

# ***SPECIAL CONDITIONS***

## **CONTENTS**

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

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

- 2.1 The language used shall be English.

### **Article 4 Communications**

- 4.1 The contact person for this contract is:

Mr. Earl Harris,  
Assistant Director Strategic Services  
19 Keate Street, Port of Spain, Trinidad  
1-868- 235-5511  
[11edf@carimpacs.org](mailto:11edf@carimpacs.org)

- 4.2 An electronic system will be used by the contracting authority and the contractor for all stages of implementation including, inter alia, management of the contract (amendments and administrative orders), reporting (including reporting on results) and payments. The contractor will be required to register in and use the appropriate electronic exchange system to allow for the e-management of the contract.

The electronic management of the contract through the aforementioned system may commence on the date on which implementation of the contract starts, as described in Article 18 below, or at a later date. In the latter case, the contracting authority will inform the contractor in writing that he will be required to use the electronic system for all communications within a maximum period of 3 months.

### **Article 6 Subcontracting**

- 6.3 When selecting subcontractors the contractor must give preference to natural persons or companies from ACP States capable of implementing the tasks required on similar terms.

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

All documents, guidelines, manuals and codes and/or scripts required for the support, utilization, maintenance and execution of goods and services procured.

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

N/A

## Article 9 General obligations

9.9 N/A

## Article 10 Origin

10.1 Goods originating in the EU includes goods originating in the Overseas Countries and Territories.

All supplies under this contract may originate from any country.

## Article 11 Performance guarantee

11.1 No performance guarantee is required.

## Article 12 Liabilities and insurance

12.1(a) By way of derogation from Article 12.1(a), paragraph 2, of the general conditions, compensation for damage to the supplies resulting from the contractor's liability in respect of the contracting authority is capped at an amount equal to the contract value.

12.1(b) By way of derogation from Article 12.1(b), paragraph 2, of the general conditions, compensation for damage resulting from the contractor's liability in respect of the contracting authority is capped at an amount equal to the contract value.

12.2(a), By derogation from Article 12.2(a), paragraph 2, of the general conditions it is [state when] that the contractor shall provide the contracting authority with all cover notes and/or insurance certificates showing that the contractor's obligations relating to insurance are fully respected.

12.2(b), paragraph 2 <Specify any specific insurance requirements to cover the transport of supplies >

This type of insurance will vary depending on the nature of transport (land, air or sea) and the nature of the risks to be covered: loading, intermediate storage, unloading, including stowage and protection, theft, damage, loss, wetting, etc.

- **DAP - Delivered At Place:** Incoterm whereby the buyer bears all risks and costs of import clearance:  
*'the seller delivers when the goods are placed at the disposal of the buyer on the arriving means of transport ready for unloading at the named place of destination. The seller bears all risks involved in bringing the goods to the named place'<sup>1</sup>, including customs clearance for export, but not for import at the port or at the border of the agreed place of destination.*

## Article 13 Programme of implementation of tasks

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<sup>1</sup> Idem.

13.2 N/A

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

14.1 N/A

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

15.1 N/A

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

16.1 The Government of the Republic of Trinidad and Tobago has agreed in the Headquarters agreement for CARICOM IMPACS Privileges and Immunities of July 2009 affords exemptions from Taxes and Customs Duties on the assets, property, operations and of IMPACS. Article VIII states (1) IMPACS, its assets property and its operations and transactions, shall be exempt from: (a) all direct taxes, except for fees which are, in fact charges for public utility services. (b) all customs duties, prohibitions and restrictions on imports and exports in respect of articles intended for official use; (2) If necessary, the Government shall make appropriate administrative arrangements for the remission or refund of the amount of any duty, tax or imposts payable or paid by IMPACS. (3) Articles in respect of which paragraphs 1 and 2 shall not be sold in Trinidad and Tobago except under conditions agreed with the Government.

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

17.1 There will be no derogation from Article 17 of the general conditions.

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

18.1 Implementation of the tasks is to commence on TBC.

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

19.1 The implementation period(s) of the tasks is 185 calendar days in relation to the date stipulated in the previous article.

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

24.2 A preliminary technical acceptance is required.

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

25.2 Goods to be inspected and tested in accordance with Article 25 of the general conditions and the practical arrangements for testing at CARICOM IMPACS Headquarters.

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

26.1 Payments shall be made in Euros.

Payments shall be authorised and made by CARICOM IMPACS Finance Department, 19 Keate Street, Port of Spain, Trinidad and Tobago.

- 26.3 By derogation, the pre-financing payment shall be made within 60 days from the date on which an admissible invoice is registered by the contracting authority. The final payment to the contractor of the amounts due shall be made within 90 days following provisional acceptance of the goods, after receipt by the contracting authority of an admissible invoice.
- 26.5 In order to obtain payments, the contractor must forward to the authority referred to in paragraph 26.1 above:
- a) For the 40% pre-financing:  
When (i) the pre-financing requested is equal or below EUR 300 000 **and** (ii) the contracting authority does not require a financial guarantee following a risk assessment<sup>1</sup>, by derogation from article 26.5 of the general conditions no pre-financing guarantee is required.
  - b) For the 60 % balance, the invoice(s) in triplicate together with the request for provisional acceptance of the supplies.

## **Article 28 Delayed payments**

- 28.2 By derogation from Article 28.2 of the general conditions, once the deadline laid down in Article 26.3 has expired, the contractor shall, upon demand, be entitled to late-payment interest at the rate and for the period mentioned in the general conditions. The demand must be submitted within two months of receiving late payment.

## **Article 29 Delivery**

- 29.3 The packaging shall become the property of the recipient subject to environmental considerations.

## **Article 31 Provisional acceptance**

The certificate of provisional acceptance must be issued using the template in Annex C11.

- 31.2. By derogation from Article 31.2, second paragraph, the contracting authority's time limit for issuing the certificate of provisional acceptance to the contractor shall not be considered included in the time limit for payments indicated in Article 26.3.

## **Article 32 Warranty obligations**

- 32.7 The warranty must remain valid for one year after provisional acceptance.

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

- 33.1 After sales services will be required and specified upon agreement of contract terms.

## **Article 40 Settlement of disputes**

- 40.4 Any dispute arising out of or relating to this contract which cannot be settled otherwise shall:
- (a) in the case of a national contract, be settled in accordance with the national legislation of the state of the contracting authority; and
  - (b) in the case of a transnational contract, be settled either:
    - (i) if the parties to the contract so agree, in accordance with the national legislation of the state of the contracting authority or its established international practices; or
    - (ii) by arbitration in accordance with the procedural rules on conciliation and arbitration of contracts financed by the European Development Fund, adopted by Decision 3/90 of the ACP-EEC Council of Ministers of 29 March 1990 (Official Journal No L 382, 31.12.1990, Annex a12 to the practical guide).

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

1. Processing of personal data related to the implementation of the contract by the contracting authority takes place in accordance with the national legislation of the state of the contracting authority and with the provisions of the respective financing agreement.

2. To the extent that the contract covers an action financed by the European Union, the Contracting Authority may share communications related to the implementation of the contract, with the European Commission. These exchanges shall be made to the Commission, solely for the purpose of allowing the latter to exercise its rights and obligations under the applicable legislative framework and under the financing agreement with the Partner country – contracting authority. The exchanges may involve transfers of personal data (such as names, contact details, signatures and CVs) of natural persons involved in the implementation of the contract (such as contractors, personnel, experts, trainees, subcontractors, insurers, guarantors, auditors and legal counsel). In cases where the contractor is processing personal data in the context of the implementation of the contract, he/she shall accordingly inform the data subjects of the possible transmission of their data to the Commission. When personal data is transmitted to the Commission, the latter processes them in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC<sup>1</sup> and as detailed in the specific privacy statement published at ePRAG.

#### **Article 45 Further additional clauses**

45.1 Both parties to this Agreement undertake, except as provided below, to treat as confidential and keep confidential all information which may reasonably be supposed to be confidential with the same degree of care as it employs with regard to its own confidential information of a like nature and in any event in accordance with best current commercial security practices, provided that, this clause shall not extend to any information which was rightfully in the possession of either party prior to the commencement of the negotiations leading to this Agreement or which is already

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<sup>1</sup> OJ L 205 of 21.11.2018, p. 39

public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause).

- 45.2 Both parties shall not, without the prior written consent of the other party, divulge any part of the Information to any person except:
- i. to their own employees and then only to those employees who need to know the same;
  - ii. any person who is for the time being appointed by either party to work on or supervise the services and then only to the extent necessary to enable such person to properly carry out his/her duty.
- 45.3 Both parties undertake to ensure that persons and bodies referred to in clause 45.2 are made aware before the disclosure of any part of the Information that the same is confidential and that they owe a duty of confidence to the other party.
- 45.4 Each party to this Agreement shall promptly notify the other party if it becomes aware of any breach of confidence by any person to whom it divulges all or any part of the information and shall give the other party all reasonable assistance in connection with any proceedings which the other party may institute against such person for breach of confidence.
- 45.5 The foregoing obligations as to confidentiality shall remain in full force and effect notwithstanding any termination of this Agreement.

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