

# ANNEX I:

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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. The word "country" shall be deemed to include State or Territory.
- 1.4. Words designating persons or parties shall include firms and companies and any organisation having legal capacity.

### **ARTICLE 2. COMMUNICATION**

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

### **ARTICLE 3. ASSIGNMENT**

- 3.1. An assignment shall be valid only if it is a written agreement by which the Consultant transfers its contract or part thereof to a third party.
- 3.2. The Consultant shall not, without the prior consent of CARICOM IMPACS assign the contract or any part thereof, or any benefit or interest thereunder, except in the following cases:
  - (a) a charge, in favour of the Consultant's bankers, of any monies due or to become due under the contract; or
  - (b) the assignment to the Consultant's insurers of the Consultant's right to obtain relief against any other person liable in cases where the insurers have discharged the Consultant's loss or liability.
- 3.3. For the purpose of article 3.2, the approval of an assignment by the CARICOM IMPACS shall not relieve the Consultant of its obligations for the part of the contract already performed or the part not assigned.

- 3.4. If the Consultant has assigned the contract without authorisation, the CARICOM IMPACS may, without formal notice thereof, apply as of right the sanction for breach of contract provided for in Articles 34 and 36.
- 3.5. Assignees shall satisfy the eligibility criteria applicable for the award of the contract and they shall not fall under the exclusion criteria described in the Request for Proposal (RFP).

#### **ARTICLE 4. SUBCONTRACTING**

- 4.1. A subcontract shall be valid only if it is a written agreement by which the Consultant entrusts performance of a part of the contract to a third party. For this purpose, individual experts recruited for the project as key or non-key experts are not regarded as sub-contractors.
- 4.2. The Consultant shall request to CARICOM IMPACS the authorization to subcontract. The request must indicate the elements of the contract to be subcontracted and the identity of the subcontractor. CARICOM IMPACS shall notify the Consultant of its decision, within 30 days of receipt of the request, stating reasons should it withhold such authorization.
- 4.3. No subcontract creates contractual relations between any subcontractor and CARICOM IMPACS.
- 4.4. The Consultant shall be responsible for the acts, defaults and negligence of its subcontractor and its experts, agents or employees, as if they were the acts, defaults or negligence of the Consultant, its experts, agents or employees. The approval by CARICOM IMPACS of the subcontracting of any part of the contract or of the subcontractor to perform any part of the services shall not relieve the Consultant of any of its obligations under the contract.
- 4.5. If a subcontractor is found by CARICOM IMPACS or the Project Manager to be incompetent in discharging its duties, CARICOM IMPACS or the Project Manager may request the Consultant forthwith, either to provide a subcontractor with qualifications and experience acceptable to CARICOM IMPACS as a replacement, or to resume the implementation of the tasks itself.
- 4.6. Subcontractor shall satisfy the eligibility criteria applicable to the award of the contract.
- 4.7. Those services entrusted to a subcontractor by the Consultant shall not be entrusted to third parties by the subcontractor, unless otherwise agreed by CARICOM IMPACS.
- 4.8. If the Consultant enters into a subcontract without approval, CARICOM IMPACS may, without formal notice thereof, apply as of right the sanction for breach of contract provided for in Articles 34 and 36.

#### **OBLIGATIONS OF CARICOM IMPACS**

#### **ARTICLE 5. SUPPLY OF INFORMATION**

- 5.1. CARICOM IMPACS shall supply the Consultant promptly with any information and/or documentation at its disposal which may be relevant to the performance of the contract. Such documents shall be returned to CARICOM IMPACS at the end of the period of implementation of the tasks.
- 5.2. CARICOM IMPACS shall co-operate with the Consultant to provide information that the latter may reasonably request in order to perform the contract.
- 5.3. CARICOM IMPACS shall give notification to the Consultant of the name and address of the Project Manager.

## **ARTICLE 6. ASSISTANCE WITH LOCAL REGULATIONS**

- 6.1. The Consultant may request the assistance of CARICOM IMPACS in obtaining copies of laws, regulations, and information on local customs, orders or by-laws of the country in which the services are to be performed, which may affect the Consultant in the performance of its obligations under the contract. CARICOM IMPACS may provide the assistance requested to the Consultant at the Consultant's cost.
- 6.2. Subject to the provisions of the laws and regulations on foreign labour of the country in which the services have to be rendered, CARICOM IMPACS provides reasonable assistance to the Consultant, at its request, for its application for any visas and permits required by the law of the Country in which the services are rendered, including work and residence permits, for the personnel whose services the Consultant and CARICOM IMPACS consider necessary, as well as residence permits for their families.

## **OBLIGATIONS OF THE CONSULTANT**

## **ARTICLE 7. GENERAL OBLIGATIONS**

- 7.1. The Consultant shall execute the contract with due care, efficiency and diligence in accordance with the best professional practice.
- 7.2. The Consultant shall comply with any administrative orders given by the Project Manager. Where the Consultant considers that the requirements of an administrative order go beyond the authority of the Project Manager or of the scope of the contract he shall, give notice, with reasons, to the Project Manager. If the Consultant fails to notify within the 30 day period after receipt thereof, he shall be barred from so doing. Execution of administrative order should not be suspended because of this notice.
- 7.3. The Consultant shall supply, without delay, any information and documents to CARICOM IMPACS upon request, regarding the conditions in which the contract is being executed.
- 7.4. The Consultant shall respect and abide by all laws and regulations in force in the beneficiary country and shall ensure that its personnel, their dependants, and its local employees also respect and abide by all such laws and regulations. The Consultant shall indemnify CARICOM IMPACS against any claims and proceedings arising from any infringement by the Consultant, its employees and their dependants of such laws and regulations.
- 7.5. Should any unforeseen event, action or omission directly or indirectly hamper performance of the contract, either partially or totally, the Consultant shall immediately and at its own initiative record it and report it to CARICOM IMPACS. 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 Consultant to ensure full compliance with its obligations under the contract. In such event the Consultant shall give priority to solving the problem rather than determining liability.
- 7.6. Subject to Article 7.8, the Consultant undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to the performance of the contract without the prior consent of the CARICOM IMPACS. The Consultant shall continue to be bound by this undertaking after completion of the tasks and shall obtain from each member of its staff the same undertaking. However, use of the contract's reference for marketing or tendering purposes does not require prior approval of CARICOM IMPACS, except where CARICOM IMPACS declares the contract to be confidential.
- 7.7. If the Consultant is a joint venture or a consortium of two or more persons, all such persons shall be jointly and severally bound to fulfill the terms of the contract. 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 CARICOM IMPACS. Any alteration of the composition of the consortium without the prior consent of CARICOM IMPACS may result in the termination of the contract.
- 7.8. The Consultant shall take the necessary measures to ensure that the financial contribution of

CARICOM IMPACS or any of its International Development Partners (IDPs) is given adequate publicity. These measures shall comply with the applicable rules and communication policies of CARICOM IMPACS or IDPs.

- 7.9. Any records shall be kept for a 7-year period after the final payment made under the contract. These documents comprise any documentation concerning income and expenditure and any inventory, necessary for the checking of supporting documents, including timesheets boarding passes or transport tickets or receipts, pay slips or invoices for the remuneration paid to the experts and invoices or receipts for incidental expenditure. In case of failure to maintain such records CARICOM IMPACS may, without formal notice thereof, apply as of right, the sanction for breach of contract provided for in Articles 34 and 36.

## **ARTICLE 8. CODE OF CONDUCT**

- 8.1. The Consultant shall at all time act impartially and as a faithful adviser in accordance with the code of conduct of its profession as well as with appropriate discretion. It shall refrain from making any public statements concerning the project or the services without the prior approval of CARICOM IMPACS. It shall not commit CARICOM IMPACS in any way whatsoever without its prior consent, and shall make this obligation clear to third parties.
- 8.2. The Consultant and its staff shall respect human rights and undertake not to offend the political, cultural and religious practices prevailing in the country where the services have to be rendered.
- 8.3. The Consultant shall respect internationally agreed core labour standards, e.g. the ILO core labour standards, conventions on freedom of association and collective bargaining, elimination of forced and compulsory labour, elimination of discrimination in respect of employment and occupation, and the abolition of child labour.
- 8.4. The Consultant or any of its subcontractor, agents or personnel shall not abuse its entrusted power for private gain. The Consultant or any of its subcontractor, 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 Consultant shall comply with all applicable laws and regulations and codes relating to anti-bribery and anti-corruption.
- 8.5. The payments to the Consultant under the contract shall constitute the only income or benefit it may derive in connection with the contract. The Consultant and its staff must not exercise any activity or receive any advantage inconsistent with their obligations under the contract.
- 8.6. The execution of the contract shall not give rise to unusual commercial expenses. Unusual commercial expenses are commissions not mentioned in the contract or not stemming from a properly concluded contract referring to the contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commission paid to a company which has every appearance of being a front company. CARICOM IMPACS may carry out documentary or on-the-spot-checks it deems necessary to find evidence in case of suspected unusual commercial expenses.

## **ARTICLE 9. CONFLICT OF INTEREST**

- 9.1. The Consultant 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 CARICOM IMPACS without delay. In the event of such conflict, the Consultant shall immediately take all necessary steps to resolve it.
- 9.2. CARICOM IMPACS reserves the right to verify that such measures are adequate and may require additional measures to be taken if necessary. The Consultant shall ensure that its staff, including its management, is not placed in a situation which could give rise to conflict of interests. Without prejudice to its obligations under the contract, the Consultant shall replace, immediately and without compensation from CARICOM IMPACS any member of its staff exposed to such a situation.

- 9.3. The Consultant shall refrain from any contact which would compromise its independence or that of its personnel.
- 9.4. The Consultant shall limit its role in connection with the project to the provision of the services described in the contract.
- 9.5. The Consultant and anyone working under its authority or control in the performance of the contract or on any other activity shall be excluded from access to funds available under the same project. However, the Consultant may participate after approval of CARICOM IMPACS if it the Consultant is able to prove that its involvement in previous stages of the project does not constitute unfair competition.
- 9.6. Civil servants and other staff of the public administration of any Member State of the Community where the services have to be rendered, regardless of their administrative situation, shall not be recruited as experts unless prior approval has been granted by CARICOM IMPACS, and evidence is provided that the officer is on official leave.

#### **ARTICLE 10. ADMINISTRATIVE**

- 10.1. Without prejudice to the application of other remedies laid down in the contract, a Consultant who has made false declarations, has made substantial errors or committed irregularities and fraud, or has been found in serious breach of its contractual obligations may be excluded from all contracts and grants of CARICOM IMPACS for a maximum of five years from the date on which the infringement is committed. The period may be increased to ten years in the event of a repeat offence within five years of the first infringement.

#### **ARTICLE 11. SPECIFICATIONS AND DESIGNS**

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

#### **ARTICLE 12. INDEMNIFICATION**

- 12.1. At its own expense, the Consultant shall indemnify, protect and defend, CARICOM IMPACS its agents and employees, from and against all actions, claims, losses or damage arising from any act or omission by the Consultant in the performance of the services, including any violation of any legal provisions, or rights of third parties, in respect of patents, trademarks and other forms of intellectual property such as copyrights.
- 12.2. At its own expense, the Consultant shall indemnify, protect and defend CARICOM IMPACS its agents and employees, from and against all actions, claims, losses or damages arising out of the Consultant's performance of the contract provided that:
  - a) the Consultant is notified of such actions, claims, losses or damages not later than 30 days after CARICOM IMPACS becomes aware of them;
  - b) the ceiling on the Consultant's liability to CARICOM IMPACS shall be limited to an amount equal to the contract value, and such ceiling shall not apply to any losses or damages caused to third parties by the Consultant or by the Consultant's willful misconduct;
  - c) the Consultant's liability shall be limited to actions, claims, losses or damages directly caused by such failure to perform its obligations under the contract and shall not include liability arising from unforeseeable occurrences incidental or indirectly consequential to such failure.
- 12.3. At its own expense, the Consultant shall, upon request of CARICOM IMPACS remedy any defect in the performance of the services in the event of the Consultant's failure to perform its obligations under the contract.

- 12.4. The Consultant shall have no liability whatsoever for actions, claims, losses or damages occasioned by:
- a) CARICOM IMPACS omitting to act on any recommendation, or overriding any act, decision or recommendation, of the Consultant, or requiring the Consultant to implement a decision or recommendation with which the Consultant disagrees or on which it expresses a serious reservation; or
  - b) the improper execution of the Consultant's instructions by agents, employees or independent Consultants of CARICOM IMPACS .
- 12.5. The Consultant shall remain responsible for any breach of its obligations under the contract for such period after the services have been performed as may be determined by the law governing the contract.

**ARTICLE 13. MEDICAL, INSURANCE AND SECURITY ARRANGEMENTS**

- 13.1. CARICOM IMPACS may request the Consultant and/or its personnel performing the services to undergo a medical examination by a qualified medical practitioner before leaving their usual place of residence and the Consultant shall as soon as is practicable furnish CARICOM IMPACS with a medical certificate indicating whether or not the experts are fit to implement the required services.
- 13.2. For the period of implementation of the tasks, the Consultant shall prove that itself and other persons employed or Contracted by it under the contract are covered by a medical insurance. CARICOM IMPACS shall be under no liability in respect of the medical expenses of the Consultant.
- 13.3. Within 20 days of signing the contract, the Consultant shall take out and maintain a full indemnity insurance policy for a sum up to the higher of the maximum amount foreseen by the legislation of the beneficiary country and the amount foreseen by the legislation of the country in which the Consultant has its headquarters and covering, during the period of implementation of the tasks, the following aspects:
- (a) the Consultant's liability in respect of sickness or industrial accident affecting its employees, including the cost of repatriation on health grounds;
  - (b) loss of, or damage to, CARICOM IMPACS equipment used to perform the contract;
  - (c) civil liability in the event of accidents caused to third parties or to CARICOM IMPACS and any employee of that Authority arising out of the performance of the contract.
  - (d) accidental death or permanent disability resulting from bodily injury incurred in connection with the contract; and
- 13.4. The Consultant shall also insure the personal effects of its employees, experts and their families located in the beneficiary country against loss or damage.
- 13.5. The Consultant shall furnish proof of the insurance policy and of regular payment of premiums without delay whenever required to do so by CARICOM IMPACS or the Project Manager.
- 13.6. The Consultant shall put in place security measures for its employees, experts and their families located in the beneficiary country commensurate with the physical danger facing them.
- 13.7. The Consultant will also be responsible for monitoring the level of physical risk to which its employees, experts and their families located in the beneficiary country are exposed and for keeping CARICOM IMPACS informed of the situation. In the event that CARICOM IMPACS or the Consultant shall become aware of an imminent threat of danger to the life or health of any of its employees, experts or their families, the Consultant may take immediate action to remove the individuals concerned to safety. If the Consultant takes such action, this must be communicated immediately to the Project Manager and may lead to suspension of the contract in accordance with Article 35.

## **ARTICLE 14. INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS**

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

### **NATURE OF THE SERVICES**

## **ARTICLE 15. THE SCOPE OF THE SERVICES**

- 15.1. The scope of the services is specified in Annex II –Terms of Reference.
- 15.2. Where the contract is for an advisory function for the benefit of the CARICOM IMPACS and/or Project Manager in respect of all the technical aspects of the project which may arise out of its implementation, the Consultant shall not have decision-making responsibility.



- 15.3. Where the contract is for management of the implementation of the project, the Consultant shall assume all the duties of management inherent in supervising the implementation of a project, subject to the Project Manager's authority.
- 15.4. If the Consultant is required to prepare a RFP, the RFP shall contain all documents necessary for soliciting suitable Consultants, manufacturers and suppliers, and for preparing tender procedures with a view to carrying out the works or providing the supplies or services covered by an invitation to tender. CARICOM IMPACS shall provide the Consultant with the information necessary for drawing up the administrative part of the RFP.

#### **ARTICLE 16. PERSONNEL AND EQUIPMENT**

- 16.1. Where key experts are required, the Consultant must inform CARICOM IMPACS of all personnel which the Consultant intends to use for the implementation of the tasks, other than the key experts whose CVs are included in Annex IV. Annex II shall specify the minimum level of training, qualifications and experience of the personnel and, where appropriate, the specialisation required. CARICOM IMPACS shall have the right to oppose the Consultant's choice of personnel.
- 16.2. All those working on the project with the approval of CARICOM IMPACS shall commence their duties on the date or within the period laid down in Annex II and/or Annex III, or, failing this, on the date or within the periods notified to the Consultant by CARICOM IMPACS or the Project Manager.
- 16.3. The Consultant shall adopt all measures necessary to provide and continue to provide its staff with the equipment and backup required to enable them to carry out their specified duties efficiently.
- 16.4. No recruitment of an expert by the Consultant can create contractual relations between the expert and CARICOM IMPACS .

#### **ARTICLE 17. REPLACEMENT OF PERSONNEL**

- 17.1. The Consultant shall not make changes to the agreed personnel without the prior approval of CARICOM IMPACS . The Consultant must on its own initiative propose a replacement in the following cases:
  - (a) In the event of death, in the event of illness or in the event of accident of an agreed personnel;
  - (b) If it becomes necessary to replace an agreed personnel for any other reasons beyond the Consultant's control (e.g. resignation, etc.).
- 17.2. Moreover, in the course of performance, and on the basis of a written and justified request to which the Consultant shall provide its own and the agreed personnel's observations, CARICOM IMPACS can order an agreed personnel to be replaced.
- 17.3. Where an agreed personnel must be replaced, the replacement must possess at least equivalent qualifications and experience, and the remuneration to be paid to the replacement cannot exceed that received by the agreed personnel who has been replaced. Where the Consultant is unable to provide a replacement with equivalent qualifications and/or experience, CARICOM IMPACS may either decide to terminate the contract, if the proper performance of it is jeopardised, or, if it considers that this is not the case, accept the replacement, provided that the fees of the latter are renegotiated to reflect the appropriate remuneration level.
- 17.4. Additional costs incurred by the replacement of an agreed personnel are the responsibility of the Consultant. CARICOM IMPACS makes no payment for the period when the agreed personnel to be replaced is absent. The replacement of any agreed personnel, whose name is listed in Annex IV of the contract, must be proposed by the Consultant within 14 calendar days from the first day of the agreed personnel's absence. If after this period the Consultant fails to propose a replacement in accordance with Article 17.3 above, CARICOM IMPACS may apply liquidated damages up to 10% of the remaining fees of that expert to be replaced. CARICOM IMPACS must

approve or reject the proposed replacement within 30 days.

## **PERFORMANCE OF THE CONTRACT**

### **ARTICLE 18. IMPLEMENTATION OF THE TASKS AND DELAYS**

- 18.1. The Special Conditions specifies the date on which implementation of the tasks is to commence.
- 18.2. The period of implementation of tasks shall commence on the date fixed in accordance with Article 19.1 and shall be as laid down in the Special Conditions, without prejudice to extensions of the period which may be granted.
- 18.3. If the Consultant fails to perform the services within the period of implementation of the tasks specified in the contract, CARICOM IMPACS shall, without formal notice and without prejudice to its other remedies under the contract, be entitled to liquidated damages for every day which shall elapse between the end of the period of implementation of the tasks specified in the contract and the actual date of completion of these tasks.
- 18.4. The daily rate for liquidated damages is calculated by dividing the contract value by the number of days of the period of implementation of the tasks, up to a maximum of 15% of the total value of the contract.
- 18.5. If CARICOM IMPACS has become entitled to claim 15% of the contract value, it may, after giving notice to the Consultant:
  - (a) terminate the contract, and;
  - (b) enter into a contract with a third party to complete the services, at the Consultant's cost.

### **ARTICLE 19. AMENDMENT TO THE CONTRACT**

- 19.1. Any amendment to the contract affecting its object or scope, such as amendment to the total contract amount, replacement of an agreed personnel (the Curriculum Vitae of which is part of the contract) or change of the period of implementation, shall be formalised by means of an addendum. Both parties may request an addendum for amendment to the contract according to the following principles:
  - (a) An addendum for amendment may be requested only during the period of implementation of the contract;
  - (b) Any request for an addendum shall be submitted in writing to the other party at least thirty days before the date on which the intended addendum is required to enter into force. In case of special circumstances duly substantiated by the Consultant, CARICOM IMPACS may accept a different notice period.
  - (c) Any proposed financial adjustment shall be determined using the contractual fee rates when the tasks are similar, or when the tasks are not similar, the contractual fee rates shall be applied when reasonable.

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

- 19.2. Additionally, the Project Manager has the power to issue administrative orders requesting an amendment to the contract not affecting its object, scope or amount. Such contract amendment may take the form of additions, omissions, substitutions, changes in quality, quantity, specified sequence, method or timetable of implementation of the services.

Prior to the issuance of any administrative order, the Project Manager shall notify the Consultant of the nature and the form of the proposed amendment.

The Consultant shall then, without delay, submit to the Project Manager a written proposal containing:

- (i) all measures required to comply with the requested amendment,
- (ii) an updated timetable for implementation of the tasks, and,

Following receipt of the Consultant's proposal, the Project Manager shall decide as soon as possible whether or not the amendment shall be carried out.

If the Project Manager decides that the amendment shall be carried out, it shall notify the Consultant through an administrative order stating that the Consultant shall carry out the amendment, under the conditions given in the Consultant's proposal or as modified by the Project Manager in agreement with the Consultant.

On receipt of the administrative order, the Consultant shall carry out the amendments detailed in that administrative order as if such amendments were stated in the contract.

Administrative orders that have an impact on the contractual budget are limited to transfers within the fees, or transfers from the fees to the Incidental Expenditures, within the limits of Article 19.3.

For Global price contracts, administrative orders cannot have an impact on the contractual budget.

- 19.3. No amendment either by means of addendum or through administrative order shall change the award conditions prevailing at the time the contract was awarded.
- 19.4. Any amendment carried out by the Consultant without an administrative order or without an addendum to the contract is not allowed and made at the Consultant's own financial risk.
- 19.5. Where an amendment is required by a default or breach of contract by the Consultant, any additional cost attributable to such amendment shall be borne by the Consultant.
- 19.6. The Consultant shall notify CARICOM IMPACS of any change of address and bank account. CARICOM IMPACS shall have the right to oppose the Consultant's change of bank account.

## **ARTICLE 20. WORKING HOURS**

- 20.1. The days and hours of work of the Consultant or the Consultant's personnel shall respect the laws, regulations and customs of Member States of CARICOM IMPACS.

## **ARTICLE 21. LEAVE ENTITLEMENT**

- 21.1. Where applicable annual leave shall be taken during the period of implementation of the tasks at a time approved by CARICOM IMPACS .
- 21.2. Where applicable fee rates are deemed to take into account the annual leave of up to 2 months for the Consultant's personnel during the period of implementation of the tasks. Consequently, days taken as annual leave shall not be considered to be working days.
- 21.3. The Consultant's personnel shall not be entitled to either sick or casual leave provided, however, that CARICOM IMPACS may, at its sole discretion whether for compassionate reasons or otherwise, allow the Consultant's personnel to take unpaid leave during the period of implementation of the tasks.

**ARTICLE 22. INFORMATION**

- 22.1. The Consultant shall provide any information relating to the services and the project to the Project Manager or any person authorised by CARICOM IMPACS
- 22.2. The Consultant shall allow the Project Manager or any person authorised by CARICOM IMPACS or CARICOM IMPACS itself to inspect or audit the records and accounts relating to the services and to make copies thereof both during and after provision of the services.

**ARTICLE 23. RECORDS**

- 23.1. The Consultant shall keep full accurate and systematic records and accounts in respect of the services in such form and detail as is sufficient to establish accurately that the number of working days and the actual incidental expenditure identified in the Consultant's invoice(s) have been duly incurred for the performance of the services.
- 23.2. Where applicable, records of the number of working days ( or the number of hours) worked by the Consultant's personnel shall be maintained by the Consultant. Such records shall be compiled on a monthly basis by the Consultant's personnel and shall be confirmed by the Consultant and verified or otherwise confirmed by the Project Manager or any person authorised by CARICOM IMPACS . The amounts invoiced by the Consultant must correspond to these records. Time spent travelling exclusively and necessarily for the purpose of the implementation of the contract, by the most direct route, may be included in the numbers of days or hours, as appropriate. Travel undertaken by the expert for mobilisation and demobilisation as well as for leave purposes shall not be considered as working days. A minimum of 7 hours worked are deemed to be equivalent to one day worked. For all experts, their time input shall be rounded to the nearest whole number of days worked for the purposes of invoicing.
- 23.3. Any records must be kept for a seven year period after the final payment made under the contract. These documents comprise any documentation concerning income and expenditure and any inventory, necessary for the checking of supporting documents, including record of days worked, boarding passes and transport tickets, pay slips for the remuneration paid to the experts and invoices or receipts for reimbursable expenses. Failure to maintain such records constitutes a breach of contract and may result in the termination of the contract.

**ARTICLE 24. VERIFICATIONS, CHECKS AND AUDITS BY CARICOM IMPACS**

- 24.1. The Consultant shall allow the CARICOM IMPACS or any person authorized by CARICOM IMPACS to verify, by examining the documents and to make copies thereof or by means of on-the-spot checks, including checks of original documents, the implementation of the contract. In order to carry out these verifications and audits, CARICOM IMPACS or any person(s) duly appointed by CARICOM IMPACS shall be allowed to conduct a full audit, if necessary, on the basis of supporting documents for the accounts, accounting documents and any other document relevant to the financing of the contract. The Consultant shall ensure that on-the-spot access is available at all reasonable times, notably at the Consultant's offices, to its computer data, to its accounting data and to all the information needed to carry out the audits, including information on individual salaries of persons involved in the contract. The Consultant shall ensure that the information is readily available at the moment of the audit and, if so requested, that data be handed over in an appropriate form. These inspections may take place up to seven years after the final payment.
- 24.2. Furthermore, the Consultant shall allow CARICOM IMPACS or any person(s) duly appointed by CARICOM IMPACS to carry out checks and verification on the spot.
- 24.3. To this end, the Consultant undertakes to give appropriate access to staff or agents of CARICOM IMPACS 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 CARICOM IMPACS shall be on the basis of confidentiality with respect to third parties, without prejudice to the obligations of public law to which they are subject. Documents shall be easily accessible and filed so

as to facilitate their examination. The Consultant shall inform CARICOM IMPACS of their precise location.

- 24.4. The Consultant guarantees that the rights of CARICOM IMPACS to carry out audits, checks and verification shall be equally applicable, under the same conditions and according to the same rules as those set out in this Article, to any subcontractor or any other party benefiting from the contract.

#### **ARTICLE 25. INTERIM AND FINAL REPORTS**

- 25.1. Unless otherwise provided in the Terms of Reference, the Consultant shall draw up interim reports and a final report during the period of implementation of the tasks. These reports shall consist of a narrative section and a financial section. The format of such reports is as notified to the Consultant by the Project Manager during the period of implementation of the tasks.
- 25.2. All invoices must be accompanied by an interim or final report, or where applicable, specific deliverables. Where applicable, invoices must also be accompanied by an up to date financial report. The structure of the interim or final financial report shall be the same as that of the contractually approved budget (Annex V). This financial report shall indicate, at a minimum, the expenditure of the reporting period, the cumulative expenditure and the balance available.
- 25.3. Immediately prior to the end of the period of implementation of the tasks, the Consultant shall draw up a draft final report, which must include, if appropriate, a critical study of any major problems which may have arisen during the performance of the contract.
- 25.4. This final report shall be forwarded to the Project Manager not later than 30 days after the end of the period of implementation of the tasks, and certainly before the end of the execution period of the financing agreement. Such report shall not bind CARICOM IMPACS .
- 25.5. Where the contract is performed in phases, the implementation of each phase shall give rise to the preparation of a final report by the Consultant.

#### **ARTICLE 26. APPROVAL OF REPORTS, DOCUMENTS OR OTHER DELIVERABLES**

- 26.1. The approval/acceptance by CARICOM IMPACS of reports, documents or other deliverables forwarded by the Consultant shall certify that they comply with the terms of the contract.
- 26.2. Where reports, documents or other deliverables are approved by CARICOM IMPACS subject to amendments to be made by the Consultant, CARICOM IMPACS shall prescribe a period for making the amendments requested.
- 26.3. Where the final report or deliverable is not approved, the dispute settlement procedure is automatically invoked.
- 26.4. Where the contract is performed in phases, the implementation of each phase shall be subject to the approval, by CARICOM IMPACS of the preceding phase except where the phases are carried out concurrently.
- 26.5. CARICOM IMPACS time limit for accepting reports, documents or other deliverables shall be considered included in the time limit for payments indicated in Article 29, unless otherwise specified in the Special Conditions.

#### **PAYMENTS & DEBT RECOVERY**

#### **ARTICLE 27. EXPENDITURE VERIFICATION**

- 27.1. Before payments are made for fee-based contracts CARICOM IMPACS must examine and verify the invoices and the financial reports submitted by the Consultant.
- 27.2. CARICOM IMPACS must be satisfied that relevant, reliable and sufficient evidence exists that:
- (a) the experts employed by the Consultant for the contract have been working as evidenced by relevant information and records verified by the Project Manager (for the number of days

claimed in the Consultant's invoices and in the financial reporting spreadsheet submitted with the interim progress reports; and

- (b) the amounts claimed as reimbursable expenses have actually and necessarily been incurred by the Consultant in accordance with the requirements of the terms of reference of the contract.

27.3. No expenditure verification report is required for Global price contracts.

## **ARTICLE 28. PAYMENTS**

28.1. Payments will be made in accordance with one of the options below, as identified in the Special Conditions.

### Option 1: Fee-based

The CARICOM IMPACS will make payments to the Consultant in the following manner:

1. A first advance payment if requested by the Consultant, of an amount up to maximum 20% of the maximum contract value stated in Article 2 of the contract, within 30 days of receipt by CARICOM IMPACS of an invoice, of the contract signed by both parties, and of a financial guarantee if requested, as defined in Article 30.
2. Interim payments, as indicated in the Special Conditions, within 45 days of the Contracting Authority receiving an invoice accompanied by an interim progress report and financial report, subject to approval of those reports in accordance with Article 27. Such interim payments shall be of an amount equivalent to the costs incurred on the basis of verification. When 80 % of the maximum contract value stated in Article 2 of the contract has been paid (advance and interim payments) the amounts due to the Consultant shall be deducted from the advance payment until it is completely reimbursed before any additional payment is made.
3. The invoices must be paid such that the sum of payments does not exceed 90% of the maximum contract value stated in Article 3 of the contract; the 10% being the minimum final payment.
4. The balance of the final value of the contract after verification, subject to the maximum contract value stated in Article 3 of the contract, after deduction of the amounts already paid, within 90 days of CARICOM IMPACS receiving a final invoice accompanied by the final progress report and a final financial report, subject to approval of those reports in accordance with Article 27.

### Option 2- Global Price

CARICOM IMPACS will make payments to the Consultant in the following manner:

1. A first advance payment, if requested by the Consultant, of an amount up to maximum 20% of the maximum contract value stated in Article 2 of the contract, within 30 days of receipt by CARICOM IMPACS of an invoice, of the contract signed by both parties, and of a financial guarantee if requested, as defined in Article 30.
2. The balance of the contract value stated in Article 2 of the contract on submission and acceptance of the contract deliverable(s) accompanied by relevant invoices, based on the agreed timelines, and subject to the approval of CARICOM IMPACS, in accordance with Article 27.

28.2. The date of payment shall be the date on which the paying account is debited. The invoice shall not be admissible if one or more essential requirements are not met. Without prejudice to Article 36.2, CARICOM IMPACS may halt the countdown towards this deadline for any part of the invoiced amount disputed by the Project Manager by notifying the Consultant that part of the invoice is inadmissible, either because the amount in question is not due or because the relevant report cannot be approved and CARICOM IMPACS thinks it necessary to conduct further checks. In such cases, CARICOM IMPACS shall not unreasonably withhold any undisputed part

of the invoiced amount but may request clarification, alteration or additional information, which shall be produced within 30 days of the request. The countdown towards the deadline shall resume on the date on which a correctly formulated invoice is received by CARICOM IMPACS . If part of the invoice is disputed, the undisputed amount of the invoice shall not be withheld and must be paid according to the payment schedule set in Article 29.1.

- 28.3. Payments due by the CARICOM IMPACS shall be made into the bank account mentioned on the financial identification form completed by the Consultant. A new financial identification form must be used to report any change of bank account and must be attached to the invoice.
- 28.4. Payments shall be made in the currency of the contract as specified in the Special Conditions. The Special Conditions shall lay down the administrative or technical conditions governing payments of advance, interim and/or final payments made in accordance with the General Conditions.
- 28.5. For contracts using option 1, as per Article 29.1, invoices shall be accompanied by copies of supporting documents referred to in Article 25.2 to verify the amount invoiced for the time input of the experts. A minimum of 7 hours worked are deemed to be equivalent to one day worked. For all experts, their time input must be rounded to the nearest whole number of days worked for the purposes of invoicing.
- 28.6. Payment of the final balance shall be subject to performance by the Consultant of all its obligations relating to the implementation of all phases or parts of the services and to the approval by CARICOM IMPACS of the final phase or part of the services. Final payment shall be made only after the final report and a final statement, identified as such, shall have been submitted by the Consultant and approved as satisfactory by CARICOM IMPACS .
- 28.7. The payment obligations of CARICOM IMPACS under the contract shall cease at, at the end of the period of implementation of the tasks and at the latest at the end of the execution period of the project, unless the contract is terminated in accordance with these General Conditions.
- 28.8. Prior to, or instead of, terminating the contract as provided for in Article 36, CARICOM IMPACS may suspend payments as a precautionary measure without prior notice.
- 28.9. Where the award procedure or the performance of the contract proves to have been subject to substantial errors, irregularities or fraud attributable to the Consultant, CARICOM IMPACS may in addition to the possibility to suspend the performance of the contract in accordance with Article 35.2 and terminate the contract as provided for in Article 36, refuse to make payments and/or recover amounts already paid, in proportion to the seriousness of the errors irregularities or fraud.
- 28.9. If the contract is terminated for any reason whatsoever, the guarantee securing the advance may be invoked forthwith in order to repay the balance of the advance payment still owed by the Consultant, and the guarantor shall not delay payment or raise objection for any reason whatever.

## **ARTICLE 29. FINANCIAL GUARANTEE**

- 29.1. Unless otherwise provided for in the Special Conditions, the Consultant shall provide a financial guarantee for the full amount of the advance payment. The financial guarantee shall be in the format provided for in the contract and may be provided in the form of a bank guarantee, a banker's draft, a certified cheque, a bond provided by an insurance and/or bonding company, an irrevocable letter of credit or a cash deposit made with CARICOM IMPACS . If the financial guarantee is to be provided in the form of a bank guarantee, a banker's draft, a certified cheque or a bond, it shall be issued by a bank or bonding and/or insurance company approved by CARICOM IMPACS . This financial guarantee shall remain valid until it is released by CARICOM IMPACS in accordance with Article 29.5 or Article 29.6, as appropriate. Where the Consultant is a public body the obligation for a financial guarantee may be waived depending on a risk assessment made.
- 29.2. The financial guarantee shall be provided on the letterhead of the financial institution using the template provided in Annex VI.
- 29.3. Should the financial guarantee cease to be valid and the Consultant fail to re-validate it, either a deduction equal to the amount of the advance may be made by CARICOM IMPACS from future payments due to the Consultant under the contract, or CARICOM IMPACS shall give formal notice to the Consultant to provide a new guarantee on the same terms as the previous one. Should the Consultant fail to provide a new guarantee, CARICOM IMPACS may terminate the contract.
- 29.4. If the contract is terminated for any reason whatsoever, the financial guarantee may be invoked forthwith in order to repay any balance still owed to CARICOM IMPACS by the Consultant, and the guarantor shall not delay payment or raise objection for any reason whatsoever.
- 29.5. The financial guarantee shall be released only once the related advance has been cleared, in accordance with Article 29.1.
- 29.6. For contracts under option 2 of Article 29.1, the financial guarantee shall remain in force until the final payment has been made.

## **ARTICLE 30. RECOVERY OF DEBTS FROM THE CONSULTANT**

- 30.1. The Consultant undertakes to repay any amounts paid in excess of the final amount due to CARICOM IMPACS before the deadline indicated in the debit note which is 45 days from the issuing of that note.
- 30.2. Should the Consultant fail to make repayment within the above deadline; CARICOM IMPACS may increase the amounts due by adding interest at the discount rate applied by the central bank of the country of CARICOM IMPACS ; if payments are in the currency of that country, on the first day of the month in which the time-limit expired, plus eight percentage points. The default interest shall be incurred over the time which elapses between the date of the payment deadline, and the date on which the payment is actually made. Any partial payments shall first cover the interest thus established.
- 30.3. Amounts to be repaid to CARICOM IMPACS may be offset against amounts of any kind due to the Consultant. This shall not affect the party's right to agree on payment in installments.
- 30.4. Bank charges arising from the repayment of amounts due to CARICOM IMPACS shall be borne entirely by the Consultant.

## **ARTICLE 31. REVISION OF PRICES**

- 31.1. Unless otherwise stipulated in the Special Conditions, the contract shall be at fixed prices, which shall not be revised.



## **ARTICLE 32. PAYMENT TO THIRD PARTIES**

- 32.1. Orders for payments to third parties may be carried out only after an assignment made in accordance with Article 3. The assignment shall be notified to CARICOM IMPACS .
- 32.2. Notification of beneficiaries of the assignment shall be the sole responsibility of the Consultant.
- 32.3. In the event of a legally binding attachment of the property of the Consultant affecting payments due to it under the contract and without prejudice to the time limit laid down in Article 29, CARICOM IMPACS shall have 30 days, starting from the day when it receives notification of the definitive lifting of the obstacle to payment, to resume payments to the Consultant.

## **BREACH OF CONTRACT, SUSPENSION AND TERMINATION**

### **ARTICLE 33. BREACH OF CONTRACT**

- 33.1. Either party commits a breach of contract where it fails to perform its obligations in accordance with the provisions of the contract.
- 33.2. 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.
- 33.3. Damages may be either:
  - a) general damages; or
  - b) liquidated damages.
- 33.4. Should the Consultant fail to perform any of its obligations in accordance with the provisions of the contract, CARICOM IMPACS is without prejudice to its right under article 34.2, 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.
- 33.5. Where CARICOM IMPACS is entitled to damages, it may deduct such damages from any sums due to the Consultant or call on the appropriate guarantee.
- 35.6. CARICOM IMPACS 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 34. SUSPENSION OF THE CONTRACT**

- 34.1. The Consultant shall, on the order of CARICOM IMPACS , suspend the execution of the contract or any part thereof for such time or times and in such manner as CARICOM IMPACS may consider necessary. The suspension shall take effect on the day the Consultant receives the order or at a later date when the order so provides.
- 34.2. Suspension of the contract in the event of presumed substantial errors or irregularities or fraud: The contract may be suspended in order to verify whether presumed substantial errors 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.
- 34.3. During the period of suspension, the Consultant shall take such protective measures as may be necessary.
- 34.4. Additional expenses incurred in connection with such protective measures may be added to the contract price, unless:

- a) otherwise provided for in the contract; or
  - b) such suspension is necessary by reason of some breach or default of the Consultant;  
or
  - c) the presumed substantial errors or irregularities or fraud mentioned in article 35.2 are confirmed and attributable to the Consultant.
- 34.5. The Consultant shall only be entitled to such additions to the contract price if it notifies the Project Manager, within 30 days after receipt of the order to suspend execution of the contract, of its intention to claim them.
- 34.6. CARICOM IMPACS, after consulting the Consultant, shall determine such additions to the contract price and/or extension of the period of performance to be granted to the Consultant in respect of such claim as shall, in the opinion of CARICOM IMPACS be fair and reasonable.
- 34.7. CARICOM IMPACS shall, as soon as possible, order the Consultant to resume the contract suspended or inform the Consultant that it terminates the contract. If the period of suspension exceeds 180 days and the suspension is not due to the Consultant's breach or default, the Consultant may, by notice to CARICOM IMPACS request to proceed with the contract within 30 days, or terminate the contract.

#### **ARTICLE 35. TERMINATION BY CARICOM IMPACS**

- 35.1. CARICOM IMPACS may, at any time and with immediate effect, subject to Article 35.8, terminate the contract, except as provided for under Article 36.2.
- 35.2. Subject to any other provision of these General Conditions CARICOM IMPACS may, after giving seven days' notice to the Consultant, terminate the contract in any of the following cases where:
- (a) the Consultant is in serious breach of contract for failure to perform its contractual obligations;
  - (b) the Consultant fails to comply within a reasonable time with the notice given by the Project Manager requiring it to make good the neglect or failure to perform its obligations under the contract which seriously affects the proper and timely performance of the services;
  - (c) the Consultant refuses or neglects to carry out any administrative orders given by the Project Manager;
  - (d) the Consultant assigns the contract or sub-contracts without the authorisation of the CARICOM IMPACS ;
  - (e) the Consultant is bankrupt or being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
  - (f) any organisational modification occurs involving a change in the legal personality, nature or control of the Consultant, unless such modification is recorded in an addendum to the contract;
  - (g) any other legal disability hindering performance of the contract occurs;
  - (h) the Consultant 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 Consultant has been guilty of grave professional misconduct proven by any means which CARICOM IMPACS can justify;
  - (j) the Consultant has been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation, money laundering or any other illegal activity, where such illegal activity is detrimental to the financial interests of CARICOM IMPACS ;
  - (k) the Consultant, in the performance of another contract financed or implemented by CARICOM IMPACS has been declared to be in serious breach of contract;
  - (l) after the award of the contract, the award procedure or the performance of the contract proves to have been subject to substantial errors, irregularities or fraud;

- (m) the award procedure or the performance of another contract financed by CARICOM IMPACS proves to have been subject to substantial errors, irregularities or fraud which are likely to affect the performance of the present contract;
  - (n) the Consultant fails to maintain the contract record during a 7 years period after the final payment is made under the contract;
  - (o) the Consultant fails to perform its obligation in accordance with Article 8 and Article 9;
  - (p) the Consultant is unable to provide a suitable replacement to an expert, the absence of which affects the proper performance of the contract.
- 35.3. Termination shall be without prejudice to any other rights or powers under the contract of CARICOM IMPACS and the Consultant. CARICOM IMPACS may, thereafter, complete the services itself, or conclude any other contract with a third party, at the Consultant's own expense. The Consultant's liability for delay in completion shall immediately cease when CARICOM IMPACS terminates the contract without prejudice to any liability thereunder that may already have arisen.
- 35.4. Upon termination of the contract or when it has received notice thereof, the Consultant shall take immediate steps to bring the services to a close in a prompt and orderly manner and to reduce expenditure to a minimum.
- 35.5. The Project Manager shall, as soon as possible after termination, certify the value of the services and all sums due to the Consultant as at the date of termination.
- 35.6. CARICOM IMPACS shall not be obliged to make any further payments to the Consultant until the services are completed. After the services are completed, CARICOM IMPACS shall recover from the Consultant the extra costs, if any, of completing the services, or shall pay any balance still due to the Consultant.
- 35.7. If CARICOM IMPACS 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 Consultant any loss it has suffered up to the value of the services which have not been satisfactorily completed unless otherwise provided for in the Special Conditions.
- 35.8. Where the termination is not due to an act or omission of the Consultant, force majeure or other circumstances beyond the control of CARICOM IMPACS the Consultant shall be entitled to claim in addition to sums owed to it for work already performed, an indemnity for loss suffered.
- 35.9. This contract shall be automatically terminated if it has not given rise to any payment in the 6 months year following its signing by both parties.

#### **ARTICLE 36. TERMINATION BY THE CONSULTANT**

- 36.1. The Consultant may, after giving 14 days notice to CARICOM IMPACS terminate the contract if CARICOM IMPACS :
- (a) fails for more than 120 days to pay the Consultant the amounts due after the expiry of the time limit stated in Article 29; or
  - (b) consistently fails to meet its obligations after repeated reminders; or
  - (c) suspends the progress of the services or any part thereof for more than 90 days for reasons not specified in the contract, or not attributable to the Consultant's breach or default.
- 36.2. Such termination shall be without prejudice to any other rights of the CARICOM IMPACS or the Consultant acquired under the contract.
- 36.3. In the event of such termination, CARICOM IMPACS shall pay the Consultant for any loss or damage the Consultant may have suffered. Such additional payment must not be such that the total payments exceed the amount specified in Article 2 of the contract.

## ARTICLE 37. FORCE MAJEURE

- 37.1. Neither party shall be considered to be in default or in breach of its obligations under the contract if the performance of such obligations is prevented by any circumstances of *force majeure* which arise after the date of notification of award or the date when the contract becomes effective.
- 37.2. 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 CARICOM IMPACS to suspend the cooperation with the beneficiary country is considered to be a case of *force majeure* when it implies suspension of funding the contract.
- 37.3. Notwithstanding the provisions of Article 19 and Article 36, the Consultant shall not be liable for liquidated damages or termination for breach or default if, and to the extent that, its delay in performance or other failure to perform its obligations under the contract is the result of an event of *force majeure*. CARICOM IMPACS shall similarly not be liable, notwithstanding the provisions of Article 29 and Article 37, for payment of interest on delayed payments, for non-performance or for termination by the Consultant for breach or default, if, and to the extent that, CARICOM IMPACS delay or other failure to perform its obligations is the result of *force majeure*.
- 37.4. If either party considers that any circumstances of *force majeure* have occurred which may affect performance of its obligations it shall promptly notify the other party and the Project Manager giving details of the nature, the probable duration and the likely effect of the circumstances. Unless otherwise directed by the Project Manager in writing, the Consultant 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 Consultant shall not put into effect such alternative means unless directed so to do by the Project Manager.
- 37.5. If the Consultant incurs additional costs in complying with the Project Manager's directions or using alternative means under Article 38.4 the amount thereof shall be certified by the Project Manager.
- 37.6. 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 Consultant may by reason thereof have been granted, either party shall be entitled to serve upon the other 30 days' notice to terminate the contract. If at the expiry of the period of 30 days the situation of *force majeure* persists, the contract shall be terminated and, in consequence thereof under the law governing the contract, the parties shall be released from further performance of the contract.

**ARTICLE 38. DECEASE**

- 38.1. If the Consultant is a natural person, the contract shall be automatically terminated if that person dies. However, CARICOM IMPACS shall examine any proposal made by its heirs or beneficiaries if they have notified their wish to continue the contract.
- 38.2. Where the Consultant 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 CARICOM IMPACS 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.
- 38.3. In the cases provided for in Articles 39.1 and 39.2, persons offering to continue to implement the contract shall notify CARICOM IMPACS thereof within 14 days of the date of decease. The decision of CARICOM IMPACS shall be notified to those concerned within 30 days of receipt of such a proposal
- 38.4. Such persons shall be jointly and severally liable for the proper implementation of the contract to the same extent as the deceased Consultant. 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 39 SETTLEMENT OF DISPUTES**

- 39.1. The parties shall make every effort to settle amicably any dispute relating to the contract which may arise between them.
- 39.2. Once a dispute has arisen, a party shall notify the other party of the dispute, stating its position on the dispute and any solution which it envisages, 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.
- 39.3. In the absence of an amicable settlement, a party may notify the other party requesting a settlement through conciliation by a third person. 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.
- 30.4. If the amicable settlement procedure and, if so requested, the conciliation procedure fails, each party may refer the dispute to arbitration, as specified in the Special Conditions.

**ARTICLE 40. APPLICABLE LAW**

- 40.1. This contract shall be governed by the law of the country of CARICOM IMPACS.

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