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# General Conditions for Service Contracts

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Fondazzjoni għall-Patrimonju  
Kulturali ta' l-Arcidjocesi ta' Malta

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## GLOSSARY

**Administrative Order:** Any instruction or order issued by the Project Manager/Leader/Engineer to the Contractor in writing regarding the execution of the contract.

**Beneficiary Country:** The Maltese Islands.

**Blacklisted Person:** Any person, whether legal or natural, with whom a Contracting Authority and anybody governed by public law shall be prohibited from carrying out any procurement whether directly or as a sub-contractor or as a member of a consortium and, or joint venture.

**Breakdown of the Overall Price:** A heading-by-heading list of the rates and costs making up the price for a lump-sum or global sum contract.

**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.

**Cash Flow Forecast:** The Contractor's estimate of the cash flows arising directly from the execution of a fee-based contract.

**Conflict of Interest:** Any event influencing the capacity of a candidate, tenderer or supplier to give an objective and impartial professional opinion, or preventing him, at any moment, from giving priority to the interests of the Contracting Authority. Any consideration relating to possible contracts in the future or conflict with other commitments, past or present, of a candidate, tenderer or supplier, or any conflict with his own interests. These restrictions also apply to sub-contractors and employees of the candidate, tenderer or supplier.

**Contract Value:** The total value of the contract to be paid by the Contracting Authority in terms of the agreed terms and conditions.

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

**Contracting Authority:** The final beneficiary of the contract.

**Contractor:** The successful tenderer, once all parties have signed the contract.

**Day:** Calendar day.

**Day Works:** Varied work inputs subject to payment on an hourly basis for the Contractor's employees and plant.

**Defects Notification Period:** The period stated in the contract immediately following the date of provisional acceptance (in works contracts), during which the Contractor is required to complete the works and to remedy defects or faults as instructed by the Engineer.

**Drawings:** Drawings provided by the Contracting Authority, and/or drawings provided by the Contractor and approved by the Project Manager, for the carrying out of the services/works.

**EC:** The European Commission.

**ESPD:** The European Single Procurement Document. The ESPD allows economic operators to self-declare that they:

- do not fall within a ground for exclusion or blacklisting (or, if they do, they can demonstrate that they have taken self-cleansing measures);
- meet the relevant selection criteria; and
- (where applicable) fulfil the objective rules and criteria for reduction of candidates.

**EU:** The European Union.

**Engineer's Representative:** Any natural or legal person, designated by the Engineer as such under the contract, and empowered to represent the Engineer in the performance of his functions and in exercising such rights and/or powers as have been delegated to him. In this case, references to the Engineer will include his representative.

**Equipment:** Machinery, apparatus, components and any other articles intended for use in the works.

**Evaluation Committee:** A committee made up of an odd number of voting members (at least three) appointed by the Contracting Authority as the case may be, and possessing the technical, linguistic and administrative capacities necessary to give an informed opinion on tenders.

**Fee-Based Contract:** A contract under which the services are provided on the basis of fixed fee rates for each day/hour worked by experts/service provider.

**Final Acceptance Certificate:** Certificate(s) issued by the Engineer to the Contractor at the end of the defects notification period stating that the Contractor has completed his obligations to construct, complete, and maintain the works concerned.

**Final Beneficiary:** *The Contracting Authority issuing this tender.*

**Foreign Currency:** Any currency permissible under the applicable provisions and regulations other than the Euro, which has been indicated in the tender.

**General Conditions:** The general contractual provisions setting out the administrative, financial, legal and technical clauses governing the execution of contracts.

**General Damages:** The sum not stated beforehand in the contract, which is awarded by a court or an 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.

**In Writing:** This includes any hand-written, typed or printed communication, including fax transmissions and electronic mail (e-mail).

**Label:** Any document, certificate or attestation confirming that the works, products, services, processes or procedures in question meet certain requirements.

**Liquidated Damages:** The sum stated in the contract as compensation payable by the Contractor to the Contracting Authority for failure to complete the contract or part thereof within the periods under the contract, or as payable by either party to the other for any specific breach identified in the contract.

**Modification:** An instruction given by the Project Manager/Leader/Engineer which modifies the works/supplies/services.

**Month:** Calendar month.

**National Currency:** The currency of the country of the Contracting Authority, which is the Euro.

**Period:** A period begins the day after the act or event chosen as its starting point. Where the last day of a period is not a working day, the period expires at the end of the next working day.

**Plant:** Appliances and other machinery, and, where applicable under the law and/or practice of the state of the Contracting Authority, the temporary structures on the site required to carry out the works but excluding equipment or other items required to form part of the permanent works.

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

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

**Provisional Sum:** A sum included in the contract and so designated for the execution of works or the supply of goods, materials, plant or services, or for contingencies, which sum may be used in whole or in part, or not at all, as instructed by the Engineer.

**Public Service:** Government Ministries and Departments.

**Services:** Activities to be performed by the Contractor under the contract such as technical assistance, studies, training and designs.

**Site:** The places provided by the Contracting Authority where the works/services are to be carried out or where the supplies are to be commissioned and other places stated in the contract as forming part of the site.

**Special Conditions:** The Special Conditions laid down by the Contracting Authority are an integral part of the tender document, amplifying and supplementing the general conditions. These clauses are specific to the contract and the terms of reference (for a service contract) or technical specifications (for a supply or works contract).

**Supervisor/Engineer:** The legal or natural person responsible for administering the contract on behalf of the Contracting Authority.

**Technical Specifications:**

(a) in the case of public works contracts, the totality of the technical prescriptions contained in the procurement documents, defining the characteristics required of a material, product or supply, so that it fulfils the use for which it is intended by the Contracting Authority; those characteristics include levels of environmental and climate performance, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions and production processes and methods at any stage of the life cycle of the works; those characteristics also include rules relating to design and costing, the test, inspection and acceptance of conditions for works and methods or techniques of construction and all other technical conditions which the Contracting Authority is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve;

(b) in the case of supply contracts, the specification in a document defining the required characteristics of a product or a service, such as quality levels, environmental and climate performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods at any stage of the life cycle of the supply and conformity assessment procedures.

**Tender Document/s:** The procurement documents compiled by the Contracting Authority and containing all the documents needed to prepare and submit a tender.

**Tender Price:** The sum stated by the tenderer in his tender for carrying out the contract.

**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 provision of services, specifying, where relevant, the methods and resources to be used by the Contractor and/or the results to be achieved by it.

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

**Works:** Works of a permanent or temporary nature executed under the contract.

**Written communications:** Certificates, notices, orders and instructions issued in writing under the contract.

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**A. PRELIMINARY PROVISIONS****Article 1: Definitions and Conventions**

- 1.1 If this contract is signed in more than one language, the English version prevails in the event of inconsistencies between the different language versions.
- 1.2 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.
- 1.3 The definitions outlined in Glossary apply to the contract.
- 1.4 Where the context so permits words importing the singular shall be deemed to include the plural and vice versa and words importing the masculine shall be deemed to include the feminine and vice versa.
- 1.5 The word “country” shall be deemed to include State or Territory.
- 1.6 Words importing persons or parties shall include firms and companies and any organisation having legal capacity.
- 1.7 The Parties to the contract are to ensure that the implementation and the execution of this contract is to be carried out in compliance with the Public Procurement Regulations 2016 (Subsidiary Legislation 174.04). Instances not regulated by this contract are regulated by Maltese Law.

**Article 2: Notices and written Communications**

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

**Article 3: Assignment**

- 3.1 An assignment is any agreement by which the Contractor transfers its contract or part thereof to a third party.
- 3.2 The Contractor shall not, without the prior written consent of the Contracting Authority, assign the contract or any part thereof, or any benefit or interest there under.

- 3.3** The approval of an assignment by the Contracting Authority shall not relieve the Contractor of its obligations for the part of the contract already performed or the part not assigned.
- 3.4** Assignees must satisfy the eligibility criteria applicable to the award of the contract.

**Article 4: Subcontracting**

- 4.1** Any agreement by which the Contractor entrusts performance of a part of the services to a third party is considered to be a sub-contract.
- 4.2** The Contractor must seek the prior written authorisation of the Contracting Authority before entering into a sub-contract. This authorisation will be based on the services to be subcontracted and the identity of the intended subcontractor. The Contracting Authority shall, with due regard to the provisions of Article 2.2, within 30 days of receipt of the notification, notify the Contractor in writing of its decision, stating reasons, should it withhold such authorisation.
- 4.3** No sub-contract can create contractual relations between any subcontractor and the Contracting Authority.
- 4.4** The Contractor shall be responsible for the acts, defaults and negligence of its sub-contractors and their experts, agents or employees, as if they were the acts, defaults or negligence of the Contractor, its experts, agents or employees. The approval by the Contracting Authority of the sub-contracting of any part of the contract or of the engagement by the Contractor of subcontractors to perform any part of the services shall not relieve the Contractor of any 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 Contractor forthwith, either to provide a subcontractor with qualifications acceptable to the Contracting Authority as a replacement, or to resume the performance of the services itself.
- 4.6** Before granting the prior approval mentioned under Article 4.2, the Contracting Authority shall ensure that the subcontractor does not fall under any of the exclusion criteria and is not blacklisted in terms of Part VI of the Public Procurement Regulations.
- 4.7** In the execution of this contract, a subcontractor must ensure that he complies with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Schedule 13 of the Public Procurement Regulations.
- 4.8** Those services entrusted to a subcontractor by the Contractor cannot be entrusted to third parties by the subcontractor.
- 4.9** The Contracting Authority shall not be bound to the subcontractors and the legal relationship shall be solely with the Contractor as provided in the Public Procurement Regulations.
- 4.10** Any change of subcontractor without the prior written consent of the Contracting Authority shall be considered to be a breach of contract.

**B. OBLIGATIONS OF THE CONTRACTING AUTHORITY****Article 5: Supply of Information**

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

**Article 6: Assistance with Local Regulations**

- 6.1** The Contractor may request the assistance of the Contracting Authority 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 Contractor in the performance of its obligations under the contract. The Contracting Authority may charge the Contractor for such assistance, which would be provided at the Contractor's own expense.
- 6.2** 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.

## C. OBLIGATIONS OF THE CONTRACTOR

### **Article 7: General Obligations**

- 7.1** The Contractor shall respect and abide by all laws and regulations in force in the beneficiary country including but not limited to obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Schedule 13 of the Public Procurement Regulations. The Contractor shall ensure that its personnel, their dependants, and its local employees also respect and abide by all such laws and regulations. The Contractor shall indemnify the Contracting Authority against any claims and proceedings arising from any infringement by the Contractor, its employees and their dependants of such laws and regulations. Without prejudice to the above, the Contractor shall be bound to conform and comply with Chapter 452 of The Laws of Malta (Employment and Industrial Relations Act, 2002 – Act No. XXII of 2002) and to all regulations/legal notices that form part of this Act.
- 7.2** The Contractor shall perform the services under the contract with due care, efficiency and diligence, in accordance with the best professional practice.
- 7.3** The Contractor shall ensure that, when procuring items which are intended to be used in the execution of this contract he must procure items which adhere with the standards established under the following Legislations: *Indication by Labelling and Standard Product Information of the Consumption of Energy and other Resources by Energy Related Products Regulations*, S.L.427.24; *Framework for the Setting of EcoDesign requirements for Energy related products Regulations*, S.L.427.64 and the *Energy Efficiency and Cogeneration Regulations*, S.L. 423.27 (The Third Schedule detailing the Implementation of Art 6 on Purchasing by Contracting Authorities making reference to Council Decision 2006/1005/EC and Regulation(EC) 1222/2009).
- 7.4** The Contractor shall comply with administrative orders given by the Project Manager. Where the Contractor considers that the requirements of an administrative order go beyond the authority of the Project Manager or of the scope of the contract, it shall, on pain of being time-barred, notify the Project Manager, explaining its opinion, within 30 days after receipt thereof. Execution of the administrative order shall not be suspended because of this notice. Where the administrative order relates to the modification of the contract, the prior approval of the Contracting Authority, is to be obtained.
- 7.5** The Contractor shall treat all documents and information received in connection with the contract as private and confidential, and shall not, save in so far as may be necessary for the purposes of the performance thereof, publish or disclose any particulars of the contract without the prior consent in writing of the Contracting Authority or the Project Manager after consultation with the Contracting Authority. If any disagreement arises as to the necessity for any publication or disclosure for the purpose of the contract, the decision of the Contracting Authority shall be final. The Contracting Authority can however, for service contracts with a value which is equal to or exceeds one million Euro, disclose any part of this contract subject to the applicable national rules on access to documents and data protection.
- 7.6** If the Contractor is a Consortium of two or more persons, all such persons shall be jointly

and severally bound to fulfil the terms of the contract. The person designated by the Consortium to act on its behalf for the purposes of this contract shall have the authority to bind the Consortium.

- 7.7** The Contractor shall not make changes in the personnel without notifying the Contracting Authority, which may oppose such a change on the basis of the contract.
- 7.8** Where a member of staff must be replaced, the replacement must possess at least equivalent qualifications and experience. Where the Contractor is unable to provide a replacement with equivalent qualifications and/or experience, the Contracting Authority may either decide to terminate the contract, if the proper performance of it is jeopardised, or, if it considers that this is not the case, accept the replacement, provided that the fees of the latter are renegotiated to reflect the appropriate remuneration level.
- 7.9** Additional costs incurred by the replacement of staff are the responsibility of the Contractor. Where the personnel including expert is not replaced immediately and it is some time before the new personnel takes up its functions, the Contracting Authority may ask the Contractor to assign to the project a temporary replacement pending the arrival of the new personnel, or to take other measures to compensate for the temporary absence of the missing personnel. Whatever the case may be, the Contracting Authority makes no payment for the period of the replacement's absence.
- 7.10** 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.
- 7.11** Unless otherwise requested or agreed by the Contracting Authority, the Contractor shall take the necessary steps to ensure that the financial contribution of the EU is given adequate publicity. These steps must follow the rules applicable to the visibility of external actions as defined and published by the EC.
- 7.12** The Contractor shall, within 15 calendar days of receipt of the contract, sign and date the contract and return it to the Contracting Authority together with a copy of the Performance Guarantee. The Contractor is therefore obliged to forward the original Performance Guarantee to the Contracting Authority. The amount of the guarantee shall be 4% where the amount of the total contract value is between €10,000 and €500,000 exclusive of VAT, and 10% where the amount of the total contract value is €500,000 or above.

In the case that the value of the contract does not exceed €10,000, no Performance Guarantee is required.

The Performance Guarantee shall be held against payment to the Contracting Authority for any loss resulting from the Contractor's failure to perform his contractual obligations fully and properly.

The Performance Guarantee shall be in the format given by the Contracting Authority, and must be provided in the form of a bank guarantee. **The Contracting Authority will not effect any payment to the Contractor until the Performance Guarantee has been submitted.**

- 7.13** The Performance Guarantee shall be denominated in the currency in which the contract is payable. No payments shall be made in favour of the Contractor prior to the provision of the guarantee. The guarantee shall continue to remain valid until the contract has been fully and properly performed.

During the performance of the contract, if the natural or legal person providing the guarantee is not able to abide by his commitments or fails to extend the guarantee within the timeframe indicated by the Contracting Authority, the latter may:

- a) Call upon the valid Performance Guarantee in place.
- b) Where the option established under paragraph (a) cannot be executed, the Contracting Authority may suspend the payments due to the Contractor till the guarantee is in place or terminate the contract. Before so doing, the Contracting Authority shall send a registered letter with acknowledgement of receipt, informing the Contractor of its intention.

- 7.14** The Contracting Authority shall demand payment from the guarantee of all sums for which the guarantor is liable under the guarantee due to the Contractor's default under the contract, in accordance with the terms of the guarantee and up to the value thereof. The guarantor shall, without delay, pay those sums upon demand from the Contracting Authority and may not raise any objection for any reason whatsoever. Before making any claim under the Performance Guarantee, the Contracting Authority shall notify the Contractor stating the nature of the default in respect of which the claim is to be made.

- 7.15** Unless the Special Conditions provide otherwise, the Performance Guarantee shall be released within 30 days of the signing of the provisional acceptance certificate. However, in view of the special features of the contract, the Special Conditions may provide for half the guarantee to be released or refunded on the date of provisional acceptance.

#### **Article 8: Code of Conduct**

- 8.1** The Contractor 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 Contractor and its personnel shall respect human rights and undertake not to offend the political, cultural and religious practices prevailing in the beneficiary country.

- 8.3** The Contractor shall also ensure that in the execution of the Contract, if the Contractor's or any of its subcontractors, personnel, agents or servants offers to give or agrees to offer or to give or gives to any person, any bribe, gift, gratuity or commission as an inducement or reward for doing or forbearing to do any act in relation to the contract or any other contract with the Contracting Authority, or for showing favour or disfavour to any person in relation to the contract or any other contract with the Contracting Authority, then the Contracting Authority may terminate the contract, without prejudice to any accrued rights of the Contractor under the contract.
- 8.4** The payments to the Contractor under the contract shall constitute the only income or benefit it may derive in connection with the contract and neither it nor its personnel shall accept any commission, discount, allowance, indirect payment or other consideration in connection with, or in relation to, or in discharge of, its obligations under the contract.
- 8.5** The Contractor shall not have the benefit, whether directly or indirectly, of any royalty, gratuity or commission in respect of any patented or protected article or process used in or for the purposes of the contract or the project, without the prior written approval of the Contracting Authority.
- 8.6** The Contractor and its staff shall maintain professional secrecy, for the duration of the contract and after completion thereof. In this connection, except with the prior written consent of the Contracting Authority, neither the Contractor nor the personnel employed or engaged by it shall at any time communicate to any person or entity any confidential information disclosed to them or discovered by them, or make public any information as to any other Contractor or supplier with whom the Contractor is associated or affiliated shall be disqualified from the execution of works, supplies or other services for the project in any capacity, including tendering for any part recommendations formulated in the course of or as a result of the services. Furthermore, they shall not make any use prejudicial to the Contracting Authority, of information supplied to them and of the results of studies, tests and research carried out in the course and for the purpose of performing the contract.
- 8.7** The execution of the contract shall not give rise to unusual commercial expenses. If such unusual commercial expenses emerge, the contract will be terminated. Unusual commercial expenses are commissions not mentioned in the contract or not stemming from a properly concluded contract referring to the contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commission paid to a company which has every appearance of being a front company.
- 8.8** The Contractor shall supply to the Contracting Authority on request supporting evidence regarding the conditions in which the contract is being executed. The Contracting Authority may carry out whatever documentary or on-the-spot checks it deems necessary to find evidence in case of suspected unusual commercial expenses.

**Article 9: Conflict of Interest**

- 9.1** The Contractor shall take all necessary measures to prevent or end any situation that could compromise the impartial and objective performance of the Contract. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity,

family or emotional ties, or any other relevant connection or shared interest. Any conflict of interests which could arise during performance of the Contract must be notified in writing to the Contracting Authority without delay.

**9.2** The Contracting Authority reserves the right to verify that such measures are adequate and may require additional measures to be taken if necessary. The Contractor shall ensure that its staff, including its management, is not placed in a situation which could give rise to conflict of interests. Without prejudice to Article 7, the Contractor shall replace, immediately and without compensation from the Contracting Authority, any member of its staff exposed to such a situation.

**9.3** The Contractor shall refrain from any contact which would compromise its independence or that of its personnel.

If the Contractor fails to maintain such independence, the Contracting Authority may, without prejudice to compensation for any damage which it may have suffered on this account, terminate the contract forthwith, without giving formal notice thereof.

**9.4** The Contractor shall after the conclusion or termination of the contract, limit its role in connection with the project to the provision of the services. Except with the written permission of the Contracting Authority, the Contractor and any other Contractor, or supplier with whom the Contractor is associated or affiliated shall be disqualified from the execution of works, supplies or other services for the project in any capacity, including tendering for any part of the project.

**9.5** Public employees may be recruited as experts as long as it is ascertained through a self- declaration; that they do not fall in any of the provisions laid down in the Public Administration Act - Chapter 497 of the Laws of Malta (First Schedule Code of Ethics Article 5).

**9.6** The Contractor and anyone working under its authority or control in the performance of the contract or on any other activity shall be excluded from access to EC financing available under the same project.

#### **Article 10: Administrative and Financial Penalties**

**10.1** Without prejudice to the application of penalties laid down in the contract, if the Contractor has been guilty of making false declarations or has been found to have seriously failed to meet its contractual obligations in an earlier procurement procedure, it shall be excluded from the award of contracts for a maximum of two (2) years from the time when the infringement is established, to be confirmed after an adversarial procedure with the Contractor. The Contractor may justify its arguments against the penalty within 30 days of notification of it by recorded delivery or equivalent. In the absence of a reaction for its part or of the written withdrawal of the penalty by the Contracting Authority within 30 days of the above-mentioned arguments, the decision imposing the penalty will become binding. The period of exclusion may be extended to three (3) years in the event of a repeat offence within five (5) years of the first infringement.

**10.2** Contractors who have been found to have seriously failed to meet their contractual obligations shall also be subject to financial penalties representing 10% of the total value of the contract. This rate may be increased to 20% in the event of a repeat offence within five (5) years of the first infringement.

**Article 11: Specifications and Designs**

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

**Article 12: Indemnification**

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

**Article 13: Medical, Insurance and Security Arrangements**

- 13.1** The Contracting Authority may request the Contractor and/or its personnel performing the

services to undergo a medical examination by a qualified medical practitioner before leaving their usual place of residence and shall as soon as is practicable furnish the Contracting Authority with the medical report resulting there from.

- 13.2** Unless otherwise stated in the Special Conditions, or the period of execution of the contract, the Contractor shall obtain medical insurance for itself and other persons employed or contracted by it under the contract. The Contracting Authority shall be under no liability in respect of the medical expenses of the Contractor.
- 13.3** Within 20 days of signing the contract, the Contractor shall take out and maintain a full indemnity insurance policy for a sum up to the higher of the maximum amount foreseen by the legislation of the country of the Contracting Authority and the amount foreseen by the legislation of the country in which the Contractor has its headquarters and covering, during the period of execution of the contract, the following aspects:
- a) the Contractor's liability in respect of sickness or industrial accident affecting its employees, including the cost of repatriation on health grounds;
  - b) loss of, or damage to, the Contracting Authority's equipment used to perform the contract;
  - c) civil liability in the event of accidents caused to third parties or to the Contracting Authority and any employee of that Authority arising out of the performance of the contract; and
  - d) accidental death or permanent disability resulting from bodily injury incurred in connection with the contract.
- 13.4** The Contractor shall also insure the personal effects of its employees, experts and their families located in the beneficiary country against loss or damage.
- 13.5** The Contractor shall furnish proof of the insurance policy and of regular payment of premiums without delay whenever required to do so by the Contracting Authority or the Project Manager.
- 13.6** The Contractor shall put in place security measures for its employees, experts and their families located in the beneficiary country commensurate with the physical danger facing them.
- 13.7** The Contractor will also be responsible for monitoring the level of physical risk to which its employees, experts and their families located in the beneficiary country are exposed and for keeping the Contracting Authority informed of the situation. In the event that the Contracting Authority or the Contractor shall become aware of an imminent threat of danger to the life or health of any of its employees, experts or their families, the Contractor may take immediate action to remove the individuals concerned to safety. If the Contractor takes such action, this must be communicated immediately to the Project Manager and may lead to suspension of the contract in accordance with Article 35.
- 13.8** Without prejudice to the above, the Contractor shall be bound to conform and comply with Chapter 424 of The Laws of Malta (Occupational Health and Safety Authority Act 2000) as well as with LN281-2004 and to all regulations/legal notices that form part of this Act, as well as any other national legislation, regulations, standards, and/or codes of practice, in effect during the execution of the contract, regarding health and safety issues as they apply for the Contractor's particular operating situation and nature of work activities.

- 13.9** If and so far as the Contractor fails to effect and keep in force any of the insurance policies referred to in the Special and General conditions of the Contract, then the Contracting Authority may effect and keep in force any such instances and pay any premium as may be necessary for that purpose and deduct the amount paid to any monies due to the Contractor.

**Article 14: Intellectual and Industrial Property Rights**

- 14.1** All reports and data such as maps, diagrams, drawings, specifications, plans, statistics, calculations, databases, software and supporting records or materials acquired, compiled or prepared by the Contractor in the performance of the contract shall be the absolute property of the Contracting Authority.

The Contractor shall, upon completion of the contract, deliver all such documents and data to the Contracting Authority. The Contractor may not retain copies of such documents and data and shall not use them for purposes unrelated to the contract without the prior written consent of the Contracting Authority.

- 14.2** The Contractor shall not publish articles relating to the services or refer to them when carrying out any services for others, or divulge information obtained from the Contracting Authority, without the prior written consent of the Contracting Authority.
- 14.3** Any results or rights thereon, including copyright and other intellectual or industrial property rights, obtained in performance of the Contract, shall be the absolute property of the Contracting Authority, which may use, publish, assign or transfer them as it deems fit, without geographical or other limitation, except where intellectual or industrial property rights already exist.

**D. NATURE OF THE SERVICES****Article 15: Scope of the Services**

- 15.1** Without prejudice to other clauses in this contract the scope of the services is specified in Section 4 Terms of Reference and the offer submitted.
- 15.2** Where the contract is for an advisory function for the benefit of the Contracting Authority and/or Project Manager in respect of all the technical aspects of the project which may arise out of its execution, the Contractor shall not have decision-making responsibility.
- 15.3** Where the contract is for management of the execution of the project, the Contractor shall assume all the duties of management inherent in supervising the execution of a project, subject to the Project Manager's authority.
- 15.4** If the Contractor is required to prepare procurement documents, these shall contain all documents necessary for consulting suitable Contractors, manufacturers and suppliers, and for preparing tender procedures with a view to carrying out the works or providing the supplies or services covered by an invitation to tender. The Contracting Authority shall provide the Contractor with the information necessary for drawing up the administrative part of the procurement document.

**Article 16: Personnel and Equipment**

- 16.1** The Contractor shall give written notification to the Contracting Authority including the Curriculum Vitae (CVs) of all personnel which the Contractor intends to use for the implementation of the contract, other than the key experts included in Section 4 (Terms of Reference) shall specify the minimum level of training, qualifications and experience of the personnel and, where appropriate, the specialisation required. The Contracting Authority may oppose the Contractor's choice of personnel on the basis of this contract.
- 16.2** All those working on the contract shall commence their duties in line with what is established in the Special Conditions, or, failing this, upon the signature of the contract.
- 16.3** The Contractor shall keep the Project Manager informed of the names and qualifications of staff assigned to that part of the services.
- 16.4** Unless otherwise provided for in the Special Conditions the Contractor shall:
- a) Forward to the Project Manager within 15 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 written approval a timely request for the appointment of any non-key experts.
- 16.5** The Contractor shall adopt all measures necessary to provide and continue to provide its staff with the equipment and backup required to enable them to carry out their specified duties efficiently.

**Article 17: Replacement of Personnel and Trainees**

- 17.1** The Contractor shall not make changes in the personnel agreed under the terms of the contract without notifying the Contracting Authority, which may oppose such a change.
- 17.2** The Contractor must on its own initiative propose a replacement in the following cases:
- a) In the event of death, in the event of illness or in the event of accident of a member of staff.
  - b) If it becomes necessary to replace a member of staff for any other reasons beyond the Contractor's control (e.g. resignation, etc.).
- 17.3** 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.
- 17.4** Where a member of staff must be replaced, the replacement must possess at least equivalent qualifications and experience, and the remuneration to be paid to the replacement cannot exceed that received by the member of staff who has been replaced. Where the Contractor is unable to provide a replacement with equivalent qualifications and/or experience, the Contracting Authority may either decide to terminate the contract, if the proper performance of it is jeopardised, or, if it considers that this is not the case, accept the replacement, provided that the fees of the latter are renegotiated to reflect the appropriate remuneration level.
- 17.5** Additional costs incurred by the replacement of staff are the responsibility of the Contractor. Where the expert is not replaced immediately and it is some time before the new expert takes up its functions, the Contracting Authority may ask the Contractor to assign to the project a temporary expert pending the arrival of the new expert, or to take other measures to compensate for the temporary absence of the missing expert. Whatever the case may be, the Contracting Authority makes no payment for the period of the expert's or his/her replacement's absence.
- 17.6** If required in the terms of reference, the Contractor 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.
- 17.7** Instruction by the Contractor of such trainees shall not confer on them the status of employees of the Contractor. However, they must comply with the Contractor's instructions, and with the provisions of Article 8, as if they were employees of the Contractor. The Contractor may on reasoned request in writing obtain the replacement of any trainee whose work or conduct is unsatisfactory.
- 17.8** Unless otherwise provided in the contract, remuneration for trainees, travel, accommodation and all other expenses incurred by the trainees, shall be borne by the Contracting Authority.
- 17.9** The Contractor 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 Contractor 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.

**E. EXECUTION OF THE CONTRACT****Article 18: Execution of the Contract**

- 18.1** The Contracting Authority shall fix the date on which performance of the contract is to commence in the Special Conditions, and advise the Contractor thereof either in the notice of award of the contract or by administrative order issued by the Project Manager.
- 18.2** The period of execution of tasks shall commence on the date fixed in accordance with Article 18.1 and shall be as stated in the Special Conditions, without prejudice to extensions of the period which may be granted under Article 19.7.

**Article 19: Delays in Execution**

- 19.1** If the Contractor 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** Unless the Special Conditions specify otherwise, 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 Contractor and having obtained prior approval of the Central Government Authority:
- a) terminate the contract; and
  - b) complete the services at the Contractor's own expense.
- 19.4** Besides the penalties for delay envisaged in these conditions and without prejudice to all his other liabilities arising out of the contract, the Contractor shall also become liable to a penalty if the rate of progress of the work throughout the contract period is not satisfactory. The Contractor shall be considered to be in default if he fails to carry out, every month, at least 70% of the estimated monthly average progress. For the purpose of assessing such average progress the value of the contract shall be divided by the number of months stipulated in the contract period. Within each month the Contractor should complete works whose value is equivalent to the average progress obtained as above. However, in the case of contracts having a completion period of six (6) or more months, no penalty shall be imposed in respect of the first month from the date of allocation of the contract. Should the Contractor's progress fall below the minimum percentage progress, he will become liable to a penalty equivalent to 2% of the value of the contract in respect of every month during which progress is below standard. If the Contractor completes the whole contract within the stipulated period, the Government may consider the refund of any penalties the Contractor may have incurred for slow monthly progress.
- 19.5** Without prejudice to the above the Contractor may request an extension to the period of execution if his performance of the contract is delayed, or expected to be delayed, for any of the following reasons:
- a) extra or additional services ordered by the Contracting Authority;
  - b) exceptional weather conditions in the country of the Contracting Authority which may affect installation or erection of the supplies;

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- c) physical obstructions or conditions which may affect execution of the services, which could not reasonably have been foreseen by a competent Contractor;
  - d) administrative orders affecting the date of completion other than those arising from the Contractor's default;
  - e) failure of the Contracting Authority to fulfil its obligations under the contract;
  - f) any suspension of the execution of the services which is not due to the Contractor's default;
  - g) force majeure;
  - h) any other causes referred to in these General Conditions or the Special Conditions which are not due to the Contractor's default.

- 19.6** Within 15 days of realising that a delay might occur, the Contractor shall notify the Project Manager of his intention to make a request for extension of the period of performance to which he considers himself entitled and, save where otherwise agreed between the Contractor and the Project Manager, within 30 days provide the Project Manager with comprehensive details so that the request can be examined.
- 19.7** Within 30 days the Project Manager shall, by written notice to the Contractor after due consultation with the Contracting Authority and where appropriate, the Contractor, grant such extension of the period of performance as may be justified, either prospectively or retrospectively, or inform the Contractor that he is not entitled to an extension.

**Article 20: Modification of the Contract**

- 20.1** Any modification of the contract must be set out in writing in an addendum, to be concluded on the same terms as the original contract. Such modification must be justified in terms of part VIII of the procurement regulations. If the request for an amendment comes from the Contractor, the latter must submit such a request to the Contracting Authority at least 40 days before the amendment is intended to enter into force.
- 20.2** Unless otherwise allowed in the Public Procurement Regulations the Contractor cannot proceed with the modification unless the prior approval or permission of the Contracting Authority is obtained.
- 20.3** Any modification carried out against the expressed refusal of the Contracting Authority shall be deemed to be founded on unlawful consideration and the Contractor shall have no right for compensation with respect to that modification unless he shows that he was unaware of the refusal of the Contracting Authority.
- 20.4** The Project Manager shall, subject to the provisions of the Public Procurement Regulations, have the power to order any modification to any part of the services necessary for the proper execution of the contract, without changing the object or scope of the contract. Such modifications may include additions, omissions, substitutions, changes in quality, quantity, specified sequence, method or timing of performance of the services.
- 20.5** Subject to what is stated in the Public Procurement Regulations, the repetition of services shall be capped at a percentage that is to be specified in the Special Conditions. If such capping is not identified in the Special Conditions it shall be automatically capped at 30% of the contract value.

The prerogative to order such repetition of services shall vest in the Contracting Authority and if not used the Contractor shall have no claim against the Contracting Authority.

- 20.6** Subject to what is stated in the Public Procurement Regulations, the additional services (i.e. new services not included in the original tender) shall be capped at a percentage that is to be specified in the Special Conditions. If such capping is not identified in the Special Conditions it shall be automatically capped at 50% of the contract value.

The prerogative to order such additional services shall vest in the Contracting Authority and if not used the Contractor shall have no claim against the Contracting Authority.

Provided that before ordering additional services the Contracting Authority shall approve the rates to be used.

- 20.7** Subject to what is stated in the Public Procurement Regulations, prior to any administrative order for modification, the Project Manager shall notify the Contractor of the nature and form of such modification. As soon as possible, however not later than five (5) days after receiving such notice, the Contractor shall submit to the Project Manager a written proposal containing:

- a) a description of the service to be performed or the measures to be taken and a programme for execution; and
- b) any necessary modifications to the programme of performance or to any of the Contractor's obligations under the contract including modifications to the price; and
- c) For a fee-based contract, any adjustment to the contract value in accordance with the following principles:
  - (i) where the task is of similar character and executed under similar conditions to an item priced in the budget breakdown the equivalent numbers of working days shall be valued at the fee rates contained therein;
  - (ii) where the task is not of a similar character or is not executed under similar conditions, the fee rates in the contract shall be applied to the estimated numbers of working days so far as is reasonable, failing which, a fair estimation shall be made by the Project Manager;
  - (iii) where a modification is necessitated by a default or breach of contract by the Contractor, any additional cost attributable to such modification shall be borne by the Contractor.

- 20.8** Following the receipt of the Contractor's proposal, the Project Manager shall decide as soon as possible whether or not the modification shall be carried out. If the Project Manager decides that the modification shall be carried out he shall issue the administrative order stating that the modification is to be carried out, under the conditions given in the Contractor's proposal or as modified by the Project Manager in accordance with Article 20.5.

- 20.9** On receipt of the administrative order requesting the modification, the Contractor shall proceed to carry out the modification. The modification in question shall form an integral part of this contract.

- 20.10** The Contracting Authority shall give written notification to the Contractor of the name and address of the Project Manager. The Contractor shall give written notification to the Contracting Authority of the name and address of its contact, bank account and auditor for the contract. The Contracting Authority shall have the right to oppose the Contractor's choice of bank account or auditor.

- 20.11** All payments made by the Contracting Authority into the bank account specified in the contract will have liberating effect.

- 20.12** Any change to the contract which has not been made in the form of an administrative order or an addendum shall be considered null and void.

**Article 21: Working Hours**

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

**Article 22: Information**

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

**Article 23: Verification and Checks**

- 23.1** The Contractor will allow all auditing bodies which may from time to time be identified by the Contracting Authority to verify, by examining the documents or by means of on-the-spot checks, the implementation of the project and conduct a full audit, if necessary, on the basis of supporting documents for the accounts, accounting documents and any other document relevant to the financing of the project. These inspections may take place up to seven (7) years after the final payment.
- 23.2** Furthermore, the Contractor will allow the auditing bodies to carry out checks and verification on-the-spot in accordance with the procedures set out in the respective legislation.
- 23.3** To this end, the Contractor undertakes to give appropriate access to staff or agents of the auditing bodies 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 auditing bodies 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 and the Consultant must inform the Contracting Authority of their precise location.
- 23.4** The Contractor guarantees that the rights of the auditing bodies 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 subcontractor or any other party.

**Article 24: Interim and Final Progress Reports**

- 24.1** The Contractor must prepare progress reports during the period of execution of the contract.

For a fee-based contract, these progress reports must be accompanied by a financial report. The format of such reports is as specified by the Project Manager during the period of execution of the Contract.

- 24.2** All invoices (not including the request for the pre-financing payment) must be accompanied by a progress report and the final invoice must be accompanied by a final progress report. All invoices for a fee-based contract must also be accompanied by a financial report.
- 24.3** Immediately prior to the end of the period of execution of the contract, the Contractor shall draw up a final progress report which must include, if appropriate, a critical study of

any major problems which may have arisen during the performance of the contract.

- 24.4** This final progress report shall be forwarded to the Project Manager not later than 60 days after the end of the period of execution defined in Article 18 of the Special Conditions. Such report shall not bind the Contracting Authority.
- 24.5** Where the contract is performed in phases, the execution of each phase shall give rise to the preparation of a final progress report by the Contractor.
- 24.6** Interim and final progress reports are covered by the provisions of Article 14.

**Article 25: Approval of Reports and Documents**

- 25.1** The approval by the Contracting Authority of reports and documents drawn up and forwarded by the Contractor shall certify that they comply with the terms of the contract.
- 25.2** The Contracting Authority shall, within 45 days of receipt, notify the Contractor of its decision concerning the documents or reports received by it, giving reasons should it reject the reports or documents, or request amendments. For the final 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 Contractor may request written acceptance of them. The documents or reports shall be deemed to have been approved by the Contracting Authority if it does not expressly inform the Contractor of any comments within 45 days of the receipt of this written request.
- 25.3** Where a report or document is approved by the Contracting Authority subject to amendments to be made by the Contractor, the Contracting Authority shall, prescribe a period for making the amendments requested.
- 25.4** Where the final progress report of a global price contract is not approved, the dispute settlement procedure is automatically invoked.
- 25.5** 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.

## **F. PAYMENTS & DEBT RECOVERY**

### **Article 26: Payments and Interest on Late Payment**

**26.1** Payments will be made in accordance with one of the two options below, as identified in Article 26 of the Special Conditions. When the Contractor is carrying out either health services or economic activities of an industrial and commercial nature, the Contracting Authority shall pay the Contractor sums due within 60 days of the date on which an admissible invoice is registered. For all other instances a 30-day period is to apply.

#### **Option 1: Fee-based (unit-price) Contract**

Unless the Special Conditions stipulate otherwise, for EU Funded contracts with a contract value exceeding €100,000 (net of VAT) and/or whose implementation is longer than four (4) weeks the Contracting Authority will make payments to the Contractor in the following manner:

A pre-financing payment of 60% of the contract value, within 30 days of receipt by the Contracting Authority of the Contract signed by both Parties, of a request for the pre-financing payment and of a financial guarantee, as defined in Article 27;

Six-monthly interim payments, if any, as indicated in Article 26 of the Special Conditions, within 30 days of the approval by the Contracting Authority in accordance with Article 25 of the interim progress report which accompanies an invoice setting out the services actually performed, until the sum of the pre-financing payment and any interim payments is 90% of the maximum contract value stated in Article 26 of the Special Conditions;

The balance of the final certified value of the contract, subject to the maximum contract value stated in Article 26 of the Special Conditions, after deduction of the amounts already paid, within 30 days of the approval by the Contracting Authority in accordance with Article 25 of the final progress report which accompany the final invoice setting out the services actually carried out.

#### **Option 2: Global Price Contract**

Unless the Special Conditions stipulate otherwise, for EU Funded contracts with a contract value exceeding €100,000 (net of VAT) and/or whose implementation is longer than four (4) weeks the Contracting Authority will make payments to the Contractor in the following manner:

A pre-financing payment of 60% of the contract value within 30 days of receipt by the Central Government Authority of the Contract signed by both Parties, of a request for the pre-financing payment and of a financial guarantee, as defined in Article 27;

The balance of the contract value stated in the Special Conditions within 30 days of the approval by the Contracting Authority in accordance with the final progress report which accompanies the final invoice. Such approval or rejection may not be delayed by more than 30 days.

**26.2** The payment deadline of 30 calendar days referred to in Article 26.1 shall expire on the date on which the Contracting Authority's account is debited. Without prejudice to Article 34.3, 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 Contractor 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, or because any of the guarantees contemplated in this contract have either not been submitted by the Contractor, or if they have been submitted these have expired and have not been renewed.

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.

- 26.3** Once the deadline referred to above has expired, the Contractor may, within two (2) months of late payment, claim late-payment interest meaning simple interest for late payment at a rate which is equal to the sum of the reference rate and at least eight percent (8%); on the first day of the month in which the deadline expired. The late-payment interest shall apply to the time which elapses between the date of the payment deadline (exclusive), and the date on which the Contracting Authority's account is debited (inclusive).
- 26.4** Payments due from the Contracting Authority shall be made into the bank account notified by the Contractor in accordance with Article 20.7. In the case of acquisitions from service providers who are not registered with the VAT Authority in Malta, VAT shall be accounted for and paid by the Contracting Authority directly to the tax Authorities in Malta.
- 26.5** The Contracting Authority will make payments in Euro (€).
- 26.6** Payment of the final balance shall be subject to performance by the Contractor of all its obligations relating to the execution of all phases or parts of the services and to the approval by the Contracting Authority of the final phase or part of the services. Final payment shall be made only after the final progress report and a final statement, identified as such, shall have been submitted by the Contractor and approved as satisfactory by the Contracting Authority.
- 26.7** If any of the following events occurs and persists, the Contracting Authority may, by written notice to the Contractor, suspend in whole or in part, payments due to the Contractor under the Contract:
- a) the Contractor defaults in the execution of the contract;
  - b) any other condition for which the Contractor is responsible under the contract and which, in the opinion of the Contracting Authority, interferes, or threatens to interfere, with the successful completion of the project or the contract.
- 26.8** The payment obligations of the Treasury/Ministry of Finance under this Contract shall cease at most 18 months after the end of the period of execution of the tasks, unless the Contract is terminated in accordance with Article 34.1 of the General Conditions.

**Article 27: Financial Guarantee**

- 27.1** The Contractor must provide a Financial Guarantee for the full amount of the pre-financing payment. This Financial Guarantee must remain valid until it is released by the Contracting Authority in accordance with Article 27.5 or Article 27.6, as appropriate.
- 27.2** The Financial Guarantee shall be provided as required in the Special Conditions, and must be provided on the letterhead of the financial institution using the template provided by the Central Government Authority.

- 27.3** Should the Financial Guarantee cease to be valid and the Contractor fails to re-validate it, the Contracting Authority may either make deductions from future payments due to the Contractor 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.
- 27.4** 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 Contractor, and the guarantor shall not delay payment or raise objection for any reason whatever.
- 27.5** Unless otherwise specified in the Special Conditions, for fee-based contracts, the Financial Guarantee must remain in force until the final certified value established and has been accepted by the Contracting Authority. If the final certified value is greater than the total of the payments already made to the Contractor by the Contracting Authority under the contract, the Financial Guarantee must be released within 45 days of the acceptance of the final progress report by the Contracting Authority. If not, the Financial Guarantee may be reduced to cover the difference between the final certified value and the total of the payments already made to the Contractor by the Contracting Authority under the contract and the Financial Guarantee must be released within 45 days of repayment of the difference by the Contractor. Unless otherwise specified in the Special Conditions for global price contracts, the Financial Guarantee must remain in force until the submission by the Contractor and approval by the Contracting Authority of the first interim report.

**Article 28: Blacklisting**

- 28.1** This contract is null and void if it is signed with a blacklisted person.

**Article 29: Recovery of Debts from the Contractor**

- 29.1** Any amount which the Contracting Authority has paid, or caused to be paid, in excess of the Contractor's entitlement, irrespective of whether it is a global-price contract or a fee-based contract, shall be repaid by the Contractor to the Contracting Authority within 45 days after receipt by the Contractor of a request for repayment.
- 29.2** Should the Contractor fail to make repayment within the above deadline, the Contracting Authority may increase the amounts due by adding interest at the rediscount rate applied by the Central Bank of the beneficiary 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 (exclusive), and the date on which the Contractor's account is debited (inclusive).
- 29.3** Should the Contractor fail to repay the original balance within the above deadline and any interest added in accordance with Article 29.2, the Contracting Authority may call upon the Financial Guarantee referred to in Article 27, if any.
- 29.4** Amounts to be repaid to the Contracting Authority may be offset against amounts of any kind due to the Contractor. This shall not affect the right of the Contractor and the Contracting Authority to agree on repayment by installments.
- 29.5** Bank charges arising from the repayment of amounts due to the Contracting Authority shall be borne entirely by the Contractor.

**Article 30: Revision of Prices**

- 30.1** Subject to the provisions of Article 20 of the General Conditions, the global price of a global price contract and the fee rates of a fee-based contract shall not be revised. Article 1639 of the Civil Code shall not apply and cannot be availed of by the Contractor.

Provided that, tender prices in respect of hourly or daily rates, will be revised should any other increases determined by Government in respect of its policies be authorised between the closing date of the call for tenders and the conclusion of the contract.

- 30.2** Prices contained in the Contractor's tender shall be deemed:
- a) to have been determined on the basis of the conditions in force up to the date fixed for submission of tenders or, in the case of direct agreement contracts, on the date of the contract;
  - b) to have taken account of the legislation and the relevant tax arrangements applicable at the reference date fixed in sub-article(a).
- 30.3** In the event of changes to, or introduction of, any national or state statute, ordinance, decree or other law, or any regulation or bye-law of any local or other public authority, after the date stated in Article 46.3 which causes a change in the contractual relationship between the parties to the contract, the Contracting Authority and the Contractor shall consult on how best to proceed further under the contract, and may as a result of such consultation decide, with the prior approval of the Contracting Authority:
- a) to modify the contract; or
  - b) to provide for compensation for any imbalance caused by one Party to the other; or
  - c) to terminate the contract by mutual agreement.
- 30.4** At the end of the period of performance, revised as necessary in accordance with the contract, the Contractor cannot claim for further revision of prices within 30 days before the submission of the final report.

**Article 31: Payment to Third Parties**

- 31.1** All orders for payments to third parties may be carried out only after an assignment made in accordance with Article 3.
- 31.2** Notification of beneficiaries of assignment shall be the sole responsibility of the Contractor.
- 31.3** In the event of a legally binding attachment of the property of the Contractor affecting payments due to it under the contract and without prejudice to the time limit laid down in Article 26, the Contracting Authority shall have 60 days, starting from the day when it receives notification of the definitive lifting of the obstacle to payment, to resume payments to the Contractor.

## G. BREACH OF CONTRACT AND TERMINATION

### **Article 32: Breach of Contract**

- 32.1** Either party commits a breach of contract where it fails to discharge any of its obligations under the contract.
- 32.2** Without prejudice to any other remedies mentioned in this contract, where a breach of contract is attributable to the Contractor, the Contracting Authority shall be entitled to one or more of the following remedies as of right:
- a) request performance of an obligation and in case of non-performance, the Contracting Authority may cause the performance thereof itself at the expense of the Contractor;
  - b) terminate all or part of the contract;
  - c) conclude a contract with a third party replacing the Contractor, after prior termination of the original contract;
  - d) institute proceedings for damages.

Unless otherwise provided in the Special Conditions, recovery of damages, disbursements or expenses resulting from the application of measures provided for in this Article shall be effected without the need for a judicial declaration, by deduction from the sums due to the Contractor, from the deposit, or by payment under the guarantee.

- 32.3** In any case where the Contracting Authority is entitled to damages, it may deduct such damages from any sums due to the Contractor or call on the appropriate guarantee.
- 32.4** 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 33: Suspension**

- 33.1** 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, without thereby incurring any damages.
- 33.2** If the period of suspension exceeds 180 days and the suspension is not due to the Contractor's default, the Contractor may, by notice to the Project Manager, request permission to resume execution of the services within 30 days or terminate the contract.
- 33.3** Where the award procedure or execution of the contract is vitiated by substantial errors or irregularities or by fraud, the Contracting Authority shall suspend execution of the contract.
- 33.4** Where such errors, irregularities or fraud are attributable to the Contractor, the Contracting Authority may in addition refuse to make payments or may recover amounts already paid, in proportion to the seriousness of the errors, irregularities or fraud.
- 33.5** The suspension of the Contract is intended to allow the Contracting Authority to verify whether presumed substantial errors or irregularities or fraud have actually occurred. If they are not confirmed, execution of the contract shall resume as soon as possible.

### **Article 34: Termination by the Contracting Authority**

- 34.1** 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.
- 34.2** Termination shall be without prejudice to any other rights or powers under the contract of the Contracting Authority and the Contractor.
- 34.3** In addition to the grounds for termination defined in these General Conditions, the Contracting Authority may terminate the contract after giving seven (7) days' notice to the Contractor in any of the following cases:
- a) the Contractor fails to carry out its obligations under the contract;
  - b) the Contractor fails to comply within a reasonable time with the notice given by the Project Manager requiring it to make good the neglect or failure to perform its obligations under the contract which seriously affects the proper and timely execution of the services;
  - c) the Contractor refuses or neglects to carry out administrative orders given by the Project Manager;
  - d) the Contractor assigns the contract or subcontracts without the authorisation of the Contracting Authority;
  - e) the Contractor becomes bankrupt or is being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
  - f) the Contractor has been convicted of an offence concerning its professional conduct by a judgment which has the force of *res judicata*;
  - g) the Contractor has been guilty of grave professional misconduct proven by any means which the Contracting Authority can justify;
  - h) the Contractor has been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the financial interests of the EC;
  - i) following another procurement procedure or grant award procedure financed by the EC budget, the Contractor has been declared to be in serious breach of contract for failure to comply with its contractual obligations;
  - j) any organisational modification occurs involving a change in the legal personality, nature or control of the Contractor, unless such modification is recorded in an addendum to the contract;
  - k) any other legal disability hindering performance of the contract occurs;
  - l) the Contractor fails to provide the required guarantees or insurance, or the person providing the underlying guarantee or insurance is not able to abide by its commitments;
  - m) the Contractor fails to submit any bank guarantee as requested by this contract;
  - n) the contract has been subject to a substantial modification, which would have required a new procurement procedure pursuant to the Public Procurement Regulations;
  - o) the Contractor has, at the time of contract award, been in one of the situations referred to in Regulation 192 of the Public Procurement Regulations and should therefore have been excluded from the procurement procedure;
  - p) the contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC that has been declared by the

Court of Justice of the European Union in a procedure pursuant to Article 258 TFEU;

- q) A contract is also terminated if a Contractor is blacklisted in terms of Regulation 207 of the Public Procurement Regulations without any compensation as provided in Regulation 216 of the said Regulations.

- 34.4** The Contracting Authority may, following termination on the basis of Article 34.3, complete the services itself, or conclude any other contract with a third party, at the Contractor's own expense. The Contractor's liability for delay in completion shall immediately cease when the Contracting Authority terminates the Contracts without prejudice to any liability there under that may have already been incurred.
- 34.5** Without prejudice to other instances in these conditions where termination can take place, the Contracting Authority can terminate the contract for convenience at any time by giving a seven (7) day notice in writing to the Contractor. The Contracting Authority, may following termination on the basis of this condition, complete the services either itself or else by a separate procurement process.
- 34.6** Where termination has been carried out on the basis of Article 34.5, the Contracting Authority has to compensate the Contractor for all his expenses and work and to pay him any, according to circumstances, but not exceeding the profits which the Contractor would have made by the contract.
- 34.7** Upon termination of the contract or when it has received notice thereof, the Contractor shall take immediate steps to bring the services to a close in a prompt and orderly manner and in such a way as to keep costs to a minimum.
- 34.8** The Project Manager shall, as soon as is possible after termination, certify the value of the services and all sums due to the Contractor as at the date of termination.
- 34.9** The Contracting Authority shall not be obliged to make any further payments to the Contractor until the services are completed, whereupon the Contracting Authority shall be entitled to recover from the Contractor the extra costs, if any, of completing the services, or shall pay any balance due to the Contractor.
- 34.10** If the Contracting Authority terminates the contract, it shall be entitled to recover from the Contractor any loss it has suffered up to the maximum amount stated in the contract. If no maximum amount is stated, the Contracting Authority shall, without prejudice to its other remedies under the contract, be entitled to recover that part of the contract value which is attributable to that part of the services which has not, by reason of the Contractor's failure, been satisfactorily completed.
- 34.11** Unless otherwise provided in these conditions, the Contractor shall not be entitled to claim, in addition to sums owing to it for work already performed, compensation for any loss or injury suffered.
- 34.12** The Contracting Authority may by giving 30 day written notice, require partial termination of any part of the services on the occurrence, in relation to that part, of a default by the Contractor, where the default is either not capable of remedy or if capable of remedy, the Contractor has failed to carry out such remedial action.

- 34.13** Where partial termination has been carried out on the basis of Article 34.12, the Contracting Authority shall have the right to recover any damages it may have suffered in order to satisfactorily conclude the part of the services that have been terminated.

**Article 35: Termination by the Contractor**

- 35.1** The Contractor may, after giving 14 days notice to the Contracting Authority, terminate the contract if the Contracting Authority:
- a) fails to pay the Contractor the amounts due under any certificate of the Project Manager after the expiry of the time limit stated in Article 26; 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 180 days for reasons not specified in the contract, or not due to the Contractor's default.
- 35.2** Such termination shall be without prejudice to any other rights of the Contracting Authority or the Contractor acquired under the contract.
- 35.3** In the event of such termination, the Contracting Authority shall pay the Contractor for any loss or injury the Contractor may have suffered. Such additional payment may not be such that the total payments exceed the amount specified in Article 3 of the Special Conditions.

**Article 36: Force Majeure**

- 36.1** 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.
- 36.2** 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.
- 36.3** 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.
- 36.4** Notwithstanding the provisions of Article 33, the Contractor shall not be liable for 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 26 and Article 35, to payment of interest on delayed payments, for non-performance or for termination by the Contractor for default, if, and to the extent that, the Contracting Authority's delay or other failure to perform its obligations is the result of force majeure.
- 36.5** 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 Contractor shall continue to perform its obligations under the contract as far as is reasonably practicable, and shall

seek all reasonable alternative means for performance of its obligations which are not prevented by the force majeure event. The Contractor shall not put into effect such alternative means unless directed so to do by the Project Manager. Provided that the Project Manager shall still be obliged to follow the rules established under the Public Procurement Regulations, related to modifications where this is applicable.

- 36.6** Any modification carried out against the Public Procurement Regulations shall be deemed to be founded on unlawful consideration and the Contractor shall have no right for compensation thereof.
- 36.7** For a fee-based contract, if the Contractor incurs additional costs in complying with the Project Manager's directions or using alternative means under Article 36.5 the amount thereof shall be certified by the Project Manager subject to what is allowed under this contract.
- 36.8** If circumstances of force majeure have occurred and persist for a period of 180 days then, notwithstanding any extension of the period of execution that the Contractor may by reason thereof have been granted, either party shall be entitled to serve upon the other 30 days notice to terminate the contract. If at the expiry of the period of 30 days the situation of force majeure persists, the contract shall be terminated and, in consequence thereof, the parties shall be released from further performance of the contract.

**Article 37: Decease**

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

**H. SETTLEMENT OF DISPUTES****Article 38: Settlement of Disputes**

- 38.1** The Contracting Authority and the Contractor shall make every effort to settle amicably any dispute relating to the contract which may arise between them, or between the Project Manager and the Contractor.
- 38.2** Once a dispute has arisen, the parties i.e. the Contracting Authority and the Contractor, to this contract shall notify each other in writing of their positions on the dispute as well as of any solution which they envisage possible. If either of the parties to this contract deems it useful, the parties may refer the matter to an independent third party mediator appointed with the agreement of both parties, who can act as a mediator between the parties. Each party shall respond to a request for amicable settlement within 30 days of such request. The period to reach an amicable settlement shall be 120 days from the date of the request. Should the attempt to reach an amicable settlement be unsuccessful or should a party not respond in time to any requests for settlement, each party shall be free to proceed to the next stage in reaching a settlement by notifying the other party.
- 38.3** In the absence of an amicable settlement, any dispute between the parties i.e. the Contracting Authority and the Contractor, that may arise during the performance of this contract and that has not been possible to settle otherwise between the parties shall be submitted:
- a) either to the court, or
  - b) to an arbitration tribunal, in the case where the parties by agreement decide to refer the matter to arbitration.
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