

VOLUME 2

SECTION 3

PARTICULAR CONDITIONS

These conditions amplify and supplement, if necessary, the General Conditions governing the contract. Unless the Particular Conditions provide otherwise, those General Conditions remain fully applicable. The numbering of the Articles of the Particular Conditions is not consecutive but follows the numbering of the Articles of the General Conditions.

Clause 1 General Provisions

Sub-Clause 1.1 Definitions

Sub-Clause 1.1.1 The Contract

1.1.1.2

Add at the end of the **Subparagraph**:

Wherever the expression “**Contract Form**” appears, it shall be deemed to be synonymous with “**Contract Agreement**”.

1.1.1.4

Add at the end of the **Subparagraph**:

Wherever the expression “**Tender Form**” appears, it shall be deemed to be synonymous with “**Letter of Tender**”.

1.1.1.5

Add at the end of the **Subparagraph**:

Wherever the expression “**Technical Specification**” appears, it shall be deemed to be synonymous with “**Specification**”.

Sub-Clause 1.1.2 Parties and Persons

1.1.2.2

Add at the end of the **Subparagraph**:

Wherever the expression “**Contracting Authority**” appears, it shall be deemed to be synonymous with “**Employer**”.

Add the new **Sub-Clauses 1.1.2.11, 1.1.2.12 and 1.1.2.13** as follows:

1.1.2.11

“End Recipient” (ERA) is the “**Eastern Anatolia Development Agency**” and means the owner of the project after taking-over of the Works according to the system established under Instrument for Pre-accession Assistance (IPA II) Sustainable Economy Component. In this Contract the Employer acts in the interest of the End Recipient.

1.1.2.12

“**Notification Letter**” means the letter sent by the Employer to the Tenderer notifying that it intends to award the Contract to the Tenderer, provided he submits additional documentation if any within the time requested, the Employer will then issue the Contract for signature.

1.1.2.13

“**EUD**” means the Delegation of the European Union to Turkey.

Sub-Clause 1.1.6 Other Definitions

Add the new **Sub-Clause 1.1.6.10** as follows:

1.1.6.10

“Eligible Source Countries” means; all countries eligible for Instrument for Pre-Accession Assistance (IPA II) (Regulation (EU) No 231/2014 of The European Parliament and of the Council - OJ L 77/11 of 15.03.2014).

Please also refer to document a2a;

http://ec.europa.eu/europeaid/prag/annexes.do;JSESSIONID_PUBLIC=JoZCxdTmDoNUtcFt25ZoI6MhFoB3Lh0YnmMs3qPiVik0BwxVjYSe!-1564024182?chapterTitleCode=A

Sub-Clause 1.5 Priority of Documents

Delete the **Sub-Clause** and substitute:

The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the order of precedence of the contract documents shall be as stated in the Contract Form.

Addenda shall have the order of precedence of the document they are modifying but shall have precedence over that document.

If an ambiguity or discrepancy is found in the documents, the Engineer shall issue any necessary clarification or instruction.

Sub-Clause 1.6 Contract Agreement

Delete the **Sub-Clause** and substitute with:

The Contractor shall sign and return Contract Form together with all its forms and schedules within 30 days of the date the Contractor receives it already signed by the Employer.

The Contract shall not be valid if not submitted together with the Performance Security as described in Sub-Clause 4.2 [Performance Security] of these Particular Conditions.

Sub-Clause 1.10 Employer’s Use of Contractor’s Documents

In the second paragraph, after the word “Employer”, insert “and the End Recipient”

In the last sentence, after the word “Employer”, insert “or the End Recipient”

Clause 2 The Employer

Sub-Clause 2.6 The End Recipient

add new **Sub-Clause 2.6** as follows:

2.6 The End Recipient

The End Recipient shall have no authority to amend or to issue instructions under the Contract, either on behalf of the Employer or the Engineer.

Should the Contractor receive any communication from the End Recipient the Contractor shall forward it to the Employer with a copy to the Engineer giving notice if it considers the End Recipient's communication to be a Variation or amendment to the Contract. The Contractor shall not amend or vary the Works based on any communication from the End Recipient, unless and until it receives an instruction from the Engineer

to vary the Work under Clause 13 [Variations and Adjustments] or it enters into an agreement with the Employer to amend the Contract.

If the Contractor takes any action pursuant to an End Recipient's communication without first obtaining confirmation of the communication from the Employer and/or Engineer, the Contractor shall not be entitled to additional payment, or an extension of the Time for Completion, and the Employer shall be discharged from all liability in connection with any claim in respect of the End Recipient's communication.

This Particular Condition 2.6 will remain in effect throughout the life of the Contract, including after taking-over of the Works, and the possible transfer of title and ownership of the Works to the End Recipient has occurred.

Clause 3 The Engineer

Sub-Clause 3.1 Engineer's Duties and Authority

At the end of **Sub-Clause 3.1**, add:

The Engineer shall obtain the specific comment of the Employer in writing before taking any of the following actions specified hereafter: (a) As per Sub-Clause 20.1, agreeing or determining for any matter, which will prolong the Extension of Time for Completion and/or change the Accepted Contract Amount (b) As per Sub-Clause 4.4, approval of a subcontract for which a different subcontractor is named in the Contract (c) As per Clause 13: Instructing Variations affecting Accepted Contract Amount, Time for Completion or substantial changes to the scope of this contract.

The specific comment of the Employer shall be provided within 28 days and shall not be unreasonably withheld or delayed. The specific comment of the Employer will not have any impact on the fair determination of the Engineer, or will not relieve him/her of his/her duties regarding making a fair determination.

Clause 4 The Contractor

Sub-Clause 4.1 Contractor's General Obligations

At the end of the fourth paragraph of **Sub-Clause 4.1**, add:

All Plant and Material to be incorporated in or required for the Permanent Works shall have their origin in an Eligible Source Country as defined in these Particular Conditions.

Sub-Clause 4.2 Performance Security

delete the words, “within 28 days after receiving the Letter of Acceptance and shall send a copy to the Engineer” from the first sentence of the second paragraph of Sub-Clause and **substitute**:

together with the return of the countersigned Contract Form under Sub-Clause 1.6 [Contract Form]

delete the last paragraph of **Sub-Clause** and **substitute**:

The Performance Security shall be released within 45 days after completion of the following events whichever occurs last:

- a) the issuance of the Performance Certificate under Sub-Clause 11.9 [Performance Certificate] .
- b) the receipt from the Contractor of a written discharge together with a letter of release issued by Ministry of Labour and Social Security confirming the Contractor has fulfilled all his statutory Social Security obligations arising out of or in connection with the performance of the Contract to the Employer provided that the laws and regulations require so.

add at the end of the **Sub-Clause**:

Whenever the Engineer determines an addition or a reduction to the Contract Price as a result of a change in cost and/or legislation, or as a result of a Variation amounting to more than 10 percent of the portion of the Contract Price, the Contractor shall, at the Engineer’s written request promptly increase, or decrease, as the case may be, the value of the Performance Security by a corresponding percentage.

Where the Contractor is a joint venture/consortium, the Performance Security shall be in the form of a single security, and shall be either in the name of the joint venture/ consortium or in the name of the leader.

Sub-Clause 4.4 Subcontractors

At the beginning of **Sub-Clause 4.4**, **add**:

The value of the Permanent Works which the Contractor may subcontract shall not exceed the maximum percentage of the Contract Price as stated in the Appendix to Tender. If no such percentage is stated in the Appendix to Tender this provision shall not apply.

At the end of **Sub-Clause 4.4**, **add**:

The Contractor shall ensure that all its Subcontractors and suppliers are natural and/or legal person from one of the Eligible Source Countries as defined under subparagraph

1.1.6.10 [Other Definitions].

Subcontractors must satisfy the eligibility criteria applicable for the award of the Contract and they cannot be in any of the situations excluding them from participating in contracts which are listed in Section 2.3.3 [Grounds for exclusion] of the Practical Guide to Contract Procedure for EU External Actions.

Sub-Clause 4.6 Co-operation

In sub-paragraph b), after the word “Employer”, insert “or by the End Recipient”.

Sub-Clause 4.10 Site Data

add at the end of **Sub-Clause**:

(f) existing utilities and infrastructure

Sub-Clause 4.18 Protection of the Environment

add at the end of first paragraph of this **Sub-Clause**:

Where the Contractor’s activity is subject to regulation under applicable environmental Laws, the Engineer may require the Contractor to submit evidence of his compliance with such Laws, including but not limited to, the submission of any required permits, payment of fees, and compliance with any obligatory administrative procedures.

Sub-Clause 4.21 Progress Reports

add at the end of the first paragraph of this **Sub-Clause**:

Progress reports shall be submitted in English with a Turkish translation.

Clause 6 Staff and Labour

Sub-Clause 6.3 Persons in the Service of the Employer

Insert at the end of the sentence:

and the End Recipient’s Personnel

Sub-Clause 6.9 Contractor’s Personnel

insert at the beginning of the **Sub-Clause**:

The Contractor shall obtain prior consent from the Engineer of replacements of key Contractor’s Personnel. The Engineer’s consent shall not be unreasonably withheld or delayed. A position shall be considered as a “key” position, if it was described as such in the Technical Specifications.

Clause 7 Plant, Material and Workmanship

add new **Sub-clauses 7.9** as follows:

All Goods to be incorporated in or required for the Works shall have their origin in any eligible source country as defined in Sub-clause 1.1.6.10. However, they may originate from any country when the amount value of the supplies and materials to be purchased is below EUR 100,000.

A product cannot originate in a country in which no production process has taken place. On the other hand, the country of production is not necessarily the country of origin but only when the

relevant provisions of Council Regulation (EEC) 2913/92 and its implementing regulation are fulfilled.

Furthermore, the country of origin is not necessarily the country from which the goods have been shipped and supplied. Where there is only one country of production, the origin of the finished product is easily established. However, in cases where more than one country is involved in the production of goods it is necessary to determine which of those countries confers origin on the finished goods. The country of origin is deemed to be the country in which the goods have undergone their last, economically justified, substantial transformation and the provisions of Article 24 of the Community Customs Code must therefore be applied on a case by case basis to those goods.

The Contractor must certify that the goods tendered comply with the origin requirement specifying the country or countries of origin. To this end, the Contractor shall provide "Certificate of Origin", which must be made out by the competent authorities of the supplies' or supplier's country of origin and comply with the international agreements to which that country is a signatory.

The official Certificates of Origin must be submitted latest before Taking Over. Failing this, the Contracting Authority cannot release any funds to the Contractor in payment for such goods.

A copy of the Certificate of Origin is recommended to be provided with each progress payment.

Clause 8 Commencement, Delays and Suspension

Sub-Clause 8.1 Commencement of Works

Delete the first paragraph of the **Sub-Clause** and **substitute**:

The Engineer shall give the Contractor not less than 7 days' notice of the Commencement Date. Unless otherwise stated in these Conditions, the Commencement Date shall be within 42 days after the Employer receives the Contractor's Performance Security, and the Contract signed by the Contractor.

Sub-Clause 8.3 Programme

add the following Subparagraph (e):

(e) a detailed cash-flow estimate for all projected payments to which the Contractor expects to be entitled in accordance with the details provided in the Technical Specifications.

Clause 11 Defects Liability

Sub-Clause 11.7 Right of Access

Insert "or End Recipient's" after "Employer's".

Clause 12 Measurement and Evaluation

Sub-Clause 12.3 Evaluation

Delete the sub-paragraph (a) of the second paragraph of **Sub-Clause** and **substitute**:

(a)

(i) the measured quantity of the item is changed by more than 25% from the quantity of this item in the Bill of Quantities or other Schedule,

(ii) this change in quantity multiplied by such specified rate for this item exceeds 0.25% of the Accepted Contract Amount, and,

(iii) this item is not specified in the Contract as a “fixed rate item”;

At the end of the third paragraph of **Sub-Clause**, **add**:

When determining a provisional rate, the Engineer may, if he finds applicable, consult rates published by public authorities for an estimate of the reasonable Cost of executing the work.

Clause 13 Variations and Adjustments

Sub-Clause 13.2 Value Engineering

Delete sub-paragraph (c)

Sub-Clause 13.5 Provisional Sums

delete the first sentence of the **Sub-Clause** and **substitute** with:

Provisional sum is a sum included in the contract and so designated for the implementation of works or the supply of goods, materials, plant or services, or for contingencies, which sum may be used in whole or in part, or not at all, as instructed by the Engineer, and the Contract Price shall be adjusted accordingly. Contingencies mean an allowance to provide for additional work, adjustments in cost, or supplies that are not known at the time of tender and shall be treated as a Provisional Sum

Clause 14 Contract Price and Payment

Sub-Clause 14.2 Advance Payment

delete the second paragraph of the **Sub-Clause** and **substitute**:

Unless and until the employer receives this guarantee, and if the total advance payment is not stated in the Appendix to Tender, this Sub-Clause shall not apply.

delete the third paragraph of the **Sub-Clause** and **substitute**:

The Engineer shall issue an Interim Payment Certificate for the first instalment after receiving a Statement (under Sub-Clause 14.3 [Application for Interim Payment Certificates], after the Employer receives (i) the Performance Security in accordance with Sub-Clause 4.2 [Performance Security] and (ii) a guarantee in amounts and currencies equal to the advance payment. This guarantee shall be issued by an entity and from within a country (or other

jurisdiction) approved by the Employer and shall be in the form annexed to the Particular Conditions or in another form approved by the Employer.

Sub-Clause 14.7 Payment

delete sub-paragraphs (a), (b) and (c) and **substitute** with:

(a) the advance payment within 56 days after receiving the documents in accordance with Sub-Clause 14.2 [Advance Payment];

(b) the amount certified in each Interim Payment Certificate within 77 days after the Engineer receives the Statement and supporting documents

(c) the amount certified in the Final Payment Certificate within 70 days after the Employer receives this Payment Certificate.

At the end of the **Sub-Clause**, **add**:

The Employer shall not be held liable for reimbursement to the Contractor of any fees, charges or costs levied by the Contractor's bank in connection with the transfer of any amount paid to the Contractor by the Employer under the Contract.

The Contracting Authority shall deduct income taxes (withholding tax) from income generated from performance of the Contract in line with Annex-Tax and Customs Provision of the Contract.

Sub-Clause 14.8 Delayed Payment

delete the second paragraph of the **Sub-Clause** and **substitute**:

Financing charges shall be calculated at the rate applied by the European Central Bank to its main refinancing transactions in Euro, as published each month in the Official Journal of the European Union, C series, on the first day of the month in which the deadline expired, plus annual rate of three and a half percentage points, and shall be paid in Euro. Financing charges shall apply to the time which elapses between the date of the payment deadline and the date on which the Employer's account is debited.

Sub-Clause 14.9 Payment of Retention Money

add the following at the end of the **Sub-Clause**:

When the Taking-Over Certificate has been issued for the Works and the first half of the Retention Money has been certified for payment by the Engineer, the Contractor shall be entitled to substitute a guarantee, in the form annexed to the Particular Conditions or in another form approved by the Employer and provided by an entity approved by the Employer, for the second half of the Retention Money.

The Contractor shall ensure that the guarantee is in the amounts and currencies of the second half of the Retention Money and is valid and enforceable until the Contractor has executed and completed the Works and remedied any defects, as specified for the Performance Security in Sub-Clause 4.2. On receipt by the Employer of the required guarantee, the Engineer shall certify and the Employer shall pay the second half of the Retention Money. The release of the second half of the Retention Money against a guarantee shall then be in lieu of the release under the second paragraph of this Sub-Clause.

The Employer shall return the guarantee to the Contractor within 21 days after receiving a copy of the Performance Certificate.

Clause 18 General Requirements for Insurance

Sub-Clause 18.1 General Requirements for Insurance

Insert the following as new second paragraph:

The insuring party shall be as stated in the Appendix to Tender.

delete the first sentence of paragraph 5 of this **Sub-Clause**, and **replace** with:

Each policy insuring against loss or damage shall provide that any payments under the policy to rectify the loss or damage be made in EURO.

Add new Sub- Clause 18.5 Professional indemnity Insurance for Design

The Contractor shall affect professional indemnity insurance, which shall cover the risk of professional negligence in the design of the Works. The minimum amount of Professional indemnity insurance for design shall be not less than as indicated in the Appendix to Tender.

Clause 20 Claim, Disputes and Arbitration

Sub-Clause 20.1 Contractor's Claims

Delete the last sentence of the second paragraph of **Sub-Clause 20.1**, and **substitute** with:

However, if the Contractor considers there are circumstances which justify the late submission, he may submit the details to the DAB for a ruling. If the DAB considers that, in all the circumstances, it is fair and reasonable that the late submission be accepted, the DAB shall have the authority to overrule the relevant 28-day limit and, if it so decides, it shall advise the parties accordingly.

Sub-Clause 20.2 Appointment of the Dispute Adjudication Board

Delete last sentence of the first paragraph and **substitute**:

The Parties shall jointly appoint a DAB by the date 28 days after a Party gives notice of its intention to refer a dispute to a DAB in accordance with Sub-Clause 20.4 [Obtaining a Dispute Adjudication Board's Decision].

Delete paragraphs 6 and 7 and **substitute** with the following single paragraph:

The terms of the remuneration of either the sole member or each of three members, shall be mutually agreed upon by the Parties when agreeing the terms of appointment.
Each Party shall be responsible for paying one-half of this remuneration.

Add the following sentence at the end of paragraph 8:

The replacement shall be appointed in the same manner as the replaced person was required to have been nominated or agreed upon, as described in this Sub-Clause.

Delete paragraph 9.

Delete paragraph 10 and **substitute** with the following:

The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Employer or the Contractor acting alone. Unless otherwise agreed by both Parties, the appointment of the DAB (including each member) shall expire when the DAB has given its decision on the dispute referred to it under Sub-Clause 20.4 [Obtaining Dispute Adjudication Board's Decision], unless other disputes have been referred to the DAB by that time under Sub-Clause 20.4, in which event the relevant date shall be when the DAB has also given decisions on those disputes.

Sub-Clause 20.4 Obtaining Dispute Adjudication Board's Decision

Delete paragraph 1 and **substitute** with the following:

If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Engineer, then after a DAB has been appointed pursuant to Sub-Clause 20.2 [Appointment of the DAB] and 20.3 [Failure to Agree DAB] either Party may refer the dispute in writing to the DAB for its decision, with copies to the other Party and the Engineer. Such reference shall state that it is given under this Sub-Clause.

Delete paragraph 4 and **substitute** with the following:

Within 84 days after receiving such reference, or advance payment referred to in Clause 6 of the Appendix – General Conditions of Dispute Adjudication Agreement, whichever date is later, or within such other period as may be proposed by the DAB and approved by both Parties, the DAB shall give its decision, which shall be reasoned and shall state that it is given under this Sub-Clause. However, if neither of the Parties has paid in full the invoices submitted by each member pursuant to Clause 6 of the Appendix, the DAB shall not be obliged to give its decision until such invoices have been paid in full. The decision shall be binding on both Parties, who shall promptly give effect to it unless and until it shall be revised in an amicable settlement or an arbitral award as described below. Unless the Contract has already been abandoned, repudiated or terminated, the Contractor shall continue to proceed with the Works in accordance with the Contract.

Delete the Appendix entitled; General Conditions of Dispute Adjudication Agreement (pp 63-66), to the FIDIC General Conditions of Contract for Construction, First Edition 1999 (the Red Book) and **substitute** with the Appendix entitled; General Conditions of Dispute Adjudication Agreement (pp 64-67), to the FIDIC General Conditions of Contract for Plant and Design-Build, First Edition 1999 (the Yellow Book)

Delete the Annex entitled; Procedural Rules (pp 67-68), to the Appendix entitled; General Conditions of Dispute Adjudication Agreement to the FIDIC General Conditions of Contract for Construction, First Edition 1999 (the Red Book) and **substitute** with the Annex entitled; Procedural Rules (pp 68-69), to the Appendix entitled; General Conditions of Dispute

Adjudication Agreement to the FIDIC General Conditions of Contract for Plant and Design-Build, First Edition 1999 (the Yellow Book).

Sub-Clause 20.7 Failure to Comply with Dispute Adjudication Board's Decision

Delete Sub-Clause 20.7 and substitute:

In the event that a Party fails to comply with any decision of the DAB, whether binding or final and binding, then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under Sub-Clause 20.6 [Arbitration] for summary or other expedited relief, as may be appropriate. Sub-Clause 20.4 [Obtaining Dispute Adjudication Board's Decision] and Sub-Clause 20.5 [Amicable Settlement] shall not apply to this reference.

Add new clauses 21, 22, 23 and 24

Clause 21 Ethics Clauses

Any attempt by a candidate or tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the committee or the Contracting Authority during the process of examining, clarifying, evaluating and comparing tenders shall lead to the rejection of his candidacy or tender and may result in administrative penalties.

Without the Contracting Authority's prior written authorisation, the Contractor and its staff or any other company with which the Contractor is associated or linked may not, even on an ancillary or subcontracting basis, supply other services, carry out works or supply equipment for the project. This also applies to any other programmes or projects that could, owing to the nature of the contract, give rise to a conflict of interest on the part of the Contractor.

When putting forward a candidacy or tender, the candidate or tenderer must declare that it is not affected by any conflict of interest, and that it has no equivalent relation in that respect with other tenderers or parties involved in the project. Should such a situation arise during execution of the contract, the Contractor must immediately inform the Contracting Authority.

The Contractor must at all times act impartially and as a faithful adviser in accordance with the code of conduct of its profession. It must refrain from making public statements about the project or services without the Contracting Authority's prior approval. It may not commit the Contracting Authority in any way without its prior written consent.

For the duration of the contract, the Contractor and its staff must respect human rights and undertake not to offend the political, cultural and religious mores of the beneficiary state.

The Contractor may accept no payment connected with the contract other than that provided for therein. The Contractor and its staff must not exercise any activity or receive any advantage inconsistent with their obligations to the Contracting Authority.

The Contractor and its staff are obliged to maintain professional secrecy for the entire duration of the contract and after its completion. All reports and documents drawn up or received by the Contractor are confidential.

The contract governs the Parties' use of all reports and documents drawn up, received or presented by them during execution of the contract.

The Contractor must refrain from any relationship likely to compromise its independence or that of its staff. If the Contractor ceases to be independent, the Contracting Authority may, regardless of injury, terminate the contract without further notice and without the Contractor having any claim to compensation.

The Commission reserves the right to suspend or cancel project financing if corrupt practices of any kind are discovered at any stage of the award process and if the Contracting Authority fails to take all appropriate measures to remedy the situation. For the purposes of this provision, 'corrupt practices' are the offer of a bribe, gift, gratuity or commission to any person as an inducement or reward for performing or refraining from any act relating to the award of a contract or implementation of a contract already concluded with the Contracting Authority.

All tenders will be rejected or contracts terminated if it emerges that the award or execution of a contract has given rise to unusual commercial expenses. Unusual commercial expenses are commissions not mentioned in the main contract or not stemming from a properly concluded contract referring to the main 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 commissions paid to a company which has every appearance of being a front company.

The Contractor undertakes to supply the Commission on request with all supporting documents relating to the conditions of the contract's execution. The Commission may carry out whatever documentary or on-the-spot checks it deems necessary to find evidence in cases of suspected unusual commercial expenses.

Contractors found to have paid unusual commercial expenses on projects funded by the European Union are liable, depending on the seriousness of the facts observed, to have their contracts terminated or to be permanently excluded from receiving EU funds.

The Contracting Authority reserves the right to suspend or cancel the procedure, where the award procedure proves to have been subject to substantial errors, irregularities or fraud. Where such substantial errors, irregularities or fraud are discovered after the award of the Contract, the Contracting Authority may refrain from concluding the Contract.

Clause 22 Administrative and Financial Penalties

Without prejudice to the application of other remedies laid down in the contract, a Contractor 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 financed by the EU for a maximum of five years from the date on which the infringement is committed, to be confirmed after an adversarial procedure with the Contractor, in accordance with the relevant EU Financial Regulations. The period may be increased to ten years in the event of a repeat offence within five years of the first infringement.

In addition or in alternative to the administrative penalty laid down in the above first paragraph, the Contractor may also be subject to financial penalties representing 2-10% of the contract price. This rate may be increased to 4-20% in the event of a repeat offence within five years of the first infringement.

Where the Contracting Authority is entitled to impose financial penalties; it may deduct such financial penalties from any sums due to the Contractor or call on the appropriate guarantee.

Clause 23 Verifications, Checks and Audits by European Union Bodies

The Contractor will allow the European Commission, the European Anti-Fraud Office and the European Court of Auditors 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, the EU bodies mentioned above shall be allowed to conduct a full audit, if necessary, on the basis of supporting documents for the accounts, accounting documents and any other document relevant to the financing of the project. The Contractor shall ensure that on-the-spot accesses is available at all reasonable times, notably at the Contractor's offices, to its computer data, to its accounting data and to all the information needed to carry out the audits, including information on individual salaries of persons involved in the project. The Contractor shall ensure that the information is readily available at the moment of the audit and, if so requested, that data be handed over in an appropriate form. These inspections may take place up to 7 years after the final payment.

Furthermore, the Contractor will allow the European Anti-Fraud Office to carry out checks and verification on the spot in accordance with the procedures set out in the European Union legislation for the protection of the financial interests of the European Union against fraud and other irregularities.

To this end, the Contractor undertakes to give appropriate access to staff or agents of the European Commission, of the European Anti-Fraud Office and of the European Court of Auditors to the sites and locations at which the contract is carried out, including its information systems, as well as all documents and databases concerning the technical and financial management of the project and to take all steps to facilitate their work. Access given to agents of the European Commission, European Anti-Fraud Office and the European Court of Auditors shall be on the basis of confidentiality with respect to third parties, without prejudice to the obligations of public law to which they are subject. Documents must be easily accessible and filed so as to facilitate their examination and the Contractor must inform the Contracting Authority of their precise location.

The Contractor guarantees that the rights of the European Commission, of the European Anti-Fraud Office and of the European Court of Auditors to carry out audits, checks and verification will be equally applicable, under the same conditions and according to the same rules as those set out in this Article, to any sub-Contractor or any other party benefiting from EU budget/EDF funds.

Clause 24 Data Protection

24.1. Processing of personal data by the Employer

Any personal data included in or relating to the contract, including its implementation, shall be processed in accordance with Regulation (EU) 2018/1725. Such data shall be processed solely for the purposes of the implementation, management and monitoring of the contract by the data controller.

The contractor or any other person whose personal data is processed by the data controller in relation to this contract has specific rights as a data subject under Chapter III (Articles 14-25) of Regulation (EU) 2018/1725, in particular the right to access, rectify or erase their personal data

and the right to restrict the processing of their personal data or, where applicable, the right to object to processing or the right to data portability.

Should the contractor or any other person whose personal data is processed in relation to this contract have any queries concerning the processing of its personal data, it shall address itself to the data controller. They may also address themselves to the Data Protection Officer of the data controller. They have the right to lodge a complaint at any time to the European Data Protection Supervisor.

24.2 Processing of personal data by the contractor

The processing of personal data by the contractor shall meet the requirements of the particular conditions and be processed solely for the purposes set out by the controller.

The contractor shall assist the controller for the fulfilment of the controller's obligation to respond to requests for exercising rights of person whose personal data is processed in relation to this contract as laid down in Chapter III (Articles 14-25) of Regulation (EU) 2018/1725. The contractor shall inform without delay the controller about such requests.

The contractor may act only on documented written instructions and under the supervision of the controller, in particular with regard to the purposes of the processing, the categories of data that may be processed, the recipients of the data and the means by which the data subject may exercise its rights.

The contractor shall grant personnel access to the data to the extent strictly necessary for the implementation, management and monitoring of the contract. The contractor must ensure that personnel authorised to process personal data has committed itself to confidentiality and the contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to the performance of the contract without the prior consent of the Employer.

The contractor shall adopt appropriate technical and organisational security measures, giving due regard to the risks inherent in the processing and to the nature, scope, context and purposes of processing, in order to ensure, in particular, as appropriate:

- (a) the pseudonymisation and encryption of personal data;
- (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- (c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
- (d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;
- (e) measures to protect personal data from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed.

The contractor shall notify relevant personal data breaches to the controller without undue delay and at the latest within 48 hours after the contractor becomes aware of the breach. In such cases, the contractor shall provide the controller with at least the following information:

- (a) nature of the personal data breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
- (b) likely consequences of the breach;
- (c) measures taken or proposed to be taken to address the breach, including, where appropriate, measures to mitigate its possible adverse effects.

The contractor shall immediately inform the data controller if, in its opinion, an instruction infringes Regulation (EU) 2018/1725, Regulation (EU) 2016/679, or other Union or Member

State or third country applicable data protection provisions as referred to in the tender specifications, if any.

The contractor shall assist the controller for the fulfilment of its obligations pursuant to Article 33 to 41 under Regulation (EU) 2018/1725 to:

- (a) ensure compliance with its data protection obligations regarding the security of the processing, and the confidentiality of electronic communications and directories of users;
- (b) notify a personal data breach to the European Data Protection Supervisor;
- (c) communicate a personal data breach without undue delay to the data subject, where applicable;
- (d) carry out data protection impact assessments and prior consultations as necessary.

The contractor shall maintain a record of all data processing operations carried on behalf of the controller, transfers of personal data, security breaches, responses to requests for exercising rights of people whose personal data is processed and requests for access to personal data by third parties.

The Employer is subject to Protocol 7 of the Treaty on the Functioning of the European Union on the privileges and immunities of the European Union, particularly as regards the inviolability of archives (including the physical location of data and services) and data security, which includes personal data held on behalf of the Employer in the premises of the contractor or subcontractor.

The contractor shall notify the Employer without delay of any legally binding request for disclosure of the personal data processed on behalf of the Employer made by any national public authority, including an authority from a third country. The contractor may not give such access without the prior written authorisation of the Employer.

The duration of processing of personal data by the contractor will not exceed a 7-year period after the final payment is made under the contract. Upon expiry of this period, the contractor shall, at the choice of the controller, return, without any undue delay in a commonly agreed format, all personal data processed on behalf of the controller and the copies thereof or shall effectively delete all personal data unless Union or national law requires a longer storage of personal data.

If part or all of the processing of personal data is subcontracted to a third party, the contractor shall pass on the obligations referred to in the present article in writing to those parties, including subcontractors. At the request of the Employer, the contractor shall provide a document providing evidence of this commitment.