

GENERAL CONDITIONS FOR SERVICE CONTRACTS

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PRELIMINARY PROVISIONS

ARTICLE 1. DEFINITIONS

- 1.1. The headings and titles in these General Conditions shall not be taken as part thereof or be taken into consideration in the interpretation of the Contract.
- 1.2. 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.
- 1.3. The word “country” shall be deemed to include State or Territory.
- 1.4. Words importing persons or parties shall include firms and companies and any organisation having legal capacity.
- 1.5. Terms defined in the Special Conditions to which these General Conditions are attached shall have the same meaning when used herein.

ARTICLE 2. NOTICES AND WRITTEN COMMUNICATIONS

- 2.1. Whenever there is a deadline for the receipt of a written communication, the sender should ask for an acknowledgement of receipt of its communication. In any event, the sender shall take all the necessary measures to ensure timely receipt of the communication.
- 2.2. Any notice, consent, approval, certificate or decision by any person required under the Contract shall be in writing and shall be served by hand delivery, registered letter, e-mail or other means of transmission which affords evidence of receipt by the addressee to its address and shall not be unreasonably withheld or delayed.
- 2.3. The date of registration or, as the case may be, the stated date of receipt of transmission shall be conclusive for the determination of a period.
- 2.4. Any oral instructions or orders shall be confirmed in writing.

ARTICLE 3. ASSIGNMENT

- 3.1. An assignment is any agreement by which the Consultant transfers its contract or part thereof to a third party.
- 3.2. The Consultant shall not, without the prior written consent of the Contracting Authority, assign the Contract or any part thereof, or any benefit or interest hereunder.
- 3.3. The approval of an assignment by the Contracting Authority shall not relieve the Consultant 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 and they cannot be in any of the exclusion situations stipulated under Article 57 of European Parliament and Council Directive 2014/24/EU.

ARTICLE 4. SUBCONTRACTING

- 4.1. Any agreement by which the Consultant entrusts performance of a part of the services to a third party is considered to be a sub-contract. For this purpose, individual experts recruited for the project as key or non-key experts, are not regarded as subcontractors. The conditions for sub-contracting are specified in the Special Conditions.
- 4.2. The Consultant must seek the prior written authorisation of the Contracting Authority before entering into a subcontract. This authorisation will be based on the services to be subcontracted and the identity and qualities 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 Consultant of its decision, stating reasons, should it withhold such authorisation.
- 4.3. No subcontract can create contractual relations between any subcontractor and the Contracting Authority.
- 4.4. The Consultant shall be fully responsible for the acts, defaults and negligence of its subcontractors and their experts, agents or employees, as if they were the acts, defaults or negligence of the Consultant, its experts, agents or employees. The approval by the Contracting Authority of the sub-contracting of any part of the Contract or of the engagement by the Consultant of sub-contractors to perform any part of the services shall not relieve the Consultant of any of its obligations under the

Contract.

- 4.5. If a subcontractor is found by the Contracting Authority or the person responsible for monitoring the implementation of a project on behalf on the Contracting Authority (the “**Technical Assistance Officer**”) to be incompetent in carrying out its duties and obligations, the Contracting Authority or the Technical Assistance Officer may request at its discretion the Consultant forthwith, either to provide in due course a subcontractor with qualifications and experience acceptable to the Contracting Authority as a replacement, or to resume the implementation of the tasks itself.
- 4.6. Subcontractors must satisfy the eligibility criteria applicable to the award of the contract and they cannot be in any of the exclusion situations stipulated under Article 57 of European Parliament and Council Directive 2014/24/EU.
- 4.7. Those services entrusted to a subcontractor by the Consultant cannot be entrusted to third parties by the sub-contractor, unless otherwise agreed in writing by the Contracting Authority.
- 4.8. Any change of subcontractor without the prior written consent of the Contracting Authority shall be considered as a breach of contract under Articles 34 and 36.
- 4.9. Without prejudice to the right of the Contracting Authority to terminate the Contract in accordance with its provisions, the Contracting Authority may request the Consultant to replace in due course a subcontractor found to have been engaged in conduct bringing the Contracting Authority into disrepute, including a Sanction Event (as defined in Article 8.9 of the General Conditions) with another subcontractor of equal or greater quality. Failure by the Consultant to replace the subcontractor shall constitute a breach of this Contract for the purpose of Article 34 of the General Conditions.”

OBLIGATIONS OF THE CONTRACTING AUTHORITY

ARTICLE 5. SUPPLY OF INFORMATION

- 5.1. The Contracting Authority shall supply the Consultant 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 implementation of the tasks.
- 5.2. The Contracting Authority shall as far as possible co-operate with the Consultant to provide information that the latter may reasonably request in order to perform the Contract.
- 5.3. 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.
- 5.4. The Contracting Authority shall give written notification to the Consultant of the name and address of the Technical Assistance Officer.

ARTICLE 6. ASSISTANCE WITH LOCAL REGULATIONS

- 6.1. The Consultant may request the assistance of the Contracting Authority of the partner country (as such terms are defined in the Special Conditions or the Terms of Reference) to obtain copies of laws, regulations, and information on local customs, orders or by- laws of the country in which the services are to be performed, which may affect the Consultant in the performance of its obligations under the Contract. The Contracting Authority may charge the Consultant for such assistance, which would be provided at the Consultant'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, and subject to the provisions of the cooperation agreement, if any, the Contracting Authority will use its best efforts to facilitate the obtention by the Consultant of all required visas and permits, including work and residence permits, for the personnel whose services the Consultant and the Contracting Authority consider necessary as well as residence permits for their families.

OBLIGATIONS OF THE CONSULTANT

ARTICLE 7. GENERAL OBLIGATIONS

- 7.1. For matters not governed by the Contract, the Consultant shall respect and abide by all laws and regulations in force in the partner country and shall ensure that its personnel, their dependants, and its local employees also respect and abide by all such laws and regulations. The Consultant shall indemnify the Contracting Authority against any claims and proceedings arising from any infringement by the Consultant, its employees and their dependants of such laws and regulations.

- 7.2. The Consultant shall perform the services under the Contract with due care, high professionalism, efficiency and diligence, in accordance with the best professional practice.
- 7.3. The Consultant shall comply with administrative orders given by the Technical Assistance Officer. Where the Consultant considers that the requirements of an administrative order go beyond the authority of the Technical Assistance Officer or of the scope of the Contract, it shall, on pain of being time-barred, notify the Technical Assistance Officer, 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 Consultant 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 Technical Assistance Officer 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 Consultant is a consortium of two or more persons, all such persons shall be jointly and severally bound to fulfil and perform 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 legally 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 European Investment Bank, the Consultant shall take the necessary steps to ensure that the financial contribution of the relevant donor is given adequate publicity pursuant to the requirements set out in the Terms of Reference.
- 7.8. The Consultant shall give written notification to the Contracting Authority of the name and address of its contact and auditor(s) for the Contract, as well as proof of the full indemnity insurance policy (as specified in Article 13.3 of these General Conditions), bank account and will follow any instruction given by the Contracting Authority to register on the relevant system. The Consultant must use the EIB Supplier Portal, or any other system communicated by the Contracting Authority, to provide its bank account details. The Contracting Authority shall have the right to oppose the Consultant's choice of bank account or auditor.

ARTICLE 8. CODE OF CONDUCT AND SANCTIONS

- 8.1. The Consultant shall at all time 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 written 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 performance of the Contract, the Consultant and its personnel shall respect human rights and undertake not to offend the political, cultural, and religious practices prevailing in the partner country. The Consultant shall respect internationally agreed core labour standards, e.g. the core labour standards of the International Labour Organisation, conventions on freedom of association and collective bargaining, elimination of forced and compulsory labour, elimination of discrimination in respect of employment and occupation, and the abolition of child labour.
- 8.3. If the Consultant or any of its sub-contractors, personnel, agents or servants offers to give or agrees to offer or to give/receive or gives to/from 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 with immediate effect the Contract, without prejudice to any accrued rights of the Consultant under the Contract.
- 8.4. The payments to the Consultant 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 Consultant 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 Consultant 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 Consultant 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 may be unilaterally terminated by the Contracting Authority with immediate effect or not. 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 Consultant shall supply to the Contracting Authority on request supporting relevant evidence regarding the conditions in which the Contract is being performed. 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.
- 8.9. The Consultant undertakes not to breach, nor cause the Contracting Authority to breach, any sanctions or restrictive measures imposed or administered by a competent body or official institution or agency (each a **"Sanction"**) and shall inform the Contracting Authority in writing as soon as possible of any **"Sanction Event"**, that is where:
- a) the Consultant, its staff, subcontractors and their staff, and any other persons acting on behalf of the Consultant in the performance of the Services, or any entity or person which directly or indirectly owns or controls or directs the Consultant, or which the Consultant acts on behalf of, breaches, or becomes in breach of or the target of, a Sanction; or
 - b) a country or territory (including their government) in which any of the entities or persons referred to in point (a) above are located or resident in, or organised or incorporated under, becomes the target of a Sanction.

The Consultant shall ensure that it maintains appropriate internal controls and safeguards designed to prevent the violation of any Sanction.

The Parties acknowledge and agree that all Sanction-related undertakings are only sought and given to the extent that to do so is permissible pursuant to any applicable anti-boycott rule of the European Union, such as Regulation (EC) 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom (OJ L 309, 29.11.1996, p.1) as amended from time to time.

ARTICLE 9. CONFLICT OF INTEREST

- 9.1. The Consultant 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 Consultant 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 7, the Consultant shall replace, immediately and without compensation from the Contracting Authority, any member of its staff exposed to such a situation.
- 9.3. The Consultant shall refrain from any contact which would compromise its independence or that of its personnel. If the Consultant 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.
- 9.4. The Consultant 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 Consultant and any other consultant, contractor, or supplier with whom the Consultant 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 partner country, regardless of their administrative situation, shall not be recruited as experts in contracts implemented in the partner country unless the prior written approval has been granted by the Contracting Authority.

- 9.6. The Consultant 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 further financing managed by the European Investment Bank under the same project unless they can prove to the Contracting Authority that the involvement in previous stages of the project does not constitute unfair competition.

ARTICLE 10. EXCLUSION

- 10.1. Without prejudice to the right of the Contracting Authority to terminate the Contract, if the Consultant has been guilty of making false declarations, has made substantial errors or committed irregularities and fraud, or has been found in serious breach of its contractual obligations, the Consultant may be subject to an exclusion decision issued by the European Investment Bank or, for EU-funded activities, by the European Union, through the Early Detection and Exclusion System (EDES).
- 10.2. Where, after the award of the Contract, the award procedure or the performance of the Contract prove to have been subject to substantial errors, irregularities, or fraud, and where this is attributable to the Consultant, the Contracting Authority may refuse to make payments, may recover amounts already paid or may terminate all the contracts concluded with this Consultant, in proportion to the seriousness of the errors, irregularities or fraud.

ARTICLE 11. SPECIFICATIONS AND DESIGNS

- 11.1. The Consultant 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 Consultant 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 Consultant shall fully indemnify, protect, and defend, upon first demand, the Contracting Authority, its agents and employees, from and against all actions, claims, losses or damage arising from any act or omission by the Consultant in the performance of the Services, including any violation of any legal provisions, or rights of third parties, in respect of patents, trademarks and other forms of intellectual property such as copyrights.
- 12.2. At its own expense, the Consultant shall fully indemnify, protect, and defend the Contracting Authority, its agents and employees, from and against all actions, claims, losses or damages arising out of the Consultant's performance of the Contract provided that:
- (a) the Consultant 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 Consultant's liability to the Contracting Authority shall be limited to an amount equal to the Contract value, and such ceiling shall not apply to any losses or damages caused to third parties by the Consultant or by the Consultant's wilful misconduct, gross negligence or criminal fault; and
 - (c) the Consultant's liability shall be limited to actions, claims, losses, or damages directly caused by such failure to perform or negligence in performing its obligations under the Contract and shall not include liability arising from unforeseeable occurrences incidental or indirectly consequential to such failure or negligence except in case of wilful misconduct for the damages other than the incurred loss and the missed gain.
- 12.3. At its own expense, the Consultant shall, upon request of the Contracting Authority, immediately remedy any defect in the performance of the services in the event of the Consultant's failure to perform its obligations under the Contract.
- 12.4. The Consultant 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 decision, or recommendation, of the Consultant, or requiring the Consultant to implement a decision or recommendation with which the Consultant disagrees in writing or on which it expresses a serious reservation; or
 - (b) the improper execution of the Consultant's instructions by agents, employees, or independent Consultants of the Contracting Authority.
- 12.5. The Consultant shall remain responsible for any breach of its obligations under the Contract for such period after the Services have been performed or not as may be determined by the law governing the Contract.

- 12.6. At its own expense, the Consultant shall fully indemnify, protect, and defend, upon first demand, the Contracting Authority, its agents and employees, from and against all actions, claims, losses or damage (including any fines or penalties imposed on the Contracting Authority) arising out of the Consultant's breach of its legal and/or contractual obligations in respect of Sanctions and personal data protection.

ARTICLE 13. MEDICAL, INSURANCE AND SECURITY ARRANGEMENTS

- 13.1. The Contracting Authority may request the Consultant 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 the Consultant shall as soon as is practicable furnish the Contracting Authority with a medical certificate indicating, whether or not, the experts and its personnel are fit to implement the required services.
- 13.2. For the period of implementation of the tasks, the Consultant 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 Consultant, its personnel, its experts, its agents and its subcontractors.
- 13.3. Within 20 days of signing the Contract, the Consultant shall take out, unless it already has such a policy, and maintain, a full indemnity insurance policy, for a sum up to the higher of the maximum amount foreseen by the legislation of the partner country and headquarters, and covering, during the period of implementation of the tasks and Services, the following aspects:
- (a) The Consultant'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/property, if any, used by the Consultant, its agents, or employees, 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 the Contracting Authority, arising out of the performance of the Contract by the Consultant, its agents, employees and subcontractors; and
 - (d) Accidental death or permanent disability resulting from bodily injury incurred by any person in connection with the performance of the Contract by the Consultant, its agents, employees or subcontractors.
- 13.4. The Consultant shall also insure the personal effects of its employees, experts and their families located in the partner country against loss or damage.
- 13.5. The Consultant 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 Technical Assistance Officer.
- 13.6. The Consultant shall put in place security measures for its employees, experts and their families located in the partner country commensurate with the physical danger facing them.
- 13.7. The Consultant will also be responsible for monitoring the level of physical risk to which its employees, experts and their families located in the partner country are exposed and for keeping the Contracting Authority informed of the situation. In the event that the Contracting Authority or the Consultant shall become aware of an imminent threat of danger to the life or health of any of its employees, experts or their families, the Consultant may take immediate action to remove the individuals concerned to safety. If the Consultant takes such action, this must be communicated immediately to the Technical Assistance Officer 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, drafted, issued or prepared by the Consultant in the performance of the Contract shall automatically be the absolute and immediate property of the Contracting Authority unless otherwise specified. The Consultant shall, upon completion/termination of the Contract, without delay deliver all such documents and data to the Contracting Authority. The Consultant 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 Consultant 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 in accordance with Article 7.4..
- 14.3. Any results or rights thereon, including copyright and other intellectual or industrial property rights, obtained in performance of the Contract, are paid by the payment by the Contracting Authority of the

amount of the Contract value shall automatically be the absolute and immediate 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 to the Contract.
- 15.2. Where the Contract is for an advisory function for the benefit of the Contracting Authority in respect of all the technical aspects of the project which may arise out of its implementation, the Consultant shall not have decision-making responsibility.
- 15.3. Where the Contract is for management of the implementation of the project, the Consultant shall assume all the duties of management inherent in supervising the implementation of a project, subject to the authority of the Technical Assistance Officer.
- 15.4. If the Consultant is required to prepare a tender dossier, the dossier shall contain all documents necessary for consulting suitable consultants, 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 Consultant with the information necessary for drawing up the administrative part of the tender dossier.

ARTICLE 16. PERSONNEL AND EQUIPMENT

- 16.1. The Consultant must inform the Contracting Authority of all personnel and their identity and position which the Consultant intends to use for the implementation of the tasks, other than the key experts whose Curriculum Vitae are included in Annex IV. Annex II and/or Annex III to the Contract shall specify the minimum level of training, qualifications and experience of the personnel and, where appropriate, the specialisation required. The Contracting Authority shall have the right to oppose the Consultant's choice of personnel at its discretion and in a such case, the Consultant shall without delay propose to the Contracting Authority suitable personnel having the same skills.
- 16.2. All those working on the project with the approval of the Contracting Authority shall commence their duties on the date or within the period laid down in Annex II and/or Annex III to the Contract, or, failing this, on the date or within the periods notified to the Consultant by the Contracting Authority or the Technical Assistance Officer.
- 16.3. 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 partner country, the Consultant shall keep the Technical Assistance Officer informed of the names and qualifications of staff assigned to that part of the Services.
- 16.4. The Consultant shall:
 - (a) forward to the Technical Assistance Officer within 30 days of the signature of the Contract by both Parties, the timetable proposed for placement of the staff;
 - (b) inform the Technical Assistance Officer of the date of arrival and departure of each member of staff; and
 - (c) submit to the Technical Assistance Officer for his/her written approval a timely request for the appointment of any non-key experts.
- 16.5. The Consultant shall adopt all measures necessary to provide and continue to provide its staff with the equipment, material and backup required to enable them to carry out their specified duties efficiently.

ARTICLE 17. REPLACEMENT OF PERSONNEL

- 17.1. The Consultant shall not make changes to the agreed personnel without the prior written approval of the Contracting Authority. The Consultant 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; or
 - (b) if it becomes necessary to replace a member of staff for any other reasons beyond the Consultant's control (e.g. resignation, etc.).
- 17.2. Moreover, in the course of performance, and on the basis of a written and justified request to which

the Consultant shall provide without delay his own and the staff member's observations to the Contracting Authority, the Contracting Authority can order a replacement if it considers that a member of staff is inefficient or does not or does not properly 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 Consultant 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 downward and fairly with the Consultant to reflect the appropriate remuneration level.
- 17.4. Additional costs incurred by the replacement of staff are the responsibility of the Consultant. The Contracting Authority makes no payment for the period when the expert/staff to be replaced is absent. The replacement of any expert, whose name is listed in Annex IV to the Contract, must be proposed by the Consultant within 15 calendar days from the first day of the expert's absence. If after this period, the Consultant fails to propose a replacement in accordance with Article 17.3 above, the Contracting Authority may apply liquidated damages up to 10% of the remaining fees of that expert to be replaced.
- 17.5. The Promoter/Beneficiary may be notified of the identity of the experts proposed to be added or replaced in the Contract to obtain its approval. The Promoter/Beneficiary may not withhold its approval unless it submits duly substantiated, evidenced and justified objections to the proposed experts in writing to the Contracting Authority within 15 days of the date of the request for approval.

ARTICLE 18. TRAINEES

- 18.1. If required in the Terms of reference, the Consultant shall provide training for the period of implementation of the tasks for trainees assigned to it by the Contracting Authority under the terms of the Contract.
- 18.2. Instruction by the Consultant of such trainees shall not confer on them the status of employees of the Consultant. However, they must comply with the Consultant's instructions, and with the provisions of Article 8 above, as if they were employees of the Consultant. The Consultant may on reasoned request in writing obtain the replacement of any trainee whose work or conduct is unsatisfactory.
- 18.3. Unless otherwise provided in the contract, remuneration for trainees and travel, accommodation and all other expenses incurred by the trainees, shall be borne by the Contracting Authority.
- 18.4. The Consultant shall duly report in writing at quarterly intervals to the Contracting Authority on the training assignment. Immediately prior to the end of the period of implementation of the tasks, the Consultant shall draw up a report on the result of the training and an assessment of the qualifications obtained by the trainees with a view to their future employment. The form of such reports and the procedure for presenting them shall be as laid down in the Terms of reference.

PERFORMANCE OF THE CONTRACT

ARTICLE 19. DELAYS IN IMPLEMENTATION OF THE TASKS

- 19.1. If the Consultant does not perform the Services within the period of implementation of the tasks specified in the 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 implementation of the tasks specified in the Contract and the actual end of the period of implementation of the tasks.
- 19.2. The daily rate for liquidated damages will be 0.05% of the Maximum Contract Value.
- 19.3. If these liquidated damages exceed more than 15% of the Contract Value, the Contracting Authority may, after giving notice to the Consultant and without prejudice to its right to liquidated damages:
 - (a) terminate the Contract; and
 - (b) complete the Services at the Consultant's own expense.

ARTICLE 20. AMENDMENT OF THE CONTRACT

- 20.1. Modifications to the Contract, including but not limited to modifications to the total Contract amount and/or period of implementation of the tasks must be made by means of an addendum signed by the Contracting Authority and the Consultant. If the request for an amendment comes from the Consultant, the latter must submit such a request to the Contracting Authority 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. Within 30 days the Contracting Authority shall, by written notice to the Consultant and where appropriate, grant/refuse such amendment at its discretion, either prospectively or retrospectively, or inform the Consultant that it is not entitled to the request for amendment. Any activity carried out by the Consultant without an amendment of the Contract is made at the Consultant's own financial and legal risks.

- 20.2. However, where for a fee- based contract, the financial impact of the amendment/variation of the Contract is limited to a transfer within the fees or between the fees and the provision for incidental expenditures and the provision for expenditure verification involving a variation of less than 15% of the Maximum Contract Value, the Technical Assistance Officer shall have the power, through an administrative order, to order any variation to any part of the Services necessary for the proper implementation of the tasks/Services, 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 implementation of the Services. Subject to Article 17 above, such variations may include acceptance of the replacement of expert whose Curriculum Vitae is part of the contract, as communicated to the Consultant to the Contracting Authority in writing.
- 20.3. No such order for a variation may imply any extension of the period of implementation of the tasks/Services or any change in the total amount of the Contract.
- 20.4. Prior to any administrative order for variation, the Consultant shall submit to the Technical Assistance Officer a written proposal containing:
- (a) a description of the services to be performed or the measures to be taken and a programme for implementation of the tasks; and
 - (b) any necessary modifications to the programme of implementation of the tasks or to any of the Consultant's obligations under the Contract; and
 - (c) For a fee-based contract, any adjustment to the Contract value in accordance with the following principles:
 - (1) 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;
 - (2) where the task is not of a similar character or is not executed under similar conditions, the fee rates in the 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 Technical Assistance Officer; or
 - (3) where a variation is necessitated by a default or breach of contract by the Consultant, any additional cost attributable to such variation shall be exclusively borne by the Consultant.
- 20.5. Following the receipt of the Consultant's proposal, the Technical Assistance Officer shall decide as soon as possible, whether or not, the variation shall be carried out. If the Technical Assistance Officer decides that the variation shall be carried out, he/she shall issue the administrative order stating that the variation shall be carried out under the conditions given in the Consultant's proposal or as modified by the Technical Assistance Officer.
- 20.6. On receipt of the administrative order requesting the variation, the Consultant shall automatically proceed to carry out the variation and be bound by these General Conditions in so doing as if such variation were stated in the Contract.
- 20.7. The Consultant must inform the Bank of any modification of its bank account, and is responsible for updating relevant systems, as notified by the Bank.
- 20.8. This Contract can be modified only during the period from Contract signature until final payment (the "**Execution Period**"). Any change to the Contract which has not been made in the form of an administrative order or an addendum or in accordance with Article 20.1. or 20.6. shall be considered null and void.

ARTICLE 21. WORKING HOURS

The days and hours of work of the Consultant or the Consultant's personnel in the partner country shall be fixed on the basis of the laws, regulations and customs of the partner country and the requirements of the services. In case of discrepancy, an 8-hour working day would be the reference.

ARTICLE 22. LEAVE ENTITLEMENT

- 22.1. For a fee-based contract, the annual leave to be taken during the period of implementation of the tasks/Services must be at a time pre-approved by the Technical Assistance Officer.
- 22.2. For a fee-based contract, the fee rates are deemed to take into account the annual leave of up to 2 months for the Consultant's personnel during the period of implementation of the tasks/Services. Consequently, days taken as annual leave shall not be considered to be working days.
- 22.3. The Consultant will only be paid for the days actually worked. Any cost related to sick or casual leave will be covered only by the Consultant. The Consultant shall inform the Technical Assistance Officer of any impact of such leave on the period of implementation of the tasks.

ARTICLE 23. INFORMATION

The Consultant shall duly provide the Technical Assistance Officer, or any person authorised by the Contracting Authority or the European Court of Auditors, with any information relating to the Services and the project as the Technical Assistance Officer may at any time request.

ARTICLE 24. RECORDS

- 24.1. The Consultant shall keep full accurate and systematic records and accounts in respect of the Services in such form and details as is sufficient to establish accurately that the number of working days and the actual incidental expenditure identified in the Consultant's invoice(s) have been duly incurred for the performance of the Services.
- 24.2. For a fee-based contract, monthly timesheets recording the days or hours worked by the Consultant's personnel must be maintained by the Consultant. The timesheets must be approved by the Technical Assistance Officer, or any person authorised by the Contracting Authority or the Contracting authority itself, on a monthly basis. The amounts invoiced by the Consultant must correspond to these timesheets. Time spent travelling exclusively and necessarily for the purpose of the Contract, by the most direct route, may be specified and included in the numbers of days or hours, as appropriate, recorded in these timesheets. Travel undertaken by the expert for mobilisation and demobilisation, as well as for leave purposes, shall not be considered as working days.
- 24.3. Such records must be kept for a 7-year period after the final payment made under the 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 incidental expenditure. Failure to maintain such records constitutes a breach of Contract and may result in the termination of the Contract and/or refusal to pay and/or request for reimbursement of the related amount to the Contracting Authority.
- 24.4. The Consultant shall allow the Technical Assistance Officer or any person authorised by the Contracting Authority or the Contracting Authority itself to directly receive or inspect or audit 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 EU BODIES

- 25.1. The Consultant will allow the European Investment Bank, the European Commission, the European Anti-Fraud Office, the European Public Prosecutor's office and the European Court of Auditors to verify, by examining the documents and to make copies thereof or by means of on-the-spot checks of original documents, the implementation of the Contract 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. In order to carry out these verifications and audits, the Consultant shall ensure that on-the-spot accesses is available at all reasonable times, notably at the Consultant's offices, to its computer data, to its accounting data and to all the information needed to carry out the audits, including information on individual salaries of persons involved in the project. The Consultant shall ensure that the information is readily available at the moment of the audit and, if so requested, that data be handed over in an appropriate form. These inspections may take place up to 7 years after the final payment.

Furthermore, the Promoter/Beneficiary 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 Union legislation for the protection of the financial interests of the European Union against fraud and other irregularities.
- 25.2. To this end, the Consultant undertakes to give appropriate and prompt access to staff or agents of the European Investment Bank, the European Commission, of the European Anti-Fraud Office, the

European Public Prosecutor's 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 to duly cooperate and to take all steps to facilitate their work. Access given to agents of the European Investment Bank, of the European Commission, of the European Anti-Fraud Office, of the European Public Prosecutor's office and of 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 Consultant must inform the Contracting Authority of their precise location.

- 25.3. The Consultant guarantees that the rights of the European Investment Bank, the European Commission, of the European Anti- Fraud Office and of the European Court of Auditors or any other financier, as specified in the Special Conditions or Terms of reference, 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 benefiting from EU budget or mandate funds, as described in the Terms of reference.

ARTICLE 26. INTERIM AND FINAL REPORTS

- 26.1. Unless otherwise provided in the Terms of Reference, the Consultant must draw up interim reports and a final report during the period of implementation of the tasks. These reports shall consist of a narrative section and a financial section. The format of such reports is as notified to the Consultant by the Technical Assistance Officer during the period of implementation of the tasks.
- 26.2. All invoices must be accompanied by a copy of the interim or final report, as the case may be, once approved by the Contracting Authority (as specified in Article 29.1 of the General Conditions). For a fee-based contract, invoices must also be accompanied by an up-to-date financial report and an invoice for the cost of the expenditure verification. The structure of the interim or final financial report shall be the same as that of the contractually approved budget (Annex V to the Contract). This financial report shall indicate, at a minimum, the expenditure of the reporting period, the cumulative expenditure and the balance available. Any expense incurred outside the invoicing period should be duly justified.
- 26.3. Immediately prior to the end of the period of implementation of the tasks/Services, the Consultant shall draw up a final progress report together which must include, if appropriate, a critical study of any major problems which may have arisen during the performance of the contract.
- 26.4. This final progress report shall be forwarded to the Technical Assistance Officer, not later than 60 days after the end of the period of implementation of the tasks. Such report shall not bind the Contracting Authority.
- 26.5. Where the Contract is performed in phases, the implementation of each phase shall give rise to the preparation of a final progress report by the Consultant and its sending to the Contracting Authority.
- 26.6. 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, invoices and documents including among others, where opportune, the expenditure verification report drawn up and forwarded by the Consultant shall certify that they comply with the terms of the contract.
- 27.2. The Contracting Authority shall, within 45 days of receipt, notify the Consultant 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 progress report, the time limit is extended to 60 days as from receipt. If the Contracting Authority does not give any comments on the documents or reports within the time limit, the Consultant 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 dispute or inform the Consultant 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 Consultant, the Contracting Authority shall, prescribe a period for making the amendments requested which must be respected and made by the Consultant.
- 27.4. In the case of partial approval of a report by the Contracting Authority, the Contracting Authority shall have the right to withhold the corresponding portion of the Consultant's remuneration until such time as the Consultant has performed such remedial work as is necessary to achieve approval by the Contracting Authority.
- 27.5. Where the Contract is performed in phases, the implementation 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 & DEBT RECOVERY

ARTICLE 28. EXPENDITURE VERIFICATION

- 28.1. No expenditure verification report is required for global price contracts.
- 28.2. Before payments are made for a fee-based contract or mixed contract (fee-based or incidental expenditure component), an external auditor who meets the specific conditions of the Terms of Reference for the expenditure verification, notified by the Consultant in accordance with Article 7.8, must examine and verify the invoices and the financial reports to be sent by the Consultant to the Contracting Authority.
- 28.3. The auditor must satisfy himself that relevant, reliable and sufficient evidence exists that:
- (a) the experts employed by the Consultant for this Contract have been working as evidenced on the Contract (as corroborated by independent, third-party evidence, where available) for the number of days claimed in the Consultant's invoices and in the financial reporting spreadsheet submitted with the interim progress reports; and
 - (b) the amounts claimed as incidental expenditure have actually and necessarily been incurred by the Consultant in accordance with the requirements of the Terms of reference; and
 - (c) On the basis of his/her verification, the auditor submits to the Consultant an expenditure verification report in accordance with the model in Annex VII to the Contract.
- 28.4. The Consultant grants the auditor all access rights mentioned in Article 25.
- 28.5. The Contracting Authority reserves the right to require that the auditor be replaced if considerations which were unknown when the Contract was signed cast doubt on the auditor's independence or professional standards or if the auditor repeatedly fails to accurately fulfil its obligations towards the Consultant. In the latter case, the Contracting Authority reserves the right to reject the payment of the auditor's invoice.
- 28.6. If the expenditure verification report submitted by the external auditor does not comply with the model provided in Annex VII to the Contract in terms of verifications to be performed and level of assurance to be provided, the Contracting Authority reserves the right to refuse the payment of the expenditure covered by that report until a full verification of the supporting documents is carried out by the Contracting Authority itself. In such cases, the Contracting Authority reserves the right not to pay the costs of the expenditure verification.

ARTICLE 29. PAYMENT AND INTEREST ON LATE PAYMENT

- 29.1. Payments will be made in accordance with one of the two options below, as identified in Article 3 of the Special Conditions.

Option 1: Fee-based contract

The Contracting Authority will make payments to the Consultant in accordance with the following manner:

1. A pre-financing payment, if requested by the Consultant, of an amount specified in the Special Conditions, within 60 days of receipt by the Contracting Authority (i) of the Contract signed by both Parties, (ii) of a request for payment and (iii) of a financial guarantee, as defined in Article 30. The pre-financing shall be of a maximum of 30% of the total contract amount if the implementation period of the tasks is 24 months or less, and 20% of the total contract amount if the implementation period of the tasks is longer than 24 months;
2. Six-monthly interim payments, if any, as indicated in Article 7.2 of the Special Conditions, within 60 days of the Contracting Authority approving an interim progress report and an expenditure verification report accompanied by an invoice, in accordance with Article 27. Such interim payments shall be of an amount equivalent to the costs incurred on the basis of the expenditure verification reports. When 80% of the maximum contract amount has been paid (pre-financing and interim payments) the amounts due to the Consultant shall be deducted from the pre-financing payment until it is completely reimbursed before any additional payments will be made.
3. The invoices must be paid such that the sum of payments does not exceed 90% of the maximum Contract value stated in Article 3 of the Special Conditions, the remaining 10% being the minimum final payment.
4. The balance of the final value of the Contract after verification, subject to the maximum contract

value stated in Article 3 of the Special Conditions, after deduction of the amounts already paid, within 60 days of the Contracting Authority receiving an invoice accompanied by the final progress report and a final expenditure verification report subject to approval of those reports in accordance with Article 27.

Option 2: Global price contract

The Contracting Authority will make payments to the Consultant in accordance with the following manner:

1. a pre-financing payment up to 30% of the Contract value stated in Article 3 of the Special Conditions within 60 days of receipt by the Contracting Authority (i) of the Contract signed by both parties, and (ii) of a financial guarantee, as defined in Article 30;
 2. the balance of the Contract value stated in Article 3 of the Special Conditions within 60 days of the Contracting Authority receiving a final invoice accompanied by the final progress report, subject to approval of these final invoice and report in accordance with Article 27.
- 29.2. A prefinancing payment shall not represent an acknowledgement or a waiver of services delivered or to be delivered by the Consultant. Should the Contract end before the full repayment of the pre-financing amount, the Consultant shall promptly reimburse upon first request the Contracting Authority the part of the pre-financing amount which is the financial consideration for the Services which were not performed.
- 29.3. The payment deadline of 60 calendar days referred to in Article 29.1 shall expire on the date on which the Contracting Authority's bank account is debited. Without prejudice to Article 36.3, the Contracting Authority may halt the countdown towards this deadline for any part of the invoiced amount disputed by the Technical Assistance Officer, by notifying the Consultant that 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 a correctly formulated invoice is received by the Contracting Authority according to the Contracting Authority.
- 29.4. Once the deadline referred to above has expired, the Consultant – unless the Consultant is a government department or public body in a European Union Member State - may, within two months of receipt of late payment, receive default interest:
- at the rate applied by the European Central Bank to its main refinancing transactions in euro, as published in the Official Journal of the European Union, C series, where payments are in euro; or
 - at the rediscount rate applied by the central bank of the partner country if payments are in the currency of that country,
- on the first day of the month in which the time-limit expired, plus seven percentage points. The interest shall be payable for the time elapsed between the expiry of the payment deadline and the date on which the Contracting Authority's bank account is debited. By way of exception, when the interest calculated in accordance with this provision is lower than or equal to EUR 200, it shall be paid to the Consultant only upon demand submitted within two months of receiving late payment.
- 29.5. Payments due from the Contracting Authority shall be made into the bank account notified by the Consultant in accordance with Article 7.8.
- 29.6. The Contracting Authority will make payments in euro, or in the currency specified in Article 7.1 of the Special Conditions. Where payment is in euro, for the purposes of the Provision for incidental expenditure, actual expenditure shall be converted into euro at the rate published on the Infor-Euro on the first working day of the month in which the invoice is dated. Where payment is in the national currency, it shall be converted into the national currency at the rate published on the Infor- Euro on the first working day of the month in which the payment is made.
- 29.7. For fee-based contracts, invoices must be accompanied by copies of, or extracts from, the corresponding approved timesheets referred to in Article 24.2 to verify the amount invoiced for the time input of the experts. A minimum of 8 hours worked are deemed to be equivalent to one day worked (except if any mandatory applicable legislation provides otherwise).
- 29.8. Payment of the final balance shall be subject to performance by the Consultant of all its obligations relating to the implementation 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 final progress report and a final statement, identified as such, shall have been submitted by the Consultant and approved and considered as satisfactory by the Contracting Authority.

- 29.9. If any of the following events occurs and persists, the Contracting Authority may, by written notice to the Consultant, suspend in whole or in part, payments due to the Consultant under the Contract:
- (a) the Consultant defaults in the implementation of the tasks/Services; or
 - (b) any other condition for which the Consultant 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 Contract.
- 29.10. All payments made by the Contracting Authority into the bank account specified in the Contract will have liberating effect only in relation to the payment obligation borne by the Contracting Authority.
- 29.11. Unless otherwise permitted under the terms of the Sanction, the Contracting Authority shall not make, nor shall the Consultant request, any payments under this Contract as of the date of a Sanction Event, irrespective of whether the payment concerns delivery of Services predating the Sanction Event. For the avoidance of doubt, payments so extinguished shall not be recoverable.

ARTICLE 30. FINANCIAL GUARANTEE

- 30.1. If the pre-financing payment stated in Article 7.2 of the Special Conditions exceeds EUR 100 000, or if no proof documents have been provided for the selection criteria, the Consultant must provide an original copy of a signed financial guarantee for the full amount of the pre-financing payment. The financial guarantee, to be approved by the Contracting Authority, shall be in the format provided for in the Contract and shall be provided in the form of a first demand bank guarantee issued and signed by a financial institution with a minimum investment grade rating issued by any of the main international credit rating agencies. This financial guarantee must remain valid, callable and enforceable until it is released by the Contracting Authority by simple restitution of the original copy of the financial guarantee to the Consultant and in accordance with Article 30.5 or Article 30.6, as appropriate.
- 30.2. The financial guarantee shall be provided on the letterhead of the financial institution issuing and signing it and using the template in the tender dossier.
- 30.3. Should this financial guarantee cease to be valid, callable, payable or enforceable, and the Consultant fail to re-validate it or make it callable, payable or enforceable, or the financial institution fails to pay the Contracting Authority despite its call of the said financial guarantee, the Contracting Authority may either make deductions from future payments due to the Consultant under the Contract up to the total of the payments already made, request a reimbursement from the Consultant and/or terminate the Contract if in the opinion of the Contracting Authority such deduction is impracticable.
- 30.4. If the Contract is terminated for any reason whatsoever, the financial guarantee may be invoked and called forthwith, in order to repay any balance still owed to the Contracting Authority by the Consultant, and the guarantor and the Consultant shall not delay or prevent payment or raise objection for any reason whatever.
- 30.5. For fee-based contracts, any existing financial guarantee shall be released when the amount of the pre-financing is fully compensated by the performance by the Consultant of the Services which amount is equal to the amount of this pre-financing, documentary evidence of which and related invoice(s) shall be duly brought and transmitted by the Consultant to the Contracting Authority.
- 30.6. For global price contracts, the financial guarantee must remain in force until the final payment has been made by the EIB to the Consultant.

ARTICLE 31. RECOVERY OF DEBTS FROM THE CONSULTANT

- 31.1. The Consultant shall repay to the Contracting Authority any amounts paid in excess of the final amount due before the deadline indicated in the debit note which is 45 days from the issuing of that note.
- 31.2. Should the Consultant fail to make repayment within the above deadline; the Contracting Authority may increase the amounts due by adding interest:
- (a) at the rate applied by the European Central Bank to its main refinancing transactions in euro, as published in the Official Journal of the European Union, C series, where payments are in euro, or
 - (b) at the rediscount rate applied by the central bank of the partner country if payments are in the currency of that country,

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, and the date on which the Consultant's account is debited. Any partial payments shall cover the interest thus established.

- 31.3. Amounts to be repaid to the Contracting Authority may be offset by the Contracting Authority against amounts of any kind due to the Consultant. This shall not affect the right of the Consultant and the Contracting Authority to agree on repayment by instalments.
- 31.4. Bank charges arising from the repayment of amounts due to the Contracting Authority shall be borne entirely by the Consultant.

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 Consultant.
- 33.3. In the event of a legally binding attachment of the property of the Consultant affecting payments due to it under the Contract and without prejudice to the time limit laid down in Article 29, 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 Consultant.

BREACH OF CONTRACT, SUSPENSION AND TERMINATION

ARTICLE 34. BREACH OF CONTRACT

- 34.1. Either Party commits a breach of the Contract where it fails to perform any of its obligations under the Contract.
- 34.2. For the Contracting Authority, a breach of the Contract is limited to willful misconduct or gross negligence.
- 34.3. Where a breach of the Contract occurs, the Party injured by the breach shall be entitled to the following remedies:
 - (a) damages; and/or
 - (b) termination of the Contract in accordance with Article 36 or Article 37.
- 34.4. Damages may be:
 - (a) general damages; or
 - (b) liquidated damages.
- 34.5. In any case where the Contracting Authority is entitled to damages, it may automatically deduct such damages from any sums due to the Consultant or call on the appropriate guarantee.
- 34.6. The Contracting Authority is entitled from the Consultant 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 OF THE CONTRACT

- 35.1. Without prejudice to the right of the Contracting Authority to terminate the Contract under Article 36, the Contracting Authority may at any time suspend the Contract or any part thereof (including the payments), in particular where it considers such suspension in the interest of the project or where there are suspected or established errors, irregularities or fraud committed by the Consultant in the performance of another contract funded by the budget of third-party mandators or by the Contracting Authority, which are likely to affect the performance of the present Contract. Suspension shall take effect on the day that the Consultant receives written notice from the Contracting Authority, or at a later date when the notice so provides.
- 35.2. The Contracting Authority shall suspend the payments and/or the execution of the Contract:
 - (a) where the award procedure or the performance of the Contract is vitiated by substantial errors or irregularities, or by suspected or proven fraud. In addition, where such errors, irregularities or fraud are attributable to the Consultant, the Contracting Authority may refuse to make further payments or may proceed to recover amounts already paid, in proportion to the seriousness of the errors, irregularities or fraud; or

- (b) where the Contracting Authority is obliged to do so, pursuant to (i) a request by the provider(s) of the funding for the Contract, or (ii) the provisions of the contracting arrangements between the Contracting Authority and the provider(s) of the funding for the Contract, as these are identified in the relevant service contract, the Special Conditions or the Terms of Reference; or
 - (c) a Sanction Event has occurred.
- 35.3. During the period of suspension, the Consultant shall take such protective measures as may be necessary to mitigate any loss and duly promptly submit, for the written approval of the Contracting Authority, an estimate of associated expenses (the **"Mitigation Expenses"**). Upon the submission of receipts or any other documentary evidence, the Contracting Authority shall reimburse the Consultant for all approved Mitigation Expenses unless the suspension of the Contract or payments thereunder is enacted pursuant to Article 35.2.
- 35.4. Except for the situations described in Article 35.2, and unless otherwise agreed in writing by the Parties, the maximum period of suspension shall be 90 calendar days. Upon expiry of this period, and before being able to exercise the right specified under Article 37.1(c), the Consultant shall seek written instructions from the Contracting Authority on whether the Contract shall be fully or partially resumed or terminated.

ARTICLE 36. TERMINATION BY THE CONTRACTING AUTHORITY

- 36.1. This Contract shall terminate automatically if it has not given rise to any payment within a period of three (3) 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 Consultant.
- 36.3. In addition to the grounds for termination elsewhere defined in these General Conditions, the Contracting Authority may immediately terminate the Contract by notice in writing the Consultant in any of the following cases:
- (a) the Consultant fails to carry out the services substantially in accordance with the Contract;
 - (b) the Consultant fails to comply within fifteen (15) days with the notice given by the Technical Assistance Officer 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 Consultant refuses or neglects to properly carry out administrative orders given by the Technical Assistance Officer
 - (d) the Consultant assigns the contract or sub-contracts without the authorisation of the Contracting Authority;
 - (e) any corporate action, legal proceedings or other procedure is taken in any jurisdiction in relation to:
 - i. the suspension of payments, a moratorium of any indebtedness, the winding-up, dissolution, administration, or reorganisation of the Consultant,
 - ii. a composition, assignment or arrangement with any creditor of the Consultant, or
 - iii. the appointment of a liquidator, receiver, administrator, administrative receiver, regulatory official, compulsory manager or similar officer in respect of the Consultant;
 - (f) the Consultant, or a member of the Consultant's personnel, is in a situation of conflict or potential conflict of interest, as defined in Article 9 above;
 - (g) the Consultant has been convicted of an offence concerning its professional conduct by a judgment which has the force of res judicata;
 - (h) the Consultant has been guilty of grave professional misconduct proven by any means which the Contracting Authority can justify;
 - (i) the Consultant 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 bringing the Contracting Authority into disrepute;
 - (j) following another procurement procedure or grant award procedure financed by the EU budget, the Consultant has been declared to be in serious breach of contract for failure to comply with its contractual obligations;
 - (k) any organisational modification occurs involving a change in the legal personality, nature, or

control of the Consultant, unless such modification is recorded in an addendum to the Contract;

- (l) the Consultant fails to provide the required guarantees or insurance, or the person, company or financial institution providing the underlying guarantee or insurance is not able to abide by its commitments;
- (m) where after the award of the contract, the award procedure or the performance of the contract prove to have been subject to substantial errors, irregularities, or fraud; or
- (n) a Sanction Event occurs.

Prior to, or instead of, terminating the Contract as provided for in this Article, the Contracting Authority may suspend payments as a precautionary measure without prior notice.

- 36.4. The Contracting Authority may, thereafter, complete the Services itself, or conclude any other contract with a third party, at the Consultant's own expense. The Consultant's liability for delay in completion shall immediately cease when the Contracting Authority terminates the Contract 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 Consultant 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 Technical Assistance Officer shall, as soon as possible after termination, determine the value of the Services and all sums due to the Consultant as at the date of termination.
- 36.7. The Contracting Authority shall not be obliged to make any further payments to the Consultant until the Services are completed, whereupon the Contracting Authority shall be entitled to recover from the Consultant the extra costs, if any, of completing the Services, or shall pay any balance due to the Consultant.
- 36.8. If the Contracting Authority terminates the Contract, it shall without prejudice to its other remedies under the Contract, be entitled to recover from the Consultant any loss it has suffered up to the value of the Services which have not been satisfactorily completed unless otherwise provided for in the Special Conditions or these General Conditions.
- 36.9. The Contracting Authority may, at any time and after giving the Consultant 7 days' notice, terminate the Contract, in addition to what is already provided for in Article 36.3.
- 36.10. Where the termination is not due to an act or omission of the Consultant, force majeure or other circumstances beyond the control of the Contracting Authority, the Consultant shall be entitled to claim in addition to sums owing to it for work already performed, an indemnity for loss suffered based on documentary evidence to be provided by the Consultant.

ARTICLE 37. TERMINATION BY THE CONSULTANT

- 37.1. The Consultant may, after giving 1 month' notice to the Contracting Authority, terminate the Contract if the Contracting Authority:
 - (a) fails to pay the Consultant the amounts due under any certificate of the Technical Assistance Officer after the expiry of the time limit stated in Article 29; or
 - (b) consistently fails to meet its obligations after written 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 Contract, or not due to the Consultant's default.
- 37.2. Such termination shall be without prejudice to any other rights of the Contracting Authority, or the Consultant acquired under the contract.
- 37.3. In the event of such termination, the Contracting Authority shall compensate the Consultant for any loss or injury the Consultant may have suffered. Such additional payment may not be such that the total payments exceed the amount specified in Article 3 of the Special Conditions.

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 notification of the award or the date when the Contract becomes effective.
- 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, nuclear accidents, 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 19 and Article 35, the Consultant 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 similarly not be liable, notwithstanding the provisions of Article 29 and Article 37, to payment of interest on delayed payments, for non-performance or for termination by the Consultant for default, if, and to the extent that, the Contracting Authority's delay or other failure to perform its obligations is the result of an event 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 promptly notify in writing the other Party immediately giving details of the nature, the probable duration and likely effect of the circumstances. This Party shall also promptly inform in writing the other Party when the event of force majeure has ceased and consequently resume performing its obligations without delay. Unless otherwise directed by the Technical Assistance Officer in writing, the Consultant 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 Consultant shall not put into effect such alternative means unless directed so to do by the Technical Assistance Officer.
- 38.6. For a fee-based contract, if the Consultant incurs additional costs in complying with the Technical Assistance Officer's directions or using alternative means under Article 38.5 the amount thereof shall be certified by the Technical Assistance Officer 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 implementation of the tasks that the Consultant 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 Consultant 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/her 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 Consultant 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 Consultant. Continuation of the Contract shall be subject to the rules relating to establishment of any guarantee provided for in the Contract.