

ANNEX I: GENERAL CONDITIONS FOR SERVICE CONTRACTS FINANCED BY THE EUROPEAN COMMUNITY

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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 The following definitions apply to the contract.

Administrative order: any writing instruction or order issued by the Project Manager to the Consultant 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 contract, the schedule which breaks down the contract value, stating out the fee rates and the provision for incidental expenses.

Cashflow forecast: the Consultant's estimate of the cashflows arising directly from the execution of the contract.

Commission: the European Commission.

Consultant: the party which will perform the services.

Contract: the signed agreement entered into by the parties for the performance of the services, including all attachments thereto and all documents incorporated therein.

Contracting Authority: the government of the beneficiary country or the legal person governed by public or private law concluding the contract, or on behalf of which the contract is concluded, with the Consultant.

Contract value: the sum stated in the contract representing the maximum or total amount payable for the provision of the services.

Day: calendar day.

EC: the European Community.

EU: the European Union.

Euro: the European single currency.

Fee-based contract: a contract under which the services are provided on the bases of fixed fee rates.

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 an 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

National currency: the currency of the country of the Contracting Authority.

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 Consultant under the contract such as technical assistance, studies, training and designs.

Terms of reference: the document drawn up by the Contracting Authority giving the definition of its requirements and/or the objectives in respect of the provisions of services, specifying, where relevant, the methods and resources to be used by the Consultant 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.

1.3 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.

1.4 The word "country" shall be deemed to include State or Territory.

1.5 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 ask 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.

Article 3 Assignment

- 3.1 An assignment is a written 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 thereunder.
- 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.

Article 4 Sub-contracting

- 4.1 A written agreement by which the Consultant entrusts performance of a part of the services to a third party is considered to be a sub-contract.
- 4.2 The Consultant 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 Consultant 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 Consultant shall be responsible for the acts, defaults and negligence of its sub-contractors 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 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 Consultant 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.

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 execution of the contract.
- 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.

Article 6 Assistance with local regulations

- 6.1 The Consultant may request the assistance of the Contracting Authority of the beneficiary country 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, the Contracting Authority of the beneficiary country shall make every effort to facilitate the procurement 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.
- 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 CONSULTANT

Article 7 General obligations

- 7.1 The Consultant 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 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, efficiency and

diligence, in accordance with the best professional practice.

- 7.3 The Consultant shall comply with administrative orders given by the Project Manager. Where the Consultant 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 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 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 Consultant 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.

Article 8 Code of conduct

- 8.1 The Consultant 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 Consultant 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 Consultant 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 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 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 Consultant 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 interest

- 9.1 The Consultant shall refrain from any relationship 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, without giving formal notice thereof.
- 9.2 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 contractor, consultant 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.
- 9.3 As a general rule, 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.
- 9.4 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 EC financing available under the same project.

Article 10 Specifications and designs

- 10.1 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.
- 10.2 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 11 Indemnification

- 11.1 At its own expense, the Consultant 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 Consultant 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.
- 11.2 At its own expense, the Consultant 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 Consultant's failure to perform its obligations 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 shall be limited to an amount equal to the contract value, and such ceiling shall not apply to actions, claims, losses or damages caused by the Consultant's wilful misconduct;
- c) the Consultant's liability shall be limited to actions, claims, losses or damages directly caused by such failure to perform its obligations under the contract and shall not include liability arising from unforeseeable occurrences incidental or indirectly consequential to such failure.
- 11.3 At its own expense, the Consultant shall, upon request of the Contracting Authority, remedy any defect in the performance of the services in the event of the Consultant's failure to perform its obligations under the contract.
- 11.4 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 act, decision or recommendation, of the Consultant, or requiring the Consultant to implement a decision or recommendation with which the Consultant disagrees or on which it expresses a serious reservation; or
- b) the improper execution of the Consultant's instructions by agents, employees or independent contractors of the Contracting Authority.
- 11.5 The Consultant 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 12 Medical and insurance arrangements

- 12.1 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 shall as soon as is practicable furnish the Contracting Authority with the medical report resulting therefrom.
- 12.2 For the period of execution of the contract, 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.

- 12.3 Within 20 days of signing the contract, the Consultant 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 Consultant has its headquarters and covering, during the period of execution of the contract, 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 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
- 12.4 The Consultant shall also insure the personal effects of its employees, experts and their families located in the country of the Contracting Authority against loss or damage.
- 12.5 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 Project Manager.

Article 13 Proprietary rights in reports and documents

- 13.1 All reports and data such as maps, diagrams, drawings, specifications, plans, statistics, calculations and supporting records or materials acquired, compiled or prepared by the Consultant in the performance of the contract shall be confidential and shall be the absolute property of the Contracting Authority. The Consultant shall, upon completion of the contract, deliver all such documents and data to the Contracting Authority. The Consultant may retain copies of such documents and data, but shall not use them for purposes unrelated to its contract without the prior written consent of the Contracting Authority.
- 13.2 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.

NATURE OF THE SERVICES

Article 14 The scope of the services

- 14.1 The scope of the services is specified in the Terms of reference.
- 14.2 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 Consultant shall not have decision-making responsibility.
- 14.3 Where the contract is for management of the execution of the project, the Consultant shall assume all the duties of management inherent in supervising the execution of a project, subject to the Project Manager's authority.
- 14.4 If the Consultant 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 Consultant with the information necessary for drawing up the administrative part of the tender dossier.

Article 15 Provision of experts

- 15.1 Where the contract is for the provision of experts for the execution of a project, the Consultant shall provide such experts in specific fields relating to the execution of the project, in the form of technical assistance in an advisory and/or managerial role. Such experts shall be under the direct authority of the Project Manager.
- 15.2 The services shall be carried out by the experts specified in the contract for the periods of time indicated therein. The Consultant may, with the prior approval of the Contracting Authority, make minor adjustments to such periods as may be appropriate to ensure the efficient performance of the services, provided that such adjustments will not cause payments made under the contract to exceed the contract value.
- 15.3 The Consultant shall be responsible for the quality of the experts which it places at the disposal of the Contracting Authority.
- 15.4 The Consultant may not without the Contracting Authority's prior agreement make use of experts who do not fulfil the same eligibility criteria with regard to nationality which apply to the Consultant itself.

Article 16 Personnel and equipment

- 16.1 The personnel which the Consultant uses for the implementation of the contract shall be approved by the Contracting Authority. The terms of reference shall specify the minimum level of training, qualifications and experience of the Consultant's personnel and, where appropriate, the specialisation required.
- 16.2 References and/or curriculum vitae of experts other than the key experts identified in the contract to be employed under the contract shall be submitted to the Contracting Authority for approval.
- 16.3 Staff approved by the Contracting Authority shall commence their duties on the date or within the period laid down in the terms of reference, or, failing this, on the date or within the periods notified to the Consultant by the Contracting Authority or the Project Manager.
- 16.4 Save as otherwise provided in the special conditions, the staff of the Consultant shall reside close to their place of work. Where part of the services is to be performed outside the country of the Contracting Authority, the Consultant shall keep the Project Manager informed of the names and qualifications of staff assigned to that part of the services and of the equipment used.
- 16.5 The Consultant 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, specification of their duties and a list of the equipment it intends to use for the services;
 - b) inform the Project Manager of the date of arrival and departure of each member of staff;
 - c) submit to the Project Manager for his written approval a timely request for the appointment of any non-key experts.
- 16.6 The Consultant shall adopt all measures necessary to provide and continue to provide its staff with the equipment required enabling them to carry out their specified duties under conditions which are most conducive to efficiency.

Article 17 Replacement of personnel

- 17.1 The Consultant shall not make changes in the 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.
 - 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, 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 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 to reflect the appropriate remuneration level.
- 17.4 Additional costs incurred by the replacement of staff are the responsibility of the Consultant. 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 Consultant 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

- 18.1 If required in the terms of reference, the Consultant shall provide training for the period of execution of the contract 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, 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 report at quarterly intervals to the Contracting Authority on the training assignment. Immediately prior to the end of the period of execution of the contract, 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 performance

- 19.1 If the Consultant does not perform the services within the period of execution 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 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 contract value by the number of days of the period of execution.
- 19.3 If these liquidated damages exceed more than 15% of the contract value, the Contracting Authority may, after giving notice to the Consultant:
- terminate the contract; and
 - complete the services at the Consultant's own expense.

Article 20 Suspension

- 20.1 The Contracting Authority is entitled to suspend the performance of the services or any part thereof for such time and in such manner as it may consider necessary.
- 20.2 If the period of suspension exceeds 90 days and the suspension is not due to the Consultant's default, the Consultant may, by notice to the Project Manager, request permission to resume performance of the services within 30 days or terminate the contract.

Article 21 Amendment of the contract

- 21.1 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 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.
- 21.2 However, where the amendment does not affect the basic purpose of the contract and, for a fee-based contract, the financial impact is limited to a transfer within the Fees or between the Fees and the Provision for incidental expenditure involving a variation of less than 10% of the original amount in the Budget breakdown, 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.

- 21.3 No such order for a variation may imply any extension of the period of execution.
- 21.4 Prior to any administrative order for variation, the Project Manager shall notify the Consultant of the nature and form of such variation. As soon as possible, after receiving such notice, the Consultant shall submit to the Project Manager a written proposal containing:
- a description of the service to be performed or the measures to be taken and a programme for execution; and
 - any necessary modifications to the programme of performance or to any of the Consultant's obligations under the contract; and
 - For a fee-based contract, any adjustment to the contract value in accordance with the following principles:
 - 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;
 - 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 Project Manager;
 - where a variation is necessitated by a default or breach of contract by the Consultant, any additional cost attributable to such variation shall be borne by the Consultant.
- 21.5 Following the receipt of the Consultant's proposal, the Project Manager shall, after due consultation with the Contracting Authority, and where appropriate with the Consultant, 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 Consultant's proposal or as modified by the Project Manager in accordance with Article 21.4.
- 21.6 On receipt of the administrative order requesting the variation, the Consultant 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 contract.
- 21.7 Changes of address, changes of bank account and changes of auditor may simply be notified by the Consultant to the Project Manager, although this shall not affect the Contracting Authority's right to oppose the Consultant's choice of bank account or auditor.

21.8 No amendment shall be made retroactively. Any change to the contract which has not been made in the form of an administrative order or an addendum shall be considered as null and void.

Article 22 Working hours

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

Article 23 Leave entitlement

23.1 Annual leave to be taken during the period of execution of the contract must be at a time approved by the Project Manager.

23.2 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 execution of the contract. Consequently, days taken as annual leave shall not be considered to be working days.

23.3 The Consultant'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 Consultant to take unpaid leave during the period of execution of the contract.

Article 24 Information

The Consultant shall furnish the Project Manager with such information relating to the services and the project as the Project Manager may at any time request.

Article 25 Records

25.1 The Consultant 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 actual incidental expenditure identified in the Consultant's invoice(s) have been duly incurred for the performance of the services.

25.2 For a fee-based contract, timesheets recording the days worked by the Consultant's personnel must be maintained by the Consultant. The amounts invoiced by the Consultant must correspond to these timesheets.

25.3 Such records must be kept for a 5-year period after the last payment made under the contract. These documents comprise any documentation concerning income and expenditure and any inventory, necessary for the checking of

supporting documents in particular timesheets, plane and transport tickets, pay slips for the remuneration paid to the experts. Failure to maintain such records constitutes a breach of contract and will result in the termination of the contract.

25.4 The Consultant shall permit the Project Manager or any person authorised by him 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 26 Final report

26.1 Immediately prior to the end of the period of execution of the contract the Consultant shall draw up a confidential final report together with, if appropriate, a critical study of any major problems which may have arisen during the performance of the contract. For a fee-based contract, this final report shall include a financial analysis of the project and an audit certificate provided by the auditor identified in Article 11.1 of the Special Conditions.

26.2 This 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 Where the contract is performed in phases, the execution of each phase shall give rise to the preparation of a final report by the Consultant.

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 Consultant shall certify that they comply with the terms of the contract.

27.2 The Contracting Authority shall, within 30 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 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 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 inform the Consultant of any comments within 30 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.

27.4 Where the 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 interest on late payment

28.1 Payment procedures are set out in Article 7 of the Special Conditions and follow one of the two options below.

Option 1: Fee-based contract

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

- an advance of 60% of the cashflow forecast for the 12 months following the commencement date, within 60 days of receipt by the Contracting Authority of the Contract signed by both parties and of a financial guarantee, as defined in Article 28.4;
- interim six-monthly payments, if any, as indicated in Article 7.2 of the Special Conditions, within 60 days of the Contracting Authority receiving an invoice setting out the days actually worked and the incidental expenditure actually incurred during the period, as evidenced by the accompanying interim report, subject to approval of that report in accordance with Article 28.2;
- the balance of the final certified contract value, after deduction of the interim payments, within 60 days of the Contracting Authority receiving a final invoice accompanied by the final report and audit certificate from the auditor identified in Article 11.1 of the Special Conditions, subject to approval of the final report and audit certificate in accordance with Article 28.2.

The interim invoices must be paid such that the sum of the advance and the interim payments do not exceed 90% of the maximum contract value stated in Article 3 of the Special Conditions, the balance being paid by deduction from the advance.

Option 2: Global price contract

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

- an advance of 60% of the contract value stated in Article 3 of the Special Conditions within 60 days of receipt by the Contracting Authority of the Contract signed by both parties and of a financial guarantee, as defined in Article 28.4;
- interim payments, if any, totalling 60% of the contract value stated in Article 3 of the Special Conditions, within 60 days of the Contracting Authority receiving the corresponding interim reports and shall

be paid by deduction from the advance, subject to approval of such reports in accordance with Article 28.2;

- a final payment of 40% of the contract value stated in Article 3 of the Special Conditions if there have been interim payments, or 100% of the contract value if there have been no interim payments, within 60 days of the Contracting Authority receiving a final invoice accompanied by the final report, subject to approval of that report in accordance with Article 28.2.

28.2 The payment deadline of 60 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 32.3, the Contracting Authority may halt the countdown towards this deadline for any part of the invoiced amount disputed by the Project Manager by notifying the Consultant that 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.

28.3 Once the deadline referred to above has expired, the Consultant 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 where payments are in euro,
- at the rediscount rate applied by the central bank of the country of the Contracting Authority where payments are in the currency of that country.

on the first day of the month in which the deadline expired, plus one and a half percentage points. The late-payment interest shall apply to the time which elapses between the date of the payment deadline (inclusive), and the date on which the Contracting Authority's account is debited (exclusive).

28.4 Advances of EUR 50,000 or more must be fully secured by a financial guarantee remaining valid until it is released by the Contracting Authority following final payment. The financial guarantee shall be in conformity with or match the model below:

Article 29 Revision of prices

29.1 Unless otherwise stipulated in the special conditions, contracts shall be at fixed prices which shall not be revised.

Article 30 Payment to third parties

30.1 All orders for payments to third parties may be carried out only after an assignment made in accordance with Article 3.

30.2 Notification of beneficiaries of assignment shall be the sole responsibility of the Consultant.

30.3 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 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 Consultant.

BREACH OF CONTRACT AND TERMINATION

Article 31 Breach of contract

31.1 Either party commits a breach of contract where it fails to discharge any of its obligations under the contract.

31.2 Where a breach of contract occurs, the party injured by the breach shall be entitled to the following remedies:

- a) damages; and/or
- b) termination of the contract.

31.3 Damages may be:

- a) general damages; or
- b) liquidated damages.

31.4 In any case where the Contracting Authority is entitled to damages, it may deduct such damages from any sums due to the Consultant or call on the appropriate guarantee.

31.5 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 32 Termination by the Contracting Authority

32.1 The Contracting Authority may, at any time and with immediate effect, terminate the contract after giving 7 days notice to the Consultant.

32.2 Termination shall be without prejudice to any other rights or powers under the contract of the Contracting Authority and the Consultant.

32.3 In addition to the grounds for termination defined in these General Conditions, the Contracting Authority may terminate the contract in any of the following cases where:

- a) the Consultant fails to carry out the services substantially in accordance with the contract;
- b) the Consultant continues to default for a period of 14 days after the Contracting Authority has given notice to it of suspension of payments under Article 28.12;
- c) the Consultant 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;
- d) the Consultant refuses or neglects to carry out administrative orders given by the Project Manager;
- e) the Consultant assigns the contract or sub-contracts without the authorisation of the Contracting Authority;
- f) the Consultant becomes bankrupt or insolvent, or has a receiving order made against it, or enters into an arrangement with its creditors, or carries on business under a receiver, trustee or administrator for the benefit of its creditors, or goes into liquidation;
- g) any adverse final judgement is made in respect of an offence affecting the professional conduct of the Consultant;
- h) any legal disability hindering performance of the contract occurs;
- i) 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;
- j) the Consultant fails to provide the required guarantees or insurance, or if the person providing a guarantee or insurance is not able to abide by its commitments.

32.4 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 Contracts without prejudice to any liability thereunder that may have already been incurred.

32.5 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.

32.6 The Project Manager shall, as soon as is possible after termination, certify the value of

the services and all sums due to the Consultant as at the date of termination.

- 32.7 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.
- 32.8 If the Contracting Authority terminates the contract, it shall be entitled to recover from the Consultant 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 Consultant's failure, been satisfactorily completed.
- 32.9 If the termination is not due to an act or omission of the Consultant, the Consultant shall be entitled to claim in addition to sums owing to it for work already performed, a compensation for any loss or injury suffered.

Article 33 Termination by the Consultant

- 33.1 The Consultant may, after giving 14 days 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 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 contract, or not due to the Consultant's default.
- 33.2 Such termination shall be without prejudice to any other rights of the Contracting Authority or the Consultant acquired under the contract.
- 33.3 In the event of such termination, the Contracting Authority shall pay 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 Conditionst.

Article 34 Force majeure

- 34.1 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.

34.2 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.

34.3 Notwithstanding the provisions of Article 19 and Article 32, 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 28 and Article 33, 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 force majeure.

34.4 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 Project Manager 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 Project Manager.

34.5 For a fee-based contract, if the Consultant incurs additional costs in complying with the Project Manager's directions or using alternative means under Article 34.4 the amount thereof shall be certified by the Project Manager subject to the maximum contract value.

34.6 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 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 35 Decease

- 35.1 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 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.

- 35.2 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.
- 35.3 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.

- b) in all other cases, under the rules of Conciliation and Arbitration of the International Chamber of Commerce (Paris) by one or more arbitrators appointed in accordance with the said rules. The request for arbitration must be submitted within 60 days as from the end of the period of conciliation.

SETTLEMENT OF DISPUTES

Article 36 Settlement of disputes

- 36.1 The Contracting Authority and the Consultant shall make every effort to amicably settle any dispute relating to the contract which may arise between them, or between the Project Manager and the Consultant.
- 36.2 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 any of the two parties deems it useful, the parties to this contract shall meet and try and 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. Should the attempt to reach an amicable settlement not be successful 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 Article 36.3.
- 36.3 The parties may agree to the settlement of the dispute by conciliation within a specific time limit by a third party after the amicable settlement procedure adopted has failed.
- 36.4 The amicable settlement or conciliation procedure adopted shall in all cases involve a procedure in which complaints and responses are notified to the other party.
- 36.5 In the absence of an amicable settlement or settlement by conciliation within the maximum time limits specified, the dispute shall be settled:
- a) in the case of a national contract, in accordance with the national legislation of the country of the Contracting Authority; and