DRAFT CONTRACT
EUSPA/OP/17/23
"HADG INFRASTRUCTURE FOR HAS PHASE 2"

After Corrigendum 3

1. DEFINITIONS 7
2. SUBJECT MATTER 15
3. ENTRY INTO FORCE AND DURATION 16
4. PRICE 17
5. PAYMENT PROVISIONS 18
6. RECOVERY 22
7. INTEREST ON LATE PAYMENT 22
8. TAXATION 23
9. GENERAL PROVISIONS ON PERFORMANCE 23
10. CHANGE OF SUBCONTRACTORS 24
11. CHANGE OF CONSORTIA MEMBERS 25
12. AGENCY'S UNDERTAKINGS 25
13. HAND OVER ASSETS 26
14. GSC SITE CONDITIONS 26
15. DELIVERY OF ITEMS UNDER THE CONTRACT 27
16. PROJECT MANAGEMENT, PRODUCT ASSURANCE, QUALITY ASSURANCE, RELIABILITY, AVAILABILITY AND SAFETY 28
17. DESIGN AND DEVELOPMENT ENGINEERING 28
18. QUALIFICATION AND INSTALLATION 28
19. ACTIVITIES FOR THE PREPARATION FOR OPERATIONS AND MAINTENANCE 29
20. SECURITY 29
21. ACCEPTANCE OF THE HADG P2 INFRASTRUCTURE 29
22. ACCEPTANCE OF DOCUMENTS 30
23. INSPECTION 31
24. INVENTORY 31
25. OWNERSHIP – TRANSFER OF RISK 31
26. FOREGROUND IPR, BACKGROUND IPR 31
27. UNION IPR 39
28. LIQUIDATED DAMAGES 40
29. LIABILITIES 41
30. AMENDMENTS 42
31. ASSIGNMENT 44
32. SUSPENSION OF THE CONTRACT PERFORMANCE 45
33. TERMINATION OF THE CONTRACT 46
34. FORCE MAJEURE 51
35. CONFIDENTIALITY 51

36. PROFESSIONAL CONFLICTING INTERESTS 52
37. PROCESSING OF PERSONAL DATA 53
38. CHECKS AND AUDITS 55
39. ANNOUNCEMENTS AND PUBLICITY 56
40. COMMUNICATION DETAILS AND DATA CONTROLLER 57
41. BANK ACCOUNT 57
42. SURVIVAL 58
43. APPLICABLE LAW AND SETTLEMENT OF DISPUTES 58
SIGNATURES 59
Annex I – Tenderer's Statements of Compliance to the Terms of Reference 60
Annex II – Tender specifications and its annexes (EUSPA/OP/17/23); 61
Annex III - Security Aspects Letter (SAL) 62
Annex IV – Contractor's tender of XXX 63
Annex IV.a- Milestone Payment Plan 64
Annex V – Template of Deliverables Acceptance Sheet 65
Annex VI – List of Background Intellectual Property Rights 66
Annex VII – Declaration Foreground IPRs 67
Annex VIII – Template - Pre-financing guarantee 68
Annex IX – Template of Statistical Reporting 70

The European Union Agency for the Space Programme (hereinafter referred to as "the Agency", or “the Customer”, or the “Contracting Authority”), represented for the purposes of the signature of this contract (hereinafter referred to as “the contract”) by Mr Rodrigo da Costa, Executive Director of the Agency,

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,

WHEREAS

1) Pursuant to the Contribution Agreement between the European Union, represented by the European Commission, and the Agency on the implementation of the Union Space Programme and Horizon Europe, signed by the last contracting party on 22 June 2021, the Agency is responsible for specifying, procuring, qualifying deploying and maintaining change and evolutions to the Galileo Service Center.

2) The Galileo High Accuracy Service (HAS) provides free of charge access, through the Galileo signal (E6-B) and by terrestrial means (Internet), to the information required to estimate an accurate positioning solution using a Precise Point Positioning algorithm in real-time.

3) With the declaration of Galileo HAS Initial Service on the 24 January 2023, users within the service area can achieve improved user positioning performance in real-time by exploiting the HAS data delivered in the Galileo E6-B signal component and by terrestrial means (Internet).

4) The information provided by the Galileo HAS Initial Service includes:

   - Galileo and GPS satellite orbit corrections to the broadcast ephemerides;
   - Galileo and GPS satellite clock corrections to the broadcast ephemerides;
   - Galileo and GPS satellite code biases.

5) This information is computed by the High Accuracy Data Generator (HADG), deployed at the European GNSS Service Centre (E-GSC) in Torrejón de Ardoz, Spain. It is also foreseen to deploy an HADG backup unit at an E-GSC backup site in Toulouse, France in the course of the year 2024.

6) Implementation of the Galileo HAS is following a staggered approach based on the 3 phases, the last of which (Phase 2) will cover the evolution of the service to reach the Full Operational Capability, including compliance to more demanding performance targets.

7) To this purpose, the procurement procedure EUSPA/OP/17/23 has been carried out resulting in the present contract.

8) The Parties wish to conclude this contract ("HADG P2" Contract) having as scope the design, development, installation, qualification, support to accreditation, acceptance, maintenance of the High Accuracy Data Generator (HADG) Infrastructure for the Galileo High Accuracy Service (HAS) Phase 2 as well as HAS phase 2 engineering support to the Contracting Authority.

9) The HADG Facility procured shall be operated (including L1 maintenance) by an external service provider (Galileo Service Operator) with whom the Agency holds a separate contractual relationship.

HAVE AGREED

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

Annex I – Contractor's Statement of Compliance to the Terms of Reference

Annex II – Tender Specifications including Annexes

Annex III – Security Aspects Letter (SAL)

Annex IV – Contractor's tender including Milestone Payment Plan

Annex V – Template of Deliverables Acceptance Sheet

Annex VI – List of Background Intellectual Property Rights

Annex VII – Declaration Foreground IPRs - template

Annex VIII – Template of pre-financing guarantee

Annex IX – Template of Statistical Reporting

which form an integral part of this contract (hereinafter referred to as "the Contract"). The terms set out in the Contract shall take precedence over the Annexes.

The terms set out in Annex I shall take precedence over those in Annex II and Annex III, in any case of discrepancy between the relevant provisions.

Subject to the provisions under Annex I the terms set out in Annex II shall take precedence over those in Annex III.

The terms set out in Annex III shall take precedence over those in Annexes IV-VI.

All references to the Tender Specifications shall be understood to include reference to their Annexes as well.

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:

Acceptance Review (AR)	means the process of assessing whether the HADG Infrastructure can be accepted by the Contracting Authority as further described in Annex I.A (SoW)
Annex	means an annex to this Contract.
Anomaly	means the anomalies as identified in Applicable Document (Galileo PA, QA and RAMS Generic Requirements EUSPA-PCEDQ-PA-REQ-A24122) inlcuded in the CISL
Applicable Document (AD)	means any document included in the CISL (Annex I.A.I to Tender Specifications) which are applicable in their entirety
Article	means an article of this Contract.
Background Intellectual Property Rights /Background IPR	means intellectual property rights (IPR), 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 perform: a) the Contract, b) operate, maintain, evolve the HADG P2 Infrastructure, c) provide services through the HADG P2 Infrastructure. including through Galileo Service Operator. 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.

CDR - Critical Design Review	means the Critical Design Review milestone as described in the SoW.
Change	means any alteration of the Contractual Baseline
Change Proposal	means the proposal by the Contractor to the Customer to implement a Change subject to a Change Request pursuant to Article 30.1.
Change Request	means a request issued by the Customer to the Contractor under Article 30.1, in which the Contractor is asked to submit a Change Proposal for the implementation of a Change.
Change Request Notice	means the instrument used by the Customer to submit a Change Request to the Contractor in writing with the content set out under Article 30.1.
Connection to OPE	means the status of operation of the HADG P2 Infrastructure—or the point in time when this begins— in which the HADG P2 Infrastructure provides services and functionalities to its intended end users by implementing the connection to HADG P2 operational external interfaces.
Contract	means this Contract.
Contractor Obligations	means all Contractor's obligations and liabilities under and pursuant to the Contract.
Contractor Party (-ies)	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.
Contractual Baseline	means this Contract and all documents forming part of or referred to in its annexes forming an integral part thereof
Creator	means any natural person who contributes to the production of Foreground IPR.
CDR - Critical Design Review	means the Critical Design Review milestone as described in the SoW.

Customer Party (-ies)	means any person or legal entity engaged by the Customer to execute on its behalf tasks in relation to the Contract, including its employees, affiliates, subcontractors, consultants or agents.
Day	means a calendar day.
Document Change Notice (DCN)	means the document by which the Agency approves and applies a modification or update of an Applicable Document.
Document Change Proposal (DCP)	means the document by which the Contractor proposes to the Agency a modification or update of an Applicable Document.
Deliverable Item(s)	means any item (*e.g.*, HADG P2 Infrastructure, hardware, software, tools, databases or documents) to be delivered by the Contractor under or in the frame of the Contract, as listed in Annex I.A.II to the Tender Specifications (Deliverable Requirements List - DRL) or which is deliverable according to the requirements of Section 9 of the Annex I.A to the Tender Specifications (Statement of Work).
Deliverables Acceptance Sheet	means the deliverable acceptance sheet in Annex V to the contract .
E-GSC	means European GNSS Service Centre.
E-GSC Sites	means the main E-GSC site (Madrid-Torrejon de Ardoz), and the backup E-GSC site (Toulouse) as defined in Annex II.
EoC – End of Contract	means the End of Contract milestone as specified in SOW.
EU Space Programme	means space programme established by the Regulation (EU) 2021/696.
Force majeure	means any unforeseeable and exceptional situation or event beyond the Parties' control which prevents either of them from fulfilling any of their obligations under the contract, which

	was not attributable to error or negligence on their part or on the part of subcontractors and which proves to be inevitable in spite of exercising due diligence. Any default of a service, defect in equipment or material or delays in making them available, unless they stem directly from a relevant case of force majeure, as well as labour disputes within the Contractor workforce, strikes within the Contractor workforce or financial difficulties, cannot be invoked as force majeure
Foreground IPR	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.
Galileo Service Operator or GSOp	means the Agency`s contractor under the GSOp Contract (GSA-CD-14-14) and/or any subsequent contractor which signs with EUSPA a contract having the same subject matter than GSOp Contract. Galileo Service Operator is in charge of, inter alia, operation and L1 maintenance of the HADG P2 Infrastructure after the handover of the platform(s) for the operations validation preparation and execution, support to migration and initial service monitoring phase. Once the infrastructure is finally accepted in the AR milestone by EUSPA, the Galileo Service Operator will continue operating the platforms handed over .
GNSS	means global navigation satellite system.
HADG P2 Infrastructure	means High Accuracy Data Generator (HADG) Infrastructure for the Galileo High Accuracy Service (HAS) Phase 2 (made of, inter alia, equipment and tools, hardware, software and documentation) to be delivered by the Contractor as specified in the Statement of Work

	(including its Annexes) and in the Contractor's Statement of Compliance and Proposal – i.e., Annexes I, II and IV to the Contract. The baseline HADG P2 Infrastuctue consists of 5 platforms with on option to buy 1 further platform.
Handover Assets	means assets identified in Annex I.A.V to the Tender Specifications - Contracting Authority Undertakings and Handover Assets handed over to the Contractor for the purpose of fulfilling the Contractor obligations
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: ○ literary, artistic and scientific works; ○ performances of performing artists, phonograms, and broadcasts; ○ inventions in all fields of human endeavour; ○ scientific discoveries; ○ industrial designs; ○ trademarks, service marks, and commercial names and designations; ○ protection against unfair competition; and ○ 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.
Non-conformity (NC) / NCR (non-conformity report)	means the non conformities as defined in Applicable Document Galileo PA, QA and RAMS Generic Requirements EUSPA-PCEDQ-PA-REQ-A24122 inlcuded in the CISL.
Notice	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 40.2.
Party or Parties	means (a) in singular, either the Contractor or the Agency, and (b) in plural, both the Contractor and the Agency.
PDR - Preliminary Design Review	means the Preliminary Design Review milestone as described in the SoW.
Professional Conflicting Interest	Means a situation in which the Contractor's previous or ongoing professional activities affect its capacity to implement the Contract to an appropriate quality standard.
Related person	means any natural or legal person who is a member of the administrative, management or supervisory body of the Contractor, or who has

	powers of representation, decision or control with regard to the Contractor
Relevant Standard	means any experience, skill, knowledge, procedure, qualification or certification which would or should if operating in accordance with good industry practices 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.
Service Monitoring Phase	means the phase of Contract implementation starting from Connection to OPE and ending at AR. The Service Monitoring phase is planned to last 6 weeks.
Statement of Work/ SoW	Means the Statement of Work forming the Annex I.A. to the Tender Specification (Annex II) and its Annexes.
Subcontractor	means any person, company or other legal entity having concluded a subcontract with the Contractor for the performance of the Contractor's obligations under this Contract.
Termination Date	means the date on which the Contract ends according to the Article 3
Termination Notice	means a Notice by the Contracting Authority submitted to the Contractor to communicate its declaration of termination of the Contract under Article 33.
Test Readiness Review (TRR)	means the process of assessing whether a test campaign can be launched as further described in the SOW
Third Party	means entities other than the Contractor, 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.
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 30.2 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 30.2

2. SUBJECT MATTER

2.1 The subject matter of this Contract is to deliver the HADG P2 Infrastucture and provide engineering support to the Contracting Authority according to the schedule and terms and conditions defined in the present Contract including its Annexes. The tasks of the Contractor include the design, development, installation, qualification, support to accreditation, acceptance and optionally preventive and corrective maintenance of the HADG P2 Infrastructure according to the terms and conditions defined in the present Contract including its Annexes.

2.2 Technical Assistance

The Engineering support activities as described in the SoW shall be requested and provided according to the process described in the Section 7.9 of the SoW.

2.3 Options

The Contract includes the following options, available for exercising by the Customer at prices defined in Article 4 and further defined under Annex I, II and IV:

- **Option 1 - Maintenance**
  - **Scope:** As per Annex II as complemented by Annex IV
  - **Activation :** The Contracting Authority may request the activation of this option no later than 30 days before the successful Acceptance Review.
  - **Duration of the activity:** 12 months
- **Option 2 – Maintenance Extension**
  - **Scope:** As per Annex II as complemented by Annex IV
  - **Activation :** The Contracting Authority may request the activation of this option (for each six month period) no later than 14 days before the start of each period.
  - **Duration of the activity:** six sequential periods of six months each after the end of the first optional maintenance period specified in Option 1
- **Option 3.1 – On call L2 support during the HADG service monitoring**
  - **Scope:** As per Annex II as complemented by Annex IV
  - **Activation :** The Contracting Authority may request the activation of this option no later than 30 days before the start of the HADG service monitoring.
  - **Duration of the activity:** during the HADG service monitoring
- **Option 3.2 – On call L2 support during the HADG 12 months maintenance**
  - **Scope:** As per Annex II as complemented by Annex IV
  - **Activation :** The Contracting Authority may request the activation of this option no later than 30 days before the succesful Acceptance Review.
  - **Duration of the activity:** during the HADG maintenance option 1

- **Option 3.3 – On call L2 support during optional extensions of maintenance**
  - **Scope:** As per Annex II as complemented by Annex IV
  - **Activation :** The Contracting Authority may request the activation of this option no later than 14 days before the start of the days before the start of each extended maintenace period.
  - **Duration of the activity:** during the HADG optional (Options2) extensions of maintenance.
- **Option 4 – Engineering Support Extension**
  - **Scope:** As per Annex II as complemented by Annex IV
  - **Activation :** The Contracting Authority may request the activation of this option no later than 30 days after the consumption of all the baseline engineering support.
  - **Duration of the activity:** the activity shall be provided until the consumption of the financial envelope or the end of the contract whichever is earlier
  - In case of activation of this extension, the the Engineering Support activities shall be requested and provided as the baseline Technical Assistance for the Engineering Support as described in Section 2.2.
- **Option 5 – Additional HADG unit at back up site**
  - **Scope:** As per Annex II as complemented by Annex IV
  - **Activation :** The Contracting Authority may request the activation of this option no later than 1 month before the end of contract.
  - **Duration of the activity:** 8 months as per detailed schedule included in the SoW
  - This additional chain shall be a replica of the HADG P2 Infrastructure deployed in the E-GSC Main Site as part of baseline contract activities.
- **Option 5.1 – Maintenance of the Additional HADG unit at back up site**
  - **Scope:** As per Annex II as complemented by Annex IV
  - **Activation :** The Contracting Authority may request the activation of this option no later than 14 days before the start of each period.
  - **Duration of the activity:** six sequential periods of six months.

3. ENTRY INTO FORCE AND DURATION

3.1 The Contract shall enter into force on the date on which it is signed by the last Party (Entry into Force) and shall last for 45 (forty-five) monthsfrom the entry into force of the present Contract unless terminated earlier. If Contractor have not fulfilled its obligation by the above deadline the contract shall continue until the contractor has delivered according to the terms of the contract and the contracting authority has made the final payment.

3.2 In case any of the options under Article 2.3 is exercised the relevant activities must be completed

within the relevant duration as indicated per each option. In case any of the options under Article 2.3 is exercised and the activities under the relevant options are to be delivered following the original 45-months duration, the duration shall be prolonged accordingly.

3.3 Under no circumstances may performance commence before the date on which the Contract enters into force.

4. PRICE

4.1 The amount to be paid by the Customer under the Contract shall be EUR XXX**, constituting a Firm Fixed Price (FFP)** covering the execution of all tasks and the delivery of all related supplies and services as defined in Article 2.1. and 2.2 covering all tasks executed as follows:

(a) EUR XXX for the activities described in WP#1-WP#7 of the SoW

(b) EUR XXX for the Technical Assistance Description envelope related to WP#9 as described in the SoW

4.2 The prices of the options **constituting a Firm Fixed Price (FFP)** covering the execution of all tasks and the delivery of all related supplies and services as defined in Article 2.3. covering all tasks executed provided under Article2.3. above are

(a) EUR XXX for the actitivites described in Option 1

(b) EUR XXX for the actitivites described in Option 2

(c) EUR XXX for the actitivites described in Option 3

(d) EUR XXX for Technical Assistance Description envelope related to activities described in Option 4

(e) EUR XXX for the actitivites decribed in Option 5

(f) EUR XXX for the actitivites decribed in Option 5.1

4.3 The above amount shall include all cost and expenses. Cost and expenses are: effort for all the tasks and deliverables (as specified in this Contract and its Annexes) necessary for their performance, including all costs (management of the project, coordination, quality control, support resources, missions with associated travel expenses (if any), subcontracting, procurement, manufacturing, assembly, quality control, documentation, storage, transportation, etc.), all overheads (management of the firm, secretarial services, social security, wages, etc.), all cost necessary for the performance of the tasks described, incurred directly and indirectly by the Contractor in performance of the tasks that will be entrusted to him, including travel and subsistence expenses.

4.4 There shall be no indexation during the performance of the Contract for the Baseline activities as further described in Article 2.1. with the exception of the Technical Assistance.

4.5 The price of the Technical Assisitance as described in Section 2.2 and the options as described in Article 2.3 shall be revised upwards or downwards as specified in this Article 4 at the beginning

of the second and every following year of the Contract.

4.6 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/.

4.7 Revision shall be calculated in accordance with the following formulas on yearly basis:

$Pr = Pr_{-1} * (Ir / Ir_{-1})$ where:

Pr= revised prices;

Pr-1= prices applicable during the preceding yearly period;

Ir-1= index used as Ir for the previous price revision conducted one year ago, if the indexation is calculated for the first time then this should be the index at time of contract signature; and

Ir= most up-to-date index available at the date on which price revision is being computed.

4.8 For the avoidance of doubt the Parties declare that the amounts of Technical Assistance Envelopes described in Articles 4.1(b) and 4.2(d) shall remain at the disposal of the Contracting Authority and any amount against these envelopes shall be paid according to Article 5.6. Only the actual spent effort shall be paid and the Agency shall retain all unused remaining amounts.

5. PAYMENT PROVISIONS

5.1 General provision on Payments

All payments under the Contract shall be made in EURO.

5.2 Pre-financing

(a) The amount of the pre-financing shall be agreed for the Contract on the basis of due justification provided by the Contractor.

(b) The pre-financing payment constitutes a debt of the Contractor to the Agency until it has been set-off against subsequent milestones or payments as described in milestone payment plan, 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.

5.3 Pre-financing guarantee

(a) The Agency reserves the right to request 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 VIII hereinafter referred to as the "Guarantee".

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

(c) The cost of providing the above Guarantee shall be borne by the Contractor.

(d) The Guarantee shall be gradually released on the basis of the off-setting described above and in the milestone payment plan.

(e) The signed Guarantee shall be provided as an annex to the Contract

5.4 Partial Payments and Retention of Payment

(a) If the Contractor fails to provide the service in accordance with the contract including but not limited to cases where a payment milestone as defined in the milestone payment plan is partially achieved, the contracting authority may reduce or retain payments proportionally to the seriousness of the unperformed obligations**.** The execution of partial payment or retention is subject to the discretional assessment of the Agency.

(b) In cases where a payment milestone is partially achieved, the Agency may:

5.4.b.1 perform partial payments, subject to the Contractor providing adequate evidence of the portion of the payment milestone which has been actually achieved. The execution of a partial payment is without prejudice to the application of liquidated damages at the completion of the affected milestone whenever occurring. The liquidated damages shall be calculated on the residual amount of the milestone not accepted and already covered by the partial payment.

or

5.4.b.2 retain payment of the corresponding milestone, without prejudice of the application of liquidated damages in the full amount when the required performance is met or the milestone accepted.

(c) The contracting authority must formally notify the Contractor of its intention to partially pay a corresponding calculated amount or retain the payment. As regards the partial payment, the amount of the partial payment is clearly assessed by the Parties acting in good faith as a function of the value created to the Agency by the partial achievement of the payment milestone concerned. The Contractor shall submit the invoice for the partial payment or appropriate credit note, as the case may be.

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

(e) If the Contractor submits observations, the contracting authority, taking into account the relevant observations, must notify the Contractor:

5.4.e.1 of the withdrawal of its intention to partial payment or the retention of payment; or

5.4.e.2 of its final decision to partial payment and the corresponding amount or the retention of payment.

5.5 Interim Payments

(a) The Contractor shall submit an invoice on the due date(s) as attached in the Milestone Payment Plan (Annex IV) 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:

5.5.a.1 Deliverable Item(s) and any associated documentations in accordance with the instructions laid down in this Contract and its Annexes;

5.5.a.2 Deliverables Acceptance Sheet as per Annex V, duly dated and signed by the Contractor;

5.5.a.3 a detailed justification of all expenses incurred,;

5.5.a.4 a list of all created Foreground IPRs, by attaching the filled-in Annex VII or a declaration stating that no such rights were created;

5.5.a.5 any other document in accordance with this Contract and its Annexes.

(b) The Agency shall have 90 (ninety) Days from the receipt of all the Deliverable Items and documents listed under Article 5.5 (a) to approve, countersign the Deliverable Acceptance Sheet and effect payment, subject to Article 5.5 (c).

(c) The Agency may suspend the above-mentioned 90 (ninety) Days term any time pursuant to Article 5.8(g) below.

(d) In case of partial approval, Article 5.4 shall apply and a credit note shall be issued by the Contractor.

(e) In case the Agency has not paid the invoice on expiration of the payment period specified in Article 5.5 (b). (subject to possible suspension as per Article 5.5 (c)), the Contractor is entitled to interest on late payment pursuant to Article 7 below.

5.6 Payment of TAD activities

(a) Payment of TAD activities shall be made on a quarterly basis upon the delivery of a report containing as a minimum a summary of the tasks performed, the actual effort spent and the total remaining effort over the initial amount of effort. Only the actual spent effort shall be paid if the maximum effort estimated in the TAD is not fully consumed. In no cases the actual effort can exceed maximum effort estimated in the TAD.

(b) The Agency shall have 90 (ninety) Days from the receipt of all the documents listed under Article 5.6 (a) to approve the related engineering support in the relevant progress meeeting and effect payment, subject to Article 5.5(c).

(c) The process described under Articles 5.5(c) to 5.5(e) shall apply mutatis mutandis to the payment of the TAD activities

5.7 Final Payment (Payment of the Balance)

The final payment payment under the Contract shall be made by the Agency after the Contractor has been discharged of all its obligations. The Contractor shall submit an invoice for payment of the balance for any services/supply due under a the Contract not invoiced yet by an interim or partial payment The invoice shall be accompanied by:

a. Deliverable Item(s) and any associated documentation in accordance with the instructions laid down in the Contract and its Annexes;
b. a deliverables acceptance sheet under Annex V, duly dated and signed by the Contractor;
c. a detailed justification of all expenses incurred,;
d. a list of all created Foreground IPRs, by attaching the filled-in Annex VII or a declaration stating that there are no such rights were created;
e. any other document in accordance with this Contract.

The process described under Articles 5.5(b) to 5.5(e) shall apply mutatis mutandis to the payment of the balance.

Final payment may take the form of recovery.

5.8 Payment Procedure

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

(b) The Contractor undertakes to ensure that its invoices are issued to the Agency quoting the following reference: "EUSPA/OP/17/23 [milestone/payment reference]".

(c) Invoices shall be submitted electronically to finance@euspa.europa.eu.

(d) 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 5.

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

(f) Any payments against invoice made under this 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.

(g) The Agency may suspend the payment periods specified in this 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.

- because of reasons duly justifying the need to perform on-the-spot checks or to ascertain eligibility of the payment

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 verifications or corrections, including on-the-spot checks, ~~is~~ are carried out. When the suspension requires the Contractor to provide additional ~~clarifications or information~~ documentation and/or Deliverable Items (i.e. documentation and/or Deliverable Items which were not provided by the date of submission of the invoice), such suspension shall stop 21 (twenty-one) calendar days after the date the Contractor has provided such documentation and/or Deliverable Items~~clarifications or information~~, in the absence of further rejection from the Agency during that time period. Where the suspension period exceeds 3 (three) months, the Contractor may request the Agency to justify the continued suspension. In case of suspension of payment, the Agency shall not be liable for late payment.

6. RECOVERY

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

6.2 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.

6.3 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.

6.4 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 7. 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.

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

6.6 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 this Contract, or by taking legal action, in accordance with applicable law.

7. INTEREST ON LATE PAYMENT

7.1 On expiry of the payment periods specified in Article 5.5(b) (subject to Article 5.5(c)), 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.

7.2 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 5.8(e).

7.3 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.

8. TAXATION

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

8.2 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.

8.3 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.

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

9. GENERAL PROVISIONS ON PERFORMANCE

9.1 The Contractor shall perform the Contract to the highest professional standards and shall exercise the highest 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.

9.2 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.

9.3 Any reference made to the Contractor's personnel in the Contract shall relate exclusively to individuals involved in the performance of the Contract.

9.4 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.

9.5 The Contractor shall neither represent the Customer 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.

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

9.7 The Contractor's personnel executing the tasks assigned to the Contractor may not be given orders directly by the Customer. The Customer may not under any circumstances be considered to be the employer of the personnel referred to in Section 9.6 and the personnel shall undertake not to invoke against the Customer any right arising from the contractual relationship between the Customer and the Contractor.

9.8 In the event of disruption resulting from the action of one of the Contractor's personnel working on the Customer's premises or 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 Customer 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.

9.9 Should the execution of the tasks be directly or indirectly hampered, either partially or totally, by any unforeseen event, action or omission, the Contractor shall immediately and on its own initiative record it and report it to the Customer. 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.

9.10 Should the Contractor fail to perform its obligations under the contract, the Customer may - without prejudice to its right to terminate the Contract - reduce or recover payments in proportion to the scale of the unperformed obligations. In addition, the Customer may claim compensation or impose liquidated damages in accordance with Articles 28 and 29 .

10. CHANGE OF SUBCONTRACTORS

10.1 After the signature of the Contract, the Contractor shall request the Contracting Authority's prior written approval to introduce any newly selected subcontractor(s), including when part of the Core Team. The Contracting Authority 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 under Annex II (Tender Specifications).

10.2 The Contractor shall notify the details of such Subcontractor to the Agency and shall provide evidence of compliance of such Subcontractor with the requirements of exclusion and selection criteria, and participation conditions under Annex II (Tender Specifications),.

10.3 Even where the Contracting Authority authorises the Contractor to subcontract to third parties, the Contractor shall nevertheless remain solely responsible for the proper performance of this Contract, 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 Contracting Authority by virtue of this Contract, notably by Article 31.2.

10.5 The Contracting Authority 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 33.1(c) to 33.1(o) In such case, the Contractor shall undertake, on the basis of its written request and subject to the Contracting Authority's prior written approval, to absorb the part of the Contract 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.

11. CHANGE OF CONSORTIA MEMBERS

11.1 Changes in consortia members during contract execution are in principle acceptable in the context of universal successions or when the Contracting Authority terminates the Contract with a member of the consortium separately as per Article 33.133.1(q).

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

11.3 The replacing consortium member and/or newly formed consortium shall comply with the relevant cumulative conditions elaborated on in section 2.3.3 of the Tender Specifications.

11.4 The Contracting Authority reserves the right to terminate the Contract in its entirety, should the newly formed consortium not be in alignment with relevant cumulative conditions elaborated on in section 2.3.3 of the Tender Specifications.

12. AGENCY'S UNDERTAKINGS

12.1 As part of its undertakings under the Contract the Agency shall make available to the Contractor the items specified in Annex II.

12.2 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 Contract and propose mitigation actions, including Contract amendments;

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

12.3 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 12.2 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.

12.4 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.

13. HAND OVER ASSETS

13.1 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.

13.2 The Contractor declares to know the Handover Assets and consider them as satisfactory and fit for the purposes of performing its obligation under this Contract.

13.3 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.

13.4 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.

13.5 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 29.

13.6 The Contractor acknowledges that the rights granted under Article 13.1 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.

13.7 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.

13.8 The Contracting Authority shall not provide any other items than those identified explicitly as Handover Assets.

14. GSC SITE CONDITIONS

14.1 The Contractor declares to be acquainted with the E-GSC Sites and the premises where the HADG P2 Infrastructure (including the back-up HADG P2 Infrastructure) shall be deployed. The Contractor declares to be acquinted with the Hosting site constraints as described in the SoW and annexes. The Contractor declares that such premises are suitable for the correct functioning of HADG P2 Infrastructure and its subs-systems, and the performance of Contractor Obligations under the Contract.

14.2 Before executing any deployment activity on any E-GSC Site (prime and/or back up), health and

safety measures shall be fully coordinated with the Agency. The Contractor shall have the sole responsibility for complying with all legal obligations incumbent on it, its employees and subcontractors, 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.

14.3 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 the E-GSC Sites.

15. DELIVERY OF ITEMS UNDER THE CONTRACT

15.1 The items delivered under the Contract, must:

(a) correspond to the description given in the Annex II and the Contractor's tender (Annex IV);

(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 Contract and accepted by the Contractor;

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

(d) demonstrate the quality and performance considering the statements on the specific characteristics of the supplies made by the Contractor in the delivered documentation;

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

(f) 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 Deliverable Items be made at the agreed places of delivery during the hours agreed between the Customer and the Contractor.

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

15.4 Each delivery of the 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 contract number and particulars of the supplies delivered and/or installed. One copy of the consignment note shall be countersigned by the Customer and returned to the Contractor or to its carrier.

15.5 Signature of the consignment note by the Customer is simply an acknowledgment of the fact that the delivery of supplies took place and in no way implies conformity of the Deliverable Items with this contract. Signature of the consignment note by the Agency merely constitutes acknowledgment of the receipt of one or more items, without any verification on their quality

or quantity.

15.6 The Contractor shall ensure that all Deliverable Items and other supplies used for the purpose of Contract performance 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.

15.7

16. PROJECT MANAGEMENT, PRODUCT ASSURANCE, QUALITY ASSURANCE, RELIABILITY, AVAILABILITY AND SAFETY

16.1 In relation to the project management PA, QA, RAMS activities activities related to the HADG P2 Infrastructure, the Contractor undertakes to perform the tasks (including but not limited to plan, implement and maintain an effective project management) as indicated in SoW (Annex II).

17. DESIGN AND DEVELOPMENT ENGINEERING

17.1 In relation to the design and development engineering of the HADG P2 Infrastructure, the Contractor undertakes to perform the tasks and achieve the objectives and related milestones indicated in SoW (Annex II), including the coordination of any required tasks and inputs.

17.2 The design-related activities shall be subject to the Agency's approval with the conclusion of a successful Critical Design Review („CDR"), preceded by a succesful Preliminary Design Review ("PDR") pursuant to the provision of the SoW (Annex II). The PDR and CDR can only take place after all the prerequisites as defined in the SoW (Annex II) are fulfiled by the Contractor.

17.3 The development-related activities shall only commence after the successful CDR. The Contractor shall develop the HADG P2 Infrastructure including all system and subsystems in accordance with the design agreed at CDR and pursuant to the provisions of the SoW (Annex II). The Contractor shall coordinate health and safety measures before executing any deployment activity on E-GSC site(s).

17.4 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.A.II 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 SoW (Annex II).

18. QUALIFICATION AND INSTALLATION

18.1 The Contractor shall comply with all the requirements as described in SoW (Annex II) and in Annex I regarding assembly, integration, installation, verification and shall conduct all tasks related to assembly, installation and integration activities and verification tests as needed for qualification purposes.

18.2 The Contractor shall be responsible for coordinating all tasks and responsibilities associated with qualification of the HADG P2 Infrastructure in the E-GSC sites.

18.3 The Contractor shall fully integrate the infrastructure deployed at the main and back up E-GSC sites. The integration between the E-GSC Infrastructure and other E-GNSS entities shall be under the responsibility and control of the Agency, which shall be supported by the Contractor. The Contractor shall support integration activities, including test preparation, support to reviews and on-site technical support as defined in the SoW (Annex II).

18.4 If option 5 is activated, the Contractor shall perform the full integration of the additional chain at the backup site.

18.5 The qualification related activities shall be subject to the Agency approval with the conclusion of a successful Qualification Review ("QR") pursuant to the provision of the SoW (Annex II). The QR can only take place after all the prerequisites as defined in the SoW (Annex II) are fulfiled by the Contractor.

18.6 Any lack of conformity resulting from incorrect installation of any part of the delivered HADG P2 Infrastucture shall be deemed to be equivalent to lack of conformity of any part of theHADG P2 Infrastucture or any part thereof as installation of the HADG P2 Infrastucture forms part of this contract and the HADG P2 Infrastucture is installed by the Contractor or under its responsibility.NSTALLATION

19. ACTIVITIES FOR THE PREPARATION FOR OPERATIONS AND MAINTENANCE

19.1 The Contractor shall comply with all the requirements dealing with the preparation of the operations and maintenance as described in the SoW (Annex II), including the support to the operational validation of the HADG P2 Infrastructure to be executed by GSOp.

20. SECURITY

20.1 The Contractor shall comply with all the requirements related to Security Management, Security Engineering, Security Monitoring, Cybersecurity, Internal Security Audits, Indepenten Security Audits and Accreditation as described in the SoW (Annex II)

21. ACCEPTANCE OF THE HADG P2 INFRASTRUCTURE

21.1 Subject to the successful completion of the GSOp Operational Validation Review and the SAB authorizationto migrate the HADG P2 to OPE, the Contractor shall assume full responsibility for the migration of the HADG P2 Infrastructure in the operational chain and the Connection to OPE. The Contractor shall in particular coordinate health and safety measures before executing any deployment activity on E-GSC site(s). The Contractor shall migrate the HADG P2 Infrastructure in the operational chain in accordance with the conditions set forth in the SoW and the Contractor's Proposal (Annex IV).

21.2 If SAB authorisation is not granted due to reasons related to the breach of Contractor Obligations, the Contractor shall perform all the corrective actions needed to have such SAB authorisation granted at its own costs and expenses.

21.3 If SAB authorisation is not granted due to reasons outside of the Contractor's control, Article 32 shall apply and:

a. the Parties shall negotiate in good faith the corrective actions to be contractually implemented (on the basis of amendment);
b. the Agency shall pay the Contractor for the activities successfully completed pursuant to the relevant contractual provisons.

21.4 Testing in the operational system will be carried out during the Service Monitoring Phase executed for a period of minimum 6 (six) weeks from the connection of the HADG P2 to OPE. The Contractor shall consider that only GSOp will operate the HADG P2 in OPE during the HADG service monitoring phase. During the Service Monitoring phase, the Contractor shall implement the activities needed to prove the achievement of the objectives of the Acceptance Review, including the provision of associated evidence, in what regards the functional, performance and operational aspects that the infrastructure is required to comply with.

21.5 Once the Service Monitoring phase is completed, and the preconditions for the Accetpance Review are fullfiled, EUSPA will call for the Acceptance Review.

21.6 The Agency and the Contractor shall take part in the Acceptance process. Any of the parties may raise observations, Anomalies or Non-conformances (as defined in the SoW) identified during the Service Monitoring phase.

21.7 If the tested performance is not fully compliant with the requirements described in CISL and/or the Contract and its Annexes 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 Contractor shall bear the costs and expenses of the relevant Acceptance Test(s) (Retest(s)). Such retest(s) shall be subject to the provisions of this Article 21. This is without prejudice to any contractual remedy available to the Agency, such as without limitation regarding the application of liquidated damages pursuant to Article 28 (Liquidated damages) for the late performance of the Contract.

21.8 Subject to the acceptance of all Deliverable Items, Testing shall end at the successful Acceptance Review as specified in the Contract and its Annexes, inter alia when (a) the performances of the HADG P2 Infrastructure are compliant with the requirements specified in the CISL. (b) all materials and equipment for the relevant release have been installed in accordance with the Contract; (c) all systems required to be installed by Contractor have been installed; (d) all the equipment and systems are ascertained as suitable to be operated in a safe and prudent manner and according to the Contract.

21.9 Anomalies, Non-conformances, vulnerabilities and other issues shall be closed at the Acceptance Review, with the exception of those that - at the discretion of the Agency - have no impact on service monitoring or service performance of the HADG P2 Infrastructure. Such Anomalies, Non-conformances, vulnerabilities and other issues identified at the Acceptance Review, are to be addressed before a deadline set by the Contracting Authority.

22. ACCEPTANCE OF DOCUMENTS

Each document shall be submitted to the procedure described under Annex II (Tender Specifications). Acceptance of documents shall not release the Contractor for its responsibilities before the HADG P2 Infrastructure has been shown to comply with the requirements described

in the SoW and its Annexes and final acceptance has occurred.

23. INSPECTION

The Customer and its agents, employees or contractors shall, upon reasonable prior notice to Contractor and subject to adherence to the safety procedures and other applicable procedures and requirements, have access to inspect all work done by the Contractor under this Contract; provided, however, that any inspection of the work 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 work. The Contractor shall have the right to condition such inspection upon the persons conducting the inspection observing procedures to preserve the safety and security the site of work. 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.

24. INVENTORY

24.1 The Contractor shall create and document in the Inventory List (Annex II – Tender Specifications) all the tangible and intangible assets including Foreground IPR owned by the European Union. The Contractor shall update the such assets inventory on a regular basis and shall submit it for approval at Critical Design Review, Qualification Review and for the final approval at Acceptance Review as per the Terms of Reference.

24.2 The Contractor shall include a list of sub-licences in the assets inventory.

25. OWNERSHIP – TRANSFER OF RISK

Ownership of the HADG P2 Infrastructure and all Deliverable Items shall be exclusively and without restrictions vested in the European Union, represented by the European Commission, immediately upon successfull Acceptance Review, with acceptance being deemed to constitute an effective assignment of rights from the Contractor to the Union. This is without prejudice to the application of Article 26.1

26. FOREGROUND IPR, BACKGROUND IPR

26.1 Foreground IPR

(a) Foreground IPR ownership shall be vested to the European Union from the moment of its generation. Documentation or software generated by the Contractor under the Contract shall be immediately marked "EU Proprietary information. Unauthorised distribution, dissemination or disclosure not allowed".

(b) The Contractor shall ensure that all necessary measures are taken in order to transfer all Foreground IPR to the European Union for compliance with the above-mentioned requirements.

(c) 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 Foreground IPRs by the European Union and all modes of exploitation and of use of them as further

specified below.

(d) The European Union acquires the following exclusive rights on the Foreground IPR, including, without limitation to, the following rights:

i. 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;

ii. 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;

iii. 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;

iv. rental: the exclusive right to authorise or prohibit rental or lending of the Foreground IPRs or of copies of the Foreground IPRs;

v. adaptation: the exclusive right to authorise or prohibit any modification of the Foreground IPRs;

vi. the right to prepare derivative works of the subject matter of Foreground IPR;

vii. 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;

viii. the right to incorporate, embed or merge the subject matter of the Foreground IPR into any other product,

ix. 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;

x. 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 them, subject to the respect of moral rights of authors, where applicable;

xi. 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;

xii. 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;

xiii. 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;

xiv. where the Foreground IPRs are or include know-how: the right to use such know-how as is necessary to make use of such Foreground IPRs 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;

xv. 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;

xvi. where documents are concerned:

1. 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;

2. the right to store and archive Foreground IPR 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;

xvii. where Foreground IPR 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:

1. 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;

2. the rights to decompile or disassemble the software;

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

(e) 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.

(f) 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.

(g) 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.

(h) 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.

(i) 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.

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

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

(l) The Contractor shall use the template in Annex VII 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 5.

(m) 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.

(n) 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 29.

(o) 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.

(p) 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.

(q) 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.

(r) 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.

(s) The Contractor shall without delay notify the Agency of the patentable invention created in the frame of the present Contract. Such notification shall contain:

i. a description of the invention;

ii. an initial assessment of patentability;

iii. the technical assessment of the programmatic value of the invention;

iv. invention declaration form, using the template under Annex VII (part 2);

v. if possible, information whether the Contractor intends to file a patent application for the notified invention, if the Agency authorises it to do so.

(t) 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:

i. the Agency authorises the Contractor to file a patent application for the notified inventions in its own name, or

ii. the date of publication of the patent application by the patent office, if the Agency does not authorise the Contractor.

(u) 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.

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

(w) 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.

(x) 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.

(y) 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 the HADG P2 Infrastructure, including applications. The Contractor shall negotiate the license terms in good faith with every willing economic operator. In case agreement on license terms cannot be reached within six (6) months from the time the willing economic operator declares in writing its interest to 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 economic operator refuses to enter into binding arbitration agreement with respect to the terms of the license.

(z) 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.

26.2 Background IPR

(a) All Background IPRs as agreed by the Parties are specified in Annex VI of the Contract.

(b) 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.

(c) If conclusive evidence and appropriate justification are provided by the Contractor, the Parties shall formalise a Change updating the List of Background IPR (Annex VI).

(d) 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.

(e) 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.

(f) 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 HADG P2 Infrastructure and the Foreground IPR 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.

(g) 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 Foreground IPR and Background IPR.

(h) 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.

26.3 IPR owned by a Third Party

(a) 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 Foreground IPR or the HADGP2 Infrastructure in all manners which are necessary for the purposes of this Contract and to

exploits the HADG P2 Infrastructure and Foreground IPR and to enable the development, the use, operation and exploitation of the HADGP2 Infrastructure. Any cost related to such licences are deemed to be included in the price of this Contract.

(b) 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 any right of sub-license.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(h) 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.

27. UNION IPR

27.1 The Agency grants to the Contractor a free-of-charge, non -exclusive, 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 wiht 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 26 and shall warrant that such adaptation and modification do not infringe any Third Party IPR. Upon the Agency's request, the provisions under Article 26.1 on Foreground IPRs shall apply to the adaptations and modifications above.

27.2 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.

27.3 The Contractor acknowledges that the licences granted under Article 27 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.

27.4 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 27.3 as may be required.

28. LIQUIDATED DAMAGES

28.1 LIQUIDATED DAMAGES FOR DELAY IN MILESTONES' ACHIEVEMENT

Should the milestones (as defined in the Annex IVa) for the delivery of the services/supplies not be successfully performed within the time-limits set by Annex IVa and in accordance with the Contract, then, without prejudice to the Contractor's actual or potential liability or to the Agency's right to terminate the Contract, the Agency may impose liquidated damages for each and every calendar day of delay using the following formula :

0.3 x (V/d)

where V is the price associated with the delayed milestone; d is the duration (expressed in calendar days) specified in the Contract for the delivery of the relevant milestone starting from T0.

28.2 LIQUIDATED DAMAGES FOR DELAY IN DEVELOPING PERMANENT FIXES FOR ANOMALIES AND NON-CONFORMANCES

Should the Contractor fail to comply with the terms set forth in Table 1 of Section 4 of Annex I.A.IV (KPI Document) to the Tender Specification (Annex II), as to analysis and fixing of Anomalies and NCRs

(i) not blocking the AR as per Point 4 of the HADGp2-SoW-0022 requirement and

(ii) raised before AR as per Point 5 of the HADGp2-SoW-0022 requirement during the

Maintenance Period (should the maintenance options be activated) and

(iii) raised during the Maintenance Period (should the maintenance options be activated)

then, without prejudice to the Contractor's actual or potential liability or to the Agency's right to terminate the Contract, the Agency may impose liquidated damages as per the above-mentioned Section 4 and according to the provision of this Article 28.2.

28.3 LIQUIDATED DAMAGES FOR DELAYS IN ON-CALL L2 MAINTENANCE

Should the Contractor fail to comply with the terms set forth in Table 2 of Section 5 of Annex I.A.IV (KPI Document) to the Tender Specification (Annex II), without prejudice to the Contractor's actual or potential liability or to the Agency's right to terminate the Contract, the Agency may impose liquidated damages as per the above-mentioned Section 5 and according to the provision of this Article 28.3.

28.4 GENERAL PROVISIONS APPLICABLE TO LIQUIDATED DAMAGES

The Parties expressly acknowledge and agree that any sums payable under this Article 28 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.

The cumulative amount of the liquidated damages is subject to the liability cap specificed in Article 29 below. 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.

Liquidated damages will be payable upon the occurance of the events as laid down in the Contract. Liquidated Damages will be deducted by the Agency from the payments due to the Contractor under the Contract.

29. LIABILITIES

29.1 The Contractor shall be solely responsible for the performance of the Contract in accordance with: (a) the tender specifications; (b) the terms of this Contract;(c) all applicable laws including without limitation obligations relating to health, safety and protection of the environment. In case the Contractor is composed of two or more economic operators (who submitted a joint tender as consortium) they shall all be jointly and severally liable.

29.2 Each Party shall be solely liable and waive any claims towards the other Party for any personal injury, impairment of health or death to its own employees, Contractor Parties or Customer Parties employees, caused in the performance and/or non-performance of the Contract, except in cases of gross negligence or willful misconduct by the other Party, including its Contractor/Customer Parties, who then becomes the sole liable Party.

29.3 The above provisions are limited to the relationship between the Parties in the frame of the Contract and shall not affect the rights and claims of the family, survivors or subrogees of the

employees concerned, or of social security institutions and other equivalent governmental bodies.

29.4 Without prejudice to Article 29.2 and 29.3 above and unless this Contract provides otherwise, the Contractor shall be liable towards the the Agency for any loss, damage, cost and expenses caused by the breach of Contractor obligations within a liability cap of 50% of the Contract value.

29.5 If the damage or loss is caused by the gross negligence or wilful misconduct of the Contractor or of its personnel or subcontractors, the Contractor shall have unlimited liability for the amount of the damage, loss, cost and expenses.

29.6 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 Contract, except in the event of wilful misconduct or gross negligence on the part of the Agency.

29.7 The Contractor shall indemnify, defend and hold harmless the Agency and/or the the Galileo Service Operator from any liablility, cost, expense, action, claim,or proceeding brought against the Agency and/or the Galileo Service Operator by a third party as a result of damage caused by the Contractor during or in relation to the performance of the Contract.

29.8 In the event of any action not resulting from damage caused by the Contractor during or in relation to the performance of the Contract brought by a third party against the Agency and/or Galileo Service Operator in connection with the performance of the Contract, including any alleged breach of intellectual property rights, the Contractor shall assist the Agency and/or Galileo Service Operator as the case may be.Such expenditure incurred by the Contractor may be borne by the Agency and/or Galileo Service Operator.

29.9 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 contract extracts or certificates shall be sent to the Agency should it so request.

29.10 Neither Party shall be responsible towards the other for indirect or consequential damage as defined and identified under the applicable law.

30. AMENDMENTS

30.1 Customer request

(a) If the Customer wishes to introduce a Change, it shall serve a Change Request Notice to the Contractor. The Change Request shall:

i. set out the Change required in sufficient detail to enable the Contractor to calculate and provide a Change Proposal in accordance with Article 30.1((b)); and

ii. require the Contractor to provide the Customer with a Change Proposal.

(b) As soon as practicable and in any event, unless specifically agreed otherwise by the

Customer, within 45 (forty-five) calendar days after having received the Change Request Notice, the Contractor shall deliver to the Customer a Change Proposal drafted following the structure of the Change Request and specifying, as applicable:

i. technical description of the work to be done under the Change Request (including the identification of the Work Packages affected);

ii. security assessment of the Change;

iii. price alteration and cost breakdown using the cost forms used to submit the Contractor´s Financial Proposal (Annex III);

iv. reasonable efforts of the Contractor to minimise any increase in costs and maximise any reduction in costs (also through its subcontractors);

v. subcontracting structure;

vi. planning, including the indication of critical milestones or dates; and

vii. the proposed amendment to the Contract and/or any Applicable Document.

(c) The Change Proposal shall also include the advice of the Contractor on:

i. whether relief from compliance with obligations is required;

ii. any impact on the risk management;

iii. whether activities subject of the Change might interfere on the relation with third parties; and

iv. whether the requested Change could materially and adversely affect the health and safety of any person.

(d) The Customer will provide a first feedback to the Contractor within forty-five (45) working days from the receipt of the Change Proposal and as soon as practicable it will evaluate it so that:

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

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

(e) Unless otherwise agreed by the Customer, the Contractor shall not be entitled to recover from the Customer the costs sustained in the preparation of the Change Proposal.

30.2 Contractor unsolicited change proposal

(a) To the extent permitted under the applicable law, the Contractor has the right to make Unsolicited Change Proposals in accordance with this article.

(b) If the Contractor wishes to introduce an Unsolicited Change Proposal, it must serve a Change Proposal Notice to the Customer.

(c) The Unsolicited Change Proposal Notice shall contain:

i. all the elements as listed under Article 30.1(30.1(b)) above;

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

iii. the advice of the Contractor regarding the applicable elements listed under Article 30.1(c) above.

(d) The Customer shall evaluate the Unsolicited Change Proposal in good faith, taking into account all relevant issues and circumstances.

(e) As soon as practicable, and in any event within 45 (forty-five) calendar 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 Customer shall either accept or reject the Unsolicited Change Proposal. In case the Customer 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.

(f) Unless otherwise agreed by the Customer, the Contractor shall not be entitled to recover from the Customer the costs sustained in the preparation of the Unsolicited Change Proposal.

(g) 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.

(h) If the Customer 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.

30.3 In case the proposed Change is limited to updating/amending the list or the content of documents forming part of the Contractual Items Status List (see Annex II), and such change:

(a) does not have any financial impact;

(b) does not impact the scope of the Contract;

it can be implemented without applying the provisions above, by way of written exchange between the Parties .

30.4 General

(a) 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 contract or result in unequal treatment of tenderers.

(b) Any amendment to the contract shall be made in writing before fulfilment of any new contractual obligations and in any case before the date of payment of the balance.

31. ASSIGNMENT

31.1 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 Customer.

31.2 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 Customer and shall have no effect on it.

31.3 The Agency shall be entitled to partially assign this Contract related to the maintenance options described in Section 2.3- to another body of the European Union – or to a private entity identified by the same Agency - which shall partially replace, the Agency with all (or part of) its rights and obligations under the Contract related to the above mentioned maintenance options and which otherwise shall continue to apply unchanged. Such partial 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. The Contractor hereby undertakes to accept the partial assignment of the Contract related to the maintenance options by the Agency in favour of Galileo Service Operator.

32. SUSPENSION OF THE CONTRACT PERFORMANCE

32.1 Suspension by the Contractor

The Contractor may suspend the performance of the contract or any part thereof if a case of force majeure makes such performance impossible or excessively difficult. The Contractor shall inform the Customer about the suspension without delay, giving all the necessary reasons and details and the envisaged date for resuming the performance of the contract. Once the circumstances allow resuming performance, the Contractor shall inform the Customer immediately, unless the Customer has already terminated the contract.

32.2 Suspension by the Agency

The Agency may suspend the performance of the contract or any part thereof:

(a) if the contract award procedure or the performance of the contract prove to have been subject to substantial breaches of obligations, irregularities or fraud;

(b) in order to verify whether presumed substantial breaches of obligations, irregularities or fraud have actually occurred.

(c) if the Contractor is in a situation of Professional Conflicting Interest under Article 36.1 and pending the definition and implementation of rectification actions as set out under Article 36.2;

(d) if the performance of the contract is considered to materially affect, directly or indirectly, the interests of the European Union, such as but not limited to security threats;

(e) if the Contractor is considered to be in non-compliance with the confidentiality obligations and is required to submit relevant observations pursuant to Article 35;

(f) if, due to a change of circumstances, the Contractor, the Contractor Parties or any entity having a role in the performance of the Contract do not comply anymore with the EU Restrictive Measures, and if the Contractor has not promptly taken the necessary actions upon EUSPA request

32.3 Effect of the suspension by the Agency

(a) Suspension shall take effect on the day the Contractor receives formal notification, or at a later date provided in the notification.

(b) During suspension for events under Article 32.2(a) attributable to the Contractor, Articles 32.2(c), 32.2(d), 32.2(e) and 32.2(f) no payments shall be due by the Contracting Authority under this Contract.

(c) The Agency shall give notice as soon as possible to the Contractor to resume the service suspended or inform the Contractor that it is proceeding with the termination of the contract.

(d) The Contractor shall not be entitled to claim compensation on account of suspension of the contract or of part thereof.

33. TERMINATION OF THE CONTRACT

33.1 Grounds for termination

The Customer may terminate the Contract in the following circumstances:

(a) if provision of the services under the Contract has not actually started within 3 (three) months of the scheduled date and the Contracting Authority considers the new date proposed, if any, unacceptable, taking into account Article 30.4(a);

(b) if the Contractor is unable, through its own fault, to obtain any permit or licence required for implementation of the Contract;

(c) if the Contractor or any Related Person is subject to any of the following situations:

33.1.c.1 the person or entity is bankrupt, subject to insolvency or winding-up procedures, its assets are being administered by a liquidator or by a court, it is in an arrangement with creditors, its business activities are suspended, or it is in any analogous situation arising from a similar procedure provided for under Union or national law;

33.1.c.2 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;

33.1.c.3 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:

a) 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;

b) entering into agreement with other persons or entities with the aim of distorting competition;

c) violating intellectual property rights;

d) attempting to influence the decision-making of the authorising officer responsible during the award procedure;

e) attempting to obtain confidential information that may confer upon it undue advantages in the award procedure;

33.1.c.4 it has been established by any means which the Agency, acting in good faith, can justify that the person or entity is responsible of any of the following conducts:

a) 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];

b) 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;

c) conduct related to a criminal organisation as referred to in Article 2 of Council Framework Decision 2008/841/JHA[5];

d) money laundering or terrorist financing within the meaning of Article 1(3), (4) and (5) of Directive (EU) 2015/849 of the European

[1] Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).
[2] OJ C 316, 27.11.1995, p. 48.
[3] OJ C 195, 25.6.1997, p. 1.
[4] Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ L 192, 31.7.2003, p. 54).
[5] Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42)

Parliament and of the Council[6];

e) 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;

f) 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];

33.1.c.5 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:

a) led to the early termination of a legal commitment;

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

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

33.1.c.6 the person or entity has committed an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95[9];

33.1.c.7 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;

33.1.c.8 an entity has been created with the intent referred to in point 33.1.c.7

(d) if the procedure for awarding the Contract or the implementation of the Contract prove to have been subject to errors, irregularities, fraud or substantial breaches of obligations including the submission of false information 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

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

[7] Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (OJ L 164, 22.6.2002, p. 3).

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

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

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 36.1; 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 or organisational or ownership situation is likely to affect the performance of the contract substantially or to affect the essential security interest of the European Union or or substantially modify the conditions under which the Contract 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 Contract would mean that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or Contractors or the Force Majeure event lasts for more than 30 days;

(j) in case of persistent breach, which means a repeated breach of the same obligation under the Contract, notwithstanding written warnings sent by the Contracting Authority;

(k) if the Contractor is in breach of the confidentiality obligations resulting from Article 35;

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

(m) if the Contractor does not implement or perform the Contract in accordance with the tender specifications or is in breach of another substantial contractual obligation;

(n) if, due to a change of circumstances, the Contractor, the Contractor Parties or any entity having a role in the performance of the Contract do not comply anymore with the EU Restrictive Measures identified in the Annex II (Tender Specifications), and if the Contractor has not promptly taken the necessary actions upon EUSPA request.

(o) if, due to a change circumstances, the Contractor does not comply anymore with the Participating Conditions identified in the tender specifications and if the Contractor has not promptly taken the necessary actions (by way of e.g. and including, but without limitation to, submitting a justified request for waiver or a contract change as per Article 30.2) in order to remedy such non-compliance;

(p) if the Contractor fails to ensure competitive subcontracting in breach of the Contractor`s Proposal (Annex IV) and Tender specifications (Annex II)

(q) In the case of joint tenders, the Contracting Authority may terminate the Contract with any member of the consortium separately on the basis of points (b), (c), (e), (f), (g), (h), (k), (l), (n), of Article 33.1, pursuant to Article 33.2 and Article 11.

33.2 Procedure for termination pursuant to Article 33.1

(a) When the Customer intends to terminate the Contract it shall formally notify the Contractor of its intention by sending a Preliminary Termination Notice specifying the grounds of termination thereof.

(b) The Customer shall invite the Contractor to make any observations and, in the case of Article 33.1(m) to inform the Customer about the measures taken to continue the fulfilment of its contractual obligations, within 15 days from receipt of the Preliminary Termination Notice.

(c) The Customer upon it sole discretion may continue the termination procedure as described in Article 33.2 (d) if

33.2.c.1 the Contractor does not submit observations and information on the measures taken to remedy the situation as applicable in the deadline specified in 33.2 (b)

33.2.c.2 If it does not confirm acceptance of the observations and information on the measures taken to remedy the situation as applicable by giving written approval.

(d) In any case of termination, the Customer shall formally notify the Contractor about its decision to terminate the contract by sending a Termination Notice specifying the date on which the termination takes effect.

33.3 Effects of termination pursuant to article 33.1

In the event of termination and except for the case under Article 33.1(i), the Contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the notification of termination, the Contractor shall take all the appropriate measures to minimise costs, prevent damages, and cancel or reduce its commitments when reasonably feasible. The Contractor shall have 60 calendar days from the date on which termination takes effect to draw up the documents required for the tasks already executed on the date of termination and produce an invoice if necessary. The Customer may recover any amounts paid under the contract according to the provisions of the present Contract.

Except for the case under Article 33.1(i), the Customer may claim compensation for any damage suffered in the event of termination within the liability caps provided under Article 29.

33.4 Effects of termination for the case of Force Majeure

In the event of termination pursuant to Article 33.1(i) above, the Agency shall pay to the Contractor the already delivered Deliverable Items, and shall take over from the Contractor at a fair and reasonable price all finished parts or works not yet delivered to the Agency, all unused and undamaged material in the course of manufacture.

The Agency shall in no circumstances be liable to pay any sum which, when added to the other sums paid, due or becoming due to the Contractor under the Contract, exceeds the total price for the work set forth in the Contract.

33.5 Voluntary termination by the Agency

(a) 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.

(b) On termination under this Article 33.5 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.

(c) The amount of compensation resulting from the application of Article 33.5 (b) 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.

(d) Subject to any mandatory provision of law, the compensation payable under Article 33.5 (b) shall be the sole remedy of the Contractor against the Agency in case of voluntary termination.

34. FORCE MAJEURE

34.1 A Party faced with force majeure shall formally notify the other Party without delay, stating the nature, likely duration and foreseeable effects.

34.2 The Party faced with force majeure shall not be held in breach of its contractual obligations if it has been prevented from fulfilling them by force majeure. Where the Contractor is unable to fulfil its contractual obligations owing to force majeure, it shall have the right to remuneration only for the tasks actually executed.

34.3 The Parties shall take all the necessary measures to limit any damage due to force majeure.

35. CONFIDENTIALITY

35.1 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 contract and identified in writing as confidential.

35.2 The Contractor shall:

(e) not use confidential information and documents for any purpose other than fulfilling its obligations under the contract without prior written agreement of the Customer;

(f) 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;

(g) not disclose directly or indirectly confidential information and documents to third parties without prior written agreement of the Customer.

35.3 The confidentiality obligation set out in this Article 35shall be binding on the the Contractor during the performance of the Contract and for five years starting from the date of the payment of the balance unless:

(h) the Customer agrees to release the Contractor from the confidentiality obligation earlier;

(i) the confidential information becomes public through other means than in breach of the confidentiality obligation through disclosure by the Contractor bound by that obligation;

(j) the disclosure of the confidential information is required by law.

35.4 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 contract, an undertaking that they will comply with the confidentiality obligation set out in this Article 35.

36. PROFESSIONAL CONFLICTING INTERESTS

36.1 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.

36.2 The Contractor must notify the Customer in writing as soon as possible of any situation that could constitute a Professional Conflicting Interest during the performance of the Contract. The Contractor must immediately take action to rectify the situation.

The Customer 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.

36.3 The Contractor must have all the relevant obligations 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 Contract, including subcontractors.

37. PROCESSING OF PERSONAL DATA

37.1 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[10]. 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.

37.2 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.

37.3 The recipients of the personal data mentioned under Article 37.2 shall be (1) a limited number of staff of the Agency managing the Contract, (2) a limited number of staff of Agency contractors assisting Agency staff in the management of the Contract, (3) a limited number of staff of Agency contractors providing hosting services for the Agency 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.

37.4 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 grounds for the exercise of any of these rights, as per the applicable rules.

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

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

a. inform in writing without delay the data controller and act only on documented instructions from the data controller, in particular with regard to the purposes of the processing, the categories of data that may be processed, the recipients of the data and the means by which the data subject may exercise its rights;
b. with regard to transfers of personal data to a country outside the European Union or an international organisation, act only on documented instructions from the data controller, unless required to do so by Union or Member State law to which the processor is subject; in such a case, the processor shall inform the data controller of that legal requirement before

[10] Currently Regulation (EU) 2018/1725.

processing, unless that law prohibits such information on important grounds of public interest;

c. ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
d. without prejudice to Article 37.8, take all necessary measures to ensure the security of the processing of personal data, as may be instructed by the controller;
e. not engage another processor or sub-processor without prior specific written authorisation of the controller;
f. taking into account the nature of the processing, assist the controller by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the controller's obligation to respond to requests for exercising the data subject's rights laid down in the applicable rules;
g. assist the controller for the fulfilment of its obligations to:
    i. ensure compliance with its obligations regarding the security of the processing, and the confidentiality of electronic communications and directories of users
    ii. notify a personal data breach to the European Data Protection Supervisor
    iii. communicate a personal data breach without undue delay to the data subject, where applicable
    iv. carry out data protection impact assessments and prior consultations as necessary
h. notify relevant personal data breaches to the controller without undue delay and at the latest within 48 hours after the Contractor becomes aware of the breach. In such cases, the Contractor shall provide the controller with at least the following information:
    i. 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;
    ii. likely consequences of the breach;
    iii. measures taken or proposed to be taken to address the breach, including, where appropriate, measures to mitigate its possible adverse effects.
i. maintain a record of all data processing operations carried on behalf of the controller, transfers of personal data, security breaches, responses to requests for exercising rights of people whose personal data is processed and requests for access to personal data by third parties;
j. delete all the personal data after the end of the provision of services relating to processing;
k. make available to the data controller all information necessary to demonstrate compliance with the obligations laid down in this article and allow for and contribute to audits, including inspections, conducted by the controller or another auditor mandated by the controller

37.7 The Contractor shall grant personnel access to the data to the extent strictly necessary for the performance, management and monitoring of the Contract.

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

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

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

38. CHECKS AND AUDITS

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

38.2 Such checks and audits may be initiated during the performance of the contract and during a period of five years which starts running from the date of the payment of the balance.

38.3 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.

38.4 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.

38.5 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 contract is performed and to all the information, including information in electronic format, needed in order to conduct such checks and audits (except for information considered as trade or industrial secret). 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.

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

38.7 On the basis of the final audit findings, the Agency may recover all or part of the payments made and may take any other measure which it considers necessary.

38.8 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.

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

38.10 The Agency and its agents, employees or contractors shall, upon reasonable prior notice to Contractor and subject to adherence to the safety procedures and other procedures and requirements applicable to the Contractor site (including without limitation, and such procedures and requirements established in connection with any insurance coverage obtained in connection with the Contract), have access to inspect all work done by the Contractor under this Contract; provided, however, that any inspection of the work 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 work. Contractor shall have the right to condition such inspection upon the persons conducting the inspection observing procedures to preserve the safety and security of the Contractor site. Notwithstanding any review or inspection, 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.

39. ANNOUNCEMENTS AND PUBLICITY

39.1 The Contractor shall not communicate itself and shall ensure that any “speaker”, (being the Contractor’s employees, directors, agents and Contractor Parties) 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.

39.2 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 facebook/twitter or any similar service, 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.

39.3 No permission to photograph or film any clearly identifiable Assets shall be given by the Contractor unless the Agency directly or through the Contractor has given its prior written approval.

39.4 Subject to the protection of the commercial interests of the Contractor, the Agency has the right to process, use, distribute and publish, for institutional purpose, 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.

40. COMMUNICATION DETAILS AND DATA CONTROLLER

40.1 For the purpose of Article 40, the data controller shall be Executive Director or the person delegated by him/her of the Customer.

40.2 Communications shall be sent to the following addresses:

Agency:

Project officer:

Name:

Surname

Email:

Telephone number: …….

EUSPA

Attention:

Janovskeho 438/2 170 00 Prague Czech Republic

Contract officer:

Legal and Procurement Department

Janovskeho 438/2 170 00 Prague Czech Republic

Email: contracts@euspa.europa.eu

Contractor:

Project Manager:

……

Contract Officer:

……..

41. BANK ACCOUNT

Payments shall be made to the Contractor's bank account denominated in euro, identified as follows: Name of bank: ……..

Full address of branch: ……

Exact designation of account holder: …….

Full account number including [bank] codes: …….

IBAN code: ……

BIC/SWIFT Code: ……..

42. SURVIVAL

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) Articles 26.2 (on Background IPR), 29 (Liability and Indemnity), 35 (Confidentiality) and 37 (Processing of Personal Data) and and such other provisions as are expressed to or impliedly survive termination of this Contract.

43. APPLICABLE LAW AND SETTLEMENT OF DISPUTES

43.1 The contract shall be governed by European Union law, complemented, where necessary, by the law of Belgium.

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

SIGNATURES

For the Contractor,

signature: _____

Done in _____, on _____

For the Agency,

Rodrigo da Costa

Executive Director

signature:_____

Done in Prague, on _____

Annex I – Tenderer's Statements of Compliance to the Terms of Reference

(separate document and separate numbering of pages)

Annex II – Tender specifications and its annexes (EUSPA/OP/17/23);

(separate document and separate numbering of pages)

Annex III - Security Aspects Letter (SAL)

(separate document and separate numbering of pages)

Annex IV – Contractor's tender of XXX

(separate document and separate numbering of pages)

Annex IV.a- Milestone Payment Plan

(separate document and separate numbering of pages)

Annex V – Template of Deliverables Acceptance Sheet

Deliverable/supply acceptance sheet -TEMPLATE

Contract reference: [to be completed]

Reference of task/deliverable/supply	Due date (Annex I to the Contract)	Actual delivery date	Format/manner of delivery	Price of deliverable/supply
Fill in				

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:

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.	
Name	
Position	
Signature	
Date	

Annex VI – List of Background Intellectual Property Rights

(separate documents and separate numbering of pages

Annex VII – Declaration Foreground IPRs

(separate documents and separate numbering of pages)

Annex VIII – Template - Pre-financing guarantee

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 5.3 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 IX – Template of Statistical Reporting

(separate documents and separate numbering of pages)