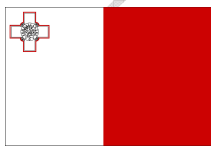


**SUBJECT: (Draft) Contract for Architectural Services for
'Enhancing the visitor experience in the Ġgantija Heritage
Park (World Heritage Site) GOZO**

HM.20.09



Operational Programme I – Cohesion Policy
2007-2013
*Investing in Competitiveness for a Better
Quality of Life*



Contract part-financed by the European Union
European Regional Development Fund (ERDF)
Co-financing rate:
85% EU funds;
15% National Funds

Investing in your future

Our ref: HM.20.09

(Draft) Contract for Architectural Services for ‘Enhancing the visitor experience in the Ġgantija Heritage Park (World Heritage Site) GOZO’

The complete (Draft) Contract document and related documentation, and includes:

(Draft) Contract Agreement and Special Conditions with annexes:

- I. General Conditions for service contracts
- II. Terms of Reference
- III. Organisation and Methodology (To be submitted according to the template provided)
- IV. Key expert/s (including templates for the summary list of key expert/s and CV)
- V. Budget (to be submitted as the Financial offer using the template provided)
- VI. Financial Identification Form
- VII. Model Performance Guarantee
- VIII. Financial Guarantee
- IX. Details of Contestant
- X. EU Declaration

Other information to be submitted with the ‘Design Contest’ scheme

- **Submission form**
- **Contestant’s declaration**
- **Statement of exclusivity and availability**

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SERVICE CONTRACT

Heritage Malta
Old University Buildings
Merchants Street
Valletta VLT1175
MALTA

and

of the one part,

<Name of Contractor> (acronym) ("the Contractor")

of the other part,

have agreed as follows:

Special Conditions

Article 1 - Subject

The subject of this Contract is:

The provision of architectural, engineering and other related services, in order to design, detail, supervise and certify the works necessary to enhance the visitor experience within, and around, the Ġgantija Heritage Park, including:

- A Masterplan of the Ġgantija Heritage Park and the immediate surroundings with respect to vehicular and visitor circulation, within and around the Park
- The design and construction of:
 - an Interpretation Centre at the Ġgantija Heritage Park, incorporating a permanent display focusing on Gozo's prehistory, (children) activity area, administration and other basic amenities for Visitors
 - an 'Exit Point' including a souvenir shop and other basic amenities for visitors to the Heritage Park
 - pathways linking the Interpretation Centre to the Temples, and the Temples to the 'Exit Point'
- The rehabilitation and landscaping of the Heritage Park, including the restoration and rebuilding of approximately 200m of rubble wall

The budget available for this project is **€2.5 million** (excl VAT).

Article 2 - Structure of the contract

The Consultant Architect will carry out the services on the terms and conditions set out in this contract, which comprises, in order of precedence, these special conditions ("Special Conditions") and the following annexes:

- | | |
|------------|--|
| Annex I: | General Conditions for service contracts financed by the European Community (ERDF 2007-13) and the Government of Malta |
| Annex II: | Terms of Reference |
| Annex III: | Organisation and methodology |
| Annex IV: | Key expert |
| Annex V: | Budget |
| Annex VI: | Forms and other relevant documents |

In case of any contradiction between the above documents, their provisions shall be applied according to the above order of precedence.

Article 3 - Contract value

This contract, established in Euro is a **global price contract**. The contract value is **€100,000** excluding VAT.

Article 4 - Commencement date

The date for commencing performance shall be **seven (calendar) days from last signature of contract**.

Article 5 - Period of execution

The period of execution of the tasks identified in Annexes II & III is from the announcement date of the winner of the **Design Contest (November 2009) until the completion of the works, planned to be handed-over by March 2013**.

Article 6 – Reporting (and meetings)

- The selected Consultant Architect shall report directly to the Project Manager.
- The selected Consultant Architect shall submit an 'Organisation and Methodology Report' by not later than **1 month** after the commencement date for approval to become **ANNEX III** of the contract. This shall be drawn up using the format in **ANNEX III** of the draft contract. It shall also include any other technical requirements as may be identified/requested in the Terms of Reference.
- The Consultant Architect shall also be required to keep the Project Manager **informed throughout the duration** of the project.
- The Consultant Architect shall also be expected to **attend Progress Meetings** with the Project Manager/project Team to report on the progress of the Project, including updates on target dates and milestone attainment.
- Together with the Project Manager, the Consultant Architect shall also be expected to attend Progress Meetings with the selected supply and works contractors.
- All 'official' communication and reporting may ensue via e-mail, or fax, or mail.
- All correspondence and memoranda will be kept in soft and hard copy and kept for records purposes.
- All reports and submissions shall be produced in English and presented in a digital file format (compatible with software compatible with Microsoft Windows operating system) and presented to the Project Manager, in electronic and hard copies (number and paper size to be established by Project Manager as necessary), who will distribute/submit for evaluation to the relevant statutory bodies as applicable, and send formal approval accordingly after the necessary consultation/permits received.

Article 7 - Payments and bank account

7.1 Payments will be made in Euro.

7.2 The payments will be made according to the following schedule, subject to the provisions of Articles 28 to 33 of the General Conditions in Annex I:

10%	Upon submission of MEPA application (December 2009)
20%	Upon finalisation of Specifications and Bills of Quantities for Tender Publication (not later than end June 2010)
20%	On commencement of construction works on site (not later than end June 2011)
10%	On approval of issued Interim Payment Certificates (not later than end September 2011)
10%	On approval of issued Interim Payment Certificates (not later than end June 2012)
10%	On approval of issued Interim Payment Certificates (not later than end December 2012)
20%	On approval of Final Handing Over Certificate

Article 8 - Contact addresses

Any written communication relating to this Contract between the Contracting Authority, must state the Contract title and identification number, and must be sent by post, fax, e-mail or by hand to the addresses identified in accordance with **Article 20.7 of Annex I – General Conditions for Service Contacts**.

Article 9 - Law and language of the contract

9.1 The law of Malta shall govern all matters not covered by the contract.

9.2 The language of the contract and of all written communications between the Contractor and the Contracting Authority, and/or the Project Manager shall be English.

Article 10 - Tax and customs arrangements

The contract shall be exempt from all duties and taxes. **VAT should be quoted separately.**

Article 11 - Dispute settlement

Any dispute between the Parties that may arise during the performance of this contract and that has not been possible to settle otherwise between the Parties shall be submitted to the arbitration of the Malta Arbitration Centre in accordance with the Arbitration Act (Chapter 387) of the Laws of Malta.

This law is based on "Model Law" which is the Model Law on International Commercial Arbitration adopted on June 21, 1985 by the United Nations Commission on International Trade Law reproduced in the First Schedule of the Arbitration Act.

Article 12 - Other specific conditions applying to the contract

The following derogations from **Annex I - General Conditions for Service Contracts** shall apply:

Article 3 - Without prejudice for the content of **Annex I - General Conditions for Service Contracts – Article 3**, the Contractor not be allowed to assign any or part of the services

Article 4 - Without prejudice for the content of **Annex I - General Conditions for Service Contracts – Article 4**, refer to **Annex II – Terms of Reference – 6.0 Requirements – 6.4 Sub-Contracting**

Article 7 - In addition to the **Annex I - General Conditions for Service Contracts – Article 7**, the Contractor shall make all necessary arrangement to enable him to fulfil all the obligations and bear the responsibility as stipulated by the local regulations, laws, etc., as appropriate.

The following supplement to the General Conditions shall apply:

There shall be a **Performance Guarantee** amounting to **10%** of the contract value which will be held against payment to the Contracting Authority for any loss resulting from the Contractor's failure to perform his contractual obligations fully and properly.

Article 11 - In addition to the **Annex I - General Conditions for Service Contracts – Article 11**, prior to the preparation of any reports, etc., as requested in the Contract, the Contractor shall seek the instructions of the Project Manager whether pre-established templates or formats exist.

Article 13- The Contractor shall take on a **Professional Indemnity Policy of €100,000**. Such policy shall, *inter alia*, cater for compensation to the Client for any damages which it may incur as a result of any operations undertaken on site, and eventual defaults, errors or miscalculations or any cost overruns which are attributable to such defaults, errors or miscalculations.

Article 14 - Without prejudice for the content of **Annex I - General Conditions for Service Contracts – Article 14, Clause 14.1**, the Contractor shall be bound to keep a back-up of all the reports, data and information generated and/or gathered during the execution of the Contract, for at least 5 years after the termination of the contract. A copy of such information shall be submitted to the Contracting Authority at any time as requested during these five years at no additional cost.

Article 24 - Without prejudice for the content of **Annex I - General Conditions for Service Contracts – Article 24, Article 6 of the Part B – Service Contract - Special Conditions** supersedes the clauses, as applicable.

Article 26 - Without prejudice for the content of **Annex I - General Conditions for Service Contracts – Article 26, Clause 26.1**, payment of 'Global Price Contract' shall be affected as stipulated in Article 7 of the Special Conditions.

Done in English in three originals, two originals being for the Contracting Authority and one original being for the Contractor.

For the Contractor

Name:

Function:

Signature:

Date:

For the Contracting Authority

Name:

Function:

Signature:

Date:

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ANNEX I: GENERAL CONDITIONS FOR SERVICE CONTRACTS

PRELIMINARY PROVISIONS

Article 1 Definitions and conventions

1.1 If this contract is signed in more than one language, the English version prevails in the event of inconsistencies between the different language versions.

1.2 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.

1.3 The following definitions apply to the contract.

Administrative order: any written or oral instruction or order issued by the Project Manager to the Contractor regarding the performance of the services.

Beneficiary country: The Maltese Islands

Budget breakdown: in a fee-based contract, the schedule which breaks down the contract value, stating out the fee rates and the provision for incidental expenses.

Cash flow forecast: the Contractor's estimate of the cash flows arising directly from the execution of a fee-based contract.

Central Government Authority: means the Department of Contracts (of the Government of Malta)

Commission: the European Commission.

Contractor: the party which contracts to perform the services.

Contract: the signed agreement entered into by the parties for the performance of the services, including all attachments thereto and all documents incorporated therein, including these General Conditions.

Contracting Authority: the Final beneficiary, Implementing Authority, Implementing Agency or Final recipient of the contract.

Contract value: the amount stated in Article 3 of the Special Conditions.

Day: calendar day.

EC: the European Community.

EU: the European Union.

Euro: the European single currency.

Department of Contracts Web site: <http://www.contracts.gov.mt>.

Fee-based contract: a contract under which the services are provided on the basis of fixed fee rates for each day/hour worked by experts/service provider.

General damages: the sum, not stated previously in the contract, which is awarded by a court or arbitration tribunal, or agreed between the parties, as compensation payable to an injured party for a breach of the contract by the other party.

Global price contract: a contract under which the services are performed for an all-inclusive fixed price.

Liquidated damages: the compensation stated in the contract as being payable by one contracting party to the other for failure to perform the contract or part thereof.

Month: calendar month

National currency: the currency of the beneficiary country.

Perit: the term **Perit** shall be defined as “the profession assuming responsibility for the design and, or, construction of building works, under the generic title of Perit and includes works in architecture and civil and structural engineering (Laws of Malta - Periti Act Chapter 390 - Art 2).”

Project: the project in relation to which the services are to be provided under the contract.

Project Manager: the natural or legal person responsible for monitoring the implementation of the contract on behalf of the Contracting Authority.

Public Service: refers to Ministries and Government Departments

Services: activities to be performed by the Contractor under the contract such as technical assistance, studies, training and designs.

Terms of reference: the document in Annex II drawn up by the Contracting Authority giving the definition of its requirements and/or the objectives in respect of the provisions of services, specifying, where relevant, the methods and resources to be used by the Contractor and/or the results to be achieved by it.

Time limits: those periods in the contract which shall begin to run from the day following the act or event which serves as the starting point for those periods. Should the last day of the period fall upon a non-working day, the period shall expire at the end of the first working day following the last day of the period.

1.4 Where the context so permits words importing the singular shall be deemed to include the plural and vice versa and words importing the masculine shall be deemed to include the feminine and vice versa.

1.5 The word “country” shall be deemed to include State or Territory.

1.6 Words importing persons or parties shall include firms and companies and any organization having legal capacity.

Article 2 Notices and written communications

2.1 Whenever there is a deadline for the receipt of a written communication, the sender should ask for an acknowledgement of receipt of its communication. In any event, the sender shall take all the necessary measures to ensure timely receipt of the communication

2.2 Any notice, consent, approval, certificate or decision by any person required under the contract shall be in writing, unless otherwise specified, and shall not be unreasonably withheld or delayed.

2.3 Any oral instructions or orders shall take effect at the time of transmission and shall be confirmed subsequently in writing.

Article 3 Assignment

3.1 An assignment is any agreement by which the Contractor transfers its contract or part thereof to a third party.

3.2 The Contractor shall not, without the prior written consent of the Contracting Authority, assign the contract or any part thereof, or any benefit or interest thereunder.

3.3 The approval of an assignment by the Contracting Authority shall not relieve the Contractor of its obligations for the part of the contract already performed or the part not assigned.

3.4 Assignees must satisfy the eligibility criteria applicable to the award of the contract.

Article 4 Sub-contracting

4.1 Any agreement by which the Contractor entrusts performance of a part of the services to a third party is considered to be a sub-contract.

4.2 The Contractor must seek the prior written authorisation of the Contracting Authority before entering into a sub-contract. This authorization will be based on the services to be subcontracted and the identity of the intended subcontractor. The Contracting Authority shall, with due regard to the provisions of Article 2.2, within 30 days of receipt of the notification, notify the Contractor of its decision, stating reasons, should it withhold such authorisation.

4.3 No sub-contract can create contractual relations between any sub-contractor and the Contracting Authority.

4.4 The Contractor shall be responsible for the acts, defaults and negligence of its sub-contractors and their experts, agents or employees, as if they were the acts, defaults or negligence of the Contractor, its experts, agents or employees. The approval by the Contracting Authority of the sub-contracting of any part of the contract or of the engagement by the Contractor of subcontractors to perform any part of the services shall not relieve the Contractor of any of its obligations under the contract.

4.5 If a sub-contractor is found by the Contracting Authority or the Project Manager to be incompetent in discharging its duties, the Contracting Authority or the Project Manager may request the Contractor forthwith, either to provide a sub-contractor with qualifications and experience acceptable to the Contracting Authority as a replacement, or to resume the performance of the services itself.

4.6 Sub-contractors must satisfy the eligibility criteria applicable to the award of the contract.

4.7 Those services entrusted to a sub-contractor by the Contractor cannot be entrusted to third parties by the sub-contractor.

4.8 Any change of sub-contractor without the prior written consent of the Contracting Authority shall be considered to be a breach of contract.

OBLIGATIONS OF THE CONTRACTING AUTHORITY

Article 5 Supply of information

5.1 The Contracting Authority shall supply the Contractor 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 the Contracting Authority at the end of the period of execution of the contract.

5.2 The Contracting Authority shall as far as possible co-operate with the Contractor to provide information that the latter may reasonably request in order to perform the contract.

Article 6 Assistance with local regulations

6.1 The Contractor may request the assistance of the Contracting Authority of the beneficiary country to obtain copies of laws, regulations, and information on local customs, orders or bylaws of the country in which the services are to be performed, which may affect the Contractor in the performance of its obligations under the contract. The Contracting Authority may charge the Contractor for such assistance, which would be provided at the Contractor's own expense.

6.2 Subject to the provisions of the laws and regulations on foreign labour in the country in which the services are to be performed, the Contracting Authority of the beneficiary country shall make every effort to facilitate the procurement by the Contractor of all required visas and permits, including work and residence permits, for the personnel whose services the Contractor and the Contracting Authority consider necessary as well as residence permits for their families.

6.3 The Contracting Authority shall issue to its employees, agents and representatives all such instructions as may be necessary or appropriate to facilitate the prompt and effective performance of the services.

OBLIGATIONS OF THE CONTRACTOR

Article 7 General obligations

7.1 The Contractor 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 Contractor shall indemnify the Contracting Authority against any claims and proceedings arising from any infringement by the Contractor, its employees and their dependants of such laws and regulations. Without prejudice to the above, the Contractor shall be bound to conform and comply with Chapter 452 of The Laws of Malta (Employment and Industrial Relations Act, 2002 – Act No. XXII of 2002) and to all regulations/legal notices that form part of this Act.

7.2 The Contractor shall perform the services under the contract with due care, efficiency and diligence, in accordance with the best professional practice.

7.3 The Contractor shall comply with administrative orders given by the Project Manager. Where the Contractor considers that the requirements of an administrative order go beyond the authority of the Project Manager or of the scope of the contract, it shall, on pain of being time-barred, notify the Project Manager, explaining its opinion, within 30 days after receipt thereof. Execution of the administrative order shall not be suspended because of this notice.

7.4 The Contractor shall treat all documents and information received in connection with the contract as private and confidential, and shall not, save in so far as may be necessary for the purposes of the performance thereof, publish or disclose any particulars of the contract without the prior consent in writing of the Contracting Authority or the Project Manager after consultation with the Contracting Authority. If any disagreement arises as to the necessity for any publication or disclosure for the purpose of the contract, the decision of the Contracting Authority shall be final.

7.5 If the Contractor is 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 this contract shall have the authority to bind the consortium.

7.6 Any alteration of the composition of the consortium without the prior written consent of the Contracting Authority shall be considered to be a breach of contract.

7.7 Unless otherwise requested or agreed by the **Contracting Authority**, the Contractor shall take the necessary steps to ensure that the financial contribution of the EU is given adequate publicity. These steps must follow the rules applicable to the visibility of external actions as defined and published by the EC.

7.8 Performance guarantee

The Contractor shall, within 15 calendar days of receipt of the contract already signed by the Contracting Authority, sign and date the contract and return it with a guarantee for the full and

proper performance of the contract. The amount of the guarantee shall be specified in the Special Conditions. It shall not exceed 10% of the amount of the contract price, including any amounts stipulated in addenda to the contract.

In the case that the value of the contract does not exceed €10,000, no performance guarantee is required. The performance guarantee shall be held against payment to the Contracting Authority for any loss resulting from the Contractor's failure to perform his contractual obligations fully and properly.

The performance guarantee shall be in the format given in the relevant Annex and must be provided in the form of a bank guarantee.

The performance guarantee shall be denominated in the currency in which the contract is payable. No payments shall be made in favour of the Contractor prior to the provision of the guarantee. The guarantee shall continue to remain valid until the contract has been fully and properly performed.

During the performance of the contract, if the natural or legal person providing the guarantee is not able to abide by his commitments, the guarantee shall cease to be valid. The Contracting Authority shall give formal notice to the Contractor to provide a new guarantee on the same terms as the previous one. Should the Contractor fail to provide a new guarantee, the Contracting Authority may terminate the contract. Before so doing, the Contracting Authority shall send a registered letter with acknowledgement of receipt, which shall set a new deadline of no less than 15 days from the day of delivery of the letter.

The Contracting Authority shall demand payment from the guarantee of all sums for which the guarantor is liable under the guarantee due to the Contractor's default under the contract, in accordance with the terms of the guarantee and up to the value thereof. The guarantor shall, without delay, pay those sums upon demand from the Contracting Authority and may not raise any objection for any reason whatsoever. Before making any claim under the performance guarantee, the Contracting Authority shall notify the Contractor stating the nature of the default in respect of which the claim is to be made.

Article 8 Code of conduct

8.1 The Contractor shall at all times act loyally and impartially and as a faithful adviser to the Contracting Authority in accordance with the rules and/or code of conduct of its profession as well as with appropriate discretion. It shall, in particular, refrain from making any public statements concerning the project or the services without the prior approval of the Contracting Authority, and from engaging in any activity which conflicts with its obligations towards the Contracting Authority under the contract. It shall not commit the Contracting Authority in any way whatsoever without its prior written consent, and shall, where appropriate, make this obligation clear to third parties.

8.2 For the period of execution of the contract, the Contractor and its personnel shall respect human rights and undertake not to offend the political, cultural and religious practices prevailing in the beneficiary country.

8.3 If the Contractor or any of its sub-contractors, personnel, agents or servants offers to give or agrees to offer or to give or gives to any person, any bribe, gift, gratuity or commission as an inducement or reward for doing or forbearing to do any act in relation to the contract or any other contract with the Contracting Authority, or for showing favour or disfavour to any person in relation to the contract or any other contract with the Contracting Authority, then the Contracting Authority may terminate the contract, without prejudice to any accrued rights of the Contractor under the contract.

8.4 The payments to the Contractor under the contract shall constitute the only income or benefit it may derive in connection with the contract and neither it nor its personnel shall accept any commission, discount, allowance, indirect payment or other consideration in connection with, or in relation to, or in discharge of, its obligations under the contract.

8.5 The Contractor shall not have the benefit, whether directly or indirectly, of any royalty, gratuity or commission in respect of any patented or protected article or process used in or for the purposes of the contract or the project, without the prior written approval of the Contracting Authority.

8.6 The Contractor and its staff shall maintain professional secrecy, for the duration of the contract and after completion thereof. In this connection, except with the prior written consent of the Contracting Authority, neither the Contractor nor the personnel employed or engaged by it shall at any time communicate to any person or entity any confidential information disclosed to them or discovered by them, or make public any information as to any other contractor, contractor or supplier with whom the Contractor is associated or affiliated shall be disqualified from the execution of works, supplies or other services for the project in any capacity, including tendering for any part recommendations formulated in the course of or as a result of the services. Furthermore, they shall not make any use prejudicial to the Contracting Authority, of information supplied to them and of the results of studies, tests and research carried out in the course and for the purpose of performing the contract.

8.7 The execution of the contract shall not give rise to unusual commercial expenses. If such unusual commercial expenses emerge, the contract will be terminated. 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.

8.8 The Contractor shall supply to the Contracting Authority on request supporting evidence regarding the conditions in which the contract is being executed. The Contracting Authority

may carry out whatever 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 Contractor 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 could arise during performance of the Contract must be notified in writing to the Contracting Authority without delay.

9.2 The Contracting Authority reserves the right to verify that such measures are adequate and may require additional measures to be taken if necessary. The Contractor shall ensure that its staff, including its management, are not placed in a situation which could give rise to conflict of interests. Without prejudice to Article 7, the Contractor shall replace, immediately and without compensation from the Contracting Authority, any member of its staff exposed to such a situation.

9.3 The Contractor shall refrain from any contact which would compromise its independence or that of its personnel. If the Contractor fails to maintain such independence, the Contracting Authority may, without prejudice to compensation for any damage which it may have suffered on this account, terminate the contract forthwith, without giving formal notice thereof.

9.4 The Contractor shall after the conclusion or termination of the contract, limit its role in connection with the project to the provision of the services. Except with the written permission of the Contracting Authority, the Contractor and any other contractor, contractor or supplier with whom the Contractor is associated or affiliated shall be disqualified from the execution of works, supplies or other services for the project in any capacity, including tendering for any part of the project.

9.5 Civil servants and other agents of the public service of the beneficiary country, regardless of their administrative situation, shall not be recruited as experts in contracts in the beneficiary country.

9.6 The Contractor 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 EC financing available under the same project.

Article 10 Administrative and financial penalties

10.1 Without prejudice to the application of penalties laid down in the contract, if the Contractor has been guilty of making false declarations or has been found to have seriously failed to meet its contractual obligations in an earlier procurement procedure, it shall be excluded from the award of contracts for a maximum of two years from the time when the

infringement is established, to be confirmed after an adversarial procedure with the Contractor. The Contractor may justify its arguments against the penalty within 30 days of notification of it by recorded delivery or equivalent. In the absence of a reaction for its part or of the written withdrawal of the penalty by the Contracting Authority within 30 days of the above-mentioned arguments, the decision imposing the penalty will become binding. The period of exclusion may be extended to three years in the event of a repeat offence within five years of the first infringement.

10.2 Contractors who have been found to have seriously failed to meet their contractual obligations shall also be subject to financial penalties representing 10% of the total value of the Contract. This rate may be increased to 20% in the event of a repeat offence within five years of the first infringement.

Article 11 Specifications and designs

11.1 The Contractor shall prepare all specifications and designs using accepted and generally recognised systems acceptable to the Contracting Authority and taking into account the latest design criteria.

11.2 The Contractor 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 Contractor shall indemnify, protect and defend, the Contracting Authority, their agents and employees, from and against all actions, claims, losses or damage arising from any act or omission by the Contractor in the performance of the services, including any violation of any legal provisions, or rights of third parties, in respect of patents, trade marks and other forms of intellectual property such as copyrights.

12.2 At its own expense, the Contractor shall indemnify, protect and defend the Contracting Authority, their agents and employees, from and against all actions, claims, losses or damages arising out of the Contractor's performance of the contract provided that:

a) the Contractor is notified of such actions, claims, losses or damages not later than 30 days after the Contracting Authority becomes aware of them;

b) the ceiling on the Contractor's liability to the Contracting Authority 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 Contractor or by the Contractor's willful misconduct;

c) the Contractor'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 Contractor shall, upon request of the Contracting Authority, remedy any defect in the performance of the services in the event of the Contractor's failure to perform its obligations under the contract.

12.4 The Contractor shall have no liability whatsoever for actions, claims, losses or damages occasioned by:

a) the Contracting Authority omitting to act on any recommendation, or overriding any act, decision or recommendation, of the Contractor, or requiring the Contractor to implement a decision or recommendation with which the Contractor disagrees or on which it expresses a serious reservation; or

b) the improper execution of the Contractor's instructions by agents, employees or independent contractors of the Contracting Authority.

12.5 The Contractor 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 The Contracting Authority may request the Contractor 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 shall as soon as is practicable furnish the Contracting Authority with the medical report resulting there from.

13.2 For the period of execution of the contract, the Contractor shall obtain medical insurance for itself and other persons employed or contracted by it under the contract. The Contracting Authority shall be under no liability in respect of the medical expenses of the Contractor.

13.3 Within 20 days of signing the contract, the Contractor 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 country of the Contracting Authority and the amount foreseen by the legislation of the country in which the Contractor has its headquarters and covering, during the period of execution of the contract, the following aspects:

a) the Contractor'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, the Contracting Authority's equipment used to perform the contract;

c) civil liability in the event of accidents caused to third parties or to the Contracting Authority 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 Contractor 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 Contractor shall furnish proof of the insurance policy and of regular payment of premiums without delay whenever required to do so by the Contracting Authority or the Project Manager.

13.6 The Contractor 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 Contractor 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 the Contracting Authority informed of the situation. In the event that the Contracting Authority or the Contractor shall become aware of an imminent threat of danger to the life or health of any of its employees, experts or their families, the Contractor may take immediate action to remove the individuals concerned to safety. If the Contractor 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.

13.8 Without prejudice to the above, the Contractor shall be bound to conform and comply with Chapter 424 of The Laws of Malta (Occupational Health and Safety Authority Act 2000) and to all regulations/legal notices that form part of this Act, as well as any other national legislation, regulations, standards, and/or codes of practice, in effect during the execution of the contract, regarding health and safety issues as they apply for the Contractor's particular operating situation and nature of work activities.

Article 14 Intellectual and industrial property rights

14.1 All reports and data such as maps, diagrams, drawings, specifications, plans, statistics, calculations, databases, software and supporting records or materials acquired, compiled or prepared by the Contractor in the performance of the contract shall be the absolute property of the Contracting Authority. The Contractor shall, upon completion of the contract, deliver all such documents and data to the Contracting Authority. The Contractor may not retain copies of such documents and data and shall not use them for purposes unrelated to the contract without the prior written consent of the Contracting Authority.

14.2 The Contractor shall not publish articles relating to the services or refer to them when carrying out any services for others, or divulge information obtained from the Contracting Authority, without the prior written consent of the Contracting Authority.

14.3 Any results or rights thereon, including copyright and other intellectual or industrial property rights, obtained in performance of the Contract, shall be the absolute property of the Contracting Authority, which may use, publish, assign or transfer them as it deems fit, without

geographical or other limitation, except where intellectual or industrial property rights already exist.

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) and Annex III (Organisation and Methodology).

15.2 Where the contract is for .an advisory function for the benefit of the Contracting Authority and/or Project Manager in respect of all the technical aspects of the project which may arise out of its execution, the Contractor shall not have decision-making responsibility.

15.3 Where the contract is for management of the execution of the project, the Contractor shall assume all the duties of management inherent in supervising the execution of a project, subject to the Project Manager's authority.

15.4 If the Contractor is required to prepare a tender dossier, the dossier shall contain all documents necessary for consulting suitable contractors, 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. The Contracting Authority shall provide the Contractor with the information necessary for drawing up the administrative part of the tender dossier.

Article 16 Personnel and equipment

16.1 The Contractor shall give written notification to the Contracting Authority including the CVs of all personnel which the Contractor intends to use for the implementation of the contract, other than the key experts whose CVs are included in Annex IV. Annex II and/or Annex III shall specify the minimum level of training, qualifications and experience of the personnel and, where appropriate, the specialization required. The Contracting Authority may oppose the Contractor's choice of personnel on the basis of the contract.

16.2 All those working on the contract 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 Contractor by the Contracting Authority or the Project Manager.

16.3 Save as otherwise provided in the special conditions, those working on the contract shall reside close to their place of work. Where part of the services is to be performed outside the beneficiary country, the Contractor shall keep the Project Manager informed of the names and qualifications of staff assigned to that part of the services.

16.4 The Contractor shall:

a) Forward to the Project Manager within 30 days of the signature of the contract by both parties, the timetable proposed for placement of the staff;

- b) Inform the Project Manager of the date of arrival and departure of each member of staff;
- c) Submit to the Project Manager for his written approval a timely request for the appointment of any non-key experts.

16.5 The Contractor 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.

Article 17 Replacement of personnel

17.1 The Contractor shall not make changes in the personnel agreed under the terms of the contract without notifying the Contracting Authority, which may oppose such a change on the basis of the contract.

17.2 The Contractor 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 a member of staff.
- b) If it becomes necessary to replace a member of staff for any other reasons beyond the Contractor's control (e.g. resignation, etc.).

17.3 Moreover, in the course of performance, and on the basis of a written and justified request, the Contracting Authority can ask for a replacement if it considers that a member of staff is inefficient or does not perform its duties under the contract.

17.4 Where a member of staff 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 member of staff who has been replaced. Where the Contractor is unable to provide a replacement with equivalent qualifications and/or experience, the Contracting Authority may either decide to terminate the contract, if the proper performance of it is jeopardized, 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.

17.5 Additional costs incurred by the replacement of staff are the responsibility of the Contractor. Where the expert is not replaced immediately and it is some time before the new expert takes up its functions, the Contracting Authority may ask the Contractor to assign to the project a temporary expert pending the arrival of the new expert, or to take other measures to compensate for the temporary absence of the missing expert. Whatever the case may be, the Contracting Authority makes no payment for the period of the expert's or his/her replacement's absence.

Article 18 Trainees

18.1 If required in the terms of reference, the Contractor shall provide training for the period of execution of the contract for trainees assigned to it by the Contracting Authority under the terms of the contract.

18.2 Instruction by the Contractor of such trainees shall not confer on them the status of employees of the Contractor. However, they must comply with the Contractor's instructions, and with the provisions of Article 8, as if they were employees of the Contractor. The Contractor may on reasoned request in writing obtain the replacement of any trainee whose work or conduct is unsatisfactory.

18.3 Unless otherwise provided in the contract, remuneration for trainees and travel, accommodation and all other expenses incurred by the trainees, shall be borne by the Contracting Authority.

18.4 The Contractor shall report at quarterly intervals to the Contracting Authority on the training assignment. Immediately prior to the end of the period of execution of the contract, the Contractor shall draw up a report on the result of the training and an assessment of the qualifications obtained by the trainees with a view to their future employment. The form of such reports and the procedure for presenting them shall be as laid down in the terms of reference.

EXECUTION OF THE CONTRACT

Article 19 Delays in execution

19.1 If the Contractor does not perform the services within the period of execution specified in the contract, the Contracting Authority shall, without formal notice and without prejudice to its other remedies under the contract, be entitled to liquidated damages for every day, or part thereof, which shall elapse between the end of the period of execution specified in the contract and the actual end of the period of execution.

19.2 The daily rate for liquidated damages is calculated by dividing the contract value by the number of days of the period of execution.

19.3 If these liquidated damages exceed more than 15% of the contract value, the Contracting Authority may, after giving notice to the Contractor:

- a) terminate the contract; and
- b) complete the services at the Contractor's own expense.

19.4 Besides the penalties for delay envisaged in these conditions and without prejudice to all his other liabilities arising out of the contract, the contractor shall also become liable to a penalty if the rate of progress of the work throughout the contract period is not satisfactory. The contractor shall be considered to be in default if he fails to carry out every month at least 70% of the estimated monthly average progress. For the purpose of assessing such average

progress the value of the contract shall be divided by the number of months stipulated in the contract period. Within each month the contractor should complete works whose value is equivalent to the average progress obtained as above. However, in the case of contracts having a completion period of 6 or more months, no penalty shall be imposed in respect of the first month from the date of allocation of the contract. Should the contractor's progress fall below the minimum percentage progress, he will become liable to a penalty equivalent to 2% of the value of the contract in respect of every month during which progress is below standard. If the contractor completes the whole contract within the stipulated period, the Government may consider the refund of any penalties the contractor may have incurred for slow monthly progress.

19.5 Without prejudice to the above the Contractor may request an extension to the period of execution if his performance of the contract is delayed, or expected to be delayed, for any of the following reasons:

- a) extra or additional services ordered by the Contracting Authority;
- b) exceptional weather conditions in the country of the Contracting Authority which may affect installation or erection of the supplies;
- c) physical obstructions or conditions which may affect execution of the services, which could not reasonably have been foreseen by a competent contractor;
- d) administrative orders affecting the date of completion other than those arising from the Contractor's default;
- e) failure of the Contracting Authority to fulfil its obligations under the contract;
- f) any suspension of the execution of the services which is not due to the Contractor's default;
- g) force majeure;
- h) any other causes referred to in these General Conditions which are not due to the Contractor's default.

19.6 Within 15 days of realising that a delay might occur, the Contractor shall notify the Project Manager of his intention to make a request for extension of the period of performance to which he considers himself entitled and, save where otherwise agreed between the Contractor and the Project Manager, within 30 days provide the Project Manager with comprehensive details so that the request can be examined.

19.7 Within 30 days the Project Manager shall, by written notice to the Contractor after due consultation with the Contracting Authority and where appropriate, the Contractor and after having obtained written approval from the Contracting Authority, grant such extension of the period of performance as may be justified, either prospectively or retrospectively, or inform the Contractor that he is not entitled to an extension.

Article 20 Amendment of the contract

20.1 Any amendment of the contract must be set out in writing in an addendum, to be concluded on the same terms as the original contract. If the request for an amendment comes from the Contractor, the latter must submit such a request to the Contracting Authority at least 30 days before the amendment is intended to enter into force, except in cases which are duly substantiated by the Contractor and accepted by the Contracting Authority. Addenda are to be submitted to the Contracting Authority for approval and signing.

20.2 However, where the amendment does not affect the basic purpose of the contract and, for a fee-based contract, the financial impact is limited to a transfer within the Fees involving a variation of less than 15% of the original amount for the relevant line in the Budget breakdown in Annex V, the Project Manager shall have the power to order any variation to any part of the services necessary for the proper execution of the contract, without changing the object or scope of the contract. Such variations may include additions, omissions, substitutions, changes in quality, quantity, specified sequence, method or timing of performance of the services.

20.3 Prior to any administrative order for variation, the Project Manager shall notify the Contractor of the nature and form of such variation. As soon as possible, after receiving such notice, the Contractor shall submit to the Project Manager a written proposal containing:

- a) a description of the service to be performed or the measures to be taken and a programme for execution; and
- b) any necessary modifications to the programme of performance or to any of the Contractor's obligations under the contract; and
- c) For a fee-based contract, any adjustment to the contract value in accordance with the following principles:
 - i) where the task is of similar character and executed under similar conditions to an item priced in the budget breakdown, the equivalent numbers of working days shall be valued at the fee rates contained therein;
 - ii) where the task is not of a similar character or is not executed under similar conditions, the fee rates in the contract shall be applied to the estimated numbers of working days so far as is reasonable, failing which, a fair estimation shall be made by the Project Manager;
 - iii) where a variation is necessitated by a default or breach of contract by the Contractor, any additional cost attributable to such variation shall be borne by the Contractor.

20.4 Following the receipt of the Contractor's proposal, the Project Manager shall decide as soon as possible whether or not the variation shall be carried out. If the Project Manager decides that the variation shall be carried out he shall issue the administrative order stating

that the variation shall be carried out, either prospectively or retrospectively, under the conditions given in the Contractor's proposal or as modified by the Project Manager in accordance with Article 20.4.

20.5 Without prejudice to the above provisions, in all cases where variation orders individually or in their totality exceed by more than five per cent the awarded contract value, the prior approval of the Chief Executive Officer of Heritage Malta is to be sought before a commitment is made by the contracting authority with the contractor.

20.6 On receipt of the administrative order requesting the variation, the Contractor shall proceed to carry out the variation and be bound by these General Conditions in so doing as if such variation were stated in the contract.

20.7 The Contracting Authority shall give written notification to the Contractor of the name and address of the Project Manager. The Contractor shall give written notification to the Contracting Authority of the name and address of its contact, bank account and auditor for the contract. The Contractor must use the form in Annex VI for notification or modification of its bank account. The Contracting Authority shall have the right to oppose the Contractor's choice of bank account or auditor.

20.8 All payments made by the Contracting Authority into the bank account specified in the contract will have liberating effect.

20.9 Any change to the contract which has not been made in the form of an administrative order or an addendum or in accordance with Article 20.1 shall be considered null and void.

Article 21 Working hours

The days and hours of work of the Contractor or the Contractor's personnel in the beneficiary country shall be fixed on the basis of the laws, regulations and customs of the beneficiary country and the requirements of the services.

Article 22 Information

The Contractor shall furnish the Project Manager or any person authorized by the Central Government Authority, the Contracting Authority, the European Commission or the European Court of Auditors with such information relating to the services and the project as they may at any time request.

Article 23 Verification and checks by EC bodies

23.1 The Contractor will allow the European Commission, the European Anti-Fraud Office and the European Court of Auditors to verify, by examining the documents or by means of on-the-spot checks, the implementation of the project and 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. These inspections may take place up to 7 years after the final payment.

23.2 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 Community legislation for the protection of the financial interests of the European Communities against fraud and other irregularities.

23.3 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.

23.4 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 subcontractor or any other party benefiting from EC funds.

Article 24 Interim and final progress reports

24.1 The Contractor must prepare progress reports during the period of execution of the contract. For a fee-based contract, these progress reports must be accompanied by a financial report. The format of such reports is as specified by a template in Annex VI, if any, or, in the absence of a template, as notified to the Contractor by the Project Manager during the period of execution of the Contract.

24.2 All invoices (not including the request for the pre-financing payment) must be accompanied by a progress report and the final invoice must be accompanied by a final progress report. All invoices for a fee-based contract must also be accompanied by a financial report.

24.3 Immediately prior to the end of the period of execution of the contract, the Contractor shall draw up a final progress report together which must include, if appropriate, a critical study of any major problems which may have arisen during the performance of the contract.

24.4 This final progress report shall be forwarded to the Project Manager not later than 60 days after the end of the period of execution defined in Article 5 of the Special Conditions. Such report shall not bind the Contracting Authority.

24.5 Where the contract is performed in phases, the execution of each phase shall give rise to the preparation of a final progress report by the Contractor.

24.6 Interim and final progress reports are covered by the provisions of Article 14.

Article 25 Approval of reports and documents

25.1 The approval by the Contracting Authority of reports and documents drawn up and forwarded by the Contractor shall certify that they comply with the terms of the contract.

25.2 The Contracting Authority shall, within 45 days of receipt, notify the Contractor of its decision concerning the documents or reports received by it, giving reasons should it reject the reports or documents, or request amendments. For the final progress report, the time limit is extended to 60 days. If the Contracting Authority does not give any comments on the documents or reports within the time limit, the Contractor may request written acceptance of them. The documents or reports shall be deemed to have been approved by the Contracting Authority if it does not expressly inform the Contractor of any comments within 45 days of the receipt of this written request.

25.3 Where a report or document is approved by the Contracting Authority subject to amendments to be made by the Contractor, the Contracting Authority shall, prescribe a period for making the amendments requested.

25.4 Where the final progress report of a global price contract is not approved, the dispute settlement procedure is automatically invoked.

25.5 Where the contract is performed in phases, the execution of each phase shall be subject to the approval, by the Contracting Authority, of the preceding phase except where the phases are carried out concurrently.

PAYMENTS & DEBT RECOVERY

Article 26 Payments and interest on late payment

26.1 Payments will be made in accordance with one of the two options below, as identified in Article 3 of the Special Conditions.

Option 1: Fee-based contract

The Contracting Authority will make payments to the Contractor in the following manner:

- a pre-financing payment of 60% of the contract value, within 45 days of receipt by the Contracting Authority of the Contract signed by both parties, of a request for the pre-financing payment and of a financial guarantee, as defined in Article 27;

- six-monthly interim payments, if any, as indicated in Article 7.2 of the Special Conditions, within 45 days of the approval by the Contracting Authority in accordance with Article 25 of the interim progress report which accompanies an invoice setting out the services actually performed, until the sum of the pre-financing payment and any interim payments is 90% of the maximum contract value stated in Article 3 of the Special Conditions;
- the balance of the final certified value of the contract, subject to the maximum contract value stated in Article 3 of the Special Conditions, after deduction of the amounts already paid, within 45 days of the approval by the Contracting Authority in accordance with Article 25 and Article 28 of the final progress report and audit certificate which accompany the final invoice setting out the services actually carried out.

Option 2: Global price contract

The Contracting Authority will make payments to the Contractor in the following manner:

- a pre-financing payment of 60% of the contract value stated in Article 3 of the Special Conditions within 30 days of the Contract signed by both parties, of a request for the pre-financing payment and of a financial guarantee, as defined in Article 27;
- the balance of the contract value stated in Article 3 of the Special Conditions within 30 days of the approval by the Contracting Authority in accordance with Article 27 of the final progress report which accompanies the final invoice.

26.2 The payment deadline of 30 calendar days referred to in Article 26.1 shall expire on the date on which the Contracting Authority's account is debited. Without prejudice to Article 34.3, the Contracting Authority may halt the countdown towards this deadline for any part of the invoiced amount disputed by the Project Manager by notifying the Contractor that 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 the Contracting Authority thinks it necessary to conduct further checks. In such cases, the Contracting Authority must not unreasonably withhold any undisputed part of the invoiced amount but may request clarification, alteration or additional information, which must be produced within 30 days of the request. The countdown towards the deadline will resume on the date on which a correctly formulated invoice is received by the Contracting Authority.

26.3 Once the deadline referred to above has expired, the Contractor may, within two months of late payment, claim late-payment interest: - at the rediscount rate applied by the central bank of the beneficiary country on the first day of the month in which the deadline expired,

plus seven percentage points. The late-payment interest shall apply to the time which elapses between the date of the payment deadline (exclusive), and the date on which the Contracting Authority's account is debited (inclusive).

26.4 Payments due from the Contracting Authority shall be made into the bank account notified by the Contractor in accordance with Article 20.7.

26.5 The Contracting Authority will make payments in euro or in the national currency, in accordance with Article 7.1 of the Special Conditions.

26.6 Payment of the final balance shall be subject to performance by the Contractor of all its obligations relating to the execution of all phases or parts of the services and to the approval by the Contracting Authority of the final phase or part of the services. Final payment shall be made only after the final progress report and a final statement, identified as such, shall have been submitted by the Contractor and approved as satisfactory by the Contracting Authority.

26.7 If any of the following events occurs and persists, the Contracting Authority may, by written notice to the Contractor, suspend in whole or in part, payments due to the Contractor under the Contract:

- a) the Contractor defaults in the execution of the contract;
- b) any other condition for which the Contractor is responsible under the contract and which, in the opinion of the Contracting Authority, interferes, or threatens to interfere, with the successful completion of the project or the contract.

26.8 The payment obligations of the Treasury/Ministry of Finance under this Contract shall cease at most 18 months after the end of the period of execution of the tasks, unless the Contract is terminated in accordance with Article 34.1 of the General Conditions.

Article 27 Financial guarantee

27.1 If the pre-financing payment stated in Article 7.2 of the Special Conditions exceeds EUR150,000, the Contractor must provide a financial guarantee for the full amount of the pre-financing payment. This financial guarantee must remain valid until it is released by the Contracting Authority in accordance with Article 27.5 or Article 27.6, as appropriate.

27.2 The financial guarantee shall be provided on the letterhead of the financial institution using the template provided in Annex VI.

27.3 Should the financial guarantee cease to be valid and the Contractor fail to re-validate it, the Contracting Authority may either make deductions from future payments due to the Contractor under the Contract up to the total of the payments already made, or terminate the Contract if in the opinion of the Contracting Authority such deduction is impracticable.

27.4 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 the Contracting Authority by the

Contractor, and the guarantor shall not delay payment or raise objection for any reason whatever.

27.5 For fee-based contracts, the financial guarantee must remain in force until the final certified value established in the audit certificate referred to in Article 30 has been accepted by the Contracting Authority. If the final certified value is greater than the total of the payments already made to the Contractor by the Contracting Authority under the Contract, the financial guarantee must be released within 45 days of the acceptance of the final audit certificate by the Contracting Authority. If not, the financial guarantee may be reduced to cover the difference between the final certified value and the total of the payments already made to the Contractor by the Contracting Authority under the Contract and the financial guarantee must be released within 45 days of repayment of the difference by the Contractor.

27.6 For global price contracts, the financial guarantee must remain in force until the submission by the Contractor and approval by the Contracting Authority of the first interim report.

Article 28 Audit certificate

28.1 No audit certificate is required for global price contracts.

28.2 Before the final payment is made for a fee-based contract, an independent and impartial auditor who is a member of an internationally recognized supervisory body for statutory auditing, notified by the Contractor in accordance with Article 20.7, must examine the invoices sent by the Contractor to the Contracting Authority.

28.3 The auditor must satisfy himself that relevant, reliable and sufficient evidence exists that the experts employed by the Contractor for this contract have actually been working on the contract (as corroborated by independent, third-party evidence, where available) for the number of days/hours claimed in the Contractor's invoices and in the financial reports submitted with the interim progress reports;

28.4 On the basis of his examination, the auditor must certify the final value of the contract using the audit certificate template in Annex VI. The final payment, if any, is the difference between this final certified value and the total amounts already paid, subject to the maximum contract value stated in the contract.

Article 29 Recovery of debts from the Contractor

29.1 The Contractor shall repay any amounts paid in excess of the final certified value due to the Contracting Authority within 45 days of receiving a request to do so.

29.2 Any amount which the Contracting Authority has paid, or caused to be paid, in excess of the Contractor's entitlement under the contract, shall be repaid by the Contractor to the Contracting Authority within 45 days after receipt by the Contractor of a request for repayment.

29.3 Should the Contractor fail to make repayment within the above deadline, the Contracting Authority may increase the amounts due by adding interest at the rediscount rate applied by the central bank of the beneficiary country, on the first day of the month in which the deadline expired, plus seven percentage points. The late-payment interest shall apply to the time which elapses between the date of the payment deadline (exclusive), and the date on which the Contractor's account is debited (inclusive). Any partial payments shall cover the interest thus established.

29.4 Should the Contractor fail to repay the original balance within the above deadline and any interest added in accordance with Article 29.3, the Contracting Authority may call upon the financial guarantee referred to in Article 27, if any.

29.5 Amounts to be repaid to the Contracting Authority may be offset against amounts of any kind due to the Contractor. This shall not affect the right of the Contractor and the Contracting Authority to agree on repayment by installments.

29.6 Bank charges arising from the repayment of amounts due to the Contracting Authority shall be borne entirely by the Contractor.

Article 30 Revision of prices

Subject to the provisions of Article 20 of the General Conditions, the global price of a global price contract and the fee rates of a fee-based contract shall not be revised.

Article 31 Payment to third parties

31.1 All orders for payments to third parties may be carried out only after an assignment made in accordance with Article 3.

31.2 Notification of beneficiaries of assignment shall be the sole responsibility of the Contractor.

31.3 In the event of a legally binding attachment of the property of the Contractor affecting payments due to it under the contract and without prejudice to the time limit laid down in Article 26, the Contracting Authority shall have 60 days, starting from the day when it receives notification of the definitive lifting of the obstacle to payment, to resume payments to the Contractor.

BREACH OF CONTRACT AND TERMINATION

Article 32 Breach of contract

32.1 Either party commits a breach of contract where it fails to discharge any of its obligations under the contract.

32.2 Where a breach of contract occurs, the party injured by the breach shall be entitled to the following remedies:

- a) damages; and/or
- b) termination of the contract.

32.3 Damages may be:

- a) general damages; or
- b) liquidated damages.

32.4 In any case where the Contracting Authority is entitled to damages, it may deduct such damages from any sums due to the Contractor or call on the appropriate guarantee.

32.5 The Contracting Authority 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 33 Suspension

33.1 The Contracting Authority is entitled to suspend the performance of the services or any part thereof for such time and in such manner as it may consider necessary.

33.2 If the period of suspension exceeds 90 days and the suspension is not due to the Contractor's default, the Contractor may, by notice to the Project Manager, request permission to resume execution of the services within 30 days or terminate the contract.

33.3 Where the award procedure or execution of the contract is vitiated by substantial errors or irregularities or by fraud, the Contracting Authority shall suspend execution of the contract.

33.4 Where such errors, irregularities or fraud are attributable to the Contractor, the Contracting Authority may in addition refuse to make payments or may recover amounts already paid, in proportion to the seriousness of the errors, irregularities or fraud.

33.5 The suspension of the Contract is intended to allow the Contracting Authority to verify whether presumed substantial errors or irregularities or fraud have actually occurred. If they are not confirmed, execution of the contract shall resume as soon as possible.

Article 34 Termination by the Contracting Authority

34.1 This contract shall terminate automatically if it has not given rise to any payment within a period of three years after its signature by both parties.

34.2 Termination shall be without prejudice to any other rights or powers under the contract of the Contracting Authority and the Contractor.

34.3 In addition to the grounds for termination defined in these General Conditions, the Contracting Authority may terminate the contract after giving 7 days' notice to the Contractor in any of the following cases:

- a) the Contractor fails substantially to carry out its obligations under the contract;

- b) the Contractor 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 execution of the services;
- c) the Contractor refuses or neglects to carry out administrative orders given by the Project Manager;
- d) the Contractor assigns the contract or subcontracts without the authorization of the Contracting Authority;
- e) the Contractor becomes bankrupt or is 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) the Contractor has been convicted of an offence concerning its professional conduct by a judgment which has the force of *res judicata*;
- g) the Contractor has been guilty of grave professional misconduct proven by any means which the Contracting Authority can justify;
- h) the Contractor has been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organization or any other illegal activity detrimental to the financial interests of the EC;
- i) following another procurement procedure or grant award procedure financed by the EC budget, the Contractor has been declared to be in serious breach of contract for failure to comply with its contractual obligations.
- j) any organisational modification occurs involving a change in the legal personality, nature or control of the Contractor, unless such modification is recorded in an addendum to the contract;
- k) any other legal disability hindering performance of the contract occurs;
- l) the Contractor fails to provide the required guarantees or insurance, or the person providing the underlying guarantee or insurance is not able to abide by its commitments.

34.4 The Contracting Authority may, thereafter, complete the services itself, or conclude any other contract with a third party, at the Contractor's own expense. The Contractor's liability for delay in completion shall immediately cease when the Contracting Authority terminates the Contract without prejudice to any liability thereunder that may have already been incurred.

34.5 Upon termination of the contract or when it has received notice thereof, the Contractor shall take immediate steps to bring the services to a close in a prompt and orderly manner and in such a way as to keep costs to a minimum.

34.6 The Project Manager shall, as soon as is possible after termination, certify the value of the services and all sums due to the Contractor as at the date of termination.

34.7 The Contracting Authority shall not be obliged to make any further payments to the Contractor until the services are completed, whereupon the Contracting Authority shall be entitled to recover from the Contractor the extra costs, if any, of completing the services, or shall pay any balance due to the Contractor.

34.8 If the Contracting Authority terminates the contract, the Contracting Authority shall be entitled to recover from the Contractor any loss it has suffered up to the maximum amount stated in the contract. If no maximum amount is stated, the Contracting Authority shall, without prejudice to its other remedies under the contract, be entitled to recover that part of the contract value which is attributable to that part of the services which has not, by reason of the Contractor's failure, been satisfactorily completed.

34.9 The Contractor shall not be entitled to claim, in addition to sums owing to it for work already performed, compensation for any loss or injury suffered.

Article 35 Termination by the Contractor

35.1 The Contractor may, after giving 14 days notice to the Contracting Authority, terminate the contract if the Contracting Authority:

- a) fails to pay the Contractor the amounts due under any certificate of the Project Manager after the expiry of the time limit stated in Article 26; 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 due to the Contractor's default.

35.2 Such termination shall be without prejudice to any other rights of the Contracting Authority or the Contractor acquired under the contract.

35.3 In the event of such termination, the Contracting Authority shall pay the Contractor for any loss or injury the Contractor may have suffered. Such additional payment may not be such that the total payments exceed the amount specified in Article 3 of the Special Conditions.

Article 36 Force majeure

36.1 Neither party shall be considered to be 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 signature of the contract by both parties.

36.2 The term "force majeure", as used herein shall mean 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, and any other similar unforeseeable events, beyond the control of either party and which by the exercise of due diligence neither party is able to overcome.

36.3 A party affected by an event of force majeure shall take all reasonable measures to remove such party's inability to fulfill its obligations hereunder with a minimum of delay.

36.4 Notwithstanding the provisions of Article 33, the Contractor shall not be liable for liquidated damages or termination for 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. The Contracting Authority shall similarly not be liable, notwithstanding the provisions of Article 26 and Article 35, to payment of interest on delayed payments, for non-performance or for termination by the Contractor for default, if, and to the extent that, the Contracting Authority's delay or other failure to perform its obligations is the result of force majeure.

36.5 If either party considers that any circumstances of force majeure have occurred which may affect performance of its obligations it shall notify the other party immediately giving details of the nature, the probable duration and likely effect of the circumstances. Unless otherwise directed by the Project Manager in writing, the Contractor 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 Contractor shall not put into effect such alternative means unless directed so to do by the Project Manager.

36.6 For a fee-based contract, if the Contractor incurs additional costs in complying with the Project Manager's directions or using alternative means under Article 36.5 the amount thereof shall be certified by the Project Manager subject to the maximum contract value.

36.7 If circumstances of force majeure have occurred and persist for a period of 180 days then, notwithstanding any extension of the period of execution that the Contractor 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, the parties shall be released from further performance of the contract.

Article 37 Decease

37.1 If the Contractor is a natural person, the contract shall be automatically terminated if that person dies. However, the Contracting Authority shall examine any proposal made by his heirs or beneficiaries if they have notified their wish to continue the contract within 15 days of

the date of decease. The decision of the Contracting Authority shall be notified to those concerned within 30 days of receipt of such a proposal.

37.2 If the Contractor is a group of natural persons and one or more of them die, a report shall be agreed between the parties on the progress of the services and the Contracting Authority shall decide whether to terminate or continue the contract in accordance with the undertaking given within 15 days of the date of decease by the survivors and by the heirs or beneficiaries, as the case may be. The decision of the Contracting Authority shall be notified to those concerned within 30 days of receipt of such a proposal.

37.3 Such persons shall be jointly and severally liable for the proper performance of the contract to the same extent as the Contractor. Continuation of the contract shall be subject to the rules relating to establishment of any guarantee provided for in the contract.

SETTLEMENT OF DISPUTES

Article 38 Settlement of disputes

38.1 The Contracting Authority and the Contractor shall make every effort to settle amicably any dispute relating to the contract which may arise between them, or between the Project Manager and the Contractor.

38.2 Once a dispute has arisen, the parties to this contract shall notify each other in writing of their positions on the dispute as well as of any solution which they envisage possible. If either of the parties to this contract deems it useful, the parties shall meet and try to settle the dispute. Each party shall respond to a request for amicable settlement within 30 days of such request. The period to reach an amicable settlement shall be 120 days from the date of the request. Should the attempt to reach an amicable settlement be unsuccessful or should a party not respond in time to any requests for settlement, each party shall be free to proceed to the next stage in reaching a settlement by notifying the other party.

38.3 In the absence of an amicable settlement, any dispute between the Parties that may arise during the performance of this contract and that has not been possible to settle otherwise between the Parties shall be submitted to the arbitration of the Malta Arbitration Centre in accordance with the Arbitration Act (Chapter 387) of the Laws of Malta.

This law is based on "Model Law" which is the Model Law on International Commercial Arbitration adopted on June 21, 1985 by the United Nations Commission on International Trade Law reproduced in the First Schedule of the Arbitration Act.

ANNEX II: TERMS OF REFERENCE

1.0 BACKGROUND INFORMATION

1.1 Beneficiary country

Malta

1.2 Contracting Authority

Heritage Malta

1.3 Relevant country background

Heritage Malta is responsible for the management of all National Museums and Historical sites (of the Government of Malta), including the World Heritage Site of the Ġgantija Temples, Xagħra, Gozo. The agency was established with a mission to “protect and make accessible to the public” Malta’s national heritage (Cultural Heritage Act 2002). Ensuring the conservation of the megalithic temples is therefore one of the agency’s primary roles in prolonging the lifetime of these unique historical sites and preserving them for future generations.

Furthermore, tourism is the main source of Malta’s economic income. The temples, in the Ġgantija Heritage Park, are among the main tourist attractions on the Maltese Islands (c. 150,000 visitors annually), with Ġgantija Temples being the most visited cultural site in Malta and Gozo. Their preservation and enhanced accessibility, therefore, would not only promote the educational, social and archaeological values of the site, but may also help in contributing to the Islands’ economy.

1.4 Current state of affairs in the relevant sector

Heritage Malta is responsible for the management of the Ġgantija Temples (within the Ġgantija Heritage Park), which have been recognised by UNESCO as a World Heritage Site since 1980, being the first of the Maltese Prehistoric Temples to receive such status. The site’s inclusion in the World Heritage List has meant that the Maltese Government has committed itself to preserving the site on behalf of the international community.

The requested services will aid in the preservation and presentation of the site and therefore will also have a bearing on the fulfilment of Malta’s responsibilities towards the international community.

The ‘Scientific Committee for the Conservation of the Megalithic Temples’ is appointed by the Ministry of Education, Culture, Youth and Sports, to offer expertise and guidance in issues concerning the conservation of the Megalithic Temples. Furthermore, the ‘Superintendence of Cultural Heritage’ is the regulator on all matters in the Cultural Heritage field.

1.5 Related programmes and other donor activities:

This contract forms part of the Archaeological Heritage Conservation Project (ERDF032) under the European Regional Development Funds and which will ultimately seek to conserve the Tarxien Temples, the Ġgantija Temples and Heritage Park, and the St. Paul’s Catacombs, and to present an enhanced visitors’ experience in the three sites.

Closely related projects are: the installation of new walkways in the Temples, accessibility provisions for people with special needs, environmental monitoring equipment and a remote security system, which works are partly funded through the Vodafone Ġgantija Project.

Past related projects include the 3-D documentation (laser scanning) of the Ġgantija Temples and the restoration of part of the external megalithic wall, both funded by EU Solidarity Funds procured through the Ministry for Gozo in 2004-05.

1.8 The Archaeological Heritage Conservation Project

This project is intended to partly meet Malta's international obligations in the cultural heritage sector. Malta, as a nation, has the role of custodian of a heritage of universal value. Furthermore, the Ministry of Education, Culture, Youth and Sport is legally bound through the Cultural Heritage Act 2002 to safeguard Malta's national heritage through better management, with an emphasis on accessibility and interpretation. Articles 3-6 of the Cultural Heritage Act refer specifically to the State as duty bound to manage these national assets. Article 8 established the agency Heritage Malta to facilitate this obligation. Hence, the aim of the **€2.5 million** (excl VAT) project at the Ġgantija Heritage Park, as proposed by Heritage Malta, is to:

1. present an organised, pleasant and sustainable experience, to the circa 150,000 yearly visitors, but at the same time follow up any preventive conservation measures which the temples and park require
2. facilitate circulation including both pedestrian and vehicular movement outside the site and, visitor circulation within the site
3. highlight the landscape setting of the site
4. remove and mitigate past interventions which have a negative impact on the setting

The expected outcome after the implementation of the ERDF project, with respect to the Ġgantija Temples and surrounding areas, include:

- Construction of an Interpretation Centre at the Ġgantija Heritage Park, incorporating a permanent display focusing on Gozo's prehistory, (children) activity area, administration and other basic amenities for visitors
- An 'Exit Point' including a souvenir shop and other basic amenities for visitors to the Heritage Park
- Pathways to link the Interpretation Centre to the Temples and the Temples to the 'Exit Point'
- Rehabilitation and landscaping of the Heritage Park, including the restoration and rebuilding of approximately 200m of rubble wall

2.0 CONTRACT OBJECTIVES & EXPECTED RESULTS

2.1 Overall objectives

The Consultant Architect, is to provide architectural, engineering and other related services, in order to design, detail, supervise, certify, etc, the enhancement of the visitor experience within, and around, the Ġgantija Heritage Park, including:

- A Masterplan of the Ġgantija Heritage Park and the immediate surroundings with respect to vehicular and visitor circulation, within and around the Park
- The design and construction of:
 - an Interpretation Centre at the Ġgantija Heritage Park, incorporating a permanent display focusing on Gozo's prehistory, (children) activity area, administration and other basic amenities for visitors
 - an 'Exit Point' including a souvenir shop and other basic amenities for visitors to the Heritage Park
 - Pathways to link the Interpretation Centre to the Temples, and the Temples to the 'Exit Point'
- The rehabilitation and landscaping of the Heritage Park, including the restoration and rebuilding of approximately 200m of rubble wall.

This document is to be read in conjunction with the brief issued for the '**Design Contest - Enhancing the visitor experience in the Ggantija Heritage Park World Heritage Site**'.

2.2 Specific objectives

The Consultant Architect will provide all the necessary services with respect to the the various aspects of the project. The Specific Objectives shall include amongst others:

- The conservation and enhancement of the site and its relations with the surrounding environment/landscape of archaeological value.
- The design and construction of the interpretation centre, landscaping, circulation, pathway, 'Exit Point', etc.
- The creation of an accessible, sustainable and energy efficient environment

2.3 Results to be achieved by the Consultant Architect

The Consultant Architect will prepare all the necessary **designs (and revisions thereof), applications, detailed drawings, Specifications, Bills of Quantities, site supervision, interim/final measurement and certification of works, etc.**, for the various aspects of the project, in order to ensure the smooth implementation of the project's and achievement of the milestones established in the ERDF032 schedule and ensuring the attainment of the principal and specific objectives outlined in this contract.

3.0 ASSUMPTIONS & RISKS

3.1 Assumptions

- The Consultant Architect has to take into consideration the requirements of the MEPA application process, building regulations, feedback of the Superintendence of the Cultural Heritage, etc., as well as other obligations ensuing from the Grant Agreement.
- The Consultant Architect is expected to modify the designs on encountering uncovering any archaeological remains and take immediately the necessary steps with regards to design revisions and necessary permits to ensure the smooth progress of the project as per agreed implementation.
- All tasks and activities shall be carried out within the specified timeframes, as approved in the 'Methodology & Organisation' report, notwithstanding the effects of external factors such as archaeological finds, bureaucratic processes, permits, visitor flow, adverse weather conditions, etc.

3.2 Risks

- The approved milestones have to be respected since such dates are committed in the Implementation and Disbursement schedules approved as part of the ERDF funding programme.

4.0 SCOPE OF THE WORK

4.1 General

4.1.1 Project description

The Ġgantija Project will address the following priorities for an integrated and sustainable management of the heritage assets situated within the project site. Keeping in mind the landscape value and context, the proposed project shall comprise:

- The design and construction of:
 - an Interpretation Centre at the Ġgantija Heritage Park, incorporating a permanent display focusing on Gozo's prehistory, (children) activity area, administration and other basic amenities for visitors
 - an 'Exit Point' including a souvenir shop and other basic amenities for visitors to the Heritage Park
 - Pathways to link the Interpretation Centre to the Temples, and the Temples to the 'Exit Point'
- Full accessibility, valorisation and enjoyment of the cultural landscape within the Ġgantija Heritage Park including the rehabilitation and landscaping of the Heritage Park, as well as the restoration and rebuilding of approximately 200m of rubble wall

This document is to be read in conjunction with the brief issued for the '**Design Contest - Enhancing the visitor experience in the Ġgantija Heritage Park World Heritage Site**'.

4.1.2 Geographical area to be covered

The Ġgantija Heritage Park, Xaghra, Gozo and the immediate surroundings, so as to improve traffic management and transport /parking infrastructure.

4.1.3 Target groups

The Archaeological Heritage Conservation Project is aimed mainly at the tourism industry, but also encompasses Maltese citizens. Visitors to the site comprise both tourists and local residents, including school children and students. The educational impact of the project is not exclusively restricted to students/school visits but has more important and wide-ranging effects on the general population, as this will lead toward a better appreciation of the national and world heritage.

Through this greater appreciation of Malta's heritage by Maltese citizens, an improved impact on the tourism sector will also be achieved.

4.2 Specific activities

The Consultant Architect shall perform the following services for all the different parts/aspects of the project:

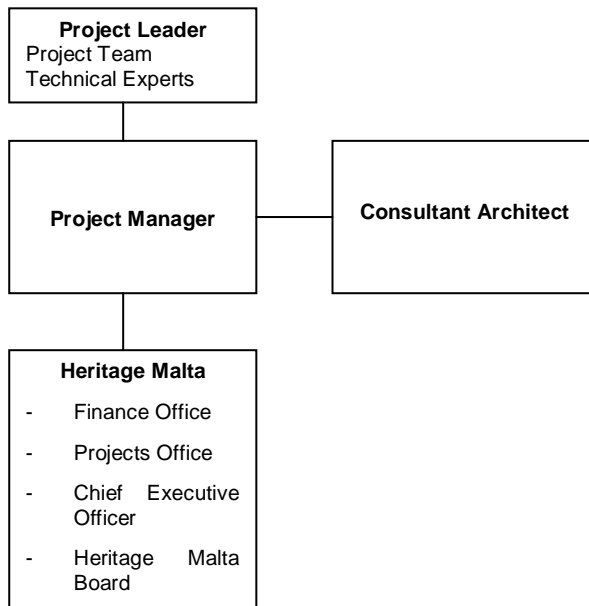
- (1) after an adequate number of meetings with the Project Manager, including other representatives of Heritage Malta, as well as meetings/presentation/consultations with the Scientific Committee for the Conservation of the Megalithic Temples and Superintendence of Cultural Heritage, as necessary, and considering further feedback from MEPA through the Outline Development Application process, the 'Design Contest' 'winning' **scheme** shall be revised accordingly (if necessary), in compliance with all the commitments in the ERDF032 application, for the final approval by Heritage Malta

- (2) make approximate estimates for the approved design to ensure the **budget**, allocated for the various components, is respected – revise designs accordingly, if necessary
- (3) prepare all necessary drawings and documentation for the submission of the relevant **Full Development Application/s** to MEPA, follow-up of the same application, including submission of any additional requirements and amendments requested, etc., until issue of Full Development Permit and liaising with the various Government Authorities and Agencies concerned where applicable, such as the Local Council, ADT (Malta Transport Authority), etc.
- (4) preparation of **working/detail drawings, Specifications and Bills of Quantities** to form the basis of the **Tender Package**. This shall include the structural detailing; relevant infrastructure - M&E services, foul water, ICT backbone, security systems; renewable energy systems; etc.
- (5) take part in the **adjudication and award process** for the issued tender/s
- (6) general **on-site works supervision** (not cover constant supervision of the work but only such supervision as may be required for the purpose of the professional responsibility of the Perit under any relevant law at any time in force and as may be necessary to ensure that the works are being executed in general accordance with the contract)
- (7) in liaison with the Project Manager, organise and attend monthly **progress meetings** with Contractor/s and on-site **technical meetings**, as requested /required by the Project Manager
- (8) general **contact administration** including the issuing of the necessary Site Instructions, reply to 'Contractor's Submissions' and any 'Request for Information'. All such documentation is to be approved by the Project Manager prior to issuing directly to the Contractor/s to ensure that the works are being executed in general accordance with the Drawings and Specifications
- (9) **measurement** of works on site and issuing (monthly - interim) **certificates of payment** including the constant **monitoring of the costs** to ensure delivery on time and within the available budget and recommendation to the client regarding any 'Variation Order Request(s)' which may be presented by the Contractor/s. Any necessary revision/deviation from the tender drawings or Bills of Quantities cannot be instructed prior to the approval of the Project Manager after justifying the requirement, who in turn has to get the necessary approvals from PPCD and the Director General of the Department of Contracts.
- (10) issuing of the **final certification** and issuing, for approval, of the '**Handing-Over Certificate**' after the completion of the necessary snagging and ensuring practical completion as per relevant contract/s

4.3 Project management

4.3.1 Responsible body

For the purposes of this contract, the Consultant Architect shall report to the Project Manager and is accountable to Heritage Malta's Project Leader at all times.



4.3.2 Management structure

The Consultant Architect shall report directly to the Project Manger who will in turn consult all the stakeholders involved.

The Project Manager will then consult with the Project Leader and Project Team who are supported by the **'Scientific Committee for the Conservation of the Megalithic Temples'**, a Committee appointed by the Ministry of Education, Culture, Youth and Sports to offer expertise and guidance in issues concerning the conservation of the Megalithic Temples, as well any other legal entity, such as, but not exclusive to, the **Superintendence of Cultural Heritage**.

5.0 LOGISTICS AND TIMING

5.1 Location

The Ġgantija Project will take place in the Ġgantija Heritage Park, Xaghra, Gozo (and the immediate surroundings).

The Consultant Architect will be expected to attend or convene meetings (in liaison with the Project Manager) and inspections on the site itself, or anywhere else in Malta or Gozo as required by the exigencies of the Project. Meetings may be held in premises supplied by Heritage Malta.

5.2 Commencement date & Period of execution

The intended commencement date is as per **Article 4 of Part B – Service Contract – Special Conditions**. Please refer to **Articles 4 and 5 of Part B – Service Contract – Special Conditions** for the actual commencement date and period of execution.

6.0 REQUIREMENTS

6.1 Personnel

This section is to be read in conjunction with the requirements set out in the brief issued for the 'Design Contest'.

6.1.1 Other experts

- **CVs for experts other than the key experts are not examined prior to the signature of the contract. They should not have been included in tenders.**
- In the formation of the project team, the Consultant Architect shall hire other experts as required according to the profiles identified in the Organisation & Methodology. For the purposes of this contract, international experts are considered to be those whose permanent residence is outside the beneficiary country while local experts are considered to be those whose permanent residence is in the beneficiary country.
- The Consultant Architect should pay attention to the need to ensure the active participation of local professional skills where available, and a suitable mix of international and local staff in the project teams. All experts must be independent and free from conflicts of interest in the responsibilities accorded to them.
- The selection procedures used by the Consultant Architect to select these other experts shall be transparent, and shall be based on pre-defined criteria, including professional qualifications, language skills and work experience. The findings of the selection panel shall be recorded. The selection of experts shall be subject to approval by the Contracting Authority.
- Note that civil servants and other staff of the Public Service of the beneficiary country cannot be recruited as experts. See **sub-article 9.5 of Annex 1 - General Conditions for Service Contracts**.

6.1.2 Support staff & backstopping

- The Consultant Architect shall avail him/herself of the expertise of Heritage Malta, especially the Project Manager and the other members of the Project Team. However, should the need arise for the Consultant Architect to make use of additional staff other than those of the Client, to supplement duties intended by this contract, the cost of engaging such staff will be borne by the Consultant Architect.
- Secretarial/administrative roles as well as on-site assistants, testing equipment, data gathering campaigns, etc., required for the completion of the Structural Assessment Report, as specified in this Terms of Reference, are considered part of the contract's global price.

6.2 Subcontracting

- Subcontracting of the Key Expert is not allowed;
- Subcontracting of required specialised services for the successful design and implementation of the project is allowed as per conditions specified in **Annex I - General Conditions for Service Contracts – Article 4**;
- Sub-contracting is the only allowed form of collaboration and only on condition that the Contractor explicitly states that it is the sole party which will be contractually liable. If the Contractor intends to subcontract one or more parts of the contracted services, this must be clearly stated by the contractor in his submission form;

- All sub-contractors must be eligible for the contract. If the identity of the intended sub-contractor is already known at the time of submission, a statement guaranteeing the eligibility of the sub-contractor must be provided.
- If any sub-contractor identified in this way, does not meet the eligibility criteria, the submission may be rejected. If the identity of the sub-contractor is not known at the time of submission, any sub-contract must be awarded according to **Annex I - General Conditions for Service Contracts – Article 4.**

6.3 Office accommodation

- The Consultant Architect shall make use of his/her own office, office support and equipment. All office expenses including stationery and printing are to be covered by the global price quoted. Meetings may be held in premises supplied by the Client.
- In the absence of the installation of a site office, operations will be conducted from the Consultant Architect's own office.

6.4 Facilities to be provided by the Consultant Architect

- The Consultant Architect shall ensure that other experts or persons engaged on this contract are supported with the necessary equipment. In particular it shall ensure that there is administrative, secretarial and interpreting provision to enable experts to concentrate on their primary responsibilities. It must also transfer funds as necessary to support its activities under the contract and to ensure that its employees are paid regularly and in a timely fashion.
- All expenses such as transport, report production, equipment, office support, support staff, etc., must be included in the global price quoted by the contestant.
- If the Consultant Architect is a consortium, the arrangements should allow for the maximum flexibility in project implementation. Arrangements offering each consortium partner a fixed percentage of the work to be undertaken under the contract should be avoided.

6.5 Equipment

- No equipment is to be purchased on behalf of the Contracting Authority / beneficiary country as part of this service contract or transferred to the Contracting Authority / beneficiary country at the end of this contract. Any equipment related to this contract which is to be acquired by the beneficiary country must be purchased by means of a separate supply tender procedure.
- The Consultant Architect shall provide all equipment necessary for the fulfilment of this contract.

7.0 REPORTS

7.1 Reporting requirements

The Consultant Architect shall report to the Project Manager as specified in **Article 6 of Part B – Service Contract - Special Conditions**.

7.2 Submission & approval of progress reports

All reports (in English) are to be submitted to the Project Manager as specified in **Article 6** of the **Special Conditions**.

8.0 MONITORING AND EVALUATION

8.1 Definition of indicators

The Consultant Architect shall have his/her performance measured and evaluated against milestones and objectives set out in the project plan and/or its authorised revisions.

All designs, reports, methodologies are also to be approved by Heritage Malta, the 'Scientific Committee for the Conservation of the Megalithic Temples' the Superintendence of Cultural Heritage, and any other related authorities/entities, as necessary.

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ANNEX III: ORGANISATION & METHODOLOGY

Following the 'Design Contest', the winner shall prepare an 'Organisation and Methodology' report, to be submitted for the approval by the Project Manager, including:

1. Rationale

- Any comments on **Annex II - Terms of Reference** of importance for the successful execution of activities, in particular its objectives and expected results, thus demonstrating the degree of understanding of the contract. **Any comments contradicting 'Annex II - Terms of Reference' or falling outside their scope will not form part of the final contract;**
- An opinion on the key issues related to the achievement of the contract objectives and expected results;
- An explanation of the risks and assumptions affecting the execution of the contract.

2. Strategy

- An outline (preliminary) of the approach proposed for contract implementation;
- A list of the proposed activities considered to be necessary to achieve the contract objectives;
- The related inputs and outputs;
- In the case of a joint venture/consortium, a description of the input from each of the partners and the distribution and interaction of tasks and responsibilities between them;
- A description of the support facilities (back-stopping) that the team of experts will have from the contractor during the execution of the contract;
- A description of sub-contracting arrangements foreseen, if any and within the identified limits, with a clear indication of the tasks that will be entrusted to a sub-contractor and a statement by the tenderer guaranteeing the eligibility of any sub-contractor.

3. Timetable of activities

- The timing, sequence and duration of the proposed activities, taking into account mobilisation time where applicable, in the form of a **Gantt Chart**;
- The identification and timing of major milestones in execution of the contract, including an indication of how the achievement of these would be reflected in any reports/submissions, particularly those stipulated in **Article 6 of Service Contract – Special Conditions** and other relevant articles in **Annex II - Terms of Reference**.

ANNEX IV: KEY EXPERT/S

Name of expert	Proposed position	Years of experience	Age	Nationality	Educational background	Specialist areas of knowledge	Experience in beneficiary country	Languages and degree of fluency (VG, G, W)

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Curriculum vitae

Proposed role in the project:

1. **Family name:**
2. **First names:**
3. **Date of birth:**
4. **Nationality:**
5. **Civil status:**
6. **Education:**

Institution [Date from - Date to]	Degree(s) or Diploma(s) obtained:

7. **Language skills:** Indicate competence on a scale of 1 to 5 (1 - excellent; 5 - basic)

Language	Reading	Speaking	Writing

8. **Membership of professional bodies:**
9. **Other skills:** (e.g. Computer literacy, etc.)
10. **Present position:**
11. **Years within the firm:**
12. **Key qualifications:** (Relevant to the project)
13. **Specific experience in the region:**

Country	Date from - Date to

14. **Professional experience**

Date from - Date to	Location	Company	Position	Description

15. **Other relevant information** (e.g., Publications)

ANNEX V: BUDGET (GLOBAL PRICE)

Global price: Price Excluding VAT [Euro] <amount>
V.A.T. element [Euro] <amount>
Total [Euro] <amount>

Breakdown of Budget as per proposed activities included in the **Organisation and Methodology – Strategy**:

Item Number	Description of Service	EUR

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ANNEX VI

FINANCIAL IDENTIFICATION FORM

FINANCIAL IDENTIFICATION

<u>ACCOUNT HOLDER</u>	
NAME	<input type="text"/>
ADDRESS	<input type="text"/>
TOWN/CITY	<input type="text"/>
COUNTRY	<input type="text"/>
CONTACT PERSON	<input type="text"/>
TELEPHONE	<input type="text"/>
E - MAIL	<input type="text"/>
POSTCODE	<input type="text"/>
VAT NUMBER	<input type="text"/>
FAX	<input type="text"/>

<u>BANK</u>	
BANK NAME	<input type="text"/>
BRANCH ADDRESS	<input type="text"/>
TOWN/CITY	<input type="text"/>
COUNTRY	<input type="text"/>
ACCOUNT NUMBER	<input type="text"/>
IBAN	<input type="text"/>
POSTCODE	<input type="text"/>

REMARKS :

<u>BANK STAMP + SIGNATURE of BANK REPRESENTATIVE</u> (Both Obligatory)	<u>DATE + SIGNATURE of ACCOUNT HOLDER :</u> (Obligatory)
---	---

ANNEX VII

MODEL PERFORMANCE GUARANTEE

[On the headed notepaper of the financial institution providing the guarantee]

Title of contract: < Title of contract>

Identification number: <Publication reference>

We the undersigned, [*name, company name, address*], hereby declare that we will guarantee, not merely jointly and severally, but as principal debtor, to the Department of Contracts, Notre Dame Ravelin, Floriana VLT2000 on behalf of [*Contractor's name and address*], the payment of [*amount of the performance guarantee*], representing the performance guarantee mentioned in Article 7.8 of the General Conditions without dispute, on receipt of a first written request from the beneficiary.

This guarantee shall enter into force and take effect from [*indicate the date of entry into force of the contract*].

We note that you will release the guarantee and notify us of the fact at the latest within thirty days of the approval by the Contracting Authority in accordance with Article 27 of the General Conditions following submission of the Final progress report which accompanies the final invoice.

Any dispute concerning this guarantee shall be governed by the Laws of Malta.

Name: Position:

Signature:

Date:<Date>

ANNEX VIII: FINANCIAL GUARANTEE

To be submitted on the letterheaded notepaper of the financial institution providing the guarantee

To: Heritage Malta hereinafter referred to as "the Contracting Authority"

Subject: Financial guarantee for the contract <Contract title> with identification number <Identification number>

In accordance with Article 29 of the General Conditions of the above Contract, we hereby irrevocably declare that we guarantee as primary obligor, and not merely as a surety, on behalf of *<name and address of the Contractor>*, hereinafter referred to as "the Contractor", payment to the Contracting Authority of *<amount>* euro representing [*For a global price contract: 60% of the value*] of the above Contract.

Payment shall be made into an account to be specified by the Contracting Authority, without objection or legal proceedings of any kind, upon receipt of your first written claim (sent by recorded delivery) stating that the Contractor has not repaid the pre-financing payment on request or that the Contract has been terminated for any reason whatsoever. We shall not delay the payment, nor shall we oppose it for any reason whatsoever. We shall inform you in writing as soon as payment has been made.

We note that the guarantee will be released in accordance with Article [*For a global price contract: 27.6*] [*For a fee-based contract: 27.5*] of the above Contract.

The law applicable to this guarantee shall be that of *<country in which the financial institution is established>*. Any dispute arising out of or in connection with this guarantee shall be referred to the courts of the country of the Contracting Authority.

This guarantee will come into force and will take effect on receipt of the pre-financing payment in the account designated by the Contractor to receive payments.

.....
Date

.....
Signature

ANNEX IX

Details of Contestant

Name of Contestant/ Joint Venture/ Consortium			
Address			
Trading Licence		Valid up to	
E-mail Address			
Tel. Nos.			
Fax Nos.			
Mobile Phone No.			
VAT Registration No.			
Signature		Date	
ID. Card No.			

ANNEX X

EU DECLARATION

STATEMENT ON EXCLUDING CIRCUMSTANCES OF ARTICLE 49 OF PUBLIC CONTRACTS REGULATIONS 2005.

This declaration, duly completed, must be submitted by all tenderers and returned with the tender submission.

Name of Contestant: _____

Address:

Please tick Yes or No as appropriate to the following statements relating to the current status of your organization:

1. The Contestant is bankrupt or is being wound up; or whose affairs are being administered by the court, who has entered into arrangement with creditors or who has suspended business activities or who is in any analogous situation arising from a similar procedure under national law and regulations.

[YES] [NO]

2. The Contestant is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or administration by the court for an arrangement with creditors or of any other similar proceedings under national laws or regulations.

[YES] [NO]

3. The Contestant has been convicted of an offence concerning professional conduct by a judgment which had the force of *res judicata* in accordance with the laws of Malta.

[YES] [NO]

4. The Contestant has been declared guilty of grave professional misconduct proven by any means which the contracting authorities can demonstrate.

[YES] [NO]

5. The Contestant has not fulfilled the obligations relating to the payment of social security contributions in accordance with the law of Malta or the country in which he is established.

[YES] [NO]

6. The Contestant has not fulfilled obligations relating to the payment of taxes in accordance with the legal provisions of Malta or the country in which he is established.

[YES] [NO]

7. The Contestant is guilty of serious misrepresentation in supplying the information required under these regulations or has not supplied such information.

[YES] [NO]

8. The Contestant is the subject of conviction by final judgment for one or more reasons listed below:

- (a) participation in a criminal organization, as defined in Article 2(1) of Council Joint Action 98/733/JHA;
- (b) corruption, as defined in Article 3 of the Council Act of 26 May 1997 and Article 3(1) of Council Joint Action 98/742/JHA respectively;
- (c) fraud within the meaning of Article 1 of the Convention relating to the protection of the financial interests of the European Communities;
- (d) money laundering, as defined in Article 1 of Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering.

[YES] [NO]

I certify that the information provided above is accurate and complete to the best of my knowledge and belief. I understand that the provision of inaccurate or misleading information in this declaration may lead to my organization being excluded from participation in future design contest/s, tenders, etc.

Contestants who have been guilty of making false declarations will incur financial penalties representing 10% of the total value of the contract being awarded. The rate may increase to 20% in the event of a repeat offence within five years of the first infringement.

SIGNATURE: _____

DATE: _____

NAME: _____

TEL: _____

**OTHER INFORMATION TO BE SUBMITTED WITH THE
'DESIGN CONTEST' SCHEME**

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SUBMISSION FORM

Ref: HM.20.09

Contract title: Architectural Services for 'Enhancing the visitor experience in the Ggantija Heritage Park (World Heritage Site) GOZO'

One signed original of this submission form (including original signed statements of exclusivity and availability from all key expert/s proposed, a completed financial identification form, as well as declarations from the Leader and all Partners in the case of a consortium) must be supplied.

'Design Contest' entries being submitted by a consortium (i.e., either a permanent, legally-established grouping or a grouping which has been constituted informally for this specific 'Design Contest') must follow the instructions applicable to the consortium leader and its partners.

1. Submitted by [i.e., the identity of the 'Design Contest' participant]

	Name(s) and address(es) of legal entity or entities submitting this 'Design Contest' entry
Leader*	
Partner 2*	
Etc ... *	

*add / delete additional lines for consortium partners as appropriate. **Note that a sub-contractor is not considered to be a consortium partner.** If this entry is being submitted by an individual legal entity, the name of that legal entity should be entered as 'Leader' (and all other lines should be deleted). Any change in the identity of the Leader and/or any consortium partners between the deadline for receipt of entries indicated in the 'Design Contest' brief to the award of the contract must be communicated to the Contracting Authority as soon as possible.

2 Contact Person (for this 'Design Contest' entry)

Name	
Organisation	
Address	
Telephone	
Fax	
e-mail	

3 Declaration(s)

As part of their entry, each legal entity identified under **Point 1** of this form, including every consortium partner, must submit a signed declaration using the attached format.

[For consortia, the declaration of the Leader must be a signed original but those of other partners may be faxed copies].

4 Statement

I, the undersigned, being the authorised signatory of the above 'Design Contest' entry (including all consortium partners, in the case of a consortium), hereby declare that we have examined and accept without reserve or restriction the entire contents of the 'Design Contest' brief and 'Draft Contract' dossier for the 'Design Contest' procedure referred to above. We offer to provide the services requested in the 'Draft Contract' on the basis of the following

documents, which comprise our 'Design Contest' entry, and all relevant documentation, including:

- Organisation & Methodology;
- Key experts (comprising a list of the key experts and their CVs);
- Declaration (including one from every consortium partner, in the case of a consortium);
- Statements of exclusivity and availability signed by each of the key experts;
- Completed financial identification form (see Annex VI of the draft contract) providing details of the bank account into which payments under the proposed contract should be made in the event that we are awarded the contract.

[If applicable: We undertake to guarantee the eligibility of the sub-contractor(s) for the parts of the services for which we have stated our intention to sub-contract in the Organisation and Methodology.]

We recognise that our 'Design Contest' entry may be excluded if we propose key experts who have been involved in preparing this project or engage such personnel as advisers in the preparation of our entry.

We are fully aware that, in the case of a consortium, the composition of the consortium cannot be modified in the course of the selection procedure. We are also aware that the consortium partners would have joint and several liability towards the Contracting Authority concerning participation in both the above 'Design Contest' procedure and any contract awarded to us as a result of it.

This entry is subject to acceptance within the validity period stipulated in clause 6 of the Instructions to tenderers. Signed on behalf of the contestant:

Name	
Signature	
Date	

FORMAT OF THE DECLARATION

To be submitted on the headed notepaper of the legal entity concerned

<Date>

<Name and address of the **Heritage Malta**>

Your ref: HM.20.09

Dear Sir/Madam

CONTESTANT'S DECLARATION

In response to your invitation to participate in the 'Design Contest' procedure for the above contract, we hereby declare that we:

- offer to deliver, in accordance with the terms of the 'Design Contest' dossier and the conditions and time limits laid down, without reserve or restriction;
- If our entry is selected, we undertake to provide a performance guarantee of **€10,000**, as required by **Article 12 - Other specific conditions applying to the contract**.
- Our firm/company [and our subcontractors] has/have the following nationality:
[.....]
- are submitting this entry [**on an individual basis**]* / [**as partner of the consortium** led by < name of the leader / ourselves >]* for this contract. We confirm that we are not participating in any other entry for the same contract, whatever the form of the application (as a partner - including leader - in a consortium or as an individual Candidate);
- reconfirm that we are not in any of the situations excluding us from participating in contracts which are listed in the relevant **section of the Public Contracts Regulations 2005 (LN177/2005)**
- agree to abide by the ethics clauses in the relevant **section of the Public Contracts Regulations 2005 (LN177/2005)** and, in particular, have no potential conflict of interests or any relation with other short-listed candidates or other parties in the 'Design Contest' procedure at the time of the submission of this 'Design Contest' entry;
- [have attached a current list of the enterprises in the same group or network as ourselves] / [are not part of a group or network]* and have only included data in the application form concerning the resources and experience of our legal entity;
- will inform the **Heritage Malta** immediately if there is any change in the above circumstances at any stage during the 'Design Contest' procedure or during the implementation of the contract; and
- fully recognise and accept that any inaccurate or incomplete information deliberately provided in this submission may result in our exclusion from this and other contracts.
- we note that the **Heritage Malta** is not bound to proceed with the 'Design Contest' and that it reserves the right to award only part of the contract. It will incur no liability towards us should it do so.

[* Delete as applicable]

In the event that our entry is selected by the **Jury**, we undertake to provide a sworn statement that our situation with regard to the grounds for exclusion listed in the relevant section of the **Public Contracts Regulations 2005 (LN177/2005)** has not altered in the period which has elapsed since the documentary evidence submitted with our application form was drawn up. We also understand that if we fail to provide this proof, together with copies of the diplomas and employers' certificates or references corresponding to the CVs of the key experts if requested to do so, confirmation of bank account details and a contact address for the

contract within 15 calendar days after the date of the letter advising us that our entry has been recommended by the **Jury**, or if the information provided is proved false, the notification will be considered null and void.

Yours faithfully

<Signature of authorised representative of the legal entity >

< **Name and position of authorised representative of the legal entity** >

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STATEMENT OF EXCLUSIVITY AND AVAILABILITY

Publication ref: HM.20.09

I, the undersigned, hereby declare that I agree to participate exclusively with the contestant < entry identification code > in the above-mentioned 'Design Contest' procedure. I further declare that I am able and willing to work for the period(s) foreseen for the position for which my CV has been included in the event that this 'Design Contest' entry is successful, namely:

From	To
< start of period 1 >	< end of period 1 >
< start of period 2 >	< end of period 2 >
< etc >	

I confirm that I am not engaged in another project in a position for which my services are required during the above periods.

By making this declaration, I understand that I am not allowed to present myself as a candidate to any other contestant submitting an entry to this 'Design Contest'. I am fully aware that if I do so, I will be excluded from this 'Design Contest' procedure, the entry may be rejected, and I may also be subject to exclusion from other design contest/s, tender procedures and contracts.

Furthermore, should this entry be successful, I am fully aware that if I am not available at the expected start date of my services for reasons other than ill-health or *force majeure*, I may be subject to exclusion from other design contest/s, tender procedures and contracts and that the notification of award of contract to the contestant may be rendered null and void.

Name	
Signature	
Date	