Research Assignments Commissioned  
to RIVM**

November 2005

## 1. Definitions

In these General Terms and Conditions, the below terms, which are listed in alphabetical order and written with an initial capital letter, are defined as follows:

- 1.1 *Agreement*: the Agreement between RIVM and Principal, of which these General Terms and Conditions constitute an integral part. In these General Terms and Agreements, the terms Assignment and Agreement are used interchangeably but are considered to have the same meaning.
- 1.2 *AVOA*: the present General Terms and Conditions for Research Assignments commissioned to RIVM, as agreed by the management of RIVM.
- 1.3 *Principal*: every natural or legal person who has entered or wishes to enter into an Agreement for or related to the execution of a Research Assignment with RIVM and, in addition, their representative(s), agent(s) and acquirer(s) of rights.
- 1.4 *RIVM*: Rijksinstituut voor Volksgezondheid en Milieu (National Institute for Public Health and the Environment), a legal person under public law, being an agency of the State of the Netherlands, whose office is registered at Antonie van Leeuwenhoeklaan 9 in Bilthoven, hereafter referred to as 'RIVM'.
- 1.5 *Written*: by letter, telefax or e-mail.

## 2. General

- 2.1 RIVM may modify the AVOA. Such modifications become effective on the date on which they are announced to come into effect, except for Assignments that were already in effect prior to such date. RIVM will send the modified terms and conditions to Principal in a timely manner. Should the notification not specify the date on which the modifications take effect, the modifications will then take effect for Principal as soon as Principal has been notified or otherwise informed of such modifications, except for Assignments that were entered into prior to such date.
- 2.2 The AVOA applies to all offers, quotes and activities of RIVM in the broadest sense of the word, as well as to all (supplementary) Agreements between RIVM and a Principal, in so far as the parties do not explicitly deviate from these terms and conditions in writing.
- 2.3 This AVOA does not apply to Assignments from the Ministry of Health, Welfare and Sport, the Ministry of Housing, Spatial Planning and the Environment, and the Ministry of Agriculture, Nature and Food Quality.
- 2.4 Supplementary and/or deviating terms and conditions of Principal do not constitute part of the Agreement between RIVM and Principal. They are thus not binding on RIVM unless RIVM accepts in writing Principal's terms and conditions in whole or in part.
- 2.5 Deviations from the AVOA are only binding if and in so far as they are explicitly agreed in writing and only for the quotes, offers, activities and (supplementary)

Agreements to which they apply. The AVOA continues to apply in full with regard to other quotes, offers, activities and (supplementary) Agreements.

- 2.6 RIVM is autonomous in the execution of an Assignment. There is and never will be an employment relationship with Principal.
- 2.7 Should any provision of this AVOA be declared invalid in whole or in part for whatever reason, all other provisions of the Agreement and these terms and conditions will remain in full force. As to the invalid provision(s), the parties are expected to agree that which under the law comes closest to the intent of the invalid provision(s).
- 2.8 Should this English translation of the AVOA result in a lack of clarity regarding the terms and conditions or their interpretation, the Dutch version will prevail. In the event of any discrepancy between a written version and an electronic version, the written version will prevail.

### **3. Scope of the Assignment, quote**

- 3.1 The scope of the Assignment is determined by the description of the activities in RIVM's quote, including subsequent modifications that are agreed in writing. The content of the Assignment does not extend beyond the activities explicitly agreed.
- 3.2 The Agreement takes effect when Principal confirms RIVM's quote in writing. In the event that Principal does not confirm the quote in any way whatsoever and RIVM nonetheless starts executing the Assignment with the approval of Principal, the content of the quote will be considered as having been agreed.
- 3.3 The quote will specify the intended results of the activities assigned, such as written advice, a report, a model, etc. In addition, the quote will contain a cost specification for the activities described in the quote.
- 3.4 All quotes issued by RIVM, regardless of their form, are non-binding unless agreed otherwise in writing. RIVM may revoke a quote during a maximum period of five (5) working days after receipt of Principal's acceptance. Unless agreed otherwise in writing, quotes submitted by RIVM are valid for a period of two (2) months.
- 3.5 Modifications, supplements and additions to the Assignment are only binding after they have been approved by both parties in writing. Principal accepts that the Assignment's schedule may be affected by any changes, including modifications, supplements or additions parties make to the activities during the execution of the Agreement. RIVM will notify Principal as quickly as possible if such modifications impact the price or estimated price specified in the quote.
- 3.6 Proposals for research, as well as proposals for modifications, supplements or additions to an Assignment, are issued on the condition that the knowledge and ideas of RIVM reflected therein will only be used by Principal to form an opinion about the proposals of RIVM.

3.7 Inquiries about third-party patent rights or the possibility of obtaining a patent do not fall within the scope of the Assignment unless specifically stated in the quote.

#### **4. Scope of the Assignment, result**

4.1 The Assignment will be executed within the mutually agreed (estimated) period specified in the quote, unless the period specified is not deemed feasible. In the event that this period risks being exceeded, RIVM must consult with Principal as quickly as possible. RIVM will not be in default through the mere expiration of the agreed period without notice of default.

4.2 Upon acceptance of an Assignment, RIVM only commits itself to strive towards a result that is useful to Principal. There is and never will be a commitment to achieve a specific result.

4.3 In the event that the Assignment involves, among other things, the delivery of a tangible object, no other warranty will be given by RIVM with regard to such object than that specified in the quote.

4.4 In the event that the Assignment involves, among other things, research on samples, Principal is solely responsible for the selection and representative character of the samples, the identification of codes, brand or product name, and for providing them to RIVM for research, except when it has been agreed that RIVM will be responsible for the sampling.

4.5 RIVM is not required to start with the Assignment until all materials, objects or data to be provided by Principal have actually been submitted to RIVM in the agreed form and quantity. Any delay caused by the tardy provision of materials will extend the period referred to in article 4.1. RIVM reserves the right to charge Principal at its standard rates for any costs incurred as a result of the delay.

4.6 RIVM will notify Principal of any obvious shortcomings in the agreed research methods and other particulars that arise during the research which RIVM believes Principal should be aware of.

4.7 RIVM may, in the event that it is considered necessary or appropriate for the proper execution of the Assignment, engage the services of third parties at the expense of Principal. Unless specifically agreed otherwise, the cost of engaging third parties in the execution of the agreement will never be deemed to be included in the cost specification.

#### **5. Confidentiality**

5.1 Only in the event that such is agreed in writing when the Assignment is granted does RIVM commit to maintain in confidentiality the name of Principal and the fact that the research has been conducted. Such commitment will in principle end two (2) years after the date of the final invoice.

5.2 Only in the event that such is agreed in writing when the Assignment is granted does RIVM commit to maintain in confidentiality the results of the Assignment provided by RIVM to Principal for a period of two (2) years after the date of the final

invoice. This does not apply to calculation methods, software and experimental methods whose development is not directly related to the issuance of the Assignment. For inspections, analyses, measurements or literature studies, the confidentiality commitment does not extend beyond the results of the inspection, analysis, measurement or study performed.

- 5.3 RIVM must maintain in confidentiality any information it becomes aware of during the execution of the Assignment and that is specifically identified by Principal as confidential. This confidentiality commitment does not apply to:
- information that is already held by RIVM at the time the information is provided to RIVM;
  - information that is or will become publicly available, without such availability being the result of any failure on the part of RIVM;
  - information that has been rightfully obtained by RIVM either from a third party or through its own research, without making use of confidential information in any way whatsoever.
- 5.4 In the event that Principal's publication of the results of the assigned activities leads to misunderstandings, RIVM is released from its obligation to maintain confidentiality to the extent reasonable that enables RIVM to explain to third parties how it has reached the results of the research.
- 5.5 RIVM's obligation to maintain information in confidentiality does not apply when legal requirements oblige RIVM to make information public, nor does it apply when and in so far as RIVM notices a serious danger to persons or goods. In this latter case, RIVM will, if possible, consult with Principal before notifying those whose person or property is threatened and/or the competent authorities of the danger.
- 5.6 RIVM will ensure that any third parties it engages in the execution of the Assignment maintain the same level of confidentiality that RIVM has committed itself to on the basis of these general terms and conditions.

## **6. Intellectual property rights**

- 6.1 All intellectual property rights that may be exercised, now or in future, with regard to the results of the activities assigned pursuant to article 3.3, as well as with regard to drawings, calculation methods, software, work methods, models etc. used by RIVM in connection with the Assignment, lie with RIVM unless agreed otherwise in writing. Within the scope of the Assignment, however, Principal has full and free right of use of the results of the activities assigned pursuant to article 3.3. This right is exclusive in so far as RIVM has committed itself to maintain information in confidentiality pursuant to article 5.2, such subject to the provisions of articles 6.2 and 6.3. Reports, measurement results, source codes, drawings and other tangible items that are the result of the activities assigned pursuant to article 3.3 accrue to or are the property of Principal, with the exception of copyrights and/or intellectual property rights that are the property of RIVM, and will be provided by RIVM to Principal.
- 6.2 During the period in which RIVM is obliged to maintain information in confidentiality pursuant to article 5.2, RIVM may only use the results referred to in article 6.1 for its own purpose. Following the period during which RIVM is obliged to maintain

information in confidentiality pursuant to article 5.2, or if it has not obliged itself to maintain information in confidentiality, RIVM may use the results referred to in article 6.1 for third parties and allow third parties to use the results.

- 6.3 RIVM may use for itself and/or third parties and allow third parties to use:
- a. the knowledge and expertise that RIVM has at the time the Assignment is accepted;
  - b. the knowledge and expertise that RIVM has gained outside the scope of the Assignment by executing the Assignment;
  - c. calculation methods, software and experimental methods resulting from the Assignment, in so far as their development is not directly related to the Assignment granted.
- 6.4 In so far as the execution of the Agreement by RIVM leads to an invention that is patentable, RIVM may apply for a patent in its own name and at its own expense. RIVM will take into account its obligation under article 5.2 to maintain information in confidentiality.
- 6.5 Parties will notify each other as soon as possible about every invention arising from the execution of the Agreement that may be patentable. Parties will fully cooperate when submitting patent applications.
- 6.6 Should RIVM not apply for a patent on an invention as referred to in article 6.4, Principal may apply for and acquire a patent on the invention involved in its own name and at its own expense, if and in so far as the patent application relates to the results of the assigned activities as specified in article 3.3. Principal will in such case immediately grant RIVM, at RIVM's request, a non-exclusive user license free of charge.

## **7. Disclosure**

- 7.1 For each publication for which Principal uses data files that were obtained by or with the cooperation of RIVM, Principal will state that the content relies solely or partly on data obtained in the context of a project that was carried out by 'Rijksinstituut voor Volksgezondheid en Milieu (RIVM)'.
- 7.2 For each publication for which Principal uses reports or publications or partial publications made by or with the cooperation of RIVM, Principal will state the name of each author and the fact that the content relies solely or partly on publications obtained in the context of a project that was carried out by 'Rijksinstituut voor Volksgezondheid en Milieu (RIVM)'.
- 7.3 Without the prior written permission of RIVM, Principal may not:
- a. multiply and/or publish in full or in part reports issued by RIVM by means of print, photocopy, microfilm, in electronic format or any other way;
  - b. submit reports issued by RIVM for inspection outside the circle of persons who, considering the scope of the Assignment, are directly concerned;
  - c. use in full or in part reports issued by RIVM to lodge claims, conduct legal proceedings, as publicity or negative publicity, and to recruit in a more general sense;
  - d. use the name of RIVM in whatever connection for one or more of the purposes stated under c of this article.
- 7.4 In the event that a prohibition or injunction described in this article is violated, Principal forfeits a penalty of €25,000 per violation that is immediately payable to

RIVM, plus €1,000 for each day that the violation endures, without prejudice to other claims that RIVM is entitled to.

## **8. Price and payment**

- 8.1 In the event that the quote contains a 'fixed price', this price is considered to be the agreed price. In the event that the quote does not contain a 'fixed price', Principal and RIVM agree that the amount due will be determined on a time and materials basis using the rates agreed for the Assignment. In the event that rates were not agreed in advance, the rates will be determined on the basis of RIVM's standard rates and methods. Should the quote in the latter two cases specify an 'estimated price', the amount stated represents no more than a non-binding cost estimate. In this last case RIVM may, in the event that the period between the date of the quote and the date on which the activities end or will end is one year or longer, apply per 1 January of each year indexation to the portion of the price of the Assignment that has not yet been invoiced in line with RIVM's annual rate adjustment.
- 8.2 For Assignments with a value of €15,000 and higher and with an expected duration of three months or longer, RIVM may, at the request of Principal, apply a ceiling amount. This automatically releases RIVM from its obligation to continue the activities in so far as the execution of the Assignment has reached or will exceed the ceiling amount.
- 8.3 In the event that the quote does not contain a 'fixed price' and the value of the Assignment is higher than €15,000, RIVM will specify the related invoice in detail if so requested by Principal at the time the Assignment is granted.
- 8.4 Unless stated otherwise, all amounts stated by RIVM in the quote are exclusive of value added tax.
- 8.5 RIVM retains the right to submit periodic invoices. RIVM may at all times demand prepayment, a letter of credit or immediate payment in cash.
- 8.6 Principal must pay the invoices in euros without discount or the possibility of offsetting the amount within thirty (30) days after the invoice date, and, without specific notice of default, also pay legal interest for trade agreements and collection charges (with a minimum of 15% applied to the amount due by Principal) if Principal exceeds the payment term of thirty (30) days.
- 8.7 RIVM may suspend the execution of the Assignment if payments are not made in time.
- 8.8 RIVM retains ownership of all items that RIVM makes available to Principal in the context of the Assignment, including tangible items as specified in article 6.1, until the time when all the Assignment-related amounts due by Principal to RIVM have been paid in full.

## **9. Liability**

- 9.1 RIVM is only liable for shortcomings in the execution of the Assignment in so far as these are the result of failures on the part of RIVM to observe the level of care, expertise and professionalism that may be expected when carrying out activities in the context of the specific Assignment.
- 9.2 Should RIVM be liable in any way for damage suffered by Principal, such liability is limited to the direct damage suffered by Principal and may not exceed the amount that RIVM has received or invoiced for its activities in the context of an Assignment pursuant to article 8.1.
- 9.3 RIVM and persons that RIVM assigns to and/or involves in the execution of the Assignment are not liable for damage suffered by Principal as a result of applying or using the results of RIVM's activities, unless there is evidence of wilful intent or gross negligence by RIVM and/or the persons RIVM assigned to and/or involved in the execution of the Assignment.
- 9.4 Principal holds RIVM and/or persons RIVM involves in the execution of the Assignment harmless against all claims by third parties relating to damages suffered by these third parties arising from the application or use of the result of RIVM's activities by Principal or any other person to whom Principal has provided such result, unless there is evidence of wilful intent or gross negligence by RIVM and/or persons RIVM assigned to and/or involved in the execution of the Assignment.
- 9.5 Principal holds RIVM harmless against all claims, including claims by third parties, arising from errors by persons Principal assigns to and/or involves in the execution of the Assignment.
- 9.6 Persons RIVM assigns to and/or involves in the execution of the Assignment who carry out Assignment-related activities on the premises of Principal and/or a third party are not bound by the terms and conditions stated on site-admission papers etc. that limit in full or in part Principal's liability by virtue of the Agreement.
- 9.7 Principal holds RIVM harmless against claims by persons RIVM assigns to and/or involves in the execution of the Agreement arising from damage such persons suffer on the premises of Principal and/or of a third party during the execution of Assignment-related activities.
- 9.8 RIVM declines all liability for damage arising from the fact that the results of the activities are not patentable or from the infringement on third-party rights when applying the results.

## **10. Custody of research objects**

- 10.1 RIVM will maintain, in so far as reasonably possible, custody of the goods, including samples or remnants thereof that are provided to RIVM in connection with the Assignment, for a period of two weeks after the date on which the results of the research are reported to Principal. Any related costs are considered to be included in the price or estimated price specified in the quote. In the event that Principal has

not made arrangements for the return of said goods within this period, RIVM is free to take appropriate measures. Any related costs, including costs resulting from longer custody, are carried by Principal.

- 10.2 RIVM may keep, free of charge, for its own research samples and other similar goods that have been provided by Principal. RIVM will notify Principal accordingly, and will not charge Principal for custody in such case.

## **11. Miscellaneous**

- 11.1 For Assignment-related activities that are carried out on Principal's premises, Principal will, at the request of RIVM, provide RIVM with assistants and supporting equipment free of charge.
- 11.2 When on RIVM's premises, Principal and/or its personnel must comply with RIVM's house rules, which apply to all persons using the buildings or sites concerned. Principal will ensure that its personnel behave in accordance with this provision.
- 11.3 In the event that Principal cancels an Agreement in whole or in part after it has been concluded, 15% of the price or estimated price specified in the quote will be charged as cancellation fee without prejudice to the right of RIVM to claim full compensation for damages from Principal.
- 11.4 Should Principal, after written notice of default, continue to default on its obligations under the Agreement or ensuing agreements, as well as in the event of insolvency (or petition for insolvency) or a moratorium on payments (provisional or otherwise), or should Principal through whatever cause lose or risk losing control over all or part of its assets, and in the event of closedown, liquidation, dissolution, cessation or any similar situation of Principal or Principal's company, RIVM may terminate the Agreement with immediate effect by means of a written notification to Principal. In such case, Principal is liable for damages, and all claims by RIVM against Principal are immediately due and payable without discount or the possibility of offsetting them.
- 11.5 Obligations that by their very nature are intended to remain in effect after termination of the Agreement continue to apply after termination. Such obligations include, among other things, confidentiality (article 5), intellectual property rights (article 6), disclosure (article 7), liability (article 9), dispute resolution and applicable law (article 12).
- 11.6 Claims by Principal against RIVM that arise from or are related to the execution of an Assignment by RIVM and/or persons RIVM assigns to and/or involves in the execution of the Assignment become null and void if RIVM is not explicitly notified of such claims in writing within one year after the date of the final invoice, unless Principal demonstrates that it was unable to meet its notification duty within the period set. RIVM must be notified in writing of complaints regarding invoices no later than fourteen days (14) after receipt of the invoice. Upon expiration of this period, Principal is considered to have accepted the invoice.

**12. Dispute resolution and applicable law**

- 12.1 Any disputes that arise from an Agreement to which these General Terms and Conditions apply, or further agreements that are the result thereof, or from the related terms and conditions or their interpretation or execution, whether of a factual or legal nature, shall be resolved by the authorised court in The Hague or, at the choice of RIVM, by the authorised court for the place of residence of Principal.
- 12.2 Offers, quotes, activities and Agreements, including ensuing agreements and their execution, as well as these General Terms and Conditions, are governed exclusively by the law of the Netherlands