DRAFT CONTRACT EUSPA/OP/11/21

EUSPA PKI

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

on the one part, and

Company name

Address

VAT number

(Hereinafter referred to as 'the Contractor'), represented for the purposes of the signature of this contract by [XXXX],

on the other part,

together referred to as 'the Parties',

WHEREAS

A) Pursuant to the REGULATION (EU) 2021/696 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 28 April 2021[1] (hereinafter the "Space Regulation") the Agency shall be responsible of managing the exploitation of the Galileo component if so entrusted by the European Commission;

B) Following the entry into force of the Space Regulation, on 22 June 2021, the Agency has concluded with the European Union, represented by the European Commission, and with the European Space Agency a financial framework partnership agreement ("FFPA") and with the European Union represented by the European Commission a contribution agreement for the implementation of the FFPA according to which the Agency has been entrusted to provide the Open Service Navigation Message Authentication (''OS-NMA'');

C) In order to provide the OS-NMA service, the Agency needs to procure a turn-key solution (i.e. Public Key Infrastructure (PKI) System) and all the essential elements required to allow the Agency to act and operate as root certification authority (RCA) and as subsidiary certification authority (SCA) of such infrastructure as further defined in the Statement of Word (see Annex II);

D) To this purpose the Agency has launched the procurement procedure EUSPA/OP/11/21 – ''EUSPA

[1] REGULATION (EU) 2021/696 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 28 April 2021 establishing the Union Space Programme and the European Union Agency for the Space Programme and repealing Regulations (EU) No 912/2010, (EU) No 1285/2013 and (EU) No 377/2014 and Decision No 541/2014/EU

PKI'' on XXXX; [*date to be inserted*]

E) Following the evaluation and the award of the proposal submitted by the Contractor, the Agency intends to conclude the present contract

HAVE AGREED

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

Annex I - Statements of Compliance to the SOW

Annex II – Tender Specifications including its annexes

Annex III – Contractor's tender

Annex IV – Security Aspect Letter

Annex V – Template of acceptance sheet

Annex VI - Declaration of Background IPRs

Annex VII - Declaration Foreground IPRs

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

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

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

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

All references to the Tender Specifications and the Statement of Work (SoW), annexed to them, shall be understood to include reference to their annexes as well.

1. DEFINITIONS

Background IPR: means IPR (including Third-Party IPR), including source code, to which the Contractor or Contractor Parties have acquired rights:

- prior to the entry into force of this Contract; or
- independently from the execution of this Contract in the course of the duration of this Contract,

and which are or have to be used by the Contractor or Contractor Parties for the performance of the Contract.

Background IPRs do not include those IPRs that:

(i) are developed and/or acquired by the Contractor or any of the Contractors Parties in the course of carrying out their general business; and

(ii) are included in the scope of this Contract or of a subcontract as deliverable.

Contractor Party: means any person or legal entity engaged by the Contractor to execute on its behalf tasks in relation to this Contract

Foreground IPR: means any IPR, including source codes, developed by the Contractor, a Sub-Contractor, any other Contractor Party or their agent, or transferred to the Contractor by third parties in the course of the duration of the Contract, which is developed or created in fulfilling any Contractor's obligations under this Contract.

Intellectual Property Right (IPR): have the meaning stated in Article 2 of the Convention establishing the World Intellectual Property Organisation, done in Stockholm on 14 July 1967. In particular, “intellectual property” shall include the rights relating to:

- literary, artistic and scientific works;
- performances of performing artists, phonograms, and broadcasts;
- inventions in all fields of human endeavour;
- scientific discoveries;
- industrial designs;
- trademarks, service marks, and commercial names and designations;
- protection against unfair competition; and
- all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

For the purposes of this Contract, Intellectual Property shall also include know-how or trade secrets, provided that they are unpublished, and in written or otherwise documented form, and

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

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

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

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

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

(f) to the extent they do not comprise a standard.

Public Key Infrastructure (PKI): shall mean the set of hardware, software, policies, and procedures needed to create, manage, distribute, use, store, and revoke certificates.

PKI System: shall mean the system composed of tangible assets (sub-systems, equipment, components, HW and SW technologies) and non-tangible assets (design, plan, policies, procedures and SW) in order to provide digital certificates, as further specified in the Statement of Work ('SoW') – Annex I.1 to the Tender Specifications.

Subcontractor: shall mean any person, company or other legal entity having concluded a subcontract with the Contractor for the purpose of this Contract.

Third Party IPR: means all Intellectual Property Rights other than Foreground IPR owned by third parties either before or after the signature of the Contract, which are relevant to the performance of the Contract and which are listed in the Background IPR List.

2. SUBJECT MATTER

The scope of this Contract is the to supply a turn-key solution (i.e. Public Key Infrastructure (PKI) System) and the elements needed in order to allow the Contracting Authority to act and operate as root certification authority (RCA) and as subsidiary certification authority (SCA) in support of Galileo Open Service Navigation Message Authentication (OS-NMA) service provisioning as further defined in Annexes I, II and III to this Contract.

In particular the scope of this Contract includes:

2.1 Baseline

The design, development, delivery, installation, integration validation and 12-month warranty and maintenance of the PKI System according to the schedule, terms and conditions defined in the present Contract and in Annexes I, II and III to this Contract.

2.2 Option

Maintenance services as defined in the **Error! Reference source not found.** (SoW) to Annex II of this Contract: PKI-SOW-1650.

Validity: 12 months after the date of the PKI acceptance review
Number of options: 2
Option exercising: via letter (or equivalent) by the Agency to the Contractor, sent at least two (2) weeks

before the start of the option implementation.

3. ENTRY INTO FORCE AND DURATION

3.1 The Contract shall enter into force on the date on which it is signed by the last Party and shall last until xxx.

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

3.3 In case the option under Article 2.2 is exercised, the duration of the Contract shall be extended accordingly.

4. PRICE

4.1 Baseline

The amount to be paid by the Customer under the Contract shall be EUR [*XX (XXX)]*, **constituting a Firm Fixed Price (FFP)** covering the execution of all tasks and the delivery of all related supplies, excluding the option.

4.2 Option

The amount to be paid by the Customer under the Contract in case of exercise of the option under Article 2.2 above, shall be EUR [*XX, (XXX)]*, **constituting a Firm Fixed Price (FFP),** covering the execution of all tasks and the delivery of all related supplies (if any).

4.3 The above amounts shall include all cost and expenses. Cost 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 cost necessary for the performance of the tasks described, incurred directly and indirectly by the Contractor in performance of the tasks that will be entrusted to him, including travel and subsistence expenses.

4.4 There shall be no indexation during the performance of the Contract.

5. PAYMENT ARRANGEMENTS

5.1 Pre-financing

Not Applicable.

5.2 Payments

5.2.1 Interim/final payments shall be made upon successful achievement of the milestones defined in Annex II (SOW), according to the acceptance provisions defined therein in the amounts and at the time specified therein upon submission of:

a. an invoice for the corresponding amount,

b. signed and approved deliverable acceptance sheet (see Annex V);

c. any other document necessary to be presented for the particular milestone according to the TS and SOW (Annex II)

5.2.2 Option

As far as the delivery of the option under Article 2.2 above is concerned, payment shall be made on a quarterly basis upon submission of an invoice and a maintenance report.

5.2.3 General conditions applicable to the payments

All invoices shall be issued electronically to finance@gsa.europa.eu.

The Contractor undertakes to ensure that its invoices sent to the Agency quote the following reference: "EUSPA/OP/11/21 [milestone/payment reference]". Invoices shall be complete (including instructions for billing taxes and duties, where applicable) and shall strictly adhere to any Agency instructions.

Upon submission of the documents mentioned in art 5.2.1 above, the Customer shall make the payment within 60 (sixty) days from receipt of the invoice.

The Contractor shall have 30 (thirty) days, from the receipt of a request of the Customer, to submit additional information or corrections or other documents.

The Agency may suspend the time limit for payments as agreed by the Parties where duly justified, including to perform on-the-spot checks, to ascertain eligibility of the payment, and in case of inadmissibility of the invoice.

The Agency shall formally notify the Contractor of suspension of payment. It shall set out the reasons for suspension. Suspension shall take effect from the date of dispatch of the letter. In case of suspension of payment, the Agency shall not be liable for late payment.

In the event of late payment, the Contractor shall be entitled to interest at the rate applied by the European Central Bank to its most recent main refinancing operations ("the reference rate") plus eight percentage points ("the margin"). The reference rate in force on the first day of the month in which the payment is due shall apply. Such interest rate is published in the C series of the Official Journal of the European Union.

Interest 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.

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 Partial payment.

In the event a milestone is considered successful achieved only partially, the Customer may approve partial payment proportionate to the partially achieved milestone (i.e. not exceeding the value for the work performed at the date of declaration of the partially successful milestone).

5.3 Taxation

The Contractor recognises that the Agency is, as a rule, exempt from all taxes and duties, including value added tax (VAT), pursuant to the provisions of Article 7 of Regulation (EU) No 912/2010, in connection with Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities.

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

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

6. GENERAL PROVISIONS ON PERFORMANCE

6.1 The Contractor shall perform the Contract to the highest professional standards.

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

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

6.4 The Contractor must ensure that the personnel performing the Contract possesses the professional qualifications and experience required for the execution of the tasks assigned to it.

6.5 The Contractor shall neither represent the Customer nor behave in any way that would give such an impression. The Contractor shall inform third parties that it does not belong to the European public service.

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

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

6.8 In the event of disruption resulting from the action of one of the Contractor's personnel working on the Customer's premises or in the event that the expertise of a member of the Contractor's personnel fails to correspond to the profile required by the contract, the Contractor shall replace him without delay. The Customer shall have the right to make a reasoned request for the replacement of any such personnel. The replacement personnel must have the necessary qualifications and be capable of performing the contract under the same contractual conditions. The Contractor shall be responsible for any delay in the execution of the tasks assigned to it resulting from the replacement of personnel.

6.9 Should the execution of the tasks be directly or indirectly hampered, either partially or totally, by any unforeseen event, action or omission, the Contractor shall immediately and on its own

initiative record it and report it to the Customer. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with its obligations under this contract. In such an event the Contractor shall give priority to solving the problem rather than determining liability.

6.10 Should the Contractor fail to perform its obligations under the contract, the Customer may - without prejudice to its right to terminate the Contract - reduce or recover payments in proportion to the scale of the unperformed obligations. In addition, the Customer may claim compensation or impose liquidated damages in accordance with Article 19.

7. KEY PERSONNEL

The Contractor's key personnel are listed in Section *[XXX]* of the Contractor's Proposal under Annex III.

If a replacement of Key Personnel is required, this must be agreed with the Agency. The Contractor shall provide, free of charge, anhandover of specific technical knowledge to replacement personnel to ensure the individual is fully competent, as soon as he/she starts work under the Contract, to carry out the tasks allocated to him/her.

This hand over phase shall ensure continuity of the activities without disruption.

8. CHANGE OF SUBCONTRACTORS

In case, during the performance of the Contract, the Contractor intends to change a Subcontractor or to enter into contractual relationships with a new Subcontractor, the Contractor shall notify the details of such Subcontractor to the Agency and shall provide evidence of compliance of such Subcontractor with the requirements under Annex II (Tender Specifications), before concluding any contract. The Agency shall verify the compliance of the new Subcontractor with the above-mentioned requirements and may reject its appointment in case of lack of compliance. In such case, the Contractor shall accordingly update the Annex I.12 – template Statistical Reporting, of the Tender Specifications and submit it to the Agency.

9. INTENTIONALLY LEFT BLANK

10. DELIVERY OF ITEMS UNDER THE CONTRACT

10.1 The items delivered under the Contract, must:

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

b. be fit for any specific purpose required of them by the Agency and made known to the Contractor at the time of conclusion of this contract and accepted by the Contractor;

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

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

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

10.2 Delivery

a. All deliveries of supplies shall be made at the agreed place of delivery during the hours agreed between the Customer and the Contractor.

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

c. Each delivery 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 Customer and returned to the Contractor or to its carrier.

d. Signature of the consignment note by the Customer is simply an acknowledgment of the fact that the delivery of supplies took place and in no way implies conformity of the supplies with this contract.

11. ACCEPTANCE OF DOCUMENTS

Each document shall be submitted to the procedure described under Annex II (SOW). Acceptance of documents shall not release the Contractor for its responsibilities before the PKI System have been shown to comply with the requirements and final acceptance has occurred.

12. INSTALLATION

12.1 The Contractor shall install the supplies delivered in accordance with the conditions set forth in the tender specifications (Annex II).

12.2 Any lack of conformity resulting from incorrect installation of the supplies delivered shall be deemed to be equivalent to lack of conformity of the supplies as installation of the supplies form part of this contract and the supplies are installed by the Contractor or under its responsibility.

13. TESTING AND ACCEPTANCE OF THE PKI System

13.1 The Contractor shall be responsible for coordinating all tasks and responsibilities associated with acceptance testing.

13.2 Acceptance test for the correct functioning of the release shall be conducted as defined in the tender specifications and SOW (Annex II).

13.3 The procedures and tests for conduct of the acceptance process and acceptance test must be developed by the Contractor and delivered to the Agency for approval as specified in the SOW-

DIL (Annex II). In case of disagreement between the Parties on the approval of the procedures and tests, the matter shall be settled in accordance with Article 33.

13.4 The Contractor shall give the Agency 10 days' advance written notice of the time it expects to conduct the acceptance test.

13.5 The Contractor may repeat an acceptance test as Contractor deems appropriate; provided, that all acceptance tests must be completed by 60 days after their beginning unless: (a) the Parties agree otherwise in writing; or (b) the acceptance testing period is extended by Force Majeure or for reasons not attributable to the Contractor. Contractor shall bear the costs of performing the repeat acceptance tests unless such repeat acceptance is resulting from reasons not attributable to the Contractor.

13.6 If the tested performance is not in line with performance requirements the Contractor shall make (or cause to be made) at its own costs and expenses all the modifications, improvements, redesign, repairs or reconstruction necessary to cause PKI system to meet the acceptance requirements, without prejudice to liquidated damages for delays, according to Article 19.

13.7 Completion shall occur when (a) all materials and equipment for the relevant release have been installed substantially in accordance with the Contract; (b) all systems required to be installed by Contractor have been installed; (c) all the equipment and systems are ascertained as suitable to be operated in a safe and prudent manner and according to the Contract; (d) the performances of the relevant release are compliant with the performance requirements under Annex II (SOW).

14. INSPECTION

14.1 The Customer and its agents, employees or contractors shall, upon reasonable prior notice to Contractor and subject to adherence to the safety procedures and other applicable procedures and requirements, have access to inspect all work done by the Contractor under this Contract; provided, however, that any inspection of the work shall be conducted at a reasonable time and in a manner that does not delay or increase the cost of the work by disrupting the work. The Contractor shall have the right to condition such inspection upon the persons conducting the inspection observing procedures to preserve the safety and security the site of work. Notwithstanding any review or inspection, the Contractor shall not be relieved of its responsibility for the design, construction and performance of the contract solely by virtue of the inspection or review.

15. WARRANTY

15.1 The PKI System shall be guaranteed against all defects in manufacture and any malfunctioning or underperformance with respect to the performance requirements set out in the SoW (Annex II)

15.2 The Contractor shall replace or repair at its own expense any item which become damaged or defective in the course of normal use during the warranty period

15.3 If part of an item is replaced, the replacement part shall be guaranteed under the same terms and conditions for a further period of 6 months. Contractor's correction, replacement, or repair shall be made with due regard to Customer's operational requirements.

15.4 If a defect is found to originate in a systematic flaw in design, the Contractor must replace or modify all identical parts incorporated in the other deliverables and/or supplies that are part

of the Contract, even though they may not have been the cause of any incident. In this case, the guarantee period shall be extended as stated above.

15.5 Contractor warrants that all equipment and materials incorporated into PKI System that are purchased by Contractor or by any subcontractor shall not be subject to any chattel mortgage, conditional sales contract, or security agreement under which an interest or lien is retained; provided, however, that such equipment and materials may be subject to the security interest of the Customer, to secure the payment of the purchase price of the affected equipment and materials.

15.6 Contractor shall have no obligation for breach of warranty under this article to the extent any deficiencies are the result of Force Majeure, normal wear and tear, misuse or negligence by the Customer or someone other than Contractor acting on Customer's behalf.

16. OWNERSHIP AND FOREGROUND IPR

16.1 Ownership of all tangible assets and Foreground IPRs shall be exclusively vested in the European Union, represented by the European Commission, free-of-charge, without any title or right of the inventor and upon acceptance.

16.2 The Contractor shall declare and provide the Agency with full details of all inventions and works, including those related to software, performed under the Contract, which could be patentable or protected by another title of intellectual property. Subject to Article 26 (Confidentiality), such inventions and works performed by the Contractor, including its employees and agents in the course of the execution of the Contract shall be notified to the Agency, without delay and in any case, not later than thirty (30) days after its discovery.

16.3 Such notification shall contain:

(i) a description of the invention

(ii) an initial assessment of the patentability

(iii) the technical assessment of the programmatic value of the invention

(iv) the declaration form as per Annex VII

(v) information whether the Contractor intends to file a patent application for the notified invention if the Agency authorizes so.

16.4 The Agency shall retain all rights on the invention unless it notifies in writing to the Contractor within 6 (six) months from the time it receives the completed notification as provided under Article 16.3 above, that it authorizes the Contractor to file a patent application for the notified invention in its own name.

16.5 The Contractor shall extend its obligations under this Article to its sub-contractors, including their employees and agents.

16.6 The Contractor shall ensure that the ownership rights to Foreground IPRs are vested free-of-

charge, without any title or right of the inventor, to the European Union upon their acceptance by the Contracting Authority.

16.7 The intended purpose of the permanent assignment of full ownership of all Foreground IPR to the European Union referred to in the preceding paragraph is to enable the European Union to act as the full and only owner of such Foreground IPR without any limitation. Therefore, subject to the condition that under the law applying to the Contract a permanent assignment of the Intellectual Property Rights is lawfully not possible, the Contractor agrees to and herewith shall grant to the European Union an irrevocable and worldwide exclusive license for the Foreground IPR, covering all uses and exploitation rights, not restricted in respect of territory, time or purpose and including all the rights as listed in this article. For the avoidance of doubt, no royalty fee shall be paid by the European Union for such license grant.

16.8 In order to allow for filing of patent applications or to protect in any other way the Foreground IPR, the Contractor shall not disclose, except pursuant to a binding confidentiality obligation, any information, data or results related thereto until the Agency authorizes the Contractor to file a patent application for the notified invention at its own name or the date of publication of the patent application by the patent office. The Contractor shall abstain from and avoid any measures or acts which could endanger the novelty of an invention or otherwise endanger the registration of a Foreground IPR.

16.9 The Contractor shall provide technical support to the Agency and/or to the European Commission for filing of a patent application including drafting of the patent application, assistance in the patent prosecution process provided that such obligation does not extend beyond 14 (fourteen) months from the time the Agency receives the complete notification of the invention as per Article 16.3 above. The Contractor obligation according to the present provision shall not extend beyond 44 (forty-four) months from the time the Agency receives complete notification of the invention as per Article 16.3 above or 12 (twelve) months after expiration or termination of the Contract whichever is the longer period.

16.10 If the Contractor, after authorization from the Agency, files a patent application for the notified invention, it shall license the patent application or the ensuing patent on fair, reasonable and non-discriminatory (FRAND) terms to economic operators involved in the Galileo Component of the Space Programme as defined in the Space Regulation, including applications. The Contractor shall negotiate the license terms in good faith with every willing licensor. In case agreement on license terms cannot be reached within six (6) months from the time the willing licensor declares in writing its interest to license the patent, the terms of the license shall be decided by recourse to arbitration. The Contractor shall be entitled to enforce its patent through litigation in front of national courts only if the willing licensor refuses to enter into binding arbitration agreement with respect to the terms of the license.

16.11 The Contractor shall provide for the European Union and for the Agency a non-exclusive, royalty-free license to a patent application or a patent with the right to grant sublicenses for the purpose of the EU Space Programme and space component of Horizon Europe.

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

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

16.14 For the entire duration of this Contract , the Agency hereby grants to the Contractor a free-of-charge, non-exclusive, non-transferable license to use adapt, operate and modify the subject matter of Foreground IPR, including Third Party IPR licensed to the Union, in so far as the right to sub-licence is granted, for the purposes of performing its obligations under the present Contract, with the right to grant sublicenses to Contractor Parties within the limits of the scope and duration of the licence. The Contractor shall declare to the Agency any adaptation and modification performed on the Foreground IPR according to the provision of this Article and shall warrant that such adaptation and modification do not infringe any Third Party IPR.

16.15

16.16 The Contractor acknowledges that the licences granted under this Article are revoked with immediate effect in the case of termination or expiry of the Contract. The revocation will take effect on the date of the termination or expiry of the Contract.

17. THIRD PARTY IPR

17.1.1 The Contractor warrants that the results of the performance of this Contract, the transfer of ownership and the licences granted under this Contract will not infringe on any Intellectual Property Right of any third party. The Contractor shall indemnify the Agency against any related claim for infringement of third-party IPR, except where the Contractor demonstrates that the infringement is caused by the adaptations and modifications under 18 below.

17.1.2 If the Contractor considers that a licence to a third-party IPR is necessary to perform the present Contract it shall make its best commercial effort to obtain non-exclusive, perpetual, irrevocable, free of charge licence to use, adapt, operate and modify the subject matter of such Third-Party IPR, whether directly or through an appointed third party, for the purposes and uses related to the operation and maintenance of the PKI. 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 and for the purpose of operating the PKI, excluding any rights of sub-licence.

17.1.3 If the Contractor is not able to obtain such licence itself by exercising reasonable efforts, the Agency will, subject to a written request by the Contractor, support and assist the Contractor in obtaining the license.

17.1.4 When the Contractor procures software, which is subject to Third-Party IPR or in any way linked to or connected with software subject to Third-Party IPR, and the software subject to Third-Party IPR is made available under an Open Source Software (OSS) Licence, the Contractor shall ensure that the OSS Licence does not require him or the European Union to

apply the terms and conditions of such licence on its own developments or any developments within the frame of this Contract. If the OSS Licence so requires, the Contractor shall not procure or otherwise use the software under the OSS licence for any contractual purpose, unless otherwise agreed between the Parties.

17.1.5 The Agency shall make its best efforts to facilitate the Contractor's effort in obtaining third-party IPRs, however it makes no financial commitment to pay licensing or any other related costs. Financial commitments, if any, shall only be assumed following an amendment to this Contract.

17.1.6 The Contractor shall undertake best commercial efforts to ensure that any licence agreement the Contractor concludes with the owner of the third-party IPR shall include an article allowing the assignment of the licence to the Agency in case of termination before its expiry. The Contractor shall submit all such licence agreements to the Agency for information.

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

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

18. Background IPRS

18.1 The Contractor shall declare as per Annex VI all Background IPRs which it intends to use for the implementation of the contract.

18.2 The Contractor shall declare to the Agency the creation and/or acquisition and use of a new Background IPRs in the course of the duration of the Contract.

18.3 The Agency shall not become the owner of the Background IPR.

18.4 In relation to Background IPRs, subject to the provisions of Article 18 above, the Contractor shall grant the Agency a non-exclusive, perpetual, irrevocable, free-of-charge licence or sub-license, as the case may be, to use, adapt, operate and modify the subject matter of such Background IPRs, with the right to grant sub-licences within the same scope and duration, for the purposes of using the subject-matter of the Background IPR in all manners which are necessary for the operations and corrective and evolutive maintenance of the PKI System.

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

required to this purpose.

18.6

18.7 Should access to Background IPR involve a security concern[2], a specific non-disclosure agreement shall be put in place between the Agency and the Contractor to cover the confidentiality of this Background IPR. 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 this sensitive Background IPR.

18.8 After the termination or expiry of the Contract, the Contractor shall inform the Agency of any important modification or improvement of software protected by Background IPR and its documentation, and offer to the Agency the possibility to negotiate the availability of such modification or improvement at FRAND Terms. This obligation shall cease five years after the termination of the Contract.

19. LIQUIDATED DAMAGES

19.1 Should the milestones defined in Art. 19.3 below not be successfully performed within the time-limits set therein, then, without prejudice to the Contractor's actual or potential liability or to the Customer's right to terminate the contract, the Customer may impose liquidated damages for each and every calendar day of delay as specified therein.

19.2 The Parties expressly acknowledge and agree that any sums payable under this article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses incurred due to failure to fulfil obligations which may be reasonably anticipated. Liquidated Damages shall be the sole remedy for Contractor's breach of obligations under this Contract, unless the overall ceiling under Article 19.3 has been reached and the Contractor fails to undertake in good faith corrective actions to rectify the breach and mitigate the relevant damages. In such case, the Customer may terminate the Contract for Contractor's default in accordance with accordance Article 24.

19.3 The liquidated damages shall apply in accordance with the following scheme:

Reference Milestone	**Milestone Due Date**	**Ceiling Liquidated Damage Amount per Milestone (EUR)**	**Liquidated Damage Per Day of Delay (EUR)**
KO CDR QR OVRR	T0 T0+2,5 T0+4 T0+4,5	The LD due per milestone shall not exceed 15% of the amount due for the successful	For each calendar day of delay 0.17% of the baseline contract price shall be due.

[2] In particular but not limited to Commission Decision of 29 November 2001 amending its internal Rules of Procedure, 2001/844/E C, ECSC, Euratom, OJ L 317/1 of 3/12/2001 as last amended by Commission Decision 2006/548/EC, Euratom published in OJ L 215 p.38 of 5.8.2006; or Commission Decision No 1104/2011/EU of the European Parliament and of the Council of 25 October 2011 on the rule s for access to the public regulated service provided by the global navigation satellite system established under the G alileo programme.

ORR AR EOC	T0+5 T0+8 T0+20	achievement of the milestone as reported in PKI-SOW-0030: PKI system milestones and payment plan (see Annex II - SOW)	

Liquidated damages shall apply after a neutral period of forty-five (45) calendar days, during which no liquidated damages shall be due by the contractor, followed by a grace period of 60 (sixty) calendar days for each milestone.

At expiry of the grace period liquidated damages shall apply retroactively as of the date of the end of the neutral period. If the milestone is achieved before the end of the grace period then the Liquidated Damages are not due by the Contractor.

Liquidated damages are payable on their occurrence, and the Agency will deduct liquidated damage payments from its payments to the Contractor.

20. LIABILITIES

20.1 The Contractor shall be solely responsible for the delivery of the PKI System in accordance with: (a) the tender specifications; (b) the terms of this Contract;(c) all applicable laws including without limitation obligations relating to health, safety and protection of the environment.

20.2 The Customer 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 aconsequence of performance of the contract, except in the event of willful misconduct or gross negligence on the part of the Customer.

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

20.4 The Contractor shall hold the Agency harmless from any action, claim or proceeding brought against the Agency by a third party as a result of damage caused by the Contractor during the performance of the contract. In the event of any action brought by a third party against the Agency in connection with the performance of the contract, including any alleged breach of intellectual property rights, the Contractor shall assist the Agency as the case may be. Such expenditure incurred by the Contractor may be borne by the Agency.

20.5 The overall liability of the Contractor under this Contract shall be limited to an amount corresponding to the price of the Contract. Nevertheless, if the damage or loss is caused by the gross negligence or willful misconduct of the Contractor or of its personnel or subcontractors, the Contractor shall have unlimited liability for the amount of the damage or loss.

20.6 The Contractor shall take out an insurance policy against risks and damage relating to the performance of the contract, if required by the relevant applicable legislation. It shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy

of all the relevant insurance contracts shall be sent to the Agency should it so request.

21. AMENDMENTS

21.1 Customer request

21.1.1 If the Customer wishes to introduce a change, it shall serve a change request notice to the Contractor. The change request shall:

a. set out the change required in sufficient detail to enable the Contractor to calculate and provide a change proposal in accordance with Article 21.1.2; and

b. require the Contractor to provide the Customer with a change proposal.

21.1.2 As soon as practicable and in any event, unless specifically agreed otherwise by the Customer, within 60 (sixty) Days after having received the change request notice, the Contractor shall deliver to the Customer a change proposal drafted following the structure of the change request and specifying, as applicable:

a. technical description of the work to be done under the change request (including the identification of the Work Packages affected);

b. security assessment of the change;

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

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

e. subcontracting structure;

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

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

21.1.3 The change proposal shall also include the advice of the Contractor on:

a. whether relief from compliance with obligations is required;

b. any impact on the risk management;

c. whether activities subject of the change might interfere on the relation with third parties; and

d. whether the requested change could materially and adversely affect the health and safety of any person.

21.1.4 As soon as practicable after the Customer receives the change proposal it will evaluate it:

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

b. in case of non–acceptance, the Parties shall discuss and agree on the relevant issues set out in the change proposal.

21.1.5 Unless otherwise agreed by the Customer, the Contractor shall not be entitled to recover from the Customer the costs sustained in the preparation of the change proposal.

21.2 Contractor unsolicited change proposal

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

21.2.2 If the Contractor wishes to introduce an unsolicited change proposal, it must serve a change

proposal notice to the Customer.

21.2.3 The unsolicited change proposal notice shall contain:

a. all the elements as listed under Article 21.1.2 above;

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

c. the advice of the Contractor regarding the applicable elements listed under Article 21.1.3 above.

21.2.4 The Customer shall evaluate the unsolicited change proposal in good faith, taking into account all relevant issues and circumstances.

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

21.2.6 Unless otherwise agreed by the Customer, the Contractor shall not be entitled to recover from the Customer the costs sustained in the preparation of the unsolicited change proposal.

21.2.7 All the relevant Applicable Documents and annexes to this Contract and/or articles of this Contract shall be amended according to the accepted unsolicited change.

21.2.8 If the Customer rejects the unsolicited change proposal, it shall be obliged to give its reasons for such rejection. In such case, the Contractor shall not be liable for the consequences of such refusal insofar as it is proven that the consequences in question could have been avoided with the implementation of the change subject to the unsolicited change proposal.

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

(i) does not have any financial impact;

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

it can be implemented without applying the provisions above, provided that:

(i) the decision related to the implementation of the change is taken within the quarterly progress meetings organised according to the provision of Annex II (SOW).

21.4 General

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

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

21.4.3 In case the amendment affects the information provided under the Annex I.12 – 'Template for statistical reporting' of the Tender Specifications, the Contractor shall update the table accordingly and submit it to the Agency.

22. ASSIGNMENT

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

22.2 In the absence of such authorisation, or in the event of failure to observe the terms thereof, the assignment of rights or obligations by the Contractor shall not be enforceable against the Customer and shall have no effect on it.

23. SUSPENSION

23.1 Suspension of contract performance

23.1.1 Suspension by the Contractor

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

23.1.2 Suspension by the Agency

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

a. if the contract award procedure or the performance of the contract prove to have been subject to substantial 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 Agency shall give notice as soon as possible to the Contractor to resume the service suspended or inform the Contractor that it is proceeding with the termination of the contract. The Contractor shall not be entitled to claim compensation on account of suspension of the contract or of part thereof.

24. TERMINATION OF THE CONTRACT

24.1 Grounds for termination

The Customer may terminate the contract in the following circumstances:

a. if a change to the Contractor's legal, financial, technical or organisational or ownership situation is likely to affect the performance of the contract substantially or to affect the essential security interest of the European Union or calls into question the decision to award the contract;

b. if, due to a change circumstances, the Contractor does not comply anymore with the Participating Conditions identified in the relevant section of the tender specifications and if the Contractor has not promptly taken the necessary actions (by way of e.g. and including, but without limitation to, submitting a justified request for waiver or a contract change as per Article 21) in order to remedy to such non-compliance;

c. if execution of the tasks has not actually commenced within three months of the date foreseen, and the new date proposed, if any, is considered unacceptable by the Agency;

d. if the Contractor does not perform the contract as established in the tender specifications or fails to fulfil another substantial contractual obligation and the Parties have established, acting reasonably, that the damage caused by such default is irremediable.;

e. in the event of force majeure or if the performance of the contract has been suspended by the Contractor as a result of force majeure, where either resuming performance is impossible or the modifications to the contract might call into question the decision awarding the contract or result in unequal treatment of tenderers;

f. if the Contractor is declared bankrupt, is being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

g. if the Contractor or any natural person with the power to represent it or take decisions on its behalf has been found guilty of professional misconduct proven by any means;

h. if the Contractor is not in compliance with its obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which it is established or with those of the country of the applicable law of this contract or those of the country where the contract is to be performed;

i. if the Customer has evidence that the Contractor or natural persons with the power to represent it or take decisions on its behalf have committed fraud, corruption, or are involved in a criminal organisation, money laundering or any other illegal activity detrimental to the European Union's financial interests;

j. if the Customer has evidence that the Contractor or natural persons with the power to represent it or take decisions on its behalf have committed substantial errors, irregularities or fraud in the award procedure or the performance of the contract, including in the event of submission of false information;

k. if the Contractor is unable, through its own fault, to obtain any permit or licence required for performance of the contract.

24.2 Procedure for termination

When the Customer intends to terminate the Contract, it shall formally notify the Contractor of its intention specifying the grounds thereof.

The Customer shall invite the Contractor to make any observations and, in the case of point (d) of Article 20.1, to inform the Customer about the measures taken to continue the fulfilment of its contractual obligations, within 30 days from receipt of the notification.

If the Customer does not confirm acceptance of these observations by giving written approval within 30 days of receipt, the termination procedure shall proceed.

In any case of termination, the Customer shall formally notify the Contractor about its decision to terminate the contract.

In the cases referred to in points (a), (c), (d), (f), (h) and (k) of Article 20.1 the formal notification shall specify the date on which the termination takes effect. In the cases referred to in points (b), (e), (g), (i), and (j) of Article 20.1 the termination shall take effect on the day following the date on which

notification of termination is received by the Contractor.

24.3 Effects of termination

In the event of termination, the Contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the notification of termination, the Contractor shall take all the appropriate measures to minimise costs, prevent damages, and cancel or reduce its commitments. The Contractor shall have 60 days from the date on which termination takes effect to draw up the documents required by the special conditions for the tasks already executed on the date of termination and produce an invoice if necessary. The Customer may recover any amounts paid under the contract.

The Customer may claim compensation for any damage suffered in the event of termination.

25. FORCE MAJEURE

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

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

25.3 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.

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

25.5 The Parties acknowledge that the evolution of the Covid-19 pandemic, the scope of related measures taken by public authorities and their impacts on the performance of the present Contract are not reasonably foreseeable at the time of its signature. The Parties undertake to monitor the evolution of the situation, to closely exchange and to mutually agree on any resulting measures and contractual impacts in accordance with the provisions of the present article.

26. CONFIDENTIALITY

26.1 Subject to the provisions of Article 16, The Customer 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 contract and identified in writing as confidential.

26.2 The receiving party shall:

a. not use confidential information and documents for any purpose other than fulfilling its obligations under the contract without prior written agreement of the disclosing

party;

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 disclosing party.

26.3 The confidentiality obligation set out in Article 22 shall be binding on the Customer and the Contractor during the performance of the contract 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.

26.4 Each Party shall obtain from any natural person with the power to represent it or take decisions on its behalf, as well as from third parties involved in the performance of the contract, an undertaking that they will comply with the confidentiality obligation set out in Article 22.

27. PROFESSIONAL CONFLICTING INTERESTS

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

27.2 The Contractor must notify the Customer in writing as soon as possible of any situation that could constitute a professional conflicting interest during the performance of the Contract. The Contractor must immediately take action to rectify the situation.
The Customer may do any of the following:
(a) verify that the Contractor's action is appropriate;
(b) require the Contractor to take further action/measures within a specified deadline;

27.3 The Contractor must have all the relevant obligations counter acknowledged and passed on in writing to:
(a) its personnel;
(b) any natural person with the power to represent it or take decisions on its behalf;
(c) third parties involved in the performance of the Contract, including subcontractors.

28. PROCESSING OF PERSONAL DATA

28.1 Any personal data included in the Contract must be processed in accordance with the applicable rules on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data[3]. Such data shall be processed by the data controller (EUSPA) and the data processor (the Contractor) solely for the purposes of the performance, management and monitoring of the

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

Contract without prejudice to its possible transmission to the bodies charged with monitoring or inspection tasks in application of Union law.

28.2 The following categories of personal data are expected to be processed by the data controller: contact details of the contractor's personnel or its contractors that may be included in deliverables, such as name and last name, gender, telephone number, email address, postal address, organisation and position within organisation. The provision of the aforementioned data is a contractual requirement.

28.3 The recipients of the personal data mentioned under Article 28.2 shall be (1) a limited number of staff of EUSPA managing the Contract, (2) a limited number of staff of EUSPA contractors assisting EUSPA staff in the management of the Contract, (3) a limited number of staff of GSA contractors providing hosting services for EUSPA servers. The personal data will be stored in the premises of the aforementioned recipients, all of which are located within Union territory, and will be retained for up to 7 (seven) years after the expiry of the present Contract for audit and discharge purposes.

28.4 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.

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

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

i. 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;

ii. 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;

iii. ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;

iv. without prejudice to Article 28.8, take all necessary measures to ensure the security of the processing of personal data, as may be instructed by the controller;

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

vi. 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;

vii. assist the controller for the fulfilment of its obligations to

   a. ensure compliance with its obligations regarding the security of the processing, and the confidentiality of electronic communications and directories of users

   b. notify a personal data breach to the European Data Protection Supervisor

c. communicate a personal data breach without undue delay to the data subject, where applicable

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

viii. 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:

a. nature of the personal data breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;

b. likely consequences of the breach;

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

ix. 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;

x. delete all the personal data after the end of the provision of services relating to processing;

xi. 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

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

28.8 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.

29. CHECKS AND AUDITS

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

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

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

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

29.5 The Contractor shall allow the Agency's staff and outside personnel authorised by the Agency the appropriate right of access to sites and premises where the contract is performed and to all the information, including information in electronic format, needed in order to conduct such checks and audits. 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.

29.6 On the basis of the findings made during the audit, a provisional report shall be drawn up. It shall be sent to the Contractor, which shall have 30 days following the date of receipt to submit observations. The final report shall be sent to the Contractor within 60 days following the expiry of that deadline.

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

29.8 By virtue of Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspection carried out by the European Commission in order to protect the European Communities' financial interests against fraud and other irregularities and Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013concerning investigation conducted by the European Anti-Fraud Office (OLAF), the OLAF may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by European Union law for the protection of the financial interests of the European Union against fraud and other irregularities. Where appropriate, the findings may lead to recovery by the Agency.

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

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

30. ANNOUNCEMENTS AND PUBLICITY

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

position of the European Union or the Agency.

30.2 Except when made in compliance with any applicable law, or related to the everyday administration of the Contract, or in the context of corporate communication, any distribution or publication of information and/or of any publicity material, including but not limited to press releases, brochures, videos, official notices, reports and publications, relating to the Contract by the Contractor, in whatever form and whatever medium including the world wide web and/or facebook/twitter or any similar service, shall require prior written authorisation from the Agency in relation to the content (which authorisation shall not be unreasonably withheld), shall mention that the Contract is carried out under a programme funded by the European Union and shall display in an appropriate way the EU logo (twelve yellow stars on a blue background) and the Agency logo. It shall, unless otherwise approved in writing by the Agency, state that the opinions expressed are those of the Contractor only and do not represent the official position of the European Union or the Agency.

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

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

31. COMMUNICATION DETAILS AND DATA CONTROLLER

31.1 For the purpose of Article 28, the data controller shall be Executive Director or the person delegated by him/her of the Customer.

31.2 Communications shall be sent to the following addresses:

EUSPA

Project officer: Name:

Surname:

Email:

Telephone number: +

Attention:

Janovskeho 438/2 170 00 Prague Czech Republic

Contract officer:

EUSPA Legal and Procurement Department

Janovskeho 438/2 170 00 Prague Czech Republic

Email: contracts@euspa.europa.eu

Contractor:

Email:

32. BANK ACCOUNT

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

Name of bank:
Full address of branch:
Exact designation of account holder:
Full account number including [bank] codes:
IBAN code:
BIC/SWIFT Code:

33. APPLICABLE LAW AND SETTLEMENT OF DISPUTES

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

33.2 Any dispute between the Parties in relation to the interpretation, application or validity of the contract which cannot be settled amicably shall be brought before the Court of Belgium.

SIGNATURES

For the Contractor,	For the Agency,
General Manager	Rodrigo da Costa Executive Director
signature: _____	signature:_____
Done in _____, on _____	Done in Prague, on _____

In duplicate in English.

Annex I Statements of Compliance to the SoW and its annexes

Annex II Tender specifications and its annexes

Annex IV Template - Security Aspect Letter

Annex V Template Acceptance Sheet

Annex VI Declaration of Background IPRs

Annex VII Declaration of Foreground IPRs