



# Secretariat

24 February 2021

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## Administrative instruction

### Consultants and individual contractors

The Secretary-General, for the purpose of setting out provisions for obtaining the temporary services of consultants and individual contractors, hereby promulgates the following:

#### Section 1

##### Scope of application

1.1 The present instruction sets out the provisions applicable to contracts that are issued by the International Seabed Authority to consultants and individual contractors.

#### Section 2

##### Definitions

2.1 The following definitions apply for the purpose of the present instruction:

(a) A consultant, being an individual or an institutional or corporate entity, is a recognized authority or specialist in a specific field, engaged under a temporary contract in an advisory or consultative capacity to the secretariat of the Authority. A consultant must have special skills or knowledge not normally possessed by the regular staff of the secretariat and for which there is no continuing need in the secretariat. The functions of a consultant are results-oriented and normally involve analysing problems, facilitating seminars or training courses, preparing documents for conferences and meetings and presenting them at those events, or writing reports on the matters within their area of expertise on which their advice or assistance is sought;

(b) An individual contractor is an individual engaged from time to time under a temporary contract to provide support, expertise, skills or knowledge for the performance of a specific task or piece of work, which would be short-term by nature, against the payment of an all-inclusive fee. The work assignment may involve full-time or part-time functions similar to those of staff members, such as the provision of translation, editing, conference services, language training, public information, secretarial or clerical and part-time maintenance services or other functions that could be performed by staff.



### **Section 3** **Conditions for contracting**

#### *Terms of reference*

3.1 Heads of offices are responsible for ensuring that detailed terms of reference describing the work to be performed are prepared well in advance of the engagement of the consultant or individual contractor and submitted in a timely manner to the Office for Administrative Services for processing.

3.2 The terms of reference are mandatory and shall form part of the contract signed between the Authority and the consultant or individual contractor. The terms of reference shall include the outputs to be delivered, the functions to be performed and the payment schedule. The outputs and functions shall be specific, measurable, attainable, results-based and time-bound and include:

- (a) Tangible and measurable outputs, objectives and targets of the work assignment, as well as specific activities to achieve the required outputs and targets;
- (b) Specific delivery dates and details as to how the work must be delivered (e.g., electronic submission or hard copy). The dates and details shall be subdivided into “milestones” where appropriate;
- (c) Indicators for the evaluation of outputs (including timeliness, achievement of goals and quality of work);
- (d) The name and title of the supervisor(s).

3.3 Consultants and individual contractors may be engaged only when the following conditions are met:

- (a) The assignment is of a temporary nature;
- (b) The need for the required services cannot be met from within the current staff resources of the secretariat owing to a lack of specialized knowledge and/or expertise or capacity;
- (c) The services performed clearly relate to programmed or mandated activities in the work programme of the office concerned and/or specific decisions of the organs of the Authority.

3.4 Consultants and individual contractors may not be engaged:

- (a) As a means of applying a probationary period to candidates prior to offering them a staff appointment;
- (b) Where any representative, certifying, approving authority and/or supervisory responsibility would be required.

3.5 Consultants shall not perform the functions of regular and continuing staff members. Consultants and individual contractors shall not be involved in decisions affecting the status, rights and entitlements of staff members.

3.6 The services to be provided by consultants or individual contractors should not duplicate work or activities already done, being done or about to be done by other individuals or offices of the secretariat.

#### *Contracting of former and retired staff members*

3.7 A former or retired staff member may be engaged following consultation with the Office for Administrative Services as necessary, on a contract subject to the following provisions:

(a) A minimum of a one-month break is applied between separation or retirement of the former or retired staff member and re-engagement on a contract;

(b) The former staff member did not separate from the Authority or another organization of the United Nations common system for any of the following reasons: abandonment of post, misconduct, dismissal, non-renewal or termination of appointment for unsatisfactory service, and/or resignation in lieu of disciplinary action;

(c) There are no other qualified and readily available candidates to perform the required functions, and the engagement of the former or retired staff member with the secretariat will not adversely affect the career development opportunities of existing staff members.

3.8 The fees payable to a former staff member shall not be based on the level of remuneration that the former staff member held before separation, but rather on the nature and complexity of the assignment performed.

3.9 The contracting of a retired staff member who is in receipt of a benefit from the United Nations Joint Staff Pension Fund, is subject to the following restrictions:

(a) The retired staff member may not be hired for more than six months per calendar year;

(b) The retired staff member may not be contracted at a higher equivalent level than that at which he or she separated from the Authority or from an organization of the United Nations common system.

#### *Contracting of family members and spouses*

3.10 Contracts shall not be issued to a person whose father, mother, son, daughter, sister or brother works for the secretariat as a staff member or in a non-staff capacity.

3.11 Spouses of staff members may be contracted simultaneously, provided that:

(a) They are fully qualified for the assignment and were selected in accordance with the competitive selection process requirements as stipulated in the present instruction;

(b) They are not superior or subordinate in the line of authority to their spouse, or where a conflict of interest could be perceived because of the nature of the work;

(c) They are not participating in any review or decision-making process that affects the status or entitlements of their spouse, or vice versa.

3.12 Spouses of heads of offices may not be engaged as consultants or individual contractors in the same office.

## **Section 4**

### **Selection process**

4.1 In the process of selecting a consultant or individual contractor, heads of offices are responsible for instituting competitive selection procedures in accordance with the Financial Rules of the Authority (ISBA/ST/SGB/2008/02). The competitive selection procedure may take several forms, including the evaluation of individuals identified from a roster of qualified individuals maintained by the Office for Administrative Services, through a call for proposals on the website of the Authority, through the issuance of a consultancy or individual contractor opening in the electronic platform provided for this purpose or through any other appropriate means. For each assignment, every effort shall be made to shortlist for consideration a minimum of three candidates from the widest possible geographical basis. Travel

costs may be considered but may not distort the geographical balance in the awarding of contracts.

4.2 In the final selection, careful scrutiny of the terms of reference, the competitive cost and the quality of work, as well as the qualifications, competencies, expertise and experience of all suitable candidates and any potential conflict of interest, should be taken into account. The final selection shall be confirmed by the relevant head of office and recorded in a selection report.

4.3 The head of office may engage a consultant or individual contractor even though the person was the only candidate considered, provided a reasoned and documented justification is recorded in a selection report.

4.4 All required information on consultants and individual contractors, including the call for proposals, proposals submitted by the shortlisted candidates and their curriculum vitae, as well as the selection report, should be submitted to the Office for Administrative Services for official file purpose.

#### *Certification of good health*

4.5 Before commencing work, a consultant or individual contractor, where appropriate, shall submit a certificate of good health issued by a medical practitioner, and assume all costs that may occur in relation to the certificate of good health. No certificate of good health is required when the consultant or individual contractor works solely from home for less than 30 days.

### **Section 5 Budgetary policy**

5.1 The costs incurred for the services of consultants or individual contractors shall be charged exclusively to funds specifically authorized for the relevant programme or budget item. Such costs shall always be coded under the appropriate object of expenditure for consultants or individual contractors.

### **Section 6 Contractual terms and conditions**

#### *Contract documents*

6.1 Consultants and individual contractors shall be engaged under contracts signed by the Authority directly with the individual concerned, or with the institutional or corporate entity concerned.

6.2 The General Conditions of Contracts for the Services of Consultants and Individual Contractors (annex I) apply to all consultants and individual contractors, independent of the value of their contract, and will be incorporated into their contracts signed with the Authority. The General Conditions of Contracts may not be changed or modified.

6.3 Consultants and individual contractors shall not commence work or travel until the relevant contract has been duly approved, signed by both parties and returned to the responsible office.

6.4 Following the confirmation of the selection of the consultant or individual contractor by the relevant head of office, the Office for Administrative Services should collect, as soon as possible, all the required information, including the terms of reference, available funds and the banking details of the selected candidate for the contract, and prepare the contract for signatures within seven working days.

6.5 At the request of the relevant head of office, all communications between the Office for Administrative Services and the consultant or individual contractor should be copied to the head of office in charge of supervising the contract.

#### *Legal status*

6.6 Consultants and individual contractors serve in their own capacity and not as representatives or agent of a Government or of any other authority external to the Authority. They are neither “staff members” under the Staff Regulations of the Authority nor “officials” for the purpose of the Protocol on the Privileges and Immunities of the International Seabed Authority. They may, however, be given the status of “expert on mission for the Authority” in the sense of article 9 of the Protocol.

#### *Standards of conduct*

6.7 Consultants and individual contractors shall respect the impartiality and independence of the secretariat and shall neither seek nor accept instructions regarding their services for the Authority performed under the contract from any Government or from any source external to the Authority. During the period of their services for the Authority, consultants and individual contractors shall refrain from any conduct that would adversely reflect on the Authority and shall not engage in any activity that is incompatible with the aims and objectives of the Authority. They are required to strictly adhere to the secretariat policies on prohibition of harassment, sexual harassment and abuse of authority and other policies and instructions relating to proper conduct in the secretariat.

6.8 Consultants and individual contractors shall exercise the utmost discretion in all matters relating to the discharge of their functions. Unless otherwise authorized by the head of office concerned in the Authority, they may not communicate at any time to the media or to any institution, person, Government or other external authority any information that has not been made public and that has become known to them by reason of their association with the Authority; nor shall they at any time use such information to private advantage. They may not use such information without the written authorization of the Authority. These obligations do not lapse upon cessation of their service with the Authority.

6.9 The Authority may at any time require the consultants and individual contractors to give a written undertaking, in the form required by the Authority, relating to the non-disclosure of confidential information. The consultants and individual contractors should promptly arrange for any such undertaking to be completed and placed on official record.

6.10 The provisions of article 168 of the United Nations Convention on the Law of the Sea related to the responsibilities of the staff of the Authority shall apply, mutatis mutandis, to the consultants and individual contractors. This requirement should be incorporated in the written undertaking referred to in section 6.9.

#### *Title rights*

6.11 The Authority shall be entitled to all property rights, including but not limited to patents, copyrights and trademarks, with regard to material that bears a direct relation to, or is made in consequence of, the services provided to the Authority by a consultant or an individual contractor. At the request of the Authority, the consultant or individual contractor shall assist in securing such property rights and transferring them to the Authority in compliance with the requirements of the applicable law.

*Duration of contract*

6.12 The duration of the contract shall be directly linked to the terms of reference as set out in the contract.

*Work permits and related authorizations*

6.13 For internationally engaged consultants or individual contractors, who are required by the nature of their assignment to work in a country other than their own country of permanent residence, the Authority may assist the consultant or individual contractor in obtaining the necessary visas and/or work permits.

*Remuneration*

6.14 As a general principle, the fees payable to a consultant or individual contractor shall be the minimum amount necessary to obtain the services required by the Authority.

6.15 If deemed necessary, the head of office concerned may indicate the approximate expected fee levels in their request or advertisement, which shall be guided by applicable market rates for the type, quality and volume of services required. Amounts paid in connection with travel undertaken by the consultant in accordance with sections 6.25 and 6.26 below shall not be taken into account for remuneration purposes.

6.16 Heads of offices shall keep records of how the fee level was determined.

6.17 Detailed policy guidelines and formulas for the determination of the appropriate level of remuneration are provided in annex II to the present instruction.

*Payment*

6.18 Consultants or individual contractors may be paid at a daily, weekly or monthly rate, or on a lump-sum basis, which represents the total value of the services to the Authority. The total remuneration payable to a consultant by the Authority shall be specified in the contract in terms of gross amounts.

6.19 Payment of fees established on a lump-sum basis shall normally take place upon certification, by the head of office concerned, of satisfactory completion of the work. If the contract provides for payment in instalments upon the completion of clearly identified phases of the work to be performed, payment shall be made upon certification, by the head of office concerned, that each phase has been successfully completed. No payment shall be made if the consultant fails to complete the service specified in the contract to the satisfaction of the Authority. If the service is carried out partially, a determination shall be made as to what amount, if any, is to be paid, based on that part of the work completed.

6.20 In general, fee advances for all individual contracts shall not be granted. However, a maximum of 40 per cent of the total contract value may be authorized by the head of office in cases where advance purchases, for example, for supplies or travel, may be necessary.

6.21 In cases where the payment of fees is made in instalments, the final instalment may not be less than 10 per cent of the total value of the contract and will be payable only upon satisfactory completion of the services and the certification thereof by the head of office concerned. The payment of instalments should be directly linked with satisfactory deliverables at specific time intervals, as certified by the head of office concerned.

*Taxes on income*

6.22 The fees of consultants and individual contractors are expressed in gross amounts. Consultants and individual contractors are responsible for determining their tax liabilities and for the payment of any taxes and/or duties, in accordance with local laws. The Authority does not reimburse consultants or individual contractors for any taxes, duties or other contribution payable by the consultants or individual contractors on payments made under the contract. The Authority does not issue statements of earnings to consultants or individual contractors.

*Contracts with token fees*

6.23 Individuals with specific expertise who volunteer their services to the Authority for no fee and who travel on behalf of the Authority may be issued an individual contract with a token fee (e.g., \$1) by the head of office concerned, following consultation with the Office for Administrative Services as necessary. Where appropriate, they may be paid travel expenses, including daily subsistence allowance, in accordance with sections 6.25 and 6.26 below.

*Currency of payment*

6.24 The currency of payment shall be specified in the contract. Consultants or individual contractors who are not required by the Authority to travel outside the country of their usual residence will normally be paid in the currency of that country. Those who are required to travel outside the country of their usual residence may, in addition to receiving a daily subsistence allowance, receive their remuneration in another currency when appropriate.

*Travel*

6.25 If the Authority determines that the consultant or individual contractor needs to travel in order to perform the assignment, that travel shall be specified in the contract and provided for by the Authority. In accordance with the applicable provisions under the administrative instruction on official travel,<sup>1</sup> when travel is authorized for consultants or individual contractors, economy class shall be the standard of accommodation for air travel in all cases and irrespective of the duration of the journey, unless determined otherwise by the Secretary-General, taking into account the circumstances of the traveller (such as for health reasons) and the interests of the Authority.<sup>2</sup>

6.26 Consultants and individual contractors authorized to travel shall receive a daily subsistence allowance that shall comprise the total contribution of the Authority towards such expenses as meals, lodging, gratuities and other such payments made for services rendered. The payment of the daily subsistence allowance shall be made on the same basis as staff members, except where otherwise expressly provided, and in accordance with a schedule of rates established from time to time by the International Civil Service Commission.

*Training*

6.27 Consultants and individual contractors shall not receive training at the expense of the Authority.<sup>3</sup>

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<sup>1</sup> See section 4.3 of [ISBA/ST/AI/2020/6](#).

<sup>2</sup> See section 4.6 of [ISBA/ST/AI/2020/6](#).

<sup>3</sup> An exception may be granted for mandatory safety and security-related training or in the context of the implementation of a project or programme where extrabudgetary resources exist for the specific project or programme.

*Life and health insurance*

6.28 The Authority does not provide or arrange life or health insurance coverage for consultants and individual contractors, and consultants and individual contractors are not eligible to participate in the life and health insurance schemes provided by the Authority for its staff members. Consultants and individual contractors are responsible for assuming all costs related to required inoculations and medical treatment.

6.29 The Authority accepts no responsibility for the death, illness or injury of any consultant or individual contractor that is not attributable to the performance of services on behalf of the Authority. Consultants and individual contractors are fully responsible for arranging, at their own expense, such life, health and other forms of insurance covering the period of their services as they consider appropriate. The responsibility of the Authority is limited solely to the payment of compensation for service-incurred death, injury or illness in accordance with section 6.30 below.

*Compensation for service-incurred death, injury or illness*

6.30 Consultants and individual contractors, or their dependants as appropriate, who are authorized to travel at the Authority's expense or who are required under their contract to perform services on the Authority's premises shall be entitled in the event of death, injury or illness attributable to the performance of official duties on behalf of the Authority to compensation equivalent to that provided under appendix B to the Staff Rules of the Authority ([ISBA/ST/SGB/2020/1](#)).

*Malicious acts insurance policy*

6.31 Consultants and individual contractors are covered under the terms of the malicious acts insurance policy.

*Leave*

6.32 Consultants and individual contractors shall not be entitled to any paid leave, including annual leave, sick leave, special leave or official holidays. The fees of consultants and individual contractors, other than those paid on the basis of a lump sum, shall be prorated for any period of absence.

*Final evaluation*

6.33 A final evaluation of the service provided by the consultant or individual contractor shall be conducted at the time of completion of assignment on a designated form, available from the Office for Administrative Services, and placed on file.

6.34 In cases of contract periods longer than six months, interim evaluations should be undertaken by the supervisor as designated in the terms of reference.

6.35 The final evaluation shall measure the achievement of goals and the quality and timeliness of work, as stipulated in the terms of reference. If output is evaluated as less than fully satisfactory, no further contracts shall be granted to the consultant or individual contractor, and payments may be reduced or withheld entirely (see sect. 6.19).

6.36 The Office for Administrative Services should inform the head of office concerned of previous and relevant final evaluation forms, if any, in order to ensure that the information that they contain is taken into consideration for future engagement or the extension or renewal of the contract signed with the consultant or individual contractor concerned.

*Termination of contract*

6.37 Unsatisfactory or incomplete output or failure to conform to the standards of conduct set out in the present instruction shall lead to termination of contract, without notice, at the initiative of the Authority.

6.38 The contract signed with a consultant or an individual contractor may be terminated before the expiry date of the contract by the party wishing to terminate the contract giving notice in writing to the other party. The period of notice shall be at least 5 days in the case of contracts for a total period of less than two months and at least 14 days in the case of contracts for a longer period.

6.39 In the event of a contract being terminated prior to its due expiry date in that way, the consultant or individual contractor may not be compensated if none of the work has been performed to the satisfaction of the Authority, or shall be compensated on a pro rata basis for no more than the actual amount of work performed to the satisfaction of the Authority. Additional costs incurred by the Authority resulting from the termination of the contract by the consultant or individual contractor may be withheld from any amount otherwise due to the consultant or individual contractor from the Authority.

*Settlement of disputes*

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

6.41 **Arbitration.** Any dispute between the parties arising out of the contract, or the breach, termination or invalidity thereof, unless settled amicably as provided above, shall be referred by either of the parties to arbitration in accordance with the applicable UNCITRAL Arbitration Rules. The number of arbitrators shall be three. The language to be used in arbitral proceedings shall be English. The decisions of the arbitral tribunal shall be based on general principles of international commercial law. The arbitral tribunal shall have no authority to award punitive damages. The parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy or claim.

**Section 7****Responsibilities of offices concerned**

7.1 Where the services of a consultant or individual contractor are required, the head of office shall be responsible for:

- (a) Ensuring that the services to be rendered fulfil the conditions of the definition for either a consultant or an individual contractor set out in section 2 above;
- (b) Ensuring that decisions on selection and all other matters of substance relating to consultants and individual contractors are taken in accordance with the provisions of the present instruction. Any exceptions to or deviations from the provisions of the present instruction shall require the prior approval of the Secretary-General.

7.2 The Office for Administrative Services is responsible for preparing and processing the contracts in accordance with the Financial Rules and the Financial Regulations of the Authority and the provisions of the present instruction.

7.3 The Office for Administrative Services will provide policy guidance, monitor compliance by offices with all the terms, conditions and requirements of the present instruction, and prepare reports annually to the Secretary-General on the hiring and use of consultants and individual contractors, which shall include information on, inter alia, nationality, gender, fees, duration of contract, terms of reference and performance rating.

**Section 8**

**Final provisions**

8.1 The present instruction shall take effect on the date of its issuance.

8.2 Administrative instruction [ISBA/ST/AI/2003/01](#) is hereby replaced.

(Signed) Michael **Lodge**  
Secretary-General

## Annex I

### **General Conditions of Contracts for the Services of Consultants and Individual Contractors**

#### **1. Legal status**

1. The consultant or individual contractor shall have the legal status of an independent contractor vis-à-vis the International Seabed Authority. The contractor [Any representative or employee of the contractor]<sup>1</sup> shall not be regarded, for any purposes, as being either a staff member of the Authority, under the Staff Regulations and Rules of the Authority, or an official of the Authority, for purposes of the Protocol on the Privileges and Immunities of the International Seabed Authority. Accordingly, nothing within or relating to the contract shall establish the relationship of employer and employee, or of principal and agent, between the Authority and the contractor.

#### **2. Standards of conduct**

2. The contractor shall neither seek nor accept instructions from any authority external to the International Seabed Authority in connection with the performance of the obligations under the contract. Should any authority external to the Authority seek to impose any instructions on the contractor regarding the contractor's performance under the contract, the contractor shall promptly notify the Authority and shall provide all reasonable assistance required by the Authority. The contractor shall not take any action in respect of the performance of the contract or otherwise related to the contractor's obligations under the contract that may adversely affect the interests of the Authority, and the contractor shall perform the obligations under the contract with fullest regard for the interests of the Authority. The contractor warrants that the contractor has not offered and shall not offer any direct or indirect benefit arising from or related to the performance of the contract or the award thereof to any representative, official or employee of the Authority. The contractor shall comply with all applicable laws, ordinances, rules and regulations bearing upon the performance of the obligations under the contract.

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

4. The contractor may not at any time communicate any information to any other person, Government or authority external to the Authority or known to them by reason of their association with the Authority that has not been made public, except in the course of their duties or by authorization of the Secretary-General or any designate by the Secretary-General; nor shall the contractor at any time use such information to private advantage. These obligations do not lapse upon termination of the contract with the Authority.

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

5. Title to any equipment and supplies that may be furnished by the Authority to the contractor for the performance of any obligations under the contract shall rest with the Authority, and any such equipment shall be returned to the Authority upon

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<sup>1</sup> Where the contractor is an institutional or corporate consultant, the term "contractor" as used in the present General Conditions includes its representatives and employees.

completion of work under the contract or when no longer needed by the contractor. Such equipment, when returned to the Authority, shall be in the same condition as when delivered to the contractor, subject to normal wear and tear, and the contractor shall be liable to compensate the Authority for any damage or degradation of the equipment beyond normal wear and tear.

6. The Authority shall be entitled to all intellectual property and other proprietary rights, including but not limited to patents, copyrights and trademarks, with regard to products, processes, inventions, ideas, know-how or documents and other materials that the contractor has developed for the Authority under the contract and that bear a direct relation to or are produced, prepared or collected in consequence of, or during the course of, the performance of the contract, and the contractor acknowledges and agrees that such products, documents and other materials constitute works made for hire for the Authority. However, to the extent that any such intellectual property or other proprietary rights consist of any intellectual property or other proprietary rights of the contractor: (a) that pre-existed the performance by the contractor of the obligations under the contract; or (b) that the contractor may develop or acquire, or may have developed or acquired, independently of the performance of the obligations under the contract, the Authority does not and shall not claim any ownership interest thereto, and the contractor grants to the Authority a perpetual licence to use such intellectual property or other proprietary right solely for the purposes of and in accordance with the requirements of the contract. At the request of the Authority, the contractor shall take all necessary steps, execute all necessary documents and, generally, assist in securing such proprietary rights and transferring or licensing them to the Authority in compliance with the requirements of the applicable law and of the contract. Subject to the foregoing provisions, all maps, drawings, photographs, mosaics, plans, reports, estimates, recommendations, documents and other data compiled or received by the contractor under the contract shall be the property of the Authority, shall be made available for use or inspection by the Authority at reasonable times and in reasonable places, shall be treated as confidential and shall be delivered only to authorized officials of the Authority upon completion of work under the contract.

#### **4. Confidential nature of documents and information**

7. Information and data that are considered proprietary by either the Authority or the contractor or that are delivered or disclosed by one of them (“discloser”) to the other (“recipient”) during the course of performance of the contract, and that is designated as confidential (“information”) shall be held in confidence and shall be handled as follows: the recipient of such information shall use the same care and discretion to avoid disclosure, publication or dissemination of the discloser’s information as it uses with its own similar information that it does not wish to disclose, publish or disseminate, and the recipient may use the discloser’s information solely for the purpose for which it was disclosed. The recipient may not disclose confidential information to any other party unless with the discloser’s prior written consent. Subject to and without any waiver of the privileges and immunities of the Authority and its officials, the contractor may disclose information to the extent required by law, provided that the contractor will give the Authority sufficient prior notice of a request for the disclosure of information in order to allow the Authority to have a reasonable opportunity to take protective measures or such other action as may be appropriate before any such disclosure is made. The Authority may disclose information to the extent required pursuant to the United Nations Convention on the Law of the Sea and the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, and the rules, regulations and procedures of the Authority. The recipient shall not be precluded from disclosing information that is obtained by the recipient from a third

party without restriction, is disclosed by the discloser to a third party without any obligation of confidentiality, is previously known by the recipient or is developed at any time by the recipient completely independently of any disclosures hereunder. These obligations and restrictions of confidentiality shall be effective during the term of the contract, including any extension thereof, and, unless otherwise provided in the contract, shall remain effective following any termination of the contract.

8. Confidential information means information that:

- (a) Is by its nature confidential;
- (b) Is designated by the Authority as confidential;
- (c) The contractor knows or ought to know is confidential.

9. Confidential information does not include information that:

- (a) Is or becomes public knowledge by means other than by breach of the contract;
- (b) Is in the possession of the contractor without restriction to disclosure before the date of receipt from the Authority;
- (c) Has been independently developed or acquired by the contractor;
- (d) Was in the possession of the contractor prior to the commencement date of the contract;
- (e) Is obtained by the contractor from a third party that is free to divulge the same.

10. The Authority may at any time require the contractor to give a written undertaking, in a form required by the Authority, relating to the non-disclosure of confidential information. In the written undertaking, the contractor is required to acknowledge that the provisions of article 168 of the United Nations Convention on the Law of the Sea related to the responsibilities of the staff of the Authority apply, mutatis mutandis, to the contractor. The contractor shall promptly arrange for all such undertakings to be given.

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

11. If the contractor is required by the Authority to travel beyond commuting distance from his or her usual place of residence, such travel shall be at the expense of the Authority and shall be governed by conditions equivalent to the relevant provisions of the administrative instruction of the Authority on official travel. In such cases, the travel expenses borne by the Authority shall not exceed the cost of travel by the least costly economy class regularly available or its equivalent when by air, unless a higher standard is approved in advance by, or on behalf of, the Secretary-General of the Authority.

12. Prior to the commencement of the contractor's services in any offices or premises of the Authority or before engaging in any travel required by the Authority or connected with the performance of the contract, the contractor shall submit a certificate of good health provided by a medical practitioner for himself or herself, or for the representative or employee concerned, and certify that he or she, or the representative or employee concerned, is in possession of medical or health insurance during the period of the contractor's services. The contractor shall provide such a certificate of good health and certification of the medical or health insurance that includes medical treatment as soon as practicable following the signature of the contract. The contractor warrants the accuracy of any such certificate of good health, including but not limited to confirmation that the contractor has been fully informed

regarding the requirements for inoculations for the country or countries to which travel may be authorized.

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

14. In the event of the death, injury or illness of the contractor that is attributable to the performance of services on behalf of the Authority under the terms of the contract while the contractor is travelling at the Authority's expense or is performing any services under the contract in any offices or premises of the Authority, [the representative or employee of] the contractor or his or her dependants, as appropriate, shall be entitled to compensation equivalent to that provided under appendix B to the Staff Rules of the Authority.

#### **6. Prohibition on assignments and modifications**

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

16. No modification or change in the contract shall be valid and enforceable against the Authority unless provided by means of a valid written amendment to the contract signed by the contractor or a duly authorized representative thereof and a duly authorized representative of the Authority.

#### **7. Subcontractors**

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

#### **8. Use of the name, emblem or official seal of the authority**

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

## **9. Indemnification**

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

(a) Allegations or claims that the use by the Authority of any patented device, any copyrighted material or any other goods or services provided to the Authority for its use under the terms of the contract, in whole or in part, separately or in combination, constitutes an infringement of any patent, copyright, trademark or other intellectual property right of any third party;

(b) Any acts or omissions of the contractor or of any subcontractor or anyone directly or indirectly employed by them in the performance of the contract that give rise to legal liability to anyone not a party to the contract, including, without limitation, claims and liability in the nature of a claim for workers' compensation.

## **10. Insurance**

20. The contractor shall pay the Authority promptly for all loss, destruction or damage to the property of the Authority caused by the contractor or of any subcontractor or anyone directly or indirectly employed by them in the performance of the contract.

21. The contractor shall be solely responsible for taking out and for maintaining adequate liability and property damage insurance required to meet any of the obligations under the contract and in respect of any tort action or tort claim arising out of the contractor's acts or omissions related to the contract, as well as for arranging, at the contractor's sole expense or at that of its representative or employee, such life, health and other forms of insurance as the contractor may consider to be appropriate to cover the period during which the contractor provides services under the contract. The contractor shall, upon request by the Authority, provide proof of such insurance.

22. The contractor acknowledges and agrees that none of the insurance arrangements that the contractor may make shall in any way be construed to limit the contractor's liability arising under or relating to the contract.

## **11. Encumbrances and liens**

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

## **12. Force majeure and other changes in conditions**

24. In the event of and as soon as possible after the occurrence of any cause constituting force majeure, the contractor shall give notice and full particulars in writing to the Authority of such occurrence or cause if the contractor is thereby rendered unable, wholly or in part, to perform the obligations and meet the responsibilities under the contract. The contractor shall also notify the Authority of any other changes in condition or the occurrence of any event that interferes or threatens to interfere with the contractor's performance of the contract. Not more than 15 days following the provision of such notice of force majeure or other changes in

condition or occurrence, the contractor shall also submit a statement to the Authority of estimated expenditures that will likely be incurred for the duration of the change in condition or the event. Upon receipt of the notice(s) required hereunder, the Authority shall take such action as it considers, at its sole discretion, to be appropriate or necessary in the circumstances, including the granting to the contractor of a reasonable extension of time in which to perform any obligations under the contract.

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

26. Force majeure as used herein means any unforeseeable and irresistible act of nature, any act of war (whether declared or not), invasion, revolution, insurrection, strikes or other labour disturbances, riots, floods, storms, earthquakes, fires or any other acts of a similar nature or force, provided that such acts arise from causes beyond the control and without the fault or negligence of the contractor.

### **13. Termination**

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

28. The Authority may, without prejudice to any other right or remedy available to it, terminate the contract forthwith in the event that: (a) the contractor is adjudged bankrupt, is liquidated or becomes insolvent, applies for a moratorium or stay on any payment or repayment obligations, or applies to be declared insolvent; (b) the contractor is granted a moratorium or a stay or is declared insolvent; (c) the contractor makes an assignment for the benefit of one or more of the contractor's creditors; (d) a receiver is appointed on account of the insolvency of the contractor; (e) the contractor offers a settlement in lieu of bankruptcy or receivership; or (f) the Authority reasonably determines that the contractor has become subject to a materially adverse change in the financial condition that threatens to endanger or otherwise substantially affect the ability of the contractor to perform any of the obligations under the contract.

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

30. A contractor may terminate the contract if: (a) the Authority is in arrears of any payment due under the contract for more than 30 days; (b) the Authority is in breach of any of the terms or conditions under the contract.

31. In the event of any termination of the contract, the Authority shall only be liable to pay the contractor compensation on a pro rata basis for no more than the actual amount of work performed to the satisfaction of the Authority in accordance with the requirements of the contract. Additional costs incurred by the Authority resulting from the termination of the contract by the contractor may be withheld from any amount otherwise due to the contractor from the Authority.

#### **14. Non-exclusivity**

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

#### **15. Taxation**

33. Article 183 of the United Nations Convention on the Law of the Sea provides, inter alia, that within the scope of its official activities, the Authority, its assets and property, its income, and its operations and transactions, authorized by the Convention, shall be exempt from all direct taxation, and that goods imported or exported for its official use shall be exempt from all customs duties. The Authority shall not claim exemption from taxes that are no more than charges for service rendered.

34. In the event that any governmental authority refuses to recognize the exemptions of the Authority from such taxation and customs duties, the contractor shall immediately consult with the Authority to determine a mutually acceptable procedure. The Authority shall have no liability for taxes, duty or other similar charges payable by the contractor in respect of any amounts paid to the contractor under the contract, and the contractor acknowledges that the Authority will not issue any statements of earnings to the contractor in respect of any such payments.

#### **16. Settlement of disputes**

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

36. **Arbitration.** Any dispute between the parties arising out of the contract, or the breach, termination or invalidity thereof, unless settled amicably as provided above, shall be referred by either of the parties to arbitration in accordance with the applicable UNCITRAL Arbitration Rules. The number of arbitrators shall be three. The language to be used in arbitral proceedings shall be English. The decisions of the arbitral tribunal shall be based on general principles of international commercial law. The arbitral tribunal shall have no authority to award punitive damages. The parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy or claim.

**17. Privileges and immunities**

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

**18. Miscellaneous**

38. The contract may be executed by parties with the use of electronic signatures in several counterparts, each of which shall be an original but all of which shall together constitute one and the same instrument.

39. The contract embodies the entire agreement and understanding between the contractor and the Authority and supersedes any and all prior agreements and understandings between parties.

## Annex II

### Fee and remuneration levels for consultants and individual contractors

#### 1. General

1. Subject to the overriding consideration of quality, as a rule the fees payable to a consultant or individual contractor will be the minimum amount necessary to obtain the services required by the International Seabed Authority. Using the guidelines provided below, duly authorized managers may negotiate and establish fees payable to a consultant or individual contractor, provided the fees are within the scope of their authority as outlined in the present instruction.

2. The head of office has the delegated authority to assess and formally determine the level of remuneration for a proposed consultancy.

#### 2. Determination

3. An assignment under a consultant or individual contractor contract does not carry with it a level or grade with respect to a United Nations salary scale. Nonetheless, on the basis of the factors listed below, it should be possible to estimate the United Nations common system equivalent of the level of the assignment (e.g., P-3, P-4) to ensure equity and consistency of fees for consultants and individual contractors. When setting the consultant's or individual contractor's rate of pay, the following factors should be considered:

(a) Level of work in terms of responsibilities and complexity of the assignment;

(b) Degree of specialization required by the assignment;

(c) Knowledge, qualifications, experience and skills required;

(d) Fees paid to the consultant for previous assignments with the Authority.

4. Once the equivalent level of the assignment has been estimated, a fee range, for the purpose of negotiating the contract with the consultant or individual contractor, may then be determined within the minimum and maximum of the level on the basis of the complexity of the assignment and the degree of specialization, knowledge, qualifications, experience and skills required.

#### 3. Fee range

5. The fee range associated with a particular level of assignment is based on: (a) the current gross annual salary scales (before application of staff assessment) applicable to staff in the Professional and higher categories; (b) levels of expertise and professional capacity linked to grades in the salary scale; and (c) special circumstances, including hardship involved in the performance of the work assignment.

6. The following are the fee ranges:

**Level A.** This level is established for the engagement of support services not available in the Authority related to projects or technical tasks of a narrow scope for which limited technical skills or experience are required.

**Level B.** This level is typically used for projects of moderate complexity with either broad scope or limited depth or restricted scope and considerable depth that have an impact on the performance of systems, processes and team(s) within the Authority. This level is typically used for persons with a specialized degree

or training and several years of relevant experience in one of the substantive, technical and/or administrative fields of the Authority.

**Level C.** This level shall be authorized to engage a person with extensive relevant professional experience requiring specialized or technical knowledge and skills. Persons at this level will be expected to develop new approaches, techniques or policies and/or design guidelines, standard operating procedures and a project's theme. The persons would be engaged in projects of broad scope and considerable depth that will have an impact on the overall execution of programmes or service of a function or various interrelated areas. Expected outputs of the consultancy at this level may relate, inter alia, to providing technical support; leading group dynamics; and undertaking report drafting or project-wide proposals.

**Level D.** This level shall be authorized to engage highly specialized persons with extensive relevant experience and the highest level of expertise in the corresponding area of work or programme for which they are engaged. The person's services, work and recommendations, for example, may form one of several contributions to the accomplishment of a crucial programme or service or functional area of a broad scope, involving high complexity and impact. Some of the expected deliverable outputs would primarily relate to the following: providing functional leadership and expert advice; preparing intricate and complex technical papers to working groups; undertaking the drafting of reports or proposals for projects of a large scale or a broad scope. The person's assigned duties may relate to large-scale programmatic and operational activities involving large commitments of staff and funds.

**Level E.** This level can be authorized only by the Secretary-General. The level is reserved for essentially very exceptional arrangements related to services and work to be obtained from a well-known, worldwide authority in a highly specialized area. Normally, these types of engagements may result in programmatic and/or operational activities involving either large commitments of staff and funds or an exceptionally complex programmatic scope, which would carry a significant organizational impact on delivery in terms of strategy, operational re-engineering and planning analytics, usually of an unusual complexity and/or sensitive nature. This level would be aligned to the Assistant Secretary-General/Under-Secretary-General levels or the equivalent ungraded levels for Chairs and Vice-Chairs or high-level representatives.

7. Once the fee range is established, the monthly and daily fee rates are calculated by the Office for Administrative Services and the resulting figure is rounded up to determine the minimum and maximum of the fee range. The fee range is updated periodically in accordance with revisions of the salary scale for the Professional and higher categories based on the annual gross base salaries.

8. The international and national consultant and individual contractor fee ranges daily and monthly rates are set out in detail below.

**International consultants and individual contractor fee ranges: daily and monthly rates effective 1 February 2021**

(In United States dollars)

<i>Levels</i>		<i>Daily rate</i>	<i>Monthly rate</i>
A	Minimum	180.00	3 867.00
	Maximum	240.00	5 012.00
B	Minimum	240.00	4 939.00
	Maximum	380.00	7 870.00

<i>Levels</i>		<i>Daily rate</i>	<i>Monthly rate</i>
C	Minimum	390.00	7 328.00
	Maximum	560.00	10 572.00
D	Minimum	620.00	10 754.00
	Maximum	750.00	13 040.00
E	Minimum	860.00	14 339.00
	Maximum	980.00	15 779.00

**National consultants and individual contractor fee ranges: daily and monthly rates effective 1 February 2021**

(In United States dollars payable in local currency based on the United Nations operational rate of exchange)

<i>Levels</i>		<i>Daily rate</i>	<i>Monthly rate</i>
A	Minimum	40.00	930.00
	Maximum	50.00	1 100.00
B	Minimum	60.00	1 250.00
	Maximum	70.00	1 500.00
C	Minimum	80.00	1 700.00
	Maximum	95.00	2 100.00
D	Minimum	95.00	2 100.00
	Maximum	115.00	2 500.00
E	Minimum	110.00	2 420.00
	Maximum	160.00	3 510.00

9. Proposals for individual contracts with rates above level D must be referred to the Secretary-General for review and a decision. The submissions for rates above level D must include appropriate justification in respect of the tasks involved (complexity of the assignment, number of workdays involved, duration/period, specific task deliverables, work coordination aspects, reporting duties, etc.).

#### 4. Payment

10. Consultants or individual contractors may be paid at a daily, weekly or monthly rate, or on a lump-sum basis, which represents the total value of the services to the Authority. The currency of payment shall be specified in the contract. The total remuneration payable to a consultant by the Authority shall be specified in the contract in terms of gross amounts.

11. Payment of fees established on a lump-sum basis shall normally take place upon certification by the authorized official of satisfactory completion of the work. If the contract provides for payment in instalments upon the completion of clearly identified phases of the work to be performed, payment shall be made upon certification by the authorized official that each phase has been successfully completed. No payment shall be made if the consultant fails to complete the service specified in the contract to the satisfaction of the Authority. If the service is carried out partially, a determination shall be made as to what amount, if any, is to be paid, based on that part of the work completed. A work quality assessment form is available from the Office for Administrative Services.