

ANNEX 3 - GENERAL CONDITIONS FOR THE SPECIFIC CONTRACT No. PKF/SAIDC/PILLAR/1/2019

I DEFINITIONS

For the purpose of this Specific Contract, the following definitions (indicated in *italics* in the text) apply:

‘Alfresco’: the service-oriented communication platform that provides a series of web services and allows the exchange of standardised electronic messages and documents between the parties. This is done through a web application which allows the contracting authority and contractor to exchange electronic business documents, such as invoices, through a graphical user interface;

‘Back office’: the internal system(s) used by the parties to process electronic invoices;

‘Confidential information or document’: any information or document received by either party from the other or accessed by either party in the context of the *implementation of the Specific Contract*, that any of the parties has identified in writing as confidential. It may not include information that is publicly available;

‘Conflict of interest’: a situation where the impartial and objective *implementation of the Specific Contract* by the contractor is compromised for reasons involving family, emotional life, political or national affinity, economic interest, or any other shared interest with the contracting authority or any third party related to the subject matter of the Specific Contract;

‘Creator’: means any natural person who contributes to the production of the *result*,

‘EDI message’ (electronic data interchange): a message created and exchanged through the electronic transfer, from computer to computer, of commercial and administrative data using an agreed standard;

‘Force majeure’: any unforeseeable, exceptional situation or event beyond the control of the parties that prevents either of them from fulfilling any of their obligations under the Specific Contract. The situation or event must not be attributable to error or negligence on the part of the parties or on the part of the subcontractors and must prove to be inevitable despite their exercising due diligence. Defaults of service, defects in equipment or material or delays in making them available, labour disputes, strikes and financial difficulties may not be invoked as *force majeure*, unless they stem directly from a relevant case of *force majeure*;

‘Formal notification’ (or ‘formally notify’): form of communication between the parties made in writing by mail or email, which provides the sender with compelling evidence that the message was delivered to the specified recipient;

‘Fraud’: any intentional act or omission affecting the SAIDC’s financial interests relating to the use or presentation of false, incorrect or incomplete statements or documents or to non-disclosure of information in violation of a specific obligation;

‘Implementation of the Specific Contract’: the purchase of services envisaged in the Specific Contract through the signature and *performance of the Specific Contract*;

‘Irregularity’: any infringement of a provision of Union law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the Union’s budget.

‘Notification’ (or ‘notify’): form of communication between the parties made in writing including by electronic means;

‘Performance of a Specific Contract’: the execution of tasks and delivery of the purchased services by the contractor to the contracting authority;

‘Personnel’: persons employed directly or indirectly or contracted by the contractor to implement the Specific Contract;

‘Pre-existing material’: any material, document, technology or know-how which exists prior to the contractor using it for the production of a *result* in the *implementation of the Specific Contract*;

‘Pre-existing right’: any industrial and intellectual property right on *pre-existing material*; it may consist in a right of ownership, a licence right and/or right of use belonging to the contractor, the *creator*, the contracting authority as well as to any other third parties;

‘Professional conflicting interest’: a situation in which the contractor’s previous or ongoing professional activities affect its capacity to implement the Specific Contract or to perform a Specific Contract to an appropriate quality standard;

‘Related person’: any person who has the power to represent the contractor or to take decisions on its behalf;

‘Request for services’: a document from the contracting authority requesting that the contractors in a multiple Specific Contract provide a specific tender for services whose terms are not entirely defined under the Specific Contract;

‘Result’: any intended outcome of the *implementation of the Specific Contract*, whatever its form or nature, which is delivered and finally or partially approved by the contracting authority. A *result* may be further defined in this Specific Contract as a deliverable. A *result* may, in addition to materials produced by the contractor or at its request, also include *pre-existing materials*;

‘Specific contract’: a contract implementing the Specific Contract and specifying details of a service to be provided;

‘Substantial error’: any infringement of a contract provision resulting from an act or omission, which causes or might cause a loss to the SAIDC’s budget.

II SEVERABILITY

Each provision of this Specific Contract is severable and distinct from the others. If a provision is or becomes illegal, invalid or unenforceable to any extent, it must be severed from the remainder of the Specific Contract. This does not affect the legality, validity or enforceability of any other provisions of the Specific Contract, which continue in full force and effect. The illegal, invalid or unenforceable provision must be replaced by a legal, valid and enforceable substitute provision which corresponds as closely as possible with the actual intent of the parties under the illegal, invalid or unenforceable provision. The replacement of such a provision must be agreed in advance between both parties in writing, including the precise wording of such a replacement provision. The Specific Contract must be interpreted as if it had contained the substitute provision as from its entry into force.

III PROVISION OF SERVICES

- III.1** The contractor must provide services (as set out in Annex 1 to the contract) of high quality standards, in accordance with the state of the art in the industry and the provisions of this Specific Contract, in particular the tender specifications and the terms of its tender.
- III.2** The contractor must comply with the minimum requirements provided for in the tender specifications. This includes compliance with applicable obligations under environmental, social and labour law established by European Union law, national (Slovak) law and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to European Directive 2014/24/EU¹.

¹ OJL94 of 28.03.2014, p. 65

- III.3** The contractor must obtain any permit or licence required in the State where the services are to be provided.
- III.4** All periods specified in the Specific Contract are calculated in calendar days, unless otherwise specified.
- III.5** The contractor must not present itself as a representative of the contracting authority and must inform third parties that it is not part of the European public service.
- III.6** The contractor is responsible for the *personnel* who carry out the services and exercises its authority over its *personnel* without interference by the contracting authority. The contractor must inform its *personnel* that:
- (a) they may not accept any direct instructions from the contracting authority; and
 - (b) their participation in providing the services does not result in any employment or contractual relationship with the contracting authority.
- III.7** The contractor must ensure that the *personnel* implementing the Specific Contract and any future replacement personnel possess the professional qualifications and experience required to provide the services, as the case may be on the basis of the selection criteria set out in the tender specifications.
- III.8** At the contracting authority's reasoned request, the contractor must replace any member of *personnel* who:
- (a) does not have the expertise required to provide the services; or
 - (b) has caused disruption at the premises of the contracting authority.
- The contractor bears the cost of replacing its *personnel* and is responsible for any delay in providing the services resulting from the replacement of *personnel*.
- III.9** The contractor must record and report to the contracting authority any problem that affects its ability to provide the services. The report must describe the problem, state when it started and what action the contractor is taking to resolve it.

IV COMMUNICATION BETWEEN THE PARTIES

IV.1 Form and means of communication

Any communication of information, notices or documents under the Specific Contract must:

- (a) be made in writing in paper or electronic format in the language of the contract;
- (b) bear the Specific Contract number; and
- (c) be sent by mail, email or, via Alfresco.

If a party requests written confirmation of an e-mail within a reasonable time, the other party must provide an original signed paper version of the communication as soon as possible.

The parties agree that any communication made by email has full legal effect and is admissible as evidence in judicial proceedings.

IV.2 Date of communications by mail and email

Any communication is deemed to have been made when the receiving party receives it, unless this Specific Contract refers to the date when the communication was sent.

E-mail is deemed to have been received by the receiving party on the day of dispatch of that e-mail, provided that it is sent to the e-mail address indicated in Article 4 of the Specific Agreement. The sending party must be able to prove the date of dispatch. In the event that the sending party receives a non-delivery report, it must make every effort to ensure that the other party actually receives the communication by email or mail. In such a case, the sending party is not held in breach of its obligation to send such communication within a specified deadline.

Mail sent to the contracting authority is deemed to have been received by the contracting authority on the date on which the contracting authority registers it.

Formal notifications are considered to have been received by the receiving party on the date of receipt indicated in the proof received by the sending party that the message was delivered to the specified recipient.

V LIABILITY

- V.1** The contracting authority is not liable for any damage or loss caused by the contractor, including any damage or loss to third parties during or as a consequence of *implementation of the Specific Contract*.
- V.2** If required by the relevant applicable legislation, the contractor must take out an insurance policy against risks and damage or loss relating to the *implementation of the Specific Contract*. It must also take out supplementary insurance as reasonably required by standard practice in the industry. Upon request, the contractor must provide evidence of insurance coverage to the contracting authority.
- V.3** The contractor is liable for any loss or damage caused to the contracting authority during or as a consequence of *implementation of the Specific Contract*, including in the event of subcontracting, but only up to an amount not exceeding three times the total amount of the relevant Specific Contract. However, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor or of its *personnel* or subcontractors, the contractor is liable for the whole amount of the damage or loss.
- V.4** If a third party brings any action against the contracting authority in connection with the *implementation of the Specific Contract*, including any action for alleged breach of intellectual property rights, the contractor must assist the contracting authority in the legal proceedings, including by intervening in support of the contracting authority upon request.
- V.5** If the contracting authority's liability towards the third party is established and that such liability is caused by the contractor during or as a consequence of the *implementation of the Specific Contract*, Article V.3 applies.
- V.6** If the contractor is composed of two or more economic operators (i.e. who submitted a joint tender), they are all jointly and severally liable to the contracting authority for the *implementation of the Specific Contract*.
- V.7** The contracting authority is not liable for any loss or damage caused to the contractor during or as a consequence of *implementation of the Specific Contract*, unless the loss or damage was caused by wilful misconduct or gross negligence of the contracting authority.

VI CONFLICT OF INTEREST AND PROFESSIONAL CONFLICTING INTERESTS

- VI.1** The contractor must take all the necessary measures to prevent any situation of *conflict of interest* or *professional conflicting interest*.
- VI.2** The contractor must *notify* the contracting authority in writing as soon as possible of any situation that could constitute a *conflict of interest* or a *professional conflicting interest* during the *implementation of the Specific Contract*. The contractor must immediately take action to rectify the situation.

The contracting authority may do any of the following:

- (a) verify that the contractor's action is appropriate;
- (b) require the contractor to take further action within a specified deadline;
- (c) decide not to award a Specific Contract to the contractor.

VI.3 The contractor must pass on all the relevant obligations in writing to:

- (a) its *personnel*;
- (b) any natural person with the power to represent it or take decisions on its behalf;
- (c) third parties involved in the *implementation of the Specific Contract*, including subcontractors.

The contractor must also ensure that the persons referred to above are not placed in a situation which could give rise to conflicts of interest.

VII CONFIDENTIALITY

VII.1 The contracting authority and the contractor must treat with confidentiality any information or documents, in any format, disclosed in writing or orally, relating to the *implementation of the Specific Contract* and identified in writing as confidential.

VII.2 Each party must:

- (a) not use *confidential information or documents* for any purpose other than to perform its obligations under the Specific Contract without the prior written agreement of the other party;
- (b) ensure the protection of such *confidential information or documents* with the same level of protection as its own *confidential information or documents* and in any case with due diligence;
- (c) not disclose, directly or indirectly, *confidential information or documents* to third parties without the prior written agreement of the other party.

VII.3 The confidentiality obligations set out in this Article are binding on the contracting authority and the contractor during the *implementation of the Specific Contract* and for as long as the information or documents remain confidential unless:

- (a) the disclosing party agrees to release the receiving party from the confidentiality obligation earlier;
- (b) the *confidential information or documents* become public through other means than a breach of the confidentiality obligation;
- (c) the applicable law requires the disclosure of the *confidential information or documents*.

VII.4 The contractor must obtain from any natural person with the power to represent it or take decisions on its behalf, as well as from third parties involved in the *implementation of the Specific Contract* a commitment that they will comply with this Article. At the request of the contracting authority, the contractor must provide a document providing evidence of this commitment.

VIII PROCESSING OF PERSONAL DATA

- VIII.1** All parties are obligated to process the Personal Data in accordance with the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (GDPR) and any other applicable laws and regulations.

IX SUBCONTRACTING

- IX.1** The contractor must not subcontract and have the Specific Contract implemented by third parties beyond the third parties already mentioned in its tender without prior written authorisation from the contracting authority.
- IX.2** Even if the contracting authority authorises subcontracting, the contractor remains bound by its contractual obligations and is solely responsible for the *implementation of the Specific Contract*.
- IX.3** The contractor must ensure that the subcontract does not affect the rights of the contracting authority under this Specific Contract.

X AMENDMENTS

- X.1** Any amendment to the Specific Contract must be made in writing before all contractual obligations have been fulfilled. A Specific Contract does not constitute an amendment to the Specific Contract.
- X.2** Any amendment must not make changes to the Specific Contract that might alter the initial conditions of the procurement procedure or result in unequal treatment of tenderers or contractors.

XI ASSIGNMENT

- XI.1** The contractor must not assign any of the rights and obligations arising from the Specific Contract, including claims for payments or factoring, without prior written authorisation from the contracting authority. In such cases, the contractor must provide the contracting authority with the identity of the intended assignee.
- XI.2** Any right or obligation assigned by the contractor without authorisation is not enforceable against the contracting authority.

XII INTELLECTUAL PROPERTY RIGHTS

XII.1 Ownership of the rights in the results

The SAIDC acquires irrevocably worldwide ownership of the *results* and of all intellectual property rights under the Specific Contract. The intellectual property rights so acquired include any rights, such as copyright and other intellectual or industrial property rights, to any of the *results* and to all technological solutions and information created or produced by the contractor or by its subcontractor in *implementation of the Specific Contract*. The contracting authority may exploit and use the acquired rights as stipulated in this Specific Contract. The SAIDC acquires all the rights from the moment the contracting authority approves the *results* delivered by the contractor. Such delivery and approval are deemed to constitute an effective assignment of rights from the contractor to the SAIDC.

The payment of the price includes any fees payable to the contractor about the acquisition of ownership of rights by the Union including for all forms of exploitation and of use of the *results*.

XII.2 Licensing rights on pre-existing materials

Unless provided otherwise in the special conditions, SAIDC does not acquire ownership of *pre-existing rights* under this Specific Contract.

The contractor licenses the *pre-existing rights* on a royalty-free, non-exclusive and irrevocable basis to SAIDC, which may use the *pre-existing materials* for all the modes of exploitation set out in this Specific Contract or in Specific Contracts. All *pre-existing rights* are licensed to SAIDC from the moment the *results* are delivered and approved by the contracting authority.

The licensing of *pre-existing rights* to SAIDC under this Specific Contract covers all territories worldwide and is valid for the duration of intellectual property rights protection.

The payment of the price as set out in the Specific Contracts is deemed to also include any fees payable to the contractor in relation to the licensing of *pre-existing rights* to SAIDC, including for all forms of exploitation and of use of the *results*.

Where *implementation of the Specific Contract* requires that the contractor uses *pre-existing materials* belonging to the contracting authority, the contracting authority may request that the contractor signs an adequate licence agreement. Such use by the contractor will not entail any transfer of rights to the contractor and is limited to the needs of this Specific Contract.

XII.3 Exclusive rights

SAIDC acquires the following exclusive rights:

- (a) reproduction: the right to authorise or prohibit direct or indirect, temporary or permanent reproduction of the *results* by any means (mechanical, digital or other) and in any form, in whole or in part;
- (b) communication to the public: the exclusive right to authorise or prohibit any display, performance or communication to the public, by wire or wireless means, including the making available to the public of the *results* in such a way that members of the public may access them from a place and at a time individually chosen by them; this right also includes the communication and broadcasting by cable or by satellite;
- (c) distribution: the exclusive right to authorise or prohibit any form of distribution *of results* or copies of the *results* to the public, by sale or otherwise;
- (d) rental: the exclusive right to authorise or prohibit rental or lending of the *results* or of copies of the *results*;
- (e) adaptation: the exclusive right to authorise or prohibit any modification of the *results*;
- (f) translation: the exclusive right to authorise or prohibit any translation, adaptation, arrangement, creation of derivative works based on the *results*, and any other alteration of the *results*, subject to the respect of moral rights of authors, where applicable;
- (g) where the *results* are or include a database: the exclusive right to authorise or prohibit the extraction of all or a substantial part of the contents of the database to another medium by any means or in any form; and the exclusive right to authorise or prohibit the re-utilization of all or a substantial part of the contents of the database by the distribution of copies, by renting, by on-line or other forms of transmission;
- (h) where the *results* are or include a patentable subject-matter: the right to register them as a patent and to further exploit such patent to the fullest extent;
- (i) where the *results* are or include logos or subject-matter which could be registered as a trademark: the right to register such logo or subject-matter as a trademark and to further exploit and use it;
- (j) where the *results* are or include know-how: the right to use such know-how as is necessary to make use of the *results* to the full extent provided for by this Specific Contract, and the right to make it available to contractors or subcontractors acting on behalf of the contracting authority, subject to their signing of adequate confidentiality undertakings where necessary;

- (k) where the *results* are documents:
 - (i) the right to authorise the reuse of the documents in conformity with the Slovak national laws on the reuse of documents, to the extent it is applicable and the documents fall within its scope and are not excluded by any of its provisions; for the sake of this provision, 'reuse' and 'document' have the meaning given to it by this Decision;
 - (ii) the right to store and archive the *results* in line with the document management rules applicable to the contracting authority, including digitisation or converting the format for preservation or new use purposes;
- (l) where the *results* are or incorporate software, including source code, object code and, where relevant, documentation, preparatory materials and manuals, in addition to the other rights mentioned in this Article:
 - (i) end-user rights, for all uses by the Union or by subcontractors which result from this Specific Contract and from the intention of the parties;
 - (ii) the rights to decompile or disassemble the software;
- (m) to the extent that the contractor may invoke moral rights, the right for the contracting authority, except where otherwise provided in this Specific Contract, to publish the *results* with or without mentioning the *creator(s)*' name(s), and the right to decide when and whether the *results* may be disclosed and published.

The contractor warrants that the exclusive rights and the modes of exploitation may be exercised by the Union on all parts of the *results*, be they created by the contractor or consisting of *pre-existing materials*.

Where *pre-existing materials* are inserted in the *results*, the contracting authority may accept reasonable restrictions impacting on the above list, provided that the said materials are easily identifiable and separable from the rest, that they do not correspond to substantial elements of the *results*, and that, should the need arise, satisfactory replacement solutions exist, at no additional costs to the contracting authority. In such case, the contractor will have to clearly inform the contracting authority before making such choice and the contracting authority has the right to refuse it.

XII.4 Identification of pre-existing rights

When delivering the *results*, the contractor must warrant that, for any use that the contracting authority may envisage within the limits set in this Specific Contract, the *results* and the *pre-existing material* incorporated in the *results* are free of claims from *creators* or from any third parties and all the necessary *pre-existing rights* have been obtained or licensed.

To that effect, the contractor must establish a list of all *pre-existing rights* to the *results* of this Specific Contract or parts thereof, including identification of the rights' owners. If there are no *pre-existing rights* to the *results*, the contractor must provide a declaration to that effect. The contractor must provide this list or declaration to the contracting authority together with the invoice for payment of the balance at the latest.

XII.5 Evidence of granting of pre-existing rights

Upon request by the contracting authority, the contractor must provide evidence that it has the ownership or the right to use all the listed *pre-existing rights*, except for the rights owned or licensed by SAIDC. The contracting authority may request this evidence even after the end of this Specific Contract.

This evidence may refer, for example, to rights to: parts of other documents, images, graphs, fonts, tables, data, software, technical inventions, know-how, IT development tools, routines, subroutines

or other programs ('background technology'), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin.

This evidence must include, as appropriate:

- (a) the name and version number of a software product;
- (b) the full identification of the work and its author, developer, *creator*, translator, data entry person, graphic designer, publisher, editor, photographer, producer;
- (c) a copy of the licence to use the product or of the agreement granting the relevant rights to the contractor or a reference to this licence;
- (d) a copy of the agreement or extract from the employment contract granting the relevant rights to the contractor where parts of the *results* were created by its *personnel*,
- (e) the text of the disclaimer notice if any.

Provision of evidence does not release the contractor from its responsibilities if it is found that it does not hold the necessary rights, regardless of when and by whom this fact is revealed.

The contractor also warrants that it possesses the relevant rights or powers to execute the transfer and that it has paid or has verified payment of all due fees including fees due to collecting societies, related to the final *results*.

XII.6 Quotation of works in the result

In the *result*, the contractor must clearly point out all quotations of existing works. The complete reference should include as appropriate, the following: name of the author, title of the work, date and place of publication, date of creation, address of publication on the internet, number, volume and other information that allows the origin to be easily identified.

XII.7 Moral rights of creators

By delivering the *results*, the contractor warrants that the *creators* will not object to the following on the basis of their moral rights under copyright:

- (a) that their names be mentioned or not mentioned when the *results* are presented to the public;
- (b) that the *results* be divulged or not after they have been delivered in their final version to the contracting authority;
- (c) that the *results* be adapted, provided that this is done in a manner which is not prejudicial to the *creator's* honour or reputation.

If moral rights on parts of the *results* protected by copyright may exist, the contractor must obtain the consent of *creators* regarding the granting or waiver of the relevant moral rights in accordance with the applicable legal provisions and be ready to provide documentary evidence upon request.

XII.8 Image rights and sound recordings

If natural persons appear in a *result* or their voice or any other private element is recorded in a recognisable manner, the contractor must obtain a statement by these persons (or, in the case of minors, by the persons exercising parental authority) giving their permission for the described use of their image, voice or private element and, on request, submit a copy of the permission to the contracting authority. The contractor must take the necessary measures to obtain such consent in accordance with the applicable legal provisions.

XII.9 Copyright notice for pre-existing rights

When the contractor retains *pre-existing rights* on parts of the *results*, reference must be inserted to that effect when the *result* is used, with the following disclaimer: '© — year — Slovak Agency for International Development Cooperation (SAIDC). All rights reserved.

Certain parts are licensed under conditions to SAIDCor with any other equivalent disclaimer as the contracting authority may consider best appropriate, or as the parties may agree on a case-by-case basis. This does not apply where inserting such reference would be impossible, notably for practical reasons.

XII.10 Visibility of Union funding and disclaimer

When making use of the *results*, the contractor must declare that they have been produced under a contract with SAIDC and that the opinions expressed are those of the contractor only and do not represent the contracting authority's official position. The contracting authority may waive this obligation in writing or provide the text of the disclaimer.

XIII FORCE MAJEURE

XIII.1 If a party is affected *by force majeure*, it must immediately *notify* the other party, stating the nature of the circumstances, their likely duration and foreseeable effects.

XIII.2 A party is not liable for any delay or failure to perform its obligations under the Specific Contract if that delay or failure is a *result of force majeure*. If the contractor is unable to fulfil its contractual obligations owing to *force majeure*, it has the right to remuneration only for the services actually provided.

XIII.3 The parties must take all necessary measures to limit any damage due to *force majeure*.

XIV LIQUIDATED DAMAGES**XIV.1 Delay in delivery**

If the contractor fails to perform its contractual obligations within the applicable time limits and/or quality standards set out in this Specific Contract, the contracting authority may claim liquidated damages for each day of delay using the following formula:

$$0.1 \times (V/d)$$

where:

V is the price of the relevant purchase or deliverable or *result*;

d is the duration specified in the relevant Specific Contract for delivery of the relevant purchase or deliverable or *result* or, failing that, the period between the date specified in Article 2.2 and the date of delivery or performance specified in the relevant Specific Contract, expressed in days.

XIV.2 Procedure

The contracting authority must *formally notify* the contractor of its intention to apply liquidated damages and the corresponding calculated amount.

The contractor has 30 days following the date of receipt to submit observations. Failing that, the decision becomes enforceable the day after the time limit for submitting observations has elapsed.

If the contractor submits observations, the contracting authority, taking into account the relevant observations, must *notify* the contractor:

(a) of the withdrawal of its intention to apply liquidated damages; or

- (b) of its final decision to apply liquidated damages and the corresponding amount.

XIV.3 Nature of liquidated damages

The parties expressly acknowledge and agree that any amount payable under this Article is not a penalty and represents a reasonable estimate of fair compensation for the damage incurred due to failure to provide the services within the applicable time limits set out in this Specific Contract.

XIV.4 Claims and liability

Any claim for liquidated damages does not affect the contractor's actual or potential liability or the contracting authority's rights under Article XVI.

XV SUSPENSION OF THE IMPLEMENTATION OF THE SPECIFIC CONTRACT

XV.1 Suspension by the contractor

If the contractor is affected *by force majeure*, it may suspend the provision of the services under a Specific Contract.

The contractor must immediately *notify* the contracting authority of the suspension. The *notification* must include a description of the *force majeure* and state when the contractor expects to resume the provision of services.

The contractor must *notify* the contracting authority as soon as it is able to resume *performance of the Specific Contract*, unless the contracting authority has already terminated the Specific Contract.

XV.2 Suspension by the contracting authority

The contracting authority may suspend the *implementation of the Specific Contract* or *performance of a Specific Contract* or any part of it:

- (a) if the procedure for awarding the Specific Contract or the *implementation of the Specific Contract* proves to have been subject to *substantial errors, irregularities or fraud*,
- (b) in order to verify whether the presumed *substantial errors, irregularities or fraud* actually occurred.

The contracting authority must *formally notify* the contractor of the suspension. Suspension takes effect on the date of *formal notification*, or at a later date if the *formal notification* so provides.

The contracting authority must *notify* the contractor as soon as possible whether:

- (a) it is lifting the suspension; or
- (b) it intends to terminate the Specific Contract under Article XVI.1(d) or (h).

The contractor is not entitled to compensation for suspension of any part of the Specific Contract.

XVI TERMINATION OF THE SPECIFIC CONTRACT

XVI.1 Grounds for termination by the contracting authority

The contracting authority may terminate the Specific Contract or a Specific Contract in the following circumstances:

- (a) if provision of the services under a pending Specific Contract has not actually started within 15 days of the scheduled date and the contracting authority considers the new date proposed, if any, unacceptable, taking into account Article X.2;

- (b) if the contractor is unable, through its own fault, to obtain any permit or licence required for *implementation of the Specific Contract*;
- (c) if the contractor does not implement the Specific Contract or perform the Specific Contract in accordance with the tender specifications or *request for service* or is in breach of another substantial contractual obligation or repeatedly refuses to sign Specific Contracts. Termination of three or more Specific Contracts in these circumstances also constitutes grounds for termination of the Specific Contract;
- (d) if the procedure for awarding the Specific Contract or the *implementation of the Specific Contract* prove to have been subject to *substantial errors, irregularities or fraud*;
- (e) if the contractor does not comply with applicable obligations under environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;
- (f) if the contractor is in a situation that could constitute a *conflict of interest* or a *professional conflicting interest* as referred to in Article VI;
- (g) if a change to the contractor's legal, financial, technical, organisational or ownership situation is likely to substantially affect the *implementation of the Specific Contract* or substantially modify the conditions under which the Specific Contract was initially awarded;
- (h) in the event of *force majeure*, where either resuming implementation is impossible or the necessary ensuing amendments to the Specific Contract would mean that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or contractors;
- (i) if the needs of the contracting authority change and it no longer requires new services under the Specific Contract; in such cases ongoing Specific Contracts remain unaffected;

XVI.2 Grounds for termination by the contractor

The contractor may terminate the Specific Contract or a Specific Contract if:

- (a) it has evidence that the contracting authority has committed *substantial errors, irregularities or fraud* in the procedure for awarding the Specific Contract or the *implementation of the Specific Contract*;
- (b) the contracting authority fails to comply with its obligations, in particular the obligation to provide the information needed for the contractor to implement the Specific Contract or to perform a Specific Contract as provided for in the tender specifications.

XVI.3 Procedure for termination

A party *must formally notify* the other party of its intention to terminate the Specific Contract or a Specific Contract and the grounds for termination.

The other party has 30 days following the date of receipt to submit observations, including the measures it has taken to continue fulfilling its contractual obligations. Failing that, the decision to terminate becomes enforceable the day after the time limit for submitting observations has elapsed.

If the other party submits observations, the party intending to terminate must *formally notify* it either of the withdrawal of its intention to terminate or of its final decision to terminate.

In the cases referred to in points (a) to (e) of Article XVI.1 and in Article XVI.2, the date on which the termination takes effect must be specified in the *formal notification*.

In the cases referred to in points (d) and (h) of Article XVI.1, the termination takes effect on the day following the date on which the contractor receives *notification* of termination.

In addition, at the request of the contracting authority and regardless of the grounds for termination, the contractor must provide all necessary assistance, including information, documents and files, to allow the contracting authority to complete, continue or transfer the services to a new contractor or internally, without interruption or adverse effect on the quality or continuity of the services. The parties may agree to draw up a transition plan detailing the contractor's assistance unless such plan is already detailed in other contractual documents or in the tender specifications. The contractor must provide such assistance at no additional cost, except if it can demonstrate that it requires substantial additional resources or means, in which case it must provide an estimate of the costs involved and the parties will negotiate an arrangement in good faith.

XVI.4 Effects of termination

The contractor is liable for damage incurred by the contracting authority as a result of the termination of the Specific Contract or a Specific Contract including the cost of appointing another contractor to provide or complete the services, unless the damage was caused by the situation specified in Article XVI.1(d) or (e) or in Article XVI.2. The contracting authority may claim compensation for such damage.

The contractor is not entitled to compensation for any loss resulting from the termination of the Specific Contract, including loss of anticipated profits, unless the loss was caused by the situation specified in Article XVI.2.

The contractor must take all appropriate measures to minimise costs, prevent damage and cancel or reduce its commitments.

Within 60 days of the date of termination, the contractor must submit any report, deliverable or *result* and any invoice required for services that were provided before the date of termination.

XVII INVOICES, VALUE ADDED TAX

XVII.1 Invoices and value added tax

Invoices must contain the contractor's (or leader's in the case of a joint tender) identification data, the amount, the currency and the date, as well as the Specific Contract reference.

Invoices must indicate the place of taxation of the contractor (or leader in the case of a joint tender) for value added tax (VAT) purposes and must specify separately amounts not including VAT and amounts including VAT.

The contracting authority is exempt from all taxes and duties, including VAT, in accordance with Articles 3 and 4 of the Protocol on the privileges and immunities of the European Union.

The contractor (or leader in the case of a joint tender) must complete the necessary formalities with the relevant authorities to ensure that the supplies and services required for *implementation of the Specific Contract* are exempt from taxes and duties, including VAT.

XVIII PAYMENTS AND GUARANTEES

XVIII.1 Date of payment

Payments are deemed to be effected on the date when they are debited to the contracting authority's account.

XVIII.2 Currency

Payments are made in euros.

XVIII.3 Conversion

The contracting authority makes any conversion between the euro and another currency at the daily

euro exchange rate published in the Official Journal of the European Union, or failing that, at the monthly accounting exchange rate, as established by the European Commission and published on the website indicated below, applicable on the day when it issues the payment order.

The contractor makes any conversion between the euro and another currency at the monthly accounting exchange rate, established by the Commission and published on the website indicated below, applicable on the date of the invoice.

http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm

XVIII.4 Costs of transfer

The costs of the transfer are borne as follows:

- (a) the contracting authority bears the costs of dispatch charged by its bank;
- (b) the contractor bears the costs of receipt charged by its bank;
- (c) the party causing repetition of the transfer bears the costs for repeated transfer.

XVIII.5 Payment on completion

The contractor must send an invoice for payment of the total contract value within 60 days of the end of the period of provision of the services, as provided for in Article 3 of the Specific Contract.

Payment of the invoice and approval of documents does not imply recognition of the regularity, authenticity, completeness and correctness of the declarations and information they contain.

XVIII.6 Suspension of the time allowed for payment

The contracting authority may suspend the payment periods specified in Article 3 of the Specific Contract at any time by *notifying* the contractor that its invoice cannot be processed. The reasons the contracting authority may cite for not being able to process an invoice are:

- (a) because it does not comply with the Specific Contract;
- (b) because the contractor has not produced the appropriate documents or deliverables; or
- (c) because the contracting authority has observations on the documents or deliverables submitted with the invoice.

The contracting authority must *notify* the contractor as soon as possible of any such suspension, giving the reasons for it.

Suspension takes effect on the date the contracting authority sends the *notification*. The remaining payment period resumes from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension period exceeds one month, the contractor may request the contracting authority to justify the continued suspension.

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph of this Article and the new document produced is also rejected, the contracting authority reserves the right to terminate the Specific Contract in accordance with Article XVI.1(c).

XVIII.7 Interest on late payment

On expiry of the payment periods specified in Article 3 of the Specific Contract, the contractor is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in euros (the reference rate) plus eight points. The reference rate is the rate in force, as published in the C series of the *Official Journal of the European Union*, on the first day of the month in which the payment period ends.

Suspension of the payment period as provided for in Article XVIII.6 is not considered as giving rise to late payment.

Interest on late payment covers the period running from the day following the due date for payment up to and including the date of payment as defined in Article XVIII.1.

However, when the calculated interest is EUR 200 or less, it must be paid to the contractor only if it requests it within two months of receiving late payment.

XIX RECOVERY

XIX.1 If an amount is to be recovered under the terms of the Specific Contract, the contractor must repay the contracting authority the amount in question.

XIX.2 Recovery procedure

Before recovery, the contracting authority *must formally notify* the contractor of its intention to recover the amount it claims, specifying the amount due and the reasons for recovery and inviting the contractor to make any observations within 30 days of receipt.

If no observations have been submitted or if, despite the observations submitted, the contracting authority decides to pursue the recovery procedure, it must confirm recovery by *formally notifying* a debit note to the contractor, specifying the date of payment. The contractor must pay in accordance with the provisions specified in the debit note.

If the contractor does not pay by the due date, the contracting authority may, after informing the contractor in writing, recover the amounts due:

- (a) by offsetting them against any amounts owed to the contractor by the SAIDC;
- (b) by taking legal action.

XIX.3 Interest on late payment

If the contractor does not honour the obligation to pay the amount due by the date set by the contracting authority in the debit note, the amount due bears interest calculated on the same basis and at the effective same rate as indicated in Article XIV.1 of these General Conditions. Interest on late payments will cover the period starting on the day after the due date for payment and ending on the date when the contracting authority receives the full amount owed.

Any partial payment is first entered against charges and interest on late payment and then against the principal amount.

XX CHECKS AND AUDITS

XX.1 The contracting authority may check or require an audit on the *implementation of the Specific Contract*. This may be carried out either by SAIDC's own staff or by any outside body authorised to do so on its behalf.

Such checks and audits may be initiated at any moment during the provision of the services and up to five years starting from the payment of the balance of the last Specific Contract issued under this Specific Contract

The audit procedure is initiated on the date of receipt of the relevant letter sent by the contracting authority. Audits are carried out on a confidential basis.

- XX.2** The contractor must keep all original documents stored on any appropriate medium, including digitised originals if authorised under UK national law, for a period of five years starting from the payment of the balance of the last Specific Contract issued under this Specific Contract.
- XX.3** The contractor must grant the contracting authority's staff and outside personnel authorised by the contracting authority the appropriate right of access to sites and premises where the Specific Contract is implemented and to all the information, including information in electronic format, needed to conduct such checks and audits. The contractor must ensure that the information is readily available at the moment of the check or audit and, if so requested, that information is handed over in an appropriate format.
- XX.4** On the basis of the findings made during the audit, a provisional report is drawn up. The contracting authority or its authorised representative must send it to the contractor, who has 30 days following the date of receipt to submit observations. The contractor must receive the final report within 60 days following the expiry of the deadline to submit observations.

On the basis of the final audit findings, the contracting authority may recover all or part of the payments made in accordance with Article 3 of the Specific Contract.