

**MULTIPLE FRAMEWORK CONTRACT FOR SERVICES IN CASCADE**

**EUSPA/OP/19/26/Lot [X]**

The European Union Agency for the Space Programme (hereinafter referred to as the "EUSPA", the "Agency" or the "**Contracting Authority**"), represented for the purposes of the signature of this framework contract (hereinafter referred to as the "Framework Contract" or "FWC") by Mr Rodrigo da Costa, Executive Director,

on the one part, and

*[Contractor's full official name]*

*[Contractor's official legal form]*

*[Contractor's statutory registration number]*

*[Contractor's full official address]*

*[Contractor's VAT registration number]*

Hereinafter referred to as the "**Contractor**"; represented for the purposes of the signature of this Framework Contract by *[first name, last name, function of Contractor's authorised representative]*

on the other part,

together referred to as "**the Parties**"

HAVE AGREED

to the **special conditions, general conditions for the Framework Contract**, and the following annexes:

<b>Annex II.I</b>	Statement of Compliance to the Specifications and Contractual Baseline [and the Security Aspects Letter - APPLICABLE ONLY TO LOT 2] of EUSPA/OP/19/26/Lot [x] Framework Contract
<b>Annex II.II</b>	Tender Specifications and its annexes including corrigenda and clarification notes
<b>Annex II.III</b>	Contractor's Tender dated [xx/xx/xxx] and relating clarifications received
<b>Annex II.IV</b>	Draft Specific Contract – TEMPLATE (enclosed in the present document)
<b>Annex II.V</b>	Declaration on confidentiality and absence of conflicting professional interest – TEMPLATE
<b>Annex II.VI</b>	Ceilings for Missions to European Union and non-European Union Member States (enclosed in the present document)
<b>Annex II.VII</b>	Deliverables acceptance sheet – TEMPLATE (enclosed in the present document)
<b>Annex II.VIII</b>	Declaration of Background Intellectual Property Rights
<b>Annex II.IX</b>	Declaration of Foreground Intellectual Property Rights
<b>Annex II.X</b>	EUSPA policy on the prevention and management of conflicts of interest with regard to staff members and external workforce & its implementing rules
<b>Annex II.XI</b>	Security Aspects Letter (SAL) [APPLICABLE ONLY TO LOT 2]
<b>Annex II.XII</b>	Template Deliverables Request Form (enclosed in the present document)

All documents issued by the Contractor except its tender (such as end-user agreements or general terms and conditions) are held inapplicable, unless explicitly mentioned in the special conditions of this FWC. If there is any conflict between different provisions in this FWC, the following rules must be applied:

- a) The terms set out in the Special Conditions shall take precedence over those in the General Conditions;
- b) The terms set out in the Framework Contract shall take precedence over the Annexes;
- c) The terms set out in Annex II.I shall take precedence over those in Annex II.II and Annex II.III;
- d) Subject to the provisions under Annex II.I, the terms set out in Annex II.II shall take precedence over those in Annex II.III;
- e) The terms set out in Annex II.III shall take precedence over those in Annexes II.IV-VII;
- f) The provisions set out in the Framework Contract take precedence over those in the Specific Contracts;
- g) The provisions set out in the Specific Contracts take precedence over those in terms of references for service provision;
- h) The provisions set out in the terms of references for services take precedence over those in the respective offer for a request for Specific Contract, unless otherwise agreed in the Specific Contract.

## I. SPECIAL CONDITIONS

### ARTICLE I.1 – SUBJECT MATTER

**I.1.1.** The subject matter of the Framework Contract (hereinafter referred to as ‘FWC’) is the provision of *Lot 1: - Unclassified administrative support services form contractor’s premises (unclassified)” / Lot 2: classified (entailing management of EU classified Information (EUCI)) administrative support ser-vices at EUSPA’s HQ and other offices]* as further specified in Annex II.II – Tender Specifications to this FWC.

**I.1.2.** Signature of the FWC imposes no obligation on the Contracting Authority to conclude any Specific Contracts for the purchase of any services from the Contractor and nothing in this agreement shall be interpreted or construed as a commitment to the entire amount of the FWC.

### ARTICLE I.2 – ENTRY INTO FORCE AND DURATION OF THE FWC

**I.2.1** The FWC shall enter into force on the date on which the last party signs it.

**I.2.2** Execution of the tasks may under no circumstances begin before the date on which the FWC and Specific Contract enter into force.

**I.2.3** The FWC is concluded for a period of 12 (twelve) months with effect from the date on which it enters into force. The FWC is renewed automatically 3 (three) times for 12 (twelve) months each, unless one of the parties receives Formal Notification from the other party of a notice of withdrawal at the latest 3 (three) months before expiry of the on-going 12 months period. Renewal does not change, postpone or defer of any existing obligations. Without prejudice to the fulfilment of the obligations stemming from the execution of the Contract up to the expiry of the concerned 12 months period, the withdrawing Party shall not be liable to pay any compensation to the non-withdrawing Party,

**I.2.4** The Specific Contracts shall be signed by the parties before the FWC expires. The FWC shall continue to apply to such Specific Contracts also after its expiry. However Specific Contracts shall expire no later than 6 (six) months after the expiry of the FWC.

### ARTICLE I.3 – IMPLEMENTATION OF THE FWC

**I.3.1.** The present Contract will be implemented through Specific Contracts to be awarded in cascade.

**I.3.2.** The Contractor is ranked [*first/second*] in cascade.

**I.3.3.** The Contracting Authority may, from the contractor ranked first in cascade request at any time the provision of services falling within the scope of this Contract, through the issuing of a request for Specific Contract.

**I.3.4.** The request for Specific Contract may include tasks to be implemented in Planned Deliverable Mode, in accordance with ARTICLE I.3a.1 and/or Deliverable on Demand Mode, in accordance with ARTICLE I.3b.1, as specified by the Contracting Authority in the request for Specific Contract.

**I.3.5.** Unless the request for Specific Contract details otherwise or agreed by the parties, the Contractor shall

confirm, as soon as possible and, in any case, within five (5) calendar days from the dispatch of the request for Specific Contract, the availability to submit the offer and to provide the services or, in case it cannot accept the request for Specific Contract, it shall inform the Contracting Authority and provide the justification for the impossibility to provide the services requested.

**I.3.6.** Unless the request for Specific Contract details otherwise, the Contractor shall submit an offer in response to the request for Specific Contract dispatched by the Agency within ten (10) working days from the day of dispatch of the request for Specific Contract by the Contracting Authority. The offer shall consist of a technical and a financial part, including all elements evidencing compliance with the Contracting Authority's requirements, as specified in the Terms of Reference, as per ARTICLE I.3a.1 for Planned Deliverable Mode and ARTICLE I.3b.1 for Deliverable on Demand Mode, and the FWC and the Statistical Reporting file (Annex I.H to the Tender Specifications), if so requested.

**I.3.7.** If the offer is accepted, the Contracting Authority sends to the Contractor a Notification Letter for acceptance of the Specific Contract offer, accompanied by a draft specific contract to be signed.

**I.3.8.** Except in case of proven Force Majeure as per ARTICLE II.9 – FORCE MAJEURE, the Contractor shall under no circumstances refuse to conclude Specific Contracts, provided that such Specific Contracts are compliant with the Tender Specifications (Annex II.II) and with the provisions of the present FWC.

**I.3.9.** Within 5 (five) working days of a Notification Letter signed by the Contracting Authority accompanied by a draft Specific Contract, being sent to the Contractor, the Contractor shall provide the Contracting Authority the Specific Contract back, duly signed and dated. The Contracting Authority shall countersign the signed Specific contract within 5 working days of its receipt.

**I.3.10.** The period allowed for the execution of the tasks shall start to run on the date indicated in the Specific Contract and shall observe the schedule specified in it.

## **Article I.3a – PLANNED DELIVERABLE MODE**

### **I.3a.1 – TERMS OF REFERENCE FOR A SPECIFIC CONTRACT IN PLANNED DELIVERABLE MODE**

The Contracting Authority's requests for Specific Contract for Planned Deliverable Mode shall include Terms of Reference for a Specific Contract detailing:

- i. Description of the task in line with section 3.1 of Annex II.II Tender Specification (background, scope, requirements);
- ii. Place of the tasks' performance;
- iii. Deliverables' list and requirements;
- iv. Delivery Schedule;
- v. requirements to perform a Conflict-of-interest analysis and team composition, if applicable;
- vi. required missions (number, frequency, location, etc.), if any and if known;
- vii. Payment Plan;
- viii. The estimated price of the Specific Contract;
- ix. Any further requirements, if relevant;
- i. Deadline for submission of the Contractor's specific offer as per ARTICLE I.3.6 by default, the time-

limit for the submission of a specific offer is 10 (ten) working days from dispatch of the request for Specific Contract by the Contracting Authority to the Contractor.

### **I.3a.2 – CONTENT OF THE SPECIFIC CONTRACT OFFER FOR TASKS IN PLANNED DELIVERABLE MODE**

Within the deadline under ARTICLE I.3.7 the Contractor shall reply by submitting to the Contracting Authority a Specific Contract offer which shall include:

**I.3a.2.1** A Specific Contract technical proposal, addressing all elements proving the compliance with the requirements specified as per ARTICLE I.3a.1 including as a minimum:

- i. Analysis of the scope of the task, identification of the main challenges and risks and the proposed mitigation measures;
- ii. Proposed and implementation methods and approach, presentation of the rationale behind their selection, identified (alternative) solutions and analysis of their pros and cons;
- iii. Proposed implementation schedule for the planned deliverables and its justification;
- iv. Indication of the team of the consultant that will be engaged in the deliverables production, for the purposes of ARTICLE I.3a.1, (and the compliance to the EU CI requirements [for Lot 2]);
- v. Description of the engagement of the consortia members and / or subcontractors in the respective tasks, demonstration of the compliance of the entities / (team proposed to be engaged compliant to the EU CI / crypto requirements relevant for the task [for Lot 2]);
- vi. Analysis and justification of the absence or existence of a professional conflict-of-interest with respect to the scope of the tasks.

**I.3a.2.2** A Specific Contract financial proposal, including as a minimum for the tasks to be delivered in Planned Deliverable Mode:

- i. Maximum price for all planned deliverables, based on the FUPs, and the number of person-hours needed for each deliverable implementation,
- ii. Mission costs estimation per task based on the Travel Rates and the Daily Rates, specified in the FWC financial Proposal (Annex II.III), if applicable
- iii. Payment plan for the Specific Contract, reflecting the implementation schedule proposed in the Specific Contract technical proposal
- iv. Statistic information in a format pre-defined by the Contracting Authority to support Agency's reporting obligations towards the European Commission / EU Member States, which shall include the names of the entities that will be involved in the Specific Contract implementation, their role (primes / subcontractors (at least level N-1)), country of registration, status (Small and Medium Enterprise, public/ private), and the share of the Specific Contract price to be paid to them.

### **Article I.3b – DELIVERABLE ON DEMAND MODE**

#### **I.3b.1 TERMS OF REFERENCE FOR A SPECIFIC CONTRACT IN DELIVERABLE ON DEMAND MODE**

A request for Specific Contract for Deliverable on Demand Mode shall include as a minimum the following requirements:

- i. Description of the technical perimeter/domain for which Deliverables on Demand will be requested according to the modalities under ARTICLE I.3b.3 ,
- ii. Duration of the execution of the services under the concerned Specific Contract;
- iii. and Any further requirements, if relevant.

### **I.3b.2 CONTENT OF THE SPECIFIC CONTRACT OFFER FOR TASKS IN DELIVERABLE ON DEMAND MODE**

Within the deadline of I.3.6 the Contractor shall reply by submitting to the Contracting Authority a Specific Contract offer including:

**I.3b.2.1** a Specific contract technical proposal addressing all elements proving compliance with the requirements specified as per ARTICLE I.3b.1, including as a minimum:

- i. Analysis of the scope of the Specific Contract,
- ii. identification of the main challenges and risks and the proposed mitigation measures,
- iii. Proposed implementation methods and approach, and relevant justification.

**I.3b.2.2** Specific Contract financial proposal, including as a minimum: agreement on the proposed maximum budget, and if relevant information as per ARTICLE I.3a.2.2, iv.

Any of the elements mentioned under ARTICLE I.3a.2.2, i.-iii, if specified in the request for Specific Contract.

### **I.3b.3 IMPLEMENTATION SPECIFIC CONTRACT IN DELIVERABLE ON DEMAND MODE**

Subsequent to the conclusion of a Specific Contract, the Contracting Authority can request services, in line with the scope and requirements provided in the previous articles, under the Specific Contract from the Contractor.

**I.3b.3.1** The request for Deliverables shall include:

- i. Detailed requirements for the deliverable(s) in terms of content and delivery timeline; and
- ii. Request for quotation for the required deliverable (see annex II.XII – DELIVERABLES REQUEST FORM).

**I.3b.3.2** The Contractor shall submit within two (2) working days a quotation for the required deliverable(s) together with an outline of its content and (confirmation of the) delivery schedule.

The Contracting Authority shall have two (2) working days to either:

- Accept the quotation;
- Submit observations/request for amendments; or
- Refuse the quotation.

**I.3b.3.3** In case the Contracting Authority submits observations and/or requests for amendments the Contractor shall have one (1) working day to accept them, at the expiry of which the request for deliverables shall be considered as withdrawn.

**I.3b.3.4** The deadlines mentioned in this article shall apply, unless otherwise provided in the Specific Contract or otherwise agreed by the Parties.

**I.3b.3.5** The communications under this Article and Article I.3c.2 shall be signed by the Contracting Authority's and Contractors' Project officers identified in Article I.8.

## **Article I.3c CASCADE MECHANISM**

### **I.3c.1 APPLICATION OF THE CASCADE FOR PLANNED DELIVERABLE MODE**

The Contracting Authority has the right to request the provision of services from the contractor ranked second in cascade, if the contractor ranked first:

- a) fails to confirm to the Contracting Authority within maximum 5 (five) calendar days since the request for Specific Contract has been dispatched its intention to submit an offer or informs the Contracting Authority that it will not submit an offer for any reason,
- b) fails to reply with an acceptable offer to the request services within 10 (ten) working days from reception of request for Specific Contract, or
- c) replies with an offer which is not compliant or is only partially compliant with the scope and/or requirements set out in the request for Specific Contract,
- d) fails to send the signed Specific Contract to the Contracting Authority within 5 (five) working days from reception of the Specific Contract signed by the Contracting Authority (Article I.3.9.),
- e) is in a situation of professional conflicting interest or in a situation likely to compromise its independence and therefore cannot perform the Specific Contract,
- f) gives rise to any other grounds for termination or partial termination of the FWC or the Specific Contract, including, without limitation, partial termination of a Specific Contract for the part terminated or partially terminated,
- g) has submitted deliverables that have not been accepted or have been only partially accepted, in line with Article I.5.1.4 (ii) or (iii) and Article I.5.1.7 or Article I.5.1.8;
- h) without prejudice to point c) above, has submitted an offer for Specific Contract that is not or only partially acceptable. The Contracting Authority may request from the contractor subsequent in the cascade mechanism to submit an offer for Specific Contract for the tasks for which the offer of the contractor ranked first in the cascade was not accepted, if these tasks can be implemented independently from the tasks for which the offer of the contractor ranked first in cascade was accepted.

In relation to Specific Contracts in Deliverable on Demand mode the cascade is also triggered in the scenario's referred to ARTICLE I.3c.2.

### **I.3c.2 CASCADE FOR DELIVERABLE ON DEMAND**

In addition to the cases provided in Article I.3c.1, the Contracting Authority may, in Deliverable on Demand Mode, trigger the cascade if it:

- a) rejects or partially rejects the quotation submitted under a request for Specific Contract that is in Deliverable on Demand Mode; or
- b) the response from the Contractor to objections or request for amendments from the Contracting Authority is not accepted or partially accepted; or
- c) does not receive a quotation from the contractor within 2 (two) working days;
- d) is informed by the contractor, within a maximum of 2 (two) working days since the request for deliverables that it will not submit a quotation; or
- e) withdraws the request for quotation in line with Article I.3b.3.3.

### **I.3c.3 PARTIAL ACTIVATION OF THE CASCADE MECHANISM**

In the cases where the cascade mechanism is only partially activated, such as in articles I.3c.1, c, f, g, h, or I.3c.2 a, b, the Contracting Authority may submit to the Contractor, subsequently ranked in the cascade mechanism:

- i. a request for Specific Contract, in line with Article I.3.4 in Planned Deliverable Mode and/or Deliverable on Demand Mode, that includes the deliverables that; were partially rejected, for which the offer or quotation was partially non-compliant or rejected, or for which no offer or quotation was submitted; or
- ii. a request for quotation covering the deliverables that were; partially rejected, for which the offer or quotation was partially non-compliant or rejected, or for which no offer or quotation was submitted, if there is an ongoing Specific Contract in Deliverable on Demand Mode with a scope relevant to the requested deliverables.

## **ARTICLE I.4 – PRICES**

### **I.4.1 PRICES**

**I.4.1.1.** The indicative maximum value, covering all purchases under this FWC, including all renewals and reimbursement of expenses, is *EUR [...]* (*[...]euros*). However, this must in no way be construed as a commitment by the Agency to purchase for the maximum amount.

**I.4.1.2.** The price(s) for the services shall be the one(s) listed in the tab 'FWC unit prices' – Annex I.F.1. [Lot x] forming part of the Contractor's tender – Annex II.III. The prices shall include all costs and expenses which are necessary for performance of one hour of administrative support services.

**I.4.1.3.** "person hourly rates" are as indicated in Table 'FWC Unit prices – FUPs List' of the Financial Proposal (part of Annex II.III).

**I.4.1.4.** The "person hourly rates" indicated in Articles I.4.1.3 shall comprise effort for all the activities necessary for their performance, including all costs incurred directly and indirectly by the Contractor in performance of the services specifically defined in the Specific Contract. These costs and expenses are indicatively: effort for all the tasks (including drawing up quotations and reports, attendance to progress review meetings) necessary for their performance, including:

- All direct costs (e.g. labour cost and other direct cost as per instruction in Annex I.F.2, part of Annex II.III Contractor's Tender, travel expenses and daily subsistence allowance – except when the Service Provider is on mission in which case the provisions of Article I.4.2– costs directly relevant to the performance of the tasks such as coordination of suppliers and subcontractors, quality control, currency conversion fees, etc. strictly related to the performance of the tasks under the FWC).
- All overheads (quote part of general costs allocated to the performance of tasks on the basis of general repartition criteria, and not directly incurred for the performance of the tasks under the contract).

The person hourly rates do not include travel costs or mission expenses subject to Article I.4.2.

**I.4.1.5.** The prices for the deliverables represent firm and fixed prices. This is without prejudice to the possibility for the Contractor to provide the services at lower prices.

**I.4.1.6.** Prices are not subject to revision during the validity of the FWC.

**I.4.1.7.** Without prejudice to Article I.6, payment of travel costs and reimbursement of mission expenses is subject to Article I.4.2.

#### **I.4.2. TRAVEL COSTS AND REIMBURSEMENT OF MISSION EXPENSES**

**I.4.1.1.** Payment of travel costs and reimbursement of mission expenses is possible only if the Service Provider is required to travel more than 50 km from the place of the service provision (Contractor's premises [Lot1] some of the EUSPA premises [Lot 2]) and the mission was approved in advance, in writing by the Contracting Authority, if such approval is not already included in the Specific Contract.

**I.4.1.1.** The Contractor is entitled to charge the Contracting Authority the price of travel costs once per Consecutive Mission Period per Service Provider to the therein indicated destination. The related expenses shall be subject to compliance with **ARTICLE II.14 - REIMBURSEMENTS** and in Annex II.VI – Ceilings for Missions to European Union and non-European Union Member States.

#### **ARTICLE I.5 – ACCEPTANCE**

##### **I.5.1. ACCEPTANCE PROVISIONS FOR PLANNED DELIVERY MODE AND DELIVERABLE ON DEMAND MODE**

**I.5.1.1.** The Services provided in Planned Deliverable Mode will be accepted following an evaluation performed by the Contracting Authority, against the following criteria:

- i. Compliance of the Deliverable with the Contracting Authority's requirements; and
- ii. Quality of the deliverable(s) in terms of:
  - Completeness and readability of the analysis;
  - Timeliness of the deliverable;
  - justification of the proposed appraisal/solution (when required and relevant); and
  - Formal clarity and accuracy of the submitted deliverable.

**I.5.1.2.** Should the Contracting Authority accept the submitted deliverable a confirmation of acceptance will be provided to the Contractor by a signed Deliverables acceptance sheet (see Annex II.VII) within ten (10) working days of submission of the deliverable(s).

**I.5.1.3.** The Contracting Authority reserves the right to request clarifications and evidence concerning the deliverable(s), within ten (10) working days of submission of the deliverable(s).

**I.5.1.4.** The Contracting Authority reserves the right to provide written objections to the submitted deliverables providing justifications, within ten (10) working days of submission of the deliverable(s), and may either:

- i. request implementation of remedial measures;
- ii. propose partial acceptance and/or reduction of payment; or

iii. reject the deliverable.

**I.5.1.5.** In case the Contracting Authority submits objections or asks for remedial measures, the Contractor shall have five (5) working days to submit observations to the Contracting Authority at the expiry of which the objections or the remedial measures shall be deemed to have been accepted.

**I.5.1.6.** The Contracting Authority undertakes to evaluate in good faith the observations put forward by the Contractor.

**I.5.1.7.** In case, notwithstanding the Contractor's observations, the Contracting Authority confirms partial acceptance with a reduction of payment this will be reflected in the DAS. In such case the Contracting Authority may apply Article I.19- Partial Termination. In case the contractor does not agree with the Contracting Authorities assessment the provisions of Article I.15.2 SETTLEMENT OF DISPUTES shall apply.

**I.5.1.8.** If the deliverable are rejected the DAS will not be signed. In case the contractor does not agree with the Contracting Authorities assessment the provisions of Article I.15.2 SETTLEMENT OF DISPUTES shall apply.

**I.5.1.9.** The deadlines mentioned in this article shall apply, unless otherwise provided in the Specific Contract or otherwise agreed by the parties.

**I.5.1.10.** The Agency shall have 30 (thirty) Days from the receipt of all the deliverables and documents above to approve and countersign the deliverable acceptance sheet.

## **I.5.2. ACCEPTANCE PROVISIONS FOR DELIVERABLE ON DEMAND**

**I.5.2.1.** Once the quotation for Deliverable on Demand Mode will have been accepted according to the provisions under Article I.3b.3.2, the provided deliverable(s) shall be accepted in accordance with the provisions under article I.5.1.

## **ARTICLE I.6 – PAYMENT ARRANGEMENTS**

### **I.6.1. Interim payments**

Unless the Specific Contract provides otherwise, the Contractor shall submit an invoice every month, indicating the reference number of the Framework Contract and of the Specific Contract to which it refers for an interim payment. The invoice shall concern the services provided within the invoicing period.

Invoices shall be accompanied by the following:

- a) the approved final deliverable(s) in accordance with the instructions laid down in the relevant specific contract or which were defined applying the process in Article I.3.b.3,
- b) deliverable(s) acceptance sheet(s), duly dated and signed by the Contractor and the Contracting Authority's project officer,
- c) a table on actual consumption of travel, accommodation and subsistence expenses, including, if applicable, statements of reimbursable expenses in accordance with **ARTICLE II.14 - REIMBURSEMENTS**;

- d) a list of all created Foreground IPRs, by attaching the filled-in Annex II.IX or a declaration stating that there are no such rights were created;
- e) a list of all Background IPRs to the results or parts of the results by attaching the filled-in Annex II.VIII or a declaration stating that there are no such Background IPR, as provided for in Article I.13.2.4;
- f) any other document in accordance with the relevant Specific Contract.

Following the approval of the progress report and/or deliverable(s), the Contractor shall submit the invoice. The Contracting Authority shall make the payment within 30 (thirty) days from receipt of the invoice, subject to Article II.13.7.

Any payments against invoice made under the Specific Contract are payments for provision of services and do not represent and shall not be understood as salary payments or replacement of such. Payment of salaries for Service Provider performing the services shall remain the sole responsibility of the Contractor.

### **I.6.2. Payment of the balance**

The Contractor shall submit an invoice for payment of the balance for any services due under a Specific Contract not invoiced yet by an interim payment.

The invoice shall be accompanied by:

- a) deliverable(s) acceptance sheet(s), duly dated and signed by the Contractor and the Contracting Authority's project officer,
- b) a final table on actual consumption of travel, accommodation and subsistence expenses, including, if applicable, statements of reimbursable expenses in accordance with **ARTICLE II.14 - REIMBURSEMENTS**;
- c) a list of all created Foreground IPRs, by attaching the filled-in Annex II.IX or a declaration stating that there are no such rights were created;
- d) a list of all Background IPRs to the results or parts of the results by attaching the filled-in Annex II.VIII or a declaration stating that there are no such Background IPR, as provided for in Article I.13.2.4;
- e) any other document in accordance with the relevant Specific Contract.

Following the approval of the final report and/or deliverable(s), the Contractor shall submit the invoice. The Contracting Authority shall make the payment within 30 (thirty) days from receipt of the invoice, subject to Article II.13.7.

Any payments against invoice made under the Specific Contract are payments for provision of services and do not represent and shall not be understood as salary payments or replacement of such. Payment of salaries for Service Provider performing the services shall remain the sole responsibility of the Contractor.

### **I.6.3. Performance guarantee**

Performance guarantee is not applicable to this FWC.

### **I.6.4. Retention money guarantee**

Retention money guarantee is not applicable to this FWC.

## **ARTICLE I.7 – BANK ACCOUNT**

Payments must be made to the Contractor's (or leader's in the case of a joint tender) bank account denominated in Euro, identified as follows:

*[Account Name]*

*[IBAN]*

*[BIC/SWIFT]*

## **ARTICLE I.8 – COMMUNICATION DETAILS**

1.8.1 For the purposes of this FWC, communications shall be made in writing, including via e-mail, and sent to the following contacts:

1.8.2 Contractor:

Project officer:

*[Full name]*

*[Function]*

*[Company name]*

*[Full official address]*

*Email: [complete]*

Contract officer:

*[Full name]*

*[Function]*

*[Company name]*

*[Full official address]*

*Email: [complete]*

1.8.3 Contracting Authority:

Project officer:

*[Full name]*

*[Function]*

*[Company name]*

[Full official address]

Email: [complete]

Contract officer:

[Full name]

[Function]

[Company name]

[Full official address]

Email: [complete]

I.8.4 The contact persons may be changed by exchange of emails between a representative of the Contractor and a representative of the EUSPA Legal and Procurement Department and sent to/from [contracts@euspa.europa.eu](mailto:contracts@euspa.europa.eu).

#### **ARTICLE I.9 – PROCESSING OF PERSONAL DATA**

For the purpose of **ARTICLE II.5 – PROCESSING OF PERSONAL DATA**, the data controller is:

Head of Human Resources Department

European Union Agency for the Space Programme (EUSPA)

Janovskeho 438/2 170 00 Prague 7, Czech Republic,

and provisions under **ARTICLE II.5 – PROCESSING OF PERSONAL DATA** apply.

#### **ARTICLE I.10 – LIABILITY**

**I.10.1.** The Contractor is liable for any loss or damage caused or sustained to the Contracting Authority during or as a consequence of implementation of the FWC, including in the event of subcontracting, but only up to an amount not exceeding 50 % of the cumulative value of the signed Specific Contracts, as amended. However, if the damage or loss is caused by the gross negligence or willful misconduct of the Contractor or of its Service Provider or subcontractors, as well as in the case of an action brought against the Contracting Authority by a third party for breach of its intellectual property rights, the limitation of liability above shall not apply.

**I.10.2.** The Contractor shall indemnify and hold the Contracting Authority harmless for all damages and costs incurred due to any claim within the limit of liability under Article I.10.1 above. The Contractor shall provide compensation in the event of any action, claim or proceeding brought against the Contracting Authority by a third party as a result of damage caused by the Contractor during the performance of the FWC. If a third

party brings any action against the Contracting Authority in connection with the implementation of the FWC, including any action for alleged breach of intellectual property rights, the Contractor must assist the Contracting Authority in the legal proceedings, including by intervening in support of the Contracting Authority upon request.

**I.10.3.** If required by the relevant applicable legislation, the Contractor must take out an insurance policy against risks and damage or loss relating to the implementation of the FWC. It must also take out supplementary insurance as reasonably required by standard practice in the industry. Upon request, the Contractor must provide evidence of insurance coverage to the Contracting Authority.

**I.10.4.** The Contracting Authority is not liable for any loss or damage caused to the Contractor during or as a consequence of implementation of the FWC, unless the loss or damage was caused by wilful misconduct or gross negligence of the Contracting Authority.

**I.10.5.** The Contractor shall indemnify the Agency and/or the European Union from and against all claims, proceedings, damages, costs and expenses arising from the infringement of Third Party IPR in the frame of this Contract, in case such infringement has been caused by the Contractor, including Contractor's Parties. The above includes the Contractor's obligation to indemnify and hold harmless at first instance the Agency and the European Union against all claims and/or legal proceedings made in or out of court including all legal costs for court attorneys and or arbitration.

#### **ARTICLE I.11 - COMPLIANCE WITH LABOUR LAW**

**I.11.1** No contract of employment shall be established between the Contracting Authority and the Service Provider providing services under Specific Contracts. It shall be the Contractor's sole responsibility to ensure that its Service Providers providing services under Specific Contracts understand that they are not employed by the Contracting Authority and shall not interpret any part of their services to the Contracting Authority as creating any employment relationship between them and the Contracting Authority. It shall be the Contractor's sole duty and responsibility to ensure that no employment relationship between the Contracting Authority and the Service Provider providing services is ever construed, argued or claimed.

**I.11.2** The Contractor shall immediately notify the Contracting Authority of any other circumstances that might give rise to claims against the Contracting Authority on the part of Service Provider providing services related to status of employment. In any event the Contractor shall take all measures to prevent such claims from arising and shall hold the Contracting Authority harmless of any such claim.

**I.11.3** The Contractor shall also hold the Contracting Authority harmless from any third party claim as may arise from or in connection with the FWC or its implementation on grounds or argument of employment.

**I.11.4** The Contractor acknowledges that the Service Providers providing services to the Contracting Authority are not meant to replace the Contracting Authority's personnel but to provide deliverables and assistance not available in-house.

**I.11.5** Any Service Provider working on Contracting Authority premises shall remain fully under the responsibility of the Contractor's supervision and its responsibility as employer. Any working area at the Contracting Authority site is purely provided for ease of service provision and does not replace that Service Provider's workplace with his/her employer. Any Service Provider working at Contracting Authority premises is expected to coordinate, in terms of logistics and working time, with the needs and working hours of the Contracting Authority.

**I.11.6** The Contractor acknowledges that this FWC and any Specific Contract to be signed is (i) not meant to establish any employment relationship between the Contracting Authority and the Service Provider performing the services and (ii) shall not be interpreted as establishing such a relationship. The Contractor shall take all measures to ensure this understanding with its Service Provider and shall indemnify and hold the Contracting Authority harmless against any claim which the Contracting Authority would face in this respect. The Contractor shall take all necessary steps, towards its Service Provider executing the FWC to ensure the full applicability of FWC conditions.

## **ARTICLE I.12 – CONFIDENTIALITY AND PARTICIPATION IN PUBLIC PROCUREMENT**

**I.12.1** The Contractor must treat and shall cause its Service Providers to treat with confidentiality any information or documents, in any format, disclosed in writing or orally or got to know relating to the performance of the FWC. The Contracting Authority must treat with confidentiality any information which is identified by the Contractor in writing as confidential.

**I.12.2** Each party must:

- a) use Confidential Information for the sole purpose to perform its obligations under the FWC unless agreed otherwise in writing by the other party;
- b) ensure the protection of such Confidential Information with the same level of protection and pursuant to applicable security rules as its own Confidential Information or documents, and in any case with due diligence;
- c) not disclose directly or indirectly Confidential Information to third parties without the prior written agreement by the Contracting Authority.

The parties are allowed to disclose Confidential Information to its directors, employees and representatives, as well as external legal, accounting, financial and other advisors on a strict need to know basis and provided that they act under a written or statutory confidentiality obligation equivalent to the one provided in this Article.

**I.12.3** The confidentiality obligation set out in this Article are binding on the Contracting Authority and the Contractor during the performance of the Contract and for as long as the information or documents remain confidential unless:

- a) the disclosing party agrees to release the receiving party from the confidentiality obligation earlier;
- b) the Confidential Information become public or was lawfully obtained through other means than in breach of the confidentiality obligation;
- c) the disclosure of the Confidential Information is necessitated by due protection of the interests of the party in the frame of court proceedings or other equivalent legal proceedings; in such case the Party shall immediately give the other Party a written notice of the intention to disclose it and shall reasonably cooperate in order to regulate such disclosure;
- d) the Confidential Information was already lawfully developed or acquired by the party at the date of receipt of the information from the other party;
- e) was lawfully obtained by the party without restriction and without breach of this Contract from a third party, who is in lawful possession thereof, and under no obligation of confidence;

f) is disclosed pursuant to a request of a governmental or jurisdictional authority or is disclosed according to the law or regulations of any country with jurisdiction over the Parties; in either case the Party, subject to possible constraints of such governmental or jurisdictional authority, shall immediately give the other Party a written notice of the above request and shall reasonably cooperate in order to regulate such disclosure.

**I.12.4** When the Contractor becomes aware of any unauthorised use of the Confidential Information or of any unauthorised copy of the Confidential Information, it shall immediately inform the Contracting Authority thereof.

**I.12.5** Should the Contractor breach any of its obligations under this Article, and without prejudice to the right of the Contracting Authority to seek damages, or suspend or terminate the Contract, the Contracting Authority may, by written notice to the Contractor, withdraw the right to use the Confidential Information for the implementation of the FWC.

**I.12.6** In case the Contractor plans to participate in any of the procurements for which it was involved in or advised on the preparation of deliverables concerning requirements or documents relevant to the procurement to which it plans to participate, it shall inform the Contracting Authority's Contract Officer of this plan immediately. The Contractor shall take any appropriate measure to ensure that the same information is promptly provided to it and the Contracting Authority, in case any of the Contractor's employees or Service Providers plans to participate in the above-mentioned procurements.

**I.12.7** The Contracting Authority shall evaluate the consequences of the Contractor's or the Contractor's employees' or Service Providers' participation in view of ensuring equal treatment and non-discrimination, also through implementation of effective measures, e.g., extending the period for submission of tenders, dissemination of and/or providing access to information gained exclusively by the Contractor or the Contractor's employees/consultants in its work under the Contract. The Contractor shall support the Contracting Authority in its efforts to provide a level playing field for other potential tenderers.

**I.12.8** Following the outcome of its evaluation, the Contracting Authority shall decide with binding effect, whether the Contractor or the Contractor's employees/Service Providers are allowed to participate in the procurement process in question. Any breach by the Contractor or the Contractor's employees/Service Providers of a possible prohibition decided by the Contracting Authority following the process under previous Articles, shall constitute a material breach of the Contractor's obligations under this contract. This is without prejudice to the consequences of the breach as far as the participation in the procurement procedures referred to above is concerned both for the Contractor and the Contractor's employees/Service Providers. The Contracting Authority shall inform the Contractor of its decision without delay. The Contracting Authority may also take any other measures it finds appropriate to deal with any conflict of interests, whether potential or actual, without this entitling the Contractor to any compensation.

## **ARTICLE I.13 – INTELLECTUAL PROPERTY RIGHTS AND OTHER RESULTS**

### **I.13.1 OWNERSHIP**

**I.13.1.1** Ownership of the Deliverables shall be exclusively and without restrictions vested in the European Union, represented by the European Commission, or the Agency, immediately upon their acceptance by the Agency, with such acceptance being deemed to constitute an effective assignment of rights from the Contractor to the Union or the Agency, without prejudice to the provisions related Foreground IPR, as per the Articles I.13.1.2 and I.13.2.3 below. Whether they

are vested with the European Union or the Agency depends on the source of the budget, where a Specific Contract is financed through delegated budget the ownership will be vested with the European Union and where a Specific Contract is financed by core budget the ownership is vested with the Agency, the source of the budget will be determined in the Terms of Reference of the request for Specific Contract. To the extent that such vesting is not possible under applicable law, the Contractor shall ensure that all such rights are validly assigned to the Contracting Authority to the fullest extent permitted by applicable law..

**I.13.1.2** The Parties acknowledge that, under Article 9 (1) of the Space Regulation, all Foreground IPRs shall be automatically and fully owned by the European Union only, without any title or right of the inventor, with no other compensation for the Contractor than the price paid for the Deliverables, under Article I.4.1– Price of the Contract, which includes any fees payable to the Contractor for the acquisition of ownership of rights by the Union including for all the modes of exploitation provided under Article I.13.2.3.1 below. The Contractor shall ensure that all necessary measures are taken in order to perfect the automatic ownership of all Foreground IPRs by the European Union or the Agency, as of their coming to existence, without the need of further transfers or arrangements.

**I.13.1.3** The permanent transfer of ownership provided in this Article shall also apply to Contractor's Parties for the purpose of this Contract. The Contractor must inform its Contractor's Parties of the provision under Articles I.13.1.1 and I.13.1/2 and ensure to reflect their content in its agreements with such Contractor's Parties.

#### **I.13.2** INTELLECTUAL PROPERTY RIGHTS

**I.13.2.1** The Contractor shall hold the European Union or the Agency, its assignees and licensees, free and harmless of any claims for infringement of third party rights in connection with the use of Background IPR within the licensed scope and the Foreground IPR and to indemnify the European Union, and the Agency in accordance with Article I.10.5.

**I.13.2.2** The Agency shall not provide the Contractor with any representation or warranties in respect of the use of the Foreground IPR and the Contractor shall have no claim whatsoever against the European Union, the Agency or its institutional assignees arising out of the use of the Foreground IPR.

#### **I.13.3** CONTRACTOR'S TITLE TO UNION IPRs

Without prejudice to the provision on licensing of FIPR for the entire Contract Period as per Article I.13.2.3.4 below, the Agency hereby grants to the Contractor a free-of-charge, non-exclusive, non-transferable license to use adapt, operate and modify the subject matter of such Union IPR, including Third Party IPR licensed to the Union in so far as the right to sub-license is granted, for the purposes of performing its obligations under the present Contract, with the right to grant sublicenses to Contractor's Parties within the limits of the scope and duration of the license.

#### **I.13.4** FOREGROUND IPR

**I.13.4.1** As a result of the ownership provisions as per Article I.13.1 above, the European Union may use the Foreground IPR in any known manner and for any known matter and acquires the exclusive right on the Foreground IPR, for the entire world and for all the duration of the protection of the Foreground IPR, on all modes of exploitation, including, without limitation to:

- a) the right to permanently or temporarily reproduce or copy, store, publish, load, run, display, make publicly available or distribute in tangible or intangible form, on any hardware (virtual or physical) or other medium, offline or online (via private or public networks, by any means, including active-service-providing, software-as-a-service, cloud computing or any other form of remote service), in part or in whole, the subject-matter of the Foreground IPR in original format or in any reverse-engineered, decompiled, recompiled, translated, decoded, edited, amended, adapted or otherwise modified form;
- b) communication to the public: the exclusive right to authorise or prohibit any display, performance or communication to the public, by wire or wireless means, including the making available to the public of the Foreground IPRs in such a way that members of the public may access them from a place and at a time individually chosen by them; this right also includes the communication and broadcasting by cable or by satellite;
- c) distribution: the exclusive right to authorise or prohibit any form of distribution of Foreground IPRs or copies of the Foreground IPRs to the public, by sale or otherwise;
- d) rental: the exclusive right to authorise or prohibit rental or lending of the Foreground IPRs or of copies of the Foreground IPRs;
- e) adaptation: the exclusive right to authorise or prohibit any modification of the Foreground IPRs;
- f) the right to prepare derivative works of the subject matter of Foreground IPR;
- g) the right to install, operate and execute, reverse-engineer, decompile, (re-) compile, translate, decode, edit, amend, adapt or otherwise modify the subject-matter of the Foreground IPR by the European Union;
- h) the right to incorporate, embed or merge the subject matter of the Foreground IPR into any other product or with any other IPRs,
- i) the right to grant wire-connected or wireless public access to the subject matter of the Foreground IPR for any purpose, including commercial or free service bureau services for Third Parties;
- j) translation: the exclusive right to authorise or prohibit any translation, adaptation, arrangement, creation of derivative works based on the Foreground IPRs, and any other alteration of the FIPR, subject to the respect of moral rights of authors, where applicable;
- k) where the Foreground IPRs are or include a database: the exclusive right to authorise or prohibit the extraction of all or a substantial part of the contents of the database to another medium by any means or in any form; and the exclusive right to authorise or prohibit the re-utilisation of all or a substantial part of the contents of the database by the distribution of copies, by renting, by on-line or other forms of transmission;
- l) where the Foreground IPRs are or include a patentable subject-matter: the right to register them as a patent and to further exploit such patent to the fullest extent;

- m) where the Foreground IPRs are or include logos or subject-matter which could be registered as a trademark: the right to register such logo or subject-matter as a trademark and to further exploit and use it;
- n) where the Foreground IPRs are or include appearance of the product: the right to register them as a design and to further exploit and use it;
- o) where the Foreground IPRs are or include know-how: the right to use such know-how as is necessary to make use of the FIPR to the full extent provided for by this Contract, and the right to make it available to third parties, subject to their signing of adequate confidentiality undertakings where necessary;
- p) in its sole discretion, distribute the subject matter of the Foreground IPR under any open-source licence the European Union deems fit and this shall include also the right for the European Union to grant such rights to another organisation which will distribute the software under an open source license;
- q) where the FIPR are documents, additionally:
  - (i) the right to authorise the reuse of the documents in conformity with the Commission Decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU), to the extent it is applicable and the documents fall within its scope and are not excluded by any of its provisions; for the sake of this provision, 'reuse' and 'document' have the meaning given to it by this decision;
  - (ii) the right to store and archive the FIPR in line with the document management rules applicable to the European Union/Agency, including digitisation or converting the format for preservation or new use purposes;
- r) where the FIPR are or incorporate software, including source code, object code and, where relevant, documentation, preparatory materials and manuals, in addition to the other rights mentioned in this Article:
  - (i) end-user rights, for all uses by the European Union or by sub-contractors which result from this Contract and from the intention of the Parties;
  - (ii) the rights to decompile or disassemble the software;
- s) to the extent that the Contractor may invoke moral rights, the right for European Union/Agency, except where otherwise provided in this Contract, to publish the FIPR with or without mentioning the Creator(s)' name(s), and the right to decide when and whether the FIPR may be disclosed and published.
- t) the right to transfer or licence all or part of the Foreground IPR to any third part in its sole discretion.

**I.13.4.2** The Contractor shall obtain the consent of Creators regarding the granting of the relevant rights as per this Article and be ready to provide documentary evidence upon request.

**I.13.4.3** The Contractor shall clearly mark the FIPR or deliverables as follows: "EU Proprietary information. Unauthorised distribution, dissemination or disclosure not allowed" or "EUSPA Proprietary Information. Unauthorised distribution, dissemination or disclosure not allowed", as the case may be.

**I.13.4.4** The Agency, when relevant on behalf of the European Union, hereby grants the Contractor and the Contractor Parties a non-exclusive, worldwide, non-transferable, sublicensable, free of charge, licence of the Foreground IPRs exclusively for the purpose of the performance of the Contract and shall expire upon the expiry of the Contract. This is without prejudice that the license may be revoked with immediate effect following Agency's or the European Union's written notice should the Contractor fail to comply with its obligations under this Contract. The licence only refers to the use of the subject-matter of the Foreground IPR and does not refer to or cover anything subject to third party IPR that may be contained in or combined with such subject-matter in any form. The Contractor bears the sole responsibility for ensuring that all third party IPR is licensed properly. Upon request by the Contractor providing supporting information which describes the intended use, a licence to use the subject-matter of Foreground IPR for purposes other than the performance of this Contract might be granted to the Contractor by the European Union if the intended use and its purposes are considered not to be in conflict with the essential interest of the space programme of the European Union. In case the European Union decides to grant such licence, a separate licence agreement shall be concluded between the Contractor and the European Union determining the conditions of use including use right, purposes and term of the licence.

**I.13.4.5** The Contractor shall secure by agreements with those of his employees (including free-lancers) who have worked on the subject matter of the Foreground IPR, that those employees have waived their right of economic exploitation of the IPR and, wherever legally possible, their moral rights related to the invention.

**I.13.4.6** The same shall apply for all employees (including free-lancers) of Sub-Contractors and the Contractor is obliged to secure such waivers in written agreements with its Sub-Contractors.

#### **I.13.5 BACKGROUND IPR**

**I.13.5.1** To the extent that Background IPR or Third Party IPR are incorporated into, required for or otherwise used in connection with the FIPR and/or deliverable(s), the Contractor shall grant, or procure the grant to the Contracting Authority, of a perpetual, worldwide, irrevocable, royalty-free, transferable and sublicensable licence to use, reproduce, modify, adapt, maintain and otherwise exploit such Background IPR to the extent necessary for the Contracting Authority to use and exploit the FIPR and/or deliverable(s).

#### **ARTICLE I.14 – LIQUIDATED DAMAGES**

**I.14.1** The Contracting Authority may impose liquidated damages should the Contractor fail to complete its contractual obligations, within the applicable time limits set out in the FWC, including, without limitation, the compliance with the obligation to change the Service Providers within the time limits specified in Article I.18.

**I.14.2** Unless otherwise agreed in the Specific Contract, should the Contractor fail to perform its contractual obligations within the time limits and as per the requirements set by the FWC or the relevant Specific Contract (Underperformance), including, without limitation the implementation of an exchange of Service Provider, then, without prejudice to the Contractor's actual or potential liability or to the Contracting Authority's right to terminate the FWC or the relevant Specific Contract, the Contracting Authority may impose liquidated damages for each and every calendar day of delay/underperformance according to the following formula:

**0. 3 x (V/d), where**

V is the price of the relevant deliverable, set in the frame of the Specific Contract;

d is the duration specified for delivery of the relevant deliverable established in the Specific Contract, expressed in days. The overall aggregate amount of liquidated damages which may be imposed per Specific Contract shall not exceed 5% of the price of the relevant Specific Contract.

**I.14.3** The parties acknowledge that any sums payable under this article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses incurred due to failure to fulfil obligations which may be reasonably anticipated.

**I.14.4** Liquidated damages may be imposed together with a partial payment or retention of payment under the conditions laid down in Article II.10. Any claim for liquidated damages does not affect the Contractor's actual or potential liability or the Contracting Authority's rights under **ARTICLE I.10 – LIABILITY**.

**I.14.5** The Contracting Authority must formally notify the Contractor of its intention to apply liquidated damages and the corresponding calculated amount. The Contractor has 30 (thirty) days following the date of receipt to submit observations. Failing that, the decision becomes enforceable the day after the time limit for submitting observations has elapsed. If the Contractor submits observations, the Contracting Authority, taking into account the relevant observations, must notify the Contractor:

- of the withdrawal of its intention to apply liquidated damages; or
- of its final decision to apply liquidated damages and the corresponding amount.

**ARTICLE I.15 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

**I.15.1** The FWC shall be governed by European Union law, complemented, where necessary, by the law of Belgium.

**I.15.2** All disputes arising out of or in connection with the present Contract shall be finally settled by the General Court (as part of the Court of Justice of the European Union - CJEU) which shall have sole jurisdiction for any dispute arising out of or in connection with the present Contract, according to Article 272 of the Treaty on the Functioning of the European Union.

**I.15.3** It is the Contractor's sole responsibility and duty, also beyond legal acts listed in Annex II.II, to comply and ensure full compliance with all applicable laws of any part of performance under the Framework Contract and Specific Contracts.

**ARTICLE I.16 – Not Used**

**ARTICLE I.17 – Not Used**

**ARTICLE I.18 – NON-SOLICITATION**

**I.18.1.** During the validity of FWC and for a period of 24 (twenty-four) months from termination of the FWC, the Contractor shall not solicit the recruitment of any of the Contracting Authority's employees. Any

breach of this obligation shall be considered a breach of a substantial contractual obligation for the purposes of Article II.12.1.

**I.18.2.** The Contractor may propose to engage in the Specific Contracts additional Service Providers, as per the provisions of Article II.2.4.

#### **ARTICLE I.19 – PARTIAL TERMINATION**

In case the Contracting Authority would have the right to terminate a Specific Contract under this FWC, it may also choose to only terminate a part or parts of the Specific Contract, provided this does not affect the Contractor’s ability to perform the remaining part or parts. Such partial termination may in particular and without limitation, be performed through a de-scoping of a Specific Contract by reduction of assigned Deliverables.

#### **ARTICLE I.20 – CUSTOMER FURNISHED ITEM**

For the implementation of the Specific Contracts for Lot 2, the Agency may undertake to provide to the Contractor CFIs at times and with a scope specified therein.

**I.20.1** The Agency shall make available and the Contractor shall accept and take into custody the CFIs, as provided in the SC. The risk of loss, damage or degradation to any CFI shall lie down with the Contractor from the time the CFI is delivered to the Contractor until the time specified in the Specific Contract.

The Contractor shall take responsibility for the proper usage according to Good Industry Practice, handling, maintenance, and storage of the CFIs upon their receipt. The Contractor shall utilise and / or modify the CFIs only for the purposes and in the way specified in the Specific Contract.

#### **SIGNATURES**

For the Contractor,

For the Contracting Authority,  
Rodrigo da Costa, Executive Director

*[first name, last name, function of  
Contractor’s authorised representative],*

signature: \_\_\_\_\_

Done in \_\_\_\_\_, [date]

signature: \_\_\_\_\_

Done in Prague, [date]

In duplicate in English.

## I. GENERAL CONDITIONS

### ARTICLE II. 1 – DEFINITIONS

For the purpose of this FWC, the following definitions apply:

**‘Agency Event of Default’:** shall have the meaning ascribed to that term in Article II.12.2.

**‘Background Intellectual Property Rights / Background IPR / BIPR:** mean Intellectual Property Rights that are created, invested, authored, developed, owned and registered by the Contractor, the Contractor Parties prior to the entry into force of this Contract, and that is needed to perform the Contract.

A “need” in the aforementioned sense is considered, if, without the relevant rights, the performance of the activities and/or the achievement of the objectives of the Contract would be technically or legally impossible, impaired or incomplete.

**‘Business days’ or ‘working day’:** days on which the premises that are the place of performance of tasks are open, i.e. excluding Saturdays, Sundays and public holidays applicable to these premises. For the Contracting Authority premises, the applicable public holidays are the Contracting Authority public holidays related to the premises concerned. For other premises, the applicable public holidays are the official public holidays of the State where the premises are located.

**‘Confidential Information’:** any information or document received by either party from the other or accessed by either party in the context of the implementation of the FWC, that the party must treat with confidentiality according to the specific conditions of this FWC;

**‘Creator’:** means any natural person who contributes to the production of a Foreground IPR.;

**‘Contractor Event of Default’:** shall have the meaning ascribed to that term in Article II.12.1.

**‘Customer Furnished Items (“CFIs”):** means all equipment, facilities, documentation or services, which are to be provided to Contractor by the Agency pursuant to this Contract, that shall be defined in the Specific Contract.

**‘Contractor Parties’:** means any person or legal entity engaged by the Contractor to execute on its behalf tasks in relation to this Contract, such as Affiliates, Sub-Contractors, consultants or agents.

**‘Curable Event of Default’:** shall have the meaning ascribed to that term in Article II.12.5.2.

**‘Cure period’:** shall have the meaning ascribed to that term in Article II.12.5.2.

**‘Day’ or ‘calendar day’:** unless otherwise specified, all periods in FWC are calculated in calendar days;

**‘Default Notice’:** shall have the meaning ascribed to that term in Article II.12.5.1.

**‘Deliverable on Demand Mode’:** shall mean services whose general description of the scope of the deliverable(s) (e.g. through their functionality), duration and amount are provided in the terms of reference, as set out in Article I.3b.1 and whose specific result is identified during the execution of the specific contract according to the modalities under article I.3b.3.

**‘Deployment’:** the assignment of the Contractor’s personnel to a specific location for the provision of services. The location shall be established in Specific Contract and/or its Annexes.

**‘Event of Default’:** shall mean either Agency Event of Default or Contractor Event of Default

**‘Financial regulation’:** means Regulation (EU, EURATOM) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast).

Should Regulation (EU, EURATOM) 2024/2509 be amended or repealed by a newly adopted EU regulation, the term “Financial Regulation” shall mean such EU regulation amending or repealing Regulation (EU, EURATOM) 2024/2509, and any reference in these general conditions to an Article of Regulation (EU, EURATOM) 2024/2509 shall be considered as reference to the corresponding Article(s) in such new Financial Regulation.

**‘Force majeure’:** any unforeseeable, exceptional situation or event beyond the control of the parties that prevents either of them from fulfilling any of their obligations under the FWC. The situation or event must not be attributable to error or negligence on the part of the parties or on the part of the subcontractors and must prove to be inevitable despite their exercising due diligence. Defaults of service, defects in equipment or material or delays in making them available, labour disputes, strikes and financial difficulties may not be invoked as Force Majeure, unless they stem directly from a relevant case of Force Majeure;

**‘Foreground IPR’ or ‘Foreground Intellectual Property Rights’:** means any IPR, including source codes, developed by the Contractor or a Contractor Party or their agent, or transferred to the Contractor by third parties during the Contract duration, for the performance of this Contract in order to fulfil any Contractor Obligations under the Contract.;

**‘Formal Notification’** (or ‘formally notify’): form of communication between the parties made in writing by mail or email, which provides the sender with compelling evidence that the message was delivered to the specified Contractor;

**‘Fraud’:** an act or omission committed in order to make an unlawful gain for the perpetrator or another by causing a loss to the Union's financial interests, and relating to: i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the Union budget, ii) the non-disclosure of information in violation of a specific obligation, with the same effect or iii) the misapplication of such funds or assets for purposes other than those for which they were originally granted, which damages the Union's financial interests;

**‘Good Industry Practice’:** means using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances.

**‘Grave professional misconduct’:** a violation of applicable laws or regulations or ethical standards of the profession to which a Contractor or a Related Person belongs, including any conduct leading to sexual or other exploitation or abuse, or any wrongful conduct of the Contractor or a Related Person which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence.

**‘Gross negligence’:** unintentional act or omission by which the person responsible commits a patent breach of the duty of care which he should have and could have complied with in view of his attributes, knowledge, abilities and individual situation.

**‘Intellectual Property Rights’ or ‘IPR’:** means any and all rights which subsist anywhere in the world relating to:

- any inventions (whether patentable or not);
- patents or utility models (including any related applications, divisions, continuations, registrations, reissues, re-examinations, extensions or renewals);
- copyrights (including any rights in software, source code and design tools), works of authorship, designs, database rights, mask works and moral rights (including any related applications, registrations or renewals);

- trade dress, trade names, domain names, trademarks and service marks whether registered or not (including any applications or registrations related thereto and the goodwill associated therewith);
- trade secrets and know-how; and
- rights under any jurisdiction or legal system that are similar or equivalent to the foregoing;

and any other proprietary rights to intellectual property or intangibles of any nature.

**‘Irregularity’:** any infringement of a provision of Union law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the Union’s budget.

**‘Person-hour’:** The person-hour is defined as a working hour of 60 (sixty) minutes by the Service Provider, compliant with the requirements set for her/his experience and qualification in the Tender Specifications (Annex II.I).

**‘Mission’:** work journey of Service Provider, having been requested by the Contracting Authority for the performance of tasks at a destination other than Service Provider’s Standard Place for Performance of Tasks.

**‘Mission Day’:** day on which the Service Provider performs the tasks for which he/she was sent on Mission, such as e.g. participation in a meeting.

**‘Notification’** (or ‘notify’): form of communication between the parties made in writing including by electronic means;

**‘Order form’:** a simplified form of Specific Contract by which the Contracting Authority orders services under the FWC;

**‘Performance of a Specific Contract’:** the execution of tasks and delivery of the purchased services/deliverables by the Contractor to the Contracting Authority;

**‘Planned Deliverable Mode’:** shall mean services leading to identified deliverable(s) as determined in the terms of reference and accepted by the Contractor in line with Article I.3a.1 to be provided for a certain period and price.

**‘Professional Conflicting Interest’:** a situation in which the Contractor’s previous or ongoing professional activities affect its capacity to implement the FWC or to perform a Specific Contract to an appropriate quality standard.

**‘Restricted Person’:** any entity, individual or group of individuals designated by the EU as subject to the EU Restrictive Measures in the lists provided at [www.sanctionsmap.eu](http://www.sanctionsmap.eu)

**‘Related Person’:** any natural or legal person who is a member of the administrative, management or supervisory body of the Contractor, or who has powers of representation, decision or control with regard to the Contractor;

**‘Result’:** any tangible or intangible output, such as data, knowledge and information whatever their form or nature, whether or not they can be protected, stemming from the execution of the Contract which are generated by the Contractor and the Contractor Parties under the Contract, as well as any attached rights, and including IPRs.

**‘Service Providers’:** persons employed directly or indirectly or contracted by the Contractor or subcontractor(s) to implement the FWC;

**‘Specific Contract’:** a contract implementing the FWC and specifying details of a service to be provided;

**‘Standard Place for Performance of Tasks’:** the location where the individual Service Provider is regularly

placed for performance of activities, as defined in particular in the terms of reference of the applicable Specific Contract;

**Third Party IPR:** means all Intellectual Property Rights other than Foreground IPR owned by third parties either before or after the signature of the Contract, which are relevant to the performance of the Contract and which are listed in the Background IPR List.

**'Travel Day':** day on which the Service Provider only travels to/from the destination of performance of such tasks. A Travel Day is not considered as a Mission Day and not subject to man day rates.

**Union IPR:** means Intellectual Property Rights owned by the European Union, represented for that purpose by the European Commission part of the Assets handed over to the Contractor.

## **ARTICLE II.2 – PROVISION OF SERVICES**

**II.2.1** The Contractor shall perform the FWC to the highest professional standards, in accordance with the state of the art in the industry and the provisions of this FWC, in particular the tender specifications and the terms of its tender. The Contractor must comply with the exclusion, selection criteria, participation conditions and minimum requirements provided for in the tender specifications throughout the duration of the Contract. This includes, without limitation, compliance with applicable obligations under environmental, social and labour law established by Union law, national law and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU, compliance with data protection obligations resulting from Regulation (EU) 2016/679 and Financial Regulation and compliance with obligations resulting from the Financial Regulation on the financial rules applicable to the general budget of the Union.

**II.2.2** The Contractor shall be solely responsible for taking the necessary steps to obtain any permit or licence required for performance of the FWC under the laws and regulations in force at the place where the tasks assigned to it are to be executed.

**II.2.3** Without prejudice to Article II.4 any reference made to the Service Provider in the FWC shall relate exclusively to individuals involved in the performance of the FWC.

**II.2.4** The Contractor must ensure that the Service Provider performing the FWC possesses the professional qualifications and experience required for the execution of the tasks assigned to it.

**II.2.5** The Contractor shall neither represent the Contracting Authority nor behave in any way that would give such an impression. The Contractor shall inform third parties that it does not belong to the European public service.

**II.2.6** The Contractor is responsible for the Service Providers who carry out the services and exercises its authority over its Service Providers without interference by the Contracting Authority. The Contractor must inform its Service Providers that:

- a) they may not accept any direct instructions from the Contracting Authority; and
- b) their participation in providing the services does not result in any employment or contractual relationship with the Contracting Authority.

**II.2.7** In the event of disruption resulting from the action of one of the Service Provider working on the Contracting Authority's premises or in the event that the expertise of one of the Service Provider fails to correspond to the profile required by the FWC, the Contractor shall replace him/her without delay. The

Contracting Authority shall have the right to make a reasoned request for the replacement of any such Service Provider. The replacement Service Provider must have the necessary qualifications and be capable of performing the FWC under the same contractual conditions. The Contractor shall be responsible for any delay in the execution of the tasks assigned to it resulting from the replacement of the Service Provider. The Contractor bears the cost of replacing its Service Provider.

**II.2.8** Should the execution of the tasks be directly or indirectly hampered, either partially or totally, by any unforeseen event, action or omission, the Contractor shall immediately and on its own initiative record it and report it to the Contracting Authority. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with its obligations under this FWC. In such an event the Contractor shall give priority to solving the problem rather than determining liability.

**II.2.9** The Contractor must record and report to the Contracting Authority any problem that affects its ability to provide the services. The report must describe the problem, state when it started and what action the Contractor is taking to resolve it.

**II.2.10** The Contractor must immediately inform the Contracting Authority of any changes in the exclusion situations as declared, according to Article 138 of the Financial Regulation.

**II.2.11** The Contractor hereby represents and warrants that the execution of the services under the present FWC and the relevant modalities do not represent nor can be interpreted as the provision of interim workers' services for any purpose under the applicable law. The Contractor undertakes any and all responsibilities for the compliance of the services provided under this FWC with the applicable law. The Contractor represents and warrants to have taken into due consideration the provisions of the applicable law relevant to the execution of the services under this FWC when formulating its offer, either under a technical, managerial or financial standpoint. The Contractor undertakes to hold the Agency harmless from any claim or request of damage brought against the Agency by:

- a) the Service Providers engaged by the Contractor or any of its subcontractors at any title for the provision of services under this FWC;
- b) any third party.

### **ARTICLE II.3 – COMMUNICATION BETWEEN THE PARTIES**

**II.3.1** Any communication relating to the FWC or to its performance shall be made in writing to the relevant contact details identified in the specific conditions and shall bear the FWC number, and if applicable the Specific Contract number. Any communication is deemed to have been made when it is received by the receiving party unless otherwise provided for in this FWC.

**II.3.2** Unless otherwise agreed, any communication made by email has full legal effect and is admissible as evidence in judicial proceedings. E-mail is deemed to have been received by the receiving party on the day of dispatch of that e-mail, provided that it is sent to the e-mail address indicated in Article I.8.1. The sending party must be able to prove the date of dispatch. In the event that the sending party receives a non-delivery report, it must make every effort to ensure that the other party actually receives the communication by email or mail. In such a case, the sending party is not held in breach of its obligation to send such communication within a specified deadline.

**II.3.3** Electronic communication shall be confirmed by an original signed paper version of that communication if requested by any of the parties provided that this request is submitted without unjustified delay. The sender shall send the original signed paper version without unjustified delay.

**II.3.4** Mail sent using the postal services is deemed to have been received by the Contracting Authority on the date on which it is registered by the department responsible referred to in the specific conditions. Any Formal Notification shall be made by registered mail with return receipt or equivalent, or by equivalent electronic means. Formal Notifications are considered to have been received by the receiving party on the date of receipt indicated in the proof received by the sending party that the message was delivered to the specified Contractor.

#### **ARTICLE II.4 –PROFESSIONAL CONFLICTING INTEREST**

**II.4.1** The Contractor shall take all the necessary measures to prevent any situation of Professional Conflicting Interest. The Contractor particularly, but without limitation, undertakes for a period of 5 (five) years following the termination of this FWC or any Specific Contract thereunder, whichever the later date, not to engage directly or indirectly, either as proprietor, stockholder, partner, officer, employee, consultant or otherwise in activities that may generate conflict of interests in relation to the activities performed for the EUSPA.

**II.4.2** With the signing of the FWC, the Contractor irrevocably and explicitly declares the absence of any conflict of interest in the meaning of Annex II.V and Annex II.X existing at the signing of the contract. This declaration shall extend to and cover any members of the Contractor's group/consortium and any of the subcontractors and dedicated Service Providers part of its tender.

**II.4.3** The Contractor must notify the contracting authority in writing as soon as possible of any situation that could constitute a conflict of interest or a professional conflicting interest during the implementation of the FWC. The Contractor must immediately take action to rectify the situation.

The Contracting Authority may do any of the following:

- (a) verify that the Contractor's action is appropriate;
- (b) require the Contractor to take further action within a specified deadline to rectify the situation;
- (c) decide not to award any Specific Contract to the contractor until the situation has been rectified.

**II.4.4** The Contractor must pass on all the relevant obligations in writing to:

- (d) its personnel;
- (e) any related person;
- (f) third parties involved in the implementation of the FWC, including subcontractors.

The Contractor must also ensure that the persons referred to above are not placed in a situation which could give rise to conflicts of interest.

**II.4.5** The Contractor shall further ensure that also its Service Providers providing the services under the Specific Contracts comply with any specific EUSPA policy applicable to Contractors' Personnel and, in case required by such policy, ensures its Service Providers sign the relevant declarations, with this requirement applying to any consortium member's and subcontractor's Service Providers accordingly.

**II.4.6** Should the Contractor not comply with these requirements, and should such failure seriously affect the provision of the services as required by the Contracting Authority under the FWC, it shall follow the process described under Article II.12.5.

## **ARTICLE II.5– PROCESSING OF PERSONAL DATA**

**II.5.1** Any personal data included in the FWC must be processed in accordance with the applicable rules on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data (currently Regulation (EU) 2018/1725). Such data shall be processed by the data controller (the Contracting Authority) and by the Contractor, which is hereby appointed as data processor solely for the purposes of the performance, management and monitoring of the FWC without prejudice to its possible transmission to the bodies charged with monitoring or inspection tasks in application of Union law.

**II.5.2** The following categories of personal data are expected to be processed by the data controller: contact details of the Contractor's Personnel or its Contractors that may be included in deliverables, such as name and last name, gender, telephone number, email address, postal address, organisation and position within organisation. The provision of the aforementioned data is a contractual requirement.

**II.5.3** The recipients of the personal data mentioned under Article II.5.1 shall be (1) a limited number of staff of the Contracting Authority managing the FWC or having a need-to-know for its execution, (2) a limited number of Personnel of the Contracting Authority Contractors assisting Contracting Authorities staff in the management of the FWC, (3) a limited number of Personnel of the Contracting Authority Contractors providing hosting services for the Contracting Authority servers. The personal data will be stored in the premises of the aforementioned Contractors, all of which are located within Union territory, and will be retained for up to 7 (seven) years after the expiry of the present FWC for audit and discharge purposes.

**II.5.4** The Contractor shall have the right to request from the data controller access to, rectification or erasure of its personal data, restriction of processing, the right to object to the processing and the right to data portability, provided that there are grounds for the exercise of any of these rights, as per the applicable rules.

**II.5.5** The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

**II.5.6** If, throughout the duration of the FWC, the Contractor is required to process any personal data (acting as data processor), the Contractor shall:

- a) inform in writing without delay the data controller and act only on documented instructions from the data controller, in particular with regard to the purposes of the processing, the categories of data that may be processed, the recipients of the data and the means by which the data subject may exercise its rights;
- b) with regard to transfers of personal data to a country outside the European Union or an international organisation, act only on documented instructions from the data controller, unless required to do so by Union or Member State law to which the processor is subject; in such a case, the processor shall inform the data controller of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;
- c) ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- d) without prejudice to Article II.5.8, take all necessary measures to ensure the security of the processing of

personal data, as may be instructed by the controller;

- e) not engage another processor or sub-processor without prior specific written authorisation of the controller;
- f) taking into account the nature of the processing, assist the controller by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the controller's obligation to respond to requests for exercising the data subject's rights laid down in the applicable rules;
- g) assist the controller for the fulfilment of its obligations to:
  - ensure compliance with its obligations regarding the security of the processing, and the confidentiality of electronic communications and directories of users;
  - notify a personal data breach to the European Data Protection Supervisor;
  - communicate a personal data breach without undue delay to the data subject, where applicable;
  - carry out data protection impact assessments and prior consultations as necessary.
- h) notify relevant personal data breaches to the controller without undue delay and at the latest within 48 hours after the Contractor becomes aware of the breach. In such cases, the Contractor shall provide the controller with at least the following information:
  - nature of the personal data breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
  - likely consequences of the breach;
  - measures taken or proposed to be taken to address the breach, including, where appropriate, measures to mitigate its possible adverse effects.
- i) maintain a record of all data processing operations carried on behalf of the controller, transfers of personal data, security breaches, responses to requests for exercising rights of people whose personal data is processed and requests for access to personal data by third parties;
- j) delete all the personal data after the end of the provision of services relating to processing;
- k) make available to the data controller all information necessary to demonstrate compliance with the obligations laid down in this Article and allow for and contribute to audits, including inspections, conducted by the controller or another auditor mandated by the controller.

**II.5.7** The Contractor shall grant Personnel access to the data to the extent strictly necessary for the performance, management and monitoring of the FWC.

**II.5.8** The Contractor shall adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to ensure:

- a) the pseudonymisation and encryption of personal data;
- b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;

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

**II.5.9** If the Contractor infringes the provisions of the present Article by determining the purposes and means of processing, the Contractor shall be considered to be a controller in respect of that processing under the General Data Protection Regulation (EU) 2016/679 Article 29(10) Regulation (EU) 2018/1725).

**II.5.10** The Contracting Authority as the data controller processes personal data of the Contractor as the data subject. The detailed information on processing the Contractor's personal data and the Contractor's rights in connection with personal data processing is provided in Privacy Statements related to applicable purposes of data processing.

## **ARTICLE II.6 – SUBCONTRACTING AND CONSORTIA MEMBERS**

### **II.6.1 General principles applicable to subcontracting and subcontractors**

A. The Contractor may only subcontract the provision of any of the services subject to:

- (i) the Agency's prior approval, which shall be withheld if the proposed subcontractor fails to demonstrate compliance with the exclusion, rejection and selection criteria, as well as the access to procurement conditions provided under Annex II.II (Tender Specifications) or shall be rejected under Annex II.II (Tender Specifications); and
- (ii) the Contractor's compliance with the Contracting Standards set out in paragraph B.

B. The Contractor commits and warrants that subcontracts entered into in the course of the execution of the FWC shall as far as possible be undertaken through competitive tendering and shall comply with the contracting standards set forth below (the "**Contracting Standards**"):

- (i) any such subcontract shall provide for the termination thereof or the assignment thereof to the Agency or the Agency's designee, in each case with no liability to the Agency or its designee, upon the termination of this FWC or the expiry of the Contract Period, whichever shall first occur;
- (ii) the Contractor shall ensure that the other party or parties to any such subcontract or amendment thereto comply with the Contracting Standards and that such contract or amendment thereto shall include (a) a copy of the Contracting Standards and (b) a provision allowing for the immediate termination of such contract by the Contractor in case of breach; the Contractor shall obtain the Agency's prior approval on any amount of break costs that may ultimately be due by the Agency in connection with such subcontract or amendment thereto in accordance with Article II.12.5.6 (Termination for an Agency Event of Default) all such contracts shall be entered into on an arm's-length basis (meaning, in the ordinary course of business and upon fair and reasonable terms no less favourable to the FWC than it would obtain in a comparable transaction with a person which is not an Affiliate) and shall contain market-based terms and conditions; the procurement, negotiation, execution and performance of all such contracts shall not involve any unfair or fraudulent conduct,

including, but not limited to, abuse of any dominant position / economic dependency, bribes, kick-backs, unlawful payments or promises of payment or other unlawful gifts or similar actions by any of the parties thereto or their employees, representatives, agents or similar persons;

- (iii) the procurement, negotiation, execution and performance of all such contracts shall be transparent to the Agency including the duty to provide full and complete information in relation thereto to the Agency. The Contractor shall use commercially reasonable efforts to harmonize the contract terms offered to similarly situated counterparties;
- (iv) the Contractor shall treat all similarly situated counterparties to such contracts in a consistent and even-handed manner. Similarly situated parties may only be treated differently by the Contractor for good cause or where objectively justifiable circumstances exist;
- (v) the subcontracts shall pass-through to subcontractors under fair and comparable conditions and terms the obligations and rights (including with respect to payments and payment terms) provided in this FWC; any discrepancies between the conditions of the FWC and those of any subcontract in relation to the same obligation shall be limited to the extent necessary (i) to preserve the project interests or (ii) to take into consideration the specific residual risks borne by the Contractor exclusively.

**II.6.2** Even where the Contracting Authority authorises the Contractor to subcontract to third parties, the Contractor shall nevertheless remain solely responsible for the proper performance of this FWC, including with regard to the activities and responsibilities undertaken by the subcontractors.

**II.6.3** The Contractor shall make sure that the subcontract does not affect rights and guarantees granted to the Contracting Authority by virtue of this FWC, notably by Article II.16.

**II.6.4** The Contracting Authority shall request the Contractor to remove or replace subcontractor(s) found to be in a situation provided for in Article II.12. In such case, the Contractor shall undertake, on the basis of its written request and subject to the Contracting Authority's prior written approval, to absorb the part of the FWC previously performed by the concerned subcontractor(s) at its level. Alternatively, the Contractor may introduce new subcontractor(s) pursuant to the applicable provisions of this Article II.6.

#### **II.6.5 Payment of Sub-Contractors**

The Contractor shall be sole responsible for paying the accounts of its Sub-Contractors in a timely and proper manner and not later than 90 (ninety) Days from the receipt of the relevant invoice including all the supporting documentation, in accordance with the applicable laws and commercial practice. The Contractor shall indemnify the Agency against any claims by its Sub-Contractors, caused by the Contractor's failure to pay them. The Contractor shall keep the Agency informed of the payment status of the Sub-Contractors and supply to the Agency, on request, evidence of said payments.

#### **II.6.6. CHANGE OF CONSORTIA MEMBERS**

**II.6.6.1** Changes in group members during contract execution are in principle acceptable in the context of universal successions or when the Contracting Authority terminates the Contract with a member of the consortium separately as per Article II.12.1. last paragraph.

**II.6.6.2** In the latter case changes may happen either by replacing the terminated member or by absorbing the relevant tasks and responsibilities by the remaining ones, subject to Agency's prior written approval. The replacing consortium member and/or newly formed consortium shall comply with the relevant cumulative conditions elaborated on in section 4.3 of the Tender Specifications (Annex II.II).

**II.6.6.3** The Contracting Authority reserves the right to terminate the FWC in its entirety, should the newly formed consortium not be in alignment with relevant cumulative conditions elaborated on in section 4.3 of the Tender Specifications (Annex II.II).

#### **II.6.7 Compliance with the Supply Chain Requirement**

**II.6.7.1** The Contractor shall comply with the Supply Chain Requirement, as provided in accordance with Section 5.2 of the Tender Specification. The compliance with this obligation is to be assessed on a regular basis and in any case at the signature of each specific contract.

The Contractor shall provide the Agency with any document as may be required by the Agency to assess compliance with the Supply Chain Requirement

### **ARTICLE II.7 – AMENDMENTS**

**II.7.1** Any amendment to the FWC or Specific Contract shall be made in writing before fulfilment of all contractual obligations. A Specific Contract may not be deemed to constitute an amendment to the FWC.

**II.7.2** The amendment may not have the purpose or the effect of making changes to the FWC or the Specific Contracts that might alter the initial conditions of the procurement procedure or specific contract or result in unequal treatment of tenderers or Contractors.

**II.7.3** Within 5 (five) working days of an Amendment signed by the Contracting Authority, being sent dispatched to the Contractor, the Contractor shall provide the Contracting Authority the Amendment back, duly signed and dated.

### **ARTICLE II.8 – ASSIGNMENT**

#### **BY THE CONTRACTOR**

**II.8.1** The Contractor shall not assign the rights, including claims for payments or factoring, and obligations arising from the FWC, in whole or in part, without prior written authorisation from the Contracting Authority. In such cases, the Contractor must provide the Contracting Authority with the identity of the intended assignee.

**II.8.2** In the absence of such authorisation, or in the event of failure to observe the terms thereof, the assignment of rights or obligations by the Contractor shall not be enforceable against the Contracting Authority and shall have no effect on it.

#### **BY THE AGENCY**

**II.8.3** The Contractor expresses hereby its consent and grants its authorisation to the assignment of the

Contract to the European Commission, with the exception of the Agency's rights regarding checks and audits under Article II.16, with effect as of 31 December 2027 and subject to Article II.8.6.

- II.8.4** The Agency shall cause the European Commission to undertake all obligations and be vested with all the rights arising out of the Contract.
- II.8.5** The Agency shall remain bound by any obligations and liabilities arising out of or in relation to the Contract prior to the date of assignment.
- II.8.6** The assignment shall be notified by the Agency by means of registered letter with return receipt by 30 November 2027 at the latest. In case the assignment is not notified by that date, the Contract shall not be assigned.

## **ARTICLE II.9 – FORCE MAJEURE**

**II.9.1.** If a party is affected by Force Majeure, it shall immediately and formally notify the other party without delay, stating the nature of the circumstances, likely duration and foreseeable effects.

**II.9.2.** A party is not liable for any delay or failure to perform its obligations under the FWC if that delay or failure is a result of Force Majeure. If the Contractor is unable to fulfil its contractual obligations owing to Force Majeure, it has the right to remuneration only for the services actually provided.

**II.9.3.** The parties shall take all the necessary measures to limit any damage due to Force Majeure.

**II.9.4.** If the force majeure event lasts for more than 30 (thirty) days each party is entitled to terminate the FWC or specific contract. Article II.12 shall be used accordingly.

## **ARTICLE II.10 – PARTIAL PAYMENT AND RETENTION OF PAYMENT**

**II.10.1.** If the Contractor fails to provide the service in accordance with the FWC or a Specific Contract, the Contracting Authority may reduce or retain payments proportionally to the seriousness of the unperformed obligations.

**II.10.2.** In cases where a payment milestone is partially achieved, the Agency may:

- perform partial payments, subject to the Contractor providing adequate evidence of the portion of the payment milestone which has been actually achieved. The execution of a partial payment is without prejudice to the application of liquidated damages at the completion of the affected milestone whenever occurring. The liquidated damages shall be calculated on the residual amount of the milestone not accepted and already covered by the partial payment.

or

- retain payment of the corresponding milestone, without prejudice of the application of liquidated damages in the full amount when the required performance is met or the milestone accepted.

### **II.10.3. Procedure for a partial payment or retention of payment**

The Contracting Authority must formally notify the Contractor of its intention to partially pay a corresponding calculated amount or retain the payment. Upon such notification, the invoice shall be suspended until the

Contractor submits a dedicated credit note, covering the amount of the reduction.

The Contracting Authority shall perform the payment of the amount that is certain, upon receipt of the credit note.

As regards the partial payment, the amount of the partial payment is clearly assessed by the Parties acting in good faith as a function of the value created to the Agency by the partial achievement of the payment milestone concerned.

The Contractor has 15 (fifteen) days following the date of receipt to submit observations. Failing that, the decision becomes enforceable the day after the time limit for submitting observations has elapsed.

If the Contractor submits observations, the Contracting Authority, taking into account the relevant observations, must notify the Contractor either of:

- i. the withdrawal of its intention to partial payment or the retention of payment; or of
- ii. its final decision to partial payment and the corresponding amount or the retention of payment,

whereby in case of (i) the Contractor shall issue an invoice for the amount of credit note and the Contracting Authority shall pay the amount which was debatable.

## **ARTICLE II.11 – SUSPENSION OF THE IMPLEMENTATION OF THE CONTRACT**

### **II.11.1 Suspension by the Contractor**

The Contractor may suspend the performance of the FWC or Specific Contract or any part thereof if a case of Force Majeure makes such performance impossible or excessively difficult. The Contractor shall inform immediately the Contracting Authority about the suspension without delay, giving all the necessary reasons and details and the envisaged date for resuming the implementation of the FWC.

The Contractor must notify the Contracting Authority as soon as it is able to resume performance of the Specific Contract, unless the Contracting Authority has already terminated the FWC or the Specific Contract.

### **II.11.2 Suspension by the Contracting Authority**

The Contracting Authority may suspend the implementation of the FWC or performance of a Specific Contract or any part thereof:

- a) if the FWC or Specific Contract award procedure or the performance of the FWC prove to have been subject to irregularities, fraud or substantial breaches of obligations;

- b) in order to verify whether presumed irregularities, fraud or substantial breaches of obligations have actually occurred;
- c) if the Contractor is in a situation of Professional Conflicting Interest under **ARTICLE II.4 –PROFESSIONAL CONFLICTING INTEREST** and pending the definition and implementation of rectification actions as set out under Article II.4.3;
- d) if the performance of the Contract is considered to materially affect, directly or indirectly, the interests of the European Union, such as but not limited to security threats;
- e) if the Contractor is considered to be in non-compliance with the confidentiality obligations and is required to submit relevant observations pursuant to **ARTICLE I.12 – CONFIDENTIALITY AND PARTICIPATION IN PUBLIC PROCUREMENT**.
- f) if, due to a change of circumstances, the Contractor, the Contractor Parties or any entity having a role in the performance of the Contract do not comply anymore with the EU Restrictive Measures referred to in section 7.2 of the Tender Specifications (Annex II.II), and if the Contractor has not promptly taken the necessary actions upon EUSPA request.

**II.11.3** During suspension for events under points (a) attributable to the Contractor, (c), (d) and (e) no payments shall be due by the Contracting Authority on the affected Specific Contract.

**II.11.4** Suspension shall take effect on the day the Contractor receives Formal Notification, or at a later date provided in the Notification. The Contracting Authority shall as soon as possible give notice to the Contractor to resume the service suspended or inform the Contractor that it is proceeding with termination of the FWC or Specific Contract. The Contractor shall not be entitled to claim compensation on account of suspension of the FWC or Specific Contract or of part thereof.

## **ARTICLE II.12 – EVENTS OF DEFAULT**

### **II.12.1 Contractor Events of Default**

Any of the following are “Contractor Events of Default”:

- II.12.1.1** if the Contractor or any (natural or legal) person that assumes unlimited liability for the debts of the Contractor is in one or more of the following situations:
  - II.12.1.1.1** the person or entity is bankrupt, subject to insolvency or winding-up procedures, its assets are being administered by a liquidator or by a court, it is in an arrangement with creditors, its business activities are suspended, or it is in any analogous situation arising from a similar procedure provided for under Union or national law;
  - II.12.1.1.2** it has been established by any means which the Agency, acting in good faith, can justify, that the person or entity is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the applicable law.
- II.12.1.2** if the Agency becomes aware of any pre-existing or new facts evidencing a change to the Contractor’s legal, financial, technical or organisational or ownership situation which change is:
  - affecting the performance of the Contract substantially; or

- affecting the essential security interest of the European Union; or
- substantially modifying the conditions under which the Contract was initially awarded; or calling into question the decision to award the Contract.

**II.12.1.3** if the provision of the services under the Contract has not actually started at the scheduled date;

**II.12.1.4** if the Contractor and/or any (natural or legal) person who is a member of their administrative, management or supervisory bodies or who has powers of representation, decision or control with regard to them and/or any natural person who is essential for the implementation of the Contract is in one or more of the following situations:

**II.12.1.4.1** it has been established by any means which the Agency, acting in good faith, can justify, that the person or entity is responsible of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the person or entity belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes wrongful intent or negligence, including, in particular, any of the following:

- i fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of access to procurement or selection criteria or in the implementation of the Contract;
- ii entering into agreement with other persons or entities with the aim of distorting competition;
- iii violating intellectual property rights;
- iv unduly influencing or attempting to unduly influence the decision-making process to obtain Union funds by taking advantage, through misrepresentation, of a conflict of interests involving any financial actors or other persons referred to in Article 61(1) of the Financial Regulation;
- v attempting to obtain confidential information that may confer upon it undue advantages in the award procedure;
- vi inciting to discrimination, hatred or violence against a group of persons or a member of a group or similar activities that are contrary to the values on which the Union is founded enshrined in Article 2 Treaty on European Union, where such misconduct has an impact on the person or entity's integrity which negatively affects or concretely risks affecting the performance of the legal commitment.

**II.12.1.4.2** it has been established by any means which the Agency, acting in good faith, can justify that the person or entity is responsible of any of the following conducts:

- i fraud, within the meaning of Article 3 of Directive (EU) 2017/1371 of the European Parliament and of the Council<sup>1</sup> and Article 1 of the Convention on the protection of the European Communities' financial interests, drawn up by the Council Act of 26 July 1995<sup>2</sup>;
- ii corruption, as defined in Article 4(2) of Directive (EU) 2017/1371 or active corruption within the meaning of Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26

<sup>1</sup> Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).

<sup>2</sup> OJ C 316, 27.11.1995, p. 48.

May 19973, or conduct referred to in Article 2(1) of Council Framework Decision 2003/568/JHA4, or corruption as defined in other applicable laws;

- iii conduct related to a criminal organisation as referred to in Article 2 of Council Framework Decision 2008/841/JHA<sup>5</sup>;
- iv money laundering or terrorist financing within the meaning of Article 1(3), (4) and (5) of Directive (EU) 2015/849 of the European Parliament and of the Council<sup>6</sup>;
- v terrorist offences or offences related to terrorist activities, as defined in Articles 3 to 12 of Directive (EU) 2017/541 of the European Parliament and of the Council<sup>7</sup>, or inciting, aiding, abetting or attempting to commit such offences, as referred to in Article 14 of that Directive;;
- vi child labour or other offences concerning trafficking in human beings as referred to in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council<sup>8</sup>;

**II.12.1.4.3** the person or entity has shown significant deficiencies in complying with main obligations in the implementation of a legal commitment, other than the Contract, financed by the budget of the European Union which has:

- i led to the early termination of a legal commitment;
- ii led to the application of liquidated damages or other contractual penalties; or
- iii been discovered by an authorising officer, the European Anti-Fraud Office (OLAF), the Court of Auditors or the European Public Prosecutor's Office (EPPO) following checks, audits or investigations;

**II.12.1.4.4** it has been established by any means which the Agency, acting in good faith, can justify that the person or entity is responsible of an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95<sup>9</sup>;

**II.12.1.4.5** it has been established by any means which the Agency, acting in good faith, can justify that the person or entity has created an entity in a different jurisdiction with the intent to circumvent fiscal, social or any other legal obligations including those related to working rights, employment and labour conditions in the jurisdiction of its registered office, central administration or principal place of business;

**II.12.1.4.6** it has been established by any means which the Agency, acting in good faith, can justify that the entity has been created with the intent referred to in previous point.

**II.12.1.4.7** the entity or person has intentionally and without proper justification resisted an investigation, check or audit carried out by an authorising officer or its representative or auditor, OLAF, the EPPO, or the Court of Auditors. It shall be considered that the person or entity resists an investigation, check or audit when it carries out actions with the goal or effect of preventing, hindering or delaying the conduct of any

<sup>3</sup> OJ C 195, 25.6.1997, p. 1.

<sup>4</sup> Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ L 192, 31.7.2003, p. 54).

<sup>5</sup> Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42)

<sup>6</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

<sup>7</sup> Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA

<sup>8</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 15.4.2011, p. 1).

<sup>9</sup> Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.1995, p. 1).

of the activities needed to perform the investigation, check or audit. Such actions shall include, in particular, refusing to grant the necessary access to its premises or any other areas used for business purposes, concealing or refusing to disclose information or providing false information.

- II.12.1.5** if the Contractor is the addressee of a decision prohibiting the award of the contract for having received foreign subsidies distorting the internal market, adopted by the European Commission in accordance with REGULATION (EU) 2022/2560 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 December 2022 on foreign subsidies distorting the internal market;
- II.12.1.6** If the Contractor is subject to international procurement instruments measures pursuant to the provision of Regulation 2022/103110 and related implementing acts;
- II.12.1.7** if the procedure for awarding the Contract or the implementation of the Contract proves having been subject to errors, irregularities, fraud or substantial breaches of obligations including the submission of false information on the side of the Contractor;
- II.12.1.8** if the Contractor does not comply with applicable laws, including, without limitation to, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;
- II.12.1.9** if the Contractor fails to notify the Contracting Authority that it is in a situation of Conflict of Interest as referred to in Article II.4 (Professional Conflicting Interest); or fails to take immediate action for rectification or additional action for rectification as required by Contracting Authority; or if the proposed rectification actions are, in the opinion of Contracting Authority acting reasonably, not effective
- II.12.1.10** if the Contractor is in breach of any of the confidentiality obligations resulting from Article I.12 (Confidentiality and Participation in Public Procurement);
- II.12.1.11** if the Contractor does not comply with the applicable data protection obligations resulting from Regulation (EU) 2016/679;
- II.12.1.12** if the Contractor does not implement or perform the Contract in accordance with the tender specifications or is in breach of another substantial contractual obligation;
- II.12.1.13** if, due to a change of circumstances, the Contractor, the Contractor Parties or any entity having a role in the performance of the Contract do not comply anymore with the EU Restrictive Measures identified in the Section 7.2 of Annex II.II - Tender Specifications, and if the Contractor has not promptly taken the necessary actions upon EUSPA request;
- II.12.1.14** any failure to comply with the Access to Procurement, Selection, Rejection and Exclusion Criteria or the provisions of Section 7 – 10 of Annex II.II – Tender Specifications (Compliance with the Access to Procurement, Selection, Rejection and Exclusion Criteria);
- II.12.1.15** if the Contractor fails to comply with its subcontracting obligations as provided under Contractor’s Proposal (Annex II.III) and the Tender specifications (Annex II.II) and this Contract (including in Article II.6 – Subcontracting and Consortia Members and subclauses thereof);
- II.12.1.16** any failure to comply with any environmental obligations as per this Contract;

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<sup>10</sup> REGULATION (EU) 2022/1031 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 June 2022 on the access of third-country economic operators, goods and services to the Union’s public procurement and concession markets and procedures supporting negotiations on access of Union economic operators, goods and services to the public procurement and concession markets of third countries (International Procurement Instrument – IPI).

- II.12.1.17 the Contractor fails to comply with the provisions of Article II.8 (Assignment)
- II.12.1.18 the Contractor reaches the Contractor liability cap.

### II.12.2 Agency Events of Default

An “**Agency Events of Default**” shall mean a failure by the Agency to make payment of any amount that is due and payable by the Agency under this Contract or any Specific Contract within one hundred and eighty (180) days from the formal written demand by the Contractor.

### II.12.3 GROUNDS FOR TERMINATION BY THE CONTRACTOR

The Contractor shall have the right to terminate this Contract based on:

- (a) an Agency Event of Default (which has not been cured during the Cure Period) as provided under Article II.12.2 (Agency Events of Default); or
- (b) a Force Majeure Event, subject to the conditions provided in Article II.9 (Force Majeure)

### II.12.4 GROUNDS FOR TERMINATION BY THE AGENCY

The Agency shall have the right to terminate this Contract based on:

- (a) a Contractor Event of Default (and when it is a Curable Event of Default, has not been cured during the Cure Period) as provided under Article II.12.1 (Contractor Event of Default); or
- (b) Force Majeure Event, subject to the conditions provided in Article II.9 (Force Majeure); or
- (c) a public policy reason.

### II.12.5 TERMINATION PROCEDURE

#### II.12.5.1 Notification of an Event of Default

If an Event of Default occurs in relation to a Party which is a Curable Event of Default, the other Party may give notice of that Event of Default to that Party (a “**Default Notice**”).

#### II.12.5.2 Cure Period - Mitigation

In case of a Curable Event of Default, the Party in default shall remedy the event giving rise to the Default Notice within sixty (60) days (or such longer period as may be set forth in the Default Notice, or as the Parties may otherwise agree) following the Default Notice (the “**Cure Period**”).

At the expiry of the Cure Period, if:

- (a) the Curable Event of Default has not been remedied; and
- (b) the Parties have not agreed to extend the Cure Period,

the notifying Party shall be entitled to serve a Termination Notice on the defaulting Party pursuant to Article II.12.5.3 below.

For the purpose of this Article, a "**Curable Event of Default**" shall mean any Agency Event of Default and any Contractor Event of Default that may reasonably be remedied.

If an Event of Default occurs which is not a Curable Event of Default, Article II.12.3 or Article II.12.4 (as the case may be) shall apply.

#### **II.12.5.3 Termination Notice**

Subject to Article II.12.5.2, any Party entitled to terminate this Contract in accordance with Article II.12.3 or Article II.12.4 (as applicable) and wishing to do so shall issue a notice to the other Party informing it of its intention to terminate this Contract and stating the grounds for termination (the "**Termination Notice**").

Without prejudice to the Cure Period provided under Article II.12.5.2, this Contract shall be effectively and automatically terminated upon expiry of a period of sixty (60) days following the date of delivery of the Termination Notice, except otherwise provided in the Hand Back Plan.

#### **II.12.5.4 Effect of Termination**

On receipt of the notification of termination under Article II.12.5.3, and unless the Step in Rights under Article II.12.05.8 are exercised by the Agency, the Contractor shall:

- (i) take all the appropriate measures to minimise costs, prevent damages, and cancel or reduce its commitments,
- (ii) carry out the hand back activities and fulfil the hand back obligations specified under the Hand Back Plan to be agreed with the Agency upon the Agency's request. Such obligations shall be performed within the time limit specified in the Hand Back Plan.
- (iii) assign back to the Agency all the contracts under Article II.6.1(b)(i) (Contracts Assignment), still in force at the date of termination, subject to the Agency request;
- (iv) pay within one month of the termination date the amount due in accordance with Article II.12.5.5 and Article II.12.5.6 (as applicable).

#### **II.12.5.5 TERMINATION PAYMENTS IN THE EVENT OF A CONTRACTOR EVENT OF DEFAULT**

If the Agency terminates this Contract in the event of a Contractor Event of Default, the Contractor shall pay to the Agency a compensation amount equal to the sum of

- (v) the remediation costs, equal to any costs incurred and/or to be incurred and/or reasonably expected to be incurred by the Agency to remedy the underperformance of the Contractor not remedied at termination date;
- (vi) the Handback costs;
- (vii) any amount due by the Contractor to the Agency and unpaid at termination date;

up to a limit of liability equal to 50% of the overall aggregate value of the effective Specific Contracts.

For the sake of clarity, it is specified that:

- (i) the Contractor liability cap as well as liquidated damages cap provided in this FWC and any Specific Contract thereunder shall not apply to the payment of the termination amount provided for in this Article II.12.5.5;
- (ii) the payment of the termination amount provided for in this Article II.12.5.5 may be offset against any amount due and unpaid by the Agency to the Contractor, being specified that

the payments due by the Agency to the Contractor in relation to the performance of the FWC and any Specific Contract thereunder shall be limited to the apportionment of the relevant contractual amounts corresponding to the activities successfully undertaken by the Contractor and accepted by the Agency at termination date only.

#### **II.12.5.6 Termination Payments In the event of an Agency Event of Default and a public policy reason**

If the Contractor terminates this Contract in the event of an Agency Event of Default or the Agency terminates this Contract for a public policy reason, the Agency shall pay to the Contractor a compensation amount equal to the sum of:

- (i) any amount due and unpaid by the Agency to the Contractor, being specified that the payments due by the Agency to the Contractor in relation to the performance of the Contract and any Specific Contract thereunder shall be limited to the apportionment the relevant contractual amounts corresponding to the activities successfully undertaken by the Contractor and accepted by the Agency at termination date only;
- (ii) the loss of profit fee, equal to the net present value (discounted on the date of payment at the rate equal to the 12-months EURIBOR rate published on that date by the European Central Bank) of the net benefit that the Contractor may have reasonably expected under the ongoing FWC or Specific Contracts from the termination date until the normal term of the FWC or Specific Contracts, based on the Contractor's actual level of performance up to the date of termination, less any gain the Contractor had or should be able to realise as a result of termination.

For the sake of clarity, it is specified that the payment of the termination amount provided for in this Article may be offset against any amount due and unpaid by the Contractor to the Agency, including any Liquidated Damages.

#### **II.12.5.7 SOLE REMEDY FOR EVENT OF TERMINATION**

The Parties acknowledge that the termination events, conditions and amounts provided for under Articles II.12.1, II.12.2, II.12.3, II.12.4, and II.12.5., shall constitute the exclusive remedy and full and final compensation available with respect to any event of termination of the Contract, with the exception of the claims available under Article I.14 (Liquidated Damages) which shall remain applicable in addition to the compensation under Article II.12.0 as well. Accordingly, the Parties irrevocably waive any right they may have with respect to any claim for any other termination events, conditions and amounts than those provided for under this Articles II.12.2, II.12.3, II.12.4, and II.12.5 or elsewhere contained in this Contract, with the exception of the claims available under Article I.14 (Liquidated Damages) which shall remain applicable in addition to the compensation under Article II.12.5 as well.

#### **II.12.5.8 STEP-IN RIGHT**

1. In the event that a Contractor Event of Default has occurred and is continuing and without prejudice to any ongoing Cure Period and to the right of the Agency to terminate the Contract in accordance with Articles II.12.2, II.12.3, II.12.4, and II.12.5, the Agency may, irrespective of any pending dispute resolution in accordance with Article I.15 (Applicable Law and Settlement of Disputes), issue a notice to the Contractor (a "**Step-in Notice**") informing the Contractor that the Agency will, from such date as shall be specified in the Step-in Notice, exercise its rights to step-in under this Article ("**Step-in Rights**"). The Agency may at its discretion:

- (i) take measures itself; or

- (ii) appoint a third party to take measures,

to remedy the Contractor Event of Default (including any matters referred to in the Default Notice (if any)), together with all ancillary measures as may reasonably be necessary in this respect be, with the Contractor being under the obligation not to obstruct and making its best effort to support the measures taken by the Agency and/or the third party appointed by it.

2. Any Step-in Notice issued by the Agency pursuant to this article shall state the reasons for the Agency exercising its rights to step-in, the action the Agency intends to take in order to remedy the matters, the date on which the Agency will exercise its rights to step-in, the third party appointed by it, the measure such third party is entitled to take on behalf of the Agency, and the likely duration for which the measures under the Step-in Rights will be exercised. All measures carried out by the Agency or on its behalf shall be carried on in accordance with Good Industry Practice and, subject to Article II.12.5.8.6 (Step-out Notice), for such period(s) as the Agency shall reasonably decide.
3. The Contractor shall compensate the Agency for the costs of measures which the Contractor should have taken to meet its obligations (including but not limited to reasonably allocated overheads or other internal costs) that are incurred by the Agency or any third party appointed under Article II.12.5.8.1 in taking any measure in accordance with this paragraph pursuant to a Step-in Notice up to the limit of Contractor liability cap. These costs may include a reasonable profit element of any third party appointed under Article II.12.5.8.1. Such profit element may only be deemed to be unreasonable for the purpose for this Article to the extent any difference between the profit element provided for in this agreement and the profit element applied for the same services under this Article exceeds what could be justified by the short term, short notice and emergency nature of such third-party engagement. On the Agency's choice, the reimbursement to the Agency may be made through the adjustment of the relevant contractual amounts or by offsetting against any other claim of the Contractor.
4. Neither the Agency nor any third party appointed under Article II.12.5.8.1 shall have any liability to the Contractor for any loss or damage which has occurred as a result of the Agency's exercise of its Step-in Rights under this Article, except to the extent such loss or damage arise as a result of wilful misconduct or gross negligence of the Agency or any third party appointed in accordance with Article II.12.5.8.1 and attributable to it while exercising the Step-in Rights.
5. Following a Step-in Notice, the Contractor shall promptly submit to the Agency proposals in relation to the events giving rise to the Step-in Notice, to demonstrate to the Agency that the Contractor is able to perform the Contractor's Obligations on which the Step-in Rights were exercised, and that the grounds on which the Step-in Rights were exercised no longer apply or will be resolved within a reasonable period by the Contractor.
6. Following receipt of the Contractor's proposals pursuant to Article II.12.5.8.5, if the Parties agree that the Contractor's proposals are satisfactory, the Agency shall give notice to the Contractor (a "**Step-out Notice**") informing the Contractor that from the date specified in such Step-out Notice, such date being no more than 60 (sixty) Days following the Parties' agreement or the determination that such proposals are satisfactory, the Contractor shall resume the performance of its obligations in respect of which the Step-in Rights were exercised and the Agency will withdraw its own personnel and any personnel, if any, of third parties and/or any other resources, upon such date.
7. Where the Agency and the Contractor agree in writing or it is determined by a final judgement of a court of law or final arbitration award that the Agency was not entitled to exercise its Step-in Rights in accordance with this Article, then the Agency shall, without prejudice to any other remedies the Contractor may have under

the Contract or under the applicable Law, refund the amounts paid by the Contractor to the Agency. Any Default Notices which are agreed or determined to have been awarded in error shall be deemed to have been cancelled. Moreover, the Agency shall reimburse to the Contractor any additional losses costs or expenses incurred by the Contractor as a direct result of such improper Step-In.

#### **II.12.5.9 CONSEQUENCES OF AN AGENCY DEFAULT**

Without prejudice to the Contractor's right to terminate for Agency Default, if as a direct result of an Agency's material breach of any of the Agency's undertakings that materially affects the performance of this Contract by the Contractor (an "**Agency Default**"):

- (i) the Contractor incurs any delay or is unable to comply with its obligations under this Contract; and/or
- (ii) the Contractor incurs additional costs with respect to that indicated in the cost breakdown under Annex II.III (Contractor's Proposal),

then the Contractor is entitled to apply for relief from its obligations under this Contract and compensation subject to compliance with this Article II.12.5.9.

In case of any Agency Default, the Contractor shall:

- (i) Notify the Agency, not later than three (3) working days of becoming aware of such Agency Default;
- (ii) analyse and report on the impact of such Agency Default, if any, on the FWC or Specific Contract affected and propose mitigation actions, including FWC or Specific Contract amendments;
- (iii) take all reasonable measures to eliminate or limit the consequences of the Agency Default, omission or delay on its performance.

The Agency Default shall relieve the Contractor from fulfilling its obligations, either totally or in part, only insofar as:

- (i) the Contractor has notified the Agency in accordance with the Article above;
- (ii) the Contractor can prove that the direct cause of such non-fulfilment was the considered Agency Default.

In this case, the Agency responsibility for breach of its undertakings shall not go beyond the following:

- (i) extension of contractual milestones, to the extent that the delay is proven to be the direct result of the Agency Default; or
- (ii) total or partial waiver of KPIs, including temporary, to the extent that the non-compliance with KPIs is proven to be the direct result of the Agency Default;
- (iii) reimbursement of the duly justified direct costs (excluding, without limitation, any indirect costs or consequential damages) due to the Agency Default, to the extent proven that such financial consequences are the direct result of this Agency Default.

#### **ARTICLE II.13 –PAYMENTS AND GUARANTEES**

### **II.13.1 Date of payment**

The date of payment is deemed to be the date on which the contracting authority's account is debited.

### **II.13.2 Currency**

The FWC shall be in Euro. Payments shall be executed in Euro. Upon agreement of the Contracting Authority, the payments may be executed in the local currency.

### **II.13.3 Conversion**

The Contracting Authority makes any conversion between the Euro and another currency at the daily Euro exchange rate published in the Official Journal of the European Union, or failing that, at the monthly accounting exchange rate, as established by the European Commission and published on the website indicated below, applicable on the day when it issues the payment order.

The Contractor makes any conversion between the Euro and another currency at the monthly accounting exchange rate, established by the Commission and published on the website indicated below, applicable on the date of the invoice.

[http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/inforeuro/inforeuro\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm)

### **II.13.4 Costs of transfer**

The costs of the transfer shall be borne in the following way:

- a) the Contracting Authority bears the costs of dispatch charged by its bank;
- b) the Contractor bears the costs of receipt charged by its bank;
- c) the party causing repetition of the transfer bears the costs for repeated transfer.

### **II.13.5 Invoices and Value Added Tax**

Invoices shall contain the Contractor's identification (or leader's in the case of a joint tender), the identification data, the amount, the currency and the date, as well as the FWC reference and reference to the Specific Contract. Invoices shall be sent electronically to the following address: [finance@EUSPA.europa.eu](mailto:finance@EUSPA.europa.eu) and to any other address as communicated by the Contracting Authority.

Invoices shall indicate the place of taxation of the Contractor (or leader in the case of a joint tender) for value added tax (VAT) purposes and shall specify separately the amounts not including VAT and the amounts including VAT. The Contracting Authority is, as a rule, exempt from all taxes and duties, including VAT, pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.

The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure

that the supplies and services required for performance of the FWC are exempt from taxes and duties, including VAT exemption.

The Contractor shall have sole responsibility for compliance with the tax laws which apply to it.

### **II.13.6 Interim payments and payment of the balance**

Upon receipt, the Contracting Authority shall pay the amount due as interim or final payment, within the periods specified in Article I.6, provided the invoice, deliverables and documents have been approved by the Contracting Authority and without prejudice to Article II.10.1. Approval of the invoice, deliverables and documents shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information they contain. Payment of the balance may take the form of recovery.

### **II.13.7 Suspension of the time allowed for payment**

The Contracting Authority may suspend the payment periods specified in Article I.6 at any time by notifying the Contractor (or leader in the case of a joint tender) that its invoice cannot be processed, either because it does not comply with the provisions of the FWC, or because the appropriate documents have not been produced, or because the Contracting Authority has observations on the documents or deliverables submitted with the invoice. The Contracting Authority must notify the Contractor (or leader in the case of joint tender) as soon as possible of any such suspension, giving the reasons for it. The Contracting Authority shall notify the Contractor (or leader in case of a joint tender) of the need to submit additional information or corrections or a new version of the documents or deliverables if the Contracting Authority requires it.

Suspension shall take effect on the date the Notification is sent by the Contracting Authority. The remaining payment period resumes from the date on which the requested information or revised documents are received by the Contracting Authority or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension period exceeds two months, the Contractor may request the Contracting Authority to justify the continued suspension.

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph and the new document produced is also rejected, the Contracting Authority reserves the right to terminate the Specific Contract in accordance with Article II.12.

### **II.13.8 Interest on late payment**

On expiry of the payment periods specified in Article I.6, the Contractor is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in Euros (the reference rate) plus eight points. The reference rate shall be the rate in force on the first day of the month in which the payment period ends, as published in the C series of the Official Journal of the European Union.

The suspension of the payment period in accordance with Article II.13.7 may not be considered as a late payment. Interest on late payment shall cover the period running from the day following the due date for payment up to and including the date of actual payment as defined in Article II.13.7.1 However, when the

calculated interest is lower than or equal to EUR 200, it shall be paid to the Contractor only upon request submitted within two months of receiving late payment.

#### **ARTICLE II.14 - REIMBURSEMENTS**

**II.14.1** Where provided by the special conditions or by the tender specifications, the Contracting Authority shall reimburse the expenses that are directly connected with execution of the tasks either on production of original supporting documents, including receipts and used tickets, or failing that, on production of copies or scanned originals, or on the basis of flat rates.

**II.14.2** Travel, accommodation and subsistence expenses shall be reimbursed, where appropriate, on the basis of the shortest itinerary and the minimum number of nights necessary for overnight stay at the destination.

**II.14.3** Travel expenses shall be reimbursed as follows:

- a) travel by air shall be reimbursed up to the maximum cost of an economy class ticket at the time of the reservation;
- b) travel by boat or rail shall be reimbursed up to the maximum cost of a first class ticket;
- c) travel by car shall be reimbursed at the rate of one first class rail ticket for the same journey and on the same day;

In addition, travel outside European Union territory shall be reimbursed provided the Contracting Authority has given its prior written consent.

**II.14.4** Subsistence and accommodation expenses shall be reimbursed on the basis of a daily subsistence and accommodation allowances as follows:

- a) for journeys of less than 200 km for a return trip, no subsistence shall be payable;
- b) daily subsistence allowance shall be payable only on receipt of supporting documents proving that the person concerned was present at the destination;
- c) daily subsistence allowance shall take the form of a flat-rate payment to cover all subsistence expenses, including meals, local transport which includes transport to and from the airport or station, insurance and sundries;
- d) daily subsistence allowance shall be reimbursed at the flat rates specified in Article I.4.2.;
- e) accommodation allowance shall be reimbursed on receipt of supporting documents proving the necessary overnight stay at the destination, up to the flat-rate ceilings specified in Article I.4.2.2.

**II.14.5** The cost of shipment of equipment or unaccompanied luggage shall be reimbursed provided the Contracting Authority has given prior written authorisation.

**II.14.6** Conversion between the Euro and another currency shall be made as specified in Article II.13.3.

#### **ARTICLE II.15 – RECOVERY**

**II.15.1** If an amount is to be recovered under the terms of the FWC or the Specific Contract, the Contractor shall repay the Contracting Authority the amount in question according to the terms and by the date specified in the debit note.

**II.15.2** Before recovery, the Contracting Authority must formally notify the Contractor of its intention to recover the amount it claims, specifying the amount due and the reasons for recovery and inviting the Contractor to make any observations within 30 (thirty) days of receipt. If no observations have been submitted or if, despite the observations submitted, the Contracting Authority decides to pursue the recovery procedure, it must confirm recovery by formally notifying a debit note to the Contractor, specifying the date of payment. The Contractor must pay in accordance with the provisions specified in the debit note.

**II.15.3** If the Contractor does not pay by the due date, the Contracting Authority may, after informing the Contractor in writing, recover the amounts due:

- a) by offsetting them against any amounts owed to the Contractor by the Contracting Authority, Union or by the European Atomic Energy Community or by an executive agency when it implements the Union budget;
- b) by calling in a financial guarantee if the Contractor has submitted one to the Contracting Authority;
- c) by taking legal action.

#### **II.15.4 Interest on late payment**

If the obligation to pay the amount due is not honoured by the date set by the Contracting Authority in the debit note, the amount due shall bear interest at the rate indicated in Article II.13.8. Interest on late payments shall cover the period from the day following the due date for payment up to and including the date when the Contracting Authority receives the full payment of the amount owed.

**II.15.5** Any partial payment shall first be entered against charges and interest on late payment and then against the principal amount.

**II.15.6** If the Contract is signed by a group (joint tender), the group is jointly and severally liable under the conditions set out in Article I.10.1 (liability). The Contracting Authority shall send the debit note first to the leader of the group.

**II.15.7** If the leader does not pay by the due date and if the amount cannot be offset in accordance with Article II.15.3(a), the Contracting Authority may claim the amount still due to any other member of the group by respectively notifying them with the debit note already sent to the leader under this Article

#### **ARTICLE II.16 – CHECKS AND AUDITS**

**II.16.1** The Contracting Authority and the European Anti-Fraud Office may check or have an audit on the performance of the FWC. It may be carried out either directly by their own staff or by any other outside body authorised to do so on their behalf. Such checks and audits may be initiated at any moment during the performance of the FWC and during a period of up to five years which starts from the payment of the balance of the last Specific Contract issued under this FWC. The audit procedure shall be deemed to be initiated on the date of receipt of the relevant letter sent by the Contracting Authority. Audits shall be carried out on a confidential basis.

**II.16.2** The Contractor must keep all original documents stored on any appropriate medium, including digitised originals if authorised by national law and under the conditions laid down therein, for a period of five years which starts running the payment of the balance of the last Specific Contract issued under this FWC.

**II.16.3** The Contractor shall allow the Contracting Authority's staff and outside personnel authorised by the Contracting Authority the appropriate right of access to sites and premises where the FWC is performed and to all the information, including information in electronic format, needed in order to conduct such checks and audits. The Contractor must ensure that the information is readily available at the moment of the check or audit and, if so requested, that information be handed over in an appropriate form.

**II.16.4** On the basis of the findings made during the audit, a provisional report shall be drawn up. It shall be sent to the Contractor, which shall have 30 (thirty) days following the date of receipt to submit observations. The final report shall be sent to the Contractor within 60 (sixty) days following the expiry of that deadline. On the basis of the final audit findings, the Contracting Authority may recover all or part of the payments made and may take any other measures which it considers necessary.

**II.16.5** The Court of Auditors and the European Public Prosecutor's Office established by Council Regulation (EU) 2017/1939 ('the EPPO') shall have the same rights as the Contracting Authority, notably right of access, for the purpose of checks and audits.

**Annex II.I to the Framework Contract - Statement of Compliance to the Technical Specifications and Contractual Baseline of EUSPA/OP/19/26/Lot [x] Framework Contract**

(separate document)

**Annex II.II - Tender Specifications and its annexes including corrigenda and clarification notes**  
(separate document)

**Annex II.III - Contractor's Tender dated [xx/xx/xxx] and relating clarifications received**  
(separate document)

## ANNEX II.IV – DRAFT SPECIFIC CONTRACT

SPECIFIC CONTRACT No **EUSPA/OP/08/22/Lot[X]/SC[#]**

implementing Framework Contract No **EUSPA/OP/19/26/Lot[X]**

The European Union Agency for the Space Programme (hereinafter referred to as "EUSPA", the "Agency" or the "Contracting Authority"), represented for the purposes of the signature of this contract (hereinafter referred to as the "contract" or "specific contract" or "SC") by Mr Rodrigo da Costa, Executive Director, on the one part, and

[full official name] [official legal form]

[statutory registration number]

[full official address]

[VAT registration number]

[appointed as leader of the group by the members of the group that submitted the joint tender]

[repeat these data as many times as there are Contractors in case of joint tender and continue numbering]

([collectively] "the Contractor"), represented for the purposes of signing this specific contract by [forename, surname and function of legal representative,]

on the other part,

HAVE AGREED

## ARTICLE 1: SUBJECT MATTER

- 1.1 This specific contract implements Framework Contract (FWC) No [TO BE INSERTED] signed by the Contracting Authority and the Contractor on [complete date].
- 1.2 The subject matter of this specific contract is [short description of subject].
- 1.3 The Contractor undertakes, in accordance with the terms set out in the FWC and in this specific contract and the annexes thereto, which form an integral part thereof, to perform the tasks specified in Annexes SC.I and SC.II.

## ARTICLE 2: ENTRY INTO FORCE AND DURATION

- 2.1 This specific contract shall enter into force on the date on which it is signed by the last party.
- 2.2 The Specific Contract implementation provision of the services shall start on [xx/xx/xxx].

### *For Planned Deliverable Mode Tasks*

The Contractor shall deliver to the Contracting Authority the deliverables, included in the scope of the Specific Contract, according to the schedule defined in Annex SC.I.

### *For Deliverable on Demand Mode Tasks*

The Contractor shall deliver to the Contracting Authority the deliverables, included in the scope of the Specific Contract, according to the schedule established via the mechanism defined in Art. 1.3b.3 of the Framework Contract, but not later than [xx (xx)] months after the signature of the Specific Contract or upon budget exhaustion, whichever occurs earlier.

- 2.3 The duration of the specific contract may be extended only with the express written agreement of the parties before such period elapses.
- 2.4 In Planned Deliverable Mode: Annex SC.I to the Specific Contract provides for the budget allocation per deliverable. The allocation of budget per deliverable may be:
  - amended;
  - reallocated to other deliverables, irrespective of whether these are in Planned Deliverable Mode or deliverables to be provided in Deliverable on Demand Mode; and/or
  - cancelled.

by a letter co-signed by the EUSPA's responsible Project Officer & the EUSPA's Head of Finance and sent by the Contracting Authority to the Contractor, on the condition that the total duration of the Specific Contract, the maximum total price to be paid under this Specific Contract and the budgetary allocation per space component remain unchanged, as well as the budget reallocation is done within the same EU Space programme component.

It is clarified that the allocation of budget for missions (without prejudice to the provisions of Article I.4.2 of the FWC and respecting the upper budgetary limit set out in the mission plan) and deliverables within one task/deliverable is indicative and the re-allocation of budget and effort between mission and deliverables within one task/deliverable is possible without the additional communication between the contracting parties.

- 2.5 For Deliverable on Demand Mode: the quotation for tasks/deliverables that has been accepted by the Contracting Authority in accordance with Article I.3b.3 may be amended as provided in Article 2.4.
- 2.6 Following the communication by the Contracting Authority, in line with Article 2.4 and/or Article 2.5, the Contractor shall have 5 (five) working days to comment on the updated allocation of budget. In case the Contracting Authority receives no communication from the Contractor within this period, the allocation of budget shall be considered formally updated and applicable.
- 2.6 The delivery schedule may be updated monthly through written communication by the Contracting Authority to the Contractor, on the condition that the total duration of the SC and the total maximum price to be paid under this SC remain unchanged.
- 2.7 Following the communication by the Contracting Authority, the Contractor shall have 5 (five) working days to comment on the updated delivery schedule. In case the Contracting Authority receives no communication from the Contractor within this period, the delivery schedule shall be considered formally updated and applicable. The updated delivery schedule shall be also presented to the following progress report as agreed between the Parties.

### **ARTICLE 3: PRICE**

- 3.1 The maximum total price to be paid under this specific contract shall be EUR [amount in figures and in words] covering all services provided. It being understood that payment will only be made for deliverables that have been accepted in line with Article I.5 of the Framework Contract and the maximum total price of the Specific Contract may not be consumed.
- 3.2 Travel expenses, accommodation costs and daily subsistence allowance for Missions are part of the maximum total price of the SC and shall be reimbursed in line with Article I.4 of the FWC and up to a total maximum amount of EUR [amount in figures and in words].
- 3.3 In addition to the maximum total price, no other reimbursable expenses are foreseen.

### **ARTICLE 4: PAYMENTS**

- 4.1 Payments and approval of payments shall be made in accordance with Articles I.4, I.5, I.6, I.7, II.13, II. 14, II.15, II.16 of the FWC.
- 4.2 In accordance with Article I.4, payments shall be executed only if the Contractor has fulfilled all its contractual obligations by the date on which the invoice is submitted (with all required information and supporting documents), including submission to the Contracting Authority of:
  - a) deliverable(s) acceptance sheet(s), duly dated and signed by the Contractor and the Contracting Authority's project officer,
  - b) a table on actual consumption of travel, accommodation and subsistence expenses, including, if applicable, statements of reimbursable expenses in accordance with ARTICLE II.14 –

REIMBURSEMENTS of the FWC;

- c) a list of all created Foreground IPRs, by attaching the filled-in Annex II.IX to the FWC or a declaration stating that there are no such rights were created;
- d) a list of all Background IPRs to the results or parts of the results by attaching the filled-in Annex II.VIII or a declaration stating that there are no such Background IPR, as provided for in Article I.13.2.4 of the FWC;
- e) *[ any other document in accordance with the relevant Specific Contract.]*

*(the above list is indicative - to be tailored for each SC)*

If by any reason the submission of a deliverable is delayed or not complete by the payment milestone planned, the request for its payment shall be delayed accordingly and may be submitted with the payment request following its delivery.

**4.3** As part of the Final Progress Report, the Contractor shall release a final version of the information submitted under Article 4.2 gathering all the costs of the specific contract split among the interim payment periods.

#### **ARTICLE 5: FOLLOW-UP OF BUDGET**

**5.1.** Tasks under this SC include the project management of such tasks. The Contractor is obliged to monitor the consumption of the budget for each task of this SC. In order to prevent exceeding the budget ceiling for this SC or any of its tasks, the Contractor shall alert, in writing and in due time, the Contracting Authority when the budget consumption exceeds 70%, 80% and 90% pre task and for the SC. The Contractor will not invoice any tasks going beyond the budget ceiling unless it receives a prior written agreement of the Contracting Authority.

**5.2.** The Contractor shall create and maintain a database of all accepted by the Contracting Authority quotations for Deliverables on Demand, which shall include at least:

- SC number, the SC tasks task ID and title, the programme component
- deliverable ID, title and price,
- date of quotation acceptance,
- delivery deadline,
- delivery date,
- date of deliverable acceptance and
- any other relevant information agreed between the Parties

The Database shall indicate the unused budget for Deliverable of Demand per SC tasks and be kept up-to-date and made available online or shared on a weekly basis with the Contracting Authorities' Project officer identified in Article I.8.3.

#### **ARTICLE 6: WARRANTY OF COMPLIANCE WITH THE LAW**

**6.1.** The Contractor hereby represents and warrants that the execution of the services under the present Specific Contract and the relevant modalities do not represent nor can be interpreted as the provision of interim

workers' service for any purpose under the applicable law. The Contractor undertakes any and all responsibilities for the compliance of the services provided under this Contract with the applicable law. The Contractor represents and warrants to have taken into due considerations the provision of applicable law relevant to the execution of the services under this Specific Contract when formulating its offer, either under a technical, managerial or financial standpoint. The Contractor undertakes to hold the Agency harmless from any claim or request of damage brought against the Agency by

- a) the Service Providers engaged by the Contractor or any of its subcontractors at any title for the provision of services under this Specific Contract;
- b) any third party.

## **ANNEXES**

Annex SC.I: Terms of reference

Annex SC.II: Contractor's specific offer (No [complete] of [insert date])

Annex SC.III: Deliverables Acceptance Sheet

**SIGNATURES**

For the Contractor,

For the Contracting Authority,

[Company name/forename/surname/function]

Rodrigo da Costa, Executive Director

signature[s]: \_\_\_\_\_

signature[s]: \_\_\_\_\_

Done in [place], [date]

Done in Prague, [date]

In duplicate in English.

**Annex II.V - Declaration on confidentiality and absence of conflicting professional interest – TEMPLATE**

(separate document)

ANNEX II.VI –

**CEILINGS FOR MISSIONS TO EUROPEAN UNION AND NON-EUROPEAN UNION MEMBER STATES**

<b>Destination</b>	<b>Daily allowance (€)</b>	<b>Max. hotel price (€)</b>	<b>EU</b>
Afghanistan	50	75	
Albania	50	160	
Algeria	85	85	
American Samoa	70	135	
Andorra (Spain)	68.89	126.57	
Angola	105	175	
Anguilla	75	140	
Antigua and Barbuda	85	140	
Argentina	75	210	
Armenia	70	210	
Aruba	80	185	
Australia	75	135	
<b>Austria</b>	<b>131</b>	<b>158</b>	<b>EU</b>
Azerbaijan	70	200	
Bahamas	75	115	
Bahrain	80	195	
Bangladesh	50	140	
Barbados	75	140	
Belarus	90	135	
<b>Belgium</b>	<b>132</b>	<b>171</b>	<b>EU</b>
Belize	50	135	
Benin	50	100	

Bermuda	70	140	
Bhutan	50	130	
Bolivia	50	100	
Bonaire	90	185	
Bosnia and Herzegovina	65	135	
Botswana	50	135	
Brazil	65	180	
Brunei	60	165	
<b>Bulgaria</b>	<b>78</b>	<b>121</b>	<b>EU</b>
Burkina Faso	55	90	
Burundi	50	115	
Cambodia	50	115	
Cameroon	55	105	

Cameroon	55	105	
Canada	65	165	
Cape Verde	50	75	
Cayman Islands	60	135	
Chad	65	145	
Chile	70	175	
China	55	155	
Colombia	50	120	
Comoros	50	85	
Congo	70	115	
Congo, Dem. Rep. of	105	140	
Cook Islands	50	135	
Costa Rica	50	140	
<b>Croatia</b>	<b>99</b>	<b>132</b>	<b>EU</b>
Cuba	75	150	
<b>Cyprus</b>	<b>103</b>	<b>145</b>	<b>EU</b>
<b>Czech Republic</b>	<b>98</b>	<b>149</b>	<b>EU</b>
<b>Denmark</b>	<b>172</b>	<b>208</b>	<b>EU</b>
Djibouti	65	170	
Dominica	75	140	
Dominican Republic	60	170	
East Timor	50	110	
Ecuador	50	140	
Egypt	65	140	
El Salvador	55	125	
Equatorial Guinea	60	85	
Eritrea	50	80	
<b>Estonia</b>	<b>125</b>	<b>118</b>	<b>EU</b>
Ethiopia	50	145	
Fiji	50	120	

<b>Finland</b>	<b>155</b>	<b>170</b>	<b>EU</b>
<b>France</b>	<b>127</b>	<b>212</b>	<b>EU</b>
French Guiana	55	140	
French Guiana (launches)	100	140	
French Polynesia	60	135	
Gabon	75	115	
Gambia	50	120	
Georgia	80	215	

<b>Germany</b>	<b>123</b>	<b>154</b>	<b>EU</b>
Ghana	70	140	
<b>Greece</b>	<b>108</b>	<b>134</b>	<b>EU</b>
Grenada	75	140	
Guadeloupe	65	115	
Guam	60	135	
Guatemala	50	125	
Guinea	50	135	
Guinea-Bissau	50	90	
Guyana	50	160	
Haiti	65	125	
Honduras	50	125	
Hong Kong	60	205	
<b>Hungary</b>	<b>93</b>	<b>135</b>	<b>EU</b>
Iceland	85	160	
India	50	195	
Indonesia	50	145	
Indonesia East Timor	50	110	
Iran	55	145	
Iraq	60	85	
<b>Ireland</b>	<b>144</b>	<b>191</b>	<b>EU</b>

Israel	105	210	
<b>Italy</b>	<b>116</b>	<b>178</b>	<b>EU</b>
Ivory Coast	60	130	
Jamaica	60	170	
Japan	130	275	
Jordan	60	135	
Kazakhstan	70	175	
Kenya	60	165	
Kiribati	60	145	

Korea, North	50	180	
Korea, South	100	200	
Kuwait	85	175	
Kyrgyzstan	75	180	
Laos	50	145	
<b>Latvia</b>	<b>110</b>	<b>128</b>	<b>EU</b>
Lebanon	70	190	
Lesotho	50	100	
Liberia	85	150	
Libya	50	175	
Liechtenstein	80	95	
<b>Lithuania</b>	<b>103</b>	<b>114</b>	<b>EU</b>
<b>Luxemburg</b>	<b>142</b>	<b>178</b>	<b>EU</b>
Macao	55	95	
North Macedonia	50	160	
Madagascar	50	105	
Malawi	50	165	
Malaysia	50	160	
Maldives	50	135	
Mali	60	95	

<b>Malta</b>	<b>109</b>	<b>166</b>	<b>EU</b>
Marshall Islands	50	135	
Mauritania	50	75	
Mauritius	60	140	
Mayotte	50	110	
Mexico	70	185	
Micronesia	55	135	
Monaco (France)	72.58	97.27	
Mongolia	70	90	
Montenegro	80	140	
Montserrat	55	140	
Morocco	75	130	
Mozambique	60	140	
Myanmar	50	75	

Namibia	50	85	
Nauru	50	135	
Nepal	50	135	
<b>Netherland</b>	<b>137</b>	<b>190</b>	<b>EU</b>
Netherlands Antilles	90	185	
New Caledonia	55	135	
New Zealand	60	125	
Nicaragua	50	135	
Niger	50	75	
Nigeria	50	185	
Northern Marianas	70	135	
Norway	80	140	
Oman	70	135	
Other countries	60	145	
Pakistan	50	130	
Palau, Republic of	50	135	
Panama	50	160	
Papua New Guinea	55	135	
Paraguay	50	140	
Peru	75	135	
Philippines	60	150	

<b>Poland</b>	<b>95</b>	<b>126</b>	<b>EU</b>
<b>Portugal</b>	<b>95</b>	<b>121</b>	<b>EU</b>
Puerto Rico	65	140	
Qatar	65	135	
Republic of Moldova	80	170	
Reunion	60	90	
<b>Romania</b>	<b>88</b>	<b>109</b>	<b>EU</b>
Russian Federation	90	275	
Rwanda	65	160	
Saint Kitts and Nevis	85	185	
Saint Lucia	75	140	
Samoa	50	135	
San Marino (Italy)	60.34	114.33	
São Tomé& Príncipe	60	95	
Saudi Arabia	85	195	
Senegal	65	135	
Serbia	80	140	
Seychelles	85	140	
Sierra Leone	55	135	
Singapore	75	150	
<b>Slovakia</b>	<b>104</b>	<b>120</b>	<b>EU</b>
<b>Slovenia</b>	<b>108</b>	<b>140</b>	<b>EU</b>
Solomon Islands	50	120	
Somalia	50	125	
South Africa	50	145	

<b>Spain</b>	<b>101</b>	<b>154</b>	<b>EU</b>
Sri Lanka	50	105	
St. Vincent and the Grena.	75	190	
Sudan	55	215	
Suriname	55	125	
Swaziland	50	90	
<b>Sweden</b>	<b>135</b>	<b>198</b>	<b>EU</b>
Switzerland	80	140	
Syria	80	145	
Taiwan	55	200	
Tajikistan	75	110	
Tanzania	50	200	
Thailand	60	145	
Togo	60	95	
Tonga	50	105	
Trinidad and Tobago	60	115	
Tunisia	60	85	
Turkey	55	165	
Turkmenistan	80	150	
Turks and Caicos Island	55	135	

Tuvalu	50	135
Uganda	55	180
Ukraine	80	190
United Arab Emirates	70	195
United Kingdom	152	226
Uruguay	55	160
USA(New York)	100	275
USA(others)	80	200
Uzbekistan	75	155
Vanuatu	60	110
Vatican (Italy)	60.34	114.33
Venezuela	85	125
Vietnam	50	205
Virgin Islands(USA)	55	140
Wallis& Futuna Islands	50	135
West Bank and Gaza Strip	60	110
Yemen	60	165
Zambia	50	135
Zimbabwe	50	115

**ANNEX II.VII – DELIVERABLES ACCEPTANCE SHEET**

**Annex SC.III: Deliverables Acceptance Sheet**

implementing Framework Contract No **EUSPA/OP/19/26/Lot [x]**

Service contract reference: EUSPA/OP/19/26/Lot [x]/SC[x]

Reference of Task/Deliverable	Due date (Annex II.I to the contract)	Actual Delivery date	Format/Manner of delivery	Price of deliverable
Fill-in				

**For the Contractor:**

1) hereby certify that the task(s), deliverable(s) listed above have been completed according to the terms and conditions of the above-mentioned contract and submitted to the Contracting Authority.	
Name	
Position	
Signature	
Date	

**For the Contracting Authority:**

I hereby certify that the Task(s) and Deliverable(s) listed above have been completed according to the terms of the contract, received and accepted by the Contracting Authority.	
Name	
Position	
Signature	
Date	

## Annex II.XII: Template Deliverables Request Form

### Deliverables on Demand Mode

#### Deliverables Request Form for Specific Contract Number [#]

#### Under Framework Contract EUSPA/OP/19/26

Deliverables Request Form Number [#]

Original document - duly signed - to be attached to the invoice
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### 1) REQUEST AND DESCRIPTION FOR TASK CONTAINING DELIVERABLES

*To be filled in by EUSPA:*

Title:
Date of request's dispatch:
Point of Contact at EUSPA:
Task reference in ToR:
Description and requirements for sub-Task:
Deliverables:
Timeline:

### 2) QUOTATION FOR DELIVERABLES

*To be filled in by the Contractor **for each associated deliverable:***

Proposed implementation method and approach:	
Place of delivery:	
Planned starting date of work:	
Planned delivery date of work:	
Proposed team of Service Providers:	
Proposed result/functionality	

Number of hours per profile allocated to the deliverable:	
Price for each deliverable (based on FWC Daily Rates and the level of effort required for each deliverable's production):	

Date and Contractor's signature:

*To be filled in by EUSPA:*

Date and signature denoting EUSPA's agreement:	
--	--