

ANNEX I:

General terms and conditions of contract ('Terms and Conditions') for supplying services and works on behalf of the Urban Electric Mobility Initiative (UEMI) gGmbH.

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PRELIMINARY PROVISIONS

1 DEFINITIONS

- 1.1 The headings and titles in these general conditions shall not be taken as part thereof or be taken into consideration in the interpretation of the contract.
- 1.2 Where the context so permits, words in the singular shall be deemed to include the plural and vice versa, and words in the masculine shall be deemed to include the feminine and vice versa.
- 1.3 The word “country” shall be deemed to include State or Territory.
- 1.4 Words designating persons or parties shall include firms, companies, and any organisation having legal capacity.
- 1.5 Contracting authority refers to “Urban Electric Mobility Initiative gGmbH”.
- 1.6 Contractor refers to the contracted party by the contracting authority.

2 COMMUNICATIONS

- 2.1 Unless otherwise specified in the special conditions, any written communication relating to this contract between the contracting authority or the project manager, and the contractor shall state the contract title and identification number, and shall be sent by post, facsimile transmission, e-mail or personal delivery to the appropriate addresses designated by the Parties for that purpose in the special conditions.
- 2.2 If the sender requires evidence of receipt, it shall state such requirement in its communication and shall demand such evidence of receipt whenever there is a deadline for the receipt of the communication. In any event, the sender shall take all the necessary measures to ensure timely receipt of its communication.
- 2.3 Wherever the contract provides for the giving or issue of any notice, consent, approval, certificate or decision, unless otherwise specified such notice, consent, approval, certificate or decision shall be in writing and the words “notify”, “consent”, “certify”, “approve” or “decide” shall be construed accordingly. Any such consent, approval, certificate or decision shall not unreasonably be withheld or delayed.
- 2.4 Any oral instructions or orders shall be confirmed in writing.

3 ASSIGNMENT

- 3.1 An assignment shall be valid only if it is a written agreement by which the contractor transfers its contract or part thereof to a third party.
- 3.2 The contractor shall not, without the prior consent of the contracting authority, assign the contract or any part thereof, or any benefit or interest thereunder, except in the following cases:
 - a) a charge, in favour of the contractor's bankers, of any monies due or to become due under the contract; or
 - b) the assignment to the contractor's insurers of the contractor's right to obtain relief against any other person liable in cases where the insurers have discharged the contractor's loss or liability.

- 3.3 For the purpose of Article 3.2, 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 If the contractor has assigned the contract without authorisation, the contracting authority may, without formal notice thereof, apply as of right the sanction for breach of contract provided for in Articles 32 and 34.
- 3.5 Assignees shall satisfy the eligibility criteria applicable for the award of the contract and they shall not fall under the exclusion criteria described in the tender dossier.

4 SUBCONTRACTING

- 4.1 A subcontract shall be valid only if it is a written agreement by which the contractor entrusts performance of a part of the contract to a third party.
- 4.2 The contractor shall request to the contracting authority the authorisation to subcontract. The request must indicate the elements of the contract to be subcontracted and the identity of the subcontractors. For the avoidance of doubt, where experts are not directly contracted or employed by the contractor but through a third party, the latter is a subcontractor. The contracting authority shall notify the contractor of its decision, within 30 days of receipt of the request, stating reasons should it withhold such authorisation.
- 4.3 No subcontract creates contractual relations between any subcontractor and the contracting authority.
- 4.4 The contractor shall be responsible for the acts, defaults and negligence of any subcontractor and any member of their personnel (experts, agents or employees), as if they were the acts, defaults or negligence of the contractor. The approval by the contracting authority of the subcontracting of any part of the contract or of the subcontractor to perform any part of the services shall not relieve the contractor of any of its obligations under the contract. 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 and experience acceptable to the contracting authority as a replacement or to resume the implementation of the tasks itself.
- 4.5 Those services entrusted to a subcontractor by the contractor shall not be entrusted to third parties by the subcontractor, unless otherwise agreed by the contracting authority.
- 4.6 If the contractor enters into a subcontract without approval, the contracting authority may, without formal notice thereof, apply as of right the sanction for breach of contract provided for in Articles 32 and 34.

OBLIGATIONS OF THE CONTRACTING AUTHORITY

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 implementation of the tasks.
- 5.2 The contracting authority shall cooperate with the contractor to provide information that the latter may reasonably request to perform the contract.
- 5.3 The contracting authority shall notify the contractor of the name and address of the project manager.

6 ASSISTANCE WITH LOCAL REGULATIONS

- 6.1 The contractor may request the assistance of the contracting authority in obtaining 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 provide the assistance requested to the contractor at the contractor's cost.
- 6.2 Subject to the provisions of the laws and regulations on foreign labour of the country in which the services have to be rendered, the contracting authority provides reasonable assistance to the contractor, at its request, for its application for any visas and permits required by the law of the country in which the services are rendered, including work and residence permits, for the personnel whose services the contractor and the contracting authority consider necessary, as well as residence permits for their families.

OBLIGATIONS OF THE CONTRACTOR

7 GENERAL OBLIGATIONS

- 7.1 The contractor shall execute the contract with due care, efficiency and diligence in accordance with the best professional practice.
- 7.2 The contractor shall comply with any 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 he shall give notice, with reasons, to the project manager. If the contractor fails to notify within the 30-day period after receipt thereof, he shall be barred from so doing. Execution of administrative order should not be suspended because of this notice.
- 7.3 The contractor shall supply, without delay, any information and documents to the contracting authority upon request, regarding the conditions in which the contract is being executed.
- 7.4 The contractor shall respect and abide by all laws and regulations in force in the partner country and shall ensure that its personnel, their dependents, 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 dependents of such laws and regulations.
- Contractors must ensure that the subcontractors and all natural persons linked to the contract, including participants to workshops and/or trainings, do not include entities/persons included in the lists of EU restrictive measures.
- 7.5 Should any unforeseen event, action or omission directly or indirectly hamper performance of the contract, either partially or totally, the contractor shall immediately and at its own initiative record it and report it to the contracting authority. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the contractor to ensure full compliance with its obligations under the contract. In such event the contractor shall give priority to solving the problem rather than determining liability.
- 7.6 Subject to Article 7.7, the contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to the performance of the contract without the prior consent of the contracting authority. The contractor shall continue to be bound by this undertaking after completion of the tasks and shall obtain from each member of its personnel the same undertaking. However, use of the contract's reference for marketing or tendering purposes does not require prior approval of the contracting authority, except where the contracting authority declares the contract to be confidential.

- 7.7 If the contractor is a joint venture or a consortium of two or more persons, all such persons shall be jointly and severally bound in respect of the obligations under the contract, including any recoverable amount. The person designated by the consortium to act on its behalf for the purposes of the contract shall have the authority to bind the consortium and is the sole interlocutor for all contractual and financial aspects. The composition or the constitution of the joint venture or consortium shall not be altered without the prior consent of the contracting authority. Any alteration of the composition of the consortium without the prior consent of the contracting authority may result in the termination of the contract.
- 7.8 Save where the contracting authority requests or agrees otherwise, the contractor shall take all relevant measures to ensure the highest visibility to the financial contribution of the contracting authority. Additional communication activities required by the contracting authority are described in the special conditions. All visibility and, if applicable, communication activities must comply with the conditions laid down by the contracting authority.
- The Parties will consult immediately and endeavour to remedy any detected shortcomings in implementing the visibility and, if applicable, communication requirements set out in this Article and in the special conditions. Failure to perform the obligations set out in this article and in the special conditions can constitute a breach of contract in the sense of Article 32 of these general conditions and can lead to corresponding measures taken by the Contracting Authority, including suspension of payment and/or a reduction of the final payment in proportion of the seriousness of the breach of obligations.
- 7.9 Any records shall be kept for a 7-year period after the final payment made under the contract as laid down in Article 22. These documents comprise any documentation concerning income and expenditure and any inventory, necessary for the checking of supporting documents, including timesheets, plane and transport tickets, pay slips or invoices for the remuneration paid to the experts and invoices or receipts for incidental expenditure. In case of failure to maintain such records, the contracting authority may, without formal notice thereof, apply as of right the sanction for breach of contract provided for in Articles 32 and 34.

8 CODE OF CONDUCT

- 8.1 The contractor shall at all-time act impartially and as a faithful adviser in accordance with the code of conduct of its profession as well as with appropriate discretion. It shall refrain from making any public statements concerning the project or the services without the prior approval of the contracting authority. It shall not commit the contracting authority in any way whatsoever without its prior consent and shall make this obligation clear to third parties.
- 8.2 Physical abuse or punishment, or threats of physical abuse, sexual abuse or exploitation, harassment and verbal abuse, as well as other form of intimidation shall be prohibited. The contractor shall also provide to inform the contracting authority of any breach of ethical standards or code of conduct as set in the present Article. In case the contractor is aware of any violations of the abovementioned standards, he shall report it in writing within 30 days to the contracting authority.
- 8.3 The contractor and its personnel shall respect human rights, applicable data protection rules and the environmental legislation applicable in the country where the services have to be rendered and internationally agreed core labour standards, e.g. the ILO core labour standards, conventions on freedom of association and collective bargaining, elimination of forced and compulsory labour, elimination of discrimination in respect of employment and occupation, and the abolition of child labour.

- 8.4 The contractor or any of its subcontractors, agents or personnel shall not abuse of its entrusted power for private gain. The contractor or any of its subcontractors, agents or personnel shall not receive or agree to receive from any person or offer or agree to give to any person or procure for any person, gift, gratuity, commission or consideration of any kind as an inducement or reward for performing or refraining from any act relating to the performance of the contract or for showing favour or disfavour to any person in relation to the contract. The contractor shall comply with all applicable laws, regulations and codes relating to anti-bribery and anti-corruption.
- 8.5 The payments to the contractor under the contract shall constitute the only income or benefit it may derive in connection with the contract. The contractor and its personnel must not exercise any activity or receive any advantage inconsistent with their obligations under the contract.
- 8.6 The execution of the contract shall not give rise to unusual commercial expenses. 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. The contracting authority may carry out documentary or on-the-spot checks they deem necessary to find evidence in case of suspected unusual commercial expenses.
- 8.7 The respect of the code of conduct set out in the present article constitutes a contractual obligation.

Failure to comply with the code of conduct is always deemed to be a breach of the contract under Article 32 of the General Conditions. In addition, failure to comply with the provisions set out in the present Article can be qualified as grave professional misconduct that may lead to either suspension or termination of the contract, without prejudice to the application of administrative sanctions including exclusion from participation in future contract award procedures.

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 may arise during performance of the contract, shall be notified to the contracting authority without delay. In the event of such conflict, the contractor shall immediately take all necessary steps to resolve it.
- 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 personnel, including its management, is not placed in a situation, which could give rise to conflict of interests. Without prejudice to its obligations under the contract, the contractor shall replace, immediately and without compensation from the contracting authority, any member of its personnel exposed to such a situation.
- 9.3 The contractor shall refrain from any contact which would compromise its independence or that of its personnel.
- 9.4 The contractor shall limit its role in connection with the project to the provision of the services described in the contract.

- 9.5 The contractor and anyone working under its authority or control in the performance of the contract or on any other activity may be excluded from access to other EU budget/EDF funds available under the same project. However, if the contractor is able to prove that his involvement in previous stages of the project does not constitute unfair competition, the contractor may participate, subject to the prior approval of the contracting authority.
- 9.6 Civil servants and other personnel of the public administration of the country where the services have to be rendered, regardless of their administrative situation, shall not be contracted or employed as experts unless the prior approval has been granted by the contracting authority.

10 ADMINISTRATIVE SANCTIONS

- 10.1 Without prejudice to the application of other remedies laid down in the contract, a sanction of exclusion from all contracts and grants financed by the EU may be imposed, after an adversarial procedure in line with the applicable Financial Regulation, upon the contractor who, in particular,
- a) is guilty of grave professional misconduct, has committed irregularities or has shown significant deficiencies in complying with the main obligations in the performance of the contract or has been circumventing fiscal, social or any other applicable legal obligations, including through the creation of an entity for this purpose. The duration of the exclusion shall not exceed the duration set by final judgement or final administrative decision or, in the absence thereof, three years.
 - b) is guilty of fraud, corruption, participation in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings. The duration of the exclusion shall not exceed the duration set by final judgement or final administrative decision or, in the absence thereof, five years.
- 10.2 In the situations mentioned in Article 10.1, in addition or in alternative to the sanction of exclusion, the contractor may also be subject to financial penalties up to 10% of the total value of the contract.
- 10.3 Where the contracting authority is entitled to impose financial penalties, it may deduct such financial penalties from any sums due to the contractor or call on the appropriate guarantee.
- 10.4 The decision to impose administrative sanctions may be published on a dedicated internet-site, explicitly naming the contractor.

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 the procurement of goods and services for the project are prepared on an impartial basis so as to promote competitive tendering.

12 LIABILITIES

- 12.1 Liability for damage to services

Without prejudice to Article 36 (force majeure), the contractor shall assume (i) full responsibility for maintaining the integrity of services and (ii) the risk of loss and damage, whatever their cause, until the completion of the implementation of the tasks and approval of reports and documents under Articles 24 and 25.

After the completion of the implementation of the tasks, the contractor shall be responsible for and shall indemnify the contracting authority for any damage caused to the services by the contractor, its personnel, its subcontractors and any person for which the contractor is

answerable, during any operation performed to complete any work left, as the case may be, pending or to comply with its obligations under Articles 24 and 25, particularly if the contract is performed in phases.

Compensation for damage to the services resulting from the contractor's liability in respect of the contracting authority is capped at the contract value.

However, compensation for loss or damage resulting from fraud or gross negligence of the contractor, its personnel, its subcontractors and any person for which the contractor is answerable, can in no case be capped.

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, even after approval of the reports and documents, or by default for a period of 10 years.

12.2 Contractor's liability in respect of the contracting authority

At any time, the contractor shall be responsible for and shall indemnify the contracting authority for any damage caused during the performance of the services, to the contracting authority by the contractor, its personnel, its subcontractors and any person for which the contractor is answerable.

Compensation for damage resulting from the contractor's liability in respect of the contracting authority is capped at an amount equal to one million euros if the contract value is less than or equal to one million euros. If the contract value is greater than one million euros, compensation for damages resulting from the contractor's liability shall be capped to the contract value.

However, compensation for loss or damage resulting from the contractor's liability in case of bodily injury, including death, can in no case be capped. The same applies to compensation for any damages of any kind resulting from fraud or gross negligence of the contractor, its personnel, its subcontractors and any person for which the contractor is answerable.

12.3 Contractor's liability in respect of third parties

Without prejudice to Article 14.9, the contractor shall, at its own expense, indemnify, protect and defend, the contracting authority, its agents and employees, from and against all actions, claims, losses or damage, direct or indirect, of whatever nature (hereinafter 'claim(s)') arising from any act or omission by the contractor, its personnel, its subcontractors and/or any person for which the contractor is answerable, 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.

The contracting authority must notify any third-party claim to the contractor as soon as possible after the contracting authority becomes aware of them.

If the contracting authority chooses to challenge and defend itself against the claim(s), the contractor shall bear the reasonable costs of defence incurred by the contracting authority, its agents and employees.

Under these general conditions, the agents and employees of the contracting authority, as well as the contractor's personnel, its subcontractors and any person for which the contractor is answerable are considered to be third parties.

- 12.4 The contractor shall treat all claims in close consultation with the contracting authority
- 12.5 Any settlement or agreement settling a claim requires the prior express written consent of the contracting authority and the contractor.

13 MEDICAL, INSURANCE AND SECURITY ARRANGEMENTS

13.1 Medical arrangement

The contracting authority may condition the performance of the services to the production, by the contractor, of a recent medical certificate attesting that the contractor itself, its personnel, its subcontractors and/or any person for which the contractor is answerable, are fit to implement the services required under this contract.

13.2 Insurance – general issues

- a) At the latest together with the return of the countersigned contract, and for the period of implementation of the tasks, the contractor shall ensure that itself, its personnel, its subcontractors and any person for which the contractor is answerable, are adequately insured with insurance companies recognized on the international insurance market, unless the contracting authority has given its express written consent on a specific insurance company.
- b) At the latest together with the return of the countersigned contract, the contractor shall provide the contracting authority with all cover notes and/or certificates of insurance showing that the contractor's obligations relating to insurance are fully respected. The contractor shall submit without delay, whenever the contracting authority or the project manager so requests, an updated version of the cover notes and/or certificates of insurance.
- 1.1. The contractor shall obtain from the insurers that they commit to personally and directly inform the contracting authority of any event likely to reduce, cancel or alter in any manner whatsoever, that coverage. The insurers shall deliver this information as quickly as possible, and in any event at least thirty (30) days before the reduction, cancellation or alteration of the cover is effective. The contracting authority reserves the right to indemnify the insurer in case the contractor fails to pay the premium, without prejudice to the contracting authority's right to recover the amount of the premium it paid, and to subsequently seek compensation for its possible resulting damage.
- c) Whenever possible, the contractor shall ensure that the subscribed insurance contracts contain a waiver of recourse in favour of the contracting authority, its agents and employees.
- d) The purchase of adequate insurances by the contractor shall in no case exempt it from its statutory and/or contractual liabilities.
- e) The contractor shall fully bear the consequences of a total or partial lack of coverage, and to the full discharge of the contracting authority.
- f) The contractor shall ensure that its personnel, its subcontractors and any person for whom the contractor is answerable comply with the same insurance requirements imposed to it under this contract. In case of default of insurance or inadequate insurance of its personnel, its subcontractors or any person for which the contractor is answerable, the contractor shall indemnify the contracting authority from all consequences resulting therefrom.
- g) Under its own responsibility and without prejudice to the obligation to take out all insurance covering its obligations under this contract, the contractor shall ensure that all compulsory insurances are subscribed in compliance with the laws and regulations in force in the country in which the services are to be performed. It shall also ensure that all possible statutory obligations applying to the coverage are complied with.
- h) The contracting authority shall not bear any liability for the assessment and adequacy of insurance policies taken out by the contractor with its contractual and/or statutory obligations.
- i) In any event, the contractor shall take out the insurance referred to below.

13.3 Insurance – Specific issues

- a) The contractor shall take out all insurance necessary to cover its liability, both with regard to its professional liability and its liability as provided under Article 12.
 - b) The contractor shall ensure that itself, its personnel, its subcontractors and any person for which the contractor is answerable, are covered by an insurance policy covering, in addition to the possible intervention of any statutory insurance:
 - i. all medical expenses, including hospital expenses.
 - ii. the full cost of repatriation in case of illness, accident, or in the event of death by disease or accident.
 - iii. accidental death or permanent disability resulting from bodily injury incurred in connection with the contract.
- 1.2. In the absence of adequate insurance, the contracting authority may bear such costs to the benefit of the contractor itself, its personnel, its subcontractors and any person for which the contractor is answerable. This bearing of the costs by the contracting authority shall be subsidiary and may be claimed against the contractor, its subcontractors and any person who should have taken out this insurance, without prejudice to the compensation of the contracting authority's possibly resulting damage.
- c) The contractor shall take out insurance policies providing coverage of the contractor itself, its personnel, its subcontractors and any person for which the contractor is answerable, in case of an accident at work or on the way to work. It shall ensure that its subcontractors do the same. It indemnifies the contracting authority against any claims that its employees or those of its subcontractors could have in this regard. For its permanent expatriate personnel, where appropriate, the contractor shall in addition comply with the laws and regulations applicable in the country of origin.
 - d) The contractor shall also provide insurance for the personal effects of its employees, experts and their families in the partner country against loss or damage.

13.4 Security arrangements

The contractor shall put in place security measures for its employees, experts and their families located in the partner country, commensurate with the physical danger (possibly) facing them.

The contractor shall also be responsible for monitoring the level of physical risk to which its employees, experts and their families located in the partner country are exposed and for keeping the contracting authority informed of the situation. If the contracting authority or the contractor becomes aware of an imminent threat to the life or health of any of its employees, experts or their families, the contractor must take immediate emergency action to remove the individuals concerned to safety. If the contractor takes such action, he must communicate this immediately to the project manager and this may lead to suspension of the contract in accordance with Article 33.

14 INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS

- 14.1 A 'result' shall be any outcome of the implementation of the contract and provided as such by the contractor.
- 14.2 The ownership of all the results or rights thereon as listed in the tender specification and the tender attached to the contract, including copyright and other intellectual or industrial property rights, and all technological solutions and information embodied therein, obtained in performance of the contract, shall be irrevocably and fully vested to the contracting authority from the moment these results or rights are delivered to it and accepted by it. The contracting authority may use them as it sees fit and in particular may store, modify, translate, display, reproduce, publish or communicate by any medium, as well as, assign, transfer them as it sees fit. Where the contract implements a financing agreement and relates to any study, the partner country(ies) with whom this financing agreement was signed also enjoys all the rights conferred by this article on the contracting authority.
- 14.3 For the avoidance of doubt and where applicable, any such vesting of rights is also deemed to constitute an effective transfer of the rights from the contractor to the contracting authority.
- 14.4 The above vesting of rights in the contracting authority under this contract covers all territories worldwide and is valid for the whole duration of intellectual or industrial property rights protection, unless stipulated otherwise by the contracting authority and the contractor.
- 14.5 The contractor shall ensure that delivered results are free of rights or claims from third parties including in relation to pre-existing rights, for any use envisaged by the contracting authority. If the contracting authority so requires, the contractor shall provide exhaustive proof of ownership or rights to use all necessary rights, as well as, of all relevant agreements of the creator(s).
- 14.6 All reports and data such as maps, diagrams, drawings, specifications, plans, statistics, computations, databases format and data, software and any supporting records or materials acquired, compiled or prepared by the contractor in the performance of the contract, as well as any outcome of the implementation of the contract, shall be the absolute property of the contracting authority unless otherwise specified. The contractor shall, upon completion of the contract, deliver all such documents and data to the contracting authority. The contractor must not retain copies of such documents and data and must not use them for purposes unrelated to the contract without the prior consent of the contracting authority.
- 14.7 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 by the contractor in the course of the contract for purposes other than its performance, without the prior consent of the contracting authority.
- 14.8 By delivering the results, the contractor warrants that the above transfer of rights does not violate any law or infringe any rights of others and that it possesses the relevant rights or powers to execute the transfer. It also warrants that it has paid or has verified payment of all fees including fees to collecting societies, related to the final results.
- 14.9 The contractor shall indemnify and hold the contracting authority harmless for all damages and cost incurred due to any claim brought by any third party including creators and intermediaries for any alleged breach of any intellectual, industrial or other property right based on the contracting authority's use as specified in the contract of patents, licenses, drawings, designs, models, or brand or trade-marks, except where such infringement results from compliance with the design or specification provided by the contracting authority.

NATURE OF THE SERVICES

15 THE SCOPE OF THE SERVICES

- 15.1 The scope of the services is specified in Annex II and Annex III.

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

16 PERSONNEL

- 16.1 For fee-based contracts, without prejudice to paragraph 4 of this Article, the contractor must inform the contracting authority of all personnel which the contractor intends to use for the implementation of the tasks, other than the key experts whose CVs are included in the technical bid and the price schedule. The Terms of Reference (ToR) shall specify the minimum level of training, qualifications and experience of the personnel and, where appropriate, the specialisation required. The contracting authority shall have the right to oppose the contractor's choice of personnel.
- 16.2 All those working on the project with the approval of the contracting authority shall commence their duties on the date or within the period laid down in the Terms of Reference (ToR) and/or the Contract, or, failing this, on the date or within the periods notified to the contractor by the contracting authority or the project manager.
- 16.3 Save as otherwise provided in the contract, those working on the contract shall reside close to their normal place of posting. Where part of the services is to be performed outside the partner country, the contractor shall keep the project manager informed of the names and qualifications of personnel assigned to that part of the services.
- 16.4 The contractor shall:
- a) forward to the project manager within 30 days of the signature of the contract by both parties, the timetable proposed for placement of the personnel;
 - b) inform the project manager of the date of arrival and departure of each member of personnel;
 - c) submit to the project manager for its approval a timely request for the appointment of any non-key experts.
- 16.5 The contractor shall provide its personnel with all financial and technical means needed to enable them to carry out their tasks described under this contract efficiently.
- 16.6 Experts employed or contracted, directly or indirectly, by the contractor do not have any contractual relations with the contracting authority.

17 REPLACEMENT OF PERSONNEL

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

- 17.2 In the course of performance, the contracting authority can order agreed personnel to be replaced. This shall be done on the basis of a written and justified request to which the contractor and the agreed personnel have had the opportunity to provide observations.
- 17.3 Where agreed personnel 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 agreed personnel who has been replaced. Where the contractor is unable to provide a replacement with equivalent qualifications and/or experience, the contracting authority may either decide to terminate the contract, if the proper performance of it is jeopardised, or, if it considers that this is not the case, accept the replacement, provided that the fees of the latter are renegotiated to reflect the appropriate remuneration level.
- 17.4 Additional costs incurred by the replacement of an agreed personnel are the responsibility of the contractor. The contracting authority makes no payment for the period when the agreed personnel to be replaced is absent. The replacement of any agreed personnel, whose name is listed in the price schedule of the contract, must be proposed by the contractor within 15 calendar days from the first day of the agreed personnel's absence. If after this period the contractor fails to propose a replacement in accordance with Article 17.3 above, the contracting authority may apply liquidated damages up to 10% of the remaining fees of that expert to be replaced. The contracting authority must approve or reject the proposed replacement within 30 days.
- 17.5 The partner country may be notified of the identity of the agreed personnel proposed to be added or replaced in the contract to obtain its approval. The partner country must not withhold its approval unless it submits duly substantiated and justified objections to the proposed experts in writing to the contracting authority within 15 days of the date of the request for approval.

PERFORMANCE OF THE CONTRACT

18 IMPLEMENTATION OF THE TASKS AND DELAYS

- 18.1 The special conditions fix the date on which implementation of the tasks is to commence.
- 18.2 The period of implementation of tasks shall commence on the date fixed in accordance with Article 18.1 and shall be as laid down in the special conditions, without prejudice to extensions of the period which may be granted.
- 18.3 If the contractor fails to perform the services within the period of implementation of the tasks specified in the contract, the contracting authority shall, without formal notice and without prejudice to its other remedies under the contract, be entitled to liquidated damages for every day which shall elapse between the end of the period of implementation of the tasks specified in the contract and the actual date of completion of these tasks.
- 18.4 The daily rate for liquidated damages is calculated by dividing the contract value by the number of days of the period of implementation of the tasks, up to a maximum of 15% of the total value of the contract.
- 18.5 If the contracting authority has become entitled to claim 15% of the contract value, it may, after giving notice to the contractor:
- a) terminate the contract, and;
 - b) enter into a contract with a third party to complete the services, at the contractor's cost.

19 AMENDMENT TO THE CONTRACT

19.1 Any amendment to the contract affecting its object or scope, such as amendment to the total contract amount, replacement of an agreed personnel whose curriculum vitae is part of the contract and change of the period of implementation shall be formalised by means of an addendum. Both parties may request an addendum for amendment to the contract according to the following principles:

- a) An addendum for amendment may be requested only during the period of execution of the contract;
- b) Any request for an addendum shall be submitted in writing to the other party at least thirty days before the date on which the intended addendum is required to enter into force. In case of special circumstances duly substantiated by the contractor, the contracting authority may accept a different notice period.

The requested party shall notify the requesting party of its decision concerning the request within 30 days from its receipt. There is no automatic amendment without written confirmation by the requested party.

19.2 Any amendment carried out by the contractor without an administrative order or without an addendum to the contract is not allowed and made at the contractor's own financial risk.

19.3 Where an amendment is required by a default or breach of contract by the contractor, any additional cost attributable to such amendment shall be borne by the contractor.

19.4 The contractor shall notify the contracting authority of any change of address and bank account using the form in Annex VI to notify any change in its bank account. The contracting authority shall have the right to oppose the contractor's change of bank account. The contractor shall notify the contracting authority of any change of auditor, which the contracting authority needs to approve.

20 WORKING HOURS AND LEAVE

20.1 The days and hours of work of the contractor or the contractor's personnel shall respect the laws, regulations and customs of the country where the services have to be rendered and the requirements of the services.

20.2 For fee-based contracts, the fee rates are deemed to take into account the annual leave of up to 2 months for the contractor's personnel during the period of implementation of the tasks. Consequently, days taken as annual leave shall not be considered to be working days.

20.3 The contractor shall only be paid for the duration actually worked. Any cost related to sick or casual leave shall be covered by the contractor. The contractor shall inform the project manager of any impact of such leave on the period of implementation of the tasks.

21 INFORMATION

21.1 The contractor shall provide any information relating to the services and the project to the project manager, the contracting authority, or any person authorised by the contracting authority.

21.2 The contractor shall allow the project manager, or any person authorised by the contracting authority or the contracting authority itself to inspect or audit the records and accounts relating to the services and to make copies thereof both during and after provision of the services.

22 RECORDS

- 22.1 The contractor shall keep full accurate and systematic records and accounts in respect of the services in such form and detail as is sufficient to establish accurately that the number of working days and the actual incidental expenditure identified in the contractor's invoice(s) have been duly incurred for the performance of the services.
- 22.2 Timesheets recording the days or hours worked by the contractor's personnel shall be maintained by the contractor. The timesheets filled in by the experts shall be confirmed on a monthly basis by the contractor and shall be approved by the project manager or any person authorised by the contracting authority or the contracting authority itself. The amounts invoiced by the contractor must correspond to these timesheets. Time spent travelling exclusively and necessarily for the purpose of the implementation of the contract, by the most direct route, may be included in the numbers of days or hours, as appropriate, recorded in these timesheets. Travel undertaken by the expert for mobilisation and demobilisation as well as for leave purposes shall not be considered as working days. A minimum of 8 hours worked are deemed to be equivalent to one day worked. For all experts, their time input shall be rounded to the nearest whole number of days worked for the purposes of invoicing.
- 22.3 Any records must be kept for a seven-year period after the final payment made under the contract. These documents comprise any documentation concerning income and expenditure and any inventory, necessary for the checking of supporting documents, including timesheets, plane and transport tickets, pay slips for the remuneration paid to the experts and invoices or receipts for incidental expenditure. In case of failure to maintain such records, the contracting authority may, without formal notice thereof, apply as of right the sanction for breach of contract provided for in Articles 32 and 34.

23 VERIFICATIONS, CHECKS AND AUDITS

- 23.1 The contractor shall allow the contracting authority to verify, by examining the documents and to make copies thereof or by means of on-the-spot checks, including checks of documents (original or copies), the implementation of the contract. In order to carry out these verifications and audits, agents of the contracting authority shall be allowed to 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 contract. The contractor shall ensure that on-the-spot accesses is available at all reasonable times, notably at the contractor's offices, to its computer data, to its accounting data and to all the information needed to carry out the audits, including information on individual salaries of persons involved in the contract. The contractor shall ensure that the information is readily available at the moment of the audit and, if so requested, that data be handed over in an appropriate form. These inspections may take place up to seven years after the final payment.
- 23.2 Furthermore, the contractor shall allow the contracting authority to carry out checks and verification on the spot in accordance with the procedures set out in the European Union legislation against fraud and other irregularities.
- 23.3 To this end, the contractor undertakes to give appropriate access to staff or agents of the contracting authority 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 contracting authority 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 shall be easily accessible and filed so as to facilitate their examination. The contractor shall inform the contracting authority of their precise location.
- 23.4 The contractor guarantees that the rights of the contracting authority to carry out audits, checks and verification shall 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 benefiting from EU budget/EDF funds.

- 23.5 Failure to comply with the obligations set forth in Article 23.1 to 23.4 constitutes a case of serious breach of contract.

24 INTERIM AND FINAL REPORTS

- 24.1 Unless otherwise provided in the terms of reference, the contractor shall draw up interim reports and a final report during the period of implementation of the tasks. These reports shall consist of a narrative section and a financial section. The format of such reports is as notified to the contractor by the project manager during the period of implementation of the tasks.
- 24.2 All invoices must be accompanied by an interim or final report. All invoices for fee- based contracts must also be accompanied by an up-to-date financial report and an invoice for the actual costs of the expenditure verification. The structure of the interim or final financial report shall be the same as that of the contractually approved budget (Annex V). This financial report shall indicate, at a minimum, the expenditure of the reporting period, the cumulative expenditure and the balance available.
- 24.3 Immediately prior to the end of the period of implementation of the tasks, the contractor shall draw up a final progress report together which must include, if appropriate, a critical study of any major problems which may have arisen during the performance of the contract.
- 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 implementation of the tasks. Such report shall not bind the contracting authority.
- 24.5 Where the contract is performed in phases, the implementation of each phase shall give rise to the preparation of a final progress report by the contractor.
- 24.6 Interim and final progress reports are covered by the provisions of Article 14.

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 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.
- 25.3 Where the final progress report is not approved, the dispute settlement procedure is automatically invoked.
- 25.4 Where the contract is performed in phases, the implementation of each phase shall be subject to the approval, by the contracting authority, of the preceding phase except where the phases are carried out concurrently.
- 25.5 The contracting authority's time limit for accepting reports or documents shall be considered included in the time limit for payments indicated in Article 27, unless otherwise specified in the special conditions.

PAYMENTS & DEBT RECOVERY

26 EXPENDITURE VERIFICATION

- 26.1 No expenditure verification report is required for global price contracts.
- 26.2 Before payments are made for fee-based contracts, an external auditor must examine and verify the invoices and the financial reports sent by the contractor to the contracting authority. The auditor shall meet the requirements set out in the terms of reference for expenditure verification and shall be approved by the contracting authority.
- 26.3 The auditor must satisfy itself that relevant, reliable and sufficient evidence exists that:

- a) the experts employed by the contractor for the contract have been working as evidenced on the contract (as corroborated by independent, third-party evidence, where available) for the number of days claimed in the contractor's invoices and in the financial reporting spreadsheet submitted with the interim progress reports; and
- b) the amounts claimed as incidental expenditure have actually and necessarily been incurred by the contractor in accordance with the requirements of the terms of reference of the contract.

Based on its verification, the auditor submits to the contractor an expenditure verification report.

- 26.4 The contractor grants the auditor all access rights mentioned in Article 23.
- 26.5 The contracting authority reserves the right to require that the auditor be replaced if considerations, which were unknown when the contract was signed, cast doubt on the auditor's independence or professional standards.

27 PAYMENT AND INTEREST ON LATE PAYMENT

- 27.1 Payments will be made in accordance with one of the options below, as identified in the special conditions.

Option 1: Fee-based contract:

The contracting authority will make payments to the contractor in the following manner:

1. A first payment of pre-financing, if requested by the contractor, of an amount up to a maximum 20% of the maximum contract value stated in point 2 of the contract, within 30 days of receipt by the contracting authority of an invoice, of the contract signed by both parties, and of a financial guarantee if requested, as defined in Article 30.
 2. Six-monthly further interim payments, as indicated in the special conditions, within 60 days of the contracting authority receiving an invoice accompanied by an interim progress report and an expenditure verification report, subject to approval of those reports in accordance with Article 25. Such interim payments shall be of an amount equivalent to the costs incurred on the basis of the expenditure verification reports. When 80 % of the maximum contract value stated in point 2 of the contract has been paid (pre-financing and interim payments) the amounts due to the contractor shall be deducted from the pre-financing payment until it is completely reimbursed before any additional payment is made.
 3. The invoices must be paid such that the sum of payments does not exceed 90% of the maximum contract value stated in point 2 of the contract; the 10% being the minimum final payment.
 4. The balance of the final value of the contract after verification, subject to the maximum contract value stated in point 2 of the contract, after deduction of the amounts already paid, within 90 days of the contracting authority receiving a final invoice accompanied by the final progress report and a final expenditure verification report, subject to approval of those reports in accordance with Article 25.
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Option 2: Global price contract:

If the contract is not divided between different outputs that the contracting authority can approve independently, or has a duration of less than two years, the contracting authority will make payments to the contractor in the following manner:

1. a pre-financing payment if requested by the contractor, of an amount up to 40% of the contract value stated in point 2 of the contract within 30 days of receipt by the contracting authority of an invoice, of the contract signed by both parties, and of a financial guarantee if requested, as defined in Article 30;
2. the balance of the contract value stated in point 2 of the contract within 90 days of the contracting authority receiving a final invoice accompanied by the final progress report, subject to approval of that report in accordance with Article 25.

If the contract has a duration of at least two years and if the budget is divided between different outputs that the contracting authority can approve independently, the contracting authority will make payments to the contractor in the following manner:

1. a pre-financing payment if requested by the contractor, of an amount up to 40% of the contract value stated in point 2 of the contract within 30 days of receipt by the contracting authority of an invoice, of the contract signed by both parties, and of a financial guarantee if requested, as defined in Article 30;
2. one interim payment at the end of each 12 months of implementation of the contract, of an amount corresponding to the outputs delivered, within 60 days of the contracting authority receiving an invoice accompanied by an interim progress report, subject to approval of this report in accordance with Article 25;
3. The invoices must be paid such that the sum of payments does not exceed 90% of the maximum contract value stated in point 2 of the contract; the 10% being the minimum final payment.
4. the balance of the contract value stated in point 2 of the contract within 90 days of the contracting authority receiving a final invoice accompanied by the final progress report, subject to approval of that report in accordance with Article 25.

27.2 The date of payment shall be the date on which the paying account is debited. The invoice shall not be admissible if one or more essential requirements are not met. Without prejudice to Article 34.2, 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. In such cases, the contracting authority shall not unreasonably withhold any undisputed part of the invoiced amount but may request clarification, alteration or additional information, which shall be produced within 30 days of the request. The countdown towards the deadline shall resume on the date on which a correctly formulated invoice is received by the contracting authority. If part of the invoice is disputed, the undisputed amount of the invoice shall not be withheld and must be paid according to the payment schedule set in Article 27.1.

27.3 Once the deadline referred to above has expired, the contractor - unless it is a government department or public body in an EU Member State - shall, within two months of receiving late payment, receive default interest:

- at the rate applied by the European Central Bank to its main refinancing transactions in euro, as published in the Official Journal of the European Union, C series, where payments are in euro,
- at the rediscount rate applied by the central bank of the country of the contracting authority if payments are in the currency of that country,

on the first day of the month in which the time-limit expired, plus eight percentage points. The interest be payable for the time elapses between the expiry of the payment deadline (exclusive) and the date on which the contracting authority's account is debited (inclusive).

By way of exception, when the interest calculated in accordance with the first subparagraph is lower than or equal to EUR 200, it shall be paid to the creditor only upon a demand submitted within two months of receiving late payment.

- 27.4 Payments due by the contracting authority shall be made into the bank account mentioned on the financial identification form completed by the contractor. A new financial identification form must be used to report any change of bank account and must be attached to the invoice.
- 27.5 Payments shall be made in euro or in the national currency as specified in the special conditions. The special conditions shall lay down the administrative or technical conditions governing payments of pre-financing, interim and/or final payments made in accordance with the general conditions. Where payment is in Euro, for the purposes of the provision for incidental expenditure, actual expenditure shall be converted into Euro at the rate published on the Infor-Euro on the first working day of the month in which the invoice is dated. Where payment is in the national currency, it shall be converted into the national currency at the rate published on the Infor-Euro on the first working day of the month in which the payment is made.
- 27.6 For fee-based contracts, invoices shall be accompanied by copies of, or extracts from, the corresponding approved timesheets referred to in Article 22.2 to verify the amount invoiced for the time input of the experts. A minimum of 8 hours worked are deemed to be equivalent to one day worked. For all experts, their time input must be rounded to the nearest whole number of days worked for the purposes of invoicing.
- 27.7 Payment of the final balance shall be subject to performance by the contractor of all its obligations relating to the implementation of all phases or parts of the services and to the approval by the contracting authority of the final phase or part of the services. Final payment shall be made only after the final progress report and a final statement, identified as such, shall have been submitted by the contractor and approved as satisfactory by the contracting authority.
- 27.8 The payment obligations of the European Commission under the contract shall cease at most 18 months after the end of the period of implementation of the tasks, unless the contract is terminated in accordance with these general conditions.
- 27.9 Prior to, or instead of, terminating the contract as provided for in Article 34, the contracting authority may suspend payments as a precautionary measure without prior notice. A payment may be suspended for the duration of an audit or an OLAF investigation.
- 27.10 Where the award procedure or the performance of the contract proves to have been subject to breach of obligations, irregularities or fraud attributable to the contractor, the contracting authority may in addition to the possibility to suspend the performance of the contract in accordance with Article 33.2 and terminate the contract as provided for in Article 34, suspend payments and/or recover amounts already paid, in proportion to the seriousness of the breach of obligations, irregularities or fraud. In addition to measures referred above, the contracting authority may reduce the contract value in proportion to the seriousness of the irregularities, fraud or of the breach of obligations, including where the activities concerned were not implemented or were implemented poorly, partially or late. The measures described in this paragraph may equally be adopted by the European Commission in pursuance of its administrative powers under the Financial Regulation (Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018, OJ-L 193/30.07.2018, p.1).

- 27.11 If the contract is terminated for any reason whatsoever, the guarantee securing the pre-financing may be invoked forthwith in order to repay the balance of the pre-financing still owed by the contractor, and the guarantor shall not delay payment or raise objection for any reason whatever.

28 RECOVERY OF DEBTS FROM THE CONTRACTOR

- 28.1 The contractor undertakes to repay any amounts paid in excess of the final amount due to the contracting authority before the deadline indicated in the debit note which is 45 days from the issuing of that note.
- 28.2 Should the contractor fail to make repayment within the above deadline; the contracting authority may (unless the contractor is a government department or public body of an EU Member State) increase the amounts due by adding interest:
- a) at the rediscount rate applied by the central bank of the country of the contracting authority if payments are in the currency of that country,
 - b) at the rate applied by the European Central Bank to its main refinancing transactions in euro, as published in the Official Journal of the European Union, C series, where payments are in euro,
- on the first day of the month in which the time-limit expired, plus eight percentage points. The default interest shall be incurred over the time which elapses between the date of the payment deadline, and the date on which the payment is actually made. Any partial payments shall first cover the interest thus established.
- 28.3 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 party's right to agree on payment in instalments.
- 28.4 Bank charges arising from the repayment of amounts due to the contracting authority shall be borne entirely by the contractor.
- 28.5 Without prejudice to the prerogative of the contracting authority, if necessary, the European Union may as a donor proceed itself to the recovery by any means.

29 REVISION OF PRICES

- 29.1 The contract shall be at fixed prices, which shall not be revised.

30 FINANCIAL GUARANTEE

- 30.1 Unless otherwise provided for in the special conditions, the contractor shall provide a financial guarantee for the full amount of the pre-financing payment. The financial guarantee shall be in the format provided for in the contract and may be provided in the form of a bank guarantee, a banker's draft, a certified cheque, a bond provided by an insurance and/or bonding company, an irrevocable letter of credit or a cash deposit made with the contracting authority. If the financial guarantee is to be provided in the form of a bank guarantee, a banker's draft, a certified cheque or a bond, it shall be issued by a bank or bonding and/or insurance company approved by the contracting authority. This financial guarantee shall remain valid until it is released by the contracting authority in accordance with Article 30.5 or Article 30.6, as appropriate. Where the contractor is a public body the obligation for a financial guarantee may be waived depending on a risk assessment made.
- 30.2 The financial guarantee shall be provided on the letterhead of the financial institution.

- 30.3 During the execution of the contract, if the natural or legal person providing the guarantee (i) is not able or willing to abide by its commitments, (ii) is not authorised to issue guarantees to contracting authorities, or (iii) appears not to be financially reliable, or the financial guarantee ceases to be valid, and the contractor fails to replace it, either a deduction equal to the amount of the pre-financing may be made by the contracting authority from future payments due to the contractor under the contract, or the contracting authority shall give formal notice to the contractor to provide a new guarantee on the same terms as the previous one. Should the contractor fail to provide a new guarantee, the contracting authority may terminate the contract.
- 30.4 If the contract is terminated for any reason whatsoever, the financial guarantee may be invoked forthwith in order to repay any balance still owed to the contracting authority by the contractor, and the guarantor shall not delay payment or raise objection for any reason whatsoever.
- 30.5 For fee-based contracts, the financial guarantee shall be released when the pre-financing is reimbursed in accordance with Article 27.1.
- 30.6 For global price contracts, (i) if the contract is not divided between different outputs that the contracting authority can approve independently, or has a duration of less than two years, the financial guarantee shall remain in force until the final payment has been made, and (ii) if the contract has a duration of at least two years and if the budget is divided between different outputs that the contracting authority can approve independently, the financial guarantee shall be released when the pre-financing is reimbursed in accordance with Article 27.1.

31 PAYMENT TO THIRD PARTIES

- 31.1 Orders for payments to third parties may be carried out only after an assignment made in accordance with Article 3. The assignment shall be notified to the contracting authority.
- 31.2 Notification of beneficiaries of the 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 27, the contracting authority shall have 30 days, starting from the day when it receives notification of the definitive lifting of the obstacle to payment, to resume payments to the contractor.

BREACH OF CONTRACT, SUSPENSION AND TERMINATION

32 BREACH OF CONTRACT

- 32.1 Either party commits a breach of contract where it fails to perform its obligations in accordance with the provisions of the contract.
- 32.2 Where a breach of contract occurs, the party injured by the breach is entitled to the following remedies:
- a) damages; and/or
 - b) termination of the contract.
- 32.3 Damages may be either:
- a) general damages; or
 - b) liquidated damages.
- 32.4 Should the contractor fail to perform any of its obligations in accordance with the provisions of the contract, the contracting authority is without prejudice to its right under Article 32.2, also entitled to the following remedies;
- a) suspension of payments; and/or
 - b) reduction or recovery of payments in proportion to the failure's extent.

- 32.5 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.
- 32.6 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.

33 SUSPENSION OF THE CONTRACT

- 33.1 The contractor shall, on the order of the contracting authority, suspend the execution of the contract or any part thereof for such time or times and in such manner as the contracting authority may consider necessary. The suspension shall take effect on the day the contractor receives the order or at a later date when the order so provides.
- 33.2 Suspension of the contract in the event of presumed breach of obligations or irregularities or fraud: The contract may be suspended in order to verify whether presumed breach of obligations or irregularities or fraud occurred during the award procedure or the performance of the contract. If these are not confirmed, performance of the contract shall resume as soon as possible.
- 33.3 During the period of suspension, the contractor shall take such protective measures as may be necessary.
- 33.4 Additional expenses incurred in connection with such protective measures may be added to the contract price, unless:
- a) otherwise provided for in the contract; or
 - b) such suspension is necessary by reason of some breach or default of the contractor; or
 - c) the presumed breach of obligations or irregularities or fraud mentioned in Article 33.2 are confirmed and attributable to the contractor.
- 33.5 The contractor shall only be entitled to such additions to the contract price if it notifies the project manager, within 30 days after receipt of the order to suspend execution of the contract, of its intention to claim them.
- 33.6 The contracting authority, after consulting the contractor, shall determine such additions to the contract price and/or extension of the period of performance to be granted to the contractor in respect of such claim as shall, in the opinion of the contracting authority be fair and reasonable.
- 33.7 The contracting authority shall, as soon as possible, order the contractor to resume the contract suspended or inform the contractor that it terminates the contract. If the period of suspension exceeds 90 days and the suspension is not due to the contractor's breach or default, the contractor may, by notice to the contracting authority, request to proceed with the contract within 30 days, or terminate the contract.

34 TERMINATION BY THE CONTRACTING AUTHORITY

- 34.1 The contracting authority may, at any time and with immediate effect, subject to Article 34.8, terminate the contract, except as provided for under Article 34.2.
- 34.2 Subject to any other provision of these general conditions the contracting authority may, by giving seven days' notice to the contractor, terminate the contract in any of the following cases where:
- a) the contractor is in serious breach of contract for failure to perform its contractual obligations;
 - b) the contractor fails to comply within a reasonable time with the notice given by the project manager requiring it to make good the neglect or failure to perform its obligations under the contract which seriously affects the proper and timely performance of the services;

- c) the contractor refuses or neglects to carry out any 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 is bankrupt, subject to insolvency or winding up procedures, is having its assets administered by a liquidator or by the courts, has entered into an arrangement with creditors, has suspended business activities, or is in any analogous situation arising from a similar procedure provided for under any national law or regulations relevant to that contractor;
- f) 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;
- g) any other legal disability hindering performance of the contract occurs;
- h) the contractor fails to provide the required guarantees or insurance, or the person providing the earlier guarantee or insurance is not able to abide by its commitments;
- i) the contractor has been guilty of grave professional misconduct or has committed an irregularity proven by any means which the contracting authority can justify, within the meaning of Article 10.1(a) (b);
- j) it has been established by a final judgment or a final administrative decision or by proof in possession of the contracting authority that the contractor has been guilty of fraud, corruption, involvement in a criminal organisation, money laundering or terrorist financing, terrorist related offences, child labour or other forms of trafficking in human beings, circumventing fiscal, social or any other applicable legal obligations, including through the creation of an entity for this purpose.
- k) the contractor, in the performance of another contract financed by the EU budget/EDF funds, has been declared to be in serious breach of contract, which has led to its early termination or the application of liquidated damages or other contractual penalties or which has been discovered following checks, audits or investigations by the European Commission, the contracting authority, OLAF or the Court of Auditors;
- l) after the award of the contract, the award procedure or the performance of the contract proves to have been subject to breach of obligations, irregularities or fraud;
- m) the award procedure or the performance of another contract financed by the EU budget/EDF funds proves to have been subject to breach of obligations, irregularities or fraud which are likely to affect the performance of the present contract;
- n) the contractor fails to perform its obligation in accordance with Article 8 and Article 9;
- o) the contractor is unable to provide a suitable replacement to an expert, the absence of which affects the proper performance of the contract.
- p) the contractor is in breach of the data protection obligations resulting from Article 40 of these general conditions.

The cases of termination under points (e), (i), (j), (l), (m) and (n) may refer also to persons who are members of the administrative, management or supervisory body of the contractor and/or to persons having powers of representation, decision or control with regard to the contractor.

The cases of termination under points (a), (e), (f), (g), (i), (j), (k), (l), (m) and (n) may refer also to persons jointly and severally liable for the performance of the contract.

The cases under points (e), (i), (j), (k), (l), (m), (n) and (p) may refer also to subcontractors.

- 34.3 Termination shall be without prejudice to any other rights or powers under the contract of the contracting authority and the contractor. The contracting authority may, thereafter, complete the services itself, or conclude any other contract with a third party, at the contractor's own expense. The contractor's liability for delay in completion shall immediately cease when the contracting authority terminates the contract without prejudice to any liability thereunder that may already have arisen.
- 34.4 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 to reduce expenditure to a minimum.
- 34.5 The project manager shall, as soon as possible after termination, certify the value of the services and all sums due to the contractor as at the date of termination.
- 34.6 The contracting authority shall not be obliged to make any further payments to the contractor until the services are completed. After the services are completed, the contracting authority shall recover from the contractor the extra costs, if any, of completing the services, or shall pay any balance still due to the contractor.
- 34.7 If the contracting authority terminates the contract pursuant to Article 34.2, it shall, in addition to the extra costs for completion of the contract and without prejudice to its other remedies under the contract, be entitled to recover from the contractor any loss it has suffered up to the value of the services which have not been satisfactorily completed unless otherwise provided for in the special conditions.
- 34.8 Where the termination is not due to an act or omission of the contractor, force majeure or other circumstances beyond the control of the contracting authority, the contractor shall be entitled to claim in addition to sums owed to it for work already performed, an indemnity for loss suffered.
- 34.9 This contract shall be automatically terminated if it has not given rise to any payment in the two years following its signing by both parties.

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 for more than 120 days to pay the contractor the amounts due after the expiry of the time limit stated in Article 27; or
 - b) consistently fails to meet its obligations after repeated reminders; or
 - c) suspends the progress of the services or any part thereof for more than 90 days for reasons not specified in the contract, or not attributable to the contractor's breach or 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 damage the contractor may have suffered. Such additional payment must not be such that the total payments exceed the amount specified in Article 2 of the contract.

36 FORCE MAJEURE

- 36.1 Neither party shall be considered to be in default or in breach of its obligations under the contract if the performance of such obligations is prevented by any circumstances of *force majeure*, which arise after the date of notification of award or the date when the contract becomes effective.
- 36.2 The term *force majeure*, as used herein covers any unforeseeable events, not within the control of either party and which by the exercise of due diligence neither party is able to overcome such as 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, ... A decision of the European Union to suspend the cooperation with the partner country is considered to be a case of force majeure when it implies suspension of funding the contract.
- 36.3 Notwithstanding the provisions of Article 18 and Article 34, the contractor shall not be liable for liquidated damages or termination for breach or 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 27 and Article 35, for payment of interest on delayed payments, for non-performance or for termination by the contractor for breach or 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*.
- 36.4 If either party considers that any circumstances of force majeure have occurred which may affect performance of its obligations it shall promptly notify the other party and the project manager giving details of the nature, the probable duration and the 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.
- 36.5 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 36.4 the amount thereof shall be certified by the project manager.
- 36.6 If circumstances of *force majeure* have occurred and continue for a period of 180 days then, notwithstanding any extension of time for completion of the contract 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 under the law governing the contract, the parties shall be released from further performance of the contract.

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 its heirs or beneficiaries if they have notified their wish to continue the contract.
- 37.2 Where the contractor consists of a number of natural persons and one or more of them die, a report shall be agreed between the parties on the progress of the contract and the contracting authority shall decide whether to terminate or continue the contract in accordance with the undertaking given by the survivors and by the heirs or beneficiaries, as the case may be.
- 37.3 In the cases provided for in Articles 37.1 and 37.2, persons offering to continue to implement the contract shall notify the contracting authority thereof 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

- 37.4 Such persons shall be jointly and severally liable for the proper implementation of the contract to the same extent as the deceased contractor. Continuation of the contract shall be subject to the rules relating to establishment of any guarantee provided for in the contract.

SETTLEMENT OF DISPUTES AND APPLICABLE LAW

38 SETTLEMENT OF DISPUTES

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

39 APPLICABLE LAW

- 39.1 This contract shall be governed by the law of the country of the contracting authority.

DATA PROTECTION

40 DATA PROTECTION

- 40.1 Processing of personal data by the contracting authority
- Any personal data included in or relating to the contract, including its implementation, shall be processed in accordance with Regulation (EU) 2018/1725. Such data shall be processed solely for the purposes of the implementation, management and monitoring of the contract by the data controller.

The contractor or any other person whose personal data is processed by the data controller in relation to this contract has specific rights as a data subject under Chapter III (Articles 14-23) of Regulation (EU) 2018/1725, in particular the right to access, rectify or erase their personal data and the right to restrict the processing of their personal data or, where applicable, the right to object to processing or the right to data portability.

Should the contractor or any other person whose personal data is processed in relation to this contract have any queries concerning the processing of its personal data, it shall address itself to the data controller. They may also address themselves to the Data Protection Officer

of the data controller. They have the right to lodge a complaint at any time to the European Data Protection Supervisor.

Details concerning the processing of personal data are available in the data protection notice referred to in the special conditions.

40.2 Processing of personal data by the contractor

The processing of personal data by the contractor shall meet the requirements of the general conditions and be processed solely for the purposes set out by the controller.

The contractor shall assist the controller for the fulfilment of the controller's obligation to respond to requests for exercising rights of person whose personal data is processed in relation to this contract as laid down in Chapter III (Articles 14-23) of Regulation (EU) 2018/1725. The contractor shall inform without delay the controller about such requests.

The contractor may act only on documented written instructions and under the supervision of the controller, in particular with regard to the purposes of the processing, the categories of data that may be processed, the recipients of the data and the means by which the data subject may exercise its rights.

The contractor shall grant personnel access to the data to the extent strictly necessary for the implementation, management and monitoring of the contract. The contractor must ensure that personnel authorised to process personal data has committed itself to confidentiality or is under appropriate statutory obligation of confidentiality in accordance with the provisions of Article 7.6 of these general conditions.

The contractor shall adopt appropriate technical and organisational security measures, giving due regard to the risks inherent in the processing and to the nature, scope, context and purposes of processing, in order to ensure, in particular, as appropriate:

- a) the pseudonymisation and encryption of personal data;
- b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
- d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;
- e) measures to protect personal data from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed. The contractor shall notify relevant personal data breaches to the controller without undue delay and at the latest within 48 hours after the contractor becomes aware of the breach. In such cases, the contractor shall provide the controller with at least the following information:
 - i. nature of the personal data breach including where possible, the categories and approximate number of data subjects concerned, and the categories and approximate number of personal data records concerned;
 - ii. likely consequences of the breach;
 - iii. measures taken or proposed to be taken to address the breach, including, where appropriate, measures to mitigate its possible adverse effects.

The contractor shall immediately inform the data controller if, in its opinion, an instruction infringes Regulation (EU) 2018/1725, Regulation (EU) 2016/679, or other Union or Member State or third country applicable data protection provisions as referred to in the tender specifications.

The contractor shall assist the controller for the fulfilment of its obligations pursuant to Article 33 to 41 under Regulation (EU) 2018/1725 to:

- a) ensure compliance with its data protection obligations regarding the security of the processing, and the confidentiality of electronic communications and directories of users;
- b) notify a personal data breach to the European Data Protection Supervisor;
- c) communicate a personal data breach without undue delay to the data subject, where applicable;
- d) carry out data protection impact assessments and prior consultations as necessary.

The contractor shall maintain a record of all data processing operations carried on behalf of the controller, transfers of personal data, security breaches, responses to requests for exercising rights of people whose personal data is processed and requests for access to personal data by third parties.

The contracting authority is subject to Protocol 7 of the Treaty on the Functioning of the European Union on the privileges and immunities of the European Union, particularly as regards the inviolability of archives (including the physical location of data and services) and data security, which includes personal data held on behalf of the contracting authority in the premises of the contractor or subcontractor.

The contractor shall notify the contracting authority without delay of any legally binding request for disclosure of the personal data processed on behalf of the contracting authority made by any national public authority, including an authority from a third country. The contractor may not give such access without the prior written authorisation of the contracting authority.

The duration of processing of personal data by the contractor will not exceed the period referred to in Article 7.9 of these general conditions. Upon expiry of this period, the contractor shall, at the choice of the controller, return, without any undue delay in a commonly agreed format, all personal data processed on behalf of the controller and the copies thereof or shall effectively delete all personal data unless Union or national law requires a longer storage of personal data.

For the purpose of Article 4 of these general conditions, if part or all of the processing of personal data is subcontracted to a third party, the contractor shall pass on the obligations referred to in the present article in writing to those parties, including subcontractors. At the request of the contracting authority, the contractor shall provide a document providing evidence of this commitment.

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