

**MULTIPLE FRAMEWORK CONTRACT FOR SERVICES IN CASCADE  
EUSPA/OP/16/25/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/16/25/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 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]

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 services, 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: Administrative support services to all EUSPA sites~~ **Lot 1: "Administrative support services to EUSPA HQ" *Corr. no 1*** / Lot 2: Security-related administrative support services to all EUSPA sites] as further specified in Annex II.II 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 to the contrary at the latest 3 (three) months before expiry of the on-going duration. Renewal does not change, postpone or defer of any existing obligations.

**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 AND THE CASCADE

**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 services.

**I.3.4.** 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 services 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 services, or
- c) replies with an offer which is only partially compliant with the scope and/or requirements set out in the request for services,
- 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.3.8.),
- 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) fails to provide the personnel included in its offer to the service request within 1 (one) month as of the moment agreed in the specific contract, which shall also be considered a ground for termination under Article II.12,
- g) 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,
- h) without prejudice to point c) above, the Contracting Authority may trigger the cascade also for a consolidated part of the Specific Contract's tasks, whose implementation is not linked with the implementation of the other Tasks in the Specific Contract, to the extent that this possibility was clearly identified in the request for services, and the Specific Contract proposal for the tasks at stake has been considered as not acceptable.

**I.3.5.** 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.3.6.** The Contracting Authority's requests for services shall include Terms of Reference for a Specific Contract detailing:

- i. Period of services' implementation (start / end date);
- ii. Services' specifications, including man-days needed for each service and in total;
- iii. Requirements for the team to be proposed (i.a., possession of Personal Security Clearance, language proficiency);
- iv. General description of the deliverables to be delivered as part of the services, associated requirements and frequency;
- v. Place of the services' performance;
- vi. Specification of the needed missions (number, frequency, location, etc.), if any;
- vii. Payment Plan;
- viii. Maximum total value of the Specific Contract;
- ix. Deadline for submission of the Contractor's specific offer - by default, the time-limit for the submission of a specific offer is 10 (ten) working days from dispatch of the request for services by the Contracting Authority to the Contractor.

**I.3.7.** Within the default time period or as indicated by the Contracting Authority in the request for services, which must in any case be reasonable for preparing the offer, the Contractor shall reply to the request for services by submitting to the Contracting Authority a duly dated and signed Specific Contract offer, which 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.3.6, and the FWC and the Statistical Reporting file (Annex I.H to the Tender Specifications), if so requested.

**I.3.8.** Within 5 (five) working days of a Specific Contract signed by the Contracting Authority, being sent to

the Contractor, the Contractor shall provide the Contracting Authority the Specific Contract back, duly signed and dated.

**I.3.9.** The period allowed for the execution of the tasks shall start to run on the date indicated in the Specific Contract. It shall not exceed the term of the Specific Contract.

## **ARTICLE I.4 – PRICES AND COST REIMBURSEMENT**

### **I.4.1 PRICES**

**I.4.1.1.** The maximum amount, 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 Financial Tables of Answers – Annex I.F.1.[Lot x] forming part of the Contractor’s tender – Annex II.III. The prices shall comprise effort for all the activities necessary for their performance and all related costs, unless otherwise provided in this FWC.

**I.4.1.3.** Prices for the “man-day 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 “man day 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 rates shall comprise in particular:

- a. management of the project, drawing up quotations and reports coordination, quality control, support resources, subcontracting, procurement, manufacturing, assembly, quality control, documentation, storage;
- b. all overheads (such as management costs, secretarial services, social security, wages);

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

**I.4.1.5.** The prices 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.4.2.1.** Payment of travel costs and reimbursement of mission expenses is possible only if the mission was approved in advance, in writing by the Contracting Authority, if such approval is not already included in the Specific Contract. When approving the mission, the Contracting Authority shall approve the share/s of the Mission (if any) during which the Service Provider shall provide services during the day/s when he/she travels (Travel Day), whereby it may authorise 8 (eight) or 4 (four) hours of service provision.

**I.4.2.2.** 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**.

**I.4.2.3.** For missions of Service Providers, the Contractor is entitled to reimbursement of the mission expenses according to the same rules as those applicable to the EUSPA staff; current rules and ceiling of these mission expenses are laid down in EUSPA Mission rules (current rules form available as a document ref. EUSPA-OED-AB-DEC-A38356 at <https://www.euspa.europa.eu/register-of-documents>) and in Annex II.VI. This is without prejudice to the right of the Contracting Authority to amend the rules. The related expenses shall be subject to compliance with **ARTICLE II.14 - REIMBURSEMENTS**.

### **I.4.3. REIMBURSEMENT OF PUBLIC TRANSPORTATION COSTS**

**I.4.3.1.** Public transportation costs incurred during provision of the services under this Contract shall be reimbursed only for Service Providers of Service n.6, as defined in the Tender Specifications forming part of Annex II.II to this Contract, unless explicitly foreseen otherwise by the Contracting Authority in the request for services and resulting Specific Contract.

**I.4.3.2.** In case such reimbursable expenses are foreseen under a Specific Contract, the Contracting Authority shall reimburse the expenses based on the original supporting documents submitted together with the respective invoice (Article I.6), including receipts, invoices and tickets or, in case of impossibility to submit the originals, based on copies or scanned versions of the originals.

**I.4.3.3.** Conversion between the euro and another currency shall be made according to the provisions under Article II.13.3.

**I.4.3.4.** Reimbursable expenses shall not be reimbursed in case the requirements set under the Contract for the reimbursement (including any requirement on the evidence to be submitted in support of incurred costs) cannot be met by the Contractor.

### **ARTICLE I.5 – CHARGING OF MAN-DAY RATES**

**I.5.1.** The individual Service Providers shall provide services for 8 (eight) hours per day, whereby the Contractor shall charge a full “man-day rate” indicated in Article I.4.1.3 for the same day.

**I.5.2.** In exceptional cases and only upon written request / agreement of the Contracting Authority, the individual Service Provider may provide services for less than 8 (eight) hours on the same day, whereby the applicable “man-day rate” shall be decreased by 1/8 for any non-commenced hour of service provision.

**I.5.3.** In exceptional cases and only upon written request / agreement of the Contracting Authority, the individual Service Provider may provide services for more than 8 (eight) hours per day on the same day, whereby the applicable “man-day rate” shall be increased by 1/8 for any additionally commenced extra hour of service provision.

**I.5.4.** In exceptional cases and only upon written request and subject to agreement of the Contracting Authority, it may be necessary that the Contractor provides services outside the ‘Business days’ or ‘Working days’, as defined in Article II.1 of the FWC. In such cases, the following surcharge will apply: surcharge of

50% of the applicable “man-day rate”, applied prorata temporis.

**1.5.5.** For avoidance of doubt, the Contractor cannot invoice any “man-day rates” or fractions thereof for Travel Days. The Contractor may invoice either 50% or 100% of the “man-day rates” for the days when individual Service Provider travels, only when individual Service Provider was explicitly requested to provide services during the time, when he/she does not travel, and where the dedicated hours of service provision (i.e., 4 hours or 8 hours respectively) have been pre-approved in writing by the Contracting Authority, as provided in Article I.4.2.1.

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

### **1.6.1. 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 activity report and/or deliverable(s) in accordance with the instructions laid down in the relevant Specific Contract and its Annexes,
- b) deliverable(s) acceptance sheet(s), duly dated and signed by the Contractor and the Contracting Authority’s project officer,
- c) timesheets stating at least the names of individual Service Providers, the services provided as per the Terms of Reference, the place of services’ performance, the dates of services’ provision and the service provision pattern of each Service Provider (i.e., hours of service provision as per **ARTICLE I.5 – CHARGING OF MAN-DAY RATES**),
- d) 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**;
- e) 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;
- f) 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.13.24;
- g) any other document in accordance with the relevant Specific Contract.

The Agency shall have 90 (ninety) Days from the receipt of all the deliverables and documents above to approve, countersign the deliverable acceptance sheet and pay, subject to Article II.13.7. Unless otherwise specified by the Contracting Authority in the terms of reference of the relevant Specific Contract, the Contractor shall have 15 (fifteen) days to submit additional information or a new progress report and/or updated deliverable(s) requested by the Contracting Authority.

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.

### **1.6.2. 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) the approved final activity report and/or deliverable(s) in accordance with the instructions laid down in the relevant Specific Contract and its Annexes,
- b) deliverable(s) acceptance sheet(s), duly dated and signed by the Contractor and the Contracting Authority's project officer,
- c) timesheets stating at least the names of individual Service Providers, the services provided as per the Terms of Reference, the place of services' performance, the dates of services' provision and the service provision pattern of each Service Provider (i.e., hours of service provision as per **ARTICLE I.5 – CHARGING OF MAN-DAY RATES**),
- d) 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**;
- e) 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;
- f) 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.13.24;
- g) any other document in accordance with the relevant Specific Contract.

The Agency shall have 90 (ninety) Days from the receipt of all the deliverables and documents above to approve, countersign the deliverable acceptance sheet and pay, subject to Article II.13.7. Unless otherwise specified by the Contracting Authority in the terms of reference of the relevant Specific Contract, the Contractor shall have 15 (fifteen) days to submit additional information or a new progress report and/or updated deliverable(s) requested by the Contracting Authority.

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.

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. Rejection of double financing across lots**

The Contracting authority will not accept double financing of Contractor's staff and expenses across lots. The Contractor shall therefore ensure through a precise breakdown attached to each invoice that all resources, related activities, costs and expenses subject to reimbursement under this Contract are clearly allocated to this individual lot and do not overlap with activities, costs and expenses in the other lot.

Should the invoice indicate an overlap, the Contracting Authority may reject the higher of the invoiced amounts for the resource, activities, costs or expenses affected by the overlap provided it has prior informed the Contractor about such intention in writing, including reasons for the assumed overlap and the Contractor, following a 10 (ten) days' notice period after receipt of the Contracting Authority's observations, could not explain to the Contracting Authority's conviction, that the overlap does not exist. The Contracting Authority may verify the circumstances declared by the Contractor in this respect by an audit on the FWC performance as per Article II.16, whereby the Contracting Authority may recover all or part of the performed payments covering any double-financing identified and may take any other measures which it considers necessary.

#### **1.6.4. Performance guarantee**

Performance guarantee is not applicable to this FWC.

#### **1.6.5. 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** Leading 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]

**1.8.4** 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 willful 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.

**I.10.6.**

#### **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 expertise 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.11a – TRANSFER OF UNDERTAKINGS RISK**

I.11a.1 The Contractor's tender (Annex II.III to the Contract) provides for the maximum amount to which he may be exposed, in case the risk of Transfer of Undertakings, as described under section 3.3 of the Tender Specifications (Annex II.II to the Contract of the Tender Specifications, materialises upon the signature and during the implementation of the Contract, as provided in section).

I.11a.2 Should the Contractor incur financial consequences stemming from claims raised against him by reason of a Transfer of Undertakings having occurred in relation or in connection with the subject matter of this contract, the Contracting Authority undertakes to hold the Contractor harmless from such financial consequences, up to the concurrence of the amount under Article I.11a.1, and subject to the following conditions:

- (a) The Contractor has notified the Contracting Authority about the claim, and its proposed defense strategy, providing:
  - a. The request/pleas from the incumbent contractor/s, including all its details and supporting documentation
  - b. The Contractor's assessment of the relevance of the request/plea and justification thereof and estimation of the amount attributable to the materialised risk, containing:
    - i. a description of the event, claim, procedure or circumstance giving rise to the requested reimbursement and the relevant legal and factual grounds;
    - ii. a detailed assessment of the amount requested, broken down by person and by cost item;
    - iii. any other relevant information substantiating the claim
  - c. regular updates on the development of the claim
- (b) the Contractor has consulted EUSPA on the defense strategy and took into account the inputs received by the latter
- (c) The Contractor has not upheld any claim originating from or related to the transfer of undertakings, nor acknowledged any liability or waived any defence or concluded any settlement or otherwise disposed of the matter without EUSPA's prior written approval.
- (e) the Contractor has involved the Contracting Authority in any discussion with the incumbent, concerning the transfer of Undertaking

I.11a.3 EUSPA may request additional documents or information, necessary to assess the request.

I.11a.4 The hold harmless obligations under Article I.11a.2 will be limited to amounts which:

- (a) arise directly from the risk referred to in paragraph 1;
- (b) are supported by the documents referred to in paragraphs 2 and 3 or any other evidence of the paid related costs;
- (c) do not result from any act, omission or breach of contract by the Contractor, its subcontractors, personnel

- or other persons for whom the Contractor is responsible; and
- (d) have not already been included in the Contractor's prices or otherwise remunerated under the Contract;
- (e) are not based on a settlement concluded without EUSPA's prior written approval.

I.11a.5 The Contracting Authority hold harmless shall be limited to the amount legally due or actually paid by the Contractor and shall in no event exceed the maximum amount set out in paragraph 1 above. <sup>Corr. 2</sup>

## **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 it was involved preparing or advising under this Contract, 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 Contractors' 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 Deliverable Items and/or Assets shall be exclusively and without restrictions vested in the European Union, represented by the European Commission, 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, without prejudice to the provisions related Foreground IPR, as per the Articles I.13.1.2 and I.13.2.3 below. The Contractor shall ensure that all necessary measures are taken in order to transfer the tangible assets, to the European Union for compliance with the present provision.

**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 fee of EUR 1 (one euro) for each mode of exploitation provided under Article 1.3.2.3.1 below with the Contractor agreeing that such fee is fair and reasonable and will be included in the Contract price. 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, 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.13.1.4** The intended purpose of the permanent assignment of full ownership of all Foreground IPR to the European Union is to enable the European Union to act as the full and only owner of the Foreground IPR without any limitation. Therefore, subject to the condition – to be demonstrated by the Contractor – that under the law applying to the Contract a permanent assignment of some or all Foreground IPR is lawfully not possible, the Contractor herewith grants to the European Union an exclusive, worldwide, irrevocable, and royalty-free license of the Foreground IPRs to make any use whatsoever thereof for no other payment than the price of the Contract. This licence shall be granted for the duration of the respective Foreground IPRs protection under the applicable law and survive the end of Contract for whatever reason, to the maximum extent possible under applicable law. For the avoidance of doubts such license shall be sufficiently broad to allow, as much as legally possible under the Law, the European Union to use the Foreground IPRs in substantially the same way as if it was the owner thereof.

**I.13.1.5** The Contractor undertakes to keep Deliverable Items, including items under production, and any Assets, at all times in an inventory. The inventory shall be made available to the Agency at any time upon request.

**I.13.1.6** The Contractor undertakes to keep Deliverable items and Assets clearly identifiable for third parties as being the property of the European Union.

**I.13.1.7 The Parties agree that the ownership of all Deliverable Items and/or Assets created or developed**

(i) at any time throughout the Contract Period by the Agency or third parties for the Agency;  
or

(ii) by the Contractor or any Contractor Party under this Contract,

shall be vested in the European Union in accordance with this Article I.13.1.

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

### **I.13.2.1 COMMON PROVISIONS TO FOREGROUND IPR, BACKGROUND IPR AND UNION IPR**

#### **I.13.2.1.1 WARRANTIES**

##### **I.13.2.1.1.1 Each Party warrants that:**

(i) it owns its respective Background IPR, Foreground IPR, holds rights on Union IPR and it shall, upon request from the other Party, provide evidence of ownership / right to use of such IPRs;

(ii) it is fully entitled to grant to the other Party the licenses envisaged under Article I.13.1 except provisioned otherwise.

##### **I.13.2.1.1.2 In addition, the Contractor warrants and undertakes:**

(i) not to take action which jeopardizes or affects the ability of the European Union to legally protect the subject-matter of the IPRs;

(ii) that the Foreground IPRs developed by the Contractor and either owned by or licensed to the European Union, the transfer of ownership of the FIPR and the BIPR licensed to the European Union will not infringe any third party IPRs;

(iii) that all employees, officers, trainees of the Contractor, as well as any other party involved in the development of Foreground IPRs, have validly assigned their rights to the Contractor and have received all compensation due to them as a result where applicable. The Contractor shall be ready to provide documentary evidence upon request of the European Union and/or the Agency:

- that its agreements with Contractor's Parties shall contain relevant provisions enabling the Contractor to grant the European Union the sublicenses envisaged under Article I.13.1.
- that all required information is provided to the Agency and that any measure is immediately taken in order to mitigate and remedy any infringement, without any additional cost for the Agency and the European Union.

**I.13.2.1.1.3** The Contractor shall hold the European Union, 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.13.2.1.1.4** 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.13.2.1.2** INFRINGEMENT

**I.13.2.1.2.1** The Parties shall notify each other without undue delay of any actual or potential (i) infringement by a third party of the Parties' Background or Foreground or Union IPRs and (ii) claim from a third party that a Party is infringing this third party's IPRs in the course of the Contract.

**I.13.2.1.2.2** If the Party owning such Background or Foreground or Union IPRs decides not to act within thirty (30) calendar days following receipt of a notice from the other Party to do so, this other Party shall be entitled to act in its own name and shall bear alone all costs (including legal fees), expenses, risks and benefits of the proceedings. However, in countries where this other Party would not be entitled act in its own name without the owning Party, then owning Party shall act upon request of the other Party at this other Party's costs (including legal fees), expenses, risks and benefits. If the Party owning such Background or Foreground or Union IPRs acts alone, the costs including legal fees), expenses, risks and benefits shall be at its exclusive charge or profit. The other Party shall be entitled to intervene at any time in the proceedings brought by the owning Party, in which case the Parties shall bear their own costs (including legal fees), expenses, risks and benefits of this action. The Party owning such Background Foreground or Union IPRs shall, at any time, have the exclusive right to determine how the proceedings will be conducted and, in particular, the need to reach a settlement.

**I.13.2.1.2.3** In each case mentioned in this Article, each Party shall give the other all assistance it may reasonably require in connection with any proceedings it may bring or other steps it may take and shall take any measure that may be reasonably required to mitigate the above-mentioned infringement.

**I.13.2.1.3** INVENTORY OF IPRs

The Contractor shall maintain an inventory of all IPRs generated or used in this Contract.

**I.13.2.2** CONTRACTOR'S TITLE TO UNION IPRs

Without prejudice to the provision on licensing of FIPR for the entire Contract Period as per Article I.13.1.3 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.

The Contractor shall declare to the Agency any modification, enhancement or adaptation/alteration performed on the Union IPR according to the provision of Articles I.13.2.3.5, I.13.2.3.13 and I.13.2.3.14 and shall warrant that such adaptation and modification do not infringe any Third Party IPR. The provisions under Article I.13.1.3 on Foreground IPRs shall apply to such modification, enhancement or adaptation/alteration.

Should the Contractor or any Contractor Party be subject to any third-party claims that the use of Union IPRs by the Contractor or any Contractor Party is infringing any Third Party IPR, the Contractor shall inform the Agency of such claims without delay and shall invite the Agency to participate in their defence. The Agency shall indemnify the Contractor and/or the respective Contractor Party against any such claim, provided the Union IPRs were used for the performance of the present Contract and under its terms and conditions. The Agency indemnifications shall not apply in case of claims arising out from the use of the adaptations and/or modifications made by the Contractor.

The Contractor acknowledges that the licences granted under Article I.13.1.2 are revoked with immediate effect in the case of termination or expiry of the Contract. The revocation will take effect on the date of the termination or expiry of the Contract.

In case the Contractor sublicenses any Union IPRs required for the performance of this Contract it shall insert an article in the sub-licence allowing for revocation in accordance with Article I.13.12.4, as may be required.

Upon request by the Contractor providing supporting information which describes the intended use, a licence to use the subject-matter of Union 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.13.2.3 FOREGROUND IPR**

**I.13.2.3.1** As a result of the ownership provisions as per Article I.13.1 above, the European Union may use the Foreground IPR in any know 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.13.2.3.2** The European Union may make use of the Foreground IPR in any unknown manner and for any unknown type of use, provided that such use the Contractor is remunerated by the European Union in reasonable and non-discriminatory (FRAND) terms.

**I.13.2.3.3** The Contractor shall keep secret and confidential the subject matter of the Foreground IPR and anything related to them, including preparatory specification, plan, drawing, pattern, sample or information, in order to ensure that:

- (i) only and exclusively the Agency and the European Commission, as legal representative of the European Union, are aware of and know such intellectual property and
- (ii) novelty requirements in accordance with the applicable intellectual property legislation as well as any other conditions required by the legislation, are secured and met.

**I.13.2.3.4** The Contractor shall upon the European Union's or Agency's request provide technical support to the European Union or the Agency and to experts appointed by them, for matters related to the protection and filing of the Foreground IPRs. In case the Contractor modifies, enhances or makes alteration to an existing IPR for in the performance of this Contract, such modification, enhancement or alteration shall be considered as Foreground IPR and shall be subject to the same provisions of the present Article.

**I.13.2.3.5** The Contractor shall without delay notify the Agency of the possible patentable invention created in the frame of the present Contract. Such notification shall contain:

- a) a description of the invention;
- b) an initial assessment of patentability;
- c) the technical assessment of the programmatic value of the invention;
- d) invention declaration form, using the template under Annex II.IX Template FIPR Declaration;
- e) if possible, information whether the Contractor intends to file a patent application for the notified invention, if the Agency authorises it to do so.

**I.13.2.3.6** The Contractor shall take measures to ensure that the invention is not disclosed to persons and bodies other than those with the need to know and bound by a confidentiality obligation until:

- a) the Agency authorises the Contractor to file a patent application for the notified inventions in its own name, or
- b) The date of publication of the patent application by the patent office, if the Agency does not authorise the Contractor.

**I.13.2.3.7** The Contractor shall not undertake, any activity having the purpose or the effect of restricting the European Union's rights under the invention or its registration process, including through protecting or attempting to protect any Intellectual Property Right related or connected with the invention.

**I.13.2.3.8** The Contractor shall not be entitled to any residual Intellectual Property Rights in the notified invention.

**I.13.2.3.9** The Contractor shall provide technical support in the drafting of the patent application. Such obligation does not extend beyond twelve months from the time the Agency receives the complete notification of the invention. The Contractor shall provide technical assistance in the patent prosecution process if the Agency files the patent application within twelve months from the time it receives the complete notification of the invention. This duty of the Contractor does not extend beyond forty-two months from the time the Agency receives the complete notification of the invention or twelve months after the expiration or termination of the Contract, whichever is the longer period. The European Union shall retain all rights in the invention unless the Agency notifies in writing the Contractor, within four (4) months from the time it receives the complete notification, that it authorises the Contractor to file a patent application for the notified invention in the Contractor's name. If the Contractor after authorisation from the Agency, files a patent application for the notified invention, it shall, with its own responsibility, license the patent application or the ensuing patent on fair, reasonable and non-discriminatory (FRAND) terms to economic operators involved in the implementation of the Union Space Programme. The Contractor shall negotiate the license terms in good faith with every willing economic operator. In case agreement on license terms cannot be reached within six (6) months from the time the willing economic operator declares in writing its interest to obtain a license on the patent, the terms of the license shall be decided by recourse to arbitration. The Contractor is entitled to enforce its patent through litigation in front of national courts only if the willing economic operator refuses to enter into binding arbitration agreement with respect to the terms of the license.

**I.13.2.3.10** For the patentable inventions under Article I.13.1.3.9 above, the Contractor shall provide for the European Union and for the Agency a non-exclusive, royalty-free license to a patent application or a patent with the right to grant sublicenses for the purposes of the EU Space Programme and space component of Horizon Europe. The European Union may permanently or temporarily transfer all or single rights granted to the European Union in whole or in part to a third party in its sole discretion.

**I.13.2.3.11** 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.13.2.3.12** The Contractor shall clearly mark the FIPR as follows: "EU Proprietary information. Unauthorised distribution, dissemination or disclosure not allowed".

**I.13.2.3.13** Subject to the provisions of Article I.13.1 – Ownership and Article I.13.1.3.5, the Contractor shall declare and provide the Agency with full details of all inventions and works, including those related to software, performed under the Contract, which could be protected by title of intellectual property other than patent. Subject to Article I.12 – Confidentiality, such inventions and works performed by the Contractor, including its employees and agents in the course of the execution of the Contract shall be described in writing and communicated to the Agency, without delay and in any case, not later:

- (i) the submission of the payment request as per the contract payment provisions or
- (ii) 45 (forty five) Days from the date of the termination notice in case the Contract is terminated prior to the Expiry Date on the initiative of either Party.

**I.13.2.3.14** Subject to Article I.13.1.3.5 and I.13.1.3.13, the Contractor shall use the template in Annex II.IX – Template FIPR Declaration of the Contract to declare any Foreground IPR.

**I.13.2.3.15** The Agency 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.13.2.3.16** The Contractor shall inform the Agency reasonably in advance of any plans to develop, acquire, update and/or expand the functionality of:

- (iv) the software tools that are relevant and specific to the Galileo Component;
- (v) operations and maintenance processes and procedures,

and shall obtain a prior written consent of the Agency to proceed with such activities, such consent not to be unreasonably withheld. For the avoidance of doubt, this paragraph is not intended to require consent of the Agency to ordinary maintenance of the system intended to rectify or maintain the intended functionality of any IPRs.

**I.13.2.3.17** The Contractor's notification shall include its opinion and reasons whether such developments, acquisitions, updates and/or expansions at issue should be considered as Foreground IPR. Status of all the implemented and planned developments, acquisitions, updates and/or expansions shall be presented by the Contractor to the Agency on a yearly basis together with an updated list of Foreground IPR.

**I.13.2.3.18** The Contractor shall extend its obligations under this Article 0to its Sub-Contractors, including their employees and agents.

**I.13.2.3.19** 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.13.2.3.20**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.13.2.4 BACKGROUND IPR**

- I.13.2.4.1** All Background IPRs as agreed by the Parties are specified in Annex I.VII – List of BIPR of the Contract.
- I.13.2.4.2** If the Contractor, after the signature of this Contract, invokes the existence of any additional Background Intellectual Property to be used for the purposes of this Contract, it shall notify the Agency within 10 working days from the time it became award of such need using the template under Annex II.VIII – Template BIPR Declaration, providing conclusive evidence to the Agency of the existence of this Background Intellectual Property and justifying the reasons for which the existence of this Background Intellectual Property was not invoked before the Contract signature.
- I.13.2.4.3** If conclusive evidence and appropriate justification are provided by the Contractor, the Parties shall formalise such change updating the List of Background Rights (Annex II.VIII – List of BIPR) according to the provision of this Contract.
- I.13.2.4.4** Conversely, if such evidence and justification are not provided, all information delivered shall be deemed as having been generated in the frame of the Contract and shall be treated as FIPR.
- I.13.2.4.5** Upon request by the Agency, the Contractor shall provide evidence of ownership of or rights to use all the listed Background IPR and third party IPRs except for the rights hold by the Agency.
- I.13.2.4.6** Provision of evidence does not release the Contractor from its responsibilities in case it is found that it does not hold the necessary rights, regardless of when and by whom this fact was revealed.
- I.13.2.4.7** The Contractor, hereby grants to the European Union and the Agency a non-exclusive, worldwide, perpetual, irrevocable, free-of-charge licence with the right to grant sub-licences for the duration of the respective IPR protection and for the purposes of using the subject-matter of the Background IPR in all manners which are necessary for the purposes of this Contract and/or to operate, maintain the subject matter of the FIPR including in particular, but not limited to, as follows:
- i) The right to store, reproduce, publish, display, adapt and create derivative works from, 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) the subject-matter of the Background IPR to the extent that this is necessary for the use of the Foreground IPR within the EU Space Programme and of the space component of Horizon Europe; where necessary , this includes the right to have access to source codes and technical information
  - ii) The right to use the subject-matter of the Background IPR in the frame of virtual or physical systems, databases, data networks, online services, terrestrial and space related activities, including the right to make available the subject-matter of the Background IPR necessary for the use of the Foreground IPR to end-users of databases, data networks, online services, terrestrial and space related activities, offline or online, by means of hardware or software tools or via download;
  - iii) The right to use or make available for use of third parties the subject-matter of the Background IPR necessary for the use of the Foreground IPR offline or online, on computers or other virtual or physical hardware devices;
  - iv) The right to use the subject-matter of the Background IPR as described above not only for purposes of the European Union and the Agency, but also for rendering services to third parties;
  - v) The right to modify the subject-matter of the Background IPR in any manner that is necessary for the use of the Foreground IPR for the purpose of operation, maintenance, service provision and future evolutions or any other use within the EU Space Programme and of the space component of Horizon Europe, including re-engineering or re-programming of the programme code (e.g. mere customizing or parametrization);

- vi) The right to develop add-ons (= further developments) to any work or programme subject to Background IPR that is necessary for the use of the Foreground IPR.

**I.13.2.4.8** If access to any Background IPR involves a security concern, the Parties will agree in good faith the applicable process to allow such access.

**I.13.2.4.9** The Contractor shall ensure that, for the duration of the IPR, the protection of the Background IPRs is maintained, including by ensuring strict need to know and confidentiality when so required to this purpose.

**I.13.2.5** THIRD PARTY IPR

**I.13.2.5.1** Subject to Article I.13.1.5.3, in the event that licenses from third party is necessary to the Contractor for the performance of its obligations under Contract, the Contractor shall provide its best efforts to ensure that the third party grants a worldwide, transferable and sub-licensable license to the European Union to use, adapt, operate and modify such third party IPRs in all manners which are necessary for the purpose of this Contract and for the exploitation of the FIPR as per Article I.13.1.3 above even beyond the duration and scope of the present Contract and for all the duration of the IPR protection, at no additional cost for the European Union and the Agency. Absent such a license, the Parties will discuss in good faith the best possible way to overcome this situation.

**I.13.2.5.2** The Contractor shall clearly point out all quotations of existing third party works that may generate any IPR. The complete reference should include as appropriate: name of the author, title of the work, date and place of publication, date of creation, address of publication on internet, number, volume and other information which allows the origin to be easily identified.

**I.13.2.5.3** Subject to Article I.13.1.5.4 below, where Commercial-Off-The-Shelf (COTS) products and Open Source Software (OSS) are concerned and the standard license terms of the third party owner apply, such license shall grant to the European Union the right to use such COTS products or OSS in connection with the Foreground IPRs generated under this Contract and Union IPR when so required by the Agency, with the right to sublicense, subject to the standard licensing terms of such COTS products or OSS. Absent such a license, the Parties will discuss in good faith the best possible way to overcome this situation.

**I.13.2.5.4** The Contractor shall ensure that the OSS licence does not require him to apply the terms and conditions of such licence on its own developments or any developments within the frame of this Contract. If the OSS Licence requires so, the Contractor shall not use the software under the OSS licence for any contractual purpose.

## **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 Specific Contract;

d is the duration specified for delivery of the relevant Specific Contract, or, failing that, the period between

the date specified in Article I.3.9 and the date of delivery or performance specified in the relevant 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 – EXCHANGE OF SERVICE PROVIDERS, ADDITIONAL SERVICE PROVIDERS, NON-SOLICITATION**

**I.18.1.** Service Providers originally assigned to the team for performing activities under a Specific Contract may only be exchanged following written request by the Contractor's project officer and corresponding agreement by the Contracting Authority's project officer in writing, not to be unreasonably withheld, provided the following conditions are fulfilled:

- (1) The request must be made at least 30 (thirty) calendar days prior to the suggested date of exchange, unless such notification would not be possible given the circumstances justifying the request, or within 20 (twenty) calendar days of the Contractor's notification to EUSPA of an arisen

need of consultant's exchange, that given the circumstances justifying the request could not have been predicted.

- (2) The exchange must be duly justified in the request such as e.g. resignation, termination of contract or illness of the Service Provider;
- (3) Attached to the request must be the CV and any ancillary information which may be required to support that the new Service Provider fulfils the profile of the exchanged Service Provider in line with the imposed requirements; and
- (4) Measures are described in the request and subsequently applied to ensure that the quality of the services to the Contracting Authority is not affected due to or in relation to the exchange.

**I.18.2.** The Contracting Authority may also request the change of any Service Provider whose quality of performance is not satisfactory or who is not in line with other requirements of the FWC or the Specific Contract. In such case, the Contractor shall, not later than 20 (twenty) calendar days following receipt of the Contracting Authority's request, suggest replacement profiles equivalent to the Service Provider requested to be exchanged for the Contracting Authority's agreement in writing. Any suggestion shall be accompanied with CV and any ancillary documents which may be needed to verify the equivalence of the profile.

**I.18.3.** Without prejudice to the Contracting Authorities rights under **ARTICLE I.14 – LIQUIDATED DAMAGES**, failure of the Contractor to comply with the time limit of Articles I.18.1 and I.18.2. to suggest profiles equivalent to the Service Provider requested to be exchanged shall constitute a ground for termination of a Specific Contract under Article II.12. This termination may be only partial and may concern only the services affected by the incompliance above. Following this termination, the Contracting Authority may request the next contractor in cascade to perform these services.

**I.18.4.** The exchange of a consultant against a different one according to this Article shall be implemented by the Contractor within maximum 10 (ten) calendar days following the date at which it received the Contracting Authority's project officer's agreement to the exchange, unless other starting date for the new Service Provider is agreed with the Contracting Authority.

For the purposes of this Article, the receipt of communication from the Contracting Authority by the Contractor shall be assumed to have taken place not later than 2 (two) working days after its dispatch, unless proven otherwise by any of the Parties.

Without prejudice of the Contracting Authority's rights under **ARTICLE I.14 – LIQUIDATED DAMAGES**, failure of the Contractor to comply with the time limits of this Article I.18.4 shall constitute a ground for termination under Article II.12.

**I.18.5.** During the validity of FWC and for a period of 24 (twenty-four) months from termination of the FWC, the Contractor shall neither directly or indirectly solicit, induce, recruit or encourage any of the Contracting Authority's employees to terminate their relationship with the Contracting Authority, or attempt to solicit, induce, recruit, encourage or take away employees of the Contracting Authority, either for itself or for any other person or entity. Any breach of this obligation in view of any individual Contracting Authority employee shall be subject to liquidated damages to the amount of 3 % of the value of the last Specific Contract awarded the Contractor under the FWC, with the provisions of **ARTICLE I.14 – LIQUIDATED DAMAGES** otherwise applying accordingly.

**I.18.6.** 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 activities and/or assigned Service Providers.

#### **SIGNATURES**

For the Contractor,

For the Contracting Authority,

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

Rodrigo da Costa, Executive Director

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

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

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

Done in Prague, [date]

In duplicate in English.

## II. 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.

**‘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.

**‘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.

**'Man Day'**: The man-day is defined as a working day of 8 (eight) consecutive hours (plus lunch break): the maximum number of man-days that can be invoiced for each profile should be equal to the man-days effectively worked and shall not exceed in any case the number of working days of the Agency in the same period, unless Article I.5.4 of this FWC has been applied.

**'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 by the Contractor to the Contracting Authority;

**'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** When the Contractor identified in the offer for FWC or for Specific Contract the Service Provider(s) who will perform the tasks, it may add Service Provider(s) only if the new Service Provider(s) has/have equivalent qualifications and only with prior agreement confirmed by a letter co-signed by the Contracting Authority's Project and Contract Officers.

**II.2.5** 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.2.6** 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.2.7** 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.2.8** 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.2.9** 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.2.10** 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.2.11** 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.2.12** 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;

**II.2.13** 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 1.8.1. 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.12.4 (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.8.

**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.12.1. 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.6.5. CHANGE OF CONSORTIA MEMBERS**

**II.6.5.1** 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.6.5.2** 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.6.5.3** 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.6.6 Compliance with the Supply Chain Requirement**

**II.6.6.1** 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 I.2.2.

**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 of the activities needed to perform the investigation, check or audit. Such actions shall include, in particular,

---

<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).

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;
- 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.12.1.19** In the case of joint tenders, the Contracting Authority may terminate the FWC or a Specific Contract with any member of the consortium separately.

## II.12.2 Agency Events of Default

---

<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).

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.12.2 or Article II.12.3 (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.12.2 or Article II.12.3 (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.12.0 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.8 (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.12.0, II.12.0, and II.12.**Error! Reference source not found.** 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. 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.4.2.3;
- 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.4.2.3.

**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/16/25/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/Lot2/SC[#] implementing Framework Contract No EUSPA/OP/08/22/Lot2**

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 provision of the services shall start on [xx/xx/xxx]. The provision of the services shall end xx (xx) months after the services' starting date 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** The provision of the services under this SC shall respect the schedule presented in delivery schedule (Annexes SC. I and SC.II) and the duration of the SC. It is herewith clarified that the allocation of the budget and effort (number of man-days) between the administrative support services provided in Annex SC.I and Annex SC.II is indicative, and the re-allocation is possible without the additional communication between the Parties.
- 2.5** 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.
- 2.6** 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.

**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) the approved activity report and/or deliverable(s) in accordance with the instructions laid down in the relevant Specific Contract and its Annexes,
- b) deliverable(s) acceptance sheet(s), duly dated and signed by the Contractor and the Contracting Authority's project officer,
- c) timesheets stating at least the names of individual Service Providers, the services provided as per the Terms of Reference, the place of services' performance, the dates of services' provision and the service provision pattern of each Service Provider (i.e., hours of service provision as per ARTICLE I.5 – CHARGING OF MAN-DAY RATES of the FWC),
- d) 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;
- e) 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;
- f) 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.13.24 of the FWC;
- g) any other document in accordance with the relevant Specific Contract.

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 this SC. In order to prevent exceeding the budget ceiling for this SC, the Contractor shall alert, in writing and in due time, the Contracting Authority when the budget consumption exceeds 70%, 80% and 90%. The Contractor will not invoice any tasks going beyond the budget ceiling unless it receives a prior written agreement of the contacting authority.

#### **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 NON-EUROPEAN UNION MEMBER STATES**

<b>Destination</b>	<b>Daily allowance (€)</b>	<b>Max. hotel price (€)</b>
Afghanistan	50	75
Albania	50	160
Algeria	85	85
American Samoa	70	135
Andorra	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
Azerbaijan	70	200
Bahamas	75	115
Bahrain	80	195
Bangladesh	50	140
Barbados	75	140
Belarus	90	135
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
Burkina Faso	55	90
Burundi	50	115
Cambodia	50	115
Cameroon	55	105
Canada	65	165
Cape Verde	50	75
Cayman Islands	60	135
Central African Republic	60	80
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
Cuba	75	150
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
Ethiopia	50	145
Fiji	50	120
French Guiana	55	140
French Polynesia	60	135
Gabon	75	115
Gambia	50	120
Georgia	80	215
Ghana	70	140
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
Iceland	85	160
India	50	195
Indonesia	50	145
Indonesia East Timor	50	110
Iran	55	145
Iraq	60	85
Israel	105	210
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	195
Kyrgyzstan	75	180
Laos	50	145
Lebanon	70	190
Lesotho	50	100
Lettonia	66	145
Liberia	85	150
Libya	50	175
Liechtenstein	80	95
Macao	55	95
Macedonia,FYR	50	160
Madagascar	50	105
Malawi	50	165
Malaysia	50	160
Maldives	50	135
Mali	60	95
Marshall Islands	50	135
Martinique	70	110
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
Netherlands Antilles	90	185
New Caledonia	55	135
New Zealand	60	125
Nicaragua	50	135
Niger	50	75
Nigeria	50	185
Niue	50	135
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
Puerto Rico	65	140
Qatar	65	135
Republic of Moldova	80	170
Reunion	60	90
Russian Federation	90	275
Rwanda	65	160
Saint Kitts and Nevis	85	185
Saint Lucia	75	140
Samoa	50	135
San Marino (Italy)	95	135
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
Solomon Islands	50	120
Somalia	50	125
South Africa	50	145
Sri Lanka	50	105
St Marteen	90	185
St. Vincent and the Grena.	75	190
Sudan	55	215
Suriname	55	125
Swaziland	50	90
Switzerland	80	140
Syria	80	145
Taiwan	55	200
Tajikistan	75	110
Tanzania	50	200
Thailand	60	145
Togo	60	95
Tokelau Islands	50	135
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
Uruguay	55	160
USA(New York)	100	275
USA(others)	80	200
Uzbekistan	75	155
Vanuatu	60	110
Vatican City	60,34	114,33
Venezuela	85	125
Vietnam	50	205
Virgin Islands(UK)	75	140
Virgin Islands(USA)	55	140
Wallis& Futuna Islands	50	135
West Bank and Gaza Strip	60	110
Yemen	60	165
Yugoslavia	80	140
Zambia	50	135
Zimbabwe	50	115

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

**Annex SC.III: Deliverables Acceptance Sheet**  
implementing Framework Contract No **EUSPA/OP/16/25/Lot [x]**

Service contract reference: EUSPA/OP/16/25/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.	
2) I hereby confirm that the number of the man-days / hours rendered for the deliverables subject to acceptance herewith are as defined in the (specific) contract for the respective deliverables <sup>11</sup> .	
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	

<sup>11</sup> In case the number of the man-days /hours for any of the deliverables is less that the number defined in the (specific) contract, the contractor shall invoice only the real number of man-days/hours rendered. The EUSPA reserves the right to request contractor to present time-sheets to support the deliverables acceptance in case of doubt.

