

ANNEX I:

GENERAL CONDITIONS FOR SERVICE CONTRACTS FOR EXTERNAL ACTIONS FINANCED BY THE EUROPEAN UNION OR BY THE EUROPEAN DEVELOPMENT FUND

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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. The definitions of the terms used throughout this General Conditions are laid down in the "Glossary of terms", annex A1 to the Practical Guide to contract procedures for EU external actions, which forms an integral part of this contract.

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, unless otherwise specified, and shall not be unreasonably withheld or delayed.
- 2.3. 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 can not be in any of the situations excluding them from participating in contracts which are listed in Section 2.3.3 of the Practical Guide to contract procedure for EU external actions.

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 subcontracting 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 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 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 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 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 can not be in any of the situations excluding them from participating in contracts which are listed in Section 2.3.3 of the Practical Guide to contract procedure for EU external actions.
- 4.7. Those services entrusted to a subcontractor by the Consultant cannot be entrusted to third parties by the sub-contractor, unless otherwise agreed by the Contracting Authority.
- 4.8. Any change of subcontractor without the prior written consent of the Contracting Authority shall be considered to be a breach of contract under Article 34 and 36.

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 give written notification to the Consultant of the name and address of the Project Manager.

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. For matters not governed by the contract, 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.
- 7.7. Unless otherwise requested or agreed by the European Commission, the Consultant shall take the necessary steps to ensure that the financial contribution of the EU is given adequate publicity. These steps must follow the rules applicable in the Communication and Visibility Manual for EU External Actions defined and published by the European Commission.
- 7.8. The Consultant shall give written notification to the Contracting Authority of the name and address of its contact, bank account and auditor(s) for the Contract. The Consultant must use the form in Annex VI for notification of its bank account. The Contracting Authority shall have the right to oppose the Consultant's choice of bank account or auditor.

ARTICLE 8. CODE OF CONDUCT

- 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 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. The Consultant shall respect internationally agreed core labour standards, e.g. the ILO core labour standards, 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 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 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 beneficiary country, regardless of their administrative situation, shall not be recruited as experts in contracts financed by the EU in the beneficiary country unless the prior written approval has been granted by the European Commission.
- 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 EU/EDF financing available 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. ADMINISTRATIVE AND FINANCIAL PENALTIES

- 10.1. Without prejudice to the application of penalties laid down in 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 excluded from all contracts and grants financed by the EU budget or EDF for a maximum of five years from the time when the infringement is established, to be confirmed after an adversarial procedure with the Consultant. The Consultant may justify its arguments against the penalty within 30 days of notification of it by recorded delivery or equivalent. In the absence of a reaction for its part or of the written withdrawal of the penalty by the European Commission within 30 days of the above-mentioned arguments, the decision imposing the penalty will become binding. The period of exclusion may be extended to ten years in the event of a repeat offence within five years of the first infringement.
- 10.2. Consultants who have been found to have seriously failed to meet their contractual obligations, other than foreseen in Article 19, shall also be subject to financial penalties representing 2-10% of the total value of the Contract. This rate may be increased to 4-20% in the event of a repeat offence within five years of the first infringement.
- 10.3. 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 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.
- 12.2. 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 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;
 - (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.

- 12.3. 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.
- 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 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 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 as may be determined by the law governing the contract.

ARTICLE 13. MEDICAL, INSURANCE AND SECURITY ARRANGEMENTS

- 13.1. The Contracting Authority may request the 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 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.
- 13.3. 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 beneficiary country and the amount foreseen by the legislation of the country in which the Consultant has its headquarters and covering, during the period of implementation of the tasks, 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
- 13.4. The Consultant shall also insure the personal effects of its employees, experts and their families located in the beneficiary country against loss or damage.
- 13.5. The 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.
- 13.6. The Consultant shall put in place security measures for its employees, experts and their families located in the beneficiary country commensurate with the physical danger facing them.

- 13.7. The Consultant will also be responsible for monitoring the level of physical risk to which its employees, experts and their families located in the beneficiary country are exposed and for keeping the Contracting Authority informed of the situation. In the event that the Contracting Authority or the 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 Project Manager and may lead to suspension of the contract in accordance with Article 35.

ARTICLE 14. INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS

- 14.1. All reports and data such as maps, diagrams, drawings, specifications, plans, statistics, calculations, databases, software and supporting records or materials acquired, compiled or prepared by the Consultant in the performance of the contract shall be the absolute property of the Contracting Authority unless otherwise specified. The Consultant shall, upon completion of the contract, 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, shall be the absolute property of the Contracting Authority, which may use, publish, assign or transfer them as it sees fit, without geographical or other limitation, except where intellectual or industrial property rights already exist.

NATURE OF THE SERVICES

ARTICLE 15. THE SCOPE OF THE SERVICES

- 15.1. The scope of the services is specified in Annex II and Annex III.
- 15.2. Where the contract is for an advisory function for the benefit of the Contracting Authority and/or Project Manager in respect of all the technical aspects of the project which may arise out of its 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 Project Manager's authority.
- 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 which the Consultant intends to use for the implementation of the tasks, other than the key experts whose CVs are included in Annex IV. Annex II and/or Annex III 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.
- 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, or, failing this, on the date or within the periods notified to the Consultant by the Contracting Authority or the Project Manager.
- 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 beneficiary country, the Consultant shall keep the Project Manager informed of the names and qualifications of staff assigned to that part of the services.
- 16.4. 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;
 - (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/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 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.
 - (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 his own and the staff member's observations, the Contracting Authority can order 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. The Contracting Authority makes no payment for the period when the expert to be replaced is absent. The replacement of any expert, whose name is listed in Annex IV of 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 beneficiary country may be notified of the identity of the experts proposed to be added or replaced in the contract to obtain its approval. The beneficiary country may not withhold its approval unless it submits duly substantiated 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, 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 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 is calculated by dividing the contract value by the number of days of the period of implementation of the tasks.
- 19.3. If these liquidated damages exceed more than 15% of the contract value, the Contracting Authority may, after giving notice to the Consultant:
 - (a) terminate the contract; and
 - (b) complete the services at the Consultant's own expense.

ARTICLE 20. AMENDMENT OF THE CONTRACT

- 20.1. Substantial modifications to the contract, including modifications to the total contract amount and replacement of expert whose Curriculum Vitae is part of the contract, must be made by means of an addendum. 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 such amendment, 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 risk.
- 20.2. 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 expenditures and the provision for expenditure verification considering the fact that the latter provision cannot be decreased, involving a variation of less than 15% of the original amount (or as modified by addendum) for the total fees/provisions line where the money was taken from in the Budget breakdown in Annex V, the Project Manager shall have the power to order any variation to any part of the services necessary for the proper implementation of the tasks, 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. Such variations may not include replacement of expert whose Curriculum Vitae is part of the contract.
- 20.3. No such order for a variation may imply any extension of the period of implementation of the tasks or, for a fee-based contract, any change in the total amount of the contract.
- 20.4. 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) a description of the service 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 Project Manager;
 - (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 borne by the Consultant.
- 20.5. Following the receipt of the Consultant's proposal, the Project Manager shall decide as soon as possible whether or not the variation shall be carried out. If the Project Manager decides that the variation shall be carried out he/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 Project Manager in accordance with Article 20.4.

- 20.6. 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.
- 20.7. The Consultant must use the form in Annex VI for notifying any modification of its bank account.
- 20.8. This Contract can be modified only during its 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 7.8 or 20.7 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 beneficiary country shall be fixed on the basis of the laws, regulations and customs of the beneficiary country and the requirements of the services.

ARTICLE 22. LEAVE ENTITLEMENT

- 22.1. For a fee-based contract, the annual leave to be taken during the period of implementation of the tasks must be at a time approved by the Project Manager.
- 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. 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 by the Consultant. The Consultant shall inform the Project Manager of any impact of such leave on the period of implementation of the tasks.

ARTICLE 23. INFORMATION

The Consultant shall furnish the Project Manager or any person authorised by the Contracting Authority, the European Commission or the European Court of Auditors with any information relating to the services and the project as the Project Manager 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 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.
- 24.2. For a fee-based contract, 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 Project Manager 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 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. A minimum of 7 hours worked are deemed to be equivalent to one day worked. For all experts, their time input must be rounded to the nearest whole number of days worked for the purposes of invoicing.

- 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.
- 24.4. The Consultant shall permit the Project Manager or any person authorised by the Contracting Authority or the Contracting Authority itself to 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 Commission, the European Anti-Fraud 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 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 access to staff or agents of the European Commission, of the European Anti-Fraud Office and of the European Court of Auditors to the sites and locations at which the Contract is carried out, including its information systems, as well as all documents and databases concerning the technical and financial management of the project and to take all steps to facilitate their work. Access given to agents of the European Commission, European Anti-Fraud Office and the European Court of Auditors shall be on the basis of confidentiality with respect to third parties, without prejudice to the obligations of public law to which they are subject. Documents must be easily accessible and filed so as to facilitate their examination. The Consultant must inform the Contracting Authority of their precise location.
- 25.3. The Contractor guarantees that the rights of the European Commission, of the European Anti-Fraud Office and of the European Court of Auditors to carry out audits, checks and verification will be equally applicable, under the same conditions and according to the same rules as those set out in this Article, to any sub-contractor or any other party benefiting from EU budget or EDF funds.

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 Project Manager during the period of implementation of the tasks.
- 26.2. All invoices must be accompanied by an interim or final report. All invoices for a fee-based contract must also be accompanied by an up to date financial report and an invoice for the actual

costs 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). This financial report shall indicate, at a minimum, the expenditure of the reporting period, the cumulative expenditure and the balance available

- 26.3. Immediately prior to the end of the period of implementation of the tasks, 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 Project Manager 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.
- 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 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 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. 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 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.
- 27.4. Where the final progress report is not approved, the dispute settlement procedure is automatically invoked.
- 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, 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 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 of the contract.
- (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. .

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.

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 the following manner:

1. A pre-financing payment, if requested by the Consultant, of an amount as requested up to the maximum specified below, within 45 days of receipt by the Contracting Authority of the Contract signed by both parties, of a request for payment and of a financial guarantee, as defined in Article 30. The pre-financing shall be of a maximum of 40 % of the total contract amount if the implementation period of the tasks is 12 months or less, 30 % of the total contract amount if the implementation period of the tasks is between 12 and 24 months, and 20 % of the total contract amount if the implementation period of the tasks is 24 months or more.
2. Six-monthly interim payments, if any, as indicated in Article 7.2 of the Special Conditions, within 45 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 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 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 45 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 the following manner:

1. a pre-financing payment up to 60 % of the contract value stated in Article 3 of the Special Conditions within 45 days of receipt by the Contracting Authority of the Contract signed by both parties, and 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 45 days of the Contracting Authority receiving a final invoice accompanied by the final progress report, subject to approval of that report in accordance with Article 27
- 29.2. The payment deadline of 45 calendar days referred to in Article 29.1 shall expire on the date on which the Contracting Authority's account is debited. Without prejudice to Article 36.3, the Contracting Authority may halt the countdown towards this deadline for any part of the invoiced amount disputed by the Project Manager 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.
- 29.3. 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;
 - at the rediscount rate applied by the central bank of the beneficiary 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 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.
- 29.4. Payments due from the Contracting Authority shall be made into the bank account notified by the Consultant in accordance with Article 7.8.
- 29.5. The Contracting Authority will make payments in euro or in the national currency, in accordance with 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.
- 29.6. 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 7 hours worked are deemed to be equivalent to one day worked. For all experts, their time input must be rounded to the nearest whole number of days worked for the purposes of invoicing.
- 29.7. 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 as satisfactory by the Contracting Authority.

- 29.8. 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;
 - (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;
- 29.9. All payments made by the Contracting Authority into the bank account specified in the contract will have liberating effect.

The payment obligations of the European Commission under this contract shall cease at most 18 months after the end of the period of implementation of the tasks, unless the contract is terminated in accordance with Article 36.1 of the General Conditions.

ARTICLE 30. FINANCIAL GUARANTEE

- 30.1. If the pre-financing payment stated in Article 7.2 of the Special Conditions exceeds EUR 150,000, or if no proof documents have been provided for the selection criteria, the Consultant must provide a 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 may be provided in the form of a bank guarantee, a banker's draft, a certified cheque, a bond provided by an insurance and/or bonding company, an irrevocable letter of credit or a cash deposit made with the Contracting Authority. This financial guarantee must remain valid until it is released by the Contracting Authority in accordance with Article 30.5 or Article 30.6, as appropriate. Where the contractor is a public body the obligation for a financial guarantee may be waived depending on a risk assessment made.
- 30.2. The financial guarantee shall be provided on the letterhead of the financial institution using the template provided in Annex VI.
- 30.3. Should the financial guarantee cease to be valid and the Consultant fail to re-validate it, 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, 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 forthwith in order to repay any balance still owed to the Contracting Authority by the Consultant, and the guarantor shall not delay payment or raise objection for any reason whatever.
- 30.5. For fee-based contracts, any existing financial guarantee shall be released when the pre-financing is reimbursed in accordance with Article 29.1.
- 30.6. For global price contracts, the financial guarantee must remain in force until the final payment has been made.

ARTICLE 31. RECOVERY OF DEBTS FROM THE CONSULTANT

- 31.1. The Consultant shall repay any amounts paid in excess of the final amount due to the Contracting Authority 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,
- (b) at the rediscount rate applied by the central bank of the beneficiary 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 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.
- 31.5. Where necessary the European Union may as a donor subrogate itself to the Contracting Authority.

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 contract where it fails to discharge any of its obligations under the contract.
- 34.2. 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.
- 34.3. Damages may be:
 - (a) general damages; or

(b) liquidated damages.

34.4. 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.

34.5. The Contracting Authority shall be entitled to compensation for any damage which comes to light after the contract is completed in accordance with the law governing the contract.

ARTICLE 35. SUSPENSION OF THE CONTRACT

35.1. Where the award procedure or performance of the contract is vitiated by substantial errors or irregularities or by suspected or proven fraud, the Contracting Authority shall suspend payments and/or execution of the contract.

35.2. Where such errors, irregularities or fraud are attributable to the Consultant, the Contracting Authority may in addition refuse to make payments or may recover amounts already paid, in proportion to the seriousness of the errors, irregularities or fraud. The Contracting Authority may also suspend payments in cases where there are suspected or established errors, irregularities or fraud committed by the Consultant in the performance of another contract funded by the general budget of the European Union or by EDF which are likely to affect the performance of the present contract.

35.3. The Contracting Authority may suspend the implementation of the contract when it considers such a suspension being in the interest of the project.

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 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 defined in these General Conditions, the Contracting Authority may terminate the contract after giving 7 days' notice to 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 a reasonable time with the notice given by the Project Manager requiring it to make good the neglect or failure to perform its obligations under the contract which seriously affects the proper and timely performance of the services;
- (c) the Consultant refuses or neglects to carry out administrative orders given by the Project Manager;
- (d) the Consultant assigns the contract or sub-contracts without the authorisation of the Contracting Authority;
- (e) the Consultant becomes bankrupt or is being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (f) the Consultant has been convicted of an offence concerning its professional conduct by a judgment which has the force of *res judicata*;

- (g) the Consultant has been guilty of grave professional misconduct proven by any means which the Contracting Authority can justify;
- (h) 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 detrimental to the financial interests of the EU;
- (i) 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.
- (j) 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;
- (k) any other legal disability hindering performance of the contract occurs;
- (l) the Consultant fails to provide the required guarantees or insurance, or the person providing the underlying guarantee or insurance is not able to abide by its commitments;
- (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.

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 Contracts without prejudice to any liability thereunder that may have already been incurred.
- 36.5. Upon termination of the contract or when it has received notice thereof, the 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 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.
- 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.
- 36.9. The Contracting Authority may, at any time and after giving the Consultant seven 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.

ARTICLE 37. TERMINATION BY THE CONSULTANT

- 37.1. 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 29; 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.
- 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 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 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, 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 force majeure.
- 38.5. If either party considers that any circumstances of force majeure have occurred which may affect performance of its obligations it shall notify the other party immediately giving details of the nature, the probable duration and likely effect of the circumstances. Unless otherwise directed by the 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.
- 38.6. 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 38.5 the amount thereof shall be certified by the Project Manager subject to the maximum contract value.
- 38.7. If circumstances of force majeure have occurred and persist for a period of 180 days then, notwithstanding any extension of the period of 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.

SETTLEMENT OF DISPUTES

ARTICLE 40. SETTLEMENT OF DISPUTES

- 40.1. The Parties shall make every effort to settle amicably any dispute relating to the contract which may arise between them.
- 40.2. Once a dispute has arisen, a Party shall notify the other Party in writing of the dispute, stating its position on the dispute and any solution which it envisages, and requesting amicable settlement. The other Party shall respond to this request for amicable settlement within 30 days, stating its position on the dispute. Unless the Parties agree otherwise, the maximum time period laid down for reaching an amicable settlement shall be 120 days from the date of the notification requesting such a procedure. Should a Party not agree to the other Party's request for amicable settlement, should a Party not respond in time to that request or should no amicable settlement be reached within the maximum time period, the amicable settlement procedure is considered to have failed.
- 40.3. In the absence of an amicable settlement, a Party may notify the other Party in writing requesting a settlement through conciliation by a third person. If the European Commission is not a Party to the contract, the Commission can accept to intervene as such a conciliator. The other Party shall respond to the request of conciliation within 30 days. Unless the Parties agree otherwise, the maximum time period laid down for reaching a settlement through conciliation shall be 120 days from the notification requesting such a procedure. Should a Party not agree to the other Party's request for conciliation, should a Party not respond in time to that request or should no settlement be reached within the maximum time period, the conciliation procedure is considered to have failed.
- 40.4. If amicable settlement procedure and, if so requested, the conciliation procedure fails, each party may refer the dispute to either the decision of a national jurisdiction or arbitration, as specified in Article 11 of the Special Conditions.