

FRAMEWORK CONTRACT FOR INTERIM WORKERS IN CASCADE

EUSPA/OP/18/26

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

on one part, and

[Contractor's full official name]

[Contractor's official legal form]

[Contractor's statutory registration number]

[Contractor's full official address]

[Contractor's VAT registration number]

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

on the other part,

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

HAVE AGREED

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

Annex II.I	Tender Specifications and their annexes including corrigenda and
Annex II.II	Contractor's Tender dated [xx/xx/xxx] including clarifications
Annex II.III	Draft Specific Contract – TEMPLATE (enclosed in the present document)
Annex II.IV	Interim Worker Timesheet – TEMPLATE
Annex II.V	Declaration on confidentiality and absence of conflicting professional interest – TEMPLATE

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

- a) The terms set out in the Special Conditions shall take precedence over those in the General Conditions;
- b) The terms set out in the Framework Contract shall take precedence over the other Annexes;
- c) The terms set out in Annex II.I shall take precedence over those in Annex II.II, Annex II.III, II.IV and II.V;
- d) The provisions set out in the Framework Contract take precedence over those in the Specific Contract;
- e) The provisions set out in the Specific Contracts take precedence over those in the relevant Terms of Reference;
- f) The provisions set out in the Terms of Reference take precedence over those in the respective Specific Offer, unless otherwise agreed in the Specific Contract.

I. SPECIAL CONDITIONS

ARTICLE I.1 – SUBJECT MATTER

- I.1.1.** The subject matter of the Framework Contract is the provision of interim workers by the Contractor (temporary work agency) to the Contracting Authority as a user at the Contracting Authority's headquarters in Prague, as further specified in Annex II.I to this FWC.
- I.1.2.** Signature of the FWC imposes no obligation on the Contracting Authority to conclude any Specific Contracts for the purchase of any services from the Contractor and nothing in this agreement shall be interpreted or construed as a commitment to the entire amount of the FWC.

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

- I.2.1** The FWC shall enter into force on the date on which the last party signs it. Execution of the tasks may under no circumstances begin before the date on which the FWC and Specific Contract enter into force.
- I.2.2** The FWC is concluded for a period of 12 (twelve) months with effect from the date on which it enters into force.
- I.2.3** The FWC is renewed automatically 3 (three) times for 12 (twelve) months each, unless one of the parties receives Formal Notification from the other party to the contrary at the latest 3 (three) months before expiry of the on-going duration. Renewal does not change, postpone or defer any existing obligations.
- I.2.4** The Specific Contracts shall be signed by the parties before the FWC expires. The FWC shall continue to apply to such Specific Contracts also after their expiry. However Specific Contracts shall expire no later than 6 (six) months after the expiry of the FWC.

ARTICLE I.3 – IMPLEMENTATION OF THE FWC AND THE CASCADE

- I.3.1.** The Contracting Authority's request for services shall include Terms of Reference for a Specific Contract detailing at least.
 - a. number of positions to be filled and the requirements for such positions;
 - b. envisaged period of assignment (start / end dates);
 - c. maximum total value of the Specific Contract.
- I.3.2.** Upon receipt of the request for services, the Contractor shall identify suitable candidates. No later than five (5) working days from receipt of the request for services, the Contractor shall propose at least three (3) qualified persons per requested position, using the EUROPASS or comparable CV format. The candidates proposed shall match the requested requirements, be available to commence the assignment within the expected start date and be able to work at the Contracting Authority's premises for the expected duration of the assignment.
- I.3.3.** When selecting candidates for presentation to the Contracting Authority, the Contractor shall act exclusively in the interests of the Contracting Authority and with a view to proposing the best available candidates, avoiding any preferential treatment towards any specific candidate and without accepting any form of internal or external influence.
- I.3.4.** The Contracting Authority shall have the right to invite one or more of the proposed candidates for interview, conducted online or at its premises, at the expense of the Contractor. Candidates must be available for interview at short notice, with a minimum notice period of one (1) working day.

- 1.3.5.** The Contracting Authority shall assess whether the proposed candidates are suitable for the requested position(s). The Contracting Authority shall endeavour to confirm to the Contractor its choice of candidate(s) for the assignment within three (3) working days from the last relevant interview.
- 1.3.6.** Within five (5) working days from the Contracting Authority's confirmation, the Contractor shall submit to the Contracting Authority a Specific Offer corresponding to the requirements of the request for services in respect of the selected candidate(s). The Specific Offer shall include all information required by applicable law for the assignment of interim workers, including in particular the personal data of the interim worker, the agreed start date and expected duration of the assignment, the applicable working and wage or salary conditions of the EUSPA staff who performs or would perform the same work as the temporarily assigned employee at the function group category II, taking into account length of professional experience and its entitlements, and the applicable price calculated in accordance with the Contractor's financial proposal set out in Annex II.II.
- 1.3.7.** Following the receipt of the Specific Offer, the Agency shall send the Contractor the relevant Specific Contract, substantially in line with the template annexed to this Framework Contract. The Contractor shall return the countersigned Specific Contract to the Agency within five (5) working days of receipt.
- 1.3.8.** The period during which the interim workers may be engaged under Specific Contract shall commence on the date indicated in the Specific Contract and shall not exceed the term of the Specific Contract.

ARTICLE I.4 – CASCADE

- 1.4.1.** The present Contract will be implemented through Specific Contracts to be awarded in cascade.
- 1.4.2.** The Contractor is ranked [first/second] in cascade.
- 1.4.3.** The Contracting Authority may at any time request from the contractor ranked first in cascade the provision of services falling within the scope of this Framework Contract, through the issuing of a request for services.
- 1.4.4.** The Contracting Authority has the right to request the provision of services from the contractor ranked second in cascade, if the contractor ranked first:
- a. fails to provide to the Contracting Authority within the applicable time-limit the list of at least 3 (three) candidates for each requested position who are available for interview, or informs the Contracting Authority that it will not do so for any reason;
 - b. provides the Contracting Authority candidates which are not suitable for the requested position, or otherwise provides an offer which is non-compliant or only partially compliant with the requirements set out in the request for services;
 - c. fails to send the signed Specific Contract to the Contracting Authority within 5 (five) working days from reception of the Specific Contract signed by the Contracting Authority or informs the Contracting Authority that it will not do so for any reason;
 - d. fails to provide the interim workers included in its offer as of the moment agreed in the Specific Contract or informs the Contracting Authority that it will not do so for any reason;
 - e. fails to provide candidates for replacement of interim worker within 5 (five) working days of the notification of the termination of the assignment;
 - f. gives rise to any other grounds for termination or partial termination of the FWC or the Specific Contract, including, without limitation, partial termination of a Specific Contract for the part terminated or partially terminated.
- 1.4.5.** Where any of the circumstances referred to in points (a) to (f) of Article I.4.4 arise with respect to one or more, but not all, of the positions included in a given request for services, the Contracting Authority may nevertheless refer the entire request for services to the contractor ranked second in cascade.
- 1.4.6.** Except in case of proven Force Majeure as per ARTICLE II.9 – FORCE MAJEURE, the Contractor shall under no

circumstances refuse to conclude Specific Contracts, provided that such Specific Contracts are compliant with the Tender Specifications (Annex II.I) and with the provisions of the present FWC.

ARTICLE I.5 – COMPLIANCE WITH THE LABOUR LAW

- I.5.1.** It is the Contractor's sole responsibility and duty, also beyond legal acts listed in Annex II.I, to comply and ensure full compliance with all applicable laws of any part of performance under the Framework Contract. In particular, the Contractor shall fully comply with Temporary Agency Work Directive and the applicable laws implementing it, including the Czech Act No. 262/2006 Coll., the Labour Code, and the Czech Act No. 435/2004 Coll., on Employment.
- I.5.2.** The interim workers assigned to the Contracting Authority shall remain fully under the Contractor's control and responsibility as an employer. However, during a period of temporary assignment of an interim worker (by a Contractor that is his/her employer) to the Contracting Authority, the interim worker shall be given working tasks by the Contracting Authority, and his/her work shall be organised, managed and supervised by the Contracting Authority. The Contractor must inform its interim workers that they shall accept instructions directly from the Contracting Authority solely in relation to the performance of the services.
- I.5.3.** No contract of employment shall be established between the Contracting Authority and the interim worker. It shall be the Contractor's sole duty and responsibility to ensure that no employment relationship between the Contracting Authority and any interim worker be ever construed, argued or claimed. It shall be the Contractor's sole responsibility to ensure that interim agency workers understand that they are not employed by the Contracting Authority and shall not interpret any part of their assignment to the Contracting Authority as creating any employment relationship between them and the Contracting Authority.
- I.5.4.** The Contractor shall guarantee to the Contracting Authority that the interim worker will not acquire any legal right with respect to the Contracting Authority under any employment laws or other similar/related laws or rules, whether by reason of duration or other circumstances of their assignment to Contracting Authority.
- I.5.5.** The Contractor shall immediately notify the Contracting Authority of any situation regarding length of assignment or other circumstances that might give rise to claims on the part of any interim worker. In any event the Contractor shall take all measures to prevent such claims from arising.
- I.5.6.** The Contractor shall ensure that, in line with the applicable legislation, the principle of equal treatment is applied to interim workers taking into consideration the level of the comparability of interim agency worker to relevant Contracting Authority's staff member(s). The Contractor undertakes to provide the interim workers with working conditions which are equal to those provided by the Contracting Authority to its comparable staff.
- I.5.7.** To the maximum extent permitted by law, the Contractor shall hold the Contracting Authority harmless from any interim worker or third party claims as may arise from or in connection with the Framework Contract or its implementation, as well as any breach of the Contractor's obligations, in particular (without limitation) any claims brought by interim agency workers, whether on employment grounds/arguments or otherwise. Further, the Contractor shall indemnify the Contracting Authority for any claims raised by interim agency workers as a (direct or indirect) result of the assignment.
- I.5.8.** The Contractor waives any rights of recourse against the Contracting Authority which could arise in connection with damages paid by the Contractor to the interim worker related to tasks performed for the Contracting Authority or in direct connection therewith.

ARTICLE I.6 – REQUIREMENTS FOR THE INTERIM WORKERS

- 1.6.1.** Contractor must ensure that the interim worker assigned to the Contracting Authority possesses the professional qualifications and experience required for the execution of the tasks assigned to it and, at the same time, holds all necessary residence and work permits, if required for the performance of their work.
- 1.6.2.** The Contractor shall ensure that during their assignment to Contracting Authority, the interim workers comply with the internal rules of the Contracting Authority applicable to Contracting Authority's staff working in the Contracting Authority's HQ, in particular with respect to the security, health and safety, leaves and absences, working time arrangements, hybrid working, confidentiality, conflict of interest, security and use of artificial intelligence. These rules are provided to the Contractor as part of Annex II.I.
- 1.6.3.** The Contractor shall ensure that the interim workers sign the declaration of confidentiality and conflict of interest prior their engagement with the Contracting Authority (Annex II.V).
- 1.6.4.** The applicable rules and declaration form referred to in paragraphs 2 and 3 may be subject to change as a result of EUSPA decision or as a result of a change of applicable laws and regulations. EUSPA will inform the Contractor of any such changes. In cases where change is a result of EUSPA decision, such a change shall be considered in effect as of the date of such a notification. In cases where the change results from the change of applicable laws and regulations, the change shall be considered in effect as of the date stipulated in the relevant law or regulation. These changes shall not be understood as amendment of the Framework Contract.
- 1.6.5.** The Contractor shall ensure that the interim workers also comply with any other internal rules of the Contracting Authority as applicable from time to time, that, by their nature, should reasonably apply to all persons working at Contracting Authority's HQ regardless of their status, provided that such rules have been communicated to the interim worker through the internal system to which the interim worker has access or any other means.

ARTICLE I.7 – TERMINATION AND REPLACEMENT OF INTERIM WORKERS

- 1.7.1.** The Contracting Authority may terminate the temporary assignment by written notice with a one month's notice period in the following circumstances:
- In case of dissatisfaction with the work of an interim worker the Contracting Authority shall inform the Contractor thereof describing the reason for the dissatisfaction;
 - where the need for which the temporary assignment ceases.
- 1.7.2.** The Contracting Authority may terminate the temporary assignment by written notice with 7-day notice period:
- in the event of the assigned interim worker's prolonged absence exceeding ten (10) working days due to an impediment to work (such as sickness or injury);
 - where the assigned interim worker commits a serious breach of obligations arising from legal regulations applicable to the work temporarily performed, or in the event of repeated less serious breaches of such obligations;
 - if the assigned interim worker commits a criminal offence during the temporary assignment at the Contracting Authority's premises, in the performance of work or in direct connection therewith, and criminal proceedings have been initiated against the interim worker in respect of such offence.
- 1.7.3.** The assigned interim worker is entitled to terminate the temporary assignment before the end of its term without giving a reason with one month notice period. The interim worker's unilateral notice must be delivered

to the Contractor, who shall inform the Contracting Authority immediately.

- 1.7.4.** The assigned interim worker may terminate the temporary assignment by written notice if the Contracting Authority breaches any of the working conditions applicable to a comparable employee with 7-day notice period. The interim worker's unilateral notice must be delivered to the Contractor, who shall inform the Contracting Authority immediately.
- 1.7.5.** In case of any termination of the temporary assignment, the Contractor shall propose a suitable candidate for replacement within five (5) working days of the notification of termination, unless the Contracting Authority agrees with a longer period.
- 1.7.6.** Without prejudice to the possibility to terminate the assignment of the interim worker according to Art 1.7.2 a), any:
- a. unjustified/unauthorised absence in accordance with the Contracting Authority's rules referred to in 1.6.2 on the part of an interim worker; or
 - b. any absence of the interim worker due to an impediment to work (such as sickness or injury) exceeding ten (10) working days;

shall lead to the proportional decrease of the price paid to the Contractor for temporary assignment of interim worker and shall be considered by the Contracting Authority as an interruption of the service provided by the Contractor. Such proportional decrease shall be calculated on the basis of calendar days.

- 1.7.7.** Replacement of the interim workers or addition of new interim workers into a Specific Contract may be formalized through exchange of letters between the Contractor and Contracting Authority's point of contact. This exchange of letters shall constitute an amendment of the relevant Specific Contract.

ARTICLE I.8 – PRICES AND COST REIMBURSEMENT

I.8.1. PRICES

- I.8.1.1.** The maximum amount of the FWC for its entire duration, including all renewals and reimbursement of expenses, is EUR [...] ([...]euros). However, this must in no way be construed as a commitment by the Agency to purchase for the maximum amount.
- I.8.1.2.** All inclusive monthly prices are as indicated in the financial proposal in Annex II.II. These prices consist of:
- a. Pre-determined price component, consisting of:
 - Current basic salary of the Contracting Authority's staff with the comparable profile;
 - The relevant entitlements (specifically expatriation allowance, household allowance, dependent child allowance, education allowance – as reflected in Annex I.F.2) of the Contracting Authority's staff taking into account specific circumstances of the individual interim worker.
 - b. Factor to cover other costs of the Contractor, as proposed in the Annex II.II, that is applied on the pre-determined price component calculated for the individual worker.
- I.8.1.3.** The "factor to cover other costs of the Contractor" shall comprise effort for all the activities necessary for their performance, including all costs incurred directly and indirectly by the Contractor in performance of the services. This includes any costs borne by the Contractor to ensure compliance with its obligations under the applicable legislation, in particular with respect to the equality of treatment of interim workers (including any payments to ensure equal treatment not covered by mechanism under Art. I.8.1.2a), such as any additional entitlements, tuition costs, reimbursement of public transportation costs, etc.).The

“factor to cover other costs of the Contractor” shall remain firm and fixed throughout the duration of the Contract. The pre-determined price component shall however be updated in the following circumstances:

- a) In case of a change in the individual circumstances of the interim worker impacting the amount of entitlements referred to in Art. I.8.1.2.a that the Contracting Authority’s staff would receive, the Contractor is obliged to notify any such changes of the individual circumstances of the interim worker together with the new price to the Contracting Authority as soon as possible, and in any case no later than three (3) working days of such a change. The Contracting Authority shall confirm the receipt of such a notification without undue delay. Without prejudice to Art. I.8.1.8, the price shall be increased or decreased accordingly with effect from the first day of the second month following the month in which the notification was made. The maximum value of the relevant specific contract shall be adjusted accordingly to this price change.
- b) In case of a decision of the competent EU institution on the amendment of the amount of the basic salaries and/or allowances of EU staff which is applicable to the Contracting Authority’s staff. The Contracting Authority shall notify such a decision to the Contractor within two weeks of such a decision being communicated to the Contracting Authority. The Contractor shall confirm receipt of such a notification without undue delay. The price shall be increased or decreased accordingly as of 1st of February of the year following this decision. The maximum value of the relevant specific contract shall be adjusted accordingly to this price change.

The Contractor acknowledges that, as regards comparable staff of the Contracting Authority, the circumstances affecting basic salary or entitlements may have retroactive effect. If required to do so under the applicable law, the Contractor shall be responsible to reflect such retroactive effect in salaries and entitlements of the interim workers. The Contractor further acknowledges that costs related to this aspect are covered by “factor to cover other costs of the Contractor”. No retroactive adjustment of the price payable by the Contracting Authority shall be made in such cases, and any price increase or decrease shall apply only from the date specified in the preceding paragraphs.

- I.8.1.4.** The Contractor expressly acknowledges that the pre-determined price component as defined in Article I.8.1.2 a) constitutes solely the basis for calculating the remuneration payable by the Contracting Authority to the Contractor for the performance of the services under this Contract. Under no circumstances shall the pre-determined price component be construed as direct payment to, or on behalf of, the interim worker, nor as a determination of the interim worker's entitlements or remuneration.
- I.8.1.5.** Notwithstanding the structure of the pre-determined price component, it remains the Contractor's sole and full responsibility to ensure that all interim workers are remunerated in strict compliance with applicable law, including but not limited to the requirements for equal treatment of interim workers as set out in Article I.5.1 and any applicable national legislation. The Contractor shall not invoke the manner in which the pre-determined price component is structured or calculated as grounds for any failure to meet its obligations regarding the remuneration or equal treatment of interim workers. Furthermore, the Contractor shall not be entitled to claim any additional amounts from the Contracting Authority on such grounds, and any additional costs necessary to ensure compliance with the applicable equal treatment obligations shall be borne exclusively by the Contractor.
- I.8.1.6.** It shall be the Contractor's sole responsibility to correctly determine the individual circumstances of the interim worker relevant for the calculation of the pre-determined price component in accordance with Article I.8.1.2 a). The Contractor shall ensure that all information used as the basis for such calculation is accurate, complete, and up to date at all times.
- I.8.1.7.** In each Specific Offer and whenever a change in the individual circumstances of the interim worker occurs, the Contractor shall provide the Contracting Authority with a duly signed declaration of honour confirming

that the pre-determined price component has been determined correctly and in accordance with the applicable rules. The Contractor shall update such declaration of honour without undue delay, and in any case within the timeframe set out in Article 1.8.1.3, whenever a change in circumstances affects the calculation of the pre-determined price component.

- 1.8.1.8.** The Contracting Authority reserves the right to request, at any time, any relevant supporting documents it deems necessary to verify that the pre-determined price component has been correctly determined by the Contractor. The Contractor shall provide such documents promptly and in any case within five (5) working days of such a request, unless the Contracting Authority specifies a different deadline. Failure to provide the requested documentation, or the discovery of any inaccuracy in the determination of the pre-determined price component, shall entitle the Contracting Authority to adjust the price accordingly and to recover any overpaid amounts, without prejudice to any other rights or remedies available to the Contracting Authority under this Framework Contract or applicable law.

1.8.2. REIMBURSEMENT OF MISSION EXPENSES

In case the interim workers are sent on a mission by the Contracting Authority, the Contractor is entitled to reimbursement of the mission expenses of such interim workers according to the same rules as those applicable to the EUSPA staff (Annex II.I). This is without prejudice to the right of the Contracting Authority to amend the rules in accordance with Art. I.6.4.

ARTICLE I.9 – PAYMENT ARRANGEMENTS

- 1.9.1.** Unless the Specific Contract provides otherwise, the Contractor shall submit an invoice every month, indicating the reference number of the Framework Contract and of the Specific Contract to which it refers for payment. The invoice shall concern the services provided within the invoicing period.
- 1.9.2.** Invoices shall be accompanied by the following:
- timesheets of the respective interim workers following the template in Annex II.IV of the FWC;
 - statements of reimbursable mission costs pursuant to I.8.2, if any;
 - any other document required in accordance with the relevant Specific Contract.
- 1.9.3.** The Agency shall have 30 (thirty) days from the receipt of all the documents above to approve, countersign the timesheet. Following the approval of the timesheet, the Contractor shall submit the invoice. The Contracting Authority shall make the payment within 30 (thirty) days from receipt of the invoice with the approved timesheet, subject to Article II.13.7.
- 1.9.4.** Any payments against invoice made under the Specific Contract are payments for provision of services and do not represent and shall not be understood as salary payments or replacement of such. Payment of salaries for interim workers shall remain the sole responsibility of the Contractor.

ARTICLE I.10 – BANK ACCOUNT

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

[Account Name]

[IBAN]

[BIC/SWIFT]

ARTICLE I.11 - COMMUNICATION DETAILS

I.11.1 For the purposes of this FWC, communications shall be made in writing, including via e-mail, and sent to the following contacts:

Contractor:

Project officer:

[Full name]

[Function]

[Company name]

[Full official address]

Email: [complete]

Contract officer:

[Full name]

[Function]

[Company name]

[Full official address]

Email: [complete]

Contracting Authority:

Project officer:

[Full name]

[Function]

Email: [complete]

Contract officer:

[Full name]

[Function]

Email: [complete]

- I.11.2** The contact persons may be changed by exchange of emails between a representative of the Contractor and a representative of the EUSPA Legal and Procurement Department and sent to/from contracts@euspa.europa.eu.

ARTICLE I.12 – PROCESSING OF PERSONAL DATA

- I.12.1** For the purpose of ARTICLE II.5 – PROCESSING OF PERSONAL DATA, the data controller is:
Head of Human Resources Department
European Union Agency for the Space Programme (EUSPA)
Janovskeho 438/2 170 00 Prague 7, Czech Republic,
and provisions under ARTICLE II.5 – PROCESSING OF PERSONAL DATA apply.

ARTICLE I.13 – LIABILITY

- I.13.1** The Contractor is liable for any loss or damage caused or sustained to the Contracting Authority during or as a consequence of implementation of the FWC, including in the event of subcontracting, but only up to an amount not exceeding 50 % of the cumulative value of the signed Specific Contracts, as amended. However, if the damage or loss is caused by the gross negligence or willful misconduct of the Contractor or of its interim worker or subcontractors, as well as in the case of an action brought against the Contracting Authority by a third party for breach of its intellectual property rights, the limitation of liability above shall not apply
- I.13.2** The Contractor shall indemnify and hold the Contracting Authority harmless for all damages and costs incurred due to any claim within the limit of liability under Article I.13.1 above. The Contractor shall provide compensation in the event of any action, claim or proceeding brought against the Contracting Authority by a third party as a result of damage caused by the contractor during the performance of the FWC. If a third party brings any action against the Contracting Authority in connection with the implementation of the FWC, including any action for alleged breach of intellectual property rights, the Contractor must assist the Contracting Authority in the legal proceedings, including by intervening in support of the Contracting Authority upon request.
- I.13.3** If required by the relevant applicable legislation, the Contractor must take out an insurance policy against risks and damage or loss relating to the implementation of the FWC. It must also take out supplementary insurance as reasonably required by standard practice in the industry. Upon request, the Contractor must provide evidence of insurance coverage to the Contracting Authority.
- I.13.4** The Contracting Authority is not liable for any loss or damage caused to the Contractor during or as a consequence of implementation of the FWC, unless the loss or damage was caused by willful misconduct or gross negligence of the Contracting Authority.
- I.13.5** The Contractor shall indemnify the agency and/or the European Union from and against all claims, proceedings, damages, costs and expenses arising from the infringement of third party IPR in the frame of this contract, in case such infringement has been caused by the Contractor, its interim workers or its subcontractors. The above includes the Contractor's obligation to indemnify and hold harmless at first instance the Agency and the European Union against all claims and/or legal proceedings made in or out of court including all legal costs for court attorneys and or arbitration.

ARTICLE I.14 – CONFIDENTIALITY

- I.14.1** The Contractor must treat and shall cause its interim workers to treat with confidentiality any information

or documents, in any format, disclosed in writing or orally or got to know relating to the performance of the FWC. The Contracting Authority must treat with confidentiality any information which is identified by the Contractor in writing as confidential.

I.14.2 Each party must:

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

I.14.3 The parties are allowed to disclose Confidential Information to its directors, employees and representatives, as well as external legal, accounting, financial and other advisors on a strict need to know basis and provided that they act under a written or statutory confidentiality obligation equivalent to the one provided in this Article.

I.14.4 The confidentiality obligation set out in this Article are binding on the Contracting Authority and the Contractor during the performance of the Contract and for as long as the information or documents remain confidential unless:

- a. the disclosing party agrees to release the receiving party from the confidentiality obligation earlier;
- b. the Confidential Information become public or was lawfully obtained through other means than in breach of the confidentiality obligation;
- c. the disclosure of the Confidential Information is necessitated by due protection of the interests of the party in the frame of court proceedings or other equivalent legal proceedings; in such case the Party shall immediately give the other Party a written notice of the intention to disclose it and shall reasonably cooperate in order to regulate such disclosure;
- d. the Confidential Information was already lawfully developed or acquired by the party at the date of receipt of the information from the other party;
- e. was lawfully obtained by the party without restriction and without breach of this Contract from a third party, who is in lawful possession thereof, and under no obligation of confidence;
- f. is disclosed pursuant to a request of a governmental or jurisdictional authority or is disclosed according to the law or regulations of any country with jurisdiction over the Parties; in either case the Party, subject to possible constraints of such governmental or jurisdictional authority, shall immediately give the other Party a written notice of the above request and shall reasonably cooperate in order to regulate such disclosure.

I.14.5 When the Contractor becomes aware of any unauthorised use of the Confidential Information or of any unauthorised copy of the Confidential Information, it shall immediately inform the Contracting Authority thereof.

I.14.6 Should the Contractor breach any of its obligations under this Article, and without prejudice to the right of the Contracting Authority to seek damages, or suspend or terminate the Contract, the Contracting Authority may, by written notice to the Contractor, withdraw the right to use the Confidential Information for the implementation of the FWC.

ARTICLE I.15 – OWNERSHIP AND IPR

I.15.1. All intellectual property rights, including all economic rights, in and to any Results created, developed or

generated by an interim worker in the course of performing tasks for the Contracting Authority under a Specific Contract (Foreground IPR) shall vest in the Contracting Authority from the moment of their creation. To the extent that such vesting is not possible under applicable law, the Contractor shall ensure that all such rights are validly assigned to the Contracting Authority to the fullest extent permitted by applicable law.

- I.15.2.** To the extent that any Result qualifies as copyright work under Act No. 121/2000 Coll., the Copyright Act, the Contractor shall ensure that the Contracting Authority is entitled to exercise all economic rights in such Result and that all assignments, consents and other acts required for that purpose have been validly obtained from the relevant interim worker.
- I.15.3.** The Contractor shall ensure that each interim worker has entered into all agreements and undertaken all obligations necessary to give effect to Article I.15.1 and to ensure that the Contracting Authority may exercise all rights in the Foreground IPR without restriction. Additionally, the Contractor shall ensure that the Contracting Authority may publish, update, combine with other results, and otherwise exploit any Result created by the interim worker. To the fullest extent permitted by applicable law, the interim worker shall consent in advance to such acts and further agrees that the Contracting Authority may use and publish such Results under its own name or without identifying the interim worker as author. The Contractor shall further ensure that neither any interim worker nor any third party may assert any claim against the Contracting Authority in relation to the ownership or use of the Results or the Foreground IPR.
- I.15.4.** To the extent that any pre-existing intellectual property rights owned or controlled by the Contractor, an interim worker or a third party (Background IPR) are incorporated into, required for or otherwise used in connection with the Results, the Contractor shall grant, or procure the grant to the Contracting Authority, of a perpetual, worldwide, irrevocable, royalty-free, transferable and sublicensable licence to use, reproduce, modify, adapt, maintain and otherwise exploit such Background IPR to the extent necessary for the Contracting Authority to use and exploit the Results.
- I.15.5.** The Contracting Authority grants to the Contractor and the Interim Worker a non-exclusive, non-transferable and non-sublicensable licence to use the Contracting Authority's Union IPRs solely to the extent necessary for the performance of the relevant Specific Contract. Such licence shall automatically terminate upon completion or termination of the relevant Specific Contract, except to the extent continued use is required by applicable law.
- I.15.6.** The Contractor represents and warrants that it has obtained and shall maintain all rights, authorisations, consents and licences necessary to comply with this Article.
- I.15.7.** The obligations set out in this Article shall survive the expiration or termination of the Framework Contract and any Specific Contract.

ARTICLE I.16 – LIQUIDATED DAMAGES

- I.16.1.** Contracting Authority may impose liquidated damages in case the interim worker fails to commence the assignment on the start date specified in the relevant Specific Contract or in case the Contractor fail to present a suitable replacement candidate for the terminated interim worker within the time limit specified in this FWC.
- I.16.2.** Without prejudice to the Contractor's actual or potential liability or to the Contracting Authority's right to terminate the FWC or the relevant Specific Contract, the Contracting Authority may impose liquidated damages for each and every calendar day of delay of 100 EUR per day per one interim worker position affected. The overall aggregate amount of liquidated damages which may be imposed per Specific Contract shall not exceed 5% of the price of the relevant Specific Contract.
- I.16.3.** The parties acknowledge that any sums payable under this article are in the nature of liquidated damages and not penalties and represent a reasonable estimate of fair compensation for the losses incurred due to

failure to fulfil obligations which may be reasonably anticipated.

I.16.4. Liquidated damages may be imposed together with a partial payment or retention of payment under the conditions laid down in Article II.10. Any claim for liquidated damages does not affect the Contractor's actual or potential liability or the Contracting Authority's rights under ARTICLE I.13 – LIABILITY.

I.16.5. The Contracting Authority must formally notify the Contractor of its intention to apply liquidated damages and the corresponding calculated amount. The Contractor has 30 (thirty) days following the date of receipt to submit observations. Failing that, the decision becomes enforceable the day after the time limit for submitting observations has elapsed. If the Contractor submits observations, the Contracting Authority, taking into account the relevant observations, must notify the Contractor:

- 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

ARTICLE I.17 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES

I.17.1. The FWC shall be governed by European Union law, complemented, where necessary, by the law of the Czech Republic.

I.17.2. All disputes arising out of or in connection with the present Contract shall be finally settled by the General Court (as part of the Court of Justice of the European Union - CJEU) which shall have sole jurisdiction for any dispute arising out of or in connection with the present Contract, according to Article 272 of the Treaty on the Functioning of the European Union

SIGNATURES

For the Contractor,

For the Contracting Authority,

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

Rodrigo da Costa, Executive Director

signature:

Done in _____, [date]

signature:

Done in Prague, [date]

In duplicate in English.

II. GENERAL CONDITIONS

ARTICLE II.1 –DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

‘Foreground IPR’ or ‘Foreground Intellectual Property Rights’: means any IPR, including source codes, developed by an interim worker in the performance of the Contract.

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

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

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

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

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

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

any inventions (whether patentable or not);

- a. patents or utility models (including any related applications, divisions, continuations, registrations, reissues, re-examinations, extensions or renewals);
- b. 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);
- c. 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);
- d. trade secrets and know-how; and
- e. rights under any jurisdiction or legal system that are similar or equivalent to the foregoing;
- f. and any other proprietary rights to intellectual property or intangibles of any nature.

'Interim Worker': an employee employed by a Contractor and temporarily assigned to perform services for the Agency in Prague;

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

'Mission': work journey of interim worker, having been requested by the Contracting Authority for the performance of tasks at a destination other than Prague;

'Mission Day': day on which the interim worker performs the tasks for which he/she was sent on Mission, such as e.g. participation in a meeting;

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

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

'Performance of a Specific Contract': the execution of tasks and delivery of the purchased services by the Contractor to the Contracting Authority;

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

'Restricted Person': any entity, individual or group of individuals designated by the EU as subject to the EU Restrictive Measures in the lists provided at www.sanctionsmap.eu

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

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

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

'Union IPR': means Intellectual Property Rights owned by the European Union.

ARTICLE II.2 – PROVISION OF SERVICES

II.2.1 The Contractor shall perform the FWC to the highest professional standards, in accordance with the state of the art in the industry and the provisions of this FWC, in particular the tender specifications and the terms of its tender. The Contractor must comply with the exclusion, selection criteria, participation conditions and minimum requirements provided for in the tender specifications throughout the duration of the Contract. This includes, without limitation, compliance with applicable obligations under environmental, social and labour law established by Union law, national law and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU, compliance with data protection obligations resulting from Regulation (EU) 2016/679, compliance with obligations related to use of Artificial Intelligence resulting from Regulation Regulation (EU) 2024/1689, and compliance with obligations resulting from the Financial Regulation on the financial rules applicable to the general budget of the Union.

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

II.2.3 Should the execution of the FWC be directly or indirectly hampered, either partially or totally, by any unforeseen event, action or omission, the Contractor shall immediately and on its own initiative record it and report it to the Contracting Authority. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with its obligations under this FWC. In such an event the Contractor shall give priority to solving the problem rather than determining liability.

II.2.4 The Contractor must record and report to the Contracting Authority any problem that affects its ability to provide the services. The report must describe the problem, state when it started and what action the Contractor is taking to resolve it.

II.2.5 The Contractor must immediately inform the Contracting Authority of any changes in the exclusion situations as declared, according to Article 138 of the Financial Regulation.

ARTICLE II.3 – COMMUNICATION BETWEEN THE PARTIES

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

- II.3.2** Unless otherwise agreed, any communication made by email has full legal effect and is admissible as evidence in judicial proceedings. E-mail is deemed to have been received by the receiving party on the day of dispatch of that e-mail, provided that it is sent to the e-mail address indicated in Article I.11. The sending party must be able to prove the date of dispatch. In the event that the sending party receives a non-delivery report, it must make every effort to ensure that the other party actually receives the communication by email or mail. In such a case, the sending party is not held in breach of its obligation to send such communication within a specified deadline.
- II.3.3** Electronic communication shall be confirmed by an original signed paper version of that communication if requested by any of the parties provided that this request is submitted without unjustified delay. The sender shall send the original signed paper version without unjustified delay.
- II.3.4** Mail sent using the postal services is deemed to have been received by the Contracting Authority on the date on which it is registered by the department responsible referred to in the specific conditions. Any Formal Notification shall be made by registered mail with return receipt or equivalent, or by equivalent electronic means. Formal Notifications are considered to have been received by the receiving party on the date of receipt indicated in the proof received by the sending party that the message was delivered to the specified Contractor.
- II.3.5** The above provisions shall apply to all formal notifications between the Contracting Authority and any interim worker in connection with its assignment. The Contractor shall ensure that each interim worker is bound by and complies with the said requirements and provide email that is monitored on a regular basis.

ARTICLE II.4 –PROFESSIONAL CONFLICTING INTEREST

- II.4.1** The Contractor shall take all the necessary measures to prevent any situation of Professional Conflicting Interest. The Contractor particularly, but without limitation, undertakes for a period of 5 (five) years following the termination of this FWC or any Specific Contract thereunder, whichever the later date, not to engage directly or indirectly, either as proprietor, stockholder, partner, officer, employee, consultant or otherwise in activities that may generate conflict of interests in relation to the activities performed for the EUSPA.
- II.4.2** With the signing of the FWC, the Contractor irrevocably and explicitly declares the absence of any conflict of interest in the meaning of Annex II.V existing at the signing of the contract. This declaration shall extend to and cover any members of the Contractor's group/consortium and any of the subcontractors.
- II.4.3** The Contractor must notify the Contracting Authority in writing as soon as possible of any situation that could constitute a conflict of interest or a professional conflicting interest during the implementation of the FWC. The Contractor must immediately take action to rectify the situation.
The Contracting Authority may do any of the following:
- (a) verify that the Contractor's action is appropriate;
 - (b) require the Contractor to take further action within a specified deadline to rectify the situation;
 - (c) decide not to award any Specific Contract to the contractor until the situation has been rectified.
- II.4.4** The Contractor must pass on all the relevant obligations in writing to:
- (a) its personnel;
 - (b) any related person;
 - (c) third parties involved in the implementation of the FWC, including subcontractors
 - (d) interim workers.
- The Contractor must also ensure that the persons referred to above are not placed in a situation which could give rise to conflicts of interest.

- II.4.5** Should the Contractor not comply with these requirements, and should such failure seriously affect the provision of the services as required by the Contracting Authority under the FWC, it shall follow the process described under Article II.12.5.

ARTICLE II.5 – PROCESSING OF PERSONAL DATA

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

For the avoidance of doubt, where the Contractor processes personal data for the purposes of recruitment, employment administration, payroll administration, taxation, social security obligations, verification of entitlement to allowances or other obligations arising under applicable labour law, the Contractor acts as an independent controller and shall comply with the applicable data protection legislation in that capacity.

- II.5.2** The following categories of personal data are expected to be processed by the data controller:

- contact details of the Contractor's interim workers, Personnel or its Contractors that may be included in connection with the services, such as name and last name, gender, telephone number, email address, postal address, organisation and position within organisation.
- identification and professional data of interim workers proposed or assigned under the FWC, including CVs, qualifications, experience, assignment records and timesheets;
- information necessary for the determination and verification of amounts invoiced under the FWC, including information relating to the interim worker's eligibility for allowances where relevant.

The provision of the aforementioned data is a contractual requirement. The Contractor shall ensure that only personal data strictly necessary for the performance, management, monitoring and financial administration of the FWC are transmitted to the Contracting Authority. Supporting documents relating to family circumstances, dependency status, education, taxation, social security or eligibility for allowances shall not be routinely transmitted to the Contracting Authority and shall be provided only where necessary for audit, investigation, dispute resolution or compliance with legal obligations.

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

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

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

- II.5.6** The obligations set out in this Article apply only to those processing operations for which the Contractor acts as processor on behalf of the Contracting Authority. If, throughout the duration of the FWC, the Contractor is required to process any personal data (acting as data processor), the Contractor shall:
- a) inform in writing without delay the data controller and act only on documented instructions from the data controller, in particular with regard to the purposes of the processing, the categories of data that may be processed, the recipients of the data and the means by which the data subject may exercise its rights;
 - b) with regard to transfers of personal data to a country outside the European Union or an international organisation, act only on documented instructions from the data controller, unless required to do so by Union or Member State law to which the processor is subject; in such a case, the processor shall inform the data controller of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;
 - c) ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - d) without prejudice to Article II.5.8, necessary measures to ensure the security of the processing of personal data, as may be instructed by the controller;
 - e) not engage another processor or sub-processor without prior specific written authorisation of the controller;
 - f) taking into account the nature of the processing, assist the controller by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the controller's obligation to respond to requests for exercising the data subject's rights laid down in the applicable rules;
 - g) assist the controller for the fulfilment of its obligations to:
 - ensure compliance with its obligations regarding the security of the processing, and the confidentiality of electronic communications and directories of users;
 - notify a personal data breach to the European Data Protection Supervisor;
 - communicate a personal data breach without undue delay to the data subject, where applicable;
 - carry out data protection impact assessments and prior consultations as necessary.
 - h) notify relevant personal data breaches to the controller without undue delay and at the latest within 48 hours after the Contractor becomes aware of the breach. In such cases, the Contractor shall provide the controller with at least the following information:
 - nature of the personal data breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
 - likely consequences of the breach;
 - measures taken or proposed to be taken to address the breach, including, where appropriate, measures to mitigate its possible adverse effects.
 - i) maintain a record of all data processing operations carried on behalf of the controller, transfers of personal data, security breaches, responses to requests for exercising rights of people whose personal data is processed and requests for access to personal data by third parties;
 - j) delete all the personal data after the end of the provision of services relating to processing;
 - k) make available to the data controller all information necessary to demonstrate compliance with the obligations laid down in this Article and allow for and contribute to audits, including inspections, conducted by the controller or another auditor mandated by the controller.

- II.5.7** The Contractor shall grant Personnel access to the data to the extent strictly necessary for the performance, management and monitoring of the FWC.
- II.5.8** The Contractor shall adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to ensure:
- a) the pseudonymisation and encryption of personal data;
 - b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
 - c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
 - d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;
 - e) measures to protect personal data from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed.
- II.5.9** If the Contractor infringes the provisions of the present Article by determining the purposes and means of processing, the Contractor shall be considered to be a controller in respect of that processing under the General Data Protection Regulation (EU) 2016/679 (Article 29(10) Regulation (EU) 2018/1725).
- II.5.10** The Contracting Authority as the data controller processes personal data of the Contractor as the data subject. The detailed information on processing the Contractor's personal data and the Contractor's rights in connection with personal data processing is provided in Privacy Statements related to applicable purposes of data processing.

ARTICLE II.6 – SUBCONTRACTING AND CONSORTIA MEMBERS

II.6.1 General principles applicable to subcontracting and subcontractors

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

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

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

- (i) any such subcontract shall provide for the termination thereof or the assignment thereof to the Agency or the Agency's designee, in each case with no liability to the Agency or its designee, upon the termination of this FWC or the expiry of the Contract Period, whichever shall first occur;
- (ii) the Contractor shall ensure that the other party or parties to any such subcontract or amendment thereto comply with the Contracting Standards and that such contract or amendment thereto shall include (a) a copy of the Contracting Standards and (b) a provision allowing for the immediate termination of such contract by the Contractor in case of breach; the Contractor shall obtain the Agency's prior approval on any amount of break costs that may ultimately be due by the Agency in connection with such subcontract or amendment thereto in accordance with Article II.12.4

(Termination for an Agency Event of Default) all such contracts shall be entered into on an arm's-length basis (meaning, in the ordinary course of business and upon fair and reasonable terms no less favourable to the FWC than it would obtain in a comparable transaction with a person which is not an Affiliate) and shall contain market-based terms and conditions; the procurement, negotiation, execution and performance of all such contracts shall not involve any unfair or fraudulent conduct, including, but not limited to, abuse of any dominant position / economic dependency, bribes, kick-backs, unlawful payments or promises of payment or other unlawful gifts or similar actions by any of the parties thereto or their employees, representatives, agents or similar persons;

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

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

II.6.3 The Contractor shall make sure that the subcontract does not affect rights and guarantees granted to the Contracting Authority by virtue of this FWC, notably by Article II.8.

II.6.4 The Contracting Authority shall request the Contractor to remove or replace subcontractor(s) found to be in a situation provided for in Article II.12.1. In such case, the Contractor shall undertake, on the basis of its written request and subject to the Contracting Authority's prior written approval, to absorb the part of the FWC previously performed by the concerned subcontractor(s) at its level. Alternatively, the Contractor may introduce new subcontractor(s) pursuant to the applicable provisions of this Article II.6.

II.6.5 Payment of Sub-Contractors

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

II.6.5. CHANGE OF CONSORTIA MEMBERS

II.6.5.1 Changes in group members during contract execution are in principle acceptable in the context of universal successions or when the Contracting Authority terminates the Contract with a member of the consortium

separately as per Article II.12.1. last paragraph.

- II.6.5.2** In the latter case changes may happen either by replacing the terminated member or by absorbing the relevant tasks and responsibilities by the remaining ones, subject to Agency's prior written approval. The replacing consortium member and/or newly formed consortium shall comply with the relevant cumulative conditions elaborated on in section 4.3 of the Tender Specifications (Annex II.II).
- II.6.5.3** The Contracting Authority reserves the right to terminate the FWC in its entirety, should the newly formed consortium not be in alignment with relevant cumulative conditions elaborated on in section 4.3 of the Tender Specifications (Annex II.II).

ARTICLE II.7 – AMENDMENTS

- II.7.1** Any amendment to the FWC or Specific Contract shall be made in writing before fulfilment of all contractual obligations. A Specific Contract may not be deemed to constitute an amendment to the FWC.
- II.7.2** The amendment may not have the purpose or the effect of making changes to the FWC or the Specific Contracts that might alter the initial conditions of the procurement procedure or specific contract or result in unequal treatment of tenderers or Contractors.
- II.7.3** Within 5 (five) working days of an Amendment signed by the Contracting Authority, being sent dispatched to the Contractor, the Contractor shall provide the Contracting Authority the Amendment back, duly signed and dated.

ARTICLE II.8 – ASSIGNMENT

- II.8.1** The Contractor shall not assign the rights, including claims for payments or factoring, and obligations arising from the FWC, in whole or in part, without prior written authorisation from the Contracting Authority. In such cases, the Contractor must provide the Contracting Authority with the identity of the intended assignee.
- II.8.2** In the absence of such authorisation, or in the event of failure to observe the terms thereof, the assignment of rights or obligations by the Contractor shall not be enforceable against the Contracting Authority and shall have no effect on it.

ARTICLE II.9 – FORCE MAJEURE

- II.9.1.** If a party is affected by Force Majeure, it shall immediately and formally notify the other party without delay, stating the nature of the circumstances, likely duration and foreseeable effects.
- II.9.2.** A party is not liable for any delay or failure to perform its obligations under the FWC if that delay or failure is a result of Force Majeure. If the Contractor is unable to fulfil its contractual obligations owing to Force Majeure, it has the right to remuneration only for the services actually provided.
- II.9.3.** The parties shall take all the necessary measures to limit any damage due to Force Majeure.
- II.9.4.** If the force majeure event lasts for more than 30 (thirty) days each party is entitled to terminate the FWC or specific contract. Article II.12 shall be used accordingly.

ARTICLE II.10 – PARTIAL PAYMENT AND RETENTION OF PAYMENT

- II.10.1.** If the Contractor fails to provide the service in accordance with the FWC or a Specific Contract, the

Contracting Authority may reduce or retain payments proportionally to the seriousness of the unperformed obligations.

II.10.2. Procedure for a partial payment or retention of payment

The Contracting Authority must formally notify the Contractor of its intention to partially pay a corresponding calculated amount or retain the payment. Upon such notification, the invoice shall be suspended until the Contractor submits a dedicated credit note, covering the amount of the reduction. The Contracting Authority shall perform the payment of the amount that is certain, upon receipt of the credit note.

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

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

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

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

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

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

II.11.1 Suspension by the Contractor

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

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

II.11.2 Suspension by the Contracting Authority

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

- a) if the FWC or Specific Contract award procedure or the performance of the FWC prove to have been subject to irregularities, fraud or substantial breaches of obligations;
- b) in order to verify whether presumed irregularities, fraud or substantial breaches of obligations have actually occurred;
- c) if the Contractor is in a situation of Professional Conflicting Interest under **ARTICLE II.4 – PROFESSIONAL CONFLICTING INTEREST** and pending the definition and implementation of rectification actions as set out under Article II.4.3;
- d) if the performance of the Contract is considered to materially affect, directly or indirectly, the interests of the European Union, such as but not limited to security threats;

- e) if the Contractor is considered to be in non-compliance with the confidentiality obligations and is required to submit relevant observations pursuant to **ARTICLE I.14 – CONFIDENTIALITY**.
- f) if, due to a change of circumstances, the Contractor, the Contractor Parties or any entity having a role in the performance of the Contract do not comply anymore with the EU Restrictive Measures referred to in section 7.2 of the Tender Specifications (Annex II.II), and if the Contractor has not promptly taken the necessary actions upon EUSPA request.

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

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

ARTICLE II.12 – EVENTS OF DEFAULT

II.12.1 Contractor Events of Default

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

II.12.1.1 if the Contractor or any (natural or legal) person that assumes unlimited liability for the debts of the Contractor is in one or more of the following situations:

- 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;
- it has been established by any means which the Agency, acting in good faith, can justify, that the person or entity is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the applicable law.

II.12.1.2 if the Agency becomes aware of any pre-existing or new facts evidencing a change to the Contractor’s legal, financial, technical or organisational or ownership situation which change is:

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

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

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

- a. it has been established by any means which the Agency, acting in good faith, can justify, that the person or entity is responsible of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the person or entity belongs, or by having

engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes wrongful intent or negligence, including, in particular, any of the following:

- 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;
 - inciting to discrimination, hatred or violence against a group of persons or a member of a group or similar activities that are contrary to the values on which the Union is founded enshrined in Article 2 Treaty on European Union, where such misconduct has an impact on the person or entity's integrity which negatively affects or concretely risks affecting the performance of the legal commitment.
- c. it has been established by any means which the Agency, acting in good faith, can justify that the person or entity is responsible of any of the following conducts:
- fraud, within the meaning of Article 3 of Directive (EU) 2017/1371 of the European Parliament and of the Council¹ and Article 1 of the Convention on the protection of the European Communities' financial interests, drawn up by the Council Act of 26 July 1995²;
 - 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 1997³, or conduct referred to in Article 2(1) of Council Framework Decision 2003/568/JHA⁴, or corruption as defined in other applicable laws;
 - conduct related to a criminal organisation as referred to in Article 2 of Council Framework Decision 2008/841/JHA⁵;
 - 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 Council⁶;

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)

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).

- 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 Council⁷, or inciting, aiding, abetting or attempting to commit such offences, as referred to in Article 14 of that Directive;;
 - 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 Council⁸;
- d. 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:
- led to the early termination of a legal commitment;
 - led to the application of liquidated damages or other contractual penalties; or
 - been discovered by an authorising officer, the European Anti-Fraud Office (OLAF), the Court of Auditors or the European Public Prosecutor's Office (EPPO) following checks, audits or investigations;
- e. it has been established by any means which the Agency, acting in good faith, can justify that the person or entity is responsible of an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95⁹;
- f. it has been established by any means which the Agency, acting in good faith, can justify that the person or entity has created an entity in a different jurisdiction with the intent to circumvent fiscal, social or any other legal obligations including those related to working rights, employment and labour conditions in the jurisdiction of its registered office, central administration or principal place of business;
- g. it has been established by any means which the Agency, acting in good faith, can justify that the entity has been created with the intent referred to in previous point.
- h. 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.
- II.12.1.5** if the Contractor is the addressee of a decision prohibiting the award of the contract for having received foreign subsidies distorting the internal market, adopted by the European Commission in accordance with REGULATION (EU) 2022/2560 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 December 2022 on foreign subsidies distorting the internal market;

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

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).

- II.12.1.6** If the Contractor is subject to international procurement instruments measures pursuant to the provision of Regulation 2022/103110 and related implementing acts;
- II.12.1.7** if the procedure for awarding the Contract or the implementation of the Contract proves having been subject to errors, irregularities, fraud or substantial breaches of obligations including the submission of false information on the side of the Contractor;
- II.12.1.8** if the Contractor does not comply with applicable laws, including, without limitation to, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;
- II.12.1.9** if the Contractor fails to notify the Contracting Authority that it is in a situation of Conflict of Interest as referred to in Article II.4 (Professional Conflicting Interest); or fails to take immediate action for rectification or additional action for rectification as required by Contracting Authority; or if the proposed rectification actions are, in the opinion of Contracting Authority acting reasonably, not effective
- II.12.1.10** if the Contractor is in breach of any of the confidentiality obligations resulting from Article I.14 (Confidentiality and Participation in Public Procurement);
- II.12.1.11** if the Contractor does not comply with the applicable data protection obligations resulting from Regulation (EU) 2016/679;
- II.12.1.12** if the Contractor does not implement or perform the Contract in accordance with the tender specifications or is in breach of another substantial contractual obligation;
- II.12.1.13** if, due to a change of circumstances, the Contractor, the Contractor Parties or any entity having a role in the performance of the Contract do not comply anymore with the EU Restrictive Measures identified in the Section 7.2 of Annex II.II - Tender Specifications, and if the Contractor has not promptly taken the necessary actions upon EUSPA request;
- II.12.1.14** any failure to comply with the Access to Procurement, Selection, Rejection and Exclusion Criteria or the provisions of Section 7 – 10 of Annex II.II – Tender Specifications (Compliance with the Access to Procurement, Selection, Rejection and Exclusion Criteria);
- II.12.1.15** if the Contractor fails to comply with its subcontracting obligations as provided under Contractor’s Proposal (Annex II.III) and the Tender specifications (Annex II.II) and this Contract (including in Article II.6 – Subcontracting and Consortia Members and subclauses thereof);
- any failure to comply with any environmental obligations as per this Contract;
 - the Contractor fails to comply with the provisions of Article II.8 (Assignment)
 - the Contractor reaches the Contractor liability cap.
 - In the case of joint tenders, the Contracting Authority may terminate the FWC or a Specific Contract with any member of the consortium separately.

II.12.2 Agency Events of Default

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

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

II.12.3 GROUNDS FOR TERMINATION BY THE CONTRACTOR

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

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

II.12.4 GROUNDS FOR TERMINATION BY THE AGENCY

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

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

II.12.5 TERMINATION PROCEDURE

II.12.5.1 Notification of an Event of Default

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

II.12.5.2 Cure Period - Mitigation

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

At the expiry of the Cure Period, if:

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

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

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

If an Event of Default occurs which is not a Curable Event of Default, Article II.12.2 or Article II.12.3 (as the case may be) shall apply.

II.12.5.3 Termination Notice

Subject to Article II.12.5.2, any Party entitled to terminate this Contract in accordance with Article II.12.2 or Article II.12.3 (as applicable) and wishing to do so shall issue a notice to the other Party informing it of its intention to terminate this Contract and stating the grounds for termination (the "**Termination Notice**").

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

II.12.5.4 Effect of Termination

On receipt of the notification of termination under Article II.12.5.3, and unless the Step in Rights under Article II.12.1 are exercised by the Agency, the Contractor shall:

- (i) take all the appropriate measures to minimise costs, prevent damages, and cancel or reduce its commitments,
- (ii) pay within one month of the termination date the amount due in accordance with Article II.12.5.5 and Article II.12.5.6 (as applicable).

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

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

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

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

For the sake of clarity, it is specified that:

- (i) the Contractor liability cap as well as liquidated damages cap provided in this FWC and any Specific Contract thereunder shall not apply to the payment of the termination amount provided for in this Article II.12.5.5;
- (ii) the payment of the termination amount provided for in this Article II.12.5.5 may be offset against any amount due and unpaid by the Agency to the Contractor, being specified that the payments due by the Agency to the Contractor in relation to the performance of the FWC and any Specific Contract thereunder shall be limited to the apportionment of the relevant contractual amounts corresponding to the activities successfully undertaken by the Contractor and accepted by the Agency at termination date only.

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

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

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

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

II.12.5.7 SOLE REMEDY FOR EVENT OF TERMINATION

The Parties acknowledge that the termination events, conditions and amounts provided for under Articles II.12.1, II.12.2, II.12.0, II.12.0, and II.12. **Error! Reference source not found.** shall constitute the exclusive remedy and full and final compensation available with respect to any event of termination of the Contract, with the exception of the claims available under Article I.16 (Liquidated Damages) which shall remain applicable in addition to the compensation under Article II.12.0 as well. Accordingly, the Parties irrevocably waive any right they may have with respect to any claim for any other termination events, conditions and amounts than those provided for under this Articles II.12.2, II.12.3, II.12.4, and II.12.5 or elsewhere contained in this Contract, with the exception of the claims available under Article I.16 (Liquidated Damages) which shall remain applicable in addition to the compensation under Article II.12.5 as well.

II.12.5.8 CONSEQUENCES OF AN AGENCY DEFAULT

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

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

then the Contractor is entitled to apply for relief from its obligations under this Contract and compensation subject to compliance with this Article II.12.5.8.

In case of any Agency Default, the Contractor shall:

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

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

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

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

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

ARTICLE II.13 –PAYMENTS AND GUARANTEES

II.13.1 Date of payment

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

II.13.2 Currency

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

II.13.3 Conversion

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

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

http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm

II.13.4 Costs of transfer

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

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

II.13.5 Invoices and Value Added Tax

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

The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the services required for performance of the FWC are exempt from taxes and duties, including VAT exemption.

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

II.13.6 Interim payments and payment of the balance

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

II.13.7 Suspension of the time allowed for payment

The Contracting Authority may suspend the payment periods specified in Article I.6 at any time by notifying the Contractor (or leader in the case of a joint tender) that its invoice cannot be processed, either because it does not comply with the provisions of the FWC, or because the appropriate documents have not been produced, or because the Contracting Authority has observations on the documents or deliverables submitted with the invoice. The Contracting Authority must notify the Contractor (or leader in the case of joint tender) as soon as possible of any such suspension, giving the reasons for it. The Contracting Authority shall notify the Contractor (or leader in case of a joint tender) of the need to submit additional information or corrections or a new version of the documents or deliverables if the Contracting Authority requires it. Suspension shall take effect on the date the Notification is sent by the Contracting Authority. The remaining payment period resumes from the date on which the requested information or revised documents are received by the Contracting Authority or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension period exceeds two months, the Contractor may request the Contracting Authority to justify the continued suspension.

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

II.13.8 Interest on late payment

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

in which the payment period ends, as published in the C series of the Official Journal of the European Union.

The suspension of the payment period in accordance with Article II.13.7 may not be considered as a late payment. Interest on late payment shall cover the period running from the day following the due date for payment up to and including the date of actual payment as defined in Article II.13.7. However, when the calculated interest is lower than or equal to EUR 200, it shall be paid to the Contractor only upon request submitted within two months of receiving late payment.

ARTICLE II.14 – RECOVERY

- II.14.1** If an amount is to be recovered under the terms of the FWC or the Specific Contract, the Contractor shall repay the Contracting Authority the amount in question according to the terms and by the date specified in the debit note.
- II.14.2** Before recovery, the Contracting Authority must formally notify the Contractor of its intention to recover the amount it claims, specifying the amount due and the reasons for recovery and inviting the Contractor to make any observations within 30 (thirty) days of receipt. If no observations have been submitted or if, despite the observations submitted, the Contracting Authority decides to pursue the recovery procedure, it must confirm recovery by formally notifying a debit note to the Contractor, specifying the date of payment. The Contractor must pay in accordance with the provisions specified in the debit note.
- II.14.3** If the Contractor does not pay by the due date, the Contracting Authority may, after informing the Contractor in writing, recover the amounts due:
- a) by offsetting them against any amounts owed to the Contractor by the Contracting Authority, Union or by the European Atomic Energy Community or by an executive agency when it implements the Union budget;
 - b) by calling in a financial guarantee if the Contractor has submitted one to the Contracting Authority;
 - c) by taking legal action.
- II.14.4 Interest on late payment**
- If the obligation to pay the amount due is not honoured by the date set by the Contracting Authority in the debit note, the amount due shall bear interest at the rate indicated in Article II.13.8. Interest on late payments shall cover the period from the day following the due date for payment up to and including the date when the Contracting Authority receives the full payment of the amount owed.
- II.14.5** Any partial payment shall first be entered against charges and interest on late payment and then against the principal amount.
- II.14.6** If the Contract is signed by a group (joint tender), the group is jointly and severally liable under the conditions set out in Article I.13.1 (liability). The Contracting Authority shall send the debit note first to the leader of the group.
- II.14.7** If the leader does not pay by the due date and if the amount cannot be offset in accordance with Article II.15.3, the Contracting Authority may claim the amount still due to any other member of the group by respectively notifying them with the debit note already sent to the leader under this Article.

ARTICLE II.15 – CHECKS AND AUDITS

- II.15.1** The Contracting Authority and the European Anti-Fraud Office may check or have an audit on the performance of the FWC. It may be carried out either directly by their own staff or by any other outside

body authorised to do so on their behalf. Such checks and audits may be initiated at any moment during the performance of the FWC and during a period of up to five years which starts from the payment of the balance of the last Specific Contract issued under this FWC. The audit procedure shall be deemed to be initiated on the date of receipt of the relevant letter sent by the Contracting Authority. Audits shall be carried out on a confidential basis.

- II.15.2** The Contractor must keep all original documents stored on any appropriate medium, including digitised originals if authorised by national law and under the conditions laid down therein, for a period of five years which starts running the payment of the balance of the last Specific Contract issued under this FWC.
- II.15.3** The Contractor shall allow the Contracting Authority's staff and outside personnel authorised by the Contracting Authority the appropriate right of access to sites and premises where the FWC is performed and to all the information, including information in electronic format, needed in order to conduct such checks and audits. The Contractor must ensure that the information is readily available at the moment of the check or audit and, if so requested, that information be handed over in an appropriate form.
- II.15.4** On the basis of the findings made during the audit, a provisional report shall be drawn up. It shall be sent to the Contractor, which shall have 30 (thirty) days following the date of receipt to submit observations. The final report shall be sent to the Contractor within 60 (sixty) days following the expiry of that deadline. On the basis of the final audit findings, the Contracting Authority may recover all or part of the payments made and may take any other measures which it considers necessary.
- II.15.5** The Court of Auditors and the European Public Prosecutor's Office established by Council Regulation (EU) 2017/1939 ('the EPPO') shall have the same rights as the Contracting Authority, notably right of access, for the purpose of checks and audits.

Annex II.I Annex II.I Tender Specifications
(separate document)

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

Annex II.III - DRAFT SPECIFIC CONTRACT

implementing Framework Contract No EUSPA/OP/18/26

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

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

[appointed as leader of the group by the members of the group that submitted the joint tender]
[repeat these data as many times as there are Contractors in case of joint tender and continue numbering]
([collectively] "the Contractor"), represented for the purposes of signing this specific contract by [forename, surname and function of legal representative,]

on the other part,

HAVE AGREED

ARTICLE 1: SUBJECT MATTER

- 1.1** This specific contract implements Framework Contract (FWC) No EUSPA/OP/18/26 signed by the Contracting Authority and the Contractor on [complete date].
- 1.2** The subject matter of this specific contract is provision of xx interim workers.
- 1.3** The Contractor undertakes, in accordance with the terms set out in the FWC and in this specific contract and the annexes thereto, which form an integral part thereof, to provide services specified in Annexes SC.I and SC.II.

ARTICLE 2: ENTRY INTO FORCE AND DURATION

- 2.1** This specific contract shall enter into force on the date on which it is signed by the last party.
- 2.2** The provision of the services shall start on [xx/xx/xxx]. The provision of the services shall end xx (xx) months after the services' starting date or upon budget exhaustion, whichever occurs earlier.
- 2.3** The duration of the specific contract may be extended only with the express written agreement of the parties before such period elapses.
- 2.4** The schedule may be updated through written communication by the Contracting Authority to the Contractor, on the condition that the total duration of the SC and the total maximum price to be paid under this SC remain unchanged.

ARTICLE 3: PRICE

- 3.1** The maximum total price to be paid under this specific contract shall be EUR [amount in figures and in words] covering all services provided.
- 3.2** Travel expenses, accommodation costs and daily subsistence allowance for Missions are part of the maximum total price of the SC and shall be reimbursed in line with Article I.8.2 of the FWC and up to a total maximum amount of EUR [amount in figures and in words].
- 3.3** In addition to the maximum total price, no other reimbursable expenses are foreseen.

ARTICLE 4: PAYMENTS

- 4.1** Payments and approval of payments shall be made in accordance with the relevant FWC provisions, inter alia article I.9, II.10.
- 4.2** In accordance with Article I.9.2, payments shall be executed only if the Contractor has fulfilled all its contractual obligations by the date on which the invoice is submitted (with all required information), including submission to the Contracting Authority of:
 - a) timesheets of the respective interim workers following the template in Annex II.IV of the FWC;
 - b) statements of reimbursable mission costs pursuant, if any;
 - c) any other document required in accordance with the relevant Specific Contract.

ARTICLE 5: FOLLOW-UP OF BUDGET

The Contractor is obliged to monitor the consumption of the budget for this SC. In order to prevent exceeding the budget ceiling for this SC, the Contractor shall alert, in writing and in due time, the Contracting Authority when the budget consumption exceeds 70%, 80% and 90%. The Contractor will not invoice for any services going beyond

the budget ceiling unless it receives a prior written agreement of the Contacting Authority.

Annex SC.I: Terms of reference

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

ANNEX II.IV – Interim Worker Timesheet -TEMPLATE

(separate document)

Annex II.V - Declaration on confidentiality and absence of conflicting professional interest – TEMPLATE
(separate document)

