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VOLUME 2

SECTION 3: PARTICULAR CONDITIONS

These conditions amplify and supplement, if necessary, the General Conditions governing the Contract.

Unless the Particular Conditions provide otherwise, those General Conditions remain fully applicable. The numbering of the Clauses of the Particular Conditions is not consecutive but follows the numbering of the Clauses of the General Conditions.

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Clause 1 - General Provisions

1.1 Definitions

1.1.1 The Contract

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

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

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

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

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

Wherever the expression "Technical Specification" appears, it shall be deemed to be synonymous with "Specification".

1.1.2 Parties and Persons

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

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

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

1.1.2.11 "Beneficiary" or "End Recipient" is The Directorate General of Infrastructure Investments (DGII) and means the owner of the project after taking-over of the Works according to the system established under Instrument for Pre-accession Assistance (IPA) II. In this contract the Employer acts autonomously but in the interest of the End Recipient.

Add Subparagraph 1.1.2.12 as follows:

1.1.2.12 "Notification Letter" means the letter sent by the Employer to the Tenderer notifying that it intends to award the Contract to the Tenderer, provided he submits required documentation. If the Contractor submits satisfactory documentation within the time requested, the Employer will then issue the Contract for signature.

1.1.2.13 "**EUD"** means the Delegation of the European Union to Turkey.

1.1.6 Other Definitions

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

"**Eligible Source Countries**" means; all countries eligible for Instrument for Pre-Accession Assistance-2 (IPA-2) (Council Regulation (EC) No 231/2014 of 11 March 2014 establishing an instrument for pre-accession assistance (IPA II))

Please also refer to document A2a;

http://ec.europa.eu/europeaid/prag/annexes.do?chapterTitleCode=A

1.5 Priority of Documents

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

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

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

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

1.6 Contract Agreement

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

The contractor shall sign and return Contract Form together with all its forms and schedules within 30 days of the date the contractor receives the draft Form already signed by the Employer. The contract shall not be valid if not submitted together with the Performance Security as described in Sub-Clause 4.2 [*Performance Security*] of these Particular Conditions.

1.10 Employer's Use of Contractor's Document

In the second paragraph, after the word "Employer", **insert** "and the End Recipient".

In the last sentence, after the word "Employer", **insert** "or the End Recipient".

Clause 2 - The Employer

Add a new **Sub-Clause 2.6** as follows:

2.6 The End Recipient

Unless authorized the End Recipient shall have no authority to amend or to issue instructions under the Contract, either on behalf of the Employer or the Engineer.
Should the Contractor receive any communication from the End Recipient, the Contractor shall give notice to the Employer of the End Recipient's communication, with a copy to the Engineer indicating if it considers the End Recipient's communication to be a Variation or amendment to the Contract. The Contractor shall not amend or vary the Works based on any communication from the End Recipient, unless and until it receives an instruction from the Engineer to vary the Work under Clause 13 [Variations and Adjustments] or it enters into an agreement with the Employer to amend the Contract.
If the Contractor takes any action pursuant to an End Recipient's communication without first obtaining confirmation of the communication from the Employer and/or Engineer, the Contractor shall not be entitled to additional payment, or an extension of the Time for Completion, and the Employer shall be discharged from all liability in connection with any claim in respect of the End Recipient's communication.
This Particular Condition 2.6 will remain in effect throughout the life of the Contact, including after taking-over of the Works, and the possible transfer of title and ownership of the Works to the End Recipient has occurred.

Clause 4 - The Contractor

4.1 Contractor's General Obligations

Add at the end of the fourth paragraph of Sub-Clause:

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

4.2 Performance Security

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

The contractor shall, together with the return of the countersigned contract, furnish the Contracting Authority with a Performance Security for the full and proper performance of the contract.

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

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

a) the issuance of Performance Certificate under Sub-Clause 11.9 [*Performance Certificate*],

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

Add at the end of the Sub-Clause:

Whenever the Engineer determines an addition or a reduction to the Contract Price as a result of a change in cost and/or legislation, or as a result of a Variation amounting to more than 10 percent of the portion of the Contract Price, the Contractor shall, at the Engineer's written request promptly increase, or decrease, as the case may be, the value of the Performance Security by a corresponding percentage. Where the Contractor is a joint venture/consortium, the Performance Security shall be in the form of a single security and shall be either in the name of the joint venture/consortium or in the name of the leader.

4.4 Subcontractors

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

The value of the permanent Work which the Contractor may Subcontract shall not exceed the maximum percent as stated in the Appendix to Tender. If no such percentage is stated in the Appendix to Tender this provision shall not apply.

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

The Contractor shall ensure that all its Subcontractors and suppliers are natural and/or legal person from one of the Eligible Source Countries as defined under Particular Condition, Sub-Clause 1.1.6.10 *[Other Definitions]*.

Subcontractors must satisfy the eligibility criteria applicable for the award of the Contract and they cannot be in any of the situations excluding them from participating in contracts which are listed in the current Section 2.6.10.1 [*Grounds for exclusion*] of the Practical Guide to Contract Procedure for EU External Actions.

4.6 Co-operation

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

4.10 Site Data

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

f) existing utilities and infrastructure.

4.18 Protection of the Environment

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

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

4.21 Progress Reports

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

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

Clause 5 - Design

5.5 Training

Replace "Employer's personnel" with "End Recipient's Personnel" in the first line of this Sub-clause.

Clause 6 – Staff and Labour

6.1 Engagement of Staff and Labour

Add at the end of sub clause:

The Contractor shall ensure that foreign personnel employed by him for the execution of the Works are provided with the required resident visas and work permits. Upon request of the Contractor, the Employer shall use its best endeavours to assist the Contractor in obtaining resident visas and or work permits for foreign personnel employed for the Work.

6.3 Persons in the Service of Employer

Insert at the end of the sentence:

and the End Recipient's Personnel

6.9 Contractor's Personnel

Insert at the beginning of the Sub-Clause:

The Contractor shall obtain prior consent of the Engineer of replacements of key Contractor's Personnel. The Engineer's consent shall not be unreasonably withheld or delayed. A position shall be considered as a "key" position, if it was described as such in the Tender.

Clause 7 - Plant, Materials and Workmanship

Add a new **Sub-Clause 7.9** as follows

7.9 Rules of origin

All Goods to be incorporated in or required for the Works shall have their origin in any eligible source country as defined in Sub-clause 1.1.6.10. However, they may originate from any country when the amount value of the supplies and materials to be purchased is below EUR 100.000.

A product cannot originate in a country in which no production process has taken place. On the other hand, the country of production is not necessarily the country of origin but only when the relevant provisions of Council Regulation (EEC) 2913/92 and its implementing regulation are fulfilled.

Furthermore, the country of origin is not necessarily the country from which the goods have been shipped and supplied. Where there is only one country of production, the origin of the finished product is easily established. However, in cases where more than one country is involved in the production of goods it is necessary to determine which of those countries confers origin on the finished

goods. The country of origin is deemed to be the country in which the goods have undergone their last, economically justified, substantial transformation and the provisions of Article 24 of the Community Customs Code must therefore be applied on a case by case basis to those goods.

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

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

Clause 8 – Commencement, Delays and Suspension

8.1 Commencement of Work

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

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

8.3 Programme

Add the following Subparagraph (e)

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

Clause 11 – Defects Liability

11.7 Right of Access

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

Clause 12 - Tests after Completion

12.1 Procedure for Test after Completion

Delete the first paragraph and sub-paragraphs (a) and (b) of the Sub-Clause and **substitute** with:

If Tests after Completion are specified in the Contract, this Clause shall apply.
Unless otherwise stated in these Conditions;

a) the Employer, assisted as appropriate by the End Recipient, shall provide all electricity, equipment, fuel, instruments, labour, materials, and suitably qualified and experienced staff, as are necessary to carry out the Tests after Completion efficiently, and

b) the Employer, assisted as appropriate by the End Recipient, shall carry out the

Tests after Completion in accordance with the manuals supplied by the Contractor under Sub-Clause 5.7 [*Operation and Maintenance Manuals*] and such guidance as the Contractor may be required to give during the tests; and in the presence of such Contractor's Personnel as either Party may reasonably require.

insert in the last paragraph **after** "Employer's":
*"*and/or the End Recipient's*"*

Add a new **Sub-Clause** 12.5 as follows

12.5 Operational Costs of Consumables

Tests after Completion shall include monitoring to determine the actual quantities consumed for key consumable items for the operation of the Works and such monitoring shall comply with the Employers Requirements.

Clause 13 - Variations and Adjustments

13.5 Provisional Sums

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

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

13.6 Daywork

Add at the beginning of the second paragraph:
To the extent not already contained in the Daywork schedules, before.

Clause 14 - Contract Price and Payment

14.1 The Contract Price

Add new sub-paragraph **(e)** as follows:

(e) the Contractor shall submit to the Engineer, within 28 days after the commencement date, a proposed breakdown of each lump sum price in the schedules. The Engineer may take account of the breakdown in preparing payment certificates, but shall not be bound by it.

The Engineer shall agree or determine the value of those parts of the Works which are to be measured, in accordance with Sub-Clause 3.5 [*Determinations*]. Measurement shall be made of the net actual quantities of those parts, notwithstanding local practice. Wherever the Engineer requires any part of the Works to be measured, reasonable notice should be given to the Contractor's Representative, who shall:

(a) promptly either attend or send another qualified representative to assist the Engineer in making the measurement, and

(b) supply any particulars requested by the Engineer.

If the Contractor fails to attend or send a representative, the measurement made by (or on behalf of) the Engineer shall be accepted as accurate.

Except as otherwise stated in the Contract, wherever any Permanent Works are to be measured by records, they shall be prepared by the Engineer. The Contractor shall, as and when requested, attend to examine and agree the records with the Engineer, and shall sign the same when agreed. If the Contractor does not attend to examine and agree these records, they shall be accepted as accurate.

If the Contractor examines and disagrees the records, and/or does not sign them as agreed, then the Contractor shall notify the Engineer of the respects in which the records are asserted to be inaccurate. After receiving this notice, the Engineer shall review the records and either confirm or vary them. If the Contractor does not so notify the Engineer with 14 days after being requested to examine the records, they shall be accepted as accurate.

14.7 Payment

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

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

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

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

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

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

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

14.8 Delayed Payment

Delete the second paragraph of the **Sub-Clause** and **substitute with**:

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

14.9 Payment of Retention Money

Add the following at the end of the Sub-Clause:

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

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

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

Clause 17 – Risk and Responsibility

17.3 Employer's Risks

In sub-paragraph f), after "Employer"**, insert** "or the End Recipient".

17.5 Intellectual and Industrial Property Rights

In the first line of sub-paragraph b), after "Employer", **insert:** "or by the End Recipient".
insert after "*Employer*" in the first line of paragraph four: "or by the End Recipient"

Clause 18 – Insurance

18.1 General Requirements for Insurances

Insert the following as new second paragraph:

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

Delete the first sentence of paragraph 5 of this Sub-Clause, and **substitute with**:

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

Add new **Sub-Clause 18.5** as follows**:**

18.5 Insurance for Design

The Contractor shall affect professional indemnity insurance which shall cover the risk of professional negligence in the Design of the Works. This insurance shall be for a limit of not less than specified in Appendix to Tender. The Contractor shall use his best endeavours to maintain the professional indemnity insurance in full force and effect until the issue of the Performance Certificate. The Contractor undertakes to notify the Employer of any extending, renewing or reinstating this insurance.

Clause 20 - Claims, Disputes and Arbitration

20.7 Failure to Comply with Dispute Adjudication Board's Decision

Delete Sub-Clause 20.7 and **substitute** with:
In the event that a Party fails to comply with any decision of the DAB, whether binding or final and binding, then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under Sub-Clause 20.6 [*Arbitration*] for summary or other expedited relief, as may be appropriate. Sub-Clause 20.4 [*Obtaining Dispute Adjudication Board's Decision]* and Sub-Clause 20.5 [*Amicable Settlement*] shall not apply to this reference.

Add new **Clauses 21 and 22** as follows**:**

Clause 21 Ethics Clauses

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

Without the Contracting Authority's prior written authorisation, a Contractor and his staff or any other company with which the Contractor is associated or linked may not, even on an ancillary or subcontracting basis, supply other services, carry out works or supply equipment for the project.

This prohibition also applies to any other programmes or projects that could, owing to the nature of the contract, give rise to a conflict of interest on the part of the Contractor.

When putting forward a candidacy or tender, the candidate or tenderer shall declare that it is affected by no conflict of interest and has no particular link with other tenderers or parties involved in the project. Should such a situation arise during execution of the contract, the Contractor must immediately inform the Contracting Authority.

The Contractor must at all times act impartially and as a faithful adviser in accordance with the code of conduct of his profession. He shall refrain from making public statements about the project or services without the Contracting Authority's

prior approval. He may not commit the Contracting Authority in any way without its prior written consent.

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

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

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

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

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

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

Such unusual commercial expenses are commissions not mentioned in the main contract or not stemming from a properly concluded contract referring to the main contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commissions paid to a company which has every appearance of being a front company. The Contractor undertakes to supply the Commission on request with al l supporting documents relating to the conditions of the contract's execution. The Commission may carry out whatever documentary or on-the-spot checks it deems necessary to find evidence in cases of suspected unusual commercial expenses.

Clause 22 – Checks and Audits By European Union Bodies

The Contractor will allow the European Commission, the European Anti-Fraud Office and the European Court of Auditors to verify, by examining the documents and to make copies thereof or by means of on-the-spot checks, including checks of original documents, the implementation of the contract. In order to carry out these verifications and audits, the EU bodies mentioned above shall be allowed to conduct a full audit, if necessary, on the basis of supporting document.

ts for the accounts, accounting documents and any other document relevant to the financing of the project. The Contractor shall ensure that on-the-spot accesses is available at all reasonable times, notably at the Contractor's offices, to its computer data, to its accounting data and to all the information needed to carry out the audits, including information on individual salaries of persons involved in the project. The

Contractor shall ensure that the information is readily available at the moment of the audit and, if so requested, that data be handed over in an appropriate form. These inspections may take place up to 7 years after the final payment.

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

To this end, the Contractor undertakes to give appropriate access to staff or agents of the European Commission, of the European Anti-Fraud Office and of the European Court of Auditors to the sites and locations at which the contract is carried out, including its information systems, as well as all documents and databases concerning the technical and financial management of the project and to take all steps to facilitate their work. Access given to agents of the European Commission, European Anti-Fraud Office and the European Court of Auditors shall be on the basis of confidentiality with respect to third parties, without prejudice to the obligations of public law to which they are subject. Documents must be easily accessible and filed so as to facilitate their examination and the Contractor must inform the Contracting Authority of their precise location.
The Contractor guarantees that the rights of the European Commission, of the European Anti-Fraud Office and of the European Court of Auditors to carry out audits, checks and verification will be equally applicable, under the same conditions and according to the same rules as those set out in this Article, to any sub-Contractor or any other party benefiting from EU budget/EDF funds.