

# PROJECT CONTRACT

## MARKET IDENTIFICATION < Telescope N° 226.941-2>

Between

**DEFENSE CONSEIL INTERNATIONAL**, a French incorporated company, registered under no 722 031 176 and located at Immeuble Arc Ouest, 27-29 rue Leblanc, 75015 Paris, France,

('DCI'),

of the one part,

and

<Full official name of contractor>

[<Legal status/title>]

[<Official registration number>]<sup>1</sup>

<Full official address>

[<VAT number>],

('the contractor')

of the other part,

have agreed as follows:

### Article 1 Subject

1.1. The subject of the contract shall be:

The European Commission is financing a support measure to strengthen the operational capacity of the Egyptian coastguard and border guards to manage migratory flows by means of border surveillance and search and rescue operations on land and at sea.

In this context, the company selected by the European Commission (Civipol and its contractor DCI) issued a call for tenders for the supply of the supply of one hundred and eighty-three telescopes for Egyptian border guards (hereinafter the "Final Client"). The contractor has won this tender and the parties have agreed to sign a contract for the provision of these supplies (hereinafter the "Contract").

Accordingly, the subject of the Contract is the delivery and after-sales service of the following supplies:

- One hundred and eighty-three (183) telescopes.

The place of delivery will be in Egypt, in Cairo and the applicable Incoterms are DPU<sup>2</sup>.

The deadline for delivery of the Supplies is xxx (x) months from the date of signature of the Contract. The Supplies must be guaranteed for twelve (12) months after provisional delivery, in accordance with article 31 of the general terms and conditions, for the benefit of the Final Beneficiary.

- 1.2. The Contractor shall comply strictly with the provisions of the Contract as listed in Article 2.

## **Article 2 Order of precedence of contract documents**

The contract is made up of the following documents, in order of precedence:

- the contract agreement;
- the special conditions
- the general conditions (Annex I);
- the technical specifications (Annex II including clarifications of DCI before the deadline for submission of tenders);
- the technical offer (Annex III including clarifications from the tenderer provided during tender evaluation);
- the budget breakdown (Annex IV);
- [specified forms and other relevant documents (Annex V)];

The various documents making up the contract shall be deemed to be mutually explanatory; in cases of ambiguity or divergence, they shall prevail in the order in which they appear above.

## **Article 3 Price**

- 3.1 The price of the supplies shall be that shown on the financial offer (specimen in Annex IV).
- 3.2 Payments shall be made in accordance with the general and/or special conditions (Articles 26 to 28).

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<sup>2</sup> DPU (Delivered at Place Unloaded) – Incoterms 2020 - - <http://www.iccwbo.org/incoterms/>

**For the contractor**

Name:

Title:

Signature:

Date:

(Company stamp)

**For DCI**

Name:

Title:

Signature:

Date:

(Company stamp)

## **SPECIAL CONDITIONS**

These conditions amplify and supplement, if necessary, the general conditions governing the contract. Unless the special conditions provide otherwise, those general conditions remain fully applicable. The numbering of the articles of the special conditions is not consecutive but follows the numbering of the articles of the general conditions. In exceptional cases, and with the authorisation of the appropriate Commission departments, other clauses may be added to cover specific situations.

### **Article 1 Définitions**

Words or expressions used in general conditions have the following meaning in the Market

« contract » = Contract

« total price of the contract » = Total Price

« day » = calendar day

« market » = Market or Contract

### **Article 2 Language of the contract**

- 2.1 The language used shall be French. This translation is only translation of convenience.

### **Article 4 Language of the contract**

- 4.1 Mr./Ms. XXXX, [indicate his/her function] monitor the execution of this project on behalf of the Contractor.

Mr XXXX, Project Manager, is responsible for project management for DCI.

### **Article 8 Assistance with local regulations**

The contractor shall be responsible for all formalities for the registration and recording of the Ships prior to delivery in Egypt to DCI.

### **Article 9 General obligations**

The contractor guarantees that its personnel will comply with the provisions of the Contract.

For a period of one (1) year from the end of this Contract, the Contractor undertakes to inform DCI in the event of obsolescence and/or impossibility of manufacturing spare parts designed and manufactured under its responsibility and required for the servicing and maintenance of the Supplies.

### **Article 9 bis- Code of conduct**

The contractor undertakes to comply with all of the following obligations in addition to the obligations set out in Article 9a of the General Terms and Conditions (Annex II).

The contractor represents and warrants that neither it, nor any person under its responsibility or acting on its behalf or in its name:

- has agreed or will agree to offer any remuneration, payment or benefit of any sort which constitutes or might constitute according to regulations applicable to the Proposal and/or

the resulting Contract and/or to the parties an act or attempt of corruption or influence peddling, whether directly or indirectly, with a view to the award and/or execution of a contract (hereafter "Acts of Corruption"). Each party shall ensure that an enquiry will be held with care in the event of proof or suspicion relating to the commission of an Act of Corruption and this will be notified to the other party;

The contractor represents and warrants :

- that it has implemented all rules and procedures enabling it to comply with the said legislation and regulations. Proof of the existence of said rules and procedures will be provided to the other party upon request;
- that it has implemented appropriate rules and procedures aiming to prevent itself and persons under its responsibility or acting in its name or on its behalf from committing an Act of Corruption. Proof of the existence of said rules and procedures will be provided to the other party upon request;
- that records relating to its activities, including accounting documents, are held and kept in such a way as to guarantee their integrity.

The Client warrants that it has read DCI's compliance guidelines available on DCI's website: <https://groupedci.com/content/uploads/2021/08/2021-Compliance-guidelines-V4-Externe.pdf>.

#### **Article 10 Origin**

The article 10 of the general conditions does not apply to the Contract.

#### **Article 11 Performance guarantee**

The article 11 of the general conditions does not apply to the Contract.

#### **Article 13 Programme of implementation of tasks**

- 13.2 The contractor undertakes to comply with the entire programme for the implementation of Supplies delivery tasks within xxx (x) months of the signing of the Contract.

#### **Article 14 - Contractor's drawings**

The article 14 of the general conditions does not apply to the Contract.

#### **Article 16 Tax and customs arrangements**

- 16.1 The terms of delivery of the goods shall be DPU (Delivered at Place Unloaded) - Incoterms 2020 International Chamber of Commerce - <http://www.iccwbo.org/incoterms/>.

#### **Article 19 Period of implementation of the tasks**

- 19.1 Period of implementation of the tasks for the entire Contract is xxx (x) months.

#### **Article 21 - Delays in implementation of the tasks**

- 21.1. If the contractor fails to deliver any or all of the goods within the period of implementation of the tasks specified in the Contract (compliance with the final

delivery milestones for each Ship), DCI shall, with a formal notice and without prejudice to its other remedies under the contract, be entitled to liquidated damages for every day, or part thereof, which shall elapse between the end of the period of implementation of the tasks, or extended period of implementation of the tasks under article 20 of the general conditions, and the actual date of completion. The daily rate of liquidated damages is 0,5/100 of the value of the undelivered supplies, to a maximum of 10% of the total contract price.

21.2. Article 21.2 does not apply to the Contract

21.3. Payment of the Lump Sum shall be made by set-off by DCI against the sums due from the contractor.

If the Total Fixed Compensation Amount is reached, DCI may terminate the Contract under the conditions defined in article 36 paragraph 2, sub-paragraph a). DCI may also enter into a Contract with a third party at the contractor's expense for the part of the Ships still to be manufactured or delivered in accordance with the financial conditions which will be in force between DCI and the third party.

#### **Article 24 Quality of supplies**

24.2 The Contractor must comply with all the quality standards specified in the technical specifications (Appendix III) and must respect the quality references specified in his offer (Appendix IV).

#### **Article 25 Inspection and testing**

25.2 All Ships shall be regularly inspected by DCI in accordance with the procedures set out in Article 25 of the General Conditions. These inspections shall take place in accordance as agreed between the parties.

#### **Article 26 General principles for payments**

26.1 The total price of the Contract is that paid for all five hundred Supplies (hereinafter the "Total Price").

Prices are exclusive of VAT. The scope of the market excluded from the application of VAT.

Payment of this Total Price will be made according to the following schedule:

- Thirty (30%) percent upon signature of the Contract ;
- Seventy (70%) percent upon provisional delivery (article 31 of the General Conditions) and acceptance of the Supplies.

Payment by DCI shall be made subject to the following cumulative conditions:

- Issue of an invoice drawn up in EUROS by the Contractor on the dates set out above;
- Validation by DCI of the technical payment keys set out above.

#### **Article 29 Delivery**

29.5/6/7 All deliveries of Goods shall be accompanied by a declaration of conformity and a delivery note affixed to the outside of the package, with a copy of the said note inside the package, containing the following information:

- Delivery note identification number ;
- Order number ;
- Reference of the Good ;

- Description of the Good as mentioned in the order;
- Quantity delivered and if applicable serial number and individual number of the products/parts;
- If applicable, the number of packages;
- The purchase unit;
- Exemption number(s), if any;

Documents required for pre-transport customs clearance and on-site customs clearance are subject to DCI.

Delivery of the documentation required for use, as well as any documents required by the applicable regulations and standards, is an integral part of the Supply..

### **Article 32 Warranty obligations**

- 32.7 The warranty remains valid for each Supply for a period of one (1) full year from acceptance.

### **Article 33 After-sales service**

- 33.1 No after-sales service other than the manufacturer's warranty is required under this Contract.

### **Article 40 Settlement of disputes**

- 40.4 If the amicable settlement procedure and, if so requested, the conciliation procedure fails, any dispute shall fall within the exclusive jurisdiction of the Paris courts.

**ANNEX I: GENERAL CONDITIONS  
FOR SUPPLY CONTRACTS  
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## **PRELIMINARY PROVISIONS**

### **Article 1 - Definitions**

1.1. The headings and titles in these general conditions shall not be taken as part thereof or be taken into consideration in the interpretation of the contract.

1.2. Where the context so permits, words 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. Words designating persons or parties shall include firms and companies and any organisation having legal capacity.

### **Article 2 - Language of the contract**

2.1. The language of the contract and of all communications between the contractor and DCI shall be as stated in the special conditions.

### **Article 3 - Order of precedence of contract documents**

3.1. The order of precedence of the contract documents shall be stated in the contract.

### **Article 4 - Communications**

4.1. Any written communication relating to this contract between DCI or DCI, and the contractor shall state the contract title and identification number, and shall be sent by post, cable, telex, facsimile transmission, e-mail or personal delivery, to the appropriate addresses designated by the parties for that purpose in the special conditions.

4.2. 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.

4.3. 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.

4.4. Any oral instructions or orders shall be confirmed in writing.

### **Article 5 - Assignment**

5.1. 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.

5.2. The contractor shall not, without the prior consent of DCI, assign the contract or any part thereof, or any benefit or interest thereunder, except in the following cases:

- a charge, in favour of the contractor's bankers, of any monies due or to become due under the contract; or
- 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.

5.3. For the purpose of Article 5.2, the approval of an assignment by DCI shall not relieve the contractor of its obligations for the part of the contract already performed or the part not assigned.

5.4. If the contractor has assigned the contract without authorisation, DCI may, without formal notice thereof, apply as of right the sanction for breach of contract provided for in Articles 35 and 36.

5.5. 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.

## **Article 6 - Subcontracting**

- 6.1. 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.
- 6.2. The contractor shall request to DCI the authorisation to subcontract. The request must indicate the elements of the contract to be subcontracted and the identity of the subcontractors. DCI shall notify the contractor of its decision within 30 days of receipt of the request, stating reasons should it withhold such authorisation.
- 6.3. Subcontractors shall satisfy the eligibility criteria applicable for the award of the contract. They shall not fall under the exclusion criteria described in the tender dossier and the contractor shall ensure that they are not subject to EU restrictive measures.
- 6.4. No subcontract creates contractual relations between any subcontractor and DCI.
- 6.5. The contractor shall be responsible for the acts, defaults and negligence of its subcontractors and their agents or employees, as if they were the acts, defaults or negligence of the contractor, its agents or employees. The approval by DCI of the subcontracting of any part of the contract or of the subcontractor to perform any part of the tasks shall not relieve the contractor of any of its obligations under the contract.
- 6.6. If a subcontractor has undertaken any continuing obligation extending for a period exceeding that of the warranty period under the contract towards the contractor in respect of the supplies provided by the subcontractor, the contractor must, at any time after the expiration of the warranty period, transfer immediately to DCI, at DCI's request and cost, the benefit of such obligation for the unexpired duration thereof.
- 6.7. If the contractor enters into a subcontract without approval, DCI may, without formal notice thereof, apply as of right the sanction for breach of contract provided for in Articles 35 and 36.
- 6.8. If a subcontractor is found by DCI or DCI to be incompetent in discharging its duties, DCI or DCI may request the contractor forthwith, either to provide a subcontractor with qualifications and experience acceptable to DCI as a replacement, or to resume the implementation of the tasks itself.

## **OBLIGATIONS OF DCI**

### **Article 7 - Supply of documents**

- 7.1. Save where otherwise provided in the special conditions, within 30 days of the signing of the contract, DCI shall provide the contractor, with a copy of the drawings prepared for the implementation of the tasks and a copy of the specifications and other contract documents. The contractor may purchase additional copies of these drawings, specifications and other documents, in so far as they are available. Upon final acceptance, the contractor shall return to DCI all drawings, specifications and other contract documents.
- 7.2. DCI shall bring its support with the contractor for the provision of information that the latter may reasonably request in order to perform the contract.
- 7.3. DCI shall notify the contractor of the name and address of the contractor manager.
- 7.4. Unless it is necessary for the purposes of the contract, the drawings, specifications and other documents provided by DCI shall not be used or communicated to a third party by the contractor without the prior consent of DCI.
- 7.5. DCI shall have authority to issue to the contractor administrative orders incorporating such supplementary documents and instructions as are necessary for the proper execution of the contract and the remedying of any defects therein.
- 7.6. The special conditions and/or special conditions to the contract must indicate the procedure used, if necessary, by DCI to approve drawings and other documents provided by the contractor.

## **Article 8 - Assistance with local regulations**

8.1. The contractor may request the assistance of DCI in obtaining copies of laws, regulations and information on local customs, orders or bye-laws of the country where the supplies are to be delivered which may affect the contractor in the performance of its obligations under the contract. DCI may provide the assistance requested to the contractor.

8.2. The contractor shall duly notify DCI of details of the supplies so that DCI can obtain the requisite permits or import licences.

8.3. DCI will undertake to obtain, in accordance with the special conditions, the requisite permits or import licences within a reasonable period, taking account of the implementation dates for the tasks.

8.4. Subject to the provisions of the laws and regulations on foreign labour of the country in which the supplies are to be delivered, DCI 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 supplies are to be delivered, including work and residence permits, for the personnel whose services the contractor and DCI consider necessary, as well as residence permits for their families.

## **OBLIGATIONS OF THE CONTRACTOR**

### **Article 9 - General obligations**

9.1. The contractor shall execute the contract with due care, efficiency and diligence in accordance with the best professional practice.

9.2. The contractor shall, in accordance with the provisions of the contract, supply (deliver, unload, commission) the supplies and carry out any other work including the remedying of any defects in the supplies. The supply may include, as an incidental matter, siting and installation operations. The contractor shall also provide all necessary equipment, supervision, labour and facilities required for the implementation of the tasks.

9.3. The contractor shall supply, without delay, any information and documents to DCI and the European Commission upon request, regarding the conditions in which the contract is being executed.

9.5. The contractor shall respect and abide by all laws and regulations in force in the country where the supplies are to be delivered and shall ensure that its personnel, their dependants, and its local employees also respect and abide by all such laws and regulations. The contractor shall indemnify DCI against any claims and proceedings arising from any infringement by the contractor, its employees and their dependants of such laws and regulations applicable to the contract.

9.6. 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 DCI. 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.

9.7. Subject to Article 9.9, 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 DCI. 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 DCI, except where DCI declares the contract to be confidential.

9.8. 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 DCI. Any alteration of the composition of the consortium without the prior consent of DCI may result in the termination of the contract.

9.9. The contractor shall take all relevant measures to ensure the highest visibility to the financial contribution of the European Union. Additional communication activities required by the European Commission are described in the Special Conditions.

9.10. Any records shall be kept for a 7-year period after the final payment made under the contract. In case of failure to maintain such records DCI may, without formal notice thereof, apply as of right the sanction for breach of contract provided for in Articles 35 and 36.

#### **Article 9a - Code of conduct**

9a.1 The contractor shall at all times act impartially and as a faithful adviser in accordance with the code of conduct of its profession. It shall refrain from making public statements about the project without the prior approval of DCI. It shall not commit DCI in any way without its prior consent and shall, where appropriate, make this obligation clear to third parties.

Physical abuse or punishment, or threats of physical abuse, sexual abuse or exploitation, harassment and verbal abuse, as well as other forms of intimidation shall be prohibited. The contractor shall also provide to inform DCI 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 in writing within 30 days to DCI

9a.2 The contractor and its personnel shall respect human rights and applicable data protection rules.

9a.3 The contractor shall respect environmental legislation applicable in the country where the supplies have to be delivered and internationally agreed core labour standards, i.e. 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, as well as applicable obligations established by these conventions:

- Vienna Convention for the protection of the Ozone Layer and its Montreal Protocol on substances that deplete the Ozone Layer;
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention);
- Stockholm Convention on Persistent Organic Pollutants (Stockholm POPs Convention);
- Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) (The PIC Convention) Rotterdam, 10 September 1998, and its 3 regional Protocols.

9.a.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 and regulations and codes relating to anti-bribery and anti-corruption.

9.a.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.

9a.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. An auditor for DCI may carry out documentary or on-the-spot checks it deems necessary to find evidence in case of suspected unusual commercial expenses. 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 35 of the General Conditions. In addition, failure to comply with the provision set out in the present Article can be qualified as grave professional misconduct that may lead either to suspension or termination of the contract, without prejudice to the application of administrative sanctions including exclusion from participation in future contract award procedures.

#### **Article 9b Conflict of interest**

9.b.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 DCI without delay. In the event of such conflict, the contractor shall immediately take all necessary steps to resolve it.

9.b.2 DCI 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 obligation under the contract, the contractor shall replace, immediately and without compensation from DCI, any member of its personnel exposed to such a situation.

9.b.3 The contractor shall refrain from any contact which would compromise its independence or that of its personnel.

9.b.4 The contractor shall limit its role in connection with the project to the provision of the obligations described in the contract.

9.b.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 stage of the project does not constitute unfair competition, he may participate, subject to prior approval of DCI.

#### **Article 10 - Origin**

10.1. All goods shall have their origin in any eligible source country as defined in the instructions to tenderers and the special conditions.

10.3. The contractor must certify that the goods tendered comply with this requirement, specifying their countries of origin. It may be required to provide more detailed information in this respect.

10.4.1 The contractor shall document the origin at the time of provisional acceptance. Failure to comply with this obligation may lead, after formal notice, to termination of the contract and/or suspension of payment.

#### **Article 11 - Performance guarantee**

11.1. The contractor shall, together with the return of the countersigned contract, furnish to DCI with a guarantee for the full and proper execution of the contract. The amount of the guarantee shall be as specified in the special conditions. It shall be in the range of 5 and 10% of the total contract price, including any amounts stipulated in addenda to the contract.

11.2. The performance guarantee shall be held against payment to DCI for any loss resulting from the contractor's failure to perform its contractual obligations under the contract.

11.3. The performance 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 DCI. If the performance 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 DCI.

11.4. The performance guarantee shall be denominated in the currency in which the contract is payable. No payments shall be made in favour of the contractor prior to the provision of the guarantee. The guarantee shall continue to remain valid until the contract has been fully and properly performed.

11.5. 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, the guarantee shall be replaced. DCI 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, DCI may terminate the contract.

11.6. DCI shall demand payment from the guarantee of all sums for which the guarantor is liable under the guarantee due to the contractor's default under the contract, including the lump-sum indemnity, in accordance with the terms of the guarantee and up to the value thereof. The guarantor shall, without delay, pay those sums upon demand from DCI and may not raise any objection for any reason whatsoever. Prior to making any claim under the performance guarantee, DCI shall notify the contractor stating the nature of the default in respect of which the claim is to be made.

11.7. Unless the special conditions provide otherwise, the performance guarantee shall be released within 60 days of the issuing of the signed final acceptance certificate for its total amount except for amounts used for the guarantee or those which are the subject of amicable settlement, arbitration or litigation.

## **Article 12 - Liabilities and insurance**

### **12.1. Liabilities**

The liability rules described below are without prejudice to the possible application of international conventions on the carriage of goods.

#### **a) Liability for damage to supplies**

Without prejudice to Article 32 (warranty obligations) and Article 38 (force majeure), the contractor shall assume (i) full responsibility for maintaining the integrity of the supplies and (ii) the risk of loss and damage, whatever their cause, until the final acceptance as foreseen in Article 34.

Compensation for damage to the supplies resulting from the contractor's liability in respect of DCI 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 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.

#### **b) Contractor's liability in respect of DCI**

At any time, the contractor shall be responsible for and shall indemnify DCI for any damage caused to DCI 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 DCI 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.

#### **c) Contractor's liability in respect of third parties**

The contractor shall, at its own expense, indemnify, protect and defend, DCI, 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 its duties.

DCI must notify any third party claim to the contractor as soon as possible after DCI becomes aware of them.

If DCI chooses to challenge and defend itself against the claim(s), the contractor shall bear the reasonable costs of defence incurred by DCI, its agents and employees. Under these general conditions, the agents and employees of DCI, as well as the contractor's personnel, its subcontractors and any person for which the contractor is answerable are considered to be third parties.

The contractor shall treat all claims in close consultation with the DCI Any settlement or agreement settling a claim requires the prior express consent of DCI and the contractor.

## 12.2. Insurance

### a) Insurance – general issues

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 DCI has given its express written consent on a specific insurance company.

At the latest together with the return of the countersigned contract, the contractor shall provide DCI 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 DCI or DCI so requests, an updated version of the cover notes and/or certificates of insurance. The contractor shall obtain from the insurers that they commit to personally and directly inform DCI 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. DCI reserves the right to indemnify the insurer in case the contractor fails to pay the premium, without prejudice to DCI's right to recover the amount of the premium it paid, and to subsequently seek compensation for its possible resulting damage.

Whenever possible, the contractor shall ensure that the subscribed insurance contracts contain a waiver of recourse in favour of DCI, its agents and employees.

The purchase of adequate insurances by the contractor shall in no case exempt it from its statutory and/or contractual liabilities.

The contractor shall fully bear the consequences of a total or partial lack of coverage, and to the full discharge of DCI.

The contractor shall ensure that its personnel, its subcontractors and any person for which 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 DCI from all consequences resulting therefrom.

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 duties are to be performed. It shall also ensure that all possible statutory obligations applying to the coverage are complied with.

DCI 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.

### b) Insurance – Specific issues

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 12.1 'Liabilities'. The contractor shall in particular subscribe a products and after delivery insurance.

Depending on the nature of the contractor's obligations, DCI may require that the carriage of supplies be covered by a 'transportation' insurance policy; the conditions of which may be specified in the special conditions, which may also specify other types of insurance to

be taken out by the contractor. This insurance shall in particular cover the loading, intermediate storage, unloading, including stowage and protection, if such operations are included in the contract.

### **Article 13 - Programme of implementation of the tasks**

13.1. If the special conditions so require, the contractor shall submit a programme of implementation of the tasks for the approval of DCI. The programme shall contain at least the following:

- a) the order in which the contractor proposes to perform the contract including design, manufacture, delivery to place of receipt, installation, testing and commissioning;
- b) the time limits within which submission and approval of the drawings are required;
- c) a general description of the methods which the contractor proposes to adopt for executing the contract; and
- d) such further details and information as DCI may reasonably require.

13.2. The special conditions shall specify the time limit within which the programme of implementation of the tasks must be submitted to DCI for approval. They may set time limits within which the contractor must submit all or part of the detailed drawings, documents and items. They shall also state the deadline for DCI's approval or acceptance of the programme of implementation, detailed drawings, documents and items.

13.3. The approval of the programme by DCI shall not relieve the contractor of any of its obligations under the contract.

13.4. No material alteration to the programme shall be made without the approval of DCI. If, however, the progress of the implementation of the tasks does not conform to the programme, DCI may instruct the contractor to submit a revised programme in accordance with the procedure laid down in Article 13.

### **Article 14 - Contractor's drawings**

14.1. If the special conditions so provide, the contractor shall submit to DCI for approval:

- a) the drawings, documents, samples and/or models, according to the time limits and procedures laid down in the special conditions or in the programme of implementation of the tasks;
- b) such drawings as DCI may reasonably require for the implementation of the tasks.

14.2. If DCI fails to notify its decision of approval referred to in Article 14.1 within the time limits referred to in the contract or the approved programme of implementation of the tasks, such drawings, documents, samples or models shall be deemed to be approved at the end of the time limits specified. If no time limit is specified, they shall be deemed to be approved 30 days after receipt.

14.3. Approved drawings, documents, samples and models shall be signed or otherwise identified by DCI and shall not be departed from except as otherwise instructed by DCI. Any contractor's drawings, documents, samples or models which DCI refuses to approve shall be modified to meet the requirements of DCI and resubmitted by the contractor for approval. Within 15 days of being notified of DCI's remarks, the contractor shall make the requisite corrections, adjustments etc. to the documents, drawings etc. The corrected or adjusted documents, drawings etc. shall be resubmitted for DCI's approval under the same procedure.

14.4. The contractor shall supply additional copies of approved drawings in the form and numbers stated in the contract or in subsequent administrative orders.

14.5. The approval of the drawings, documents, samples or models by DCI shall not relieve the contractor from any of its obligations under the contract.

14.6. DCI shall have the right at all reasonable times to inspect all drawings, documents, samples or models relating to the contract at the contractor's premises.

14.7. Before provisional acceptance of the supplies, the contractor shall supply operation and maintenance manuals together with drawings, which shall be in such detail as will enable DCI to operate, maintain, adjust and repair all parts of the supplies. Unless otherwise stated in the special conditions, the manuals and drawings shall be in the language of the



contract and in such forms and numbers as stated in the contract. The supplies shall not be considered completed for the purpose of provisional acceptance until such manuals and drawings have been supplied to DCI.

## **Article 15 - Sufficiency of tender prices**

15.1. Subject to any additional provisions which may be laid down in the special conditions, the contractor shall be deemed to have satisfied itself before submitting its tender as to the correctness and sufficiency of the tender and to have taken account of all that is required for the full and proper implementation of the tasks and to have included in its rates and prices all costs related to the supplies, in particular:

- a) the costs of transport;
- b) the costs of handling, packing, loading, unloading, transit, delivery, unpacking, checking, insurance and other administrative costs in connection with the supplies. The packaging shall be the property of DCI unless otherwise provided in the special conditions;
- c) the cost of documents relating to the supplies where such documents are required by DCI;
- d) execution and supervision of on-site assembly and/or commissioning of the delivered supplies;
- e) furnishing of tools required for assembly and/or maintenance of the delivered supplies;
- f) furnishing of detailed operation and maintenance manuals for each unit of the delivered supplies, as specified in the contract;
- g) supervision or maintenance and/or repair of the supplies, for a period of time stated in the contract, with the stipulation that this service shall not release the contractor from any warranty obligations under the contract;
- h) training of DCI's personnel, at the contractor's factory and/or elsewhere as specified in the contract.

15.2. Since the contractor is deemed to have determined its prices on the basis of its own calculations, operations and estimates, it shall carry out without additional charge any work that is the subject of any item whatsoever in its tender for which it neither indicates a unit price nor a lump sum.

## **Article 16 - Tax and customs arrangements**

16.1. Save where otherwise provided in the special conditions, the terms of delivery of the goods shall be DPU (Delivered at Place Unloaded) – Incoterms 2020, International Chamber of Commerce.

## **Article 17 - Patents and licences**

17.1. Save where otherwise provided in the special conditions, the contractor shall indemnify and hold DCI harmless for all damages and cost incurred due to any claim brought by any third party including creators and intermediaries for alleged or actual violations of intellectual, industrial or other property rights of any kind whatsoever based on DCI's use as specified in the contract of patents, licenses, drawings, designs, models, or brand or trademarks, except where such infringement results from compliance with the design or specification provided by DCI.

17.2. All industrial, intellectual and other property rights (including but not limited to patent rights and copyright) developed in connection with the tasks by or on behalf of the contractor, including but not limited to any rights in any documents prepared for the purpose of the contract or the tasks, shall remain vested in the contractor but DCI and the Final Client shall have an irrevocable, royalty-free, non-exclusive licence of the above-mentioned rights for the purpose of the contract.

Such licence shall carry the right to grant sub-licences and shall be transferable by DCI and the Final Client to third parties without the consent of the contractor being required. All industrial, intellectual and other property rights (including but not limited to patent rights and

copyright) developed in connection with the tasks by or on behalf of DCI, including but not limited to any rights in any documents prepared for the purpose of the contract or the tasks, shall remain vested in DCI but the contractor shall have the right at its cost to copy, use and obtain communication of these documents for the purpose of the contract.

Upon and notwithstanding any termination of the contract howsoever arising, as well as after completion of the tasks, DCI or the Final Client shall continue to have the benefit of the licence referred to in Article 17.2, first paragraph.

## **IMPLEMENTATION OF THE TASKS AND DELAYS**

### **Article 18 - Commencement order**

18.1. Subject to the special conditions, DCI shall fix the date on which implementation of the tasks is to commence and advise the contractor thereof either in the notification of award of the contract or by administrative order.

18.2. Save where the parties agree otherwise, implementation of the tasks shall begin no later than 90 days following notification of award of contract. Unless this delay results from the contractor default, after that date the contractor shall be entitled not to implement the contract and to obtain its termination and/or compensation for the damage it has suffered. The contractor shall forfeit this right unless it exercises it within 30 days of the expiry of the 90-day period.

### **Article 19 - Period of implementation of the tasks**

19.1. The period of implementation of tasks shall commence on the date fixed in accordance with Article 18 and shall be as laid down in the special conditions, without prejudice to extensions of the period which may be granted under Article 20.

19.2. If provision is made for distinct periods of implementation of the tasks for separate lots, in cases where one contractor is awarded more than one lot per contract, the periods of implementation of the tasks for the separate lots shall not be accumulated.

### **Article 20 - Extension of period of implementation of the tasks**

20.1. The contractor may request an extension to the period of implementation of the tasks if it is or will be delayed in completing the contract by any of the following reasons:

- exceptional weather conditions in the country of DCI which may affect installation, delivery or erection of the supplies;
- artificial obstructions or physical conditions which may affect delivery of the supplies, which could not reasonably have been foreseen by an experienced contractor;
- failure of DCI to fulfil its obligations under the contract;
- any suspension of the delivery and/or installation of the supplies which is not due to the contractor's default;
- force majeure;
- extra or additional supplies ordered by DCI;
- any other causes referred to in these general conditions which are not due to the contractor's default.

20.2. If the contractor considers himself to be entitled to any extension of the period of implementation under the contract, the contractor shall

- give notice to DCI of its intention to make such a request no later than 15 days after the contractor became aware, or should have become aware of the event or circumstance giving rise to the request.
- If the contractor fails to give notice of a request for extension of the period of implementation within such period of 15 days, the period of implementation shall not be extended and DCI shall be discharged from all liability in connection with the request; and

- submit to DCI full and detailed particulars of the request, within 30 days from the above notification unless otherwise agreed between the contractor and the supervisor, in order that such request may be investigated at the time.

20.3. Within 30 days from the receipt of the contractor's detailed particulars of the request, DCI shall in agreement with DCI, by notice to the contractor, grant such extension of the period of implementation of the tasks as may be justified, either prospectively or retrospectively, or inform the contractor that it is not entitled to an extension.

### **Article 21 - Delays in implementation of the tasks**

21.1. If the contractor fails to deliver any or all of the goods or perform the services within the period of implementation of the tasks specified in the contract, DCI shall, without formal notice and without prejudice to its other remedies under the contract, be entitled to liquidated damages for every day, or part thereof, which shall elapse between the end of the period of implementation of the tasks, or extended period of implementation of the tasks under article 20, and the actual date of completion. The daily rate of liquidated damages is defined in the specific conditions to a maximum of 10% of the total contract price.

21.2. If the non-delivery of any of the goods prevents the normal use of the supplies as a whole, the liquidated damages provided for in Article 21.1 shall be calculated on the basis of the total contract price.

21.3. If DCI has become entitled to claim at least 15% of the total contract price it may, after giving notice to the contractor:

- seize the performance guarantee; and/or
- terminate the contract,
- enter into a contract with a third party for the provision of the balance of the supplies at the contractor's cost.

### **Article 22 - Amendments**

22.1. Contract amendments must be formalised by a contract addendum signed by both parties or by an administrative order issued by DCI or DCI. Substantial amendments to the contract, including amendments to the total contract price, must be made by means of an addendum.

22.2. DCI reserves the right to vary by an administrative order the quantities per lot or per item by +/- 100 % at the time of contracting and during the validity of the contract. The total value of the supplies may not rise or fall as a result of the variation by more than 25% of the tender price. The unit prices quoted in the tender shall be applicable to the quantities procured under the variation.

22.3. DCI and DCI shall have the power to order any amendment to any part of the supplies necessary for the proper completion and/or functioning of the supplies. Such amendments by administrative order may include additions, omissions, substitutions, changes in quality, quantity, form, character, kind, as well as in drawings, designs or specifications where the supplies are to be specifically manufactured for DCI, in method of shipment or packing, place of delivery, and in the specified sequence, method or timing of implementation of the tasks. No administrative order shall have the effect of invalidating the contract, but the financial effect, if any, of all such amendments shall be valued in accordance with Article 22.7.

22.4. All administrative orders shall be issued in writing, it being understood that:

- a) if, for any reason, DCI or DCI finds it necessary to give an order orally, it shall as soon as possible thereafter confirm the order by an administrative order;
- b) if the contractor confirms in writing an oral order given for the purpose of Article 22.4.a and the confirmation is not contradicted in writing forthwith by DCI or DCI, DCI or DCI shall be deemed to have issued an administrative order;
- c) no administrative order is required to increase or decrease the quantity of any incidental siting or installation because the estimates in the budget breakdown were too high or too low.

22.5. Save where Article 22.4 provides otherwise, prior to issuing an administrative order, DCI or DCI shall notify the contractor of the nature and form of such amendment. The contractor shall then, without delay, submit to DCI a written proposal containing:

- a description of the tasks, if any, to be performed or the measures to be taken and a programme of implementation of the tasks;
- any necessary amendments to the programme of implementation of the tasks or to any of the contractor's obligations resulting from this contract; and
- any adjustment to the total contract price in accordance with the rules set out in Article 22.

22.6. Following the receipt of the contractor's submission referred to in Article 22.5, DCI shall, after due consultation with DCI and, where appropriate, the contractor, decide without delay whether or not to accept the amendment. If DCI accepts the amendment, it shall notify the contractor through an administrative order stating that the contractor shall carry out the amendment at the prices and under the conditions given in the contractor's submission referred to in Article 22.5 or as modified by DCI in accordance with Article 22.7.

22.7. The prices for all amendments ordered by DCI or DCI in accordance with Articles 22.4 and 22.6 shall be ascertained in accordance with the following principles:

- where the task is of similar character and implemented under similar conditions as an item priced in the budget breakdown, it shall be valued at such rates and prices contained therein;
- where the task is not of a similar character or is not implemented under similar conditions, the rates and prices in the contract shall be used as the basis for valuation as far as is reasonable, failing which DCI shall make a fair valuation;
- if the nature or amount of any amendment relative to the nature or amount of the whole contract or to any part thereof is such that, in the opinion of DCI, any rate or price contained in the contract for any item of work is, by reason of such amendment, rendered unreasonable, DCI shall fix such rate or price as he thinks reasonable and proper in the circumstances;
- 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.

22.8. On receipt of the administrative order, the contractor shall carry out the requested amendment according to the following principles:

a) The contractor shall be bound by these general conditions as if the amendment requested by administrative order were stated in the contract.

b) The contractor shall not delay the execution of the administrative order pending the granting of any extension of time for completion or adjustment to the total contract price.

c) Where the administrative order precedes the adjustment to the total contract price, the contractor shall keep records of the costs of undertaking the amendment and of the time expended thereon. Such records shall be open to inspection by DCI at all reasonable times.

22.9. The contractor shall notify DCI of any change of bank account, using the form in Annex V. DCI shall have the right to oppose the contractor's change of bank account.

### **Article 23 - Suspension**

23.1. The contractor shall, on the order of DCI, suspend the execution of the contract or any part thereof for such time or times and in such manner as DCI 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.

23.2. Suspension 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.

23.3. During the period of suspension, the contractor shall protect and secure the supplies affected at the contractor's warehouse or elsewhere, against any deterioration, loss or damage to the extent possible and as instructed by DCI, even if supplies have been delivered to the place of acceptance in accordance with the contract but their installation has been suspended by DCI.

23.4. Additional expenses incurred in connection with such protective measures may be added to the total 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) such suspension is necessary by reason of normal climatic conditions at the place of acceptance; or  
d) such suspension is necessary for the safety or the proper execution of the contract or any part thereof insofar as such necessity does not arise from any act or default by DCI or DCI or

e) the presumed breach of obligations or irregularities or fraud mentioned in article 23.2 are confirmed and attributable to the contractor. 23.5. The contractor shall only be entitled to such additions to the total contract price if it notifies DCI, within 30 days after receipt of the order to suspend the contract, of its intention to claim them.

23.6. DCI, after consulting the contractor, shall determine such additions to the total 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 DCI, be fair and reasonable.

23.7. DCI 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 180 days and the suspension is not due to the contractor's breach or default, the contractor may, by notice to DCI, request to proceed with the contract within 30 days, or terminate the contract.

## **MATERIALS AND WORKMANSHIP**

### **Article 24 - Quality of supplies**

24.1. The supplies must in all respects satisfy the technical specifications laid down in the contract and conform in all respects to the drawings, surveys, models, samples, patterns and other requirements in the contract, which shall be held at the disposal of DCI or DCI for the purposes of identification throughout the period of execution.

24.2. Any preliminary technical acceptance stipulated in the special conditions shall be the subject of a request sent by the contractor to DCI. The request shall indicate the reference to the contract, specify the materials, items and samples submitted for such acceptance according to the contract and indicate the lot number and the place where acceptance is to take place, as appropriate. The materials, items and samples specified in the request must be certified by DCI as meeting the requirements for such acceptance prior to their incorporation in the supplies.

24.3. Even if materials or items to be incorporated in the supplies or in the manufacture of components to be supplied have been technically accepted in this way, they may still be rejected if a further examination reveals defects or faults, in which case they must immediately be replaced by the contractor. The contractor may be given the opportunity to repair and make good materials and items which have been rejected, but such materials and items will be accepted for incorporation in the supplies only if they have been repaired and made good to the satisfaction of DCI.

### **Article 25 - Inspection and testing**

25.1. The contractor shall ensure that the supplies are delivered to the place of acceptance in time to allow DCI to proceed with acceptance of the supplies. The contractor is deemed to have fully appreciated the difficulties which it might encounter in this respect, and it shall not be permitted to advance any grounds for delay in fulfilling its obligations.

25.2. DCI shall be entitled to inspect, examine measure and test the components, materials and workmanship, and check the progress of preparation, fabrication or manufacture of

anything being prepared, fabricated or manufactured for delivery under the contract, in order to establish whether the components, materials and workmanship are of the requisite quality and quantity. This shall take place at the place of manufacture, fabrication, preparation or at the place of acceptance or at such other places as may be specified in the special conditions.

25.3. For the purposes of such tests and inspections, the contractor shall:

- a) provide DCI, temporarily and free of charge, with such assistance, test samples or parts, machines, equipment, tools, labour, materials, drawings and production data as are normally required for inspection and testing;
- b) agree, with DCI, on the time and place for tests;
- c) provide access to DCI at all reasonable times to the place where the tests are to be carried out.

25.4. If DCI is not present on the date agreed for tests, the contractor may, unless otherwise instructed by DCI, proceed with the tests, which shall be deemed to have been made in DCI's presence. The contractor shall immediately send duly certified copies of the test results to DCI, who shall, if it has not attended the test, be bound by the test results.

25.5. When components and materials have passed the above-mentioned tests, DCI shall notify the contractor or endorse the contractor's certificate to that effect.

25.6. If DCI and the contractor disagree on the test results, each shall give a statement of its views to the other within 15 days of such disagreement arises. DCI or the contractor may require such tests to be repeated on the same terms and conditions or, if either party so requests, by an expert selected by common consent. All test reports shall be submitted to DCI, who shall communicate the results of these tests without delay to the contractor. The results of retesting shall be conclusive. The cost of retesting shall be borne by the party whose views are proved wrong by the retesting.

25.7. In the performance of their duties, DCI and any person authorised by him shall not disclose to unauthorised persons information concerning the undertaking's methods of manufacture and operation obtained through inspection and testing.

## **PAYMENTS**

### **Article 26 - General principles**

26.1. Payments shall be made in euro or national currency as specified in the special conditions. The special conditions shall lay down the administrative or technical conditions governing payments made in accordance with the general conditions.

26.2. Payments due by DCI shall be made to the bank account mentioned on the financial identification form completed by the contractor. The same form, annexed to the invoice, must be used to report changes of bank account.

26.3. Pre-financing payment shall be made within 30 days from the date on which an admissible invoice is registered by DCI. The invoice shall not be admissible if one or more essential requirements are not met. Final payment shall be made within 60 days from the date on which an invoice is registered by DCI, together with the request for provisional acceptance as per article 31.2. The date of payment shall be the date on which the paying account is debited.

26.4. The period referred to in article 26.3 may be suspended by notifying the contractor that the invoice cannot be fulfilled because the sum is not due, because appropriate substantiating documents have not been provided or because there is evidence that the expenditure might not be eligible. In the latter case, an inspection may be carried out on the spot for the purpose of further checks. The contractor shall provide clarifications, modifications or further information within 30 days of being asked to do so. The payment period shall continue to run from the date on which a properly drawn-up invoice is registered.

26.5. The payments shall be made as follows:

- a) 40% of the total contract price after the signing of the contract, against provision of the performance guarantee and of a pre-financing guarantee for the full amount of the pre-financing payment, unless otherwise provided for in the special conditions. The pre-financing guarantee shall be provided to DCI following the procedure foreseen for the

performance guarantee in accordance with Article 11.3-5, and in accordance with the format annexed to the contract. The pre-financing guarantee must remain valid until it is released 30 days at the latest after the provisional acceptance of the goods. Where the contractor is a public body, the obligation for a pre-financing guarantee may be waived depending on a risk assessment made;

b) 60% of the total contract price, as payment of the balance, after receipt by DCI of an invoice and of the application for the certificate of provisional acceptance;

26.6. Where only part of the supplies has been delivered, the 60% payment due following partial provisional acceptance shall be calculated on the value of the supplies which have actually been accepted and the security shall be released accordingly.

26.7. For supplies not covered by a warranty period, the payments listed above shall be aggregated. The conditions to which the payments of pre-financing and final payments are subject, shall be as stated in the special conditions.

26.8. The payment obligations of the European Commission under this contract shall cease at most 18 months after the end of the period of implementation of the tasks, unless the contract is terminated in accordance with these general conditions.

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

26.10. The contractor undertakes to repay any amounts paid in excess of the final amount due to DCI before the deadline indicated in the debit note which is 45 days from the issuing of that note. Should the contractor fail to make repayment within the above deadline, DCI may (unless the contractor is a government department or public body of a Member State of the European Union) increase the amounts due by adding interest:

- at the rediscount rate applied by the central bank of the country of DCI if payments are in the currency of that country;
- 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 payment is actually made. Any partial payments shall first cover the interest thus established. Amounts to be repaid to DCI may be offset against amounts of any kind due to the contractor. This shall not affect the parties' right to agree on payment in instalments. Bank charges arising from the repayment of amounts due to DCI shall be borne entirely by the contractor. Without prejudice to the prerogative of DCI, if necessary, the European Union may as donor proceed itself to the recovery by any means.

26.11. 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.

26.12. Prior to, or instead of, terminating the contract as provided for in Article 36, DCI may suspend payments as a precautionary measure without prior notice.

26.13. 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, DCI may in addition to the possibility to suspend the performance of the contract in accordance with Article 23.2 and to terminate the contract as provided for in Article 36, 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, DCI 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).

#### **Article 27 - Payment to third parties**

27.1. Orders for payments to third parties may be carried out only after an assignment made in accordance with Article 5. The assignment shall be notified to DCI.

27.2. Notification of beneficiaries of the assignment shall be the sole responsibility of the contractor.

27.3. In the event of a legally binding attachment of the property of the contractor affecting payments due to him under the contract, and without prejudice to the time limit laid down in Article 26, DCI shall have 30 days, starting from the day on which it receives notification of the definitive lifting of the obstacle to payment, to resume payments to the contractor.

#### **Article 28 - Delayed payments**

28.1. DCI shall pay the contractor sums due in accordance with Article 26.3.

28.2. Once the time-limit referred to in Article 26.3 has expired, the contractor – unless the contractor is a government department or public body in European Union Member States, shall, within two months of receipt of the late payment, receive default interest:

- at the rediscount rate applied by the central bank of the partner country if payments are in the currency of that country ;
- 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, if payments are in euro, on the first day of the month in which the time-limit expired, plus eight percentage points. The interest shall be payable for the time elapsed between the expiry of the payment deadline and the date on which DCI's account is debited. However, 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.

28.3. Any default in payment of more than 90 days from the expiry of the period laid down in Article 26.3 shall entitle the contractor either not to perform the contract or to terminate it, according to Article 37.

### **ACCEPTANCE AND MAINTENANCE**

#### **Article 29 - Delivery**

29.1. The contractor shall deliver the supplies in accordance with the conditions of the contract. The supplies and their delivery shall be at the risk of the contractor until their final acceptance and in accordance with DPU incoterms.

29.2. The contractor shall provide such packaging of supplies as is required to prevent their damage or deterioration in transit to their destination as indicated in the contract. The packaging shall be sufficient to withstand, without limitation, rough handling, exposure to extreme temperatures, salt and precipitation during transit and open storage. Package size and weight shall take into consideration, where appropriate, the remoteness of the final destination of the supplies, and the possible absence of heavy handling facilities at all points in transit.

29.3. The packaging, marking and documentation inside and outside the packages shall comply with such requirements as shall be expressly provided for in the special conditions, subject to any amendments subsequently ordered by DCI or DCI.

29.4. No supplies shall be shipped or delivered to the place of acceptance until the contractor has received a delivery order from DCI. The contractor shall be responsible for the delivery at the place of acceptance of all supplies and supplier's equipment required for the purpose of the contract.

29.5. Each delivery must be accompanied by a statement drawn up by the contractor. This statement shall be as specified in the special conditions.



29.6. Each package shall be clearly marked in accordance with the special conditions.

29.7. Delivery shall be deemed to have been made when there is written evidence available to both parties that delivery of the supplies has taken place in accordance with the terms of the contract, and the invoice(s) and all such other documentation specified in the special conditions, have been submitted to DCI. Where the supplies are delivered to an establishment of DCI, the latter shall bear the responsibility of bailee, in accordance with the requirements of the law applicable to the contract, during the time which elapses between delivery for storage and acceptance.

### **Article 30 - Verification operations**

30.1. The supplies shall not be accepted until the prescribed verifications and tests have been carried out at the expense of the contractor. The verifications and tests may be conducted before shipment, at the point of delivery and/or at the final destination of the goods.

30.2. DCI shall, during the progress of the delivery of the supplies and before the supplies are taken over, have the power to order or decide:

a) the removal from the place of acceptance, within such time or times as may be specified in the order, of any supplies which, in the opinion of DCI, are not in accordance with the contract;

b) their replacement with proper and suitable supplies;

c) the removal and proper re-installation, notwithstanding any previous test thereof or of any installation which in respect of materials, workmanship or design for which the contractor is responsible, is not, in the opinion of DCI, in accordance with the contract;

d) that any work done or goods supplied or materials used by the contractor is or are not in accordance with the contract, or that the supplies or any portion thereof do not fulfil the requirements of the contract.

30.3. The contractor shall, with all speed and at its own expense, make good the defects so specified. If the contractor does not comply with such order, DCI shall be entitled to employ other persons to carry out the orders and all expenses consequent thereon or incidental thereto shall be deducted by DCI from any monies due or which may become due to the contractor or from the performance bond.

30.4. Supplies which are not of the required quality shall be rejected. A special mark may be applied to the rejected supplies. This shall not be such as to alter them or affect their commercial value. Rejected supplies shall be removed by the contractor from the place of acceptance, if DCI so requires, within a period which DCI shall specify, failing which they shall be removed as of right at the expense and risk of the contractor. Any works incorporating rejected materials shall be rejected.

30.5. The provisions of Article 30 shall not affect the right of DCI to claim under Article 21, nor shall it in any way release the contractor from any warranty or other obligations under the contract.

### **Article 31 - Provisional acceptance**

31.1. The supplies shall be taken over by DCI when they have been delivered in accordance with the contract, have satisfactorily passed the required tests, or have been commissioned as the case may be, and a certificate of provisional acceptance has been issued or is deemed to have been issued.

31.2. The contractor may apply, by notice to DCI, for a certificate of provisional acceptance when supplies are ready for provisional acceptance. DCI shall within 30 days of receipt of the contractor's application either:

- issue the certificate of provisional acceptance to the contractor with a copy to DCI stating, where appropriate, his reservations, and, inter alia, the date on which, in his opinion, the supplies were completed in accordance with the contract and ready for provisional acceptance; or
- reject the application, giving his reasons and specifying the action which, in his opinion, is required of the contractor for the certificate to be issued. DCI's time limit

for issuing the certificate of provisional acceptance to the contractor shall be considered included in the time limit for payments indicated in Article 26.3, unless otherwise specified in the special conditions.

31.3. Should exceptional circumstances make it impossible to proceed with the acceptance of the supplies during the period fixed for provisional or final acceptance, a statement certifying such impossibility shall be drawn up by DCI after consultation, where possible, with the contractor. The certificate of acceptance or rejection shall be drawn up within 30 days following the date on which such impossibility ceases to exist. The contractor shall not invoke these circumstances in order to avoid the obligation of presenting the supplies in a state suitable for acceptance.

31.4. If DCI fails either to issue the certificate of provisional acceptance or to reject the supplies within the period of 30 days, it shall be deemed to have issued the certificate on the last day of that period, except where the certificate of provisional acceptance is deemed to constitute a certificate of final acceptance. In this case, Article 34.2 below does not apply. If the supplies are divided by the contract into lots, the contractor shall be entitled to apply for separate certificates for each of the lots.

31.5. In case of partial delivery, DCI reserves the right to give partial provisional acceptance.

31.6. Upon provisional acceptance of the supplies, the contractor shall dismantle and remove temporary structures as well as materials no longer required for use in connection with the implementation of the contract. It shall also remove any litter or obstruction and redress any change in the condition of the place of acceptance as required by the contract.

31.7. Immediately after provisional acceptance, DCI may make use of all the supplies delivered.

## **Article 32 - Warranty obligations**

32.1. The contractor shall warrant that the supplies are new, unused, of the most recent models and incorporate all recent improvements in design and materials, unless otherwise provided in the contract. The contractor shall further warrant that all supplies shall have no defect arising from design, materials or workmanship, except insofar as the design or materials are required by the specifications, or from any act or omission, that may develop under use of the supplies in the conditions obtaining in the country of DCI.

32.2. The contractor shall be responsible for making good any defect in, or damage to, any part of the supplies which may appear or occur during the warranty period and which:

- a) results from the use of defective materials, faulty workmanship or design of the contractor; and/or
- b) results from any act or omission of the contractor during the warranty period; and/or
- c) appears in the course of an inspection made by, or on behalf of, DCI.

32.3. The contractor shall at its own cost make good the defect or damage as soon as practicable. The warranty period for all items replaced or repaired shall recommence from the date when the replacement or repair was made to the satisfaction of DCI. If the contract provides for partial acceptance, the warranty period shall be extended only for the part of the supplies affected by the replacement or repair.

32.4. If any such defect appears or such damage occurs during the warranty period, DCI or DCI shall notify the contractor. If the contractor fails to remedy a defect or damage within the time limit stipulated in the notification, DCI may:

- a) remedy the defect or the damage itself, or employ someone else to carry out the tasks at the contractor's risk and cost, in which case the costs incurred by DCI shall be deducted from monies due to or from guarantees held against the contractor or from both; or
- b) terminate the contract.

32.5. In case of emergency, where the contractor cannot be reached immediately or, having been reached, is unable to take the measures required, DCI or DCI may have the tasks carried out at the expense of the contractor. DCI or DCI shall as soon as practicable inform the contractor of the action taken.

32.6. The warranty obligations shall be stipulated in the special conditions and technical specifications.

32.7. Save where otherwise provided in the special conditions, the duration of the warranty period shall be 365 days. The warranty period shall commence on the date of provisional acceptance and may recommence in accordance with Article 32.3.

### **Article 33 - After-sales service**

33.1. An after-sales service, if required by the contract, shall be provided in accordance with the details stipulated in the special conditions. The contractor shall undertake to carry out or have carried out the maintenance and repair of supplies and to provide a rapid supply of spare parts. The special conditions may specify that the contractor must provide any or all of the following materials, notifications and documents pertaining to spare parts manufactured or distributed by the contractor:

a) such spare parts as DCI may choose to purchase from the contractor, it being understood that this choice shall not release the contractor from any warranty obligations under the contract;

b) in the event of termination of production of the spare parts, advance notification to DCI to allow it to procure the parts required and, following such termination, provision at no cost to DCI of the blueprints, drawings and specifications of the spare parts, if and when requested.

### **Article 34 - Final acceptance**

34.1. Upon expiry of the warranty period, or where there is more than one such period, upon expiry of the latest period, and when all defects or damage have been rectified, DCI shall issue the contractor a final acceptance certificate and a copy thereof to DCI, stating the date on which the contractor completed its obligations under the contract to DCI's satisfaction. The final acceptance certificate shall be issued by DCI within 30 days after the expiration of the warranty period or as soon as any repairs ordered under Article 32 have been completed to the satisfaction of DCI.

34.2. The contract shall not be considered to have been performed in full until the final acceptance certificate has been signed or is deemed to have been signed by DCI.

34.3. Notwithstanding the issue of the final acceptance certificate, the contractor and DCI shall remain liable for the fulfilment of any obligation incurred under the contract prior to the issue of the final acceptance certificate which remains unperformed at the time that final acceptance certificate is issued. The nature and extent of any such obligation shall be determined by reference to the provisions of the contract.

## **BREACH OF CONTRACT AND TERMINATION**

### **Article 35 - Breach of contract**

35.1. Either party commits a breach of contract where it fails to perform its obligations in accordance with the provisions of the contract.

35.2. 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.

35.3. Damages may be either:

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

35.4. Should the contractor fail to perform any of its obligations in accordance with the provisions of the contract, DCI is without prejudice to its right under Article 35.2, 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.

35.5. Where DCI is entitled to damages, it may deduct such damages from any sums due to the contractor or call on the appropriate guarantee.

35.6. DCI, or anyone subrogated to it, shall be entitled to compensation for any damage which comes to light after the contract is completed in accordance with the law governing the contract.

### **Article 36 - Termination by DCI**

36.1. DCI may, at any time and with immediate effect, subject to Article 36.9, terminate the contract, except as provided for under Article 36.2. 36.2. Subject to any other provision of these general conditions, DCI may, by giving seven day 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 DCI requiring it to make good the neglect or failure to perform its obligations under the contract which seriously affects the proper and timely implementation of the tasks;
- c. the contractor refuses or neglects to carry out any administrative orders given by DCI;
- d. the contractor assigns the contract or subcontracts without the authorisation of DCI;
- 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 national law or regulations;
- 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 proven by any means which DCI can justify;
- j. it has been established by a final judgment or a final administrative decision or by proof in possession of DCI 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 or 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 DCI, the European Commission, 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 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 9a and
- o. Article 9b;
- p. the contractor fails to comply with its obligation in accordance with Article 10;
- q. the contractor is in breach of the data protection obligations resulting from Article 44 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.

36.3. Termination shall be without prejudice to any other rights or powers under the contract of DCI and the contractor. DCI may, thereafter, 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 DCI terminates the contract without prejudice to any liability thereunder that may already have arisen.

36.4. Upon termination of the contract or when it has received notice thereof, the contractor shall take immediate steps to bring the implementation of the tasks to a close in a prompt and orderly manner and to reduce expenditure to a minimum.

36.5. DCI shall, as soon as possible after termination, certify the value of the supplies and all sums due to the contractor as at the date of termination.

36.6. In the event of termination, DCI shall, as soon as possible and in the presence of the contractor or his representatives or having duly summoned them, draw up a report on the supplies delivered and the incidental siting or installation performed and take an inventory of the materials supplied and unused. A statement shall also be drawn up of monies due to the contractor and of monies owed by the contractor to DCI as at the date of termination of the contract.

36.7. DCI shall not be obliged to make any further payments to the contractor until the supplies are completed. After the supplies are completed, DCI shall recover from the contractor the extra costs, if any, of providing the supplies, or shall pay any balance still due to the contractor.

36.8. If DCI terminates the contract pursuant to Article 36.2, 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 supply unless otherwise provided for in the special conditions.

36.9. Where the termination is not due to an act or omission of the contractor, force majeure or other circumstances beyond the control of DCI, the contractor shall be entitled to claim in addition to sums owed to it for work already performed, an indemnity for loss suffered.

36.10. 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.

### **Article 37 - Termination by the contractor**

37.1. The contractor may, by giving 14 days' notice to DCI, terminate the contract if DCI:

- fails to pay the contractor the amounts due under any certificate issued by DCI after the expiry of the time limit stated in Article 28.3; or
- consistently fails to meet its obligations after repeated reminders; or
- suspends the delivery of the supplies, or any part thereof, for more than 180 days, for reasons not specified in the contract or not attributable to the contractor's breach or default.

37.2. Such termination shall be without prejudice to any other rights of DCI or the contractor acquired under the contract.

37.3. In the event of such termination, DCI shall pay the contractor for any loss or damage the contractor may have suffered.

### **Article 38 - Force majeure**

38.1. 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 arises after the date of notification of award or the date when the contract becomes effective

38.2. 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 this contract.

38.3. Notwithstanding the provisions of Articles 21 and 36, the contractor shall not be liable to forfeiture of its performance guarantee, liquidated damages or termination for default if, and to the extent that, its delay in performance or other failure to perform its obligations under the contract is the result of an event of force majeure. DCI shall similarly not be liable, notwithstanding the provisions of Articles 28 and 37, for the payment of interest on delayed payments, for non-performance or for termination by the contractor for default if, and to the extent that, DCI's delay or other failure to perform its obligations is the result of force majeure.

38.4. 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 DCI, giving details of the nature, the probable duration and the likely effect of the circumstances. Unless otherwise directed by DCI 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 alternative means unless directed so to do by DCI.

38.5. If the contractor incurs additional costs in complying with DCI's directions or using alternative means under Article 38.4, the amount thereof shall be certified by DCI.

38.6. 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 with 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.

#### **Article 39 - Decease**

39.1. Where the contractor is a natural person, the contract shall be automatically terminated if that person dies. However, DCI shall examine any proposal made by the heirs or beneficiaries if they have notified their wish to continue the contract.

39.2. 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 DCI 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.

39.3. In the cases provided for in Articles 39.1 and 39.2, persons offering to continue to perform the contract shall notify DCI thereof within 15 days of the date of decease. The decision of DCI shall be notified to those concerned within 30 days of receipt of such proposal.

39.4. Such persons shall be jointly and severally liable for the proper performance 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**

#### **Article 40 - Settlement of disputes**

40.1. The parties shall make every effort to settle amicably any dispute relating to the contract which may arise between them.

40.2. Once a dispute has arisen, a party shall notify the other party 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.

40.3. 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, 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.

40.4. 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.

#### **Article 41 - Applicable law**

41.1. This contract shall be governed by the French law.

### **FINAL PROVISIONS**

#### **Article 42 - Administrative sanctions**

42.1. Without prejudice to the application of other remedies laid down in the contract, a sanction of exclusion from all contracts and grants financed by DCI and Civipol, may be imposed, after an adversarial procedure, 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 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;

42.2. In the situations mentioned in Article 42.1, 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 contract price.

42.3. Where DCI 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.

42.4. The decision to impose administrative sanctions may be published on a dedicated internet-site, explicitly naming the contractor.

#### **Article 43 - Verifications, checks and audits**

43.1. The contractor shall allow DCI to contract with an auditor 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.

43.2. In order to carry out these verifications and audits, the auditor 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 project. 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 project. 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 7 years after the final payment.

43.3. To this end, the contractor undertakes to give appropriate access to staff or agents of the auditor 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 auditor shall be on the basis of confidentiality with respect to third parties, without prejudice to the obligations of public law to which they are subject. Documents must be easily accessible and filed so as to facilitate their examination and the contractor must inform DCI of their precise location.

43.4. The contractor guarantees that the rights of DCI to carry out audits, checks and verification will be equally applicable, under the same conditions and according to the same rules as those set out in this Article, to any subcontractor or any other party benefiting from funds of this contract.

43.5. Failure to comply with the obligations set forth in Article 43.1 to 43.4 constitutes a case of serious breach of contract.

#### **Article 44 - Data protection**

##### **44.1. Processing of personal data by DCI**

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 14-25) 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.

##### **44.2. 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 14-25) 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 9.7 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:

(a) 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;

(b) likely consequences of the breach;

(c) 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. DCI 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 DCI in the premises of the contractor or subcontractor.

The contractor shall notify DCI without delay of any legally binding request for disclosure of the personal data processed on behalf of DCI 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 DCI.

The duration of processing of personal data by the contractor will not exceed the period referred to in Article 9.10 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 6 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 DCI, the contractor shall provide a document providing evidence of this commitment.