

### FRAMEWORK SERVICE CONTRACT EUSPA/OP/01/23

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

with the term "Contracting Authority" referring to EUSPA

on the one part, and

[full official name]

[official legal form]

[statutory registration number]

[full official address]

[VAT registration number]

[appointed as the leader of the group by the members of the group that submitted the joint tender]

[For joint tenders, these data are to be repeated as many times as there are Contractors]

([for joint tenders: collectively] the "Contractor"), represented for the purposes of the signature of this Framework Contract by [forename, surname and function,]

[The parties identified above shall be jointly and severally liable vis-à-vis the Contracting Authority for the performance of this Framework Contract.]

on the other part,

## Contents

<b>I. SPECIAL CONDITIONS</b> .....	<b>5</b>
Article I.1 – Subject matter.....	5
Article I.2 – Entry into force and duration.....	5
Article I.3 – Implementation of the FWC and the cascade.....	5
Article I.4 –Prices and cost reimbursement .....	7
Article I.5 – Charging of daily rates.....	8
Article I.6 – Payment arrangements.....	9
Article I.7 – Bank account .....	11
Article I.8 – Communication details .....	11
Article I.9 – Processing of Personal Data .....	12
Article I.10 – Liability .....	12
Article I.11 - Compliance with Labour Law .....	13
Article I.12 – Confidentiality and participation in public procurement.....	14
Article I.13 – Intellectual Property Rights and Other Results.....	16
Article I.14 – Liquidated Damages.....	19
Article I.15 – Applicable Law and Settlement of Disputes.....	20
Article I.16 – Professional Conflicting interests.....	21
Article I.18 – Liability for audit and penetration tests.....	21
Article I.19 – Partial termination .....	22
<b>II. GENERAL CONDITIONS</b> .....	<b>25</b>
Article II. 1 – Definitions .....	25
Article II.2 – Provision of Services.....	27
Article II.3 – Communication Between the Parties .....	29
Article II.4 – Professional Conflicting Interest – Commitment to EUSPA Policy.....	29
Article II.5– Processing of Personal Data .....	30
Article II.6 – Subcontracting .....	32
Article II.7 – Amendments .....	32
Article II.8 – Assignment.....	33
Article II.9 – Force Majeure .....	33
Article II.10 – Partial Payment and Retention of Payment.....	33
Article II.11 – Suspension of the Implementation of the Contract .....	34
Article II.12 – Termination of the FWC.....	35
Article II.13 – Payments and Guarantees .....	37
Article II.14 - Reimbursements .....	39
Article II.15 – Recovery.....	40

Article II.16 – Checks and Audits .....	41
SPECIFIC CONTRACT NO EUSPA/OP/01/23/SC[X] .....	43
Article 1: Subject matter.....	44
Article 2: Entry into force and duration.....	44
Article 3: Price.....	45
Article 4: Payments.....	45
Article 5: Follow-up of budget .....	45
Annexes .....	45
Signatures.....	46
ANNEX SC.III .....	47

## HAVE AGREED

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

<b>Annex II.I</b>	Statements of Compliance to the Technical terms of reference of EUSPA/OP/01/23 (Signed)
<b>Annex II.II</b>	Tender Specifications No EUSPA/OP/01/23 and their annexes
<b>Annex II.III</b>	Contractor's Tender (No [number], [date])
<b>Annex II.IV</b>	Draft Specific Contract – TEMPLATE (enclosed in the present document)
<b>Annex II.V</b>	Declaration on confidentiality and absence of conflicting professional interest – TEMPLATE
<b>Annex II.VI</b>	Security Aspects Letter (SAL)
<b>Annex II.VII</b>	Deliverable acceptance sheet – TEMPLATE (enclosed in the present document)
<b>Annex II.VIII</b>	Declaration of Background Intellectual Property Rights - TEMPLATE
<b>Annex II.IX</b>	Declaration of Foreground Intellectual Property Rights - TEMPLATE
<b>Annex II.X</b>	EUSPA mission rules

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

- a) The terms set out in the special conditions (Section I) shall take precedence over those in the other parts of the Framework Contract.
- b) The terms set out in the Contract shall take precedence over the Annexes.
- c) The terms set out in Annex II.I shall take precedence over those in Annex II.II and Annex II.III.
- d) Subject to the provisions under Annex II.I, the terms set out in Annex II.II shall take precedence over those in Annex II.III.
- e) The terms set out in Annex II.III shall take precedence over those in Annexes II.IV, VII, IX.
- f) The provisions set out in the FWC take precedence over those in the Specific Contracts.
- g) The provisions set out in the Specific Contracts take precedence over those in the specific terms of references for service provision.
- h) The provisions set out in the specific terms of references for services take precedence over those in the respective offer for a request for services, unless otherwise agreed in the Specific Contract.

## **I. SPECIAL CONDITIONS**

### **ARTICLE I.1 – SUBJECT MATTER**

- I.1.1** The subject matter of the FWC is the provision of the activities in the area of the Security Accreditation Support Services, as per the conditions defined in the Contract, including its annexes.
- I.1.2** Signature of the FWC imposes no obligation on the Contracting Authority to conclude any Specific Contract for the purchase of any services from the Contractor and nothing in this agreement shall be interpreted or construed as a commitment to the entire amount of the FWC.

### **ARTICLE I.2 – ENTRY INTO FORCE AND DURATION**

- I.2.1** The FWC shall enter into force on the date on which it is signed by the last party.
- I.2.2** Execution of the tasks may under no circumstances begin before the date on which the FWC and Specific Contract enters into force.
- I.2.3** The FWC is concluded for a period of 12 (twelve) months with effect from the date on which it enters into force. Unless otherwise specified, all periods specified in the FWC are calculated in calendar days.
- I.2.4** The specific contracts shall be signed by both parties before the FWC expires.  
  
The FWC shall continue to apply to such specific contracts after its expiry. They shall expire no later than 6 (six) months after the expiry of the FWC.
- I.2.5** The FWC shall be renewed automatically up to 3 (three) times under the same conditions, unless formal written notification to the contrary is sent by one of the parties and received by the other at the latest 3 (three) months before expiry of the on-going duration. Renewal does not change, postpone or defer of any existing obligations.

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

- I.3.1.** The present Contract will be implemented through Specific Contracts to be awarded in cascade.
- I.3.2.** The Contractor is ranked [FIRST/SECOND] in cascade.
- I.3.3.** The Contracting Authority may, from the Contractor ranked first in cascade, at any time request the provision of services falling within the scope of this Contract, through the issuing of a request for services.
- I.3.4.** The Contracting Authority has the right to request the provision of services from the Contractor ranked second in cascade, if the Contractor ranked first:
  - a) fails to reply within 2 (two) weeks from reception of the request for services sent by EUSPA, or
  - b) fails to send the signed Specific Contract to the Contracting Authority within 1 (one) week from reception of the Specific Contract signed by the Contracting Authority

- (Article I.3.8.), or
- c) is in a situation of professional conflicting interest or in a situation likely to compromise its independence and therefore cannot perform the Specific Contract, or
  - d) proposes – for the first Specific Contract – less than 80% of the personnel initially forming part of the team proposed in its tender (Annex II.III), or
  - e) fails to provide the personnel included in its offer to the service request within 1 (one) month as of the moment agreed in the Specific Contract, which shall also be considered a ground for termination under Article II.12.1.o), or
  - f) gives rise to any other grounds for termination of the FWC or the specific contract, including, without limitation, partial termination of a specific contract for the part terminated.
- I.3.5.** Except in case of proven Force Majeure as per ARTICLE II.9 – FORCE MAJEURE, the Contractor shall under no circumstances refuse to provide a Specific Contract offer or conclude Specific Contracts, provided that such Specific Contracts are compliant with the Tender Specifications under Annex II.II and with the provisions of the present Contract.
- I.3.6.** The Contracting Authority's requests for services shall include as a minimum:
- a) Terms of Reference for a Specific Contract detailing the concerned activities, including the target price if necessary;
  - b) the time-limit and requirements for the submission of the Contractor's specific offer. By default, the time-limit for the submission of a specific offer is 10 (ten) working days.
- I.3.7.** Within the default time period or as indicated by the Contracting Authority in the request for services, which must in any case be reasonable for preparing the offer, the Contractor shall reply to the request for services by:
- a) either submitting to the Contracting Authority an offer in compliance with the Terms of Reference and the FWC, duly signed and dated; or
  - b) sending the earliest possible, an explanation of why it cannot accept the order.
- I.3.8.** Within 5 (five) working days of a Specific Contract signed by the Contracting Authority, being sent to the Contractor, the Contractor shall provide the Contracting Authority the Specific Contract back, duly signed and dated.
- I.3.9.** The period allowed for the execution of the tasks shall start to run on the date indicated in the Specific Contract. It shall not exceed the term of the Specific Contract.
- I.3.10.** The offer, submitted by the Contractor in response to a request for service, shall consist of technical and financial part and include all the information necessary to establish the compliance to the Terms of Reference for the Specific Contract.
- I.3.11.** Timely submission of an offer to a request for service is of the essence for the Contracting Authority. Therefore, for every complete working day lapsed in which the Contractor fails to submit a complete offer after the submission deadline following a request for services, the Contractor shall be obliged to pay the Contracting Authority liquidated damages to the amount of 500 EUR (five-hundred euros) with the provisions of Article I.14 otherwise

applying accordingly.

#### **ARTICLE I.4 –PRICES AND COST REIMBURSEMENT**

##### **I.4.1 Prices**

**1.4.1.1** The maximum amount of the FWC, covering all purchases under this FWC, including all renewals and reimbursement of expenses, shall be [6,000,000 EUR (Six million Euro)]. However, this must in no way be construed as a commitment on the Contracting Authority to purchase for the maximum amount.

**1.4.1.2** The maximum prices for the services shall be the ones listed in the “Financial Tables of Answers” (Annex I.F of the Tender Specifications) as submitted by the Contractor as part of its tender (Annex II.III).

Cost and expenses shall comprise 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.

**1.4.1.3** Prices for the “all-inclusive daily rates 1” for Mission Days of a Consecutive Mission Period with a duration of up to 6 (six) months are indicated in Table 1.1 of Annex I.F.

**1.4.1.4** Prices for the “all-inclusive daily rates 2” for Mission Days of a Consecutive Mission Period with a duration above 6 (six) months are indicated in Table 1.2 of Annex I.F.

**1.4.1.5** The prices of travel costs for a return trip for a Mission by any means of transportation to Destinations listed in Table 1.3 of Annex I.F (without travel at the Destination, hotel and daily subsistence allowance, included in the all-inclusive daily rate) are as provided therein.

**1.4.1.6** The all-inclusive daily rates 1 and 2 indicated in Articles I.4.1.3.and I.4.1.4. shall comprise effort for all the activities necessary for their performance regarding the indicated duration (up to, or above 6 (six) months), including all costs incurred directly and indirectly by the Contractor in performance of the tasks by the personnel’s Deployment to one of the destinations defined in Articles I.4.1.3.and I.4.1.4. and specifically defined in the Specific Contract. These rates shall comprise in particular:

- a) daily subsistence allowance covering also
  - i. any travel *at* the Mission Destination (travel to this destination being excluded – see below), and
  - ii. accommodation incurred for the performance of tasks at one of the Destinations listed in Articles I.4.1.3.and I.4.1.4.;
- b) management of the project, drawing up quotations and reports coordination, quality control, support resources, subcontracting, procurement, manufacturing, assembly, quality control, documentation, storage);
- c) all overheads (such as management costs, secretarial services, social security, wages).

The all-inclusive daily rates 1 and 2 do not include travel costs subject to Article I.4.1.5.

- I.4.1.7.** Prices for a “single daily rate” for services at the Contractor’s premises, Standard Place for Performance of Tasks and authorised Missions to a destination other than the ones listed for the all-inclusive daily rates 1 or 2 indicated in Articles I.4.1.3. and I.4.1.4. are: provided in Annex II.III – Table 2.
- I.4.1.8.** The “single daily rates” indicated in Article I.4.1.7 above shall comprise all the effort and costs indicated in the Article I.4.1.6, accordingly, except for daily subsistence allowance and accommodation incurred for the performance of tasks at the Mission destination, and travel costs.
- I.4.1.9.** The prices represent firm and fixed prices. This is without prejudice to the possibility for the Contractor to provide the services at lower prices.
- I.4.1.10.** Prices are not subject to revision during the validity of the FWC.
- I.4.1.11.** Without prejudice to Article I.6, payment of prices indicated in Article I.4.1.5 (travel costs) and reimbursement of Mission expenses to destinations not mentioned in Article I.4.1.5 is subject to Article I.4.2 and payment of prices indicated in Articles I.4.1.3., I.4.1.4 and I.4.1.7 (daily rates) is subject to Article I.5.

#### **I.4.2. Travel costs and reimbursement of mission expenses**

- I.4.2.1** Payment of travel costs under Article I.4.1.5 and reimbursement of Mission expenses is possible only if the Mission was approved in writing by the Contracting Authority in advance.
- I.4.2.2** The Contractor is entitled to charge the Contracting Authority the price of travel costs indicated in Article I.4.1.5 once per Consecutive Mission Period per Contractor’s Personnel to the therein indicated Destination.
- I.4.2.3** For Missions of Contractor’s Personnel to destinations not listed in in Article I.4.1.5. or to destinations listed in Article I.4.1.5. but not including return trip to a single destination, the Contractor is entitled to reimbursement of the Mission expenses according to the same rules as those applicable to EUSPA staff; current rules and ceiling of these Mission expenses are laid down in EUSPA Mission rules (Ref. C(2017) 5323 final (available at <https://www.euspa.europa.eu/media-library/register-of-documents>) and in Annex II.XI. The related expenses shall be subject to compliance with Article II.14 - Reimbursements.

#### **ARTICLE I.5 – CHARGING OF DAILY RATES**

- I.5.1.** If the individual Contractor personnel is on Mission at a Destination mentioned in Article I.4.1.5 for 8 (eight) hours which he/she has actually worked for the Contracting Authority on the same day at the Destination, the Contractor may charge a full “all-inclusive daily rate 1” indicated in Article I.4.1.3, under the conditions that the Consecutive Mission Period is not more than 6 (six) month. If the individual Contractor personnel is on Mission at a Destination mentioned in Article I.4.1.5 for 8 (eight) hours which he/she has actually worked for the Contracting Authority on the same day at the Destination, the Contractor may charge a full “all-inclusive daily rate 2” indicated in Article I.4.1.4, under the conditions that the Consecutive Mission Period is more than 6 (six) month. The above-mentioned provisions shall apply to the respective profile.
- I.5.2.** If on Mission at a Destination not mentioned in Article I.4.1.5 or at the Contractor’s Premises or at the Standard Place for Performance of Tasks, for 8 (eight) hours which individual Contractor personnel has actually worked for the Contracting Authority on the same day at the respective venue, the Contractor may charge a full “single daily rate”



applicable to the respective profile indicated in Article I.4.1.7.

- I.5.3.** If individual Contractor personnel worked less than 8 (eight) hours on the same day, the applicable “all-inclusive daily rate 1”, “all-inclusive daily rate 2” or “single daily” shall be decreased by 1/8 for any non-completed hour of work.
- I.5.4.** If individual Contractor personnel worked more than 8 (eight) hours on the same day, the applicable “all-inclusive daily rate 1”, “all-inclusive daily rate 2” or “single daily” shall be increased by 1/8 for any additionally completed extra hour of work. Any such extra hour of work will not be remunerated unless a prior written agreement is in place with Contracting Authority.
- I.5.5.** For avoidance of doubt, the Contractor cannot invoice any daily rates or fractions thereof for Travel Days or for the time spent in travel.

#### **ARTICLE I.6 – PAYMENT ARRANGEMENTS**

##### **I.6.1 Interim payments**

Unless the Specific Contract details otherwise, the Contractor shall submit an invoice on a quarterly basis, indicating the reference number of the Framework Contract and of the Specific Contract to which it refers for an interim payment equal to the price for services provided within the invoicing period.

Invoices for interim payment shall be accompanied by:

- a) the approved activity report(s) (progress report(s)) and/or deliverable(s) for the relevant period in accordance with the instructions laid down in the FWC and the relevant Specific Contract,
- b) a deliverable acceptance sheet, duly dated and signed by the Contractor and the Contracting Authority’s project officer,
- c) a detailed justification of all expenses incurred, including but not limited to justification timesheets justifying the amount of hours spent to perform the tasks,
- d) a table on the actual consumption of travel, accommodation and subsistence expenses including, if applicable, statements of reimbursable expenses in accordance with ARTICLE II.14 – REIMBURSEMENTS,
- e) a list of all created Foreground IPRs, by attaching the filled-in Annex II.IX or a declaration stating that there are no such rights were created,
- f) a list of all Background IPR to the results or parts of the results by attaching the filled-in Annex II.VIII or a declaration stating that there are no such Background IPR, as provided for in Article I.13.10,
- g) any other document in accordance with the relevant Specific Contract.

The Contracting Authority shall have thirty (30) days from the receipt of the progress report(s) and/or deliverable(s) with the associated supporting documents to approve or reject them, and, unless otherwise specified by the Contracting Authority in the terms of reference of the relevant Specific Contract, the Contractor shall have fifteen (15) days to submit additional information or a new progress report and/or updated deliverable(s).

Following the approval of the progress report(s) and/or deliverable(s), the Contractor

shall submit the invoice. The Contracting Authority shall make the payment within thirty (30) days from receipt of the invoice.

### **1.6.2 Payment of the balance**

The Contractor shall submit an invoice for payment of the balance for any services which have not yet been invoiced for interim payment.

The invoice shall be accompanied by:

- a) the approved final report and any other deliverable(s) in accordance with the instructions laid down in the relevant specific contract,
- b) a deliverable acceptance sheet, duly dated and signed by the Contractor and the Contracting Authority's project officer,
- c) a detailed justification of all expenses incurred, including but not limited to justification timesheets justifying the amount of hours spent to perform the tasks,
- d) a final table on the actual consumption of travel, accommodation and subsistence expenses under the specific contract including, if applicable, statements of reimbursable expenses in accordance with **Article II.14**,
- e) list of all created Foreground IPRs, by attaching the filled-in Annex II.IX or a declaration stating that there are no such rights were created,
- f) a list of all Background IPR to the results or parts of the results by attaching the filled-in Annex II.VIII or a declaration stating that there are no such Background IPR, as provided for in Article I.13.10,
- g) any other document in accordance with the relevant specific Contract.

The Contracting Authority shall have thirty (30) days from the receipt of the final report and/or deliverable(s) with the associated supporting documents to approve or reject them, and, unless otherwise specified by the Contracting Authority in the terms of reference of the relevant specific Contract, the Contractor shall have fifteen (15) days in which to submit additional information or a new final report and/or updated deliverable(s).

Following the approval of the final report and/or deliverable(s), the Contractor shall submit the invoice. The Contracting Authority shall make the payment within thirty (30) days from receipt of the invoice.

Any payments against invoice made under the Specific Contract are payments for provision of services and do not represent and shall not be understood as salary payments or replacement of such. Payment of salaries for staff performing the services shall remain the sole responsibility of the Contractor.

### **1.6.3 Performance guarantee**

Performance guarantee is not applicable to this FWC.

### **1.6.4 Retention money guarantee**

Retention money guarantee is not applicable to this FWC.

**ARTICLE I.7 – BANK ACCOUNT**

All invoices shall be sent electronically to [finance@euspa.europa.eu](mailto:finance@euspa.europa.eu).

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:

**ARTICLE I.8 – COMMUNICATION DETAILS**

**I.8.1** For the purposes of this FWC, communications shall be made in writing, including via e-mail, and sent to the following contacts:

**I.8.2** Contractor:

- Project officer:  
[Full name]  
[Function]  
[Company name]  
[Full official address]  
Email: [complete]
- Contract officer:  
[Full name]  
[Function]  
[Company name]  
[Full official address]  
Email: [complete]

**I.8.3** Contracting Authority:

- Project officer:  
Name:  
Surname:  
Email: [insert]@euspa.europa.eu  
Telephone number:

European Union Agency for the Space Programme  
Attention:  
Janovského 438/2  
170 00 Prague  
Czech Republic

- Contract officer:  
European Union Agency for the Space Programme

Legal and Procurement Department  
Attention:  
Janovského 438/2  
170 00 Prague  
Czech Republic  
Email: [Contracts@euspa.europa.eu](mailto:Contracts@euspa.europa.eu)

- I.8.4** The contact persons may be changed by exchange of emails between a representative of the Contractor and a representative of EUSPA Legal and Procurement Department and sent to/from [contracts@EUSPA.europa.eu](mailto:contracts@EUSPA.europa.eu).

#### **ARTICLE I.9 – PROCESSING OF PERSONAL DATA**

For the purpose of **Article II.5– Processing of Personal Data**, the data controller is:

EUSPA, Head of Security Accreditation Department, Janovského 438/2 170 00 Prague 7, Czech Republic, [sab@euspa.europa.eu](mailto:sab@euspa.europa.eu) and provisions under Article II.5– Processing of Personal Data apply.

#### **ARTICLE I.10 – LIABILITY**

- I.10.1.**The Contractor is liable for any loss or damage caused or sustained to the Contracting Authority during or as a consequence of implementation of the FWC, including in the event of subcontracting, but only up to an amount not exceeding 50 % of the maximum amount of this FWC. However, if the damage or loss is caused by the gross negligence or wilful misconduct of the Contractor or of its Personnel or subcontractors, as well as in the case of an action brought against the Contracting Authority by a third party for breach of its intellectual property rights, the limitation of liability above shall not apply.
- I.10.2.**The Contractor shall indemnify and hold the Contracting Authority harmless for all damages and costs incurred due to any claim within the limit of liability under article I.10.1 above. The Contractor shall provide compensation in the event of any action, claim or proceeding brought against the Contracting Authority by a third party as a result of damage caused by the Contractor during the performance of the FWC. If a third party brings any action against the Contracting Authority in connection with the implementation of the FWC, including any action for alleged breach of intellectual property rights, the Contractor must assist the Contracting Authority in the legal proceedings, including by intervening in support of the Contracting Authority upon request.
- I.10.3.**If required by the relevant applicable legislation, the Contractor must take out an insurance policy against risks and damage or loss relating to the implementation of the FWC. It must also take out supplementary insurance as reasonably required by standard practice in the industry. Upon request, the Contractor must provide evidence of insurance coverage to the Contracting Authority.

**I.10.4.** The Contracting Authority is not liable for any loss or damage caused to the Contractor during or as a consequence of implementation of the FWC, unless the loss or damage was caused by wilful misconduct or gross negligence of the Contracting Authority.

**ARTICLE I.11 - COMPLIANCE WITH LABOUR LAW**

**I.11.1** No contract of employment shall be established between EUSPA and the Contractor's Personnel providing services under specific contracts. It shall be the Contractor's sole responsibility to ensure that its Personnel providing services under specific contracts understand that they are not employed by EUSPA and shall not interpret any part of their services to the Contracting Authority as creating any employment relationship between them and the Contracting Authority. It shall be the Contractor's sole duty and responsibility to ensure that no employment relationship between the Contracting Authority and the Contractor's Personnel providing services are ever construed, argued or claimed.

**I.11.2** The Contractor shall immediately notify the Contracting Authority of any other circumstances that might give rise to claims against the Contracting Authority on the part of Contractor's Personnel providing services related to status of employment. In any event the Contractor shall take all measures to prevent such claims from arising and shall hold the Contracting Authority harmless of any such claim.

**I.11.3** The Contractor shall also hold the Contracting Authority harmless from any third party claim as may arise from or in connection with the Contract or its implementation on grounds or argument of employment.

**I.11.4** The Contractor acknowledges that personnel providing services to the Contracting Authority are not meant to replace the Contracting Authority's personnel but to provide expertise and assistance not available in-house.

**I.11.5** Any Contractor's personnel working on Contracting Authority premises shall remain fully under the responsibility of the Contractor's supervision and its responsibility as employer. Any working area at the Contracting Authority site is purely provided for ease of service provision and does not replace that personnel's workplace with his/her employer. Any Contractor personnel working at Contracting Authority premises is expected to coordinate, in terms of logistics and working time, with the needs and working hours of the Contracting Authority.

**I.11.6** The Contractor acknowledges that this FWC and any specific contract to be signed is (i) not meant to establish any employment relationship between the Contracting Authority and the Contractor's personnel performing the services and (ii) shall not be interpreted as establishing such a relationship. The Contractor shall take all measures to ensure this understanding with its personnel and shall indemnify and hold the Contracting Authority harmless against any claim which the Contracting Authority would face in this respect. The Contractor shall take all necessary steps, towards its personnel executing the FWCs to ensure the full applicability of FWCs conditions.

**ARTICLE I.12 – CONFIDENTIALITY AND PARTICIPATION IN PUBLIC PROCUREMENT**

**I.12.1** The Contractor must treat and shall cause its employees and consultants to treat with confidentiality any information or documents, in any format, disclosed in writing or orally or got to know relating to the performance of the Contract. The Contracting Authority must treat with confidentiality any information which is identified by the Contractor in writing as confidential.

Confidential Information (and any of their respective copies) supplied by EUSPA to the Contractor or any legal entity as well as natural person involved in or performing tasks under this FWC shall not be used in a manner conflicting with the objectives of the European Union Space programmes, and:

- a) shall not be construed as granting any right, title or interest in the confidential information including any intellectual property right,
- b) is provided "as is". The Contractor acknowledges that the EUSPA disclaims all warranties of any kind relating to the confidential information, whether expressed or implied, including but not limited to, any implied warranty against infringement of third-party property rights or as to merchantability or fitness for a particular purpose,
- c) shall not be construed as granting any right, title or interest in the confidential information including any intellectual right to the Contractor. The Contractor shall not itself, or authorise any third party to write, publish or disseminate any description of the confidential information or elements of it, for as long as it is bound under the conditions of this FWC.

**I.12.2** Each party must:

- a) use Confidential information for the sole purpose to perform its obligations under the Contract unless agreed otherwise in writing by the other party,
- b) ensure the protection of such Confidential information with the same level of protection and pursuant to applicable security rules as its own confidential information or documents, and in any case with due diligence,
- c) disclose only when a need to know is a certainty and only to recipients who are bound by confidentiality obligations,
- d) not disclose directly or indirectly Confidential information to third parties without the prior written agreement by EUSPA.

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

**I.12.3** The confidentiality obligation set out in this Article are binding on the Contracting Authority and the Contractor during the performance of the Contract and for as long as the information or documents remain confidential unless:

- a) the disclosing party agrees to release the receiving party from the confidentiality obligation earlier,
- b) the Confidential information become public or was lawfully obtained through other means than in breach of the confidentiality obligation,

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

**I.12.4** When the Contractor becomes aware of any unauthorised use of the information or of any unauthorised copy of the information or of any unauthorised derivative work, it shall immediately inform the Contracting Authority thereof.

**I.12.5** Should the Contractor breach any of its obligations under this Article, and without prejudice to the right of the Contracting Authority to seek damages, or suspend or terminate the contract, the Contracting Authority may, by written notice to the Contractor, withdraw the right to use the information for the implementation of the Contract.

**I.12.6** In case the Contractor plans to participate in any of the procurements it was involved preparing or advising under this Contract, it shall inform the Contracting Authority's contracts officer of this plan immediately. The Contractor shall take any appropriate measure to ensure that the same information is promptly provided to him and the Contracting Authority, in case any of the Contractor's employee or consultants plans to participate in the above-mentioned procurements.

**I.12.7** The Contracting Authority shall evaluate the consequences of the Contractor's or the Contractors' employees or consultant's participation in view of ensuring equal treatment and non-discrimination, also through implementation of effective measures, e.g. extending the period for submission of tenders, dissemination of and/or providing access to information gained exclusively by the Contractor or the Contractor's employees/consultants in its work under the Contract. The Contractor shall support the Contracting Authority in its efforts to provide a level playing field for other potential tenderers.

**I.12.8** Following the outcome of its evaluation, the Contracting Authority shall decide with binding effect, whether the Contractor or the Contractor's employees/consultants are allowed to participate in the procurement process in question. Any breach by the Contractor or the Contractor's employees of a possible prohibition decided by the Contracting Authority following the process under previous articles, shall constitute a material breach of the Contractor's obligations under this contract. This is without prejudice to the consequences of the breach as far as the participation in the procurements referred to above is concerned both for the Contractor and the Contractors' employees/consultants. The Contracting Authority shall inform the Contractor of its decision without delay. The Contracting Authority may also take any other measures it finds appropriate to deal with any conflict of interests, whether potential or actual, without this entitling the Contractor to any compensation.

#### **ARTICLE I.13 – INTELLECTUAL PROPERTY RIGHTS AND OTHER RESULTS**

##### **FOREGROUND IPR AND OTHER RESULTS**

**I.13.1** The Contracting Authority or the European Union represented by the European Commission, depending on the indications provided by the Contracting Authority in the respective specific contracts, acquires irrevocably ownership of all Results, including Foreground IPR, without prejudice however to the rules applying to Background IPR.

**I.13.2** The Contracting Authority licenses the Foreground IPR on a royalty-free, non-exclusive and revocable basis to the Contractor for the purpose of performance of the FWC. For other purposes, the Contractor may use Foreground IPR only after prior written agreement of the Contracting Authority.

**I.13.3** The Contractor shall take any necessary step to ensure that the ownership of Foreground IPR shall become exclusively vested in the European Union or the Contracting Authority, which shall be put in the position to use, publish, modify, assign or transfer them as it sees fit, without geographical or other limitation. Such steps shall, without limitation, include but not be limited, to support of registration, patent filing and any other measures as may be required to establish ownership.

**I.13.4** The European Union or the Contracting Authority acquires the ownership of Foreground IPR rights as from the moment the Contractor has created it. Ownership of other Results subject to an acceptance and/or hand-over process shall be automatically vested in the European Union or the Contracting Authority upon successful conclusion of the respective acceptance and/or hand-over process where required under this Contract. Prior to such acceptance and/or successful hand-over process, the risk of loss, damage or any other degradation of Results subject to such acceptance and/or hand-over process shall remain with the Contractor, unless caused by the Contracting Authority due to gross negligence or deliberate acts.

**I.13.5** The payment of the price includes any fees payable to the Contractor about the acquisition of ownership of the Results, including Foreground IPR, by the Contracting Authority, including for all modes of exploitation and of use of the results.



**I.13.6** The European Union or the Contracting Authority acquires inter alia the following exclusive rights without geographical or other limitation:

- a) use, reproduction, communication to the public, distribution, rental, adaptation, translation, right to license to third parties, assign or transfer,
- b) 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,
- c) the right to register the subject-matter as a trademark and to further exploit and use it,
- d) to the extent that the Contractor may invoke moral rights, the right for the Contracting Authority, except where otherwise provided in this FWC, 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.

**I.13.7** In the event that a computer program is delivered under the Specific Contract, the Contractor shall provide such computer program to the Contracting Authority in machine code as well as in source code together with complete documentation on appropriate medium.

**I.13.8** The Contractor shall ensure that any Foreground IPR is immediately entered into the relevant template declaring foreground intellectual IPRs, in Annex II.IX. The Contractor shall present relevant and exhaustive evidence about the acquisition of all the necessary Background IPR and third parties' rights together with presentation of foreground IPRs whenever relevant for any use of the results.

**I.13.9** Subject to the provisions of Article I.13.4, 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 I.10 – Liability such inventions and works performed by the Contractor, including its personnel in the course of the execution of the Contract shall be described in writing and communicated to the Agency, without delay and in any case, not later than:

- 18 (eighteen) months prior to the expiration of the Contract; or
- 45 (forty-five) Days from the date of the termination notice in case the Contract is terminated prior to its expiration.

## BACKGROUND IPRS

**I.13.10** The Contractor must declare Background IPR before the start of performance of tasks and creation of the Results, using Annex II.VIII hereto. The information shall include identification of the rights' owners. With prior written agreement of the Contracting Authority, the Contractor may declare the Background IPR later but at the latest together with the invoice for payment of the balance. The Contracting Authority may require that the Contractor provide it with relevant and exhaustive evidence of the acquisition of all the necessary Background IPR together with a presentation of the Result.

**I.13.11** The Contracting Authority does not acquire ownership of Background IPR. The Contractor licenses the Background IPR on a royalty-free, non-exclusive and irrevocable basis to the Contracting Authority, which may use the Background IPRs which is necessary for exploitation of the results, as described notably in Article I.13.6, or for exploitations mentioned in the specific contracts. Unless otherwise agreed, the licence is non-transferable and cannot be sub-licensed, except as provided hereafter:

- a) the Background IPR can be sub-licensed by the Contracting Authority to persons and entities working for it or cooperating with it, including its Contractors and subcontractors, whether legal or natural persons, but only for the purpose of their projects for the Union or the Contracting Authority,
- b) if the Result is a "document" such as a report or a study, the existence of Background IPRs in the result may not prevent the use, communication to third parties or publication of the document, its translation or its "reuse", it being understood however that the "reuse" may only be made of the Result as a whole and not of the Background IPRs taken separately from the Result; for the sake of this provision, "reuse" and "document" have the meaning given by the Commission Decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU).

All Background IPR are licensed to the Contracting Authority from the moment the Results are delivered and approved by the Contracting Authority. The licensing of Background IPR under this FWC covers all territories worldwide and is valid for the duration of intellectual property rights protection. The payment of the price as set out in the specific contracts is deemed to also include any fees payable to the Contractor in relation to the licensing of Background IPR to the Contracting Authority, including for all forms of exploitation and of use of the results.

**I.13.12** Where COTS products and open source software are concerned and/or the standard license terms of a third-party vendor apply, the Contractor shall ensure that such license shall grant to EUSPA the right and license to use such COTS and open source software to the extent as set out in Article I.13.11.

**I.13.13** Where implementation of the FWC requires that the Contractor uses IPR belonging to the Contracting Authority, the Contracting Authority may request that the Contractor signs an adequate license agreement. Such use by the Contractor will not entail any transfer of rights to the Contractor and is limited to the needs of this FWC.

**I.13.14** When delivering the results, the Contractor must warrant that, for any use that the Contracting Authority may envisage within the limits set in this FWC, the newly created parts and the Background IPRs incorporated in the results are free of claims from Creators or from any third parties and all the necessary Background IPR have been obtained or licensed.

**I.13.15** During the FWC and after its termination or expiry, the Contractor shall inform the Contracting Authority of any important modification or improvement of software protected by Background IPR and its documentation. During the FWC, the Contractor shall provide the Contracting Authority with these modifications and improvements without additional cost. After the termination or expiry of FWC the Contractor shall offer to the Contracting Authority the possibility to negotiate the availability of such modification or improvement at FRAND Terms. This obligation shall cease five years after the expiration of the Contract.

#### **MORAL RIGHTS OF CREATORS**

**I.13.16** By delivering the results, the Contractor warrants that the Creators will not object to the following on the basis of their moral rights under copyright:

- c) that their names be mentioned or not mentioned when the results are presented to the public;
- d) that the Results be divulged or not after they have been delivered in their final version to the Contracting Authority;
- e) that the Results be adapted, provided that this is done in a manner which is not prejudicial to the Creator's honour or reputation.

If moral rights on parts of the Results protected by copyright may exist, the Contractor must obtain the consent of Creators regarding the granting or waiver of the relevant moral rights in accordance with the applicable legal provisions and be ready to provide documentary evidence upon request.

**I.13.17** The Contractor warrants that the use of foreground IPRs and background IPRs in accordance with this Article will not infringe any IPR of any third party. The Contractor shall indemnify and hold EUSPA, its assignees, and licensees, free and harmless of any claims for infringement of third-party rights in connection with the use of Foreground IPRs and Background IPRs as set out in the Articles above, except where the Contractor demonstrates that the infringement is caused by the unauthorized adaptations or modifications made by EUSPA, its assignees, and licensees.

#### **ARTICLE I.14 – LIQUIDATED DAMAGES**

**I.14.1** The Contracting Authority may impose liquidated damages should the Contractor fail to complete its contractual obligations, within the applicable time limits set out in the FWC, including, without limitation, the compliance with the obligation to change the consultants within the time limits specified in Article I.21.

**I.14.2** Should the Contractor fail to perform its contractual obligations within the time limits

set by the FWC or the relevant specific contract, then, without prejudice to the Contractor's actual or potential liability or to the Contracting Authority's right to terminate the FWC or the relevant specific contract, the Contracting Authority may impose liquidated damages for each and every calendar day of delay according to the following formula:

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

V is the price of the relevant Specific Contract;

d is the duration specified for delivery of the relevant specific contract, including, without limitation the implementation of an exchange of consultant, or, failing that, the period between the date specified in Article I.3.9 and the date of delivery or performance specified in the relevant specific contract, expressed in days. The overall aggregate amount of liquidated damages which may be imposed per Specific Contract shall not exceed 5% of the price of the relevant Specific Contract.

- I.14.3** The parties acknowledge that any sums payable under this article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses incurred due to failure to fulfil obligations which may be reasonably anticipated.
- I.14.4** Liquidated damages may be imposed together with a partial payment or retention of payment under the conditions laid down in Article II.10.1. Any claim for liquidated damages does not affect the Contractor's actual or potential liability or the Contracting Authority's rights under Article I.10 – Liability.
- I.14.5** The Contracting Authority must formally notify the Contractor of its intention to apply liquidated damages and the corresponding calculated amount. The Contractor has 30 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:
- of the withdrawal of its intention to apply liquidated damages; or
  - of its final decision to apply liquidated damages and the corresponding amount.

#### **ARTICLE I.15 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

- I.15.1** The FWC shall be governed by European Union law, complemented, where necessary, by the law of Belgium.
- I.15.2** Any dispute between the parties in relation to the interpretation, application or validity of the FWC, which cannot be settled amicably, shall be brought before the French-speaking courts of Brussels.
- I.15.3** 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 Framework Contract and Specific Contracts.

## **ARTICLE I.16 – PROFESSIONAL CONFLICTING INTERESTS**

### **I.16.1 Conflicts of Interest**

- I.16.1.1. Without prejudice to Article II.4, the Contractor, with the signing of the FWC, irrevocably and explicitly declares the absence of any professional conflicting interest in the meaning of Article II.4 existing at the signing of the FWC. In addition, the Contractor irrevocably and explicitly declares the absence of any professional conflicting interest in relation to previous and/or current involvement in the components under the European Union Space Programme and the governmental infrastructure of the Union Secure Connectivity Programme and circumstances referred to in the EUSPA policy on prevention and management of professional conflicting interest. These declarations 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.
- I.16.1.2. The Contractor, with the signing of the FWC, 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, he may draw on for implementation of the FWC at any time during the term of the FWC.
- I.16.1.3. In case EUSPA becomes aware of a professional conflicting interest in the meaning of Article II.4 having existed at the signing of the FWC or at any time during its term of application it shall follow the process described under Article II.12.3 accordingly and, following the rejection of the Contractor's observation, may terminate the FWC and any specific contract it may have submitted thereunder 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 FWC, including any specific contract submitted thereunder shall be suspended, with the provisions of Article II.11.2 applying accordingly.
- I.16.1.4. The Contractor shall be held responsible for and take any appropriate measures to ensuring that the provisions under this Article I.10.1 and under Article II.4 are extended to, acknowledged, and followed by all members of the Contractor's group/consortium and all the subcontractors.

## **ARTICLE I.17 – APPLICATION OF THE SAL**

Any changes to and/or additions of requirements to the SAL (Annex II.VI) made by the EUSPA in compliance with new compulsory requirements imposed by law shall become integral part of the FWC. These additions and changes will be communicated by the EUSPA to the Contractor and shall become effective upon this communication, constituting an integral part of the FWC, including any specific contract submitted thereunder, with the additions or changes of requirements themselves not being subject to the provisions under Article II.7.

## **ARTICLE I.18 – LIABILITY FOR AUDIT AND PENETRATION TESTS**

- I.18.1 Without prejudice to the other provisions of Article I.10, the liability of the Contractor towards EUSPA for audit and penetration testing activities under the first sentence of

Article I.10 shall be limited, by derogation to this Article I.10 to the total value of each individual specific contract.

**I.18.2** Without prejudice to the other provisions of Article I.10, the unlimited liability of the Contractor towards EUSPA under the second sentence of Article I.10.1 shall be extended also to cases during which the Contractor does not follow the procedures, technical requirements and other arrangements agreed with EUSPA.

**I.18.3** EUSPA acknowledges that activities, such as penetration testing, may cause harm to information technology systems, hardware, computer programs, data and parts thereof and therefore EUSPA will assist the Contractor in negotiations with the owner of the systems subject to testing on limitation of the liability of the Contractor. For the avoidance of doubt, this clause is of no guarantee of such limitation and EUSPA bears no responsibility for the result of such negotiations.

#### **ARTICLE I.19 – PARTIAL TERMINATION**

**I.19.1** In case the Contracting Authority would have the right to terminate a Specific Contract under this FWC, it may also choose to only terminate a part or parts of the Specific Contract, provided this does not affect the Contractor's ability to perform the remaining part of parts. Such partial termination may in particular and without limitation, be performed through a de-scoping of a Specific Contract by reduction of tasks and/or assigned consultants.

#### **Article I.20 – NON-COMPETITION UNDERTAKING**

Without prejudice to the provisions of Articles I.10, II.4 of the FWC the Contractor is requested to undertake:

- (i) not to engage, directly or indirectly, either as proprietor, stockholder, partner, officer, employee, consultant or otherwise, in activities that may generate conflict of interests in relation to the activities performed for the EUSPA and
- (ii) not to initiate any attempt to directly or indirectly recruit present or former employees of the EUSPA, such restriction therefore not preventing a present or former employee of the EUSPA from seeking employment with the Contractor as a result of a response to a general solicitation (newspaper, trade journal, electronic internet jobs bulletin board or other advertisement or a job fair) – and on the understanding that in case any such dedicated advisor is proposed to be brought in support of the EUSPA, and the EUSPA finding the proposal unsuitable due to conflicting interests, it shall have the discretion to request the Contractor to find a replacement proposal for a dedicated advisor.

This undertaking shall be in force during the contract validity and for a period of 5 (five) years following contract (either framework or last specific whichever occurs later) completion, expiry or termination.

#### **Article I.21 – Exchange of consultants, additional consultants, non-solicitation**

**I.21.1.** Consultants originally assigned to the team for performing a task under a specific contract may only be exchanged following written request by the Contractor's project officer and corresponding agreement by the Contracting Authority's project officer in writing, not to be unreasonably withheld, provided the following conditions are fulfilled:

- (1) The exchange must be duly justified in the request such as e.g. resignation, termination of contract or illness of the consultant;
- (2) Attached to the request must be the CV and any ancillary information which may be required to support that the new consultant fulfils the profile of the exchanged consultant in line with the requirements detailed under section 2.1.1 – “Table Personnel functions and profiles” of Annex II.II relevant for the task to be performed under the specific contract; and
- (3) Measures are described in the request and subsequently applied to ensure that the quality of the services to the Contracting Authority is not affected due to or in relation to the exchange.

**I.21.2.** The Contracting Authority may also request the change of any consultant whose quality of performance is not satisfactory or who is not in line with other requirements of the FWC or the specific contract. In such case, the Contractor shall, not later than 20 (twenty) calendar days following receipt of the Contracting Authority’s request, suggest replacement profiles in line with section 2.1.1 – “Table Personnel functions and profiles” of Annex II.II equivalent to the consultants requested to be exchanged for the Contracting Authority’s agreement in writing. Any suggestion shall be accompanied with CV and any ancillary documents which may be needed to verify the equivalence of the profile.

Failure to comply with the time limit of this Article I.21.2. or to suggest profiles equivalent to the consultants requested to be exchanged shall constitute a ground for termination of a Specific Contract under Article II.12.1.o). This termination may be only partial and may concern only the tasks affected by the non-compliance above. Following this termination, the Contracting Authority may request the next Contractor in cascade to perform these tasks.

- I.21.3.** The exchange of a consultant against a different one according to this Article I.21 shall be implemented by the Contractor within the following time periods:
- a) in the case of Article I.21.1, within 10 (ten) working days following the date at which it received the Contracting Authority’s project officer’s agreement to the exchange;
  - b) in the case of Article I.21.2, within 30 (thirty) calendar days following the date at which it received the Contracting Authority’s request for the exchange.

**SIGNATURES**

For the Contractor,

[Company name/forename/surname/function]

signature[s]: \_\_\_\_\_

Done in \_\_\_\_\_, [date]

For the Contracting Authority,

Rodrigo da Costa

Executive Director

signature: \_\_\_\_\_

Done in Prague, [date]

In duplicate in English.



## II. GENERAL CONDITIONS

### ARTICLE II. 1 – DEFINITIONS

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

**‘Background IPRs’:** shall mean Intellectual property rights, including third parties’ IPR (especially – but not limited to – Commercial Off-The-Shelf or “COTS” and Open Source Software), obtained prior to the execution or developed outside the present Contract by the Contractor, the Contractor Parties or a third party, and that is needed to perform the contract or update or modify the Results under other projects subject to the Space Programmes of the European Union, including through third parties, however without prejudice to any mandatory security requirements imposed by public entities. A “need” in the aforementioned sense is considered, if, without the relevant rights of access and/or use of the Results to perform the Contract or, the update or modification of the Results under other projects subject to the Space Programmes of the European Union, including through third parties would be technically or legally impossible, impaired or incomplete.

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

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

**‘Creator’:** means any natural person who contributes to the production of the result;

**‘Consecutive Mission Period’:** means a consecutive period of Mission Days at the same Deployment initiated with 1 (one) travel to and ending with 1 (one) travel from the Deployment, whereas in-between weekends, local holidays and any travels from and to the Deployment for private reasons shall not be considered as interrupting the Consecutive Mission Period.

**‘Contractor Parties’:** means subcontractors at any tier to the Contractor.

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

**‘Deployment’:** the assignment of the Contractor’s personnel to a specific location for the provision of services, other than the Standard Place for Performance of Tasks. The location shall be established in Specific Contract and/or its Annexes.

**‘Financial regulation’:** Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012.

**‘Force majeure’:** any unforeseeable, exceptional situation or event beyond the control of the parties that prevents either of them from fulfilling any of their obligations under the FWC. The situation or event must not be attributable to error or negligence on the part of the parties or on the part of the subcontractors and must prove to be inevitable despite their exercising due diligence. Defaults of service, defects in equipment or material or delays in making them available, labour

disputes, strikes and financial difficulties may not be invoked as Force Majeure, unless they stem directly from a relevant case of Force Majeure;

**'Foreground IPR' or 'Foreground Intellectual Property Rights'**: Results within the meaning below including Intellectual Property Rights. 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 Parties in the scope of this Contract;

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

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

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

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

**'Intellectual Property Rights' or 'IPR'**: rights having 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.

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

**'Man Day'**: The man-day is defined as a working day of 8 (eight) consecutive hours (plus launch break): the maximum number of man-days that can be invoiced for each profile should be equal to the man-days effectively worked and shall not exceed in any case the number of working days of the agency in the same period.

**'Mission'**: work journey of Contractor's personnel, having been requested by the Contracting Authority for the performance of tasks at a destination other than that personnel's Standard Place for Performance of Tasks.

**'Mission Day'**: day on which the personnel of the Contractor performs the tasks for which he/she was sent on Mission, such as e.g. participation in a meeting.

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

**'Order form'**: a simplified form of specific contract by which the Contracting Authority orders services under the FWC;

**'Performance of a specific contract'**: the execution of tasks and delivery of the purchased services by the Contractor to the Contracting Authority;

**'Personnel'**: persons employed directly or indirectly or contracted by the Contractor or subcontractor(s) to implement the FWC;

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

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

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

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

**'Standard Place for Performance of Tasks'**: the location where the Contractor's individual personnel is regularly placed for performance of activities, as defined in Contractor's tender;

**'Travel Day'**: day on which the Personnel of the Contractor only travels to/from the destination of performance of such tasks. A Travel Day is not considered as a Mission Day and not subject to daily rates.

## **ARTICLE II.2 – PROVISION OF SERVICES**

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

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

**II.2.3** Without prejudice to Article II.4 any reference made to the Contractor's Personnel in the FWC shall relate exclusively to individuals involved in the performance of the FWC.

**II.2.4** The Contractor shall for the performance of the services use personnel as submitted by the Contractor as part of its tender (Annex II.III) or as agreed by EUSPA under the terms of the FWC and Specific Contracts. The Contractor may replace the Personnel identified in the offer for FWC or for SC or add Personnel only if the new Personnel has equivalent qualifications and only with prior agreement confirmed by a letter co-signed by EUSPA's project and Legal officers.

**II.2.5** The Contractor must ensure that the Personnel performing the FWC possesses the professional qualifications and experience required for the execution of the tasks assigned to it.

**II.2.6** 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.2.7** The Contractor is responsible for the Personnel who carry out the services and exercises its authority over its Personnel without interference by the Contracting Authority. The Contractor must inform its Personnel that:

- a) they may not accept any direct instructions from the Contracting Authority; and
- b) their participation in providing the services does not result in any employment or contractual relationship with the Contracting Authority.

**II.2.8** 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 FWC, 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 FWC 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. The Contractor bears the cost of replacing its Personnel.

**II.2.9** 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 Contracting Authority. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with its obligations under this FWC. In such an event the Contractor shall give priority to solving the problem rather than determining liability.

**II.2.10** The Contractor must record and report to the Contracting Authority any problem that affects its ability to provide the services. The report must describe the problem, state when it started and what action the Contractor is taking to resolve it.

**II.2.11** The Contractor must immediately inform the Contracting Authority of any changes in the exclusion situations as declared, according to Article 137 (1) of the Financial Regulation.

#### **ARTICLE II.3 – COMMUNICATION BETWEEN THE PARTIES**

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

**II.3.2** Unless otherwise agreed, any communication made by email has full legal effect and is admissible as evidence in judicial proceedings. E-mail is deemed to have been received by the receiving party on the day of dispatch of that e-mail, provided that it is sent to the e-mail address indicated in Article I.8.1. The sending party must be able to prove the date of dispatch. In the event that the sending party receives a non-delivery report, it must make every effort to ensure that the other party actually receives the communication by email or mail. In such a case, the sending party is not held in breach of its obligation to send such communication within a specified deadline.

**II.3.3** Electronic communication shall be confirmed by an original signed paper version of that communication if requested by any of the parties provided that this request is submitted without unjustified delay. The sender shall send the original signed paper version without unjustified delay.

**II.3.4** Mail sent using the postal services is deemed to have been received by the Contracting Authority on the date on which it is registered by the department responsible referred to in the specific conditions. Any Formal Notification shall be made by registered mail with return receipt or equivalent, or by equivalent electronic means. Formal Notifications are considered to have been received by the receiving party on the date of receipt indicated in the proof received by the sending party that the message was delivered to the specified Contractor.

#### **ARTICLE II.4 – PROFESSIONAL CONFLICTING INTEREST – COMMITMENT TO EUSPA POLICY**

**II.4.1** The Contractor shall take all the necessary measures to prevent any situation of Professional Conflicting Interest.

**II.4.2** The Contractor commits that he will comply with the General EUSPA policy on the Prevention and Management of Conflicts of Interest (EUSPA-AB-WP52). This Policy is accessible at <https://www.EUSPA.europa.eu/register-of-documents>. The Contractor shall sign the declarations, such as but not limited to declarations of interests, which may be required in this policy and may be conditional for continuation of activities under this FWC according to this policy.

**II.4.3** The Contractor shall further ensure that also its Personnel providing the services under the specific contract complies with the said policy and any specific EUSPA policy applicable to Contractors' Personnel and, in case required by such policy, ensures its Personnel signs the relevant declarations, with this requirement applying to any consortium member's and subcontractor's Personnel accordingly.

**II.4.4** Should the Contractor not comply with these requirements and should such failure seriously affect the provision of the services as required by EUSPA under the FWC, it shall follow the process described under Art. II.12.3.

#### **ARTICLE II.5— PROCESSING OF PERSONAL DATA**

**II.5.1** Any personal data included in the FWC must be processed in accordance with the applicable rules on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data<sup>1</sup>. Such data shall be processed by the data controller (EUSPA) and by the Contractor, which is hereby appointed as data processor solely for the purposes of the performance, management and monitoring of the FWC without prejudice to its possible transmission to the bodies charged with monitoring or inspection tasks in application of Union law.

**II.5.2** 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.

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

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

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

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<sup>1</sup> Currently Regulation (EU) 2018/1725.

**II.5.6** If, throughout the duration of the FWC, the Contractor is required to process any personal data (acting as data processor), the Contractor shall:

- a) inform in writing without delay the data controller and act only on documented instructions from the data controller, in particular with regard to the purposes of the processing, the categories of data that may be processed, the Contractors of the data and the means by which the data subject may exercise its rights;
- a) 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;
- b) ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- c) without prejudice to Article II.5.8, take all necessary measures to ensure the security of the processing of personal data, as may be instructed by the controller;
- d) not engage another processor or sub-processor without prior specific written authorisation of the controller;
- e) 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;
- f) assist the controller for the fulfilment of its obligations to:
  - ensure compliance with its obligations regarding the security of the processing, and the confidentiality of electronic communications and directories of users
  - notify a personal data breach to the European Data Protection Supervisor
  - communicate a personal data breach without undue delay to the data subject, where applicable
  - carry out data protection impact assessments and prior consultations as necessary
- g) notify relevant personal data breaches to the controller without undue delay and at the latest within 48 hours after the Contractor becomes aware of the breach. In such cases, the Contractor shall provide the controller with at least the following information:
  - nature of the personal data breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
  - likely consequences of the breach;
  - measures taken or proposed to be taken to address the breach, including, where appropriate, measures to mitigate its possible adverse effects.
- h) 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;
- i) delete all the personal data after the end of the provision of services relating to processing;



- j) make available to the data controller all information necessary to demonstrate compliance with the obligations laid down in this Article and allow for and contribute to audits, including inspections, conducted by the controller or another auditor mandated by the controller.

**II.5.7** The Contractor shall grant Personnel access to the data to the extent strictly necessary for the performance, management and monitoring of the FWC.

**II.5.8** The Contractor shall adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to ensure:

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

#### **ARTICLE II.6 – SUBCONTRACTING**

**II.6.1** The Contractor shall not subcontract and have the FWC implemented by third parties beyond the third parties already mentioned in its tender without prior written authorisation from the Contracting Authority.

**II.6.2** 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 FWC.

**II.6.3** The Contractor shall make sure that the subcontract does not affect rights and guarantees granted to the Contracting Authority by virtue of this FWC, notably by Article II.8.1.

**II.6.4** The Contracting Authority may request the Contractor to replace a sub-Contractor found to be in a situation provided for in points (e) and (f) of Article II.12.1.

#### **ARTICLE II.7 – AMENDMENTS**

**II.7.1** Any amendment to the FWC or specific contract shall be made in writing before fulfilment of all contractual obligations. A specific contract may not be deemed to constitute an amendment to the FWC.



**II.7.2** The amendment may not have the purpose or the effect of making changes to the FWC or the specific contracts that might alter the initial conditions of the procurement procedure or specific contract or result in unequal treatment of tenderers or Contractors.

#### **ARTICLE II.8 – ASSIGNMENT**

**II.8.1** The Contractor shall not assign the rights, including claims for payments or factoring, and obligations arising from the FWC, in whole or in part, without prior written authorisation from the Contracting Authority. In such cases, the Contractor must provide the Contracting Authority with the identity of the intended assignee.

**II.8.2** In the absence of such authorisation, or in the event of failure to observe the terms thereof, the assignment of rights or obligations by the Contractor shall not be enforceable against the Contracting Authority and shall have no effect on it.

#### **ARTICLE II.9 – FORCE MAJEURE**

**II.9.1.** If a party is affected by Force Majeure, it shall immediately and formally notify the other party without delay, stating the nature, likely duration and foreseeable effects. A party is not liable for any delay or failure to perform its obligations under the FWC if that delay or failure is a result of Force Majeure. If the Contractor is unable to fulfil its contractual obligations owing to Force Majeure, it has the right to remuneration only for the services actually provided.

**II.9.2.** The parties shall take all the necessary measures to limit any damage due to Force Majeure.

**II.9.3.** If the force majeure event lasts for more than 30 days each party is entitled to terminate the FWC or specific contract. Article II.12.1 shall be used accordingly.

#### **ARTICLE II.10 – PARTIAL PAYMENT AND RETENTION OF PAYMENT**

**II.10.1.** If the Contractor fails to provide the service in accordance with the FWC or a specific contract, the Contracting Authority may reduce or retain payments proportionally to the seriousness of the unperformed obligations.

**II.10.2.** In cases where a payment milestone is partially achieved, the Agency may:

- perform partial payments, subject to the Contractor providing adequate evidence of the portion of the payment milestone which has been actually achieved. The execution of a partial payment is without prejudice to the application of liquidated damages at the completion of the affected milestone whenever occurring. The liquidated damages shall be calculated on the residual amount of the milestone not accepted and already covered by the partial payment,  
or
- retain payment of the corresponding milestone, without prejudice of the application of liquidated damages in the full amount when the required performance is met or the milestone accepted.

### **II.10.3. Procedure for a partial payment or retention of payment**

The Contracting Authority must formally notify the Contractor of its intention to partially pay a corresponding calculated amount or retain the payment. As regards the partial payment, the amount of the partial payment is clearly assessed by the Parties acting in good faith as a function of the value created to the Agency by the partial achievement of the payment milestone concerned.

The Contractor has 15 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:

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

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

### **II.11.1 Suspension by the Contractor**

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

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

### **II.11.2 Suspension by the Contracting Authority**

The Contracting Authority may suspend the performance of the FWC or specific contract or any part thereof:

- a) if the FWC or specific contract award procedure or the performance of the FWC prove to have been subject to irregularities, fraud or substantial breaches of obligations;
- b) in order to verify whether presumed irregularities, fraud or substantial breaches of obligations have actually occurred;
- c) if the Contractor is in a situation of Professional Conflicting Interest under Article II.4 - Professional Conflicting Interest - Commitment to EUSPA Policy and pending the definition and implementation of rectification actions as set out under Article II.4.2;
- d) if the performance of the contract is considered to materially affect, directly or indirectly, the interests of the European Union, such as but not limited to security threats;
- e) if the Contractor is considered to be in non-compliance with the confidentiality obligations and is required to submit relevant observations pursuant to Article I.12 - Confidentiality.

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

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

## **ARTICLE II.12 – TERMINATION OF THE FWC**

### **II.12.1 Grounds for termination by the Contracting Authority**

The Contracting Authority may terminate the FWC, and any on-going specific contract respectively in the following circumstances:

- a) if provision of the services under a pending specific contract has not actually started within 15 days of the scheduled date and the Contracting Authority considers the new date proposed, if any, unacceptable, taking into account Article II.7.2;
- b) if the Contractor is unable, through its own fault, to obtain any permit or licence required for implementation of the FWC or the specific contract;
- c) if the Contractor repeatedly refuses to sign specific contracts or repeatedly fails to send them back on time. Termination of two or more specific contracts in these circumstances also constitutes grounds for termination of the FWC;
- 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 136(1) of the Financial Regulation;
- e) if the Contractor or any Related Person is subject to any of the situations provided for in points (c) to (f) of Article 136(1) or to Article 136(2) of the Financial Regulation;
- f) if the procedure for awarding the FWC or the implementation of the FWC prove to have been subject to irregularities, fraud or substantial breaches of obligations on the side of the Contractor;
- 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 fails to notify EUSPA that is in a situation of Professional Conflicting Interest as referred to in Article II.4; or fails to take immediate action for rectification or additional action for rectification as required by EUSPA; or
- i) if the proposed rectification actions are, in the opinion of EUSPA acting reasonably, not effective;
- j) if a change to the Contractor's legal, financial, technical, organisational or ownership situation is likely to substantially affect the implementation of the FWC or substantially modify the conditions under which the FWC was initially awarded or a change regarding the exclusion

situations listed in Article 136 of Financial Regulation that calls into question the decision to award the contract;

- k) in the event of Force Majeure, where either resuming implementation or the performance is impossible or the necessary ensuing amendments to the FWC or a specific contract would mean that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or Contractors;
- l) in case of persistent breach, intended as a repeated breach of the same obligation under the contract or a specific contract, notwithstanding written warnings sent by EUSPA;
- m) if the Contractor is in breach of the confidentiality obligations resulting from Article I.12 - Confidentiality;
- n) if the Contractor takes any step to recruit a member of the Contracting Authority staff;
- o) if the Contractor does not comply with the applicable data protection obligations resulting from Regulation (EU) 2016/679;
- i) if the Contractor does not implement the FWC or perform the specific contract in accordance with the tender specifications or request for service or is in breach of another substantial contractual obligation.

#### **II.12.2 Grounds for termination by the Contractor**

The Contractor may terminate the FWC or an on-going specific contract only if:

- a) it has evidence that the Contracting Authority has committed irregularities, fraud, substantial breaches of obligations in the procedure for awarding the FWC or the implementation of the FWC;
- 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 FWC or to perform a specific contract as provided for in the tender specifications.

#### **II.12.3 Procedure for termination**

A party must formally notify the other party of its intention to terminate the FWC or a specific contract 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 Notification to termination 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 within 15 days following the date of receipt of the observations either of the withdrawal of its intention to terminate or of its final decision to terminate. Provided there is no Formal Notification delivered to the other party, it shall be deemed that the intention to terminate was withdrawn.

In the cases referred to in points (a) to (d), (g) to (i), (k), to (l) and (n) and (o) of Article II.12.1, the date on which the termination takes effect must be specified in the Formal Notification.

Unless agreed otherwise, the notice period is 1 (one) month.

In the cases referred to in points (e), (f), (j) and (m) of Article II.12.1, the termination takes effect on the day following the date on which the Contractor receives Notification of termination, Formal Notification is not required.

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.12.4 Effects of termination**

The Contractor is liable for damage incurred by the Contracting Authority as a result of the termination of the FWC or a specific contract for Contractor default, including the cost of appointing another Contractor to provide or complete the services

The Contractor is not entitled to compensation for any loss resulting from the termination of the FWC or a specific contract, unless the loss was caused by the situation specified in Article II.12.2. The parties agree that only material damage, not loss of anticipated profit, will be compensated to the Contractor.

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.

In the case of joint tenders, the Contracting Authority may terminate the FWC or a specific contract with each member of the group separately on the basis of points (d), (e) (g), or (n) of Article II.12.1, under the conditions set out in this Article.

### **ARTICLE II.13 – PAYMENTS AND GUARANTEES**

#### **II.13.1 Date of payment**

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

#### **II.13.2 Currency**

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

### **II.13.3 Conversion**

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

The Contractor makes any conversion between the euro and another currency at the monthly accounting exchange rate, established by the Commission and published on the following website, applicable on the date of the invoice: [http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/infoeuro/infoeuro\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/infoeuro/infoeuro_en.cfm).

### **II.13.4 Costs of transfer**

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

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

### **II.13.5 Invoices and Value Added Tax**

Invoices shall contain the Contractor's identification (or leader's in the case of a joint tender), the identification data, the amount, the currency and the date, as well as the FWC reference and reference to the specific contract. Invoices shall be sent electronically to the following address: [finance@EUSPA.europa.eu](mailto:finance@EUSPA.europa.eu).

Invoices shall indicate the place of taxation of the Contractor (or leader in the case of a joint tender) 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 FWC are exempt from taxes and duties, including VAT exemption.

### **II.13.6 Interim payments and payment of the balance**

Upon receipt, the Contracting Authority shall pay the amount due as interim or final payment, within the periods specified in Articles I.6.1 and I.6.2, provided the invoice, deliverables and documents have been approved by the Contracting Authority and without prejudice to Article II.10.1. Approval of the invoice, deliverables and documents shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information they contain. Payment of the balance may take the form of recovery.

### **II.13.7 Suspension of the time allowed for payment**

The Contracting Authority may suspend the payment periods specified in Articles I.6.1 and I.6.2 at any time by notifying the Contractor (or leader in the case of a joint tender) that its invoice cannot be processed, either because it does not comply with the provisions of the FWC, or because the appropriate documents have not been produced, or because the Contracting Authority has observations on the documents or deliverables submitted with the invoice. The Contracting Authority must notify the Contractor (or leader in the case of joint tender) as soon as possible of any such suspension, giving the reasons for it. The Contracting Authority shall notify the Contractor (or leader in case of a joint tender) of the need to submit additional information or corrections or a new version of the documents or deliverables if the Contracting Authority requires it.

Suspension shall take effect on the date the Notification is sent by the Contracting Authority. The remaining payment period resumes from the date on which the requested information or revised documents are received by the Contracting Authority or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension period exceeds two months, the Contractor may request the Contracting Authority to justify the continued suspension.

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph and the new document produced is also rejected, the Contracting Authority reserves the right to terminate the specific contract in accordance with Article II.12.1.

### **II.13.8 Interest on late payment**

On expiry of the payment periods specified in Articles I.6.1 and I.6.2, the Contractor is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in Euros (the reference rate) plus eight points. The reference rate shall be the rate in force on the first day of the month in which the payment period ends, as published in the C series of the Official Journal of the European Union.

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

## **ARTICLE II.14 - REIMBURSEMENTS**

**II.14.1** 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 either 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.14.2** Travel, accommodation 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.14.3** 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.14.4** Subsistence and accommodation expenses shall be reimbursed on the basis of a daily subsistence and accommodation allowances as follows:

- a) for journeys of less than 200 km for a return trip, no subsistence 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.4.2.3;
- e) accommodation allowance 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.4.2.3.

**II.14.5** The cost of shipment of equipment or unaccompanied luggage shall be reimbursed provided the Contracting Authority has given prior written authorisation.**II.14.6** Conversion between the euro and another currency shall be made as specified in Article II.13.3.**ARTICLE II.15 – RECOVERY**

**II.15.1** If an amount is to be recovered under the terms of the FWC or the specific contract, the Contractor shall repay the Contracting Authority the amount in question according to the terms and by the date specified in the debit note.

**II.15.2** Before recovery, the Contracting Authority must formally notify the Contractor of its intention to recover the amount it claims, specifying the amount due and the reasons for recovery and inviting the Contractor to make any observations within 30 days of receipt. If no observations have been submitted or if, despite the observations submitted, the Contracting Authority decides to pursue the recovery procedure, it must confirm recovery by formally notifying a debit note to the Contractor, specifying the date of payment. The Contractor must pay in accordance with the provisions specified in the debit note.



**II.15.3** If the Contractor does not pay by the due date, the Contracting Authority may, after informing the Contractor in writing, recover the amounts due:

- a) by offsetting them against any amounts owed to the Contractor by the Contracting Authority, Union or by the European Atomic Energy Community or by an executive agency when it implements the Union budget;
- b) by calling in a financial guarantee if the Contractor has submitted one to the Contracting Authority;
- c) by taking legal action.

**II.15.4 Interest on late payment**

If the obligation to pay the amount due is not honoured by the date set by the Contracting Authority in the debit note, the amount due shall bear interest at the rate indicated in Article II.13.8. Interest on late payments shall cover the period from the day following the due date for payment up to and including the date when the Contracting Authority receives the full payment of the amount owed.

**II.15.5** Any partial payment shall first be entered against charges and interest on late payment and then against the principal amount.

**II.15.6** If the contract is signed by a group (joint tender), the group is jointly and severally liable under the conditions set out in Article I.10.1 (liability). The Contracting Authority shall send the debit note first to the leader of the group.

**II.15.7** If the leader does not pay by the due date and if the amount cannot be offset in accordance with Article II.15.3(a), the Contracting Authority may claim the amount still due to any other member of the group by respectively notifying them with the debit note already sent to the leader under this Article

**ARTICLE II.16 – CHECKS AND AUDITS**

**II.16.1** The Contracting Authority and the European Anti-Fraud Office may check or have an audit on the performance of the FWC. It may be carried out either directly by their own Personnel or by any other outside body authorised to do so on their behalf. Such checks and audits may be initiated at any moment during the performance of the FWC and during a period of up to five years which starts from the payment of the balance of the last specific contract issued under this FWC. The audit procedure shall be deemed to be initiated on the date of receipt of the relevant letter sent by the contracting authority. Audits shall be carried out on a confidential basis.

**II.16.2** The Contractor must keep all original documents stored on any appropriate medium, including digitised originals if authorised by national law and under the conditions laid down therein, for a period of five years which starts running the payment of the balance of the last specific contract issued under this FWC.

**II.16.3** The Contractor shall allow the contracting authority's staff and outside Personnel authorised by the contracting authority the appropriate right of access to sites and premises where the

FWC is performed and to all the information, including information in electronic format, needed in order to conduct such checks and audits. The Contractor must ensure that the information is readily available at the moment of the check or audit and, if so requested, that information be handed over in an appropriate form.

**II.16.4** 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.16.5** The Court of Auditors and the European Public Prosecutor's Office established by Council Regulation (EU) 2017/1939 ('the EPPO') shall have the same rights as the contracting authority, notably right of access, for the purpose of checks and audits.

**SPECIFIC CONTRACT No EUSPA/OP/01/23/SC[x]**implementing Framework Contract No **EUSPA/OP/01/23****(Annex II.IV to the Framework Contract)**

The European Union Agency for the Space Programme (hereinafter referred to as "EUSPA", "the Agency" or "the contracting authority") represented for the purposes of the signature of this Specific Contract by Mr Rodrigo da Costa, Executive Director of EUSPA

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 specific contract by *[forename, surname and function,]*]

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

on the other part,

HAVE AGREED

**ARTICLE 1: SUBJECT MATTER**

- 1.1 This specific contract implements Framework Contract (FWC) No [TO BE INSERTED] signed by the contracting authority and the Contractor on [complete date].
- 1.2 The subject matter of this specific contract is [short description of subject].
- 1.3 The Contractor undertakes, in accordance with the terms set out in the FWC and in this specific contract and the annexes thereto, which form an integral part thereof, to perform the following tasks, as specified in Annex SC.I:

**ARTICLE 2: ENTRY INTO FORCE AND DURATION**

- 2.1 This specific contract shall enter into force on the date on which it is signed by the last party if it has already been signed by both parties.
- 2.2 The duration of the execution of the tasks shall not exceed [days][months]. Execution of the tasks shall start from the date of entry into force of this specific contract.

The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

- [2.3 The execution of the tasks under this SC shall respect the schedule presented in delivery schedule (Annex C) and the duration of the SC.

The delivery schedule may be updated monthly through written communication by the EUSPA to the Contractor, on the condition that the total duration of the SC and the total maximum total price to be paid under this SC remain unchanged.

Following the communication by the EUSPA, the Contractor shall have 5 (five) working days to comment on the updated delivery schedule. In case the EUSPA receives no communication from the Contractor within this period, the delivery schedule shall be considered formally updated and applicable. The updated delivery schedule shall be also presented to the following progress report as agreed between the Parties.]

- [2.4 The allocation of budget for each task can be changed by email sent by EUSPA's Project Officer identified in Art. 1.8.3 of the framework contract, on the condition that the total duration of the SC and the maximum total price to be paid under this SC remain unchanged. It is herewith clarified that (i) the allocation of the budget and effort between consultants, and (ii) the allocation of budget for missions<sup>2</sup> and consultancy services, within one task is indicative, and the reallocation is possible without the additional communication between the Parties.

Following the communication by the Contracting Authority, the Contractor shall have 5 (five) working days to comment on the updated allocation of budget. In case the Contracting Authority receives no communication from the Contractor within this period, the allocation of budget shall be considered formally updated and applicable.]

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<sup>2</sup> Without prejudice to the provisions of Article I.4.2.1 of the FWC and respecting the overall limitation of the mission costs set in the respective SC

### **ARTICLE 3: PRICE**

- 3.1** The maximum total price to be paid under this specific contract shall be EUR [amount in figures and in words] covering all tasks executed.
- 3.2** Travel expenses, hotel costs and daily subsistence allowance for missions are part of the maximum total price of the SC and shall be reimbursed in line with Article I.4 of the FWC and up to a total maximum amount of EUR [amount in figures and in words].
- 3.3** In addition to the maximum total price, no other reimbursable expenses are foreseen.

### **ARTICLE 4: PAYMENTS**

- 4.1** Payments and approval of payments shall be made in accordance with Articles I.4, I.6, II.13, II.14, II.15 of the FWC.
- 4.2** In accordance with Article I.4, payments shall be executed only if the Contractor has fulfilled all its contractual obligations by the date on which the invoice is submitted (with all required information and supporting documents), including submission to the EUSPA of [adjust per SC]:
- a) The deliverables,
  - b) Copies of time sheets for verifying continuous service provision according to the requirements of the 'Financial Table of Answers' (distinguishing between senior and junior quality technicians as applicable and – including a summary of the tasks achieved),
  - c) Proof of costs incurred for short term missions and subject to reimbursement,
  - d) Proof of acceptance of the deliverables by the EUSPA, duly dated and signed by the Contractor and the Contracting Authority's project officer.

If by any reason the submission of a delivery is delayed or not complete by the payment milestone planned, the request for its payment shall be delayed accordingly and may be submitted with the payment request following its delivery.

- 4.3** As part of the Final Progress Report, the Contractor shall release a final version of the information submitted under Article 4.2 gathering all the costs of the specific contract split among the interim payment periods.

### **ARTICLE 5: FOLLOW-UP OF BUDGET**

- 5.1** Tasks under this SC include the project management of such tasks. The Contractor is obliged to monitor the consumption of the budget for this SC. In order to prevent exceeding the budget ceiling for this SC, the Contractor shall alert, in writing and in due time, the Contracting Authority when the budget consumption exceeds 70%, 80% and 90%. The Contractor will not invoice any tasks going beyond the budget ceiling unless it receives a prior written agreement of the contacting authority.

### **ANNEXES**

Annex SC.I: Terms of reference:

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

[Annex SC.III: Delivery Schedule]

Annex SC.III: Deliverable Acceptance Sheet]

**SIGNATURES**

For the Contractor,

[Company name/forename/surname/function]

For the contracting authority,

Rodrigo da Costa

Executive Director

signature[s]: \_\_\_\_\_

signature[s]: \_\_\_\_\_

Done in [place], [date]

Done in Prague, [date]

In duplicate in English.

**ANNEX SC.III**

**To Specific Contract No [x] implementing Framework contract EUSPA/OP/01/23**

**Deliverable acceptance sheet**

**Framework contract reference: EUSPA/OP/01/2023**

**Specific contract reference: EUSPA/OP/01/2023**

Reference of Task/Deliverable	Due date in offer (DD/MM/YY)	Real Delivery date (DD/MM/YY)	Format/Manner of delivery	Price of deliverable	Linked T&S
<i>/add or delete lines as necessary/</i>					

**For the Contractor:**

I hereby certify that the Task(s) and Deliverable(s) listed above have been completed according to the terms of the contract and submitted to EUSPA.	
Name	
Position	
Signature	
Date	

**For the EUSPA:**

I hereby certify that the Task(s) and Deliverable(s) listed above have been completed according to the terms of the contract, received and accepted by EUSPA.	
Name	
Position	
Signature	
Date	