



CONDITIONAL STAGE PAYMENT CONTRACT GSA/OP/23/16

The European GNSS Agency (hereinafter referred to as "the GSA", "the Agency" or "the contracting authority"), represented for the purposes of the signature of this Conditional Stage Payment Contract by Mr Carlo des Dorides, Executive Director,

on the one part, and

[full official name]

[official legal form]

[statutory registration number]

[full official address]

[VAT registration number]

(hereinafter referred to as 'the contractor'), represented for the purposes of the signature of this CSPC by [forename, surname and function,]

[The parties identified above and hereinafter collectively referred to as the 'the contractor' shall be jointly and severally liable vis-à-vis the contracting authority for the performance of this CSPC.]

on the other part,



HAVE AGREED

to the **special conditions**, the **general conditions for this Conditional Stage Payment Contract** and the following annexes:

Annex I	Tender Specifications (Invitation to Tender No GSA/OP/23/16) and its annexes)
Annex II.II	Contractor's Tender (No [number], [date])
Annex II.III	Template List of Pre-Existing Rights (Background Intellectual Property Rights)
Annex II.IV	Template Declaration for Foreground Intellectual Property Rights
Annex II.V	Template Deliverable/supply acceptance sheet
Annex II.VI	Travel Cost Reimbursement

which form an integral part of this Conditional Stage Payment Contract (hereinafter referred to as “the CSPC”).

- The terms set out in the special conditions shall take precedence over those in the other parts of the CSPC.
- The terms set out in the Tender Specifications (Annex I), the Non-Disclosure Undertaking (Annex I.F), and the Declaration on confidentiality and absence of conflict of interest (Annex I.J) shall take precedence over those in the tender (Annex II.II).



I – SPECIAL CONDITIONS

ARTICLE I.1 – SUBJECT MATTER

The subject matter of the CSPC is the development and supply to the GSA of a least 3 (three) prototypes of an Open Service Navigation Message Authentication User Terminal and their assessment of performance under real conditions, according to the requirements described in Annex I – Tender Specifications.

ARTICLE I.2 – STAGES

- I.2.1** The subject matter of the CSPC shall be delivered in two Contract Stages, as described under Annex I – Tender Specifications.
- I.2.2** The activation and entry into force of the Contract Stage 2 shall be subject to the conditions precedent described under article I.3.4 and subject to article I.9.3.
- I.2.3** The contractor shall not be entitled to claim any compensation, indemnification or tide over/non-execution allowance for the purpose of article 23 of the GNSS Regulation, as a result of the non-activation and entry into force of Contract Stage 2 in application of Article I.3.4;

ARTICLE I.3 – ENTRY INTO FORCE AND DURATION

- I.3.1** The CSPC shall enter into force on the day it is signed by the last party.
- I.3.2** The CSPC shall expire upon the occurrence of any of the following eventualities:
 - a) upon written notification of the GSA that the conditions precedent under Article I.3.4 have not been met;
 - b) automatically upon successful completion of Contract Stage 2, provided that such successful completion occurs no later than 36 (thirty-six) months after entry into force of the Contract.
- I.3.3** The time period for execution of the tasks included under each Contract Stage shall start from the date of the Kick-Off meeting for that Stage and shall last until the earlier of:
 - a) successful completion of the Contract Stage, it being understood that the Contract Stage shall be considered successfully completed if all tasks subject to it have been performed and all deliverables subject to it, as described under Annex I, have been provided to and accepted by the GSA; or
 - b) the expiry of :
 - 9 (nine) months after the date of the Kick-of Meeting of Contract Stage 1 for Contract Stage 1, and
 - 11 months after the Kick-Off Meeting of Contract Stage 2 for Contract Stage 2.

The parties may agree to extend any of these periods in writing prior to their expiry.

Under no circumstances may performance of tasks subject to the CSPC commence before:



- i) the date on which the CSPC enters into force, as far as Contract Stage 1 is concerned;
- ii) the GSA's authorisation of the execution of Contract Stage 2 pursuant to Article I.3.4, as far as Stage 2 is concerned.

I.3.4 The GSA shall authorise the execution of the Contract Stage 2 in writing via registered mail letter or equivalent sent to the Contractor, provided that the following cumulative conditions are met:

- a) Contract Stage 1, as described article I.3.3 a), has been successfully completed;
- b) the Galileo ground system and the satellite constellation are able to broadcast OS-NMA Signal-in-Space (SiS) through E1-B I/NAV, such that it is objectively suitable to support the tasks as foreseen and scheduled for Contract Stage 2.

The notification shall set the date of the Kick-Off meeting for Stage 2 which shall not be earlier than two weeks after the date of the notification and not later than 11 months before the CSPC expiry according to Article I.3.2 c).

ARTICLE I.4 – DELIVERY SCHEDULE

I.4.1 The execution of the tasks of each Contract Stage shall respect the delivery schedule presented in Annex I.

I.4.2 The delivery schedule and allocation of budget and effort between tasks (including mission budget) can be updated monthly by written communication by the GSA to the contractor under the following conditions: the total duration of the Contract Stage and the maximum total price to be paid under that Stage will remain unchanged.

I.4.3 The contractor shall have five (5) working days from the date on which it receives a communication from the GSA to comment on the updated delivery schedule. In case no communication from the contractor is received by the GSA within this timeframe, the delivery schedule shall be considered formally updated and applicable.

ARTICLE I.5 –PRICES AND COST REIMBURSEMENT

I.5.1 The contract price for Contract Stage 1 amounts to Euro [winning tenderer's financial proposal] including as follows:

- a) Firm Fixed Price of [X] EUR ([X]) covering tasks 0.1, 1, 2, 3, and 6.1 according to Annex I
- b) Ceiling price of [X] EUR ([X]) covering task 7.1 according to Annex I
- c) Ceiling price of 5 000 EUR (five thousand Euro) for mission costs to be reimbursed according to Article II.16 and Annex II.VI

I.5.2 The contract price for Contract Stage 2 amounts to Euro [X] (according to winning tenderer's financial proposal), including as follows:

- a) Firm Fixed Price of [X] EUR ([X]) covering tasks 0.2, 4, 5 and 6.2 according to Annex I
- b) Ceiling price of [X] EUR ([X]) covering task 7.2 according to Annex I

- c) Ceiling price of 5 000 EUR (five thousand Euro) for mission costs to be reimbursed according to Article II.16 and Annex II.VI

I.5.3 The above mentioned prices shall include all costs and expenses.

Costs and expenses are: effort for all the tasks (including drawing up quotations and reports) necessary for their performance, including all costs (management of the project, coordination, quality control, support resources, missions with associated travel expenses (if any), subcontracting, procurement, manufacturing, assembly, quality control, documentation, storage, transportation, etc.), all overheads (management of the firm, secretarial services, social security, wages, etc.), all costs necessary for the performance of the tasks described, incurred directly and indirectly by the contractor in performance of the tasks that will be entrusted to it.

- I.5.4** Prices submitted by the contractor in Tables of Annex I.L, shall be fixed and not subject to revision during the term of the CSPC. The contractor shall further be bound to perform the tasks and submit the deliverables in line with the prices per task according to the tab “Financial Offer” of Annex I.L as submitted by the contractor as part of its tender (Annex II.II), unless the GSA requests relevant alterations to such work tasks, in which case the contractor may request equitable adjustments to the price details to be agreed on with the GSA.

- I.5.5** Only Tasks 7.1 and 7.2 shall be subject to a cost reimbursement approach with reimbursement limited to labour and mission costs. Labour costs incurred for performance of activities subject to Tasks 7.1 or 7.2 shall follow the gross hourly rate provided for in tab “Financial Offer” of Annex I.L in line with the respective profile of the staff performing the activity as requested by the GSA. Regarding mission costs, the contractor may request reimbursement, limited to missions pre-approved by the GSA in writing, for accommodation and daily subsistence in line with the flat fees in the respective tables in Annex II.VI and reimbursement of travel expenses in line with the provisions under article II.16 and the following paragraph of this article. Without prejudice to the requirements for reimbursement of travel expenses under article II.16, cost reimbursement in accordance with the flat fees shall only require a proof of mission time and stay at the destination (e.g. hotel receipt, ticket for transportation with date of inbound and outbound journey) with no further documents required.

Any costs for transport at the mission destination, including parking costs for cars, shall be considered covered under the daily subsistence allowance, with no further reimbursement applicable. As an exception from this principle, the GSA may, on a case by case basis and only for destinations not listed in the Annex II.V, agree to further reimbursement where reaching the mission destination is only possible with disproportional effort by the contractor which it cannot be expected to mitigate by other means. No subsistence and accommodation costs and daily rates shall be payable for the travel days, unless if explicitly agreed by GSA in writing in advance of the mission performance.

ARTICLE I.6 – PAYMENT ARRANGEMENTS AND PERFORMANCE OF THE CSPC

I.6.1 Interim payment

The contractor shall submit a request for an interim payment in line with the project payment plan in section 2.8.3 of Annex I (tender specifications), accompanied by:

- invoice for the payment including reference to the CSPC, the Contract Stage, task to which it refers, and price in accordance with the tab “Financial Offer” of Annex I.L in Annex II.II;



- deliverables acceptance sheet for the deliverables specified for the payment milestone approved by the GSA in line with section 2.8.3 of Annex I
- all documents of proof (activity reports and any other deliverables) documenting the provision of the underlying tasks or supplies in compliance with the contractual requirements as laid down in Annex I and its Annexes (if applicable)
- a detailed justification of all expenses incurred for the services performed under tasks 7.1 or 7.2, including but not limited to a summary of the tasks performed, the actual effort spent and the total remaining effort over the initial amount of 200 man-hours, justification timesheets justifying the amount of days spent to perform the tasks (if applicable)
- a table of travel expenses and subsistence expenses in case of services to destinations not foreseen in the Annex II.VI (if applicable)

The corresponding payment shall be made by the GSA within 30 (thirty) days of receipt of a complete request for payment as detailed herein.

Any payments against invoice made under this CSPC are payments for performance of tasks and do not represent and shall not be understood as salary payments or replacement of such. Payment of salaries for staff performing the tasks shall remain the sole responsibility of the contractor.

I.6.2 Payment of the balance

In relation to each Contract Stage of the CSPC, the contractor shall submit an invoice request for payment of the balance for any services or supplies which have not yet been invoiced for interim payment, accompanied by:

- invoice for the payment including reference to the CSPC, the Contract Stage, task to which it refers, and price in accordance with the tab "Financial Offer" of Annex I.L in Annex II.II;
- deliverables acceptance sheet for the deliverables specified for the final payment milestone approved by the GSA in line with section 2.8.3 of Annex I
- all documents of proof (activity reports and any other deliverables) documenting the provision of the underlying tasks or supplies in compliance with the contractual requirements as laid down in Annex I and its Annexes (if applicable)
- a detailed justification of all expenses incurred for the services performed under tasks 7.1 or 7.2, including but not limited to a summary of the tasks performed, the actual effort spent and the total remaining effort over the initial amount of 200 man-hours, justification timesheets justifying the amount of days spent to perform the tasks (if applicable)
- a table of travel expenses and subsistence expenses in case of services to destinations not foreseen in the Annex II.VI (if applicable)

The corresponding payment shall be made by the GSA within 30 (thirty) days of receipt of a complete request for payment as detailed herein.

I.6.3 Performance and payment of Task 7.1 and Task 7.2

The contractor shall not start the performance of the services subject to Task 7.1 and 7.2, unless requested by the GSA in writing (email sufficient), with this requirement applying for missions in relation to these tasks accordingly.



Without prejudice to the articles above, payments relating to Task 7.1 and Task 7.2 shall be limited to the labour and mission costs actually incurred by the contractor within the invoicing period. Such effort may be invoiced on the occasion of each Payment Milestone achieved and shall be in line with the prices submitted by the Contractor, in Annex I.L tab “Financial Offer”, in accordance and limited to the labour and mission costs incurred prior to such milestone to the amounts detailed in article I.5.5 above.

ARTICLE I.7 – BANK ACCOUNT

Payments shall be made to the contractor’s bank account denominated in Euro, identified as follows:

Name of bank: [X]

Full address of branch: [X]

Exact designation of account holder: [X]

Full account number including [bank] codes: [X]

IBAN code: [X]

ARTICLE I.8 – COMMUNICATION DETAILS AND DATA CONTROLLER

For the purpose of article II.6, the data controller shall be the Executive Director of the GSA.

Communications shall be sent to the following addresses:

GSA:
European GNSS Agency
Legal and Procurement Department
Janovskeho 438/2
170 00 Prague
Czech Republic
Email: contracts@gsa.europa.eu

contractor:

[Full name]

[Function]

[Company name]

[Full official address]

Email: [complete]

ARTICLE I.9 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES

I.9.1 The CSPC shall be governed by European Union law, complemented, where necessary, by the law of the Belgium.

I.9.2 Any dispute between the parties in relation to the interpretation, application or validity of the CSPC which cannot be settled amicably shall be brought before the courts of Brussels, Belgium.



- I.9.3** Without prejudice to the above and with limited reference to disputes concerning the fulfilment of the conditions precedent for the activation of the Contract Stage 2, according to Article I.3.4, the Parties agree to refer the matter to a Technical Board composed of one representative appointed by the contracting authority, one representative appointed by the contractor and a Chairman appointed by the first two members or, in case of disagreement, by the Commission Director in charge of GNSS Programmes. Each representative of the Technical Board, including its chairperson shall have one vote. The decisions of the Technical Board shall be taken by consensus, whenever possible. When consensus will not be achieved, the Technical Board will decide at majority. The decisions of the Technical Board shall be final and binding on the Parties. It is the contractor's sole responsibility and duty, also beyond legal acts listed in Annex I, to comply and ensure full compliance with all applicable laws of any part of performance under the contract.

ARTICLE I.10 - EXPLOITATION OF THE RESULTS OF THE CSPC

I.10.1 [Intentionally left blank].

I.10.2 For the purpose of this contract, the term

- (1) "IPR" shall have the meaning stated in Clause 2 of the Convention establishing the World Intellectual Property Organisation done in Stockholm on 14 July 1967, in particular "intellectual property" shall include the rights relating to:
 - literary, artistic and scientific works;
 - performances of performing artists, phonograms, and broadcasts;
 - inventions in all fields of human endeavour;
 - scientific discoveries;
 - industrial designs;
 - trademarks, service marks, and commercial names and designations;
 - protection against unfair competition; and
 - all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.
- (2) "Affiliates/Affiliated" shall mean any legal entity which is directly or indirectly controlling, controlled by or under common control of the contractor provided that (i) such entity shall be considered an Affiliate only for the time during which such control exists and (ii) for the purpose of this definition "control" shall be constituted in case any of the following applies to either the legal entity or the Contractor in relation to each other: (a) holding, whether directly or indirectly, a majority of the voting rights, (b) holding, whether directly or indirectly, more than 50% (fifty per cent) of the share capital, (c) having the right to appoint or remove a majority of the members of the board of directors or other management body, (d) having, by agreement, the right to exercise a majority of the voting rights.
- (3) "Contractor Parties" shall mean subcontractors at any tier and Affiliates to the contractor and companies to which the contractor is Affiliated.
- (4) "Results" shall mean any tangible or intangible output, such as data, knowledge and information whatever their form or nature, whether or not they can be protected, stemming



from the execution of the contract which are generated by the contractor and the Contractor Parties under the contract, as well as any attached rights, and including IPR. Where IPR is concerned, this definition comprises all phases and stages of development and includes also rights relating to modifications of and add-ons to the subject-matter of Results, as well as modifications of and add-ons to the subject-matter of Background IPR made by the contractor and the Contractor Parties in the frame of this Contract.

- (5) "Background IPR" shall mean IPR, including third parties' IPR, obtained prior to the execution or developed outside the frame of the present contract by the contractor, the Contractor Parties or a third party, that is needed to implement the contract or exploit the Results. A "need" in the aforementioned sense is considered, if, without the relevant rights of access and/or use, the exploitation of the Results would be technically or legally impossible, impaired or incomplete.
- (6) "Creator" means any natural person who contributed to the production of the Result and includes personnel of the contracting authority or a third party;

I.10.3 Ownership of all Results shall be exclusively and without restrictions vested in the European Union, represented by the European Commission, immediately upon their delivery and acceptance by the GSA, with such delivery and acceptance being deemed to constitute an effective assignment of rights from the contractor to the Union. In the case of IPR, effective assignment of rights from the contractor to the European Union is deemed to be constituted from the moment of its generation. Documentation, or software generated by the contractor or the Contractor Parties under the contract shall be immediately marked "EU Proprietary information. Unauthorised distribution, dissemination or disclosure not allowed."

Any intermediary sub-result, raw data, intermediary analysis made available by the contractor cannot be used by the contracting authority without the written consent of the contractor, unless the CSPC explicitly provides for it to be treated as a self-contained Result.

The European Union acquires the following exclusive rights:

- (a) reproduction: the right to authorise or prohibit direct or indirect, temporary or permanent reproduction of the Results by any means (mechanical, digital or other) and in any form, in whole or in part;
- (b) communication to the public: the exclusive right to authorise or prohibit any display, performance or communication to the public, by wire or wireless means, including the making available to the public of the Results in such a way that members of the public may access them from a place and at a time individually chosen by them; this right also includes the communication and broadcasting by cable or by satellite;
- (c) distribution: the exclusive right to authorise or prohibit any form of distribution of Results or copies of the Results to the public, by sale or otherwise;
- (d) rental: the exclusive right to authorise or prohibit rental or lending of the Results or of copies of the Results;
- (e) adaptation: the exclusive right to authorise or prohibit any modification of the Results;
- (f) translation: the exclusive right to authorise or prohibit any translation, adaptation, arrangement, creation of derivative works based on the Results, and any other alteration of the Results, subject to the respect of moral rights of authors, where applicable;



- (g) where the Results are or include a database: the exclusive right to authorise or prohibit the extraction of all or a substantial part of the contents of the database to another medium by any means or in any form; and the exclusive right to authorise or prohibit the re-utilisation of all or a substantial part of the contents of the database by the distribution of copies, by renting, by on-line or other forms of transmission;
- (h) where the Results are or include a patentable subject-matter: the right to register them as a patent and to further exploit such patent to the fullest extent;
- (i) where the Results are or include logos or subject-matter which could be registered as a trademark: the right to register such logo or subject-matter as a trademark and to further exploit and use it;
- (j) where the Results are or include know-how: the right to use such know-how as is necessary to make use of the Results to the full extent provided for by this CSPC, and the right to make it available to contractors or subcontractors acting on behalf of the contracting authority, subject to their signing of adequate confidentiality undertakings where necessary;
- (k) where the Results are documents:
 - (i) the right to authorise the reuse of the documents in conformity with the Commission Decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU), to the extent it is applicable and the documents fall within its scope and are not excluded by any of its provisions; for the sake of this provision, 'reuse' and 'document' have the meaning given to it by this Decision;
 - (ii) the right to store and archive the Results in line with the document management rules applicable to the contracting authority, including digitisation or converting the format for preservation or new use purposes;
- (l) where the Results are or incorporate software, including source code, object code and, where relevant, documentation, preparatory materials and manuals, in addition to the other rights mentioned in this article:
 - (iii) end-user rights, for all uses by the European Union or by subcontractors which result from this CSPC and from the intention of the parties;
 - (iv) the rights to decompile or disassemble the software;
- (m) to the extent that the contractor may invoke moral rights, the right for the contracting authority, except where otherwise provided in this CSPC, to publish the Results with or without mentioning the Creator(s)' name(s), and the right to decide when and whether the Results may be disclosed and published.

The contractor warrants that the exclusive rights and the modes of exploitation may be exercised by the European Union on all parts of the Results. When delivering the Results, the contractor shall warrant that they are free of rights or claims from Creators and third parties, for any use envisaged by the contracting authority. This does not concern the moral rights of natural persons.

Where Background IPR is inserted in the Results, the contracting authority may accept reasonable restrictions impacting on the above list, provided that the said materials are easily identifiable and separable from the rest, that they do not correspond to substantial elements of the Results, and that, should the need arise, satisfactory replacement solutions



exist, at no additional costs to the contracting authority. In such case, the contractor will have to clearly inform the contracting authority before making such choice and the contracting authority has the right to refuse it.

In the Results the contractor shall clearly point out all quotations of existing textual works. The complete reference should include as appropriate: name of the author, title of the work, date and place of publication, date of creation, address of publication on internet, number, volume and other information which allows the origin to be easily identified.

By delivering the Results the contractor warrants that the Creators undertake not to oppose that their names be recalled when the results are presented to the public and confirms that the results can be divulged. Names of authors shall be recalled on request in the manner communicated by the contractor to the contracting authority.

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

I.10.4 All Background IPR shall be declared by the contractor as per Annex II.III as soon as the contractor is aware of the need, in the sense defined in article I.10.2 (5), to use such Background IPR and, in any case, not later than the start of the implementation of the relevant part of the CSPC.

Upon request by the contracting authority, the contractor shall provide evidence of ownership of or rights to use all the listed Background IPR and rights of third parties except for the rights owned by the GSA.

This evidence may refer, inter alia, to rights to: parts of other documents, images, graphs, tables, data, software, technical inventions, know-how etc. (delivered in paper, electronic or other form), IT development tools, routines, subroutines and/or other programs ("background technology"), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin.

The evidence shall include, as appropriate:

- (a) the name and version number of a software product;
- (b) the full identification of the work and its author, developer, creator, translator, data entry person, graphic designer, publisher, editor, photographer, producer;
- (c) a copy of the licence to use the product or of the agreement granting the relevant rights to the contractor or a reference to this licence;
- (d) a copy of the agreement or extract from the employment contract granting the relevant rights to the contractor where parts of the results were created by its personnel;
- (e) the text of the disclaimer notice if any.

Provision of evidence does not release the contractor from its responsibilities in case it is found that it does not hold the necessary rights, regardless of when and by whom this fact was revealed.

The contractor also warrants that it possesses the relevant rights or powers to execute the transfer and that it has paid or has verified payment of all due fees including fees due to collecting societies, related to the final Results.



When the contractor retains Background IPR on parts of the Results, reference shall be inserted to that effect when the result is used as set out in Article I.10.3 with the following disclaimer: © - year – European GNSS Agency. All rights reserved. Certain parts are licensed under conditions to the GSA.

- I.10.5** The contractor shall take all necessary measures for establishing the ownership requirement under article I.10.3, including, where inventions are concerned, patentability requirements, and for this purpose shall transfer all Results to the European Union in a format allowing the unfettered use of the Results. This shall include the obligation of the contractor to guarantee that all items, in both tangible and intangible form, stemming from this CSPC, include all necessary licences for the unfettered use of the Results.
- I.10.6** The contractor, without prejudice to any limitations resulting from article I.10.9, shall provide or, in case of Background IPR owned by a third party, shall ensure that the third-party provides to the European Union, the GSA, its institutional assignees, or institutional licensees a cost-free, perpetual and transferable licence to access and use the Background IPR for the use of Results for institutional purposes. Where Commercial Off-The-Shelf (COTS) products are concerned and the standard licence terms of the third-party vendor apply, such licence shall grant to the Agency/Commission the right and licence to use such COTS products for the purpose of this contract, excluding any rights of sub-licence. In the frame of this contract, institutional purposes shall mean any purpose related to promotion, demonstration, dissemination, testing, standardisation, operation, and service provision of European GNSS Programmes. The licence for the Background IPRs shall not include the right to grant sublicenses on the Background IPR for any non-institutional or commercial exploitation purposes.
- I.10.7** The contractor and the Contractor Parties shall obtain a non-transferable, non-sublicensable, perpetual, unrestricted, free of charge, non-exclusive right to use the Results, including for commercialisation purposes such as but not limited to the distribution, dissemination, or disclosure of products having embedded the Results. Should the contractor fail to comply with its obligations under article I.10.3 to I.10.6, I.10.8 and I.10.9 the GSA may require the contractor, where possible, to remedy the non-compliance within 30 (thirty) calendar days. In case no remedy is implemented, the GSA may revoke the licence upon a written notice by a registered letter to the contractor. Where remedy of the non-compliance is not possible or the failure to comply is caused by the contractor's or the Contractor Parties' intentional act or omission, the revocation shall take place with immediate effect. This revocation shall not prevent the GSA from claiming any further damages.
- I.10.8** Upon request of the European Union, represented by the European Commission, the GSA or third parties, the contractor shall be obliged to grant licence for access and use of Background IPR, whenever this use is required for the commercial exploitation of the Results, under fair, equal, and reasonable market terms and conditions. Upon receiving such request for licence of Background IPR, the contractor shall, without delay, forward it to the GSA (or the respective third party if so requested by the GSA), including the terms and conditions the contractor proposes to apply to the licence requested. Should the contractor, upon written request by the European Commission or the GSA continue to propose terms and conditions of the license not compatible with the criteria indicated above, this shall be considered a breach of contractual obligations. Without prejudice to any other legal claim by the GSA, such as but not limited to damages, resulting from such breach, the GSA shall be entitled to revoke the contractor's licence to use the Results according to article I.10.7 with immediate effect – without this revocation entitling the contractor to any indemnity. The contractor agrees and acknowledges that in case of such breach, this section of the contract shall continue to endure indefinitely beyond the term of the contract, unless otherwise agreed by the GSA.

I.10.9 The contractor shall hold the European Union, its assignees, and licensees, free and harmless of any claims for infringement of third party rights in connection with the use of Background IPR within the licensed scope according to article I.10.6, which the contractor was or should have been reasonably aware of at the time of granting the licence.

I.10.10 Should access to Background IPR involve a security concern, or a non-disclosure agreement which was entered prior to starting the implementation of the relevant part of the contract, the Parties shall put a specific non-disclosure agreement in place to cover the confidentiality of this Background IPR. In case of security concerns, such non-disclosure agreement shall involve the relevant National Security Authority to agree on the policy of use, terms and conditions for the management of the sensitive Background IPR. The contractor shall apply all efforts towards solving security concerns in a way as not to unduly prevent the said access.

I.10.11 Notwithstanding the European Union's or its assignee's rights under article I.10.3 and I.10.5, the contractor shall use the template in Annex II.IV of the contract to declare any Results and bring such declaration to the GSA's attention without delay. The contractor shall present relevant and exhaustive evidence about the acquisition of ownership or, where applicable, licence to use of all the necessary Background IPRs together with presentation of Results, whenever relevant for their use in accordance with this article I.10.

ARTICLE I.11 – CONFLICT OF INTERESTS

I.11.1 Conflicts of Interest

Without prejudice to Article II.4 the contractor, with the signing of the CSPC, irrevocably and explicitly declares the absence of any conflict of interest in the meaning of article II.4 existing at the signing of the CSPC. This declaration shall extend to and cover any members of the contractor's grouping/consortium and any of the subcontractors and any personnel which the contractor may draw on for the implementation of the contract.

The contractor, with the signing of the CSPC, further irrevocably and explicitly declares and acknowledges that the provisions under article II.4 shall apply wholly and unconditionally to any members of the contractor's grouping/consortium and any of the subcontractors and any personnel, it may draw on for implementation of the CSPC at any time during the term of the CSPC.

In case the GSA becomes aware of a conflict of interest in the meaning of article II.4 having existed at the signing of the CSPC or at any time during its term of application it shall follow the process described under article II.4.2. If the measures applied according article II.4.2 prove to be insufficient and the GSA assessment proves that the situation of Conflict Interest persists – the provisions of article II.14.1 shall apply accordingly and, following the rejection of the contractor's observation, the GSA may terminate the CSPC with immediate effect following prior written notice of termination to the contractor. During the time period for the contractor to submit its observations all work under the CSPC, shall be suspended, with the provisions of article II.13.2 applying accordingly.

The contractor shall be held responsible for and take any appropriate measures to ensuring that the provisions under this Article I.11.1 and under Article II.4 are extended to, acknowledged, and followed by all members of the contractor's group/consortium and all the subcontractors.

I.11.2 Commitment to the GSA policy

The contractor commits that it will abide by the GSA's policy on conflicts of interests and shall sign the declarations, such as but not limited to declarations of interests, which may be required

thereunder and may be conditional for continuation of activities under this CSPC according to the general GSA policy.

The contractor shall further ensure that also its personnel providing the services under the contract complies with any specific GSA policy applicable to contractors' staff and, in case required by such policy, ensure its staff signs the relevant declarations, with this requirement applying to any consortium member's and subcontractor's staff accordingly.

Should the contractor not comply with these requirements and should such failure seriously affect the provision of the services as required by the GSA under the contract, it shall follow the process described under article II.14.1 accordingly and, following the rejection of the contractor's observation, may terminate the CSPC with immediate effect following prior written notice of termination to the contractor. During the time period for the contractor to submit its observations all work under the CSPC shall be suspended, with the provisions of article II.13.2 applying accordingly.

I.12 NON-DISCLOSURE UNDERTAKINGS

Signature of the Non-Disclosure Undertaking ('NDU' - Annex I.F) by the contractor, including any of the members of its grouping/consortium and subcontractors of this CSPC if applicable (based on the need-to-know principle) is identified as a mandatory precondition for the validity of this CSPC.

In the frame of the NDU, the contractor shall ensure and be responsible towards the GSA that the provisions of the NDU are followed by any legal entity as well as natural person involved in or performing tasks under this CSPC.

The contractor may not exonerate itself from any failure of this duty in view of the non-performance of the NDU's provisions by any third-party including any of the members of its grouping/consortium and subcontractors of this CSPC as applicable and regardless of fault.

In case of the contractor's or any members of its grouping/consortium or subcontractors' non-compliance with the NDU obligations, the GSA shall follow the process described under article II.14.1 accordingly and, following the rejection of the contractor's observation, may terminate the CSPC with immediate effect following prior written notice of termination to the contractor. During the time period for the contractor to submit its observations all work under the CSPC shall be suspended, with the provisions of article II.13.2 applying accordingly.

ARTICLE I.13 – COMPLIANCE WITH MINIMUM REQUIREMENTS

When implementing the CSPC, the contractor shall at all times ensure full compliance with the minimum requirements as laid down in section 3.3 of Annex I.

Article I.14 Amendments of the General Conditions of the contract

I.14.1 Following sub-Articles are added to Article II.1:

II.1.10 Delivery of supplies

(a) Date, time and place of delivery



The Contractor shall be notified in writing by the GSA three (3) weeks prior to the Final Review for each of the two Contract Stages of the CSPC with regards to the time and place of delivery of the prototype; the GSA may request the prototype to be delivered anywhere within the European Union.

The GSA shall be notified in writing of the exact date of delivery and installation of supplies not less than 5 working days in advance...

All deliveries of supplies shall be made at the agreed place of delivery during the hours agreed between the contracting authority and the contractor.

The contractor shall bear all costs and risks involved in delivering and installing the supplies to the place of delivery.

(b) Consignment note

Each delivery and/or installation of supplies shall be accompanied by a consignment note in duplicate, duly signed and dated by the contractor, or its carrier if applicable, giving the contract number and particulars of the supplies delivered and/or installed. One copy of the consignment note shall be countersigned by the contracting authority and returned to the contractor or to its carrier.

Signature of the consignment note by the contracting authority, as provided for in point (b) of Article II.1.10 is simply an acknowledgment of the fact that the delivery and/or installation of supplies took place and in no way implies conformity of the supplies with this contract.

Without prejudice to the above, the signature of the consignment note shall transfer the risks associated to the delivery in question from the contractor to the GSA.

II.1.11 Certificate of acceptance of deliverables or supplies

Acceptance of deliverables or supplies shall be evidenced by the signature of a deliverable/supply acceptance sheet (Annex II.V) to this effect by the contracting authority. Acceptance or rejection shall be notified by the contracting authority to the contractor no later than 30 (thirty) days after the date of delivery and installation of supplies, and no later than 45 (forty-five) days after the date of submission of deliverables, unless otherwise specified in the special conditions or in the tender specifications (Annex I).

Acceptance shall be declared only where the conditions laid down in the contract are satisfied and the deliverables or supplies conform to the tender specifications (Annex I).

Where, for reasons attributable to the contractor, the contracting authority is unable to accept the deliverables or supplies, the contractor shall be notified in writing at the latest by the deadline for acceptance.

II.1.12 Conformity of the supplies delivered with the contract

(a) The supplies delivered by the contractor to the contracting authority must be in conformity in quantity, quality, price and packaging with this contract.

(b) The supplies delivered must:

(i) correspond to the description given in the tender specifications (Annex I) and the contractor's tender (Annex II.II);



- (ii) be free from defects in material and workmanship at the time of Final Review by the contracting authority for a period of two (2) years under normal use required of them by the contracting authority and made known to the contractor at the time of conclusion of this contract and accepted by the contractor;
- (iii) be packaged according to the usual method for supplies of the same type or, failing this, in a way designed to preserve and protect them.

II.1.13 Remedy

- (a) The contractor shall be liable to the contracting authority for any lack of contractually agreed conformity of deliverables which exists at the time they are subject to Final Review by the contracting authority.
- (b) In case of lack of conformity or rejection of deliverables, without prejudice to Article II.11 regarding liquidated damages applicable to the total price of the contract, the contracting authority shall be entitled:
 - (i) either to have the deliverables brought into conformity, free of charge, by repair or replacement;
 - (ii) or to have an appropriate reduction made in the price.

Any repair or replacement of deliverables shall be completed within a reasonable time and without any significant inconvenience to the contracting authority, taking account of the nature of the supplies and the purpose for which they are required by the contracting authority.

- (c) In case of lack of conformity or rejection of deliverables, the contracting authority shall be entitled to have additional information, corrections or other documents submitted by the contractor within 15 (fifteen) days from the date of receipt by the contractor of the notification of rejection.
- (d) The term 'free of charge' in paragraph (b) refers to the costs incurred to bring the deliverables or supplies into conformity, particularly the cost of postage, labour and materials.

II.1.14 General provisions concerning supplies

(a) Packaging

The supplies shall be packaged in strong boxes or crates or in any other way that ensures that the contents remain intact and prevents damage or deterioration. Packaging, pallets, etc., including contents, shall not weigh more than 500 kg.

Unless otherwise specified in the special conditions or in the tender specifications (Annex I), pallets shall be considered as one-way packaging and shall not be returned. Each box shall be clearly labelled with the following information:

- (i) name of contracting authority and address for delivery;
- (ii) name of contractor;
- (iii) description of contents;
- (iv) date of delivery;
- (v) EC code number of article.



(b) Guarantee

The contractor shall guarantee that any permits and licences required for manufacturing and selling the deliverables have been obtained.

I.14.3 Unless indicated in this article above, the General Conditions of the contract shall otherwise remain without change.

For the contractor,

[Company name/forename/surname/function]

signature[s]: _____

Done in , [date]

For the contracting authority,

Carlo Des Dorides

Executive Director

signature: _____

Done in Prague, [date]

In duplicate in English.



II – GENERAL CONDITIONS FOR SERVICE CSPCS

ARTICLE II. 1 – PERFORMANCE OF THE CSPC

- II.1.1** The contractor shall perform the CSPC to the highest professional standards. The contractor must comply 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, established as minimum requirements in the Tender Specifications.
- II.1.2** The contractor shall be solely responsible for taking the necessary steps to obtain any permit or licence required for performance of the CSPC under the laws and regulations in force at the place where the tasks assigned to it are to be executed.
- II.1.3** Without prejudice to Article II.4 any reference made to the contractor's personnel in the CSPC shall relate exclusively to individuals involved in the performance of the CSPC.
- II.1.4** The contractor must ensure that the personnel performing the CSPC possesses the professional qualifications and experience required for the execution of the tasks assigned to it.
- II.1.5** The contractor shall neither represent the contracting authority nor behave in any way that would give such an impression. The contractor shall inform third parties that it does not belong to the European public service.
- II.1.6** The contractor shall be solely responsible for the personnel who executes the tasks assigned to him/her.

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

- (a) personnel executing the tasks assigned to the contractor may not be given orders directly by the contracting authority;
 - (b) the contracting authority may not under any circumstances be considered to be the employer of the personnel referred to in point (a) and the personnel shall undertake not to invoke against the contracting authority any right arising from the contractual relationship between the contracting authority and the contractor.
- II.1.7** In the event of disruption resulting from the action of one of the contractor's personnel working on the contracting authority's premises or in the event that the expertise of one of the contractor's personnel fails to correspond to the profile required by the CSPC, the contractor shall replace him/her without delay. The contracting authority shall have the right to make a reasoned request for the replacement of any such personnel. The replacement personnel must have the necessary qualifications and be capable of performing the CSPC under the same contractual conditions. The contractor shall be responsible for any delay in the execution of the tasks assigned to it resulting from the replacement of personnel.
- II.1.8** Should the execution of the tasks be directly or indirectly hampered, either partially or totally, by any unforeseen event, action or omission, the contractor shall immediately and on its own initiative record it and report it to the contracting authority. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the contractor to ensure full compliance with its obligations



under this CSPC. In such an event the contractor shall give priority to solving the problem rather than determining liability.

- II.1.9** Should the contractor fail to perform its obligations under the CSPC the contracting authority may - without prejudice to its right to terminate the CSPC or reduce or recover payments in proportion to the scale of the unperformed obligations. In addition, the contracting authority may claim compensation or impose liquidated damages in accordance with Article II.12.

ARTICLE II.2 – MEANS OF COMMUNICATION

- II.2.1** Any communication relating to the CSPC or to its performance shall be made in writing and shall bear the CSPC number. Any communication is deemed to have been made when it is received by the receiving party unless otherwise provided for in this CSPC.

- II.2.2** Electronic communication shall be deemed to have been received by the parties on the day of dispatch of that communication provided it is sent to the addressees listed in Article I.8. Without prejudice to the preceding, if the sending party receives a message of non-delivery to or of absence of the addressee, it shall make every effort to ensure the actual receipt of such communication by the other party.

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.2.3** 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 Article I.8.

Any formal notification shall be made by registered mail with return receipt or equivalent, or by equivalent electronic means.

ARTICLE II. 3 – LIABILITY

- II.3.1** The contractor shall be solely responsible for complying with any legal obligations incumbent on it.

- II.3.2** The contracting authority shall not be held liable for any damage caused or sustained by the contractor, including any damage caused by the contractor to third parties during or as a consequence of performance of the CSPC, except in the event of wilful misconduct or gross negligence on the part of the contracting authority.

- II.3.3** The contractor shall be held liable for any loss or damage sustained by the contracting authority in performance of the CSPC, including in the event of subcontracting, and for any claim by a third party, but only to an amount not exceeding three times the total amount of the relevant Contract Stage. Nevertheless, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor or of its personnel or subcontractors, the contractor shall have unlimited liability for the amount of the damage or loss.

- II.3.4** The contractor shall indemnify and hold the European Union harmless for all damages and costs incurred due to any claim. 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 CSPC. In the



event of any action brought by a third party against the contracting authority in connection with the performance of the CSPC including any alleged breach of intellectual property rights, the contractor shall assist the contracting authority. Such expenditure incurred by the contractor may be borne by the contracting authority.

- II.3.5** The contractor shall take out an insurance policy against risks and damage relating to the performance of the CSPC if required by the relevant applicable legislation. It shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance contracts shall be sent to the contracting authority should it so request.
- II.3.6** If the contractor is composed of two or more economic operators (i.e. who submitted a joint tender), they are all jointly and severally liable to the contracting authority for the implementation of the CSPC.

ARTICLE II. 4 - CONFLICT OF INTERESTS

- II.4.1** The contractor shall take all the necessary measures to prevent any situation of conflict of interest. Such situation arises where the impartial and objective performance of the CSPC is compromised for reasons involving economic interest, political or national affinity, family or emotional ties, or any other shared interest.
- II.4.2** Any situation constituting or likely to lead to a conflict of interest during the performance of the CSPC shall be notified to the contracting authority in writing without delay. The contractor shall immediately take all the necessary steps to rectify the situation. The contracting authority reserves the right to verify that the steps taken are appropriate and may require that additional steps be taken within a specified deadline.
- II.4.3** The contractor declares that it has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, when such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, in so far as it serves as an incentive or reward relating to the performance of the CSPC.
- II.4.4** The contractor shall pass on all the relevant obligations in writing to its personnel and to any natural person with the power to represent it or take decisions on its behalf and ensure that it is not placed in a situation which could give rise to conflicts of interest. The contractor shall also pass on all the relevant obligations in writing to third parties involved in the performance of the CSPC including subcontractors.

ARTICLE II.5 – CONFIDENTIALITY

- II.5.1.** The contracting authority and the contractor shall treat with confidentiality any information and documents, in any form, disclosed in writing or orally in relation to the performance of the CSPC and identified in writing as confidential.

The contractor shall:

- (a) not use confidential information and documents for any purpose other than fulfilling its obligations under the CSPC without prior written agreement of the contracting authority;
- (b) ensure the protection of such confidential information and documents with the same level of protection it uses to protect its own confidential information, but in no case any less than reasonable care;

- (c) not disclose directly or indirectly confidential information and documents to third parties without prior written agreement of the contracting authority.

II.5.2 The confidentiality obligation set out in Article II.5.1 shall be binding on the contracting authority and the contractor during the performance of the CSPC and for five years starting from the date of the payment of the balance unless:

- (a) the concerned party agrees to release the other party from the confidentiality obligation earlier;
- (b) the confidential information becomes public through other means than in breach of the confidentiality obligation through disclosure by the party bound by that obligation;
- (c) the disclosure of the confidential information is required by law.

II.5.3 The contractor shall obtain from any natural person with the power to represent it or take decisions on its behalf, as well as from third parties involved in the performance of the CSPC an undertaking that they will comply with the confidentiality obligation set out in Article II.5.1.

ARTICLE II.6— PROCESSING OF PERSONAL DATA

II.6.1 Any personal data included in the CSPC shall be processed pursuant to Regulation (EC) 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Such data shall be processed by the data controller solely for the purposes of the performance, management and monitoring of the CSPC without prejudice to its possible transmission to the bodies charged with monitoring or inspection tasks in application of European Union law.

II.6.2 The contractor shall have the right to access its personal data and the right to rectify any such data. The contractor should address any queries concerning the processing of its personal data to the data controller.

II.6.3 The contractor shall have right of recourse at any time to the European Data Protection Supervisor.

II.6.4 Where the CSPC requires the processing of personal data by the contractor, the contractor may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data which may be processed, the recipients of the data and the means by which the data subject may exercise his rights.

II.6.5 The contractor shall grant its personnel access to the data to the extent strictly necessary for the performance, management and monitoring of the CSPC.

II.6.6 The contractor undertakes to 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:

- (a) prevent any unauthorised person from gaining access to computer systems processing personal data, and especially:
 - (i) unauthorised reading, copying, alteration or removal of storage media;
 - (ii) unauthorised data input, as well as any unauthorised disclosure, alteration or erasure of stored personal data;
 - (iii) unauthorised use of data-processing systems by means of data transmission facilities;



- (b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
- (c) record which personal data have been communicated, when and to whom;
- (d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting authority;
- (e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
- (f) design its organisational structure in such a way that it meets data protection requirements.

ARTICLE II. 7 – SUBCONTRACTING

- II.7.1** The contractor shall not subcontract without prior written authorisation from the contracting authority nor cause the CSPC to be de facto performed by third parties.
- II.7.2** Even where the contracting authority authorises the contractor to subcontract to third parties, it shall nevertheless remain bound by its contractual obligations and shall be solely responsible for the proper performance of this CSPC.
- II.7.3** The contractor shall make sure that the subcontract does not affect rights and guarantees granted to the contracting authority by virtue of this CSPC, notably by Article II.18.

ARTICLE II. 8 – AMENDMENTS

- II.8.1** Any amendment to the CSPC shall be made in writing before fulfilment of all contractual obligations.
- II.8.2** The amendment may not have the purpose or the effect of making changes to the CSPC which might call into question the decision awarding the CSPC or result in unequal treatment of tenderers or contractors.

ARTICLE II. 9 – ASSIGNMENT

- II.9.1** The contractor shall not assign the rights, including claims for payments, and obligations arising from the CSPC, in whole or in part, without prior written authorisation from the contracting authority.
- II.9.2** 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.

II.10.1 Identification and evidence of granting of pre-existing rights and rights of third parties

When delivering the results, the contractor shall warrant that they are free of rights or claims from creators and third parties including in relation to pre-existing rights, for any use envisaged by the contracting authority. This does not concern the moral rights of natural persons.

The contractor shall establish to that effect a list of all pre-existing rights and rights of creators and third parties on the results of this CSPC or parts thereof. This list shall be provided no later than the date of delivery of the final results.

In the result the contractor shall clearly point out all quotations of existing textual works. The complete reference should include as appropriate: name of the author, title of the work, date and place



of publication, date of creation, address of publication on internet, number, volume and other information which allows the origin to be easily identified.

Upon request by the contracting authority, the contractor shall provide evidence of ownership of or rights to use all the listed pre-existing rights and rights of third parties except for the rights owned by the GSA.

This evidence may refer, inter alia, to rights to: parts of other documents, images, graphs, tables, data, software, technical inventions, know-how etc. (delivered in paper, electronic or other form), IT development tools, routines, subroutines and/or other programs ("background technology"), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin.

The evidence shall include, as appropriate:

- (a) the name and version number of a software product;
- (b) the full identification of the work and its author, developer, creator, translator, data entry person, graphic designer, publisher, editor, photographer, producer;
- (c) a copy of the licence to use the product or of the agreement granting the relevant rights to the contractor or a reference to this licence;
- (d) a copy of the agreement or extract from the employment contract granting the relevant rights to the contractor where parts of the results were created by its personnel;
- (e) the text of the disclaimer notice if any.

Provision of evidence does not release the contractor from its responsibilities in case it is found that it does not hold the necessary rights, regardless of when and by whom this fact was revealed.

The contractor also warrants that it possesses the relevant rights or powers to execute the transfer and that it has paid or has verified payment of all due fees including fees due to collecting societies, related to the final results.

II.10.2 Creators

By delivering the results the contractor warrants that the creators undertake not to oppose that their names be recalled when the results are presented to the public and confirms that the results can be divulged. Names of authors shall be recalled on request in the manner communicated by the contractor to the contracting authority.

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

II.10.3 Visibility of European Union or GSA funding and disclaimer

When making use of the results, the contractor shall declare that they have been produced within a contract with the GSA and that the opinions expressed are those of the contractor only and do not represent the contracting authority's official position. The contracting authority may waive this obligation in writing.

ARTICLE II. 11 – FORCE MAJEURE

II.11.1 'Force majeure' means any unforeseeable and exceptional situation or event beyond the parties' control which prevents either of them from fulfilling any of their obligations under the CSPC, which was not attributable to error or negligence on their part or on the



part of subcontractors and which proves to be inevitable in spite of exercising due diligence. Any default of a service, defect in equipment or material or delays in making them available, unless they stem directly from a relevant case of force majeure, as well as labour disputes, strikes or financial difficulties, cannot be invoked as force majeure.

- II.11.2 A party faced with force majeure shall formally notify the other party without delay, stating the nature, likely duration and foreseeable effects.
- II.11.3 The party faced with force majeure shall not be held in breach of its contractual obligations if it has been prevented from fulfilling them by force majeure. Where the contractor is unable to fulfil its contractual obligations owing to force majeure, it shall have the right to remuneration only for the tasks actually executed.
- II.11.4 The parties shall take all the necessary measures to limit any damage due to force majeure.

ARTICLE II. 12 – LIQUIDATED DAMAGES AND REDUCTION OF PRICE

II.12.1 Liquidated Damages

The contracting authority may impose liquidated damages should the contractor fail to complete its contractual obligations, also with regard to the required quality level, according to the Tender Specifications.

Should the contractor fail to perform its contractual obligations within the time limits set by the CSPC, then, without prejudice to the contractor's actual or potential liability or to the contracting authority's right to terminate the CSPC, the contracting authority may impose liquidated damages for each and every calendar day of delay according to the following formula:

$$0.3 \times (V/d)$$

V is the price of the relevant purchase;

d is the duration specified for the relevant Contract Stage or failing that, the period between the date on which the relevant Contract Stage commences and the date of delivery or performance specified in the relevant Contract Stage, expressed in calendar days

The contractor may submit arguments against this decision within 30 days of receipt of the formal notification. In the absence of a reaction on its part or of written withdrawal by the contracting authority within 30 days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable.

The parties expressly acknowledge and agree that any sums payable under this article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses incurred due to failure to fulfil obligations which may be reasonably anticipated.

II.12.2. Quality standards

If the Contractor fails to provide the service in accordance with the CSPC ('unperformed obligations') or if it fails to provide the tasks in accordance with the expected quality levels specified in the tender specifications ('low quality delivery'), the Contracting Authority may reduce or recover payments proportionally to the seriousness of the unperformed obligations or low quality delivery. This includes in particular cases where the Contracting Authority cannot approve a result, report or deliverable after the Contractor has submitted the required additional information, correction or new version.



A reduction in price may be imposed together with liquidated damages under the conditions of Article II.12.1.

II.12.3 Procedure

The Contracting Authority must formally notify the Contractor of its intention to reduce payment and the corresponding calculated amount.

The Contractor has thirty (30) 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 reduce payment; or
- (b) of its final decision to reduce payment and the corresponding amount.

II.12.4 Claims and liability

Any reduction in price does not affect the Contractor's actual or potential liability or the Contracting Authority's rights elsewhere foreseen under this contract.

ARTICLE II. 13 – SUSPENSION OF THE PERFORMANCE OF THE CSPC

II.13.1 Suspension by the contractor

The contractor may suspend the performance of the CSPC or any part thereof if a case of force majeure makes such performance impossible or excessively difficult. The contractor shall inform the contracting authority about the suspension without delay, giving all the necessary reasons and details and the envisaged date for resuming the performance of the CSPC.

Once the circumstances allow resuming performance, the contractor shall inform the contracting authority immediately, unless the contracting authority has already terminated the CSPC.

II.13.2 Suspension by the contracting authority

The contracting authority may suspend the performance of the CSPC or any part thereof:

- (a) if the CSPC award procedure or the performance of the CSPC prove to have been subject to substantial errors, irregularities or fraud;
- (b) in order to verify whether presumed substantial errors, irregularities or fraud have actually occurred.

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 CSPC. The contractor shall not be entitled to claim compensation on account of suspension of the CSPC or of part thereof in case the suspension events under this clause are attributable to him.

ARTICLE II. 14 – TERMINATION OF THE CSPC**II.14.1 Grounds for termination by the contracting authority**

The contracting authority may terminate the CSPC, in the following circumstances:

- (a) if provision of the services has not actually started within fifteen (15) days of the scheduled date and the contracting authority considers the new date proposed, if any, unacceptable, taking into account Article II.11.2;
- (b) if the contractor is unable, through its own fault, to obtain any permit or licence required for *implementation of the CSPC*;
- (c) if the contractor does not implement the CSPC in accordance with the tender specifications or is in breach of another substantial contractual obligation;
- (d) if the contractor or any person that assumes unlimited liability for the debts of the contractor is in one of the situations provided for in points (a) and (b) of Article 106(1) of the Financial Regulation¹;
- (e) if the contractor or any *related person* is subject to any of the situations provided for in points (c) to (f) of Article 106(1) or to Article 106(2) of the Financial Regulation.
- (f) if the procedure for awarding the CSPC or the *implementation of the CSPC* prove to have been subject to *substantial errors, irregularities or fraud*;
- (g) if the contractor does not comply with applicable obligations under environmental, 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;
- (h) if the contractor is in a situation that could constitute a *conflict of interest* or a *professional conflicting interest* as referred to in Article II.4, subject to the provisions under such article;
- (i) if a change to the contractor's legal, financial, technical, organisational or ownership situation is likely to substantially affect the *implementation of the CSPC* or substantially modify the conditions under which the CSPC was initially awarded;
- (j) in the event of *force majeure*, where either resuming implementation is impossible or the necessary ensuing amendments to the CSPC would mean that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or contractors;

II.14.2 Grounds for termination by the contractor

The contractor may terminate the CSPC if:

- (a) it has evidence that the contracting authority has committed *substantial errors, irregularities or fraud* in the procedure for awarding the CSPC or the *implementation of the CSPC*;
- (b) the contracting authority fails to comply with its obligations, in particular the obligation to provide the information needed for the contractor to implement the CSPC as provided for in the tender specifications.

¹ Regulation (EU, EURATOM) No 966/2012 on the financial rules applicable to the general budget of the Union, as amended <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32012R0966>

II.14.3 Procedure for termination

A party must formally notify the other party of its intention to terminate the CSPC and the grounds for termination.

The other party has 30 days following the date of receipt to submit observations, including the measures it has taken to continue fulfilling its contractual obligations. Failing that, the decision to terminate becomes enforceable the day after the time limit for submitting observations has elapsed.

If the other party submits observations, the party intending to terminate must formally notify it either of the withdrawal of its intention to terminate or of its final decision to terminate.

In the cases referred to in points (a) to (d), (g) to (i) of Article II.14.1 and in Article II.14.2, the date on which the termination takes effect must be specified in the formal notification.

In the cases referred to in points (e), (f) and (j) of Article II.14.1, the termination takes effect on the day following the date on which the contractor receives notification of termination.

In addition, at the request of the contracting authority and regardless of the grounds for termination, the contractor must provide all necessary assistance, including information, documents and files, to allow the contracting authority to complete, continue or transfer the services to a new contractor or internally, without interruption or adverse effect on the quality or continuity of the services. The parties may agree to draw up a transition plan detailing the contractor's assistance unless such plan is already detailed in other contractual documents or in the tender specifications. The contractor must provide such assistance at no additional cost, except if it can demonstrate that it requires substantial additional resources or means, in which case it must provide an estimate of the costs involved and the parties will negotiate an arrangement in good faith.

II.14.4 Effects of termination

The contractor is liable for damage incurred by the contracting authority as a result of the termination of the CSPC including the cost of appointing another contractor to provide or complete the services, unless the damage was caused by the situation specified in Article II.14.1(j) or in Article II.14.2. The contracting authority may claim compensation for such damage.

The contractor is not entitled to compensation for any loss resulting from the termination of the CSPC, including loss of anticipated profits, unless the loss was caused by the situation specified in Article II.14.2.

The contractor must take all appropriate measures to minimise costs, prevent damage and cancel or reduce its commitments.

Within 60 days of the date of termination, the contractor must submit any report, deliverable or result and any invoice required for services that were provided before the date of termination.

ARTICLE II. 15 – REPORTING AND PAYMENTS

II.15.1 Date of payment

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

II.15.2 Currency

The CSPC shall be in euro.



Payments shall be executed in euro or in the local currency as provided for in Article I.7.

Conversion between the euro and another currency shall be made according to the daily euro exchange rate published in the *Official Journal of the European Union* or, failing that, at the monthly accounting exchange rate established by the European Commission and published on its website, applicable on the day on which the payment order is issued by the contracting authority.

II.15.3 Costs of transfer

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

- (a) costs of dispatch charged by the bank of the contracting authority shall be borne by the contracting authority,
- (b) cost of receipt charged by the bank of the contractor shall be borne by the contractor,
- (c) costs for repeated transfer caused by one of the parties shall be borne by the party causing repetition of the transfer.

II.15.4 Invoices and Value Added Tax

Invoices shall contain the contractor's identification, the amount, the currency and the date, as well as the CSPC reference.

Invoices shall indicate the place of taxation of the contractor for value added tax (VAT) purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

The contracting authority is, as a rule, exempt from all taxes and duties, including VAT, pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.

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

II.15.5 Pre-financing and performance guarantees

[Intentionally left blank].

II.15.6 Interim payments and payment of the balance

The contractor shall submit a request for interim payment upon delivery of intermediary results, in accordance with Article I.6.

The contractor shall submit request for payment of the balance within 60 days of the day upon which it becomes due, in accordance with Article I.6.

Upon receipt, the contracting authority shall pay the amount due as interim or final payment, within the periods specified in, and subject to, Article I.6, and without prejudice to Article II.15.7. Approval of the invoice 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.15.7 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 that its invoice cannot be processed, either because it does not comply with the provisions of the CSPC, or because the appropriate documents have not been produced.

The contracting authority shall inform the contractor in writing as soon as possible of any such suspension, giving the reasons for it.

Suspension shall take effect on the date the notification is sent by the contracting authority. The remaining payment period shall start to run again from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension period exceeds 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 CSPC in accordance with Article II.14.1(c).

II.15.8 Interest on late payment

On expiry of the payment periods specified in Article I.6, and without prejudice to Article II.15.7, 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.15.7 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.15.1.

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. 16 - REIMBURSEMENTS

II.16.1 Where provided by the special conditions or by the Tender Specifications, the contracting authority shall reimburse the expenses that are directly connected with execution of the tasks on production of original supporting documents, including receipts and used tickets, or failing that, on production of copies or scanned originals, or on the basis of flat rates.

II.16.2 Travel and subsistence expenses shall be reimbursed, where appropriate, on the basis of the shortest itinerary and the minimum number of nights necessary for overnight stay at the destination.

II.16.3 Travel expenses shall be reimbursed as follows:

- (a) travel by air shall be reimbursed up to the maximum cost of an economy class ticket at the time of the reservation;
- (b) travel by boat or rail shall be reimbursed up to the maximum cost of a first class ticket;
- (c) travel by car shall be reimbursed at the rate of one first class rail ticket for the same journey and on the same day;

In addition, travel outside European Union territory shall be reimbursed provided the contracting authority has given its prior written consent.



- II.16.4** Subsistence expenses shall be reimbursed on the basis of a daily subsistence allowance as follows:
- (a) for journeys of less than 200 km for a return trip, no subsistence allowance shall be payable;
 - (b) daily subsistence allowance shall be payable only on receipt of supporting documents proving that the person concerned was present at the destination;
 - (c) daily subsistence allowance shall take the form of a flat-rate payment to cover all subsistence expenses, including meals, local transport which includes transport to and from the airport or station, insurance and sundries;
 - (d) daily subsistence allowance shall be reimbursed at the flat rates specified in Article I.5;
 - (e) accommodation shall be reimbursed on receipt of supporting documents proving the necessary overnight stay at the destination, up to the flat-rate ceilings specified in Article I.5.
- II.16.5** The cost of shipment of equipment or unaccompanied luggage shall be reimbursed provided the contracting authority has given prior written authorisation.
- II.16.6.** Conversion between the euro and another currency shall be made as specified in Article II.15.2.

ARTICLE II. 17 – RECOVERY

- II.17.1** If an amount is to be recovered under the terms of the CSPC, 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.17.2** 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.15.8. 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.
- Any partial payment shall first be entered against charges and interest on late payment and then against the principal amount.
- II.17.3** If payment has not been made by the due date, the contracting authority may, after informing the contractor in writing, recover the amounts due by offsetting them against any amounts owed to the contractor by the GSA or by the European Union or by the European Atomic Energy Community or by calling in the financial guarantee, where provided for, or by taking legal action.
- II.17.4** If the contract is signed by a group (joint tender), the group is jointly and severally liable under the conditions set out in Article II.3 (liability). The contracting authority first claims the full amount to the leader of the group.

If the leader does not pay by the due date and if the amount cannot be offset in accordance with Article II.17.3, the contracting authority may claim the full amount to any other member of the group by notifying the debit note already sent to the leader under Article II.17.1.

ARTICLE II. 18 – CHECKS AND AUDITS

- II.18.1** The contracting authority and the European Anti-Fraud Office may check or have an audit on the performance of the CSPC. 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 during the performance of the CSPC and during a period of five years which starts running from the date of expiry of the CSPC.

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

- II.18.3** 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 CSPC is performed and to all the information, including information in electronic format, needed in order to conduct such checks and audits. The contractor shall ensure that the information is readily available at the moment of the check or audit and, if so requested, that information be handed over in an appropriate form.

- II.18.4** 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 days following the date of receipt to submit observations. The final report shall be sent to the contractor within 60 days following the expiry of that deadline.

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.18.5** In accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspection carried out by the Commission in order to protect the European Communities' financial interests against *fraud* and other *irregularities* and Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office, the European Anti-Fraud Office may carry out investigations, including on the spot checks and inspections, to establish whether there has been *fraud*, corruption or any other illegal activity under the contract affecting the financial interests of the Union. Findings arising from an investigation may lead to criminal prosecution under national law.

The investigations may be carried out at any moment during the provision of the services and up to five years starting from the payment of the balance under this CSPC.

- II.18.6** The Court of Auditors shall have the same rights as the contracting authority, notably right of access, for the purpose of checks and audits.



Annex II.V – Template of deliverable/supply acceptance sheet

Contract reference: GSA/OP/23/16

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

For the Contractor:

I hereby certify that the task(s), deliverable(s) and supplies listed above have been completed according to the terms and conditions of the above-mentioned contract and submitted to the GSA.	
Name	
Position	
Signature	
Date	

For the GSA:

I hereby certify that the task(s), deliverable(s) and supplies listed above have been completed according to the terms and conditions of the above-mentioned contract, received and accepted by the GSA.	
Name	
Position	
Signature	
Date	