



Annex I to Administrative Instruction ICC/AI/2016/002

Terms and Conditions of the Contract

1. Legal status

The consultant shall have the legal status of an “expert” for the purposes of the Headquarters Agreement between the International Criminal Court and the host State (“Headquarters agreement”) and the Agreement on Privileges and Immunities of the Court (“APIC”).

The individual contractor shall be recruited locally, for the purposes of the Headquarters Agreement and the APIC.

The consultant or the individual contractor, as applicable, is hereinafter referred to in this document as “contractor”.

The contractor shall serve in his or her individual capacity and shall not be regarded, for any purposes, as being either a staff member of the Court, under the Staff Rules and Staff Regulations of the Court, or an official of the Court. Accordingly, nothing within or relating to the contract shall establish the relationship of employer and employee, or of principal and agent, between the Court and the contractor. The officials, representatives, employees or subcontractors of the Court and of the contractor, if any, shall not be considered in any respect as being the employees or agents of the other, and the Court and the contractor shall be solely responsible for all claims arising out of or relating to their engagement of such persons or entities.

2. Standards of conduct

General

The contractor shall conduct himself or herself with due diligence and efficiency, in conformity with the highest ethical principles and standards of conduct and in a manner that at all times protects the interest of the Court. Although the contractor is not a staff member of the Court, he or she undertakes to uphold the standards of conduct described in the Rules and Regulations of the Court, including the Code of Conduct for Staff Members, as well as any relevant issuances related to expected standards of conduct.

The contractor shall neither seek nor accept instructions from any Government or authority external to the Court in connection with the performance of his or her obligations under the contract. Should any Government or authority external to the Court seek to impose any instructions on the contractor regarding the contractor's performance under the contract, the contractor shall promptly notify the Court and shall provide all reasonable assistance required by the Court.

The contractor shall not take any action in respect of his or her performance of the contract or otherwise related to his or her obligations under the contract that may adversely affect the interests and image of the Court, and the contractor shall perform his or her obligations under the contract with fullest regard for the interests of the Court.

The contractor, before and/or during the contract, shall ensure that he or she discloses any contracts with Governments or external authorities in order for the Court to assess if there are any perceived or existing conflict of interests as a result of such contracts.

The contractor warrants that he or she has not offered and shall not offer any direct or indirect benefit arising from or related to the performance of the contract or the award thereof to any representative, official, employee or agent of the Court.

The contractor shall comply with all laws, ordinances, rules and regulations bearing upon the performance of his or her obligations under the contract.

Prohibition of sexual and other forms of harassment

Although the contractor is not a staff member of the Court, the contractor shall comply with the standards of conduct set forth in Administrative Instruction ICC/AI/2005/005 of 14 July 2005, entitled "Sexual and other forms of Harassment". In particular, the contractor shall not engage in

any conduct that would constitute sexual harassment and harassment, as defined in that administrative instruction.

The contractor acknowledges and agrees that any breach of any of the provisions herein shall constitute a breach of an essential term of the contract and, in addition to any other legal rights or remedies available to any person, shall give rise to grounds for termination of the contract. In addition, nothing herein shall limit the right of the Court to refer any alleged breach of the foregoing standards of conduct to the relevant national authorities for appropriate legal action.

3. Title rights, copyrights, patents and other proprietary rights

Title to any equipment, materials, in whatever shape or form, and supplies that may be furnished by the Court to the contractor for the performance of any obligations under the contract shall rest with the Court, and any such equipment and materials shall be returned to the Court at the conclusion of the contract or when no longer needed by the contractor. Such equipment and materials when returned to the Court, shall be in the same condition as when delivered to the contractor, subject to normal wear and tear, and the contractor shall be liable to compensate the Court for any damage or degradation of the equipment and materials beyond normal wear and tear.

The Court shall be entitled to all intellectual property and other proprietary rights, including but not limited to patents, copyrights and trademarks, with regard to products, processes, inventions, ideas, know-how or documents and other materials, in whatever shape or form, that the contractor has developed for the Court under the contract and that bear a direct relation to or are produced, prepared or collected in consequence of, or during the course of, the performance of the contract. The contractor acknowledges and agrees that such products, processes, inventions, ideas, know-how or documents and other materials, in whatever shape or form, constitute works made for hire for the Court.

However, to the extent that any such intellectual property or other proprietary rights consist of any intellectual property or other proprietary rights of the contractor: (a) that pre-existed the performance by the contractor of his or her obligations under the contract; or (b) that the contractor may have developed or acquired, independently of the performance of his or her obligations under the contract, the Court does not and shall not claim any ownership interest thereto, and the contractor grants to the Court a perpetual and free of charge licence to use such intellectual property or other proprietary right solely for the purposes of and in accordance with the requirements of the contract.

At the request of the Court, the contractor shall take all necessary steps, execute all necessary documents and, generally, assist in securing such proprietary rights and transferring or licensing them to the Court in compliance with the requirements of the applicable law and of the contract.

Subject to the foregoing provisions, all maps, drawings, photographs, mosaics, plans, reports, estimates, recommendations, documents, materials, in whatever shape or form, and other data compiled or received by the contractor under the contract shall be the property of the Court, shall be made available for use or inspection by the Court at reasonable times and in reasonable places, shall be treated as confidential and shall be delivered only to the Court's authorized officials upon completion of work under the contract.

4. Confidential nature of documents and information

Although the contractor is not a staff member of the Court, the contractor shall comply with the provisions of the Administrative Instruction ICC/AI/2007/005 of 19 June 2007 titled "Information Security in Agreements with Third Parties" and of the provisions of the Administrative Instruction ICC/AI/2007/001 of 19 June 2007 titled "ICC Information Protection Policy".

The Court may disclose information to the extent required pursuant to the Rome Statute, resolutions of the ASP or rules promulgated by the Registrar with the agreement of the Prosecutor and President. Any obligations and restrictions of confidentiality and handling of information shall be effective during the term of the contract, including any extension thereof, and, unless otherwise provided in the contract, shall remain effective following any termination of the contract.

The contractor shall:

- (a) consider as confidential all the information, data, plans, drawings, documents and materials, in whatever form or shape, received, acquired, produced, delivered or which the contractor will have access to by reason of the contract and that has not been made public by the Court;
- (b) not disclose, publish, disseminate, or use for the benefit of any person, government or entity other than the Court, any such information, data, plans, drawings, documents or materials referred to in paragraph (a), except with the prior written consent of the Court;
- (c) not use any such information, data, plans, drawings, documents or material referred to in paragraph (a) for personal gain; and

- (d) adhere to all policies, rules, procedures or instructions as provided by the Court as to the classification, use or disposal of such confidential information, data, plans, drawings, documents or materials referred to in paragraph (a).

The Court reserves the right to take legal actions against the contractor as a result of breach of any of the obligations set forth herein. In addition to any damages that may be sought against the contractor for breach of these obligations, the Court reserves the right, in the event of any actual breach or threatened breach, to seek the appropriate orders from the competent judicial and/or arbitral authorities.

Subject to and without any waiver of the privileges and immunities of the Court, in the event the contractor is required by law to disclose confidential information, the contractor shall immediately inform the Court of such requirement.

5. Travel, statement of good health and service-incurred death, injury or illness

If the contractor is required by the Court to travel beyond commuting distance from the contractor's usual place of residence to the Court's premises where the contractor is required to perform his or her official functions, such travel shall be at the expense of the Court. In such cases, the travel expenses borne by the Court shall not exceed the cost of travel by the least costly economy service.

Prior to the commencement of the contractor's services in any offices or premises of the Court or before engaging in any travel required by the Court or connected with the performance of the contract, the contractor shall submit a statement of good health issued by a certified medical practitioner and certify that he or she is in possession of medical or health insurance during the period of the contractor's services. The contractor shall provide such a statement of good health and certification of the medical or health insurance at the time of signing the contract.

The contractor shall also certify that he or she possesses medical or health insurance that includes medical treatment, and, if required to travel beyond commuting distance to any duty station(s) with a hardship classification other than H and A, the contractor shall certify that his or her medical or health insurance covers medical evacuations and treatment. The contractor warrants the accuracy of any such statement of good health, including but not limited to confirmation that the contractor has been fully informed regarding the requirements for inoculations for the country or countries to which travel may be authorized.

The contractor shall be responsible for assuming all costs that may be incurred in relation to the statement of good health and medical or health insurance.

In the event of the death, injury or illness of the contractor which is attributable to the performance of services on behalf of the Court under the terms of the contract while the contractor is travelling at the Court's expense or is performing any services under the contract in any offices or premises of the Court, the contractor or the contractor's dependants, as appropriate, shall be entitled to compensation equivalent to that set out under the United Nations appendix D to the Staff Rules (ST/SGB/Staff Rules/Appendix D/Rev.1 and Amend.1).

6. Prohibition on assignment; modifications

The contractor may not assign, delegate, transfer, pledge or make any other disposition of the contract, of any part thereof, or of any of the rights, claims or obligations under the contract except with the prior written authorization of the Court, and any attempt to do so shall be null and void. The terms or conditions of any supplemental undertakings, licences or other forms of agreement concerning any deliverables or services to be provided under the contract shall not be valid and enforceable against the Court or in any way constitute an agreement by the Court thereto, unless any such undertakings, licences or other forms of agreement are the subject of a valid written undertaking by the Court.

No modification or change in the contract shall be valid and enforceable against the Court unless provided by means of a valid written amendment to the contract signed by the contractor and an authorized official or appropriate contracting authority of the Court.

7. Subcontractors

In the event that the contractor requires the services of subcontractors to perform any obligations under the contract, the contractor shall obtain the prior written approval of the Court for any such subcontractors. The Court may, at its sole discretion, reject any proposed subcontractor or require such subcontractor's removal without having to give any justification therefor, and such rejection shall not entitle the contractor to claim any delays in the performance or to assert any excuses for the non-performance of any of its obligations under the contract. The contractor shall be solely responsible for all services and obligations performed by its subcontractors. The terms of any subcontract shall be subject to and shall be construed in a manner that is fully in accordance with all of the terms and conditions of the contract.

8. Use of the name, emblem or official seal of the Court

The contractor shall not advertise or otherwise make public for purposes of commercial advantage or goodwill that it has a contractual relationship with the Court; nor shall the contractor in any manner whatsoever use the name, emblem or official seal of the Court or any abbreviation of the name of the Court in connection with its business or otherwise without the written permission of the Court.

9. Indemnification

The contractor shall indemnify, defend and hold and save harmless the Court and its officials, agents and employees from and against all suits, proceedings, claims, demands, losses and liability of any kind or nature brought by any third party against the Court, including, but not limited to, all litigation costs and expenses, attorney's fees, settlement payments and damages, based on, arising from or relating to:

- (a) allegations or claims that the use by the Court of any patented device, any copyrighted material or any other goods, deliverables or services provided to the Court for its use under the terms of the contract, in whole or in part, separately or in combination, constitutes an infringement of any patent, copyright, trademark or other intellectual property right of any third party; or
- (b) any acts or omissions of the contractor or of any subcontractor or anyone directly or indirectly employed by them in the performance of the contract that give rise to legal liability to anyone not a party to the contract, including, without limitation, claims and liability in the nature of a claim for workers' compensation.

In addition to the indemnity obligations set forth above, the contractor shall be obligated, at its sole expense, to defend the Court and its officials, agents and employees, regardless of whether these suits, proceedings, claims or demands in question actually give rise to or otherwise result in any loss or liability.

10. Insurance

The contractor shall pay the Court promptly for all loss, destruction or damage to the property of the Court caused by the contractor or of any subcontractor or anyone directly or indirectly employed by them in the performance of the contract. The contractor shall be solely responsible for taking out and for maintaining adequate insurance required to meet any of his or her obligations under the

contract, as well as for arranging, at the contractor's sole expense, such life, health and other forms of insurance as the contractor may consider to be appropriate to cover the period during which the contractor provides services under the contract. The contractor acknowledges and agrees that none of the insurance arrangements the contractor may make shall in any way be construed to limit the contractor's liability arising under or relating to the contract.

11. Encumbrances and liens

The contractor shall not cause and shall resist any lien, attachment or other encumbrance by any person to be placed on file or to remain on file in any public office or on file with the Court against any monies due to the contractor or to become due for any work done or against any goods supplies or materials furnished under the contract or by reason of any claim or demand against the contractor.

12. Force majeure; other changes in conditions

In the event of and as soon as possible after the occurrence of any cause constituting *force majeure*, the affected party shall give notice and full particulars in writing to the other party of such occurrence or cause if the affected party is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under the contract. The affected party shall also notify the other party of any other changes in condition or the occurrence of any event that interferes or threatens to interfere with his or her performance of the contract. Not more than 15 days following the provision of such notice of *force majeure* or other changes in condition or occurrence, the affected party shall also submit a statement to the other party of estimated expenditures that will likely be incurred for the duration of the change in condition or the event of *force majeure*. Upon receipt of the notice(s) required hereunder, the party not affected by the occurrence of a cause constituting *force majeure* shall take such action as it reasonably considers to be appropriate or necessary in the circumstances, including the granting to the affected party of a reasonable extension of time in which to perform any obligations under the contract.

If the contractor is rendered unable, wholly or in part, by reason of *force majeure* to perform his or her obligations and meet his or her responsibilities under the contract, the Court shall have the right to suspend or terminate the contract on the same terms and conditions as provided for below, under "Termination", except that the period of notice shall be five days instead of any other period of notice. In any case, the Court shall be entitled to consider the contractor permanently unable to perform his or her obligations under the contract in case the contractor is unable to perform his or her obligations, wholly or in part, by reason of *force majeure* for any period in excess of 30 days.

Force majeure as used herein means any unforeseeable and irresistible act of nature, any act of war (whether declared or not), invasion, revolution, insurrection or any other acts of a similar nature or force, provided that such acts arise from causes beyond the control and without the fault or negligence of the contractor. The contractor acknowledges and agrees that, with respect to any obligations under the contract that the contractor must perform in or for any areas in which the Court is operating, any delay or failure to perform such obligations arising from or relating to harsh conditions within such areas, or to any incidents of civil unrest occurring in such areas, shall not, in and of itself, constitute *force majeure* under the contract.

13. **Termination**

Either party may terminate the contract, with cause, in whole or in part, upon giving written notice to the other party. The period of notice shall be 5 days in the case of contracts for a total period of less than two months and 14 days in the case of contracts for a longer period. The initiation of conciliation or arbitral proceedings, as provided below, shall not be deemed to be a cause for or otherwise to be in itself a termination of the contract.

The Court may, without prejudice to any other right or remedy available to it, terminate the contract forthwith in the event that:

- (a) The contractor is adjudged bankrupt, is liquidated or becomes insolvent, applies for a moratorium or stay on any payment or repayment obligations, or applies to be declared insolvent;
- (b) The contractor is granted a moratorium or a stay, or is declared insolvent;
- (c) The contractor makes an assignment for the benefit of one or more of his or her creditors;
- (d) A receiver is appointed on account of the insolvency of the contractor;
- (e) The contractor offers a settlement in lieu of bankruptcy or receivership; or
- (f) The Court reasonably determines that the contractor has become subject to a materially adverse change in his or her financial condition that threatens to endanger or otherwise substantially affect the ability of the contractor to perform his or her obligations under the contract.

In the event of any termination of the contract, upon receipt of notice of termination by the Court, the contractor shall, except as may be directed by the Court in the notice of termination or otherwise in writing:

- (a) take immediate steps to bring the performance of any obligations under the contract to a close in a prompt and orderly manner and, in doing so, reduce expenses to a minimum;
- (b) refrain from undertaking any further or additional commitments under the contract as of and following the date of receipt of such notice;
- (c) deliver all completed or partially completed plans, drawings, information, documents, deliverables and other property that, if the contract had been completed, would have been required to be furnished to the Court thereunder;
- (d) complete performance of the work not terminated; and
- (e) take any other action that may be necessary, or that the Court may direct in writing, for the minimization of losses and for the protection and preservation of any property, whether tangible or intangible, related to the contract that is in the possession of the contractor and in which the Court has or may be reasonably expected to acquire an interest.

In the event of any termination of the contract, the Court shall only be liable to pay the contractor for the actual amount of work performed and for the deliverables completed to the satisfaction of the Court in accordance with the requirements of the contract, but only if such work and deliverables were orders, requested or otherwise provided prior to the contractor's receipt of notice of termination from the Court. Additional costs incurred by the Court resulting from the termination of the contract by the contractor may be withheld from any amount otherwise due to the contractor from the Court.

The contractor shall be bound to compensate the Court for all damages and costs arising out of the actions or omissions of the contractor in the performance of the contract that led to the termination of the contract by the Court. Such damages and cost would include, but not be limited to, all costs incurred by the Court in any legal or non-legal proceedings, resulting from or relating to the termination of the contract.

14. Non-exclusivity

The Court shall have no obligation respecting, and no limitations on, its right to obtain deliverables of the same kind, quality and quantity, or to obtain any services of the kind described in the contract, from any other source at any time.

15. Taxation

The Court shall have no liability for taxes, duty or other similar charges payable by the contractor in respect of any amounts paid to the contractor under the contract, and the contractor acknowledges that the Court will not issue any statements of earnings to the contractor in respect of any such payments.

16. Settlement of disputes

The Court and the contractor shall use their best efforts to amicably settle any dispute, controversy or claim arising out of the contract or the breach, termination or invalidity thereof. Where the parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the Conciliation Rules then obtaining of the United Nations Commission on International Trade Law (UNCITRAL), or according to such other procedure as may be agreed between the parties in writing.

Any dispute, controversy or claim between the parties arising out of the contract, or the breach, termination or invalidity thereof, unless settled amicably, as provided above, shall be referred by either of the parties to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The decisions of the arbitral tribunal shall be based on general principles of international commercial law. The arbitral tribunal shall have no authority to award punitive damages. In addition, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate then prevailing, and any such interest shall be simple interest only. The parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy or claim.

17. Privileges and immunities

Nothing in or relating to the contract shall be deemed a waiver, express or implied, of any of the privileges and immunities of the Court.