

GENERAL CONDITIONS

FRAMEWORK CONTRACT EUROPEAID/119860/C/SV/multi

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PRELIMINARY PROVISIONS

Article 1 Definitions and conventions

- 1.1 If this contract is signed in more than one language, the English version prevails in the event of inconsistencies between different language versions.
- 1.2 The headings and titles of these General Conditions shall not be taken as part thereof or be taken into consideration in the interpretation of the contract.
- 1.3 The following definitions apply to the contract.

Administrative order: any written or oral instruction or order issued by the Project manager to the Contractor regarding the performance of the services

Beneficiary country: the country or state outside the European Union with which the European Community has an agreed programme of co-operation.

Budget breakdown: in a fee-based Specific contract, the schedule which breaks down the contract value, stating out the fee rates and the reimbursable costs.

Commission: the European Commission.

Contractor: the party which contracts to perform the services.

Contract: the signed agreement entered into by the parties for the performance of the services (i.e. the framework contract and/or the Specific contracts), including all attachments thereto and all documents incorporated therein, including these General Conditions.

Framework contract: agreement concluded between the parties to establish the essential terms governing a series of specific contracts to conclude within a specific period for similar services.

Specific contract: agreement concluded between the parties according to the established terms in the framework contract and to which are annexed the Specific terms of reference determining the services to be performed by the contractor.

Contracting authority: the European Community represented by the European Commission on behalf of the beneficiary countries and/or, for Specific contract, the decentralised authorities of the beneficiary country.

Contract value : the amount stated in the Specific contract

Day: calendar days.

EC: the European Community.

EU: the European Union.

Euro: the European single currency.

EuropAid website: http://europa.eu.int/comm/europeaid/index_en.htm

Fee-based contract: contract under which the services are provided on the basis of fixed fee rates for each day worked by experts.

General damages: the sum, not stated previously in the contract, which is awarded by a court or arbitration tribunal, or agreed between the parties, as compensation payable to a injured party for a breach of the contract by the other party.

Global price contract: a contract under which the services are performed for an all-inclusive fixed price.

Liquidated damages: the compensation stated in the contract as being payable by one contracting party to the other for failure to perform the contract or part thereof.

Month: calendar month

Project: the project in relation to which the services are to be provided under the contract.

Project Manager: the natural or legal person responsible for monitoring the implementation of the contract on behalf of the Contracting Authority.

Services: activities to be performed by the Contractor under the Specific contract such as technical assistance, studies, training and designs on the spot for the benefit of third countries receiving external aid.

Global terms of reference: the document in annex II and drawn up by the Contracting Authority giving the definition of its requirements and/or the objectives in respect of the provisions of services to define in the Specific contract.

Specific terms of reference: the document annexed to the Specific contract and drawn up by the Contracting Authority giving the definition of the services to be performed by the Contractor, specifying, where relevant, the methods and resources to be used by the Contractor and/or the results to be achieved by it.

Time limits: those periods in the contract which shall begin to run from the day following the act or event which serves as the starting point for those periods. Should the last day of the period fall upon a non-working day, the period shall expire at the end of the first working day following the last day of the period.

- 1.4 Where the context so permits words importing the singular shall be deemed to include the plural and vice versa and words importing the masculine shall be deemed to include the feminine and vice versa.
- 1.5 The word "country" shall be deemed to include State or Territory.
- 1.6 Words importing persons or parties shall include firms and companies and any organisation having legal capacity.

Article 2 Notices and written communications

- 2.1 Whenever there is a deadline for the receipt of a written communication, the sender should as for an acknowledgement of receipt of its communication. In any event, the sender shall take all the necessary measures to ensure receipt of the communication.
- 2.2 Any notice, consent, approval, certificate or decision by any person required under the contract must be in writing, unless otherwise specified, and shall not be unreasonably withheld or delayed.
- 2.3 Any oral instruction or order shall take effect at the time of transmission and shall be confirmed subsequently in writing.

Article 3 Assignment

- 3.1 An assignment is any agreement by which the Contractor transfers its contract or part thereof to a third party.
- 3.2 The Contractor shall not, without the prior written consent of the Contracting Authority, assign the contract or any part thereof, or any benefit or interest thereunder.
- 3.3 The approval of an assignment by the Contracting Authority shall not relieve the Contractor of its obligations for the part of the contract already performed or the part not assigned.
- 3.4 Assignees must satisfy the eligibility criteria applicable to the award of the contract.

Article 4 Sub-contracting

- 4.1 Any agreement by which the Contractor entrusts performance of a part of the services to a third party is considered to be a sub-contract.
- 4.2 The Contractor must seek the prior written authorisation of the Contracting Authority before entering into a sub-contract. This authorisation will be based on the services to be sub-contracted and the identity of the intended sub-contractor. The Contracting Authority shall, with due regard to the provisions of Article 2.2, within 30 days of receipt of the notification, notify the Contractor of its decision, stating reasons, should it withhold such authorisation.
- 4.3 No sub-contract can create contractual relations between any sub-contractor and the Contracting Authority.

- 4.4 The Contractor shall be responsible for the acts, defaults and negligence of its sub-contractors and their experts, agents of employees, as if they were the acts, defaults or negligence of the Contractor, its experts, agents or employees. The approval by the Contracting Authority of the sub-contracting of any part of the contract or of the sub-contractor shall not relieve the Contractor of any of its obligations under the contract.
- 4.5 If a sub-contractor is found by the Contracting Authority or the Project manager to be incompetent in discharging its duties, the Contracting Authority or the Project manager may request the Contractor forthwith, either to provide a sub-contractor with qualifications and experience acceptable to the Contracting Authority as a replacement, or to resume the performance of the services itself.
- 4.6 Sub-contractors must satisfy the eligibility criteria applicable to the award of the contract.
- 4.7 Those services entrusted to a sub-contractor by the Contractor cannot be entrusted to third parties by the sub-contractor.
- 4.8 Any change of sub-contractor without the prior written consent of the Contracting Authority shall be considered to be a breach of contract.

OBLIGATIONS OF THE CONTRACTING AUTHORITY

Article 5 Supply of information

- 5.1 The Contracting Authority shall supply the Contractor promptly with any information and/or documentation at its disposal, which may be relevant to the performance of the contract. Such documents shall be returned to the Contracting Authority at the end of the period of execution of the contract.
- 5.2 The Contracting Authority shall as far as possible co-operate with the Contractor to provide information that the latter may reasonably request in order to perform the contract.

Article 6 Assistance with local regulations

- 6.1 The Contractor may request the assistance of the Contracting Authority of the beneficiary country to obtain copies of laws, regulations, and information on local customs, orders by-laws of the country in which the services are to be performed, which may affect the Contractor in the performance of its obligations under the contract. The Contracting Authority may charge the Contractor for such assistance, which would be provided at the Contractor's own expense.
- 6.2 Subject to the provisions of the laws and regulations on foreign labour in the country in which the services are to be performed, the Contracting Authority of the beneficiary country shall make every effort to facilitate the procurement by the Contractor of all required visas and permits, including work and residence permits, for the personnel whose services the Contractor and the Contracting Authority consider necessary as well as residence permits for their families.
- 6.3 The Contracting Authority shall issue to its employees, agents and representatives all such instructions as may be necessary or appropriate to facilitate the prompt and effective performance of the services.

OBLIGATIONS OF THE CONTRACTOR

Article 7 General obligations

- 7.1 The Contractor shall respect and abide by all laws and regulations in force in the beneficiary country and shall ensure that its personnel, their dependants, and its local employees also respect and abide by all such laws and regulations. The Contractor shall indemnify the Contracting Authority against any claims and proceedings arising from any infringement by the Contractor, its employees and their dependants of such laws and regulations.
- 7.2 The Contractor shall perform the services under the contract with due care, efficiency and diligence, in accordance with the best professional practice.
- 7.3 The Contractor shall comply with administrative orders given by the Project manager. Where the Contractor considers that the requirements of an administrative order go beyond the authority of the Project manager or of the scope of the contract, it shall, on pain of being time-barred, notify the Project manager, explaining its opinion, within 30 days after receipt thereof. Execution of the administrative order shall not be suspended because of this notice.

- 7.4 The Contractor shall treat all documents and information received in connection with the contract as private and confidential, and shall not, save in so far as may be necessary for the purposes of the performance thereof, publish or disclose any particulars of the contract without the prior consent in writing of the Contracting Authority or the Project Manager after consultation with the Contracting Authority. If any disagreement arises as to the necessity for any publication or disclosure for the purpose of the contract, the decision of the Contracting Authority shall be final.
- 7.5 If the Contractor is a consortium of two or more persons, all such persons shall be jointly and severally bound to fulfil the terms of the contract. The person designated by the consortium to act on its behalf for the purposes of this contract shall have the authority to bind the consortium.
- 7.6 Any alteration of the composition of the consortium without the prior written consent of the Contracting Authority shall be considered to be a breach of contract.
- 7.7 Unless otherwise requested or agreed by the EC, the Contractor shall take the necessary steps to ensure that the financial contribution of the EU is given adequate publicity. These steps must follow the rules applicable to the visibility of external actions as defined and published by the EC.

Article 8 Code of conduct

- 8.1 The Contractor shall at all times act loyally and impartially and as a faithful adviser to the Contracting Authority in accordance with the rules and/or code of conduct of its profession as well as with appropriate discretion. It shall, in particular, refrain from making any public statements concerning the project or the services without the prior approval of the Contracting Authority, and from engaging in any activity which conflicts with its obligations towards the Contracting Authority under the contract. It shall not commit the Contracting Authority in any way whatsoever without its prior written consent, and shall, where appropriate, make this obligation clear to third parties.
- 8.2 For the period of execution of the contract, the Contractor and its personnel shall respect human rights and undertake not to offend the political, cultural and religious practices prevailing in the beneficiary country.
- 8.3 If the Contractor or any of its sub-contractors, personnel, agents or servants offers to give or agrees to offer or to give or gives to any person, any bribe, gift, gratuity or commission as an inducement or reward for doing or forbearing to do any act in relation to the contract or any other contract with the Contracting Authority, or for showing favour or disfavour to any person in relation to the contract or any other contract with the Contracting Authority, then the Contracting Authority may terminate the contract, without prejudice to any accrued rights of the Contractor under the contract.
- 8.4 The payments to the Contractor under the contract shall constitute the only income or benefit it may derive in connection with the contract and neither it nor its personnel shall accept any commission, discount, allowance, indirect payment or other consideration in connection with, or in relation to, or in discharge of, its obligations under the contract.
- 8.5 The Contractor shall not have the benefit, whether directly or indirectly, of any royalty, gratuity or commission in respect of any patented or protected article or process used in or for the purposes of the contract or the project, without the prior written approval of the Contracting Authority.
- 8.6 The Contractor and its staff shall maintain professional secrecy, for the duration of the contract and after completion thereof. In this connection, except with the prior written consent of the Contracting Authority, neither the Contractor nor the personnel employed or engaged by it shall at any time communicate to any person or entity any confidential information disclosed to them or discovered by them, or make public any information as to the recommendations formulated in the course of or as a result of the services. Furthermore, they shall not make any use prejudicial to the Contracting Authority, of information supplied to them and of the results of studies, tests and research carried out in the course and for the purpose of performing the contract.
- 8.7 The execution of the contract shall not give rise to unusual commercial expenses. If such unusual commercial expenses emerge, the contract will be terminated. Unusual commercial expenses are commissions not mentioned in the contract or not stemming from a properly concluded contract referring to the contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commission paid to a company which has every appearance of being a front company.
- 8.8 The Contractor shall supply to the Contracting Authority on request supporting evidence regarding the conditions in which the contract is being executed. The Contracting Authority may carry out whatever documentary or on-the-spot checks it deems necessary to find evidence in case of suspected unusual commercial expenses.

Article 9 Conflict of interests

- 9.1 The Contractor shall take all necessary measures to prevent or end any situation that could compromise the impartial and objective performance of the Contract. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest. Any conflict of interests, which could arise during performance of the Contract must be notified in writing to the Contracting Authority without delay.
- 9.2 The Contracting Authority reserves the right to verify that such measures are adequate and may require additional measures to be taken if necessary. The Contractor shall ensure that its staff, including its management, is not placed in a situation, which could give rise to conflict of interests. Without prejudice to article 6.2, the Contractor shall replace, immediately and without compensation from the Contracting Authority, any member of its staff exposed to such a situation.
- 9.3 The Contractor shall refrain from any contact, which would compromise its independence or that of its personnel. If the Contractor fails to maintain such independence, the Contracting Authority may, without prejudice to compensation for any damage, which it may have suffered on this account, terminate the contract forthwith, without giving formal notice thereof.
- 9.4 The Contractor shall after the conclusion or termination of the contract, limit its role in connection with the project to the provision of the services. Except with the written permission of the Contracting Authority, the Contractor and any other contractor, consultant or supplier with whom the Contractor is associated or affiliated shall be disqualified from the execution of works, supplies or other services for the project in any capacity, including tendering for any part of the project.
- 9.5 Civil servants and other agents of the public administration of the beneficiary country, regardless of their administrative situation, shall not be recruited as experts in contracts financed by the EC in the beneficiary country.
- 9.6 The Contractor and anyone working under its authority or control in the performance of the contract or on any other activity shall be excluded from access to EC financing available under the same project.

Article 10 Administrative and financial penalties

- 10.1 Without prejudice to the application of penalties laid down in the contract, if the Contractor has been guilty of making false declarations or has been found to have seriously failed to meet its contractual obligations in an earlier procurement procedure, it shall be excluded from the award of contracts and grants financed by the European Commission for a maximum of two years from the time when the infringement is established, to be confirmed after an adversarial procedure with the contractor. The Contractor may justify its arguments against the penalty within 30 days of notification of it by recorded delivery or equivalent. In the absence of a reaction for its part or of the written withdrawal of the penalty by the European Commission within 30 days of the above-mentioned arguments, the decision imposing the penalty will become binding. The period of exclusion may be extended to three years in the event of a repeat offence within five years of the first infringement.
- 10.2 Contractors who have been found to have seriously failed to meet their contractual obligations shall also be subject to financial penalties representing 10% of the total value of the Specific contract. This rate may be increased to 20% in the event of a repeat offence within five years of the first infringement.

Article 11 Specifications and designs

- 11.1 The Contractor shall prepare all specifications and designs using accepted and generally recognised systems acceptable to the Contracting Authority and taking into account the latest design criteria.
- 11.2 The Contractor shall ensure that the specifications and designs and all documentation relating to procurement of goods and services for the project are prepared on an impartial basis so as to promote competitive tendering.

Article 12 Indemnification

- 12.1 At its own expense, the Contractor shall indemnify, protect and defend, the Contracting Authority, its agents and employees, from and against all actions, claims, losses or damage arising from any act or omission by the Contractor in the performance of the services, including any violation of any legal provisions, or rights of third parties, in respect of patents, trade marks and other forms of intellectual property such as copyrights.

- 12.2 At its own expense, the Contractor shall indemnify, protect and defend the Contracting Authority, its agents and employees, from and against all actions, claims, losses or damages arising out of the Contractor's performance of the Specific contract provided that:
- a) the Contractor is notified of such actions, claims, losses or damages not later than 30 days after the Contracting Authority becomes aware of them;
 - b) the ceiling on the Contractor's liability to the Contracting Authority shall be limited to an amount equal to the Specific contract value, and such ceiling shall not apply to any losses or damages caused to third parties by the Contractor or by the Contractor's wilful misconduct;
 - c) the Contractor's liability shall be limited to actions, claims, losses or damages directly caused by such failure to perform its obligations under the Specific contract and shall not include liability arising from unforeseeable occurrences incidental or indirectly consequential to such failure.
- 12.3 At its own expense, the Contractor shall, upon request of the Contracting Authority, remedy any defect in the performance of the services in the event of the Contractor's failure to perform its obligations under the Specific contract.
- 12.4 The Contractor shall have no liability whatsoever for actions, claims, losses or damages occasioned by:
- a) the Contracting Authority omitting to act on any recommendation, or overriding any act, decision or recommendation, of the Contractor, or requiring the Contractor to implement a decision or recommendation with which the Contractor disagrees or on which it expresses a serious reservation; or
 - b) the improper execution of the Contractor's instructions by agents, employees or independent contractors of the Contracting Authority.
- 12.5 The Contractor shall remain responsible for any breach of its obligations under the contract for such period after the services have been performed as may be determined by the law governing the contract.

Article 13 Medical, insurance and security arrangements

- 13.1 The Contracting Authority may request the Contractor and/or its personnel performing the services to undergo a medical examination by a qualified medical practitioner before leaving their usual place of residence and shall as soon as is practicable furnish the Contracting Authority with the medical report resulting therefrom.
- 13.2 For the period of execution of the contract, the Contractor shall obtain medical insurance for itself and other persons employed or contracted by it under the contract. The Contracting Authority shall be under no liability in respect of the medical expenses of the Contractor.
- 13.3 Within 20 days of signing the contract, the Contractor shall take out and maintain a full indemnity insurance policy for a sum up to the higher of the maximum amount foreseen by the legislation of the country of the Contracting Authority and the amount foreseen by the legislation of the country in which the Contractor has its headquarters and covering, during the period of execution of the contract, the following aspects:
- a) the Contractor's liability in respect of sickness or industrial accident affecting its employees, including the cost of repatriation on health grounds;
 - b) loss of, or damage to, the Contracting Authority's equipment used to perform the contract;
 - c) civil liability in the event of accidents caused to third parties or to the Contracting Authority and any employee of that Authority arising out of the performance of the contract;
 - d) accidental death or permanent disability resulting from bodily injury incurred in connection with the contract; and
- 13.4 The Contractor shall also insure the personal effects of its employees, experts and their families located in the beneficiary country against loss or damage.
- 13.5 The Contractor shall furnish proof of the insurance policy and of regular payment of premiums without delay whenever required to do so by the Contracting Authority or the Project manager.
- 13.6 The Contractor shall put in place security measures for its employees, experts and their families located in the beneficiary country commensurate with the physical danger facing them.
- 13.7 The Contractor will also be responsible for monitoring the level of physical risk to which its employees, experts and their families located in the beneficiary country are exposed and for keeping the Contracting Authority informed of the situation. In the event that the Contracting Authority or the Contractor shall become aware of an imminent threat of danger to the life or health of any of its employees, experts or their families, the Contractor may take immediate action to remove the individuals concerned to safety. If the Contractor takes such action, this must be communicated immediately to the Project Manager and may lead to suspension of the contract in accordance with Article 35.

Article 14 Intellectual and industrial property rights

- 14.1 All reports and data such as maps, diagrams, drawings, specifications, plans, statistics, calculations, databases, software and supporting records or materials acquired, compiled or prepared by the Contractor in the performance of the contract shall be the absolute property of the Contracting Authority unless otherwise specified. The Contractor shall, upon completion of the contract, deliver all such documents and data to the Contracting Authority. The Contractor may not retain copies of such documents and data and shall not use them for purposes unrelated to the contract without the prior written consent of the Contracting Authority.
- 14.2 The Contractor shall not publish articles relating to the services or refer to them when carrying out any services for others, or divulge information obtained from the Contracting Authority, without the prior written consent of the Contracting Authority.
- 14.3 Any results or rights thereon, including copyright and other intellectual or industrial property rights, obtained in performance of the Contract, shall be the absolute property of the Contracting Authority, which may use, publish, assign or transfer them as it sees fit, without geographical or other limitation, except where intellectual or industrial property rights already exist.

NATURE OF THE SERVICES

Article 15 The scope of the services

- 15.1 The scope of the services is specified in Annex II and Annex III.
- 15.2 Where the contract is for an advisory function for the benefit of the Contracting Authority and/or Project manager in respect of all the technical aspects of the project, which may arise out of its execution, the Contractor shall not have decision-making responsibility.
- 15.3 Where the contract is for management of the execution of the project, the Contractor shall assume all the duties of management inherent in supervising the execution of a project, subject to the Project manager's authority.
- 15.4 If the Contractor is required to prepare a tender dossier, the dossier shall contain all documents necessary for consulting suitable contractors, manufacturers and suppliers, and for preparing tender procedures with a view to carrying out the works or providing the supplies or services covered by an invitation to tender. The Contracting Authority shall provide the Contractor with the information necessary for drawing up the administrative part of the tender dossier.

Article 16 Personnel and equipment

- 16.1 All those working on the contract shall commence their duties on the date or within the period laid down in Annex II and/or Annex III, or, failing this, on the date or within the periods notified to the Contractor by the Contracting Authority or the Project Manager.
- 16.2 Save as otherwise provided in the special conditions, those working on the contract shall reside close to their place of work. Where part of the services is to be performed outside the beneficiary country, the Consultant shall keep the Project Manager informed of the names and qualifications of staff assigned to that part of the services.
- 16.3 The Contractor shall:
- a) forward to the Project Manager within 30 days of the signature of the contract by both parties, the timetable proposed for placement of the staff;
 - b) inform the Project Manager of the date of arrival and departure of each member of staff;
- 16.4 The Contractor shall adopt all measures necessary to provide and continue to provide its staff with the equipment and backup required to enable them to carry out their specified duties efficiently.

Article 17 Replacement of personnel

- 17.1 The Contractor shall not make changes to the agreed personnel without the prior written approval of the Contracting Authority. The Contractor must on its own initiative propose a replacement in the following cases:
- a) In the event of death, in the event of illness or in the event of accident of a member of staff.
 - b) If it becomes necessary to replace a member of staff for any other reasons beyond the Contractor's control (e.g. resignation, etc.).

- 17.2 Moreover, in the course of performance, and on the basis of a written and justified request, the Contracting Authority can ask for a replacement if it considers that a member of staff is inefficient or does not perform its duties under the contract.
- 17.3 Where a member of staff must be replaced, the replacement must possess at least equivalent qualifications and experience, and the remuneration to be paid to the replacement cannot exceed that received by the member of staff who has been replaced. Where the Contractor is unable to provide a replacement with equivalent qualifications and/or experience, the Contracting Authority may either decide to terminate the contract, if the proper performance of it is jeopardised, or, if it considers that this is not the case, accept the replacement, provided that the fees of the latter are renegotiated to reflect the appropriate remuneration level.
- 17.4 Additional costs incurred by the replacement of staff are the responsibility of the Contractor. Where the expert is not replaced immediately and it is some time before the new expert takes up its functions, the Contracting authority may ask the Contractor to assign to the project a temporary expert pending the arrival of the new expert, or to take other measures to compensate for the temporary absence of the missing expert. Whatever the case may be, the Contracting Authority makes no payment for the period of the expert's or his/her replacement's absence.

Article 18 Trainees : non applicable

EXECUTION OF THE CONTRACT

Article 19 Delays in execution

- 19.1 If the Contractor does not perform the services within the period of execution specified in the Specific contract, the Contracting Authority shall, without formal notice and without prejudice to its other remedies under the contract, be entitled to liquidated damages for every day, or part thereof, which shall elapse between the end of the period of execution specified in the contract and the actual end of the period of execution.
- 19.2 The daily rate for liquidated damages is calculated by dividing the Specific contract value by the number of days of the period of execution.
- 19.3 If these liquidated damages exceed more than 15% of the Specific contract value, the Contracting Authority may, after giving notice to the Contractor:
- a) terminate the Specific contract; and
 - b) complete the services at the Contractor's own expense.

Article 20 Amendments of the contract

- 20.1 Any amendment of the contract must be set out in writing in an addendum, to be concluded on the same terms as the original contract. If the request for an amendment comes from the Contractor, the latter must submit such a request to the Contracting Authority in due course at least 30 days before the amendment is intended to enter into force, except in cases which are duly substantiated by the Consultant and accepted by the Contracting Authority.
- 20.2 However, where the amendment does not affect the basic purpose of the Specific contract and, for a fee-based Specific contract, the financial impact is limited to a transfer within the Fees or between the Fees and the reimbursables, involving a variation of less than 15% of the original amount of the Budget breakdown in Annex V, the Project manager shall have the power to order any variation to any part of the services necessary for the proper execution of the contract, without changing the object or scope of the contract. Such variations may include additions, omissions, substitutions, changes in quality, quantity, specified sequence, method or timing of performance of the services.
- 20.3 No such order for a variation may imply any change in the Total amount of the contract.
- 20.4 Prior to any administrative order for variation, the Project Manager shall notify the Contractor of the nature and form of such variation. As soon as possible, after receiving such notice, the Contractor shall submit to the Project Manager a written proposal containing:
- a) a description of the service to be performed or the measures to be taken and a programme for execution; and
 - b) any necessary modifications to the programme of performance or to any of the Contractor's obligations under the contract; and

- c) For a fee-based contract, any adjustment to the Specific contract value in accordance with the following principles:
 - i) where the task is of similar character and executed under similar conditions to an item priced in the budget breakdown the equivalent numbers of working days shall be valued at the fee rates contained therein;
 - ii) where the task is not of a similar character or is not executed under similar conditions, the fee rates in the Specific contract shall be applied to the estimated numbers of working days so far as is reasonable, failing which, a fair estimation shall be made by the Project manager;
 - iii) where a variation is necessitated by a default or breach of contract by the Contractor, any additional cost attributable to such variation shall be borne by the Contractor.
- 20.5 Following the receipt of the Contractor's proposal, the Project manager shall decide as soon as possible whether or not the variation shall be carried out. If the Project manager decides that the variation shall be carried out he shall issue the administrative order stating that the variation shall be carried out under the conditions given in the Contractor's proposal or as modified by the Project manager in accordance with Article 20.4.
- 20.6 On receipt of the administrative order requesting the variation, the Contractor shall proceed to carry out the variation and be bound by these General Conditions in so doing as if such variation were stated in the Specific contract.
- 20.7 The Contracting Authority shall give written notification to the Contractor of the name and address of the Project manager. The Contractor shall give written notification to the Contracting Authority of the name and address of its contact and bank account for the Framework contract. The Contractor must use the form in Annex VI for notification or modification of its bank account. The Contracting Authority shall have the right to oppose the Contractor's choice of bank account.
- 20.8 All payments made by the Contracting Authority into the bank account specified in the Framework contract will have liberating effect.
- 20.9 No amendment shall be made retroactively. Any change to the contract, which has not been made in the form of an addendum or in accordance with Article 20.7 shall be considered null and void.

Article 21 Working hours

The days and hours of work of the Contractor or the Contractor's personnel in the beneficiary country shall be fixed on the basis of the laws, regulations and customs of the beneficiary country and the requirements of the services.

Article 22 Leave entitlement

- 22.1 Annual leave to be taken during the period of execution of the contract must be at a time approved by the Project manager.
- 22.2 For a fee-based Specific contract, the fee rates are deemed to take into account the annual leave of up to 2 months for the Contractor's personnel during the period of execution of the Specific contract. Consequently, days taken as annual leave shall not be considered to be working days.
- 22.3 The Contractor's personnel shall not be entitled to either sick or casual leave provided, however, that the Project manager may, at his sole discretion whether for compassionate reasons or otherwise, permit the Contractor to take unpaid leave during the period of execution of the contract.

Article 23 Information

The Contractor shall furnish the Project Manager or any person authorised by the Contracting Authority, the European Commission or the European Court of Auditors with such information relating to the services and the project as the project manager may at any time request.

Article 24 Records

- 24.1 The Contractor shall keep full accurate and systematic records and accounts in respect of the services in such form and detail as is sufficient to establish accurately that the number of working days and the reimbursables costs identified in the Contractor's invoice(s) have been duly incurred for the performance of the services.

- 24.2 For a fee-based Specific contract, the Contractor must maintain timesheets recording the days worked by the Contractor's personnel. The amounts invoiced by the Contractor must correspond to these timesheets. The timesheets must record the number of days worked. Time spent travelling exclusively and necessarily for the purpose of the Specific contract may be included in the numbers of days recorded in these timesheets.
- 24.3 Such records must be kept for a 7-year period after the final payment made under the Specific contract. These documents comprise any documentation concerning income and expenditure and any inventory, necessary for the checking of supporting documents, including timesheets, plane and transport tickets, pay slips for the remuneration paid to the experts and invoices or receipts for reimbursable costs. Failure to maintain such records constitutes a breach of contract and will result in the termination of the contract.
- 24.4 The Contractor shall permit the Project manager or any person authorised by the Contracting Authority, the European Commission or the European Court of Auditors to inspect or audit, at any reasonable time, the records and accounts relating to the services and to make copies thereof both during and after provision of the services.

Article 25 Verification by EC bodies

- 25.1 The Contractor will allow the European Commission, the European Anti-Fraud Office and the European Court of Auditors to verify, in accordance with the tasks entrusted to them by the Treaty establishing the European Community, by means of on-the-spot checks of original documents, the implementation of the project and conduct a full audit, if necessary, on the basis of supporting documents for the accounts, accounting documents and any other document relevant to the financing of the project. These inspections may take place up to 7 years after the final payment.
- 25.2 Furthermore, the Contractor will allow the European Anti-Fraud Office to carry out checks and verification on the spot in accordance with the procedures set out in the European Community legislation for the protection of the financial interests of the European Communities against fraud and other irregularities.
- 25.3 To this end, the Contractor undertakes to give appropriate access to staff or agents of the European Commission, of the European Anti-Fraud Office and of the European Court of Auditors to the sites and locations at which the Contract is carried out, including its information systems, as well as all documents and databases concerning the technical and financial management of the project and to take all steps to facilitate their work. Access given to agents of the European Commission, European Anti-Fraud Office and the European Court of Auditors shall be on the basis of confidentiality with respect to third parties, without prejudice to the obligations of public law to which they are subject. Documents must be easily accessible and filed so as to facilitate their examination. The Contractor must inform the Contracting Authority of their precise location.
- 25.4 The Contractor guarantees that the rights of the European Commission, of the European Anti-Fraud Office and of the European Court of Auditors to carry out audits, checks and verification will be equally applicable, under the same conditions and according to the same rules as those set out in this Article, to any sub-contractor or any other party benefitting from EC funds.

Article 26 Interim and final progress reports

- 26.1 The terms of reference of the Frame-work contract and of each specific contract specify the kind of reports to be elaborated by the Contractor as well as the format to be used.
- 26.2 The final report shall be forwarded to the project manager not later than 60 days after the end of the period of execution of the contract. Such report shall not bind the Contracting Authority.
- 26.3 Interim and final progress reports are covered by the provisions of Article 14.

Article 27 Approval of reports and documents

- 27.1 The approval by the Contracting Authority of reports and documents drawn up and forwarded by the Contractor shall certify that they comply with the terms of the contract.
- 27.2 The Contracting Authority shall, within 45 days of receipt, unless otherwise specified, notify the Contractor of its decision concerning the documents or reports received by it, giving reasons should it reject the reports or documents, or request amendments. For the final report, the time limit is extended to 60 days. If the Contracting Authority does not give any comments on the documents or reports within the time limit, the Contractor may request written acceptance of them. The documents or reports shall be deemed to have been approved by the Contracting Authority if it does not expressly inform the Contractor of any comments within 45 days of the receipt of this written request.

- 27.3 Where a report or document is approved by the Contracting Authority subject to amendments to be made by the Contractor, the Contracting Authority shall, prescribe a period for making the amendments requested.
- 27.4 Where the final progress report of a global price contract is not approved, the dispute settlement procedure is automatically invoked.
- 27.5 Where the Specific contract is performed in phases, the execution of each phase shall be subject to the approval, by the Contracting Authority, of the preceding phase except where the phases are carried out concurrently.

PAYMENTS

Article 28 Payment and interests on late payment

- 28.1 Payments will be made in accordance with one of the two options below, as identified in the Specific Contract.

Option 1: Fee-based Specific contract

The Contracting authority will make payments to the Contractor in the following manner :

- A pre-financing payment of up to 60% of the Specific contract within 45 days of receipt by the Contracting Authority of the Specific contract signed by both parties, of a request for the pre-financing payment and of a financial guarantee, as defined in Article 29.
- Possibly interim payments as indicated in rider to Specific contracts within 45 days of the Contracting Authority receiving an invoice by the Contractor;
- The balance of the final value of the Specific contract, subject to the maximum value of the Specific contract, after deduction of the amounts already paid, within 45 days of the Contracting Authority receiving a final invoice setting out the days actually worked and the costs actually incurred during the period, accompanied by original supporting documents and the final report, subject to approval of the final report in accordance with Article 27.

Option 2: Global price Specific contract

The Contracting Authority will make payments to the Contractor in the following manner:

- A pre-financing of up to 60% of the Specific contract value, within 45 days of receipt by the Contracting Authority of the Specific contract signed by both parties, of a request for pre-financing and a financial guarantee, as defined in Article 29;
- Possibly interim payments as indicated in rider to Specific contracts within 45 days of the Contracting Authority receiving an invoice by the Contractor
- The balance of the Specific contract value, within 45 days of receipt by the Contracting Authority of the final invoice, accompanied by the final report, subject to approval of this report in accordance with Article 27.

- 28.2 The payment deadline of 45 calendar days referred to in Article 28.1 shall expire on the date on which the Contracting Authority's account is debited. Without prejudice to Article 36.3, the Contracting Authority may halt the countdown for any part of the invoiced amount disputed by the Project manager by notifying the Contractor that the part of the invoice is inadmissible, either because the amount in question is not due or because the relevant report cannot be approved and the Contracting Authority thinks it necessary to conduct further checks. In such cases, the Contracting Authority must not unreasonably withhold any undisputed part of the invoiced amount but may request clarification, alteration or additional information, which must be produced within 30 days of the request. The countdown towards the deadline will resume on the date on which the Contracting Authority receives a correctly formulated invoice.
- 28.3 Once the deadline referred to above has expired, the Contractor may, within two months of late payment, claim late-payment interest at the rate applied by the European Central Bank to its main refinancing transactions in euro on the first day of the month in which the deadline expired, plus seven percentage points. The late-payment interest shall apply to the time which elapses between the date of the payment deadline (exclusive), and the date on which the Contracting Authority's account is debited (inclusive).
- 28.4 Payments due from the Contracting Authority shall be made into the bank account notified by the Contractor in accordance with Article 20.7.
- 28.5 The Contracting Authority will make payments in euro. Actual expenditure shall be converted into euro at the rate published by the European Central Bank in the "C" series of the Official Journal on the first working day of the month in which the invoice is dated.

- 28.6 For fee-based Specific contracts, invoices must be accompanied by copies of, or extracts from, the corresponding timesheets referred to in Article 24.2 to explain the amount invoiced for the time input of the experts. The time input must be rounded to the nearest whole number of days worked for the purposes of the assignment.
- 28.7 Payment of the final balance shall be subject to performance by the Contractor of all its obligations relating to the execution of all phases or parts of the services and to the approval by the Contracting Authority of the final phase or part of the services. Final payment shall be made only after the possible final progress report and a final statement, identified as such, shall have been submitted by the Contractor and approved as satisfactory by the Contracting Authority.
- 28.8 If any of the following events occurs and persists, the Contracting Authority may, by written notice to the Contractor, suspend in whole or in part, payments due to the Contractor under the contract:
- a) The Contractor defaults in the execution of the contract;
 - b) Any other condition for which the Contractor is responsible under the contract and which, in the opinion of the Contracting Authority, interferes, or threatens to interfere, with the successful completion of the project or the Specific contract.
- 28.9 The payment obligations of the EC under this Specific contract shall cease at most 18 months after the end of the period of execution of the Specific contract, unless the Specific contract is terminated in accordance with Article 36.1 of the General Conditions.

Article 29 Financial guarantee

- 29.1 If the pre-financing payment stated in Article 7.2 of the Special Conditions is EUR 150,000 or more, the Contractor must provide a financial guarantee for the full amount of the pre-financing payment. This financial guarantee must remain valid until it is released by the Contracting Authority in accordance with Article 29.5 or Article 29.6, as appropriate.
- 29.2 The financial guarantee shall be provided on the letterhead of the financial institution using the template provided in Annex II.8.
- 29.3 Should the financial guarantee cease to be valid and the Contractor fail to re-validate it, the Contracting Authority may either make deductions from future payments due to the Contractor under the Specific contract upto the total of the payments already made, or terminate the Contract if in the opinion of the Contracting Authority such deduction is impracticable.
- 29.4 If the Specific contract is terminated for any reason whatsoever, the financial guarantee may be invoked forthwith in order to repay any balance still owed to the Contracting Authority by the Contractor, and the guarantor shall not delay payment or raise objection for any reason whatever.
- 29.5 For fee-based Specific contracts, the financial guarantee must remain in force until the final value has been accepted by the Contracting Authority. If the final accepted value is greater than the total of the payments already made to the Contractor by the Contracting Authority under the Specific contract, the financial guarantee must be released within 45 days of the acceptance of the final value by the Contracting Authority. If not, the financial guarantee may be reduced to cover the difference between the final value and the total of the payments already made to the Contractor by the Contracting Authority under the Specific contract and the financial guarantee must be released within 45 days of repayment of the difference by the Contractor.
- 29.6 For global price Specific contracts, the financial guarantee must remain in force until the final payment has been made.

Article 30 Audit certificate : not applicable

Article 31 Recovery of debts from the Contractor

- 31.1 The Contractor shall repay any amount paid in excess of the final value due to the Contracting authority within 45 days of receiving a request to do so.
- 31.2 Any amount which the Contracting Authority has paid, or caused to be paid, in excess of the Contractor's entitlement under the Specific contract, shall be repaid by the Contractor to the Contracting Authority within 45 days after receipt by the Contractor of a request for repayment.

- 31.3 Should the Contractor fail to make repayment within the above deadline, the Contracting Authority may increase the amount due by adding interest: at the rate applied by the European Central Bank to its main refinancing transactions in euro where payments are in euro, on the first day of the month in which the deadline expired, plus seven percentage points. The late-payment interest shall apply to the time which elapses between the date on which the Contractor's account is debited (inclusive). Any partial payments shall cover the interest thus established.
- 31.4 Should the Contractor fail to repay the original balance within the above deadline and any interest added in accordance with article 31.3, the contracting authority may call upon the financial guarantee referred to in Article 29, if any.
- 31.5 Amounts to be repaid to the Contracting Authority may be offset against amounts of any kind due to the Contractor. This shall not affect the right of the Contractor and the Contracting Authority to agree on repayment by instalments.
- 31.6 Bank charges arising from the repayment of amounts due to the Contracting Authority shall be borne entirely by the Contractor.

Article 32 Revision of prices

Unless otherwise stipulated in the Special conditions, the global price of a global price contract and the fee rates of a fee-based contract shall not be revised.

Article 33 Payment to third parties

- 33.1 All orders for payments to third parties may be carried out only after an assignment made in accordance with Article 3
- 33.2 Notification of beneficiaries of assignment shall be the sole responsibility of the Contractor.
- 33.3 In the event of a legally binding attachment of the property of the Contractor affecting payments due to it under the specific contract and without prejudice to the time limit laid down in Article 28, the Contracting Authority shall have 60 days, starting from the day when it receives notification of the definitive lifting of the obstacle to payment, to resume payments to the Contractor.

BREACH OF CONTRACT AND TERMINATION

Article 34 Breach of contract

- 34.1 Either party commits a breach of contract where it fails to discharge any of its obligations under the specific contract.
- 34.2 Where a breach of contract occurs, the party injured by the breach shall be entitled to the following remedies:
- damages; and/or
 - termination of the contract.
- 34.3 Damages may be:
- general damages; or
 - liquidated damages.
- 34.4 In any case where the Contracting Authority is entitled to damages, it may deduct such Suspension damages from any sums due to the Contractor or call on the appropriate guarantee.
- 34.5 The Contracting Authority shall be entitled to compensation for any damage which comes to light after the contract is completed in accordance with the law governing the contract.

Article 35 Suspension

- 35.1 The Contracting Authority shall be entitled to suspend the performance of the services or any part thereof for such time as in such manner as it may consider necessary.

- 35.2 If the period of suspension exceeds 90 days and the suspension is not due to the Contractor's default, the Contractor may, by notice to the specific contract manager, request permission to resume execution of the services within 30 days or terminate the contract.
- 35.3 Where the award procedure or execution of the contract is vitiated by substantial errors or irregularities or by fraud, the Contracting Authority shall suspend execution of the contract.
- 35.4 Where such errors, irregularities or fraud are attributable to the Contractor, the Contracting Authority may in addition refuse to make payments or may recover amounts already paid, in proportion to the seriousness of the errors, irregularities or fraud.
- 35.5 The suspension of the contract is intended to allow the Contracting Authority to verify whether presumed substantial errors or irregularities or fraud have actually occurred. If they are not confirmed, execution of the contract shall resume as soon as possible.

Article 36 Termination by the Contracting Authority

- 36.1 The contract shall terminate automatically if it has not given rise to any payment within a period of three years after its signature by both parties.
- 36.2 Termination shall be without prejudice to any other rights or powers under the contract of the Contracting Authority and the Contractor.
- 36.3 In addition to the grounds for termination defined in these General Conditions, the Contracting Authority may terminate the contract after giving 7 days' notice to the Contractor in any of the following cases:
- a) the Contractor fails to carry out the services substantially in accordance with the contract;
 - b) the Contractor fails to comply within a reasonable time with the notice given by the Project manager requiring it to make good the neglect or failure to perform its obligations under the contract which seriously affects the proper and timely performance of the services;
 - c) the Contractor refuses or neglects to carry out administrative orders given by the Project manager;
 - d) the Contractor assigns the contract or sub-contracts without the authorisation of the Contracting Authority;
 - e) the Contractor becomes bankrupt or is being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
 - f) the Contractor has been convicted of an offence concerning its professional conduct by a judgment which has the force of *res judicata*;
 - g) the Contractor has been guilty of grave professional misconduct proven by any means which the Contracting Authority can justify;
 - h) the Contractor has been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the financial interests of the EC;
 - i) following another procurement procedure or grant award procedure financed by the EC budget, the Contractor has been declared to be in serious breach of contract for failure to comply with its contractual obligations.
 - j) any organisational modification occurs involving a change in the legal personality, nature or control of the Contractor, unless such modification is recorded in an addendum to the contract;
 - k) any other legal disability hindering performance of the contract occurs;
 - l) the Contractor fails to provide the required guarantees or insurance, or the person providing the underlying guarantee or insurance is not able to abide by its commitments.
- 36.4 The Contracting Authority may, thereafter, complete the services itself, or conclude any other contract with a third party, at the Contractor's own expense. The Contractor's liability for delay in completion shall immediately cease when the Contracting Authority terminates the Contracts without prejudice to any liability thereunder that may have already been incurred.
- 36.5 Upon termination of the contract or when it has received notice thereof, the Contractor shall take immediate steps to bring the services to a close in a prompt and orderly manner and in such a way as to keep costs to a minimum.
- 36.6 The Project Manager shall, as soon as is possible after termination, certify the value of the services and all sums due to the Contractor as at the date of termination.

- 36.7 The Contracting Authority shall not be obliged to make any further payments to the Contractor until the services are completed, whereupon the Contracting Authority shall be entitled to recover from the Contractor the extra costs, if any, of completing the services, or shall pay any balance due to the Contractor.
- 36.8 If the Contracting Authority terminates the contract, it shall be entitled to recover from the Contractor any loss it has suffered up to the maximum amount stated in the contract. If no maximum amount is stated, the Contracting Authority shall, without prejudice to its other remedies under the contract, be entitled to recover that part of the contract value which is attributable to that part of the services which has not, by reason of the Contractor's failure, been satisfactorily completed.
- 36.9 The Contractor shall not be entitled to claim, in addition to sums owing to it for work already performed, compensation for any loss or injury suffered.

Article 37 Termination by the Contractor

- 37.1 The Contractor may, after giving 14 days notice to the Contracting Authority, terminate the contract if the Contracting Authority:
- a) fails to pay the Contractor the amounts due under any certificate of the Project manager after the expiry of the time limit stated in Article 28; or
 - b) consistently fails to meet its obligations after repeated reminders; or
 - c) suspends the progress of the services or any part thereof for more than 90 days for reasons not specified in the Specific Contract, or not due to the Contractor's default.
- 37.2 Such termination shall be without prejudice to any other rights of the Contracting Authority or the Contractor acquired under the contract.
- 37.3 In the event of such termination, the Contracting Authority shall pay the Contractor for any loss or injury the Contractor may have suffered. Such additional payment may not be such that the total payments exceed the amount specified in the Specific Contract.

Article 38 Force majeure

- 38.1 Neither party shall be considered to be in breach of its obligations under the contract if the performance of such obligations is prevented by any circumstances of force majeure which arise after the date of signature of the contract by both parties.
- 38.2 The term "force majeure", as used herein shall mean acts of God, strikes, lock-outs or other industrial disturbances, acts of the public enemy, wars, whether declared or not, blockades, insurrection, riots, epidemics, landslides, earthquakes, storms, lightning, floods, washouts, civil disturbances, explosions, and any other similar unforeseeable events, beyond the control of either party and which by the exercise of due diligence neither party is able to overcome.
- 38.3 A party affected by an event of force majeure shall take all reasonable measures to remove such party's inability to fulfil its obligations hereunder with a minimum of delay.
- 38.4 Notwithstanding the provisions of Article 35 the Contractor shall not be liable for liquidated damages or termination for default if, and to the extent that, its delay in performance or other failure to perform its obligations under the contract is the result of an event of force majeure. The Contracting Authority shall see similarly not be liable, notwithstanding the provisions of Article 28 and Article 37, to payment of interest on delayed payments, for non-performance or for termination by the Contractor for default, if, and to the extent that, the Contracting Authority's delay or other failure to perform its obligations is the result of force majeure.
- 38.5 If either party considers that any circumstances of force majeure have occurred which may affect performance of its obligations it shall notify the other party immediately giving details of the nature, the probable duration and likely effect of the circumstances. Unless otherwise directed by the specific contract manager in writing, the Contractor shall continue to perform its obligations under the contract as far as is reasonably practicable, and shall seek all reasonable alternative means for performance of its obligations which are not prevented by the force majeure event. The Contractor shall not put into effect such alternative means unless directed so to do by the specific Project Manager.
- 38.6 For a fee-based contract, if the Contractor incurs additional costs in complying with the Project Manager's directions or using alternative means under Article 38.5 the amount thereof shall be certified by the Project Manager subject to the maximum contract value.

- 38.7 If circumstances of force majeure have occurred and persist for a period of 180 days then, notwithstanding any extension of the period of execution that the Contractor may by reason thereof have been granted, either party shall be entitled to serve upon the other 30 days' notice to terminate the contract. If at the expiry of the period of 30 days the situation of force majeure persists, the contract shall be terminated and, in consequence thereof, the parties shall be released from further performance of the contract.

Article 39 Decease

- 39.1 If the Contractor is a natural person, the contract shall be automatically terminated if that person dies. However, the Contracting Authority shall examine any proposal made by his heirs or beneficiaries if they have notified their wish to continue the contract within 15 days of the date of decease. The decision of the Contracting Authority shall be notified to those concerned within 30 days of receipt of such a proposal.
- 39.2 If the Contractor is a group of natural persons and one or more of them die, a report shall be agreed between the parties on the progress of the services and the Contracting Authority shall decide whether to terminate or continue the contract in accordance with the undertaking given within 15 days of the date of decease by the survivors and by the heirs or beneficiaries, as the case may be. The decision of the Contracting Authority shall be notified to those concerned within 30 days of receipt of such a proposal.
- 39.3 Such persons shall be jointly and severally liable for the proper performance of the contract to the same extent as the Contractor. Continuation of the contract shall be subject to the rules relating to establishment of any guarantee provided for in the contract.

SETTLEMENT OF DISPUTES

Article 40 Settlement of disputes

- 40.1 The Contracting Authority and the Contractor shall make every effort to settle amicably any dispute relating to the contract which may arise between them, or between the specific Project manager and the Contractor.
- 40.2 Once a dispute has arisen, the parties to this contract shall notify each other in writing of their positions on the dispute as well as of any solution which they envisage possible. If either of the parties to this contract deems it useful, the parties shall meet and try to settle the dispute. Each party shall respond to a request for amicable settlement within 30 days of such request. The period to reach an amicable settlement shall be 120 days from the date of the request. Should the attempt to reach an amicable settlement be unsuccessful or should a party not respond in time to any requests for settlement, each party shall be free to proceed to the next stage in reaching a settlement in accordance with paragraph 3 by notifying the other party.
- 40.3 In the absence of an amicable settlement, the parties may agree to the settlement of the dispute by conciliation by the European Commission in the case of contracts for which the Contracting Authority is not the European Commission. If no settlement is achieved within 120 days of the start of the conciliation process, each party to the contract has the right to proceed to the next stage in the dispute settlement procedure.
- 40.4 In the absence of an amicable settlement or settlement by conciliation within 120 days of the start of one of these procedures, each party may refer the dispute to either the decision of a national jurisdiction or arbitration, as specified in Article 11 of the Special Conditions.