FRAMEWORK CONTRACT

EUSPA/OP/12/23

"EmeRgency Alerting System (ERAS)"
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The European Union Agency for the Space Programme (hereinafter referred to as the “Agency”), represented for the purposes of the signature of this framework contract (hereinafter referred to as “FWC”) by Mr Rodrigo da Costa, its Executive Director, on the one part, and

[full official name]
[official legal form]
[statutory registration number]
[full official address]
[VAT registration number]

(Hereinafter referred to as ‘the Contractor’), represented for the purposes of the signature of this Contract by [forename, surname and function,]

The parties identified above and hereinafter collectively referred to as the ‘the Contractor’ shall be jointly and severally liable vis-à-vis the Agency for the performance of this Contract.

on the other part,
HAVE AGREED

to the below provisions of the Contract and the following annexes:

Annex I  Tenderer’s Statement of Compliance to the technical terms of reference

Annex II  Tender Specifications (EUSPA/OP/12/23) and its annexes including Framework Contract Statement of Work, and its annexes (e.g. CISL)

Annex III  Security Aspects Letter (SAL)

Annex IV  Contractor’s Proposal (No [number], [date])

Annex V  List of Pre-Existing Rights (Background Intellectual Property Rights)

Annex VI  Declaration for Foreground Intellectual Property Rights - TEMPLATE

Annex VII  Draft Specific Contract – TEMPLATE

Annex VIII  Declaration on confidentiality and absence of conflict of interest – TEMPLATE

Annex IX  Deliverable/supply acceptance sheet - TEMPLATE

Annex X  Pre-financing guarantee – TEMPLATE

Annex XI  Statistical Reporting - TEMPLATE

All documents issued by the Contractor except its tender are held inapplicable, unless explicitly mentioned in 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 FWC shall take precedence over the Annexes

b) The terms set out in Annex I shall take precedence over those in Annex II

c) The terms set out in Annexes II and III shall take precedence over those in Annexes IV

d) The provisions set out in the FWC take precedence over those in the specific contracts
## 1. DEFINITIONS

In addition to the terms and definitions set forth in other articles of this Contract, the following terms shall have the meanings given below when used in this Contract:

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acceptance Review</td>
<td>means the acceptance review pursuant to the provision of the Framework Statement of Work (Annex II) and the relevant specific contract statement of work.</td>
</tr>
<tr>
<td>Acceptance Test(s)</td>
<td>means the acceptance test(s) proposed by the Contractor at major milestones review (Qualification Review, Acceptance Review) and accepted by the Agency.</td>
</tr>
<tr>
<td>Agency Default</td>
<td>means a breach by the Agency of any of the Agency obligations under this Contract, which materially affects the performance of the Contract by the Contractor.</td>
</tr>
<tr>
<td>Annex</td>
<td>means an annex to this FWC</td>
</tr>
<tr>
<td>Article</td>
<td>means an article of this FWC</td>
</tr>
<tr>
<td>Authorization To Operate (ATO)</td>
<td>Means the Authorization To Operate authorize the connection of a new accredited Galileo infrastructure and/or new release to the Galileo Operational (OPE) chain and its related operations.</td>
</tr>
<tr>
<td>Pre-ATO</td>
<td>Means the Pre Authorization To Operate which is based on the accreditation file (Security Risk Analysis and SSRS 3.9 SoC) built with evidences from infrastructure qualification and operations validation performed on the VAL system environment (no activities performed in the operational (OPE) system.</td>
</tr>
</tbody>
</table>
| Background Intellectual Property Rights /Background IPR | mean Intellectual property rights, including Third Parties’ IPR (including COTS and Open Source Software), obtained prior to the execution or developed outside, including during the term of this Contract by the Contractor, the Contractor Parties or a third party, and that is needed to:  
  a) perform the Contract  
  b) operate, maintain, evolve the Solution,  
  c) provide services through Solution. |
A “need” in the aforementioned sense is considered, if, without the relevant rights of access and/or the performance of the activities and/or the achievement of the objectives above listed would be technically or legally impossible, impaired or incomplete.

<table>
<thead>
<tr>
<th>Change</th>
<th>means any alteration of the Contractual Baseline</th>
</tr>
</thead>
<tbody>
<tr>
<td>Change Proposal</td>
<td>means the proposal by the Contractor to the Agency to implement a Change subject to a Change Request pursuant to Article 22.1.</td>
</tr>
<tr>
<td>Change Request</td>
<td>means a request issued by the Agency to the Contractor under Article 22.1, in which the Contractor is asked to submit a Change Proposal for the implementation of a Change.</td>
</tr>
<tr>
<td>Change Request Notice</td>
<td>means the instrument used by the Agency to submit a Change Request to the Contractor in writing with the content set out under Article 22.1.1.</td>
</tr>
<tr>
<td>Contract</td>
<td>Means this framework Contract and any specific contract</td>
</tr>
<tr>
<td>Contractor Obligations</td>
<td>means all Contractor’s obligations and liabilities under and pursuant to the Contract</td>
</tr>
<tr>
<td>Contractor Party (-ies)</td>
<td>means any person or legal entity engaged by the Contractor to execute on its behalf tasks in relation to the Contract, including its employees, affiliates, subcontractors, consultants or agents.</td>
</tr>
<tr>
<td>Contractual Baseline</td>
<td>means this Contract and all documents forming part of or referred to in its annexes forming an integral part thereof</td>
</tr>
<tr>
<td>Creator</td>
<td>means any natural person who contributes to the production of the Solution.</td>
</tr>
<tr>
<td>Day</td>
<td>means a calendar day.</td>
</tr>
<tr>
<td>Deliverable Item(s)</td>
<td>means any item developed/procured by the Contractor or Contractor Party under or in the frame of the Contract, including any documents delivered under the Deliverable Requirements List (“DRL”) in Annex I.I.a to the Framework SOW, hardware, software, tools or databases.</td>
</tr>
<tr>
<td>Effective Date</td>
<td>means the date of the last signature of Contract by a Party</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
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<td>-------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Emergency Alerting System or ERAS</td>
<td>means the system to be designed, developed, delivered, and installed pursuant to this Contract and its Annexes.</td>
</tr>
<tr>
<td>EU Space Programme</td>
<td>means space programme established by the Regulation (EU) 2021/696</td>
</tr>
<tr>
<td>European Data Protection Supervisor</td>
<td>means the European Union’s independent data protection authority.</td>
</tr>
<tr>
<td>European GNSS Security Accreditation Panel (GSAP)</td>
<td>means the panel established by the SAB to conduct security analysis reviews and tests and produce the relevant risk reports in order to assist the SAB in preparing its decisions.</td>
</tr>
<tr>
<td>Fixed Unit Price (FUP)</td>
<td>means the unit prices / monthly fees as indicated in the offer which are fixed and only subject to changes according to Article 5 of the FWC.</td>
</tr>
<tr>
<td>Force Majeure Event</td>
<td>means any unforeseeable and exceptional situation or occurrence after the Effective Date and beyond the control of the Parties which prevents either of them from performing their obligations under the Contract (the “Affected Party”), which was not due to error or negligence on their part or on the part of any other party attributable to them and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a Force Majeure Event.</td>
</tr>
<tr>
<td>Foreground IPR</td>
<td>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, which is developed or created in fulfilling any Contractor Obligations under the Contract.</td>
</tr>
<tr>
<td>Framework Statement of Work/Framework SOW</td>
<td>Statement of work forming an annex to the Tender Specification for Phase II (Annex II to the FWC)</td>
</tr>
<tr>
<td>Galileo Security Accreditation</td>
<td>Means the security accreditation process as described in the Security Accreditation and Certification Plan (SACP) and associated annexes. Its main goal is to create and maintain a System Security Plan (SSP) documentation.</td>
</tr>
<tr>
<td>--------------------------</td>
<td>----------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Good Industry Practice</td>
<td>means using standards, practices, methods and procedures conforming to the applicable 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.</td>
</tr>
<tr>
<td>Handover Assets</td>
<td>means assets identified in the tender specifications section 1.9</td>
</tr>
</tbody>
</table>
| Intellectual Property Rights (IPR) | have the meaning stated in Article 2 of the Convention establishing the World Intellectual Property Organisation, done in Stockholm on 14 July 1967. In particular, “intellectual property” shall include the rights relating to:  
  o literary, artistic and scientific works;  
  o performances of performing artists, phonograms, and broadcasts;  
  o inventions in all fields of human endeavour;  
  o scientific discoveries;  
  o industrial designs;  
  o trademarks, service marks, and commercial names and designations;  
  o protection against unfair competition; and  
  o all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields. |
For the purposes of the Contract, intellectual property shall also include know-how or trade secrets, provided that they are unpublished, and in written or otherwise documented form, and

(a) have been held in confidence by their owner;

(b) are not generally known or available to the public from other sources, and/or are not generally available to the public in printed publications and/or other readable documents;

(c) have not been made available by their owner to other parties without an obligation concerning confidentiality;

(d) are not available to the receiving party without an obligation concerning confidentiality;

(e) are reasonably capable of being expressed in writing; and

to the extent they do not comprise a Relevant Standard.

### Maintenance

<p>| 1st level of Maintenance | Means the maintenance tasks that allows a product to remain operationally available. This usually implies a fast and easy exchange of line replacement units (LRU) performed on the product by on-site personnel following a validated procedure when a malfunction occurs. In the frame of preventive or adaptive maintenance activities, 1st level maintenance also includes primary software maintenance activities and all preventive maintenance tasks as preconised by the manufacturer. |
| 2nd level of Maintenance | Means the in-depth fault analysis and troubleshooting requiring engineering support skills and software familiarity in order to identify the root cause of a problem and determine its appropriate solution. The 2nd level of maintenance shall coordinate the 1st and 3rd level activities. |</p>
<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>3rd level of Maintenance</td>
<td>Means the actions encompassing mainly major problem resolution or major modifications to improve the design and/or operational activities.  The 3rd level of Maintenance shall include adaptative, corrective and perfective maintenance.</td>
</tr>
<tr>
<td>Adaptive maintenance</td>
<td>Means modification of a hardware/software product performed after delivery to keep a product usable in a changed or changing environment. It deals with adapting the hardware/software to new environments.</td>
</tr>
<tr>
<td>Corrective maintenance</td>
<td>Means reactive modification of a hardware/software product performed after delivery to correct discovered problems. For software it deals with fixing bugs in the code (3rd Level of maintenance) for hardware could be the replacement of a faulty equipment (1st level of maintenance).</td>
</tr>
<tr>
<td>Perfective maintenance</td>
<td>Means modification of a hardware/software product after delivery to improve performance or maintainability. It deals with updating the hardware/software according to changes in user requirements.</td>
</tr>
<tr>
<td>Preventive maintenance</td>
<td>Means modification of hardware/software product after delivery to correct latent faults in the hardware/software product before becoming effective faults.</td>
</tr>
<tr>
<td>Notice</td>
<td>means an official written and signed communication by an Agency authorised representative to the Contractor and vice versa which may be conveyed via registered mail, hand delivery or scan attachment to an email with notice of receipt to the address of a Party indicated in Article 31.</td>
</tr>
<tr>
<td>Operational Service Validation (OSV)</td>
<td>Means the required OSV activities to confirm that the system (including the integrated release) is suitable for its intended use (i.e. operational service provision).</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>-------------------------------------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>Operational Validation Readiness Review (OVRR)</strong></td>
<td>Means the start of the required OSV activities (the new release is suitable for its intended use) prior the deployment onto the operational chain of a new release.</td>
</tr>
<tr>
<td><strong>Operational Validation Review (OVR)</strong></td>
<td>Means the completion of the required OSV activities prior the deployment onto the operational chain of a new release.</td>
</tr>
<tr>
<td><strong>Qualification Review (QR)</strong></td>
<td>means factory review pursuant to the provision of the Framework Statement of Work (Annex II) and the relevant specific contract statement of work.</td>
</tr>
<tr>
<td><strong>Party or Parties</strong></td>
<td>means (a) in singular, either the Contractor or the Agency, and (b) in plural, both the Contractor and the Agency</td>
</tr>
<tr>
<td><strong>Persistent Breach</strong></td>
<td>has the meaning as defined under Article 0</td>
</tr>
<tr>
<td><strong>Personal Data</strong></td>
<td>has the meaning stated in Regulation (EU) No 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of Personal Data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.</td>
</tr>
<tr>
<td><strong>Rectification Notice</strong></td>
<td>means a Notice from the Agency to the Contractor according to the provisions of Article 25.2.3.</td>
</tr>
<tr>
<td><strong>Relevant Standard</strong></td>
<td>means any experience, skill, knowledge, procedure, qualification or certification which would or should if operating in accordance with Good Industry Practice be available to any person (or in the case of any legal entity to its employees, agents or contractors as applicable) carrying out or intending to carry out or desirous of carrying out tasks subject to this Contract.</td>
</tr>
<tr>
<td><strong>Solution</strong></td>
<td>means 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, including Foreground IPR.</td>
</tr>
<tr>
<td><strong>“Operator” or SAR/Galileo Data Service Provider (SGDSP)</strong></td>
<td>Means the Entity (CNES) in charge of the operations and maintenance, of the SAR Ground Segment including the RLSP.</td>
</tr>
</tbody>
</table>
**SAR/Galileo Ground Segment (SGS)**
Means the infrastructure to be operated and maintained by the SGDSP for the purpose of providing the Galileo Service.

**SAR/Galileo Service Centre (SGSC)**
Means the location partaking into the SAR/Galileo Service that host at the RLSP and from where the SGDSP operations are implemented.

**Security Accreditation Board (SAB)**
Means the security accreditation authority for all of the Programme’s components established under the Space Regulation 2021/696 Article (36) which tasks and responsibilities are laid down in Article (38).

**Security Risk Analysis**
Mean the following main processes:
- Analysis of the coverage to threat scenarios
- Analysis of non-compliances or partial compliances to the SSRS 3.9 requirements
- Analysis of non-compliances or partial compliances to cyber requirements
- Analysis of security audit reports (including pentests)

**Site Accreditation Milestone (SAM)**
Means the Site Accreditation Milestone is the preliminary condition to connect the any infrastructure to the Galileo System.

**Site Accreditation Review (SAR)**
Means the Site Accreditation Review, authorising the deployment of a Galileo Accredited infrastructure as a precondition for the connection of such infrastructure to the Galileo Validation Chain (once the on-site performance and functionalities are demonstrated).

**Specific Contract(s)/SC(s)**
means the specific contract(s) entered into pursuant to a Work Order and the provisions under Article 4 of the present FWC

**Termination Date**
means the date on which the Contract ends according to the Article 3.3

**Termination Notice**
means a Notice by one Party submitted to the other Party to communicate its declaration of termination of the Contract.

**Third Party**
means entities other than the Contractor, the Contractor Parties, the European Union or the Agency

**Third Party IPR**
means all Intellectual Property Rights owned by Third Parties either before or after the signature of the Contract

**Threat Scenarios Coverage**
Means the analysis of the System-specific Security Requirements Statement (SSRS) and the feared event defined
therein allocated to the different parts of the system resulting in a collection of Threat Scenarios applicable.

For each of the Threat Scenario allocated to an element of the system or its operations, a coverage based on applicable requirements or specifications is expected from the party in charge of developing or operating the said element.

The analysis of the As-Designed coverage of the threats will result in the As-Designed Security Risk Analysis.

After the implementation and verification of the requirements, the “As-Designed” inputs to threat Scenario coverage is reviewed, highlighting the deficiencies in the implementation that resulted in threat scenarios coverage degradation, based on the results of the verification activities.

The analysis of the As-Built coverage of the threats will result in the “As-Built” Security Risk Analysis.

| **Work Order(s)** | Means the work order(s) issued by the Agency according to Article 4 of this Contract |
| **Union IPR** | means intellectual property rights owned by the European Union, represented for that purpose by the European Commission. |
| **Union** | means European Union |
| **Unsolicited Change Proposal Notice** | means the instrument used by the Contractor to submit its Unsolicited Change Proposal to the Agency in writing with the content set out under Article 22.2. of the Contract. |
| **Unsolicited Change Proposal** | means the proposal by the Contractor to the Agency for implementing a Change, which has not been subject to a Change Request as further specified in Article 22.2.3 |
2. **SUBJECT MATTER**

The subject matter of this Contract is for the Contractor the:

- ERAS design, development, delivery, installation and maintenance for a period of six months after its acceptance;
- Additional design, development, delivery and installation of two other RLM-based communications, with the objective to augment ERAS to respond to other service requests;
- Additional design, development, delivery and installation of a redundant ERAS, with the objective to ensure better resilience.

as specified in the Framework SOW and its Annexes including the CISL and in the Contractor’s Statement of Compliance and Proposal under Annexes II, I and IV, as specified in the Framework Statement of Work (Annex II FWC).

3. **ENTRY INTO FORCE AND DURATION**

3.1 The Contract shall enter into force on the Effective Date.

3.2 Under no circumstances may performance commence before the date on which the FWC enters into force. Execution of the tasks may under no circumstances begin before the date on which the respective specific contract enters into force.

3.3 This FWC shall enter into force upon the Effective Date and shall end on the earlier of:

   - xx/xx/20XXX or
   - The date on which termination shall take effect.

3.4 Signature of this FWC imposes no obligation on the Agency to conclude any specific contract for the purchase of any services/supply from the Contractor and nothing in this FWC shall be interpreted or construed as a commitment to the entire amount of the FWC.
4. IMPLEMENTATION OF THE CONTRACT

4.1 The present FWC will be implemented through Specific Contracts that, once signed by the Parties, shall constitute integral and substantial parts thereof.

4.2 The Agency may at any time request the provision of services and/or supplies falling within the scope of this FWC, through the issuing of Work Orders.

4.3 Except in case of proven Force Majeure Event as per Article 25, the Contractor shall under no circumstances refuse to conclude Specific Contracts, provided that such Specific Contracts are substantially compliant with the FWC SOW under Annex II and with the provisions of the present FWC.

4.4 The Work Order shall include as a minimum:

   a. Specific Contract SoW detailing the concerned activities, including the target price and including CISL;
   b. the time-limit and requirements for the submission of the Contractor’s specific contract proposal; and
   c. a draft Specific Contract.

4.5 The Contractor shall reply to the Work Orders by delivering a Specific Contract proposal, including as a minimum the following elements:

   a. A cover letter indicating the overall price of the Specific Contract, the time limit of the validity of the Specific Contract proposal, being understood that such time limit shall be at least 6 (six) months as from the submission of the proposal, and the price breakdown between the Contractor and its subcontractors (if any);
   b. A technical proposal, containing a general description of the work (including purpose, scope, inputs and results), discussion of problem areas, details about the engineering approach, and justification of the methods and techniques to be used;
   c. Deliverable Items (including, without limitation, software, hardware and/or Deliverable Document), if applicable, with delivery dates, based on the Specific Contract and FWC SoW;
   d. A financial proposal, with the price calculated on the basis of the Fixed Unit Prices and cost items/sheets according to the forms used for the Contractor’s proposal under Annex IV, according to the price type of each Specific Contract;
   e. Specific Contract milestone payment plan, based on the costs forms under paragraph (d) above and on the planned expenditure profile;
f. Specific Contract milestones, including the project baseline schedule, according to the provision of Framework SOW (Annex II) and applicable SC SoW;
g. Statistical information according to the template in Annex XI to support Agency’s reporting obligations towards the European Commission / EU member states, which shall include the names of the entities that will be involved in the Specific Contract implementation, their role (primes / sub-contractors (at least level N-1)), country of registration, status (small and medium-sized enterprise- SME as defined in EU recommendation 2003/361, public/ private), and the share of the Specific Contract price to be paid to them;
h. Statement of compliance to the Specific Contract requirements;
i. Specific Contract schedule, including the duration of the Specific Contract; and
j. Any other elements, as may be requested by the Agency for a Specific Contract on a case by case basis.

4.6 Specific Contract proposals shall be discussed between the Parties and may be updated/modified by the Contractor as a result of such discussions.

4.7 The Agency reserves the right to terminate the process for concluding Specific Contracts at any time before their signature, without any indemnification right accruing on the Contractor.

4.8 Under no circumstances may the Contractor commence the performance of the Specific Contract activities before the signature of the Specific Contract by both parties.

4.9 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.

5. GENERAL PROVISIONS ON PERFORMANCE

5.1 The Contractor shall perform the Contract to the highest professional standards and in accordance with Good Industry Practice.

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

5.3 Any reference made to the Contractor’s personnel in the Contract shall relate exclusively to individuals involved in the performance of the Contract.
5.4 The Contractor must ensure that the personnel performing the Contract possesses the professional qualifications and experience required for the execution of the tasks assigned to it.

5.5 The Contractor shall neither represent the Agency 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.

5.6 The Contractor shall be solely responsible for the personnel who executes the tasks assigned to the Contractor.

5.7 The Contractor shall take responsibility for all Contractor Parties’ activities. In particular, the Contractor shall not be relieved or excused of any responsibility, liability or obligation under this Contract by the appointment of any Contractor Party. The Contractor shall, as between itself and the Agency, be the sole responsible for the selection, pricing, performance, acts, defaults, omissions, breaches and negligence of all Contractor Parties. All references in this Contract to any act, default, omission, breach or negligence of the Contractor shall be construed accordingly to include any such act, default, omission, breach or negligence of a Contractor Party;

5.8 The Contractor shall stipulate the following employment or service relationships with its personnel:

5.8.1 personnel executing the tasks assigned to the Contractor may not be given orders directly by the Agency;

5.8.2 the Agency may not under any circumstances be considered to be the employer of the personnel referred to in point (a) and the personnel shall undertake not to invoke against the Agency any right arising from the contractual relationship between the Agency and the Contractor.

5.9 In the event that the expertise of a member of the Contractor’s personnel fails to correspond to the profile required by the Contract, the Contractor shall replace him without delay. The Agency shall have the right to make a reasoned request for the replacement of any such personnel. The replacement personnel must have the necessary qualifications and be capable of performing the Contract 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 personnel.

5.10 The Contractor shall comply at all times during the execution of the tasks and activities under the present FWC and the Specific Contracts with the Security Aspects Letter (Annex III) and all the security requirements listed in Framework SOW (Annex II) as well as all applicable legislation. The Contractor shall ensure that the Contractor’s personnel and Contractor Parties delivering tasks under Contractor’s responsibility are aware and comply with the security requirements as they are applicable to them.

5.11 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 Agency. 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 Contract. In such an event the Contractor shall give priority to solving the problem rather than determining liability.

5.12 Should the Contractor fail to perform its obligations under the Contract, the Agency may - without prejudice to its right to terminate the Contract - reduce or recover payments in proportion to the scale of the unperformed obligations in accordance with Articles 6.3 and 7 respectively. In addition, the Agency may claim compensation or impose liquidated damages in accordance with Article 20.

5.13 In relation to the design, development, qualification, validation and maintenance activities performed under this FWC, the Contractor undertakes the tasks and achieve the objectives and related milestones indicated in the Framework SOW (Annex II to the FWC) and the relevant Specific Contract SoW, including the coordination of any required tasks and inputs with the Contractor Parties.

5.14 Design: Specification and design activities

5.14.1 The specification and design activities shall be subject to the Agency’s approval with the conclusion of a successful Critical Design Review (“CDR”) pursuant to the provision of the Framework SOW (Annex II) and the relevant Specific Contract SoW and in compliance with all applicable requirements. The CDR can only take place after all the prerequisites as
defined in the Framework SOW (Annex II) and the relevant Specific Contract SoW are fulfilled by the Contractor.

5.14.2 If errors, omissions, ambiguities, inconsistencies, inadequacies or other defects constituting design errors are found in the Contractor’s documents delivered under the Deliverable Requirements List (“DRL”) in Annex I.I.a to the Tender Specifications (Annex II) at any time by either Party, the Contractor’s documents and the related Deliverable Items listed in DRL shall be corrected by the Contractor at the Contractor’s expense, notwithstanding any review or acceptance milestones in the Framework SOW (Annex II).

5.15 Development: Implementation and integration activities

5.15.1 The implementation and integration activities shall only commence after the successful design CDR. The Contractor shall develop, implement and integrate the Solution in accordance with the design agreed at CDR and pursuant to the provisions of the Framework SOW (Annex II) and the relevant Specific Contract SoW and in compliance with all applicable requirements.

5.15.2 The implementation and integration activities shall be subject to the Agency’s approval with the conclusion of a successful In-Factory Qualification Review (“Factory QR”) pursuant to the provision of the Framework SOW (Annex II) and the relevant Specific Contract SoW. The Factory QR can only take place after all the prerequisites as defined in the Framework SOW (Annex II) and the relevant Specific Contract SoW are fulfilled by the Contractor.

5.16 Qualification: Qualification and deployment activities

5.16.1 The qualification and deployment activities shall only commence after the successful Factory QR. The Contractor shall conduct the qualification and deployment activities pursuant to the provisions of the Framework SOW (Annex II) and the relevant Specific Contract SoW and in compliance with all applicable requirements. The Contractor shall coordinate health and safety measures before executing any on-site activities as defined in the Framework SOW (Annex II) and the relevant Specific Contract SoW.

5.16.2 The qualification and deployment activities shall be subject to the Agency’s approval with the conclusion of a successful On-site Qualification Review (“QR”) pursuant to the provision of the Framework SOW (Annex II) and the relevant Specific Contract SoW. The QR can only
take place after all the prerequisites as defined in the Framework SOW (Annex II) and the relevant Specific Contract SoW are fulfilled by the Contractor.

5.17 Validation: Operational validation

5.17.1 Subject to the successful completion of the QR, the Contractor shall provide the right of use of the Solution to the Operator in order for the latter to engage in the operational validation activities pursuant to the provisions of the Framework SOW (Annex II) and the relevant Specific Contract SoW, under the responsibility of the Agency. The provision of such right of use by the Contractor does not constitute a formal hand-over of the Solution, is without prejudice to the outcome of the Acceptance Review and does not entail a transfer of ownership subject to the provisions of Article 18 (Ownership of the solution).

5.17.2 The Agency shall be responsible for the operational validation of the Solution pursuant to the Acceptance Test Plan as developed by the Contractor and delivered to the Agency for approval at the latest within QR. The individual Acceptance Tests part of the ATP shall be executed by the Operator, under the responsibility of the Agency, with the involvement of the Contractor pursuant to the provisions of the Framework SOW (Annex II) and the relevant Specific Contract SoW.

5.17.3 The Agency, the Contractor, and the Operator shall take part in the operational validation activities carried out through the individual Acceptance Tests pursuant to the provisions of the Framework SOW (Annex II) and the relevant Specific Contract SoW and according to the Acceptance Test Plan. Any of the parties may raise observations, Anomalies or Non-conformances identified during the Acceptance Tests.

5.17.4 If the tested performance is not fully compliant with the requirements in the Acceptance Test Plan and/or the Contract and its Annexes and/or the Specific Contract including Contractor’s Statement of Compliance, the Contractor shall make the modifications, improvements, redesign, repairs, corrections or reconstruction necessary to meet those requirements at its own costs and expenses. The relevant Acceptance Test(s) shall be repeated until full compliance is achieved. Such retest(s) shall be subject to the provisions of this Article 5.17. This is without prejudice to any contractual remedy available to the Agency, such as without limitation regarding the application of liquidated damages for delays pursuant to Article 21.
5.17.5 Subject to the acceptance of all Deliverable Items and the successful completion of the Agency vulnerability assessment, the operational validation activities shall end at the successful Acceptance Review pursuant to the provision of the Framework SOW (Annex II) and the relevant Specific Contract SoW. The Acceptance Review can only take place after all the prerequisites as defined in the Framework SOW (Annex II) and the relevant Specific Contract SoW are fulfilled by the Contractor.

5.18 Maintenance activities

The maintenance activities shall only commence after the successful Acceptance Review. The Contractor shall conduct the maintenance activities pursuant to the provisions of the Framework SOW (Annex II) and the relevant Specific Contract SoW and in compliance with all applicable requirements.

6. PAYMENT PROVISIONS AND MAXIMUM CEILING OF THE CONTRACT

6.1 General Provisions on Payments and maximum ceiling of the Contract

6.1.1 The maximum ceiling of the Contract shall be EUR 7,000,000.00 (seven million euro). However, this must in no way be construed as a commitment by the Agency to purchase for the maximum amount.

6.1.2 All payments under the Contract shall be made in EURO.

6.1.3 Each Specific Contract shall establish the relevant payment plan, the documentation to be provided, and, where relevant, the milestones to be achieved for the Contractor to be entitled to each payment.

6.2 Pre-Financing

6.2.1 The amount of the pre-financing shall be individually agreed for each Specific Contract on the basis of due justification provided by the Contractor.

6.2.2 In case the Specific Contract provides for pre-financing, the Contractor may be requested to provide a first demand bank guarantee or a first demand parent company guarantee equal to the amount of the pre-financing according to the terms and conditions under Annex X hereinafter referred to as the “Guarantee”.

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6.2.3 The pre-financing payment constitutes a debt of the Contractor to the Agency until it has been off-set against subsequent milestones or payments as described in the corresponding Specific Contract, subject to the Contractor demonstrating to the satisfaction of the Agency that he has provided the activities for this period in accordance with the terms of the Contract. The Guarantee shall be gradually released on the basis of the off-setting described above.

6.2.4 The signed Guarantee shall be provided as an annex to each Specific Contract.

6.2.5 The guarantor shall stand as first-call guarantor and shall not require the Agency to have recourse against the Contractor as the principal debtor.

6.2.6 The cost of providing the above Guarantee shall be borne by the Contractor.

6.3 Partial Payments

6.3.1 In cases where a payment milestone as defined in the Specific Contract milestone payment plan 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 actually been achieved. The execution of partial payment is subject to the discretionary assessment of the Agency in good faith as to the value created by the partial achievement of the payment milestone concerned. The Contractor shall submit the invoice for the partial payment or appropriate credit note, as the case may be.

6.4 Interim Payments

6.4.1 The Contractor shall submit an invoice on the due date(s) as agreed in the relevant Specific Contract, indicating the reference number of the FWC and of the Specific Contract to which it refers for an interim payment. The invoice shall concern the activities provided within the invoicing period/relevant milestones.

Invoices shall be accompanied by the following:

a) Deliverable Item(s) and any associated documentations in accordance with the instructions laid down in the relevant Specific Contract, this FWC and their Annexes;
b) a deliverables acceptance sheet as per Annex IX, duly dated and signed by the Contractor;

c) a detailed justification of all expenses incurred, including but not limited to timesheets justifying the amount of hours spent on performing the tasks (if applicable according to the Specific Contract);

d) a list of all created Foreground IPRs, by attaching the filled-in Annex VI or a declaration stating that there are no such rights were created;

g) any other document in accordance with the relevant Specific Contract.

6.4.2 The Agency shall have 90 (ninety) Days from the receipt of all the Deliverable Items and documents listed under Article 6.4.1 to approve, countersign the Deliverable Acceptance Sheet and pay, subject to Article 6.4.3

6.4.3 The Agency may suspend the above-mentioned 90 (ninety) Days term any time pursuant to Article 6.7.8 below.

6.4.4 In case of partial approval, Article 6.3.1 shall apply and a credit note shall be issued by the Contractor.

6.4.5 In case the Agency has not paid the invoice on expiration of the payment period specified in Article 6.4.2 (subject to possible suspension as per Article 6.4.3), the Contractor is entitled to interest on late payment pursuant to Article 8 below.

6.5 Final Payment (Payment of the Balance)

6.5.1 The final payment payment under each Specific Contract shall be made by the Agency after the Contractor has been discharged of all its obligations under such Specific Contract.

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

The invoice shall be accompanied by:
a) Deliverable Item(s) and any associated documentation, in accordance with the instructions laid down in the relevant Specific Contract, this FWC and their Annexes;
b) a deliverables acceptance sheet under Annex IX, duly dated and signed by the Contractor;
c) a detailed justification of all expenses incurred, including but not limited to the timesheets justifying the amount of hours spent to perform the tasks (if applicable according to the Specific Contract);
d) a list of all created Foreground IPRs, by attaching the filled-in Annex VI or a declaration stating that there are no such rights were created;
e) any other document in accordance with the relevant Specific Contract.

The process described under Articles 6.4.2 to 6.4.5 shall apply mutatis mutandis to the payment of the balance.

Final payment may take the form of recovery.

6.6 Payment of Subcontractors

6.6.1 The Contractor shall be responsible for paying the accounts of its Contractor Parties in a timely and proper manner, in accordance with the applicable laws and commercial practice.

6.6.2 The Contractor shall indemnify the Agency against any claims by its Contractor Parties, caused by the Contractor’s failure to pay them.

6.6.3 The Contractor shall keep the Agency informed of the payment status of the subcontractors and supply to the Agency, on request, evidence of said payments.

6.7 Payment Procedure

6.7.1 The Contractor is required to submit invoices for all payments due to him under the Contract.

6.7.2 The Contractor undertakes to ensure that its invoices are issued to the Agency quoting the reference of relevant Specific Contract.

6.7.3 Invoices shall be submitted electronically to finance@euspa.europa.eu.
6.7.4 The Contractor undertakes to submit complete invoices (including instructions for billing taxes and duties, where applicable), in adhering strictly to the instructions of the Agency, and to provide the documents pursuant to Article 6.

6.7.5 Payments shall be made by the Agency to the account(s) specified below:

Account Name: XXXXXXXXXXX
IBAN: XXXXXXXXXXX
BIC/SWIFT: XXXXXXXXXXX

6.7.6 Payments shall be deemed to be effected on the date when they are debited to the Agency's account.

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

6.7.8 The Agency may suspend the payment periods specified in Specific Contracts at any time by notifying the Contractor that its invoice cannot be processed. The reasons the Agency may cite for not being able to process an invoice are:

- because it does not comply with the Contract;

- because the Contractor has not produced the appropriate deliverables, supplies or documents or

- because the Agency has observations on the deliverables, supplies or documents submitted with the invoice.

The Agency must notify the Contractor as soon as possible of any such suspension, giving the reasons for it.

Suspension takes effect on the date the Agency sends the notification. The remaining payment period resumes from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension period exceeds 3 (three) months, the Contractor may request the Agency to justify the continued suspension.
6.8 Indexation

6.8.1 At the request of one of the Party, at the first Effective Date anniversary and every following year of the Contract, each FWC Price, Specific Contract price and the amounts due to the Contractor under the signed Specific Contracts (“SC amounts”) shall be revised upwards or downwards as specified in Article 6.8.2 below. The Specific Contracts shall be signed based on the FUP as indexed (if relevant) at the time of their signature and shall be subject to indexation as provided in the present article, unless otherwise provided in the Specific Contract.

6.8.2 The revision shall be determined by the most recent trend in the Harmonised Indices of Consumer Prices as defined in Regulation (EU) 2016/792 (HICP) for the EU27 [actual number of EU member states], all-items, published by the Office for Official Publications of the European Communities in the Eurostat monthly bulletin at http://ec.europa.eu/eurostat/.

a. Revision shall be calculated in accordance with the following formulas:

\[ P_r = P_{r-1} \left( \frac{I_r}{I_{r-1}} \right) \]

where:

- \( P_r \) = revised FUP / SC prices / SC amounts;
- \( P_{r-1} \) = FUP / SC prices / SC amounts applicable during the preceding FWC year;
- \( I_{r-1} \) = index used as Ir for the previous price revision conducted at the previous anniversary date of the Effective Date (or the Effective Date, if the indexation is calculated for the second year of the Contract), based on which the price revision was computed; and
- \( I_r \) = most up-to-date index available at the date on which price revision is being computed.

b. Within 30 days of the date of the price revision, the Contractor shall present to the Agency a report of the changes to the FUP / SC amounts / prices, calculated according to the formulas specified in letter A above, for verification and approval. If the Agency does not react within 30 Days of the receipt of the report with a request for clarifications or amendments, the report shall be considered accepted, and the indexed prices and amounts indicated therein shall apply. If the Agency requests amendments or clarifications to the report, the latter shall be considered accepted, only upon Agency’s written confirmation.
The Contractor shall issue a debit / credit note for all payments effected from the date on which price revision is being computed until the report acceptance, rectifying the difference between the amounts paid and the indexed amounts included in the report, to be paid/ recovered by the Agency within 30 Days.

7. **RECOVERY**

7.1 If an amount is to be recovered under the terms of the Contract, the Contractor shall repay the Agency the amount in question.

7.2 Before recovery, the Agency 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 thirty (30) Days of receipt.

7.3 If no observations have been submitted or if, despite the observations submitted, the Agency 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 shall pay in accordance with the provisions specified in the debit note.

7.4 If the obligation to pay the amount due is not honoured by the date set by the Agency in the debit note, the amount due shall bear interest at the rate indicated in Article 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 Agency receives the full amount owed.

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

7.6 If payment has not been made by the due date, the Agency may, after informing the Contractor in writing, recover the amounts due by offsetting them against any amounts owed to the Contractor by the European Union or by the Agency or by calling in the financial guarantee, where provided for in the Specific Contract, or by taking legal action, in accordance with applicable law.

8. **INTEREST ON LATE PAYMENT**

8.1 On expiry of the payment periods specified in Article 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 EURO (the reference rate) plus eight (8) 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.

8.2 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 6.7.6.

8.3 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 (2) months of receiving late payment.

9. TAXATION

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

9.2 The Contractor recognises that the Agency is, as a rule, exempt from all taxes and duties, including value added tax (VAT), pursuant to the provisions of Article 91 of the Regulation (EU) 2021/696.

9.3 The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the goods and services required for performance of the Contract are exempt from taxes and duties, including VAT, subject to compliance with the applicable law and that the Contractor receive the necessary documentation from the Agency.

9.4 The Agency shall provide to the Contractor a certificate on its exemptions from VAT, as required by the Contractor towards competent authorities.

10. CHANGE OF SUBCONTRACTORS OR CONSORTIA MEMBERS

10.1 The Contractor shall not subcontract and have the FWC and/or any Specific Contract thereunder implemented by Third Parties beyond the Third Parties already mentioned in its proposal under Annex IV without prior written authorisation from the Agency.

10.2 After the signature of the FWC, the Contractor shall request the Agency’s prior written approval to introduce any newly selected subcontractor(s), including when part of the Core Team. The Agency will decide whether or not to approve the proposed new subcontractor on the basis of the assessment of its compliance with exclusion and selection criteria, and participation conditions.
10.3 Even where the Agency 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.

10.4 The Contractor shall make sure that the subcontract does not affect rights and guarantees granted to the Agency by virtue of this Contract, notably by Article 32 (Assignment).

10.5 The Agency shall request the Contractor to remove or replace subcontractor(s), including when part of the Core Team, found to be in a situation provided for in points (c) to (r) of Article 25.1. In such case, the Contractor shall undertake, on the basis of its written request and subject to the Agency’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 10.

10.6 CHANGE OF CONSORTIA MEMBERS

10.6.1 Changes in consortia members during contract execution are in principle acceptable in the context of universal successions or when the Agency terminates the Contract with any member of the consortium separately as per Article 25.1, last paragraph, of the FWC.

10.6.2 In the latter case changes may happen either by replacing the terminated member or by absorbing the relevant tasks and responsibilities by the remaining ones, subject to the Agency’s prior written approval.

10.6.3 The replacing consortium member and/or newly formed consortium shall comply with the relevant cumulative conditions elaborated on in section 2.3.5 of the Tender Specifications.

10.6.4 The Agency 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 2.3.5 of the Tender Specifications.

11. SITE CONDITIONS

11.1 On the basis of the information and documents provided during the tendering phase, the Contractor declares to be acquainted with the site and the premises where the Solution shall be deployed and the support to operation and maintenance related activities shall be
performed. The Contractor declares that such premises are suitable for the correct functioning of the Solution, and the performance of Contractor Obligations under the Contract.

11.2 Before executing any on-site activity, health and safety measures shall be fully coordinated with the Operator. The Contractor shall have the sole responsibility for complying with all legal obligations incumbent on it, its employees and Contractor Parties, with regards to health and safety in the performance of Contractor Obligations. Any necessary activity in this respect, including, without limitation, the preparation and execution of plans, the availability and use of tools and protective measures shall be at the exclusive cost and expense of the Contractor.

11.3 The Contractor will indemnify the Agency against all costs, including any interest, penalties and legal expenses and fees that the Agency may incur as a result of non-compliance with any laws or acts as applicable to activities performed on-site.

12. GENERAL WARRANTIES FROM THE CONTRACTOR

12.1 The Contractor warrants to the Agency that, as of the Effective Date of this FWC:

a) it has all requisite corporate power to enter into this Contract and to perform all its obligations under this Contract;

b) its entry into, delivery and performance of this Contract has been validly authorised by all necessary and appropriate corporate and other actions; and

c) all its obligations under this Contract constitute legally valid, binding and enforceable obligations against the Contractor.

12.2 The Contractor shall be deemed to have:

a) satisfied itself as to the nature and extent of the risks assumed by it under this Contract; and

b) gathered all information necessary to perform its obligations under this Contract.

13. AGENCY’S UNDERTAKINGS (CUSTOMER FURNISHED ITEMS)

13.1 As part of its undertakings under the Contract the Agency shall make available to the Contractor the items specified as Agency Undertakings under section 1.8 of the Tender
Specifications. Each Specific Contract shall identify the items made available to the Contractor for the purposes of fulfilling its obligations under such Specific Contract.

13.2 In case of failure, omission or delay of the Agency to execute its undertakings, the Contractor shall:

   a) notify the Agency, not later than three (3) working days of coming to its notice, of any failure, omission or delay of the Agency to fulfil its obligations;

   b) analyse and report on the impact of such failure, omission or delay, if any, on the Specific Contract affected and propose mitigation actions, including Specific Contract amendments;

   c) take all reasonable measures to eliminate or limit the consequences of the Agency’s failure, omission or delay on its performance.

13.3 Failure, omission or delay of the Agency to execute its undertakings shall relieve the Contractor from fulfilling its obligations, either totally or in part, only insofar as:

   a) the Contractor has notified the Agency in accordance with Article 13.2 above;

   b) the Contractor can prove that the direct cause of such non-fulfilment was the Agency’s failure, omission or delay to execute its undertakings.

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

   a) extension of contractual milestones, to the extent that the delay is proven to be the direct result of an Agency’s failure, omission or delay;

   b) reimbursement of all financial consequences within the Contract due to the Agency’s failure, omission or delay in executing its undertakings, to the extent proven that such financial consequences are the direct result of the Agency’s failure, omission or delay.
14. **HANDOVER ASSETS**

14.1 The Agency shall make available and grant the Contractor the right to use and maintain the Handover Assets in compliance with the terms and conditions of this Contract if so required by the Contractor.

14.2 Considering the documentations provided by the Agency during the tendering process, the Contractor declares to have examined the Handover Assets and found them as satisfactory and fit for the purposes of performing its obligation under this Contract.

14.3 The Contractor acknowledges that each Handover Asset is handed over to and accepted by the Contractor in “as is” conditions with no warranty provided by the Agency of any kind including compliance with the applicable law, suitability for their intended purpose or actual use. Under no circumstances may the Contractor invoke defects of such Handover Assets as a ground to obtain relief from its Contractor Obligations, save the case of Force Majeure. For the avoidance of doubt, the provisions under Article 13 shall not apply to Handover Assets.

14.4 The risk to any Handover Asset shall lie with the Contractor from the time such Handover Asset is physically or electronically delivered to the Contractor at the agreed location and/or by agreed means.

14.5 The Contractor shall assume full liability for loss of or damage to the Handover Assets under its custody in accordance with the provisions of Article 21.

14.6 The Contractor acknowledges that the rights granted under Article 14.1 are revoked with immediate effect in the case of termination or expiry of the FWC. The revocation will take effect on the date of the termination or expiry of the FWC.

14.7 The Contractor shall not dispose of any non-consumable Handover Assets unless and until the Agency has specifically consented to such disposal in writing pursuant to the applicable procedure.

15. **DELIVERY OF ITEMS UNDER THE CONTRACT**

15.1 The Deliverable Items under this Contract must:
a) correspond to the description given in the Tender Specifications (Annex II) and/or the Specific Statement of Work, and the Contractor’s Proposal (Annex IV) and/or the Contractor’s Specific Contract proposal;

b) be fit for any specific purpose required of them by the Agency and made known to the Contractor at the time of conclusion of this FWC or any Specific Contract thereunder and accepted by the Contractor;

c) be fit for the purposes for which supplies of the same type are normally used;

d) demonstrate the quality and performance which are normal in supplies of the same type and which the Agency can reasonably expect, given the nature of the supplies and taking into account any public statements on the specific characteristics of the supplies made by the Contractor, the producer or its representative, particularly in advertising or on labelling;

e) be packaged according to the usual method for supplies of the same type or, failing this, in a way designed to preserve and protect them.

15.2 All deliveries of supplies/Deliverable Items shall be made at the agreed place of delivery during the hours agreed between the Agency and the Contractor.

15.3 The Contractor shall bear all costs and risks involved in delivering and installing the supplies/Deliverable Items to the place of delivery.

15.4 Each delivery of supplies/Deliverable Items shall be accompanied by a consignment note in duplicate, duly signed and dated by the Contractor, or its carrier if applicable, giving the FWC and Specific Contract numbers and particulars of the supplies delivered and/or installed. One copy of the consignment note shall be countersigned by the Agency and returned to the Contractor or to its carrier.

15.5 Signature of the consignment note by the Agency is simply an acknowledgment of the fact that the delivery of supplies took place and in no way implies conformity of the supplies with this FWC or any Specific Contract thereunder.

15.6 The Contractor shall ensure that all Deliverable Items are compliant with all legal obligations incumbent on it, including, without limitation, those resulting from local standards, environmental and urban legislation at the deployment location.
16. **Acceptance of Deliverable Items**

16.1 Acceptance of the Deliverable Items shall be evidenced by the signature of a deliverable acceptance sheet (Annex IX) to this effect by the Agency.

16.2 Acceptance shall be declared only where the conditions laid down in this Contract are satisfied and the Deliverable Item conforms to the FWC and the Specific Contracts.

16.3 Where, for reasons attributable to the Contractor, the Agency is unable to accept the Deliverable Item, the Contractor shall be notified in writing at the latest by the deadline for acceptance.

16.4 The Contractor shall be liable to the Agency for any lack of contractually agreed conformity of Deliverable Items.

16.5 In case of lack of conformity of the Deliverable Items or rejection of Deliverable Items, and without prejudice to the indemnification of possible damages incurred by the Agency and unless otherwise specified in this FWC or Specific Contracts, the Agency shall be entitled either:

   a) to have the Deliverable Items brought into conformity, free of charge, by correction or replacement; or
   
   b) to reduction in price as per Article 6.3.

16.6 Unless otherwise provided in this Contract, any correction or replacement of Deliverable Items shall be completed within a reasonable time and without any significant inconvenience to the Agency, taking into account the nature of the Deliverable Items and the purpose for which they are required by the Agency.

16.7 Acceptance of Deliverable Items related to a new ERAS Infrastructure shall not release the Contractor from its responsibilities before the relevant ERAS Infrastructure release has been shown to comply with the requirements and Acceptance Review has occurred pursuant to Articles 16.2 and 16.5 above.

17. **Inspection**

17.1 The Agency and its agents, employees or contractors shall, upon reasonable prior notice to the Contractor and subject to adherence to the safety procedures and other procedures and...
requirements applicable (including without limitation any such procedures and requirements established in connection with any insurance coverage obtained in connection with the Contract), have access to inspect all work done/activities performed by the Contractor under this Contract; provided, however, that any inspection of the work/activities performed shall be conducted at a reasonable time and in a manner that does not delay or increase the cost of the work by disrupting the activities to be performed. The Contractor shall have the right to require that the persons conducting such inspection shall observe the procedures to preserve the health and safety and security. Notwithstanding any review or inspection, the Contractor shall not be relieved of its responsibility for the design, construction and performance of the Contract solely by virtue of the inspection or review.

18. OWNERSHIP OF THE SOLUTION

18.1 Ownership of the Solution shall be exclusively and without restrictions vested in the European Union, represented by the European Commission as follows:

18.1.1 tangible assets, immediately upon their delivery and acceptance by the Agency, with such delivery and acceptance being deemed to constitute an effective assignment of rights from the Contractor to the Union.

18.1.2 Foreground IPR, effective assignment of rights from the Contractor to the European Union is deemed to be constituted from the moment of its generation.

18.2 Documentation or software generated by the Contractor or the Contractor Parties under the Contract shall be immediately marked "EU Proprietary information. Unauthorised distribution, dissemination or disclosure not allowed".

18.3 The Contractor shall ensure that all necessary measures are taken in order to transfer the Solution (tangible and intangible assets, including Foreground IPR) to the European Union for compliance with the above-mentioned requirements. In case of the Solution being tangible assets, the Contractor shall place them into the care and custody of the Agency, unless requested otherwise by the European Union, represented by the European Commission.

18.4 The Parties agree that the price payable by the Agency to the Contractor under this Contract includes all fees and expenses payable to the Contractor, with no additional claim for compensation, for the acquisition of ownership of the Solution, including Foreground IPRs by the European Union and all modes of exploitation and of use of the Solution.
19. FOREGROUND IPR, BACKGROUND IPR

19.1 Foreground IPR

19.1.1 The European Union acquires the following exclusive rights on the Foreground IPR, 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 or any licensee of the European Union for any purposes the European Union or the licensee sees fit;

h) the right to incorporate, embed or merge the subject matter of the Foreground IPR into any other product,
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 Solution, 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 know-how: the right to use such know-how as is necessary to make use of the Solution to the full extent provided for by this Contract, and the right to make it available to contractors or sub-contractors acting on behalf of the European Union/Agency, subject to their signing of adequate confidentiality undertakings where necessary;

o) 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;

p) where the Solution consists of documents:

(ii) 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 Solution 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;

q) where the Solution 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;

r) 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 Solution with or without mentioning the Creator(s)' name(s), and the right to decide when and whether the Solution may be disclosed and published.

19.1.2 The European Union may make use of the Foreground IPR in any known manner and for any known type of use, as well as all yet unknown types of use. For the avoidance of doubt, no royalty fee shall be paid by the European Union for such use.

19.1.3 The intended purpose of the permanent assignment of full ownership of all Intellectual Property Rights 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 that under the law applying to the Contract a permanent assignment of some or all IPR is lawfully not possible, the Contractor agrees to and herewith grants to the European Union an irrevocable and worldwide exclusive license for the Foreground IPR, including the grant of the exclusive and perpetual usage, distribution and exploitation rights, not restricted in respect of territory, time or purpose and including all the rights as listed in this Article. For the avoidance of doubt, no royalty fee shall be paid by the European Union for such license grant in addition to what is included in the agreed price.

19.1.4 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.

19.1.5 The Contractor warrants that the exclusive rights and the modes of exploitation may be exercised by the European Union on all parts of the Foreground IPR. When delivering the
Foreground IPR, the Contractor shall warrant that they are free of rights or claims from Creators and Third Parties, for any use envisaged by the European Union/Agency. This does not concern the moral rights of natural persons.

19.1.6 In the Foreground IPR the Contractor shall clearly point out all quotations of existing textual works. 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.

19.1.7 By delivering the Foreground IPR the Contractor warrants that the Creators undertake not to oppose that their names be recalled when the Solution is presented to the public and confirms that the Solution can be divulged. Names of authors shall be recalled on request in the manner communicated by the Contractor to the European Union/Agency.

19.1.8 The Contractor shall obtain the consent of Creators regarding the granting of the relevant rights and be ready to provide documentary evidence upon request.

19.1.9 The Contractor shall use the template in Annex VI of the Contract to declare any Foreground IPR and bring such declaration to Agency’s attention without delay and in any case no later the submission of the payment request, as per Article 6.

19.1.10 The Agency on behalf of the European Union hereby grants the Contractor and the Contractor Parties a non-transferable, sublicensable, unrestricted, free of charge, non-exclusive right to use Foreground IPRs; such license shall be granted exclusively for the purpose of implementation 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 Commission’s written notice should the Contractor fail to comply with its obligations under this Contract. 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.

19.1.11 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. In particular, the Contractor guarantees that he is compliant with all licence conditions of the respective providers and owners of Third Party IPR. In case of any claim based on an alleged infringement of such Third Party IPR, the Contractor is obliged to indemnify the European Union, and the Agency on the basis of Article 21.

19.1.12 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.

19.1.13 The Contractor shall not take any action which jeopardises or affects the ability of the European Union to legally protect the subject matter of the Foreground IPR.

19.1.14 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.

19.1.15 In case the Contractor modifies, enhances or makes another alteration to an existing IPR developed under the present Contract, and the Contractor has identified such pre-existing product to be used for the activities under this Contract, the Foreground IPR is any incremental work on top of such pre-existing product constituting modifications, corrections, additions, extensions or improvements to the pre-existing product or any translation of the pre-existing product as a result of Contractor’s activities.

19.1.16 The Contractor shall without delay notify the Agency of the 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 V (part 2);
(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.

19.1.17 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.

19.1.18 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.

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

19.1.20 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.

19.1.21 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.
19.1.22 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 deployment/development of ERAS, operation, maintenance including applications. The Contractor shall negotiate the license terms in good faith with every willing licensor. In case agreement on license terms cannot be reached within six (6) months from the time the willing licensor declares in writing its interest to license 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 licensor refuses to enter into binding arbitration agreement with respect to the terms of the license.

19.1.23 For the patentable inventions, 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.

19.2 Background IPR

19.2.1 All Background IPRs as agreed by the Parties are specified in Annex V of the Contract.

19.2.2 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, the Contractor shall provide conclusive evidence to the Agency of the existence of this Background Intellectual Property and shall justify the reasons for which the existence of this Background Intellectual Property was not invoked before the Contract signature.

19.2.3 If conclusive evidence and appropriate justification are provided by the Contractor, the Parties shall formalise a Change updating the List of Pre-Existing Rights (Annex V).

19.2.4 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.

19.2.5 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 owned by the Agency.
19.2.6 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 to exploits the Solution including in particular, but not limited to, as follows:

i. The right to store, reproduce, publish, 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) 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.

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 including rental agreements;

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.

19.2.7 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. The Contractor also warrants that it possesses the relevant rights or powers to licence the Background IPR to the Agency / European Union and that it has paid or has verified payment of all due fees including fees due to collecting societies, related to the final Solution.

19.2.8 Should access to Background IPR involve a security concern, or a non-disclosure agreement which was entered prior to starting the implementation of the relevant part of the Contract, the Parties shall put a specific non-disclosure agreement in place to cover the confidentiality of this Background IPR. In case of security concerns, such non-disclosure agreement shall involve the relevant national security authority (NSA) to agree on the policy of use, terms and conditions for the management of the sensitive Background IPR. The Contractor shall apply all efforts towards solving security concerns in a way as not to unduly prevent the said access.

19.3 IPR owned by a Third Party

19.3.1 If the Contractor, in order to perform its obligations under this Contract needs to have access to intellectual property owned by a Third Party, it shall ensure that the third-party grants an irrevocable, perpetual, worldwide, transferable licence to the Agency and the European Union, their institutional assignees, with the right to grant sub-licences, to access and use the Background IPR for the use of Solution in all manners which are necessary for the purposes of this Contract and to exploits the Solution and to enable the development, the use, operation and exploitation of the EU Space Programme and the space component of the Horizon Europe. Any cost related to such licences are deemed to be included in the price of this Contract.

19.3.2 Where Commercial Off-The-Shelf (COTS) products are concerned and the standard licence terms of the third-party vendor apply, such licence shall grant to the European Union/the Agency the right and licence to use such COTS products in connection with the Foreground IPR generated under this Contract, with the right of sub-license.
19.3.3 When the Contractor procures software, which is subject to Third Party IPR or in any way linked to or connected with software subject to Third Party IPR, and the software subject to Third Party IPR is made available under an Open Source Software (OSS) Licence, the Contractor shall ensure that the OSS Licence does not require him or the Union to apply the terms and conditions of such licence on his own developments or any developments within the frame of this Contract. If the OSS Licence so requires, the Contractor shall not procure or otherwise use the software under the OSS licence for any contractual purpose, unless otherwise agreed between the Parties.

19.3.4 The Contractor shall maintain at all times during the execution of the Contract an updated list of COTS and OSS licenses and make available a copy thereof, upon request, to the Agency and the European Union. The disclosure of such documents shall not be subject to any confidentiality provision under the present Contract.

19.3.5 The Contractor guarantees that the provision of the activities under this Contract, the transfer of ownership and the licences granted under this Contract will not infringe any Intellectual Property Right of any Third Party.

19.3.6 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.

19.3.7 Without prejudice to the above, the Agency and the Contractor shall notify each other without undue delay of any identified risk of Third Party IPR infringement or of any dispute arising over ownership or use of Intellectual Property Rights that arises from the performance of the Contract or which is required for completion of the Contract or which relates to any product, use, application or result of the Contract.

19.3.8 The Contractor shall ensure that all required information is provided to the Agency and that any measure is immediately taken in order to mitigate and remedy the above risk and/or infringement without any additional cost for the Agency and the European Union.

19.4 UNION IPR

19.4.1 The Agency grants to the Contractor a free-of-charge, non-exclusice, non-transferable license to use, adapt, operate, modify the subject matter of Union IPR, for the purposes of performing its obligation under the present Contract with the right to grant sublicenses.
to Contractor Parties within the limits of the scope and duration of the licence. The Contractor shall declare to the Agency any adaptation and modification performed on the Union IPR according to the provision of Article 19.1 and shall warrant that such adaptation and modification do not infringe any Third Party IPR. Upon the Agency’s request, the provisions under Article 19.1 on Foreground IPRs shall apply to the adaptations and modifications above.

19.4.2 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.

19.4.3 The Contractor acknowledges that the licences granted under Article 19.4 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.

19.4.4 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 19.4.3 as may be required.

20. LIQUIDATED DAMAGES AND INCENTIVES

20.1 Should the milestones defined in the Specific Contract for the delivery of the Solution not be successfully performed within the time-limits set by and in accordance with such Specific Contract, then, without prejudice to the Contractor’s actual or potential liability or to the Agency’s right to terminate the Contract and the relevant Specific Contract, the Agency may impose liquidated damages for each and every calendar day of delay using the following formula:

\[ 0.3 \times \frac{V}{d} \]

where V is the price associated with the delayed milestone; d is the duration (expressed in calendar days) specified in the Specific Contract for the delivery of the relevant milestone.
20.2 The Parties expressly acknowledge and agree 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.

20.3 Liquidated damages will be deducted by the Agency from the payments due to the Contractor under the relevant specific contract.

20.4 Liquidated damages shall be capped at 8% of each Specific Contract price. The liquidated damages cap shall not apply if the breach giving raise to the application of liquidated damages is due to gross negligence or wilful misconduct on the side of the Contractor. The amount of liquidated damages applied during the course of each Specific Contract shall not be considered for the computation of the general liability cap specified in Article 21 below.

20.5 In case Liquidated Damages cap is reached and the Contractor fails to perform its obligation under the relevant Specific Contract the Agency may claim compensation for demonstrated further damages with respect to the breach of Contractor’s Obligations up to the limits of the general cap on liability in accordance to Article 21 below.

20.6 Should the Acceptance Review milestone (as defined in the Framework SOW (Annex II) and the relevant Specific Contract SoW) be achieved earlier than the deadline set by and in accordance with the relevant Specific Contract, the Agency shall (in case the relevant Specific Contract provides so) pay to the Contractor for each and every calendar day of advance using the following formula:

\[ 0.15 \times \frac{V}{d} \]

where V is the price of the relevant Specific Contract (excluding the maintenance activities referred to in Article 5.18 above); d is the duration (expressed in calendar days) between the entry into force of the relevant Specific Contract and the original date of delivery of the Acceptance Review milestone specified in that Specific Contract.

20.7 The incentive scheme under this Article 20 shall be capped at 2.5% of each relevant Specific Contract price (excluding the maintenance activities referred to in Article 5.18 above).
20.8 The Parties expressly acknowledge that this Article 20 does not establish an obligation on the Agency to include the incentive scheme in any Specific Contract and that its potential inclusion therein remains at the Agency’s full discretion.

20.9 When the incentive scheme is applied pursuant to Article 20.6 above, the payment of the incentive shall be made together with the payment associated with the Acceptance Review milestone pursuant to Article 6.4 above.

21. LIABILITY AND INDEMNITY

21.1 The Contractor shall be solely responsible for the performance of the Contract, unless the Contractor is composed of two or more economic operators (who submitted a joint tender as consortium) in which case they shall all be jointly and severally liable.

21.2 The Agency shall not be held liable for any damage caused or sustained by the Contractor, including any damage caused by the Contractor to Third Parties during or as a consequence of performance of the FWC and of any Specific Contract thereunder, except in the event of wilful misconduct or gross negligence on the part of the Agency.

21.3 The Contractor shall be held liable and indemnify the Agency for any loss or damage sustained by the Agency by reasons or in connection with the performance of the Contract and of any Specific Contract thereunder (including liquidated damages), including in the event of subcontracting.

21.4 The Contractor shall hold the Agency harmless for any claim, action or proceeding brought against the Agency by a Third Party as a result of damage caused by the Contractor during the performance of the Contract. In the event of any action brought by a Third Party against the Agency in connection with the performance of the Contract, including any alleged breach of Intellectual Property Rights, the Contractor shall assist the Agency as the case may be. Such expenditure incurred by the Contractor may be borne by the Agency.

21.5 The overall liability of the Contractor under this Contract shall be limited to an amount corresponding to an overall amount equal to 50 % of the aggregate value of the Specific Contracts concluded. Nevertheless, if the damage or loss is caused by the gross negligence or wilful misconduct of the Contractor or of its personnel or Contractor Parties, the Contractor shall have unlimited liability for the amount of the damage or loss.
21.6 The Contractor shall take out an insurance policy against risks and damage relating to the performance of the Contract, if required by the relevant applicable legislation. It shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance contracts shall be sent to the Agency should it so request.

22. AMENDMENTS

22.1 Agency request

22.1.1 If the Agency wishes to introduce a Change, it shall serve a Change Request Notice to the Contractor. The Change Request shall:

   a. set out the Change required in sufficient detail to enable the Contractor to calculate and provide a Change Proposal in accordance with Article 222.1; and
   b. require the Contractor to provide the Agency with a Change Proposal.

22.1.2 As soon as practicable and in any event, unless specifically agreed otherwise by the Agency, within 30 (thirty) Days after having received the Change Request Notice, the Contractor shall deliver to the Agency a Change Proposal drafted following the structure of the Change Request and specifying, as minimum:

   a. technical description of the work to be done under the Change Request (including the identification of the relevant section(s) of the Statement of Work affected);
   b. security assessment of the Change;
   c. price alteration and cost breakdown;
   d. reasonable efforts of the Contractor to minimise any increase in costs and maximise any reduction in costs (also through its Subcontractors);
   e. subcontracting structure;
   f. planning, including the indication of critical milestones or dates; and
   g. the proposed amendment to the Contract and/or any Applicable Document.

22.1.3 The Change Proposal shall also include the advice of the Contractor on:
22.1.4 As soon as practicable after the Agency receives the Change Proposal it will evaluate it:

a. in case of acceptance, the Parties will amend the Contract accordingly;

b. in case of non-acceptance, the Parties shall discuss and agree on the relevant issues set out in the Change Proposal.

22.1.5 The Contractor shall not be entitled to recover from the Agency the costs sustained in the preparation of the Change Proposal.

22.2 Contractor unsolicited change proposal

22.2.1 To the extent permitted under the applicable law, the Contractor has the right to make Unsolicited Change Proposals in accordance with this Article.

22.2.2 If the Contractor wishes to introduce an Unsolicited Change Proposal, it must serve an Unsolicited Change Proposal Notice to the Agency.

22.2.3 The Unsolicited Change Proposal Notice shall contain:

a. all the elements as listed under Article 22.1.2 above;

b. the Contractor's reasons for proposing the Change; and

c. the advice of the Contractor regarding the applicable elements listed under Article 22.1.3 above.

22.2.4 The Agency shall evaluate the Unsolicited Change Proposal in good faith, taking into account all relevant issues and circumstances.

22.2.5 As soon as practicable, and in any event within 30 (thirty) Days, after receiving the Unsolicited Change Proposal, unless other period was agreed between the Parties, the
Parties shall meet and discuss the matters referred to in it. Following the discussions, the Agency shall either accept or reject the Unsolicited Change Proposal. In case the Agency requests modifications, it shall give the Contractor a reasonable time for preparing and submitting an updated proposal. In case of acceptance, the Parties will amend the Contract and/or the relevant Specific Contract accordingly.

22.2.6 Unless otherwise agreed by the Agency, the Contractor shall not be entitled to recover from the Agency the costs sustained in the preparation of the Unsolicited Change Proposal.

22.2.7 All the relevant applicable documents and Annexes to this Contract and/or Articles of this Contract shall be amended according to the accepted Unsolicited Change.

22.2.8 If the Agency rejects the Unsolicited Change Proposal, it shall be obliged to give its reasons for such rejection. In such case, the Contractor shall not be liable for the consequences of such refusal insofar as it is proven that the consequences in question could have been avoided with the implementation of the Change subject to the Unsolicited Change Proposal.

22.3 Updates of applicable and reference documents

22.3.1 In case one of the parties identifies the need to update/amend the list or the content of (1) applicable documents forming part of the Contractual Index Status List ("CISL") (Annex II) applicable to the FWC or any Specific Contract thereunder, and/or (2) reference documents forming part of the FWC or any Specific Contract thereunder, and such change(s)

   a. does not have any financial impact;

   b. does not alter the scope of the respective Contract,

   it can be implemented, by derogation from Article 22, by way of written exchange between the Parties.

22.3.2 The Party proposing the change(s) shall communicate electronically in writing the proposed change(s) to the other Party, which shall have 30 (thirty) Days from receipt of the communication to confirm in writing its agreement to the proposed change(s).
For the purpose of this Article, the communication shall be sent to:

a. the Agency to the following email address: contracts@euspa.europa.eu
b. the Contractor to the following email address: [to be completed]

22.4 General

22.4.1 The amendment may not have the purpose or the effect of making changes to the Contract which might call into question the decision awarding the FWC or result in unequal treatment of tenderers.

22.4.2 Subject to the provision of Article 22.2.7, any amendment to the Contract shall be made in writing before fulfilment of any new contractual obligations.

23. SUSPENSION

23.1 Suspension of Contract performance

23.1.1 Suspension by the Contractor

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

Once the circumstances allow resuming performance, the Contractor shall inform the Agency immediately, unless the Agency has already terminated the FWC and/or Specific Contract.

23.1.2 Suspension by the Agency

The Agency may suspend the implementation of the FWC or performance of Specific Contract or any part thereof:

a. if a case of Force Majeure Event makes such performance by the Agency impossible or excessively difficult;
b. if the procedure for awarding the FWC or a Specific Contract or the implementation of the Contract proves to have been subject to irregularities, fraud or breach of obligations;

c. in order to verify whether the presumed irregularities, fraud or breach of obligations have actually occurred.

The Agency must formally notify the Contractor of the suspension and the reasons for it by serving a Notice. Suspension takes effect on the date of formal Notice, or at a later date if the formal Notice so provides.

The Agency must notify the Contractor as soon as the verification is completed whether:

a. it is lifting the suspension; or

b. it intends to terminate the Contract or a specific contract under Article 23.1.2(a) or (b).

The Contractor is not entitled to compensation for suspension of any part of the Contract or a Specific Contract.

The Agency may in addition suspend the time allowed for payments in accordance with Article 6.7.8.

Suspension shall take effect on the day the Contractor receives formal Notice, or at a later date provided in the Notice. The Agency shall give Notice as soon as possible to the Contractor to resume the activities suspended or inform the Contractor that it is proceeding with the termination of the FWC and/or the Specific Contract. The Contractor shall not be entitled to claim compensation on account of suspension of the FWC and/or Specific Contract or any part thereof.

24. **FORCE MAJEURE**

24.1 If either Party is faced with a Force Majeure Event, it shall inform the other Party without delay by Notice, stating the nature, likely duration and foreseeable effects of the Force Majeure Event on the Contract.

24.2 Neither Party shall be held in breach of its contractual obligations if it has been prevented from performing them by a Force Majeure Event. Where the Contractor is unable to perform contractual obligations owing to a Force Majeure Event, it shall have the right to receive only
the proportion of the respective payment for the tasks which were actually performed.
Where the Contractor is able to perform only part of the tasks owed under the Contract, the
Parties shall in good faith agree on the equitable remuneration for the activities performed
or within the frame of consultations under Article 24.4 below.

24.3 The Parties shall at all times following the occurrence of a Force Majeure Event use all
reasonable endeavours to prevent and mitigate the effects of any delay and the Contractor
shall at all times during which a Force Majeure Event is subsisting take all steps in accordance
with Good Industry Practice to overcome or minimise any adverse consequences of the
Force Majeure Event.

24.4 As soon as practicable following such notification, the Parties shall consult with each other in
good faith and use all reasonable endeavours to agree appropriate terms to mitigate the
effects of the Force Majeure Event with the scope to continue the performance of the
Contract.

24.5 If either (a) no such terms are agreed on or before the date falling 30 (thirty) Days after the
date of the commencement of the Force Majeure Event, or (b) the Parties assess, acting
reasonably at any time after the occurrence of the relevant Force Majeure Event that the
Force Majeure Event is more likely than not to last for a further period of at least 60 (sixty)
Days, and in either such case such Force Majeure Event is continuing, then either Party may
terminate the Contract by Notice to the other Party with immediate effect following 30
(thirty) Days after receipt of the Notice by the other Party.

24.6 If the Contractor gives Notice to the Agency under Article 24.5 above that it wishes to
terminate the Contract, then the Agency has the option either to accept the termination or
to respond by Notice on or before the date falling 15 (fifteen) Days after the date of its
receipt stating that it requires the Contract to continue. If the Agency gives the Contractor
such notice, then the Contract shall continue however without prejudice of any continuing

24.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure
Event ceases or no longer causes the Affected Party to be unable to comply with its
obligations under this Contract and the Contract shall continue to be performed on the
terms existing immediately prior to the occurrence of the Force Majeure Event.
24.8 On termination of the Contract under this Article 24 (Force Majeure), neither Party shall pay any compensation to the other Party.

24.9 Article 25.6 (Effect of Termination) shall apply to the Termination for Force Majeure.

25. TERMINATION OF THE CONTRACT

25.1 Grounds for termination by the Agency

The Agency may terminate the FWC, and any on-going Specific Contract respectively in the following circumstances:

a. if the Contractor is unable, through its own fault, to obtain any permit or licence required for implementation of the FWC or the specific contract;

b. if the Contractor on more than two occasions fails to submit offers in response to Contracting Authority’s requests for services, or refuses to sign specific contracts or fails to send them back on time. Termination of two or more specific contracts in these circumstances also constitutes grounds for termination of the FWC;

c. if the Contractor or any Related Person is subject to any of the following situations:
   (i) 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) 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;
   (iii) it has been established by any means which the Agency, acting in good faith, can justify that the Contractor or persons having powers of representation, decision making or control over it have been guilty 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 gross negligence, including, in particular, any of the following:
      • fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of eligibility or selection criteria or in the implementation of the Contract;
• entering into agreement with other persons or entities with the aim of distorting competition;
• violating intellectual property rights;
• attempting to influence the decision-making of the authorising officer responsible during the award procedure;
• attempting to obtain confidential information that may confer upon it undue advantages in the award procedure;

(iv) 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:

• fraud, within the meaning of Article 3 of Directive (EU) 2017/1371 of the European Parliament and of the Council\(^1\) 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\(^2\);
• 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 May 1997\(^3\), or conduct referred to in Article 2(1) of Council Framework Decision 2003/568/JHA\(^4\), or corruption as defined in other applicable laws;
• conduct related to a criminal organisation as referred to in Article 2 of Council Framework Decision 2008/841/JHA\(^5\);
• money laundering or terrorist financing within the meaning of Article 1(3), (4) and (5)

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\(^2\) OJ C 316, 27.11.1995, p. 48.


- terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA\(^7\), respectively, or inciting, aiding, abetting or attempting to commit such offences, as referred to in Article 4 of that Decision;

- 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\(^8\);

(v) 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 which has:

- led to the early termination of a legal commitment;

- led to the application of liquidated damages or other contractual penalties; or

- been discovered by an authorising officer, OLAF or the Court of Auditors following checks, audits or investigations;

(vi) the person or entity has committed an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95\(^9\); 

(vii) the person or entity has created an entity in a different jurisdiction with the intent to circumvent fiscal, social or any other legal obligations in the jurisdiction of its registered office, central administration or principal place of business;

(viii) an entity has been created with the intent referred to in point (vii).

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d. if the procedure for awarding the FWC or the implementation of the FWC prove to have been subject to errors, irregularities, fraud or substantial breaches of obligations on the side of the Contractor;

e. 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;

f. if the Contractor fails to notify the Contracting Authority that it is in a situation of Professional Conflicting Interest as referred to in Article 27; 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;

g. if a change to the Contractor’s legal, financial, technical, organisational or ownership situation is likely to substantially affect the implementation of the FWC or substantially modify the conditions under which the FWC was initially awarded;

h. in case of a change regarding the exclusion situations listed in Article 136 of Financial Regulation that calls into question the decision to award the contract;

i. in the event of Force Majeure, where either resuming implementation or the performance is impossible or the necessary ensuing amendments to the FWC or a Specific Contract would mean that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or Contractors;

j. in case of persistent breach, intended as a repeated breach of the same obligation under the contract or a specific contract, notwithstanding written warnings sent by the Contracting Authority;

k. if the Contractor is in breach of the confidentiality obligations resulting from Article 26 - CONFIDENTIALITY;

l. if the Contractor takes any step to recruit a member of the Contracting Authority staff;

m. if the contractor is in breach of the data protection obligations resulting from Article 30 – PROCESSING OF PERSONAL DATA;

n. if the Contractor does not comply with the applicable data protection obligations resulting from Regulation (EU) 2016/679;

o. if the Contractor does not implement the FWC or perform the Specific Contract in accordance with the tender specifications or request for service or is in breach of another substantial contractual obligation;

p. 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 Article 0 - Definitions, above, and if the Contractor has not promptly taken the
necessary actions upon EUSPA request;
q. if the Contractor does not comply with any of the Contractor’s Obligations, to the extent directly or indirectly accountable to it;
r. if, due to a change circumstances, the Contractor does not comply anymore with the Participating Conditions identified in the relevant section of the Tender Specifications and if the Contractor has not promptly taken the necessary actions in order to remedy such non-compliance;
s. if the Contractor fails to ensure competitive subcontracting in breach of the Contractor’s Proposal (Annex IV) and Tender specifications (Annex II).

In the case of joint tenders, the Contracting Authority may terminate the FWC or a Specific Contract with any member of the consortium separately on the basis of points a, c, e, f, g, h, l, n, p, r of Article 25.1, pursuant to Article 25.3 and Article 10.6.

25.2 Termination by the Agency for Contractor Default

25.2.1 The Contractor shall notify the Agency in writing of the occurrence, and details, of any of the situations specified under Article 25.1 a, b, c, d, e, f, h, j, k, l, m, n, o, p, q, r, s (“Contractor Default”) and of any event or circumstance which is likely to constitute or give rise to a Contractor Default, promptly on the Contractor becoming aware of its occurrence.

25.2.2 On the occurrence of Contractor Default in respect of which, in the opinion of the Agency acting reasonably, the Contractor Default is irremediable within a reasonable time after the Agency becomes aware of the same, the Agency may serve a Termination Notice on the Contractor inviting it to submit any observations regarding the correctness of the alleged termination reason within 30 (thirty) Days from receipt of the Termination Notice with Article 25 applying accordingly.

25.2.3 On the occurrence of Contractor Default which, in the opinion of the Agency acting reasonably is remediable within a reasonable time after the Agency becomes aware of the same, and while the same is subsisting, the Agency may serve a Rectification Notice on the Contractor, requiring the Contractor at the Contractor’s option, either to:

a. rectify the Contractor Default referred to in the Rectification Notice (if the same is continuing) within the time period specified in such Rectification Notice; or
b. submit, within the time period specified in such Rectification Notice, a detailed plan for rectifying the Contractor Default ("Rectification Plan"), which shall specify in reasonable detail the manner in, and the latest date by which such the Contractor Default is proposed to be rectified.

25.2.4 If the Contractor either rectifies the Contractor Default within the time period specified in the relevant Rectification Notice or implements the Rectification Plan agreed in respect of such Contractor Default in accordance with its terms, the Rectification Notice will be revoked and the Contract will continue.

25.2.5 If the Contractor fails to:

   a. rectify the Contractor Default within the time period specified in the Rectification Notice; or

   b. implement the Rectification Plan agreed in respect of such Contractor Default in accordance with its terms, or if the Rectification Plan is rejected

the Agency may submit a Termination Notice to the Contractor.
25.3 Termination by the Agency for Persistent Breach

25.3.1 Without prejudice to other remedies under this Contract if a breach of the Contractors Obligations has occurred more than 3 (three) times in any 12 (twelve) months period, the Agency may serve a warning Notice on the Contractor:

a. specifying that it is a formal warning notice in the sense of this Article;

b. giving reasonable details of the breach; and

c. stating that such breach is a breach which, if it recurs frequently or continues, may result in a termination of this Contract according to Article 0 of the Contract.

25.3.2 If, following dispatch of such a warning notice by the Agency to the Contractor, the breach specified continued beyond 30 (thirty) Days or recurred a further 3 (three) or more times within the 12 (twelve) months period after the date of dispatch of the warning Notice, the Contractor shall be considered in Persistent Breach and the Agency may submit a Termination Notice to the Contractor, referring to the Persistent Breach and terminating the Contract with effect as of the date indicated by the Agency in the Termination Notice.

25.4 Voluntary Termination by the Agency

25.4.1 Without prejudice to any other grounds for termination, the Contract may be subject to voluntary termination by the Agency. If the Agency wishes to terminate the Contract voluntarily, it shall submit a Termination Notice to the Contractor stating:

i) that the Agency is terminating the Contract under this Article; and

ii) that the Contract will terminate as indicated in the Agency’s Termination Notice, in any case not earlier than 120 (one hundred twenty) Days after the date of receipt of the notice.

25.4.2 On termination under Article 25.4.1 above, the Agency shall reimburse the Contractor for:

i) such part of any loss of margin as is attributable to the termination of the Contract taking into account a reasonable estimate of profit that would be due at the completion of the Stage which the implementation of the Contract had reached at the Termination Date, discounted on the date of payment at the rate equal to the 12-months EURIBOR rate published by the European Central Bank on that
date of the termination being effective, less any gain the Contractor had or should be able to realise as a result of termination; and

ii) any loss or damage resulting as immediate and direct consequence of the termination of the Contract, in particular against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Contractor and are related to the Contract, in so far as the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract.

25.4.3 The amount of compensation resulting from the application of Article 25.4.2 shall be fixed on the basis of evidence produced by the Contractor and accepted by the Agency. It shall take account the proportion of the Contract completed.

25.4.4 Subject to any mandatory provision of law, the compensation payable under Article 25.4.2 shall be the sole remedy of the Contractor against the Agency in case of voluntary termination.

25.5 TERMINATION OF THE CONTRACT BY THE CONTRACTOR FOR AGENCY DEFAULT

25.5.1 If through an Agency Default, other than a breach of Agency’s undertaking under Article 15, the Contractor incurs a delay for a continuous period of 2 (two) months and which is still on-going at the time of giving the Termination Notice as required hereunder or is unable to comply with its obligations under this Contract or under any Contracts entered into between the Contractor and the Contractor Parties for the performance of the Contract for a continuous period of 2 (two) months and which is still on-going at the time of giving the Termination Notice as required hereunder, it may terminate the Contract by serving a Termination Notice in compliance with the requirements of this Article. The Contractor shall serve the Termination Notice on the Agency within 30 (thirty) Days of it first becoming aware of its right to terminate pursuant to this Article. The Termination Notice must specify the type of Agency Default which has occurred entitling the Contractor to terminate. For the avoidance of doubts, a breach of the Agency’s undertakings shall only give rise to the remedies specified in the Article 15.

25.5.2 The Contract will terminate with effect as of the date indicated in the Termination Notice, unless the Agency rectifies the Agency Default within 60 (sixty) Days of receipt of the Termination Notice.
25.5.3 On termination of the Contract under this Article 25.5 the Agency shall indemnify the Contractor against:

i) such part of any loss of margin as is attributable to the termination of the Contract taking into account a reasonable estimate of profit that would be due at the completion of the stage which the implementation of the Contract had reached at the Termination Date, discounted on the date of payment at the rate equal to the 12-months EURIBOR rate published by the European Central Bank on that date of the termination being effective, less any gain the Contractor had or should be able to realise as a result of termination; and

ii) any damages resulting as immediate and direct consequence of the termination of the Contract, in particular against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Contractor and are related to the Contract, in so far as the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract. This understanding does not relieve the Contractor and any Contractor Party from their general obligation to avoid the creation of any unreasonable activities which might give rise to charges.

25.5.4 The amount of compensation resulting from the application of Article 25.5.3 above shall be fixed on the basis of evidence produced by the Contractor and accepted by the Agency. It shall take account the proportion of the Contract completed.

25.5.5 If as a direct result of an Agency Default other than the one giving rise to Contract termination under Article 25.5.1:

a) the Contractor incurs any delay or is unable to comply with its obligations under this Contract or under any contracts entered into between the Contractor and the Contractor Parties for the performance of the Contract; and/or

b) the Contractor incurs additional costs with respect to that indicated in the cost breakdown under Annex IV (Contractor’s Tender) and the Agency refuses a reasonable Unsolicited Change Proposal from the Contractor under Article 22.2.2,

then the Contractor is entitled to apply for relief from its affected obligations under this Contract.
25.5.6 To obtain relief under Article 25.5.5 the Contractor must:

a) as soon as practicable, and in any event within 10 (ten) Days after it became aware that the Agency Default has caused or is likely to cause delay or breach of an obligation under this Contract, give to the Agency a Notice of its claim for relief from its obligations under the Contract;

b) within 14 (fourteen) Days of receipt by the Agency of the Notice referred to in Article 25.5.1 above, give full details of the Agency Default and the extension of time; and

c) demonstrate that the time lost, and/or relief from the obligations under the Contract claimed, could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice.

25.5.7 If the Contractor has complied with its obligations under Article 25.5.6 above, then the Agency:

a) shall grant the Contractor such relief from its obligations under the Contract, as is reasonable for such an Agency Default;

b) undertakes to reimburse the Contractor for any justified and documented costs or expenses reasonably incurred by the Contractor as a result of any delay or termination caused by such Agency Default.

25.5.8 If the Contractor provides information subject to Article 25.5.6 after the respective dates applicable thereunder, the Contractor shall not be entitled to any extension of time or relief from its obligations under the Contract.

25.5.9 If the Parties cannot agree on the extent of any delay incurred, on the relief from the Contractor Obligations, or if the Agency disagrees that an Agency Default has occurred (or as to its consequences), or that the Contractor is entitled to any relief under this Article, the Parties shall resolve the matter in accordance with Article 49 (Dispute Resolution).

25.6 Effect of Termination

25.6.1 On receipt of a Termination Notice subject to Article 25.2 or 0 by the Contractor, the Contractor shall take all the appropriate measures to minimise costs, prevent damages, and cancel or reduce its commitments under and in relation to the Contract.
25.6.2 In cases of Termination by the Agency for Contractor Default, Article 25.2 and Termination by the Agency for Persistent Breach, Article 0 the Contractor shall indemnify the Agency for re-procurement costs, within a limit of liability corresponding to an additional $X^{10}$% of the overall aggregate value of Specific Contracts affected by the termination up to the Termination Notice subject to Article 25.2.2 or Article 25.3.2 with exception for the indirect and consequential damages.

25.6.3 The amount of the liabilities under precedent 25.6.2 and the relevant limitations are intended to be in addition and without prejudice to the liabilities and the relevant limitations under Article 20 (Liquidated Damages) and Article 21 (Liabilities and Indemnity).

26. CONFIDENTIALITY

26.1 The Contractor shall treat with confidentiality any information and documents, in any form, disclosed in writing or orally in relation to the performance of the FWC and any Specific Contract thereunder and identified in writing as confidential.

26.2 The Contractor shall:

a. not use confidential information and documents for any purpose other than fulfilling its obligations under the FWC and/or Specific Contract without prior written agreement of the Agency;

b. ensure the protection of such confidential information and documents with the same level of protection it uses to protect its own confidential information, but in no case any less than reasonable care;

c. not disclose directly or indirectly confidential information and documents to third parties without prior written agreement of the Agency.

26.3 The confidentiality obligation set out in Article 26 shall be binding on the Contractor during the performance of the FWC and of any Specific Contract thereunder and for five years starting from the date of the payment of the balance unless:

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10 To be discussed during the dialogue
a. the Agency agrees to release the Contractor from the confidentiality obligation earlier;

b. the confidential information becomes public through other means than in breach of the confidentiality obligation through disclosure by the Party bound by that obligation;

c. the disclosure of the confidential information is required by law.

26.4 The Contractor shall obtain from any natural person with the power to represent it or take decisions on its behalf, as well as from third parties involved in the performance of the FWC and of any Specific Contract thereunder, an undertaking that they will comply with the confidentiality obligation set out in Article 26

27. PROFESSIONAL CONFLICTING INTERESTS

27.1 The Contractor must take all the necessary measures to prevent any situation of professional conflicting interest. Throughout the Contract’s duration, the Contractor undertakes to have and further update the mechanisms in place for monitoring, preventing and resolving professional conflicting interests.

27.2 The Contractor must notify the Agency in writing as soon as possible of any situation that could constitute a professional conflicting interest during the performance of the FWC and of any Specific Contract thereunder. The Contractor must immediately take action to rectify the situation.

27.3 The Agency may do any of the following:

a. verify that the Contractor’s action is appropriate;

b. require the Contractor to take further action/measures within a specified deadline;

27.4 The Contractor must have all the relevant obligations laid out in Annex VIII “Declaration on confidentiality and absence of conflict of interests” counter acknowledged and passed on in writing to:

a. its personnel;

b. any natural person with the power to represent it or take decisions on its behalf;
c. Third Parties involved in the performance of the FWC and of any Specific Contract thereunder, including Contractor Parties.

28. CHECKS AND AUDITS

28.1 The Agency and the European Anti-Fraud Office may check or have an audit on the performance of the FWC and of any Specific Contract thereunder. It may be carried out either directly by their own staff or by any other outside body authorised to do so on their behalf.

28.2 Such checks and audits may be initiated during the performance of the FWC and of any Specific Contract thereunder and during a period of five years which starts running from the date of the payment of the balance.

28.3 The audit procedure shall be deemed to be initiated on the date of receipt of the relevant letter sent by the Agency. Audits shall be carried out on a confidential basis.

28.4 The Contractor shall keep all original documents stored on any appropriate medium, including digitised originals when they are authorised by national law and under the conditions laid down therein, for a period of five years which starts running from the date of payment of the balance.

28.5 The Contractor shall allow the Agency’s staff and outside personnel authorised by the Agency the appropriate right of access to sites and premises where the FWC and any Specific Contract thereunder is performed and to all the information, including information in electronic format, needed in order to conduct such checks and audits. The Contractor shall 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.

28.6 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 Days following the date of receipt to submit observations. The final report shall be sent to the Contractor within 60 Days following the expiry of that deadline.

28.7 On the basis of the final audit findings, the Agency may recover all or part of the payments made in accordance with the Contract and may take any other measure which it considers necessary.
28.8 By virtue of Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspection carried out by the European Commission in order to protect the European Communities’ financial interests against fraud and other irregularities and Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigation conducted by the European Anti-Fraud Office (OLAF), the OLAF may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by European Union law for the protection of the financial interests of the European Union against fraud and other irregularities. Where appropriate, the findings may lead to recovery by the Agency.

28.9 The European Court of Auditors shall have the same rights as the Agency, notably right of access, for the purpose of checks and audits.

29. ANNOUNCEMENTS AND PUBLICITY

29.1 The Contractor shall not communicate itself and shall ensure that any “speaker”, (being the Contractor’s employees, directors, agents and subcontractors) shall not communicate with representatives of the press, television, radio or other communications media on any matter concerning the Contract without the prior written approval of the Agency, unless such opinions expressed are those of the speaker only and it is clear that they do not represent the official position of the European Union or the Agency.

29.2 Except when made in compliance with any applicable law, or related to the everyday administration of the Contract, or in the context of corporate communication, any distribution or publication of information and/or of any publicity material, including, but not limited to, press releases, brochures, videos, official notices, reports and publications, relating to the Contract by the Contractor, in whatever form and whatever medium including the world wide web and/or social media, shall require prior written authorisation from the Agency in relation to the content (which authorisation shall not be unreasonably withheld), shall mention that the Contract is carried out under a programme funded by the European Union and shall display in an appropriate way the EU logo (twelve yellow stars on a blue background) and the Agency logo. It shall, unless otherwise approved in writing by the Agency, state that the opinions expressed are those of the Contractor only and do not represent the official position of the European Union or the Agency.
29.3 No permission to photograph or film any clearly identifiable ERAS assets shall be given by the Contractor unless the Agency directly or through the Contractor has given its prior written approval.

29.4 Subject to the protection of the commercial interests of the Contractor, the Agency has the right to process, use, distribute and publish, for institutional purposes, by whatever means and on whatever medium, any data contained in or relating to the Contract, in particular the identity of the Contractor, the subject matter, the duration, the amount paid and the reports.

30. PROCESSING OF PERSONAL DATA

30.1 Any Personal Data included in the Contract 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. Such data shall be processed by the data controller (the Agency) and the data processor (the Contractor) solely for the purposes of the performance, management and monitoring of the Contract without prejudice to its possible transmission to the bodies charged with monitoring or inspection tasks in application of Union law.

PROCESSING BY THE AGENCY

30.2 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.

30.3 The recipients of the Personal Data mentioned under Article 30.2 shall be (1) a limited number of staff of the Agency managing the Contract, (2) a limited number of staff of the Agency contractors assisting Agency staff in the management of the Contract, (3) a limited number of staff of the Agency’s contractors providing hosting services for the Agency’s servers. The Personal Data will be stored in the premises of the aforementioned recipients, all of which are located within Union territory, and will be retained for up to 7 (seven) years after the expiry of the present Contract for audit and discharge purposes.

30.4 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.

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

**PROCESSING BY THE CONTRACTOR**

30.6 If, throughout the duration of the Contract, the Contractor is required to process any Personal Data (acting as data processor), the Contractor shall:

- 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;

- with regard to transfers of Personal Data to a country outside the European Union or to an international organisation, act only on documented instructions from the data controller, unless required to do so by Union or EU 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;

- ensure that persons authorised to process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;

- without prejudice to Article 30.8, take all necessary measures to ensure the security of the processing of Personal Data, as may be instructed by the data controller;

- not engage another processor or sub-processor without prior specific written authorisation of the data controller;

- taking into account the nature of the processing, assist the data 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;

- assist the data controller for the fulfilment of its obligations to
a. ensure compliance with its obligations regarding the security of the processing, and the confidentiality of electronic communications and directories of users;

b. notify a Personal Data breach to the European Data Protection Supervisor;

c. communicate a Personal Data breach without undue delay to the data subject, where applicable;

d. carry out data protection impact assessments and prior consultations as necessary,

- notify relevant Personal Data breaches to the data 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 data controller with at least the following information:

  a. 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;

  b. likely consequences of the breach;

  c. measures taken or proposed to be taken to address the breach, including, where appropriate, measures to mitigate its possible adverse effects,

- 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;

- delete or transfer to the data controller if requested all the Personal Data after the end of the provision of services relating to processing;

- 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 data controller or another auditor mandated by the data controller.
30.7 The Contractor acting as data processor shall grant access for the data controller to the data to the extent strictly necessary for the performance, management and monitoring of the Contract.

30.8 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, when appropriate;

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.

31. COMMUNICATION DETAILS AND DATA CONTROLLER

31.1 For the purpose of Article 30, the data controller shall be the Head of the Agency’s Galileo Department.

31.2 Communications shall be sent to the following addresses:

Agency:
Project officer: xxxxxxxxxx
Name: xxxxxxxxxx
Surname: xxxxxxxxxx
Email: [insert]
Telephone number: xxxxxxxxxxx
European Union Agency for the Space Programme
Galileo Department
Attention: xxxxxxxx
Janovskeho 438/2
170 00 Prague
Czech Republic

Contract officer:
Legal and Procurement Department
European Union Agency for the Space Programme
Ref. EUSPA/OP/12/23
Janovskeho 438/2
170 00 Prague
Czech Republic
Email: contracts@euspa.europa.eu

**Contractor:**
[Full name]
[Function]
[Company name]
[Full official address]
Email: [complete]
31.3 The contact persons may be changed by exchange of emails between a representative of the Contractor and a representative of the Agency’s legal and procurement department and sent to/from contracts@EUSPA.europa.eu.

31.4 Where throughout the Contract reference is made to “formal notification” from one Party to the other, it shall be understood as a form of communication between the Parties made in writing by regular or electronic mail to the addresses under Article 31.2, which provides the sender with compelling evidence that the message was delivered to the other Party.

32. ASSIGNMENT

32.1 The Contractor shall not assign the rights, including claims for payments, and obligations arising from the Contract, in whole or in part, without prior written authorisation from the Agency.

32.2 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 Agency and shall have no effect on it.

32.3 The Agency shall be entitled to assign this Contract in its entirety to another body of the European Union which shall fully replace the Agency with all its rights and obligations under the Contract and which otherwise shall continue to apply unchanged. Such assignment may be effected by the Agency with Notice to the Contractor and shall apply on the date communicated therein, however in no case earlier that 30 (thirty) Days following the dispatch of the Notice to the Contractor Authorised Representative. The Contractor shall not oppose and already waives any objection against such assignment, provided the conditions of this Article are fulfilled.

33. ENTIRE AGREEMENT

33.1 Except where expressly provided otherwise in this Contract, this Contract constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Contract.

33.2 Each of the Parties acknowledges that:
a. it does not enter into this Contract on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a Party to this Contract or not) except those expressly repeated or referred to in this Contract and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Contract, and

b. this clause shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Contract which was induced by fraud, for which the remedies available shall be all those available under Belgian law.

34. NON-WAIVER

34.1 No term or provision of this Contract shall be considered as waived by any Party to this Contract unless a waiver is agreed in writing signed by duly authorised representatives of both Parties.

34.2 Obligations may not be waived but may only be subject to Change Requests or Change Proposals.

34.3 Waivers under 34.1 shall not waive a past or future default or breach, nor shall they amend, delete or add to the terms, conditions or provisions of this Contract unless (and then only to the extent) expressly stated in that waiver.

35. SEVERABILITY

35.1 If any term, condition or provision contained in this Contract shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Contract.

35.2 In the event of occurrence of any situation described in Article 35.1 above, the Parties agree that the thus invalid, unlawful or unenforceable to any extent, such term, condition or provision shall be replaced with a valid, lawful and enforceable provision that most closely reflects the intended purposes of the affected provision.

36. COUNTERPARTS
36.1 This Contract may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by the Parties shall constitute a full original of this Contract for all purposes.

37. COSTS AND EXPENSES

37.1 Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Contract.

38. COURT PROCEEDINGS

The General Court shall have sole jurisdiction for any dispute arising out of or in connection with the present Contract.

39. GOVERNING LAW

39.1 The Contract shall be governed by European Union law, complemented, where necessary, by the laws of Belgium.

40. SURVIVAL

40.1 The Parties acknowledge that provisions of this Contract shall survive the term and termination of the Contract including all Articles required (i) for the period necessary to complete reporting and payment obligations with respect to the last year of the Contract (ii), 19.2 (on Background IPR), 21 (Liability and Indemnity), 26 (Confidentiality) and 30 (Processing of Personal Data) and such other provisions as are expressed to or impliedly survive termination of this Contract.

41. FURTHER ASSISTANCE

41.1 Each Party shall perform all acts and execute all further documents necessary to give full effect to this Contract.
**SIGNATURES**

<table>
<thead>
<tr>
<th>For the Contractor,</th>
<th>For the Agency,</th>
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<tbody>
<tr>
<td>[Company name/forename/surname/function]</td>
<td>Rodrigo da Costa, Executive Director</td>
</tr>
<tr>
<td>signature: ____________________</td>
<td>signature: ____________________</td>
</tr>
</tbody>
</table>

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Annex I

Tenderer’s Statement of Compliance to the technical terms of reference

(separate document and separate numbering of pages)
Annex II

Tender Specifications I phase (EUSPA/OP/12/23) and its annexes including Framework Contract Statement of Work, and its Annexes (e.g. CISL)

(separate document and separate numbering of pages)
Annex III

Security Aspects Letter (SAL)

(separate document and separate numbering of pages)
Annex IV

Contractor’s Proposal (No [number], of [date])

(separate documents and separate numbering of pages)
Annex V

List of Pre-Existing Rights (Background Intellectual Property Rights)

(separate documents and separate numbering of pages)
Annex VI

Declaration for Foreground Intellectual Property Rights – TEMPLATE

(separate documents and separate numbering of pages)
Annex VII

Draft Specific Contract – TEMPLATE
EUSPA/OP/12/23

EmeRgency Alerting System (ERAS)
Template Specific Contract

implementing the Framework Contract EUSPA/OP/12/23
between the European Union Agency for the Space Programme and xxxxxxxxx
The European Union Agency for the Space Programme (EUSPA), represented by Mr Rodrigo da Costa, its Executive Director, hereinafter referred to as the “Agency” or as the “Party”,

on the one part,

and


VAT number: xxxxxxxxxxx hereinafter referred to as the “Contractor” or as the “Party”, represented by [forename, surname and function],

on the other part,

together referred to as the “Parties”

HAVE AGREED

to the following terms and conditions and the following annexes:
Annex I: Contractor’s statement of compliance (SOC)
Annex II: Specific Contract XXX, Statement of Work (SoW) (Ref XXXX), and Contractor’s Statements of Compliance (SoC);
Annex III: Specific Contract XX CISL (Ref: XXXX),
Annex IV: Specific Contract XX Contractor’s proposal;
Annex V: List of pre-existing rights according to Article 28.2 of the Framework Contract complementing Annex V of the FWC for the purpose of this SC;
Annex XXX: as relevant

The annexes form an integral part of this Specific Contract.
The provisions in the terms and conditions of this Specific Contract shall take precedence over its annexes.
UNCLASSIFIED

EUSPA/OP/12/23
Draft Framework Contract

SUBJECT MATTER

1. This Specific Contract implements the Framework Contract signed by the Parties on [complete date].

2. The subject matter of this Specific Contract is the provision of the following:

   a. baseline:
      i. XXXX – high level description to be included
   b. optional activities – [to be included if relevant]:
      i. XXXX – high level description to be included per option please include validity and notice period
   c. activities to be performed on the basis of FWC SoW section 5.15 “Additional Engineering On-site and Off-site Support” [to be included if relevant]: as described under Annex II (SoW).

3. The Contractor undertakes, in accordance with the terms set out in the Framework Contract and in this Specific Contract and the annexes thereto, which form an integral part thereof, to perform the tasks specified in Annex I, II, III and IV (SOC, Sow, CISL, and contractor proosal).

ARTICLE 1 ENTRY INTO FORCE AND DURATION

1. This Specific Contract shall enter into force on [date of entry into force] and shall end on, whichever the earlier:

   I. the date falling due after XXX starting from the entry into force;
   II. the date on which termination shall take effect.

ARTICLE 2 PRICE

1. The maximum total price to be paid under this specific contract shall be EUR [amount in figures and in words] covering all tasks executed, as follows:
   a. Baseline: EUR x (x euros)
   b. Options – to be included if relevant indicating budget per option
   c. Additional Engineering On-site and Off-site Support: EUR x (x euros)
2. The price may be revised upwards or downwards according to the provision of Article 5.8 of the Framework Contract.

3. In addition to the price under paragraph (1) above, and subject to the provision under Article 4 below no reimbursable expenses/costs are foreseen.

ARTICLE 3 PAYMENT

1. Payments shall be made by the Agency according to Article 5 of the FWC as per payment plan indicated below and subject to the Contractor demonstrating to the satisfaction of the Agency that he has provided the activities for the relevant period / successfully achieved the milestones in accordance with the terms of this Specific Contract and with the Agency’s express written approval of the relevant documentation/deliverable items providing for such demonstration.

[relevant table to be inserted on included in annex]

ARTICLE 4 LIQUIDATED DAMAGES AND INCENTIVES

1. The contractual milestones as mentioned in Annex XXX above have been agreed between the Parties for the purposes of applying the liquidated damages pursuant to Article 30 of the Framework Contract within the frame of the present Specific Contract.

2. In case the Agency is entitled to apply Liquidated Damages, it will withhold the respective amount as per the Framework Contract’s provisions.

3. [To be included if applicable: Incentives are applicable to this Specific Contract according to the provisions of the FWC (Article 20).]
ARTICLE 5      DELIVERABLES ITEMS

1. The Contractor shall deliver the Deliverable Items according to the DRL included in the SCXX CISL under Annex III.

Signatures

For EUSPA
Rodrigo da Costa, Executive Director

For XXXX
[insert name, surname, function]

Done at [Prague], [date]

Done at […], [date]

In duplicate in English
Declaration on confidentiality and absence of conflict of interests

Contract reference: EUSPA/OP/12/23

I, the undersigned, ________________________________________________, understand and agree that my involvement/assignment –direct or indirect– in/to, or in support of, any activities of the European Union Agency for the Space Programme (“EUSPA”) is subject to strict requirements, in particular regarding confidentiality and impartiality/objectivity – absence of conflict of interests.

I hereby undertake that in any part that I will take in or in support of any activities of EUSPA and during the full term of my involvement in / assignment to such activities I shall act with utmost care and apply the highest professional standards, in full impartiality and objectivity, in the sole and best interest of EUSPA.

I confirm that I have no conflict of interests1 or bias whatsoever, whether actual or potential, with regard to any such EUSPA activities and shall prevent any such conflict of interests or bias from arising at any time in the course of my service to the EUSPA.

I undertake to re-assess and monitor my situation at all stages of my involvement in / assignment to EUSPA activities and, should I become aware –beyond my undertaking to avoid any such conflict– that I am or threaten to be in a situation of conflict of interests or bias (whether actual or potential) I shall immediately declare it to EUSPA and I understand and accept that the EUSPA may take measures to appropriately address such situation, including without limitation requiring information and further details about it, discharging me from my involvement in such activities in whole or in part etc. I undertake to provide all reasonable support to this effect and acknowledge that I shall not be entitled to or claim any compensation as a result of any such measures.

I undertake to treat and keep in strict confidentiality any information given to or obtained by me in the course or as a result of my assignment to EUSPA and to abide by all applicable rules on personal data protection2. I agree that such undertaking (as well as that of avoiding conflict of interest) shall to the extent required for the fulfilment

---

1 For the purpose of this Declaration I understand that a “conflict of interests” shall be deemed to exist in case of any situation in which the impartial and objective exercise of my functions / service provision for the EUSPA/EC is or could be compromised for reasons involving my family, emotional life, friends or acquaintances, political or national affinity, economic interest or any other shared interest with certain economic or scientific operators, in particular such as might have a potential interest (whether financial or otherwise) in the outcome of any (part of) assignment entrusted to me.

2 I acknowledge and accept that the EUSPA/EC is required to process personal data in compliance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community [European Union] institutions and bodies and on the free movement of such data.
of its full purpose survive the completion, expiry or termination of the term of my assignment/service to EUSPA. In particular I shall refrain from disclosing any such information to any person and shall return to EUSPA all documents and materials containing any such information on any form of support whatsoever upon expiry of my assignment or earlier on EUSPA’s request at any time.

For the avoidance of doubt I confirm my full understanding and agreement that I am not employed by EUSPA and shall refrain from any acts or representations which might give the impression of or suggest or (mis)lead to conclude to or believe in the existence of such an employment relationship, as well as from any claim based on, relating to or connected with such (non-existing) employment relationship – I hereby expressly and irrevocably waive any such claim. In particular I also shall refrain from representing or purporting to represent EUSPA, as well as from issuing any opinions or making any statements in its name or on its behalf.

Done in _________________, on _________________.

________________________(signature)
**Annex IX**

**Deliverable/supply acceptance sheet -TEMPLATE**

Contract reference: [to be completed]

<table>
<thead>
<tr>
<th>Reference of task/deliverable/supply</th>
<th>Due date (Annex I to the Contract)</th>
<th>Actual delivery date</th>
<th>Format/manner of delivery</th>
<th>Price of deliverable/supply</th>
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**For the Contractor:**

I hereby certify that the task(s), deliverable(s) and supplies listed above have been completed according to the terms and conditions of the above-mentioned Contract and submitted to the Agency.

Name

Position

Signature

Date

**For the Agency:**

Page 94 of 99
I hereby certify that the task(s), deliverable(s) and supplies listed above have been completed according to the terms and conditions of the above-mentioned Contract, received and accepted by the Agency.

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Annex X:

Pre-financing Bank Guarantee - TEMPLATE

ARTICLE 1- DECLARATION ON GUARANTEE, AMOUNT AND PURPOSE

We, the undersigned, ________ (insert details of the bank), (hereinafter referred to as "the Guarantor") hereby confirm that we give the European Union Agency for the Space Programme (hereinafter referred to as "EUSPA"), an unconditional, irrevocable and independent first-demand guarantee consisting of the undertaking to pay to EUSPA a sum of up to:

EUR: ______ (__________)

upon simple demand, for guarantee of the Pre-financing stipulated in Article 5.2 of the Contract n. ______, hereinafter referred to as the "Contract") concluded between ________ (hereinafter referred to as "the Contractor"), and EUSPA, and to be paid by EUSPA for the activities provided for the period starting on ________ and ending on _______ (hereinafter "the Period"). This amount shall be referred to as the "Pre-Financing Amount".

ARTICLE 2- EXECUTION OF GUARANTEE

If EUSPA gives notice stating (i) that the Contractor has for any reason failed to duly perform any of its contractual obligations with respect to repayment of the Pre-Financing Amount paid by EUSPA as per the terms of the Contract, and indicating (ii) the portion of the Pre-Financing Amount owed by the Contractor to EUSPA under the Contract, we, acting by order and for account of the Contractor, shall undertake to immediately pay up to the above amount, in EUR, without exception or objection, into a bank account designated by EUSPA on receipt of the first written request from EUSPA sent by registered letter or by courier with acknowledgement of receipt. We shall inform EUSPA in writing as soon as the payment has been made.
ARTICLE 3 - OBLIGATIONS OF THE GUARANTOR

1. We waive the right to require exhaustion of remedies against the Contractor, any right to withhold performance, any right of retention, any right of avoidance, any right to offset, and the right to assert any other claims which the Contractor may have against EUSPA under the Contract or in connection with it or on any other grounds.

2. Our obligations under this guarantee shall not be affected by any arrangements or agreements made by EUSPA with the Contractor which may concern its obligations under the Contract.

3. We shall undertake to immediately inform EUSPA in writing, by registered letter or by courier with acknowledgement of receipt, in the event of a change of our legal status, ownership or address.

ARTICLE 4 - DATE OF ENTRY INTO FORCE

This guarantee shall come into force upon its signature. If, on the date of its signature, the Pre-financing Amount has not been paid to the Contractor, this guarantee shall enter into force on the date on which the Contractor receives the Pre-financing Amount.

ARTICLE 5 - END DATE AND CONDITIONS OF RELEASE

1. We may be released from this guarantee only with EUSPA’s written consent. We take note that EUSPA will release this financial guarantee according to the provisions of Article 5.2 of the Contract when the Contractor demonstrates to the satisfaction of EUSPA that it has provided the activities for this Period in accordance with the terms of the Contract.

2. This guarantee shall expire on return of this original document by EUSPA to our offices by registered letter or by courier with acknowledgement of receipt.
3. This must occur at the latest during the month after the Pre-financing under the Contract has been cleared as foreseen under Article 5.2 of the Contract.

4. After expiry, this guarantee shall become automatically null and void and no claim relating thereto shall be receivable for any reason whatsoever.

ARTICLE 6- APPLICABLE LAW AND COMPETENT JURISDICTION

1. This guarantee shall be governed by and construed in accordance with the law applicable to the Contract.

2. The courts having jurisdiction for matters relating to the Contract shall have sole jurisdiction in respect of matters relating to this guarantee.

ARTICLE 7- ASSIGNMENT

The rights arising from this guarantee may not be assigned without our written consent.

Done at _____________, on ________________

Signature __________________
Annex XI

Statistical Reporting – TEMPLATE

(separate documents and separate numbering of pages)