

Service Contract n° 05•403

PART A

General Conditions

1 - Definitions

Each time the following terms are used in the present Contract, they shall have the following meanings:

- «GC»: general conditions of this Contract (Part A)
- «SC»: specific conditions of this Contract (Part B)
- «written»: any [form] of communication which is signed, hand-written, typed or printed, including faxes (although excluding electronic messages) sent to the addresses set out in the GC
- «Partner»: local body in charge of the on-site co-ordination of the Project, which constitutes the Agency's counterpart
- «Country»: the country in which the Services are performed (other than the country of origin of the Staff)
- «Staff»: persons hired as employees by the Service Provider or by one of the sub-Contractors, who are placed in charge of performing all or part of the Services
- «Services»: the services which the Service Provider must provide in the interests of the Project (Part C of this Contract)
- «Projects»: program or coherent set of activities in the areas of international co-operation, technical assistance and/or development in which the Agency takes part on behalf of a financier, the content of which is described in a « Project Description », a copy of which the Agency has handed over to the Service Provider

2 - Purpose of the Contract

The purpose of this Contract is the supply of the Services described in Part C of the Contract to the Project and/or the Partner.

The reciprocal rights and obligations of the two Parties are those set out hereafter. In particular, the Service Provider undertakes to provide the Services in accordance with the conditions set out in the Contract, and the Agency shall pay the Service Provider in accordance with the provisions of the Contract.

3 - Entry into force

Unless otherwise provided in the SC, the present Contract shall enter into force on the date on which it is signed by the two Parties.

If the Contract has not entered into force within the periods specified above, each of the two Parties may, in writing and within a minimum period of one month, declare that the present Contract is null and void, without this giving the other Party the right to file any claims in this regard.

The Service Provider shall start performing the Services at the latest one (1) month after the Contract has entered into force, unless otherwise specified in the SC.

4 - Completion of the Contract

Unless terminated previously, the Contract shall expire on the date specified in the SC or on the date on which the Services are to be completed as specified in the SC.

5 - Addenda to the Contract

The present Contract contains all the clauses and provisions governing the relations between the Parties.

No agent or representative of either Party shall be entitled to bind the Parties by a declaration, promise, undertaking or agreement which is not contained in the present Contract.

No addendum to the conditions set out in the present Contract, including the modifications made to the amount and the cost of the Services, shall be affected without the prior written consent of the two Parties.

6 - Force majeure

No Party shall be considered as having failed to comply with its Contractual obligations or to have breached them if it is prevented from performing them by an event of *force majeure* such as: strikes, lock-outs, labour conflicts or other protest actions, acts committed by the enemy, war, whether declared or not, civil disturbances, blockades, insurrections, riots, outbreaks of disease, earthquakes, landslides, floods, fire, storms, lightening, explosions, where the financier discontinues or suspends financing the Project, or any other unforeseeable event which is outside the Parties' control or which they cannot overcome despite their efforts to do so.

As soon as possible, a Party which is faced with an event of *force majeure* must take the measures required in order to overcome its own incapacity to fulfil its Contractual obligations.

A Party which is affected by an event of *force majeure* must (i) inform the other Party [thereof] as soon as possible, and in any event at the latest fourteen (14) days after the occurrence of the event, (ii) provide proof of the existence of the cause of such event, and (iii) similarly, notify it as soon as possible when normal conditions have been re-established.

Throughout the period in which it is incapable of performing its Services further to an event of *force majeure*, the Service Provider shall continue to be remunerated for a period of one (1) month, in accordance with the provisions of the present Contract. After this period, the Parties shall discuss the measures to be taken together, on the basis of the circumstances.

7 - Termination of the Contract

7.1 A Party can terminate the present Contract by notifying [the other Party thereof] within a period of thirty (30) days, if the other Party:

- does not fulfil its Contractual obligations after having been notified to do so in writing by the other Party;
- is declared by a court to be insolvent, in receivership or in liquidation, or if it is bankrupt;
- does not comply with the final decision taken further to arbitration proceedings initiated in accordance with article 11;
- provides it with a declaration which is intentionally erroneous which has consequences on its rights, obligations or interests;
- is unable to perform its Contractual obligations for a period over sixty (60) days further to an event of *force majeure*.

If, at its own initiative and for any reason whatsoever, one of the Parties decides to terminate the present Contract, the notice period shall be increased to sixty (60) days.

7.2 After the present Contract has been terminated, the Agency shall pay to the Service Provider (i) the remuneration owed for the Services performed satisfactorily up until the termination date, and (ii) the refundable expenses [incurred] before the termination date.

8 - The Service Provider's obligations

8.1 General obligations

The Service Provider shall perform the Services with all the care, efficiency and diligence required, in accordance with best Service Provider practices.

The Service Provider undertakes not to have the present Contract performed by members of Staff the *curriculum vitae* of which have not first been approved by the Agency in writing.

The Service Provider undertakes not to sub-Contract all or part of the Services without the Agency's prior written authorisation.

The Service Provider undertakes to replace the members of its staff or the sub-Contractors which the Agency or its Partner consider do not suit the functions conferred to them - without this giving rise to additional costs, without delay and by Staff which is at least as qualified [as the departing staff].

8.2 Performance standards

Subject to additional provisions which may be included in the SC, the responsibilities and professional standards with which the Service Provider must comply are those contained in the domestic law which applies in the place in which the Services are provided.

The Service Provider guarantees that all of the calculations, plans, drawings, computer software, methods, reports and all other documents produced in the context of the Services, shall be drawn up on the basis of the rules which apply in the matter concerned in accordance with the most recent techniques used in the profession.

In all circumstances, the Service Provider shall act loyally and impartially as a reliable advisor for the Project, the Agency and its Partner. It shall consider that all documents and information which it receives in the context of the Project and the Services are private and shall not divulge any items which relate to the Contract or the Project without the Agency's prior written consent.

The Service Provider cannot, in any manner whatsoever, bind the Project, the Partner or the Agency without their prior written consent; the Agency shall at all times remain the financier's sole interlocutor, vis-à-vis which the Agency is sole responsible for the due realisation of the Project.

8.3 Conflicts of interest

Generally speaking, the Service Provider and its staff, agents and sub-Contractors shall refrain from any dealings and from performing any acts which may compromise their independence.

Throughout the duration of the present Contract, the Service Provider and its staff, agents and sub-Contractors shall not, directly or indirectly, whether in their professional or commercial activities, carry out any activities which could be incompatible with the Services covered by the present Contract.

Any discounts or commissions obtained by the Service Provider in the exercise of its responsibilities in relation to concluding markets, shall be credited to the Project.

The Service Provider, its partners and sub-Contractors, undertake not to provide goods, works and services other than those provided for in Part C of the Contract to the Project and the Partner.

8.4 The Service Provider's liability

The Service Provider shall hold the Agency, the Project and the Partner harmless, at its own costs, in relation to any action, claim, loss or damage resulting from an act or omission committed by the Service Provider in the performance of the Services, and notably any breaches of any intellectual property -related laws or third party rights.

8.5 Insurance [policies] to be taken only by the Service Provider

The Service Provider shall take out and keep in force - and ensure that its sub-Contractors do the same - an insurance policy which covers all risks, including professional risks, to which it is subject under this Contract. At the Agency's first request, it shall provide it with proof that such insurance policies have duly been taken out and that the premiums relating thereto have been duly paid.

8.6 Non-disclosure obligation

The Service Provider, its staff and its sub-Contractors undertake not to divulge any confidential information which relates to the Services, the Project, the Partner or the Agency throughout the duration of the present Contract and for a period of two (2) years after its completion or termination.

8.7 Ownership of the documents drawn up by the Service Provider

All documents, plans, drawings, studies, reports and software prepared by the Service Provider in the context of the present Contract shall become and remain the property of the Agency, which shall inform the Service Provider, prior to the completion or the termination of this Contract, to whom they must be remitted, with a corresponding detailed inventory.

The Service provider may keep a copy of all such documents and data, although it shall not use them for purposes which fall outside the scope of the present Contract without the Agency's prior written consent.

8.8 Equipment and supplies placed at the disposal of the Service Provider

Unless otherwise instructed in the SC, the equipment and supplies purchased by the Service Provider using the funds provided by the Agency shall be the property of the Agency and shall be identified as such. When the Service Provider is in possession of such equipment, it shall insure them at the Agency's costs up to an amount equal to their replacement value. Upon the termination or completion of the Contract, the Service Provider shall provide the Agency with a detailed inventory of the equipment and supplies; the Agency shall decide to whom the Service Provider must hand them over.

8.9 The Service Provider's staff

During the month after that in which the Contract is signed, the Service Provider shall inform the Agency of the rules which apply to the Staff as regards business days, working hours, bank holidays and leave.

The cost of the Staff's remuneration during any sickness leave which they may take shall exclusively be borne by the Service Provider and shall not be invoiced to the Agency. With respect to missions over six (6) months, the Service Provider shall provide the Agency with a medical certificate certifying that the Staff is apt to work in the Country.

8.10 The Service Provider's accounts

Systematically, and on a daily basis, the Service Provider shall keep accounts and [supporting] documents relating to the Services, in accordance with the accepted accounting principles and in a form which is sufficiently detailed to make it possible to clearly identify the remuneration paid to the Staff, the other costs or expenses, and the basis on which they were calculated.

Upon the Agency's first request, the Service Provider shall authorise the Agency or its representatives to inspect these documents and accounts (until one (1) year after the completion or termination of the present Contract) and shall give it the possibility to make copies thereof which may be checked by experts appointed by the Agency.

9 - The Agency's obligations

9.1 Assistance and exemptions

Unless otherwise provided in the SC, the Agency shall do what it can so that the Partner and the authorities concerned in the Country:

- provide the Service Provider, its sub-Contractors and the Staff with the working permits and other documents which may be required in the context of the performance of the Services;
- allow the Staff, and where applicable their families, to rapidly obtain entry and exit visas, residency permits and all other documents which may be required for their stay in the Country;
- facilitate the clearance through customs of the goods required in order to perform the Services and of the personal belongings of the Staff and their families;
- give their respective agents the instructions required so that the Services can be performed quickly and efficiently;
- grant the Service Provider and the Staff, in accordance with the law which applies in the Country, the privilege to import into the Country reasonable amounts of foreign exchange to perform the Services and for the needs of the Staff and their families, and to re-export the said amounts in foreign exchange paid to the Staff;
- guarantee that the Staff can have free unconditional access, free of charge, to the places in the Country to which they must have access in order to perform the Services;
- place the planned counterpart staff at the disposal of the Project and possibly of the Service Provider, free of charge;
- provide the Service Provider, the sub-Contractors and the Staff with all the assistance which may be specified in the SC.

9.2 Payments

The Agency shall pay the Service Provider for the Services in the present Contract in the currency specified in the SC, in accordance with paragraph 10 hereafter.

10 - Remuneration and refund of expenses

10.1 Estimation of the maximum amount

The volume and the total cost of the Services and the refundable expenses is estimated at the amount specified in Part E of this Contract. This cost is to be considered as a maximum amount which shall in no event be overrun. When the total amount of fees and expenses reaches eighty per cent (80%) of the maximum amount, the Service Provider shall inform the Agency thereof.

10.2 Remuneration

(a) The remuneration which the Agency shall pay to the Service Provider shall cover (i) the wages and indemnities which the Service Provider has undertaken to pay to the Staff, as well as the social charges and general expenses based on the average costs as recorded in the Service Provider's financial statements with respect to the last three (3) years, (ii) the support provided by the members of Staff from the head office, which are not on the Staff list in Part C, and (iii) the Service Provider's profit-margin.

It is understood that the premiums and other forms of profit sharing shall not be considered as items of the general expenses and that the remuneration of individuals who have not yet been hired shall be for reference only and may be revised, with the Agency's written approval, when the amount of the wages and indemnities is known.

(b) The remuneration corresponding to periods of less than one week shall be calculated on an hourly basis, and shall be directly deducted from the Services, on the basis of the time effectively spent at the

Service Provider's head office or on the Project (one hour being the equivalent of 1/160th of a month). Other remuneration shall be invoiced on the basis of « man-days », « man-weeks » or « man-months ».

(c) The remuneration specified in Part E of the Contract was agreed to on the basis of supporting documents provided by the Service Provider during the Contract negotiations and relate to the costs and expenses incurred by the Service Provider as announced by the Agency, in writing, during the said negotiations.

(d) If during one of the inspections referred to in article 8.10 above, the Agency discovers that the Service Provider's representations are clearly incomplete or inaccurate, it shall be entitled to retroactively make the necessary modifications to the incorrectly or incompletely declared remuneration.

10.3 Refundable expenses

The expenses which are refundable in foreign exchange or in local currency are set out in Part E of the Contract.

Where necessary, conversions of foreign exchange into local currency shall be performed at the rate of exchange published each month by the European Union.

10.4 Invoicing and payment terms and conditions

(i) The Agency shall pay the Service Provider an advance of the amount specified in the SC after the Service Provider has provided the Agency with a bank guarantee given by a bank accepted by the Agency, at the condition that the said guarantee remains valid until the advance has been fully repaid as provided for in the SC, and is presented in a form which is consistent with the form of guarantee handed over by the Agency to the Service Provider or in any other form which the Agency has approved in writing.

(ii) At the latest within the first fifteen (15) days of the month after that in which the Services are performed, the Service Provider shall remit to the Agency two original copies of the statement of remuneration and expenses, giving the detail thereof including the headings mentioned in Part E with respect to the month considered. Copies of invoices, notes and other supporting documents shall be attached to these statements.

The Agency shall only pay the monthly statements if they are signed and approved by a duly authorised representative of the Partner or if they are accompanied by a monthly report of activities which is approved and signed by this representative.

(iii) The Agency shall pay the sums specified in the monthly statements within a period of thirty (30) days after they and the corresponding supporting documents are received.

Only the payment of the part of the monthly statement which is not correctly justified can be deferred. If the payments made by the Service Provider do not correspond to authorised payments, the Agency may carry out adjustments when making subsequent payments.

Interest on arrears at the annual rate specified in the SC shall be due after the 45th day with respect to any sum which is due but which has not been paid on this date.

(iv) The last payment shall only be made after the Service Provider has handed over to the Agency the « Final report » and the « Final statement », and the Agency has approved such documents.

The Services shall be considered as having been completed and as accepted by the Agency within a period of sixty (60) days after the Agency has received the final documents.

Within this same sixty (60) day period, the Agency must notify the Service Provider in writing of the insufficiencies and inaccuracies which it has founded in the Services, the Final Report or in the Final Statement. The Service Provider shall immediately make the necessary modifications and corrections and the same procedure shall be repeated.

(v) The Service Provider shall refund to the Agency any amount which the Agency has paid [to it] and which is not due under the present Contract, within a period of thirty (30) days after it is notified thereof. Such a request for a refund by the Agency must be made within a period of twelve (12) months after the Agency receives the Final Report and the Final Statement.

(vi) All payments made on the basis of the present Contract shall be paid to the Service Provider's accounts specified in the SC.

11 - Disputes

(i) The Parties acknowledge that it is not possible in the present Contract to provide for all events which may arise throughout the duration thereof. They also acknowledge that it is in their interests to ensure that the Contract is performed equitably, and without the interests of the Project, the Partner or of either party being damaged. If an inequitable situation were to arise, they shall do their best to agree to measures aimed at having them disappear. In the absence of such an agreement, they shall apply the procedures described hereafter.

(ii) Should a dispute arise, the Parties shall do their best to resolve it out-of-court.

Any dispute which cannot be resolved out-of-court within a period of thirty (30) days after either Party receives the written request from the other, shall be submitted to arbitration, in accordance with the following provisions:

- Each of the Parties shall appoint an arbitrator and the two arbitrators shall in turn appoint a third arbitrator. If the two arbitrators appointed by the Parties do not reach an agreement as regards the appointment of the third arbitrator within a period of thirty (30) days after their appointment, the third arbitrator shall be appointed by the International Chamber of Commerce of Paris.
- The arbitrators shall neither be Luxembourg nationals nor nationals of the Country or of the Service Provider's [country]. The arbitration shall take place in French.
- The arbitration shall take place in accordance with the arbitration procedure rules of the United Nations Commission for International Trade Law in force on the date of the present Contract.
- A majority decision taken by the arbitrators shall be final, mandatory and enforceable before the courts with jurisdiction.