

GENERAL CONDITIONS OF THE CONTRACT

ARTICLE 1 – SCOPE OF APPLICATION

- 1.1. These general conditions are applicable to contracts for supply of goods or services ordered by EUSPA via purchase orders.
- 1.2. These general conditions are divided in the following sections:
- Section I contains conditions applicable to supply of goods or services.
 - Section II contains conditions only applicable to supply of goods.
 - Section III contains conditions only applicable to the provision of services.

SECTION I – COMMON CONDITIONS APPLICABLE TO THE SUPPLY OF GOODS OR SERVICES

ARTICLE 2 – DEFINITIONS, RELATION TO PURCHASE ORDER

- 2.1. The terms and expressions set forth hereunder, if capitalized, shall have the following meaning in the Contract and in these General Conditions:

“Affiliate” means any legal entity which is directly or indirectly controlling, controlled by or under common control of the Contractor, provided that (i) such entity shall be considered an Affiliate only for the time during which such control exists, and (ii) for the purpose of this definition, “control” shall be constituted in case any of the following applies to either the legal entity or the Contractor in relation to each other: (a) holding, whether directly or indirectly, a majority of the voting rights, (b) holding, whether directly or indirectly, more than 50% (fifty per cent) of the share capital, (c) having the right to appoint or remove a majority of the members of the board of directors or other management body, (d) having, by agreement, the right to exercise a majority of the voting rights. Entities which are directly or indirectly controlled by the same entity (as described in points (a), (b), (c) and (d) above are also considered Affiliates.

“Background Intellectual Property Rights/Background IPR (BIPR)” mean Intellectual Property Rights that are created, invested, authored, developed, owned and registered by the Contractor, the Contractor Parties prior to the entry into force of this Contract, and that is needed to perform the Contract and to exploit the FIPR. A “need” in the aforementioned sense is considered, if, without the relevant rights, the exploitation of the FIPR would be technically or legally impossible, impaired or incomplete.

“Contract” means the contract concluded through the countersignature of the Purchase Order by the Contractor. The Contract constitutes the entire agreement between EUSPA and the Contractor.

“Contractor” means the economic operator(s) entering into the Contract with EUSPA.

“Contractor Party(ies)” means the person(s)/legal entity(ies) engaged by the Contractor to execute on its behalf tasks in relation to this including without limitation its Affiliates, sub-contractors, consultants or agents.

“Creator”: means any natural person who contributes to the production of the Foreground



IPR;

“**EUSPA**” means the European Union Agency for the Space Programme, having its headquarters in Prague.

“**EU Restrictive Measures**” means a common foreign and security policy tool of the European Union consisting in measures adopted under Article 29 of the Treaty on the European Union (TEU) or Article 215 of the Treaty on the Functioning of the EU (TFEU), consisting of a prohibition to make available or transfer funds or economic resources or to provide financing or financial assistance to certain restricted person(s) directly or indirectly, or an asset freeze. The list of restrictive measures and restricted persons can be found on the website <https://www.sanctionsmap.eu>.

“**Foreground IPR (FIPR)**” means any IPR, including source codes, developed by the Contractor or a Contractor Party or their agent, or transferred to the Contractor by third parties during the Contract duration, for the performance of this Contract in order to fulfil any Contractor obligations under the Contract.

“**Financial Regulation**” means Regulation (EU, EURATOM) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast). Should Regulation (EU, EURATOM) 2024/2509 be amended or repealed by a newly adopted EU regulation, the term “Financial Regulation” shall mean such EU regulation amending or repealing Regulation (EU, EURATOM) 2024/2509, and any reference in these general conditions to an Article of Regulation (EU, EURATOM) 2024/2509 shall be considered as reference to the corresponding Article(s) in such new Financial Regulation.

“**General Conditions**” means these general conditions.

“**Intellectual Property Rights (IPR)**” means any and all rights which subsist anywhere in the world relating to:

- any inventions (whether patentable or not);
- patents or utility models (including any related applications, divisions, continuations, registrations, reissues, re-examinations, extensions or renewals);
- copyrights (including any rights in software, source code and design tools), works of authorship, designs, database rights, mask works and moral rights (including any related applications, registrations or renewals);
- trade dress, trade names, domain names, trademarks and service marks whether registered or not (including any applications or registrations related thereto and the goodwill associated therewith);
- trade secrets and know-how; and
- rights under any jurisdiction or legal system that are similar or equivalent to the foregoing;

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

“**Party(ies)**” means EUSPA and/or the Contractor.

“Purchase Order” means EUSPA’s purchase order, including its annexes/attachments (such as specifications and the General Conditions therein referenced or attached) for delivery/provision of goods, services addressed (or to be addressed) to the Contractor.

“Related person”: any natural or legal person who is a member of the administrative, management or supervisory body of the Contractor, or who has powers of representation, decision or control with regard to the Contractor, including beneficial owner(s) as defined in Article 3, point (6), of Directive (EU) 2015/849.

- 2.2. The General Conditions provide general terms and conditions for the Contract between EUSPA and the Contractor. The main body of the Purchase Order contains specific provisions for the Contract.
- 2.3. In the event of conflict or ambiguity between different Contract provisions, the following order of priority shall apply:
 - (a) the main body of the Purchase Order shall take precedence over its General Conditions;
 - (b) General Conditions shall prevail over any annexes attached or referred to in the Purchase Order;
 - (c) annexes regarding specifications issued by the Agency shall prevail over annexes regarding the Contractor’s offer.

ARTICLE 3 - PERFORMANCE OF THE CONTRACT

- 3.1. The Contractor undertakes to comply with the Contract.
- 3.2. The Contractor shall have the sole responsibility for complying with any legal obligations incumbent on it, including, without limitation, those resulting from employment, tax, social, health and safety, environmental and urban legislation.
- 3.3. The Contractor shall be solely responsible for ensuring that the tasks under the Contract are at all times performed in accordance with the highest professional standards and in compliance with the applicable law.
- 3.4. The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or license required for the performance of the Contract under the laws and regulations in force at the place where the tasks assigned to it are to be executed.
- 3.5. The Contractor shall neither represent EUSPA nor behave in any way that would give such an impression. The Contractor shall inform third parties that he does not belong to the European public service if he becomes aware that any third party is under such impression.
- 3.6. The Contractor shall have sole responsibility for the staff who executes the tasks assigned to it. In this respect, the Contractor shall make provision for the following employment or service relationships with his staff:

- staff executing the tasks assigned to the Contractor may not accept orders directly by EUSPA;
 - EUSPA may not under any circumstances be considered as the staff's employer and the said staff shall undertake not to invoke in respect of EUSPA any right arising from the contractual relationship between EUSPA and the Contractor.
- 3.7.** The Contractor shall immediately notify EUSPA of any other circumstances that might give rise to claims against EUSPA on the part of Contractor's personnel related to status of employment. In any event the Contractor shall take all measures to prevent such claims from arising and shall hold EUSPA harmless of any such claim.
- 3.8.** The Contractor shall also hold EUSPA harmless from any third party claim as may arise from or in connection with the Contract or its implementation on grounds or argument of employment.
- 3.9.** The Contractor must ensure that the staff performing the Contract and any future replacement staff possess the professional qualifications and experience required to provide the services/supplies, as the case may be on the basis of the selection criteria set out in the tender specifications. In the event of disruption resulting from the action of a member of the Contractor's staff working at EUSPA premises or in the event of the expertise of a member of the Contractor's staff failing to correspond to the profile required by the Contract, the Contractor shall replace him without delay. EUSPA shall have the right to request the replacement of any such member of staff, stating its reasons for so doing. Replacement staff 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 him resulting from the replacement of staff in accordance with this Article.
- 3.10.** The Contractor shall take responsibility for all Contractor Parties' activities. In particular, the Contractor shall not be relieved or excused of any responsibility, liability or obligation under this Contract by the appointment of any Contractor Party. The Contractor shall, as between itself and the Agency, be the sole responsible for the selection, pricing, performance, acts, defaults, omissions, breaches and negligence of all Contractor Parties. All references in this Contract to any act, default, omission, breach or negligence of the Contractor shall be construed accordingly to include any such act, default, omission, breach or negligence of a Contractor Party.
- 3.11.** Without prejudice to the provisions of Article 11, should any unforeseen event, action or omission directly or indirectly hamper the execution of the tasks, either partially or totally, the Contractor shall immediately and on his own initiative record it and report it to EUSPA. 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 his obligations under the Contract. In such an event, the Contractor shall give priority to solving the problem rather than determining liability.
- 3.12.** The Contractor must immediately inform EUSPA of any changes in (a) the exclusion situations initially declared, according to Article 139(1) of Regulation (EU, Euratom) 2024/2509 (b) selection criteria and, if applicable, (c) the eligibility and participation conditions as per Article 24 of Regulation (EU) 2021/696.
- 3.13.** Without prejudice to Article 4 (liquidated damages), should the Contractor fail to (a) perform

his obligations under the Contract in accordance with the provisions laid down therein or (b) provide the service/supply in accordance with the expected quality levels specified in the tender specifications, EUSPA may - without prejudice to its right to terminate the Contract - reduce or recover payments in proportion to the seriousness of the unperformed obligations or low quality delivery.

ARTICLE 4 - LIQUIDATED DAMAGES

- 4.1.** Should the Contractor fail to perform his obligations under the Contract within the time limits set by the Contract, then, without prejudice to the Contractor's actual or potential liability incurred in relation to the Contract or to EUSPA's right to terminate the Contract, EUSPA may decide to impose liquidated damages of 0.2 % of the price specified in the Purchase Order per calendar day of delay. For the avoidance of doubt, this Article applies only to the failure of Contractor to perform his obligations under the time limits set by the Contract (delays).
- 4.2.** The Contractor may submit observations against this decision within fifteen (15) working days of notification by e-mail. After receiving observations or, failing that, following the expiration of the time limit for submitting observations, EUSPA must notify the Contractor:
 - (a) of the withdrawal of its intention to apply liquidated damages; or
 - (b) of its final decision to apply liquidated damages and the corresponding amount.
- 4.3.** EUSPA and the Contractor expressly acknowledge and agree that any sums payable under this Article are in the nature of liquidated damages and not penalties and represent a reasonable estimate of fair compensation for the losses that may be reasonably anticipated from such failure to perform obligations. No exercise of the right to any liquidated damages hereunder shall further affect EUSPA's right to require compensation for any damage or loss exceeding the amount of the relevant liquidated damages. Liquidated damages may be imposed together with a reduction or recovery of payment in line with the terms of Article 7 hereof.

ARTICLE 5 - SUBCONTRACTORS

- 5.1.** The Contractor must not subcontract and have the Contract performed by persons other than the Contractor Parties already mentioned in its tender without prior written authorisation from EUSPA.
- 5.2.** Notwithstanding EUSPA authorization of subcontractors, the Contractor remains bound by its contractual obligations and is solely responsible for the performance of the Contract pursuant to the provisions of this Contract.
- 5.3.** EUSPA may request the Contractor to replace a subcontractor found to be in a situation provided for in points (a) and (b) of Article 16.1.

ARTICLE 6 - PROVISIONS CONCERNING PAYMENT

- 6.1.** The date of payment is deemed to be the date on which the EUSPA's account is debited. Payments are made in euros, unless another currency is provided for in the purchase order.

- 6.2.** Requests for payments (invoices) presented by the Contractor shall contain his identification data, the amount, the currency and the date, the reference number of the Purchase Order, as well as further information required for taxation purposes pursuant to Article 8 hereof.
- 6.3.** Unless otherwise stipulated in the Purchase Order, any request(s) for payment shall be sent electronically to finance@euspa.europa.eu. The electronic invoice must include at least the following elements: process and invoice identifiers, the invoice period, contractor's information, EUSPA's information, Contractor's tax representative information, contract reference, delivery details, payment instructions, allowance or charge information, invoice line item information, invoice totals, VAT breakdown (when applicable) and currency.
- 6.4.** The price quoted in the Purchase Order is firm, non-revisable and all-inclusive unless otherwise specified in the Purchase Order.
- 6.5.** Payment of the invoiced amount and/or acceptance of the related supporting documents does not imply recognition of the regularity, authenticity, completeness and correctness of the declarations and information they contain.
- 6.6.** The Contractor acknowledges that under Article 111(3) of the Financial Regulation, any payment under the Contract from EUSPA to the Contractor shall be subject to prior verification and approval by EUSPA of completion of the tasks referred to in the Purchase Order as well as of compliance of the request for payment with the requirements as set out in Article 6.2 hereof.
- 6.7.** EUSPA shall pay the amount due within the period stipulated in the Purchase Order or, if no such period is stipulated in the Purchase Order, within the period of thirty (30) days, in either case commencing upon receipt of a request for payment accompanied by any necessary supporting documents and provided that EUSPA has verified and approved completion of tasks referred to in the Purchase Order and any other conditions provided therein.
- 6.8.** EUSPA may suspend the payment period specified in Article 6.7 at any time after submission of the invoice, 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:
- (i) because it does not comply with the Contract, and in particular this Article 6;
 - (ii) because the Contractor has not produced the appropriate deliverables, supplies or document;
 - (iii) because EUSPA has observations on the deliverables, supplies or documents submitted with the invoice.

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

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

- 6.9.** In the event of late payment, the Contractor shall be entitled to interest. Interest shall be calculated at the rate applied by the European Central Bank to its most recent main refinancing operations ("the reference rate") plus eight (8) percentage points ("the margin"). The reference rate in force on the first day of the month in which the payment is due shall apply. Such interest rate is published in the C series of the Official Journal of the European Union. Interest shall be payable for the period elapsing from the calendar day following the expiry of the time limit for payment up to the day of payment. Suspension of payment by EUSPA may not be deemed to constitute late payment. In case interest does not exceed EUR 200, the Contractor's right to claim interest ceases to exist unless the Contractor raises the claim for interest within two months of receiving the late payment.

ARTICLE 7 – RECOVERY

- 7.1.** If an amount is to be recovered under the terms of the Contract, the Contractor must repay EUSPA the amount in question.
- 7.2.** Before recovery, EUSPA must formally notify the Contractor of its intention to recover the amount it claims, specifying the amount due and the reasons for recovery and inviting the Contractor to make any observations within 30 days from receipt of the notification.
- 7.3.** If no observations have been submitted or if, despite the observations submitted, EUSPA decides to pursue the recovery procedure, it must confirm recovery by formally notifying a debit note to the Contractor, specifying the date of payment. The Contractor must pay in accordance with the provisions specified in the debit note.
- 7.4.** If the obligation to pay the amount due is not honoured by the date set by the Agency in the debit note, the amount due shall bear interest at the rate indicated in Article 6.9. Interest on late payments shall cover the period from the day following the due date for payment up to and including the date when the Agency receives the full amount owed.
- 7.5.** Any partial payment shall first be entered against charges and interest on late payment and then against the principal amount.
- 7.6.** If the Contractor does not pay by the due date, EUSPA may, after informing the Contractor in writing, recover the amounts due:
- (a) by offsetting them against any amounts owed to the Contractor by EUSPA/European Union or by the European Atomic Energy Community or by an executive agency when it implements the Union budget;
 - (b) by calling in a financial guarantee if the Contractor has submitted one to EUSPA;
 - (c) by taking legal action.

ARTICLE 8 – TAXATION

- 8.1.** The Contractor shall have sole responsibility for compliance with the tax laws which apply to him. Failure to comply shall make the relevant invoices invalid.
- 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 Space Regulation, in connection with Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities.

- 8.3.** The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the goods and services required for the performance of the Contract are exempt from taxes and duties, including VAT.
- 8.4.** Invoices presented by the Contractor shall also indicate his place of taxation for VAT purposes and shall specify the amounts separately, not including VAT and the amounts including VAT.

ARTICLE 9 – OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS

9.1. Ownership

Ownership of the deliverables shall be exclusively and without restrictions vested in the Agency/European Union, represented by the European Commission (as they case may be), immediately upon their acceptance by the Agency, with such acceptance being deemed to constitute an effective assignment of rights from the Contractor to the Union, without prejudice to the provisions related Foreground IPR, as per the Articles below. The Contractor shall ensure that all necessary measures are taken in order to transfer the tangible assets, to the Agency/European Union for compliance with the present provision.

The Contractor shall ensure that all necessary measures are taken in order to perfect the automatic ownership of all Foreground IPRs by the Agency/European Union, as of their coming to existence, without the need of further transfers or arrangements.

The permanent transfer of ownership provided in this Article shall also apply to Contractor's Parties for the purpose of this Contract. The Contractor must inform its Contractor's Parties of the provision under this article and ensure to reflect their content in its agreements with such Contractor's Parties.

The intended purpose of the permanent assignment of full ownership of all Foreground IPR to the Agency/European Union is to enable the Agency/European Union (as the case may be) 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 Foreground IPR is lawfully not possible, the Contractor herewith grants to the European Union an -exclusive, worldwide, irrevocable, and royalty-free license of the Foreground IPRs to make any use whatsoever thereof for no other payment than the price of the Contract. This licence shall be granted for the duration of the respective Foreground IPRs protection under the applicable law and survive the end of Contract for whatever reason, to the maximum extent possible under applicable law. For the avoidance of doubts such license shall be sufficiently broad to allow, as much as legally possible under the applicable law, the European Union/Agency to use the Foreground IPRs in substantially the same way as if it was the owner thereof.

The Parties agree that the ownership of deliverable created or developed

- (i) at any time throughout the Contract duration by the Agency or third parties for the Agency;
or
 - (ii) by the Contractor or any Contractor Party under this Contract,
- shall be vested in the European Union/Agency in accordance with this Article.

The payment of the price includes any fees payable to the Contractor about the acquisition of ownership of rights by EUSPA/European Union, including for all modes of exploitation and use of the FIPR.

9.2. Common provisions to FIPR, BIPR

Each Party warrants that:

- (i) it owns its respective Background, Foreground, IPR and it shall, upon request from the other Party, provide evidence of ownership / right to use of such IPRs;
- (ii) it is fully entitled to grant to the other Party the licenses envisaged under this article except provisioned otherwise.

In addition, the Contractor warrants and undertakes:

- (i) not to take action which jeopardizes or affects the ability of the European Union/Agency to legally protect the subject-matter of the IPRs;
- (ii) that the Foreground IPRs developed by the Contractor and either owned by or licensed to the European Union/Agency, the transfer of ownership of the FIPR and the BIPR licensed to the European Union/Agency will not infringe any third party IPRs;
- (iii) that all employees, officers, trainees of the Contractor, as well as any other party involved in the development of Foreground IPRs, have validly assigned their rights to the Contractor and have received all compensation due to them as a result where applicable. The Contractor shall be ready to provide documentary evidence upon request of the European Union and/or the Agency:
 - that its agreements with Contractor's Parties shall contain relevant provisions enabling the Contractor to grant the European Union/Agency the sublicenses envisaged under this Article.
 - that all required information is provided to the Agency and that any measure is immediately taken in order to mitigate and remedy any infringement, without any additional cost for the Agency and the European Union.

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

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.

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

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

9.3. Foreground IPR

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

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

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

The European Union/Agency may make use of the Foreground IPR in any unknown manner and for any unknown type of use, provided that such use the Contractor is remunerated by the European Union in reasonable and non-discriminatory (FRAND) terms.

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.

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

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

The Contractor shall declare and provide the Agency with full details of all inventions and works, including those related to software, performed under the Contract, which could be protected by title of intellectual property other than patent. Subject to the confidentiality obligations under this Contract, such inventions and works performed by the Contractor, including its employees and agents in the course of the execution of the Contract shall be described in writing and communicated to the Agency, without delay and in any case, not later the submission of the payment request as per Article 6.2.

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

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

9.4. Licensing rights on BIPR

All Background IPRs as agreed by the Parties are listed in the Contractor's proposal.

EUSPA/European Union does not acquire ownership of BIPR under this Contract.

If the Contractor, after the signature of this Contract, invokes the existence of any additional Background Intellectual Property to be used for the purposes of this Contract, it shall notify the Agency within 10 working days from the time it became aware of such need, providing conclusive evidence to the Agency of the existence of this Background Intellectual Property and justifying the reasons for which the existence of this Background Intellectual Property was not invoked before the Contract signature.

If conclusive evidence and appropriate justification are provided by the Contractor, the Parties shall formalise such change updating the List of Background Rights according to the provision of this Contract.

Conversely, if such evidence and justification are not provided, all information delivered shall be deemed as having been generated in the frame of the Contract and shall be treated as FIPR.

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 held by the Agency. 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 grants to the European Union/Agency the BIPR a royalty-free, non-exclusive, worldwide, perpetual, irrevocable license with the right to sublicense for the duration of the respective IPR protection and for the purposes of using the BIPR in all manners which are necessary for the purpose of this Contract and for the exploitation of the FIPR, including in particular, but not limited to, as follows:

- i) The right to store, reproduce, publish, display, adapt and create derivative works from, make publicly available, or distribute in tangible or intangible form, on any hardware (virtual or physical) or other medium, offline or online (via private or public networks, by any means, including active- service-providing, software-as-a-service, cloud computing or any other form

- of remote service) the subject-matter of the Background IPR to the extent that this is necessary for the use of the Foreground IPR within the EU Space Programme and of the space component of Horizon Europe; where necessary , this includes the right to have access to source codes and technical information
- ii) The right to use the subject-matter of the Background IPR in the frame of virtual or physical systems, databases, data networks, online services, terrestrial and space related activities, including the right to make available the subject-matter of the Background IPR necessary for the use of the Foreground IPR to end-users of databases, data networks, online services, terrestrial and space related activities, offline or online, by means of hardware or software tools or via download;
 - iii) The right to use or make available for use of third parties the subject-matter of the Background IPR necessary for the use of the Foreground IPR offline or online, on computers or other virtual or physical hardware devices;
 - iv) The right to use the subject-matter of the Background IPR as described above not only for purposes of the European Union and the Agency, but also for rendering services to third parties;
 - v) The right to modify the subject-matter of the Background IPR in any manner that is necessary for the use of the Foreground IPR for the purpose of operation, maintenance, service provision and future evolutions or any other use within the EU Space Programme and of the space component of Horizon Europe, including re-engineering or re-programming of the programme code (e.g. mere customizing or parametrization);
 - vi) The right to develop add-ons (= further developments) to any work or programme subject to Background IPR that is necessary for the use of the Foreground IPR.

This license shall survive the end of this Contract for whatever reason for as long as the use of such Background IPRs is necessary for the European Union and /or the Agency to use, modify, develop add-ons on the Foreground IPR.

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

The payment of the price as set out in the Contract is deemed also to include any fees payable to the Contractor in relation to the licensing of the BIPR as per above.

ARTICLE 10 - LIABILITY

- 10.1.** The Contractor shall be solely responsible for the performance of the Contract. Where the Contract is being entered into between EUSPA and two or more economic operators, all of such economic operators shall be jointly and severally liable for the performance of the Contract.
- 10.2.** EUSPA is not liable for any loss or damage, including any loss or damage to third parties, occurred during, or as a consequence of, the performance of the Contract, except in the event that such loss or damage is the direct consequence of wilful misconduct or gross negligence by EUSPA.
- 10.3.** The Contractor is liable for any loss or damage caused to EUSPA during, or as a consequence of, the performance of the Contract, including in the event of subcontracting, up to an amount not exceeding two times the total price of the Contract. Nevertheless, if the damage or loss is caused by the gross negligence or wilful misconduct of the Contractor, its personnel

or Contractor Parties, the Contractor shall have unlimited liability for the amount of the damage or loss.

- 10.4.** The Contractor undertakes to fully indemnify and hold EUSPA harmless against any action or claim brought by a third party for any damage or loss suffered in connection with the Contract, such as, without limitation, for breach of its intellectual property rights (including the related costs such as reasonable lawyer fees).
- 10.5.** If a third party brings any action against EUSPA in connection with the implementation of the Contract, including any action for alleged breach of intellectual property rights, the Contractor must assist EUSPA in the legal proceedings, including by intervening in support of EUSPA upon request.

ARTICLE 11 – CONFIDENTIALITY

- 11.1.** The Contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to the performance of the Contract. Especially, the Contractor shall not, without the prior written consent of EUSPA, use such information or documents for any purposes other than for the performance of the Contract or disclose them, whether directly or indirectly, to any third party. The Contractor undertakes to ensure protection of any confidential information with due diligence and using the highest professional standard. The Contractor shall continue to be bound by this undertaking after completion of the tasks for a duration of at least five (5) years unless:
- (i) the Agency agrees to release the Contractor from the confidentiality obligation earlier;
 - (ii) the confidential information becomes public through other means than in breach of the confidentiality obligation, through disclosure by the Contractor;
 - (iii) the disclosure of the confidential information is required by law.
- 11.2.** The Contractor shall obtain by any Contractor Parties and any other third party involved in the performance of the Contract a commitment to comply with this Article. Upon request, the Contractor shall provide evidence of such commitment to EUSPA.

ARTICLE 12 - ANNOUNCEMENTS AND PUBLICITY

- 12.1.** 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.
- 12.2.** 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.

- 12.3.** 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.
- 12.4.** 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.

ARTICLE 13 - CONFLICT OF INTEREST

- 13.1.** The Contractor shall take all necessary measures to prevent any situation that could compromise the impartial and objective performance of the Contract. A conflict of interests exists where the impartial and objective performance of the Contract is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other direct or indirect personal interest. Any conflict of interest which could arise during the performance of the Contract must be notified to EUSPA in writing without delay. In the event of such conflict, the Contractor shall immediately take all necessary steps to resolve it. Without prejudice to Article 3 hereof, the Contractor shall replace, immediately and without compensation from EUSPA, any member of his staff, Contractor Parties or a third party exposed to such a situation. EUSPA reserves the right to verify that such measures are adequate and may require additional measures to be taken, if necessary, within a time limit which it shall set. Failure to rectify conflict of interest situations may lead to termination pursuant to the provisions of Article 16.
- 13.2.** The Contractor declares that it has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, when such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, in so far as it serves as an incentive or reward relating to the performance of the Contract.
- 13.3.** The Contractor shall ensure that his staff, board, directors, Contractor Parties or a third party involved in the performance of the Contract are not placed in a situation that could give rise to conflicts of interest. The Contractor shall also pass on all the relevant obligations in writing to third parties involved in the performance of the Contract, including subcontractors.
- 13.4.** The Contractor shall abstain from any contact likely to compromise his independence.

ARTICLE 14 - FORCE MAJEURE

- 14.1.** Force majeure shall mean any unforeseeable and unavoidable situation or event beyond the control of the Parties which prevents either of them from performing any of their obligations

under the Contract, was not due to error or negligence on their part or on the part of a Contractor Party and could not have been avoided by the exercise of due diligence. Defaults of service, defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they occur as a direct consequence of a relevant case of force majeure.

- 14.2.** Without prejudice to Article 3.11 hereof, if either Party is faced with force majeure, it shall notify the other Party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.
- 14.3.** As soon as practicable following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to prevent and mitigate the effects of such force majeure event with the scope to continue the performance of the Contract.
- 14.4.** If either (a) no such terms are agreed on or before the date falling 30 (thirty) Days after the date of the commencement of the force majeure event, or (b) the Parties assess, acting reasonably at any time after the occurrence of the relevant force majeure event that the force majeure event is likely to last for a further period of at least 3 (thirty) Days, and in either such case such force majeure event is continuing, then each Party may terminate the Contract by giving 30 (thirty) days' written notice to the other Party.
- 14.5.** The affected party shall notify the other Party as soon as practicable after the force majeure event ceases or no longer causes the affected party to be unable to comply with its obligations under this Contract. The Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the force majeure event. On termination of the Contract under this article, neither Party shall pay any compensation to the other Party, save for possible claims having been raised prior the Force Majeure Event.
- 14.6.** Notwithstanding anything to the contrary in these general conditions, neither Party shall be held in breach of its contractual obligations if it has been prevented from performing them due to force majeure. Where the Contractor is unable to perform his contractual obligations due to force majeure, he shall have the right to remuneration only for tasks actually executed.
- 14.7.** The Parties shall take any necessary measures to limit any damage arising from force majeure.

ARTICLE 15 - SUSPENSION OF THE PERFORMANCE OF THE CONTRACT

- 15.1.** Without prejudice to EUSPA's right to terminate the Contract, EUSPA may at any time suspend execution of the tasks under the Contract or any part thereof (including payments), for any of the following reasons:
- a) if the Contract award procedure or the performance of the Contract proves to have been subject to irregularities, fraud or substantial breaches of obligations;
 - b) in order to verify whether presumed irregularities, fraud or substantial breaches of obligations have actually occurred;
 - c) if the Contractor is in a situation of conflict of interest pursuant to Article 13, and pending the definition and implementation of rectification actions as set out under Article 3;
 - d) if the performance of the Contract is considered to materially affect, directly or

indirectly, the interests of EUSPA/European Union, such as but not limited to security threats;

- e) if the Contractor is considered to be in non-compliant with the confidentiality obligations and is required to submit relevant observations;
- 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.

15.2. The suspension shall take effect on the day the Contractor receives notification by e-mail or at a later date where the notification so provides. EUSPA may at any time following suspension give notice to the Contractor to either resume the work suspended or terminate the Contract. The Contractor shall not be entitled to claim any compensation on account of suspension of the Contract or of part thereof.

During suspension for events attributable to the Contractor, no payments shall be due by the Contracting Authority under this Contract.

ARTICLE 16 – TERMINATION

16.1. Grounds for termination by EUSPA.

EUSPA may terminate, in whole or in part, the Contract, *inter alia*, in the following circumstances:

- (a) if the Contractor or any person that assumes unlimited liability for the debts of the Contractor is in one of the situations provided for paragraph 1, point (a) or (b) of Article 138 of the Financial Regulation;
- (b) if the Agency becomes aware of any pre-existing or new facts evidencing a change to the Contractor's legal, financial, technical or organisational or ownership situation which change is:
 - affecting the performance of the Contract substantially; or
 - affecting the essential security interest of the European Union;
 - substantially modifying the conditions under which the Contract was initially awarded
 - or calling into question the decision to award the Contract.
- (c) if the provision of the services under the Contract has not actually started at the scheduled date;
- (d) if the Contractor is unable, through its own fault, to obtain, maintain or renew any consents required for implementation of the Contract;
- (e) if the Contractor or any Related Person is subject to any of the following situations:
 - (i) 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 negligence, including, in particular, any of the following:
 - fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of access to procurement or selection criteria or in the implementation of the Contract;
 - entering into agreement with other persons or entities with the aim of

- distorting competition;
 - violating intellectual property rights;
 - unduly influencing or attempting to unduly influence the decision-making process to obtain Union funds by taking advantage, through misrepresentation, of a conflict of interests involving any financial actors or other persons referred to in Article 61(1) of the Financial Regulation;
 - attempting to obtain confidential information that may confer upon it undue advantages in the award procedure;
 - incitement to discrimination, hatred or violence against a group of persons or a member of a group or similar activities that are contrary to the values on which the Union is founded enshrined in Article 2 Treaty on European Union, where such misconduct has an impact on the person or entity's integrity which negatively affects or concretely risks affecting the performance of the legal commitment;
- (f) it has been established by any means which the Agency, acting in good faith, can justify that the person or entity is responsible of any of the following conducts:
 - (i) fraud, within the meaning of Article 3 of Directive (EU) 2017/1371 of the European Parliament and of the Council 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;
 - (ii) corruption, as defined in Article 4(2) of Directive (EU) 2017/1371 or active corruption within the meaning of Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997 , or conduct referred to in Article 2(1) of Council Framework Decision 2003/568/JHA , or corruption as defined in other applicable laws;
 - (iii) conduct related to a criminal organisation as referred to in Article 2 of Council Framework Decision 2008/841/JHA;
 - (iv) money laundering or terrorist financing within the meaning of Article 1(3), (4) and (5) of Directive (EU) 2015/849 of the European Parliament and of the Council;
 - (v) terrorist offences or offences related to terrorist activities, as defined in Articles 3 to 12 of Directive (EU) 2017/541 of the European Parliament and of the Council, or inciting, aiding, abetting or attempting to commit such offences, as referred to in Article 14 of that Directive;
 - (vi) child labour or other offences concerning trafficking in human beings as referred to in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council;
 - (vii) the person or entity has shown significant deficiencies in complying with main obligations in the implementation of a legal commitment, other than the Contract, financed by the budget of the European Union which has:
 - (viii) led to the early termination of a legal commitment;
 - (ix) led to the application of liquidated damages; or
 - (x) been discovered by an authorising officer, the European Anti-Fraud Office (OLAF), the Court of Auditors or the European Public Prosecutor's Office (EPPO) following checks, audits or investigations;
- (g) the person or entity has committed an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95;
- (h) the person or entity has created an entity in a different jurisdiction with the intent to circumvent fiscal, social or any other legal obligations including those related to working rights, employment and labour conditions in the jurisdiction of its registered

- office, central administration or principal place of business;
- (i) the entity or person has intentionally and without proper justification resisted an investigation, check or audit carried out by an authorising officer or its representative or auditor, OLAF, the EPPO, or the Court of Auditors. It shall be considered that the person or entity resists an investigation, check or audit when it carries out actions with the goal or effect of preventing, hindering or delaying the conduct of any of the activities needed to perform the investigation, check or audit. Such actions shall include, in particular, refusing to grant the necessary access to its premises or any other areas used for business purposes, concealing or refusing to disclose information or providing false information;
 - (j) The Contractor is the addressee of a decision prohibiting the award of the contract for having received foreign subsidies distorting the internal market, adopted by the European Commission in accordance with REGULATION (EU) 2022/2560 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 December 2022 on foreign subsidies distorting the internal market;
 - (k) the Contractor is subject to international procurement instruments measures pursuant to the provision of Regulation 2022/1031 and related implementing acts
 - (l) 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
 - (m) if the Contractor does not comply with applicable laws, including, without limitation to, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;
 - (n) if the Contractor fails to notify the Contracting Authority that it is in a situation of Conflict of Interest as referred to in Article 13; 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
 - (o) if the Contractor is in breach of any of the confidentiality obligations resulting from Article 11;
 - (p) if the Contractor does not comply with the applicable data protection obligations resulting from Regulation (EU) 2016/679;
 - (q) 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;
 - (r) 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;
 - (s) the Contractor failing to comply with the provisions of Article 21 (Assignment);
 - (t) any failure to comply with the provisions of Article 3;
 - (u) the Contractor reaches the liability cap under Article 10.3.

16.2. Ground for termination by the Contractor

The Contractor may terminate the Contract if EUSPA repeatedly fails to comply with its substantial obligations, in particular the obligation to provide the information needed for the Contractor to perform the Contract, as provided for in the tender specifications.

16.3. Procedure for termination

A Party must notify in writing (the “**Initial Communication**”) the other Party of its intention to terminate, wholly or partially, the Contract and the grounds for termination.

The other Party has 15 days following the date of receipt to submit observations, including the measures it has taken or will take to continue fulfilling its contractual obligations. Failing that, the decision to terminate becomes enforceable the day after the time limit for submitting observations has elapsed.

If the other Party submits observations, the Party intending to terminate must notify in writing (the “**Final Communication**”) either the withdrawal of its intention to terminate or its final decision to terminate. In this case, termination will become effective on the date of receipt of the Final Communication.

16.4. Effects of termination

In case of termination by EUSPA, the Contractor - on receipt of the letter terminating the Contract - shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty (60) days from that date. EUSPA may claim compensation for any damage suffered and recover any sums paid to the Contractor under the Contract. Performances shall be returned pursuant to the applicable law. On termination, EUSPA may engage any other Contractor to perform and/or complete the delivery/provision of goods, services or works. EUSPA shall be entitled to claim from the Contractor all extra costs incurred in making good and performing and/or completing the delivery/provision of goods, services or works, without prejudice to any other rights or guarantees it has under the Contract.

In the event of EUSPA terminating the Contract and without prejudice to any other measures provided for in the Contract, the Contractor shall not have, and to this end also shall waive, any claim for indirect or consequential damages, including any loss of anticipated profits for uncompleted work.

ARTICLE 17 - CHECKS AND AUDITS

- 17.1.** EUSPA may check or require an audit on the implementation of the Contract. This may be carried out by any third party authorised to do so on its behalf.
Such checks and audits may be initiated at any moment during the provision of the services/supplies and up to five years starting from the payment of the balance under the Contract. The audit procedure is initiated on the date of receipt of the relevant letter sent by the contracting authority.
- 17.2.** The Contractor shall keep all original documents stored on any appropriate medium, including digitised originals when they are authorised by national law for a period of five years which starts from the late payment made by the Agency.
- 17.3.** The Contractor shall allow 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. The Contractor shall ensure that the information is readily available at the moment of the checks or audit and, if so requested, that information be handed over in an appropriate form. EUSPA shall not be obliged to pay any compensation to the Contractor in connection to exercising its right under this Article.

- 17.4.** 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 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 investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, the European Commission and OLAF may carry out on the spot checks and inspections in accordance with the procedures laid down by Union law for the protection of the financial interests of the Union against fraud and other irregularities. The findings may lead to recovery by the Agency in accordance with the applicable European Union law.
- 17.5.** The Court of Auditors and the European Public Prosecutor's Office established by Council Regulation (EU) 2017/1939 ('the EPPO') and, for the processing of personal data, the European Data Protection Supervisor have the same rights as EUSPA, particularly right of access, for the purpose of checks, audits and investigations.

ARTICLE 18 – AMENDMENTS

- 18.1.** Any amendment to the Contract shall be the subject of a written agreement concluded by the Parties before Contract expiration.
- 18.2.** The amendment may not have the purpose or the effect of making changes to the Contract that might alter the initial conditions of the procurement procedure or result in unequal treatment of tenderers or contractors.

ARTICLE 19 - DATA PROTECTION

- 19.1.** 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 data¹. Such data shall be processed by EUSPA and the Contractor, each acting as a separate controller and being responsible for its respective processing activities, solely for the purposes of the performance, management and monitoring of the Contract.
- 19.2.** The following categories of personal data are a priori expected to be processed by EUSPA and the Contractor, each acting as a separate controller, during the implementation of the Contract for the purposes of the performance, management and monitoring of the Contract: contact details of EUSPA's and the Contractor's (including subcontractors) personnel that may be included in deliverables to be produced and/or services to be performed and/or associated communication to be exchanged under the Contract, such as first name and last name, telephone number, e-mail address, postal address, organisation and position within the organisation.
- 19.3.** The recipients of the personal data mentioned under Article 19.2 shall be (1) a limited number of staff of EUSPA managing the Contract, (2) a limited number of staff of EUSPA Contractors (including subcontractors) assisting EUSPA staff in the management of the

¹ Regulation (EU) 2018/1725 (hereinafter 'EUDPR') for EUSPA, and Regulation (EU) 2016/679 (hereinafter 'GDPR') for the Contractor.

Contract, (3) a limited number of staff of EUSPA Contractors (including subcontractors) providing hosting services for EUSPA servers, and (4) a limited number of Contractor (including subcontractors) personnel managing and performing the Contract.

- 19.4.** Any person whose personal data is processed by either EUSPA or the Contractor in relation to this Contract has specific rights as a data subject under Chapter III of the EUDPR and the GDPR respectively, in particular the right to access, rectify or erase their personal data and the right to restrict or, where applicable, the right to object to processing or the right to data portability.
- 19.5.** Should any person whose personal data is processed in relation to this Contract have any queries concerning the processing of its personal data, it shall address itself to the respective data controller for the processing in question (EUSPA or the Contractor). They may also address themselves to the Data Protection Officer of the responsible data controller.
- 19.6.** Data subjects have the right to lodge a complaint at any time with the competent supervisory authority: for EUSPA, this is the European Data Protection Supervisor; for the Contractor, this is the relevant national supervisory authority under the GDPR.
- 19.7.** Further details regarding the processing of personal data by each party, acting as a separate controller, are outlined in their respective privacy statements. Data subjects shall be able to obtain a copy of the privacy statement of the respective controller upon request.
- 19.8.** If, throughout the duration of the Contract, it becomes necessary to process the personal data mentioned in Article 19.2, or any additional personal data, for purposes other than those specified in Article 19.1, the roles and responsibilities of EUSPA and the Contractor shall be defined in accordance with applicable data protection legislation.

EUSPA shall act as the data controller in case it determines the purposes and means of the processing, while the Contractor shall assume the role of the data processor in case it processes personal data exclusively on behalf and under the instructions of EUSPA.

In such cases, where the Contractor acts as the data processor and EUSPA as the data controller, the Contractor shall comply with the provisions of Article 29 EUDPR. In addition, such arrangement shall be governed by a binding written agreement between EUSPA and the Contractor, which shall specify the subject matter and duration of the processing, the nature and purpose of the processing, the type of personal data, the categories of data subjects and the obligations and rights of the controller, in accordance with Article 29(3) of the EUDPR.

ARTICLE 20 - APPLICABLE LAW AND JURISDICTION

- 20.1.** The Contract shall be governed by the EU law complemented by the substantive law of Belgium without reference to its conflict of law provisions.
- 20.2.** Any disputes between the Parties resulting from the interpretation or application of the Contract, which cannot be settled amicably, shall be brought before the General Court (as part of the Court of Justice of the European Union – CJEU).

ARTICLE 21 – ASSIGNMENT

- 21.1.** The Contractor shall not assign the Contract, any of its parts or any rights and obligations arising from the Contract, in whole or in part, without prior written authorisation from EUSPA.
- 21.2.** In the absence of such authorisation, or in the event of failure to observe the terms thereof, assignment by the Contractor shall not be enforceable against, and shall have no effect on, EUSPA.

ARTICLE 22 – SEVERABILITY

If any term, condition or provision contained in this Contract shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Contract. The Parties shall undertake to replace without delay such invalid, unlawful or unenforceable provision by a valid, lawful and enforceable provision, which shall to the greatest possible extent comply with the meaning of the invalid, unlawful or unenforceable provision and with the purpose and objectives of this Contract

ARTICLE 23 – NON-WAIVER

The failure of EUSPA to exercise any right, power or remedy provided under the present general conditions of Contract or otherwise available in respect hereof at law, or to insist upon compliance by the Contractor with its obligations hereunder, shall not constitute a waiver by EUSPA of its right to exercise any such or other right, power or remedy or to demand such compliance. No term or condition of these general conditions of Contract shall be deemed to have been waived by EUSPA, except by an unequivocal statement in writing signed by an authorized representative of the latter. Any written waiver shall not be deemed a continuing waiver unless specifically stated, shall operate only as to the specific term or condition waived and shall not constitute a waiver of such term or condition for the future or as to any act other than that specifically waived.

ARTICLE 24 - COMMUNICATION BETWEEN THE PARTIES

24.1. Form and means of communication

Any communication of information, notices or documents under the purchase order must:

- (a) be made in writing in paper or electronic format in the language of the Purchase Order;
- (b) bear the Purchase Order number;
- (c) be made using the relevant communication details set out in the Purchase Order; and
- (d) be sent by mail or email.
- (e) If a Party requests written confirmation of an e-mail within a reasonable time, the other Party must provide an original signed paper version of the communication as soon as possible.
- (f) The Parties agree that any communication made by e-mail – to the e-mail address(es) indicated in the Purchase Order - has full legal effect and is admissible as evidence in judicial proceedings.

24.2. Date of communications by mail and e-mail

Any communication is deemed to have been made when the receiving party receives it unless this Purchase Order refers to the date when the communication was sent.

E-mail is deemed to have been received by the receiving party on the day of dispatch of that e-mail, provided that it is sent to the e-mail address indicated in the Purchase Order. The sending Party must be able to prove the date of dispatch. In the event that the sending Party receives a non-delivery report, it must make every effort to ensure that the other party actually receives the communication by e-mail or mail. In such a case, the sending Party is not held in breach of its obligation to send such communication within a specified deadline.

Mail sent to EUSPA is deemed to have been received by EUSPA on the date on which the department responsible referred to in the Purchase Order registers it.

Formal notifications are considered to have been received by the receiving Party on the date of receipt indicated in the proof received by the sending Party that the message was delivered to the specified recipient.

SECTION II – CONDITIONS ONLY APPLICABLE TO THE SUPPLY OF GOODS

ARTICLE 25 – DELIVERY AND ACCEPTANCE

- 25.1.** Where tasks referred to in the Purchase Order consist in delivering goods (including intangible assets stored on tangible media), the Contractor shall notify EUSPA in writing (e-mail) and at least three (3) working days in advance of the exact date of delivery thereof. The Contractor shall deliver the goods at the place as specified in the Purchase Order. If no place of delivery is specified in the Purchase Order or in any communication related to the Contract, the Contractor shall request by e-mail that EUSPA communicates a place of delivery unless there are no reasonable doubts regarding the place of delivery. The Contractor shall bear all costs and risks in connection to delivering the goods to the place of delivery.
- 25.2.** Acceptance of the goods or failure to refuse them shall be without prejudice to any right of EUSPA under the Contract or applicable law, including, but not limited to, the right to claim remedies in connection to defective goods or resulting from warranty, to reject a request for payment pursuant to Article 6.2 hereof, to suspend the payment period pursuant to Article 6.8 hereof, to apply liquidated damages as per Article 4 or to enforce the rights pursuant to Article 7 hereof.

SECTION III – CONDITIONS ONLY APPLICABLE TO THE PROVISION OF SERVICES

ARTICLE 26 - PERFORMANCE OF SERVICE CONTRACT

- 26.1.** Any Contractor's personnel working on EUSPA premises shall remain fully under the responsibility of the Contractor's supervision and its responsibility as employer. Any working area at EUSPA site is purely provided for ease of service provision and does not replace that personnel's workplace with his/her employer.
- 26.2.** The Contractor shall ensure that any Contractor personnel working at EUSPA premises:



- (i) coordinate, in terms of logistics and working time, with the needs and working hours of the Contracting Authority.
- (ii) Comply with any specific EUSPA policy/procedure applicable to Contractors' personnel - including, without limitation, EUSPA's health and safety, management of conflict of interests and security policies/procedures - as provided by EUSPA and, in case required by such policy/procedure signs the relevant declarations.

26.3. Failure to comply with the provision of this article seriously affect the provision of the services as required by EUSPA, constitute a ground for termination by EUSPA according to the provisions of Article 16.