



FRAMEWORK SERVICE CONTRACT GSA/OP/09/16/LOTX

"PROVISION OF SPECIALISED SUPPORT TO GSA'S MARKET DEVELOPMENT"

Technical assistance on EGNSS market development in governmental applications

The European GNSS Agency (hereinafter referred to as the "GSA", "the Agency" or the "the Contracting Authority"), represented for the purposes of the signature of this framework contract by Mr Carlo des Dorides, Executive Director,

on the one part,

and

[full official name]

[official legal form]

[statutory registration number]

[full official address]

[VAT registration number]

[insert identification information for Contractor]

(hereinafter referred to as 'the Contractor'),

represented for the purposes of the signature of this framework contract by _____

[Name + Role]

[In case of consortium: The parties identified above and hereinafter collectively referred to as the 'the Contractor' shall be jointly and severally liable vis-à-vis the Agency for the performance of this contract.]

on the other part,



HAVE AGREED

to the **special conditions**, the **general conditions for service framework contract** and the following annexes:

Annex I	Tender specifications (Invitation to tender GSA/OP/09/16 of xx.xx.xxxx)
Annex II	Contractor's tender of xx.xx.xxxx
Annex III	Model specific contract
Annex IV	Declaration on confidentiality and absence of conflict of interest
Annex V	GSA policy on prevention and management of conflicts of interest for staff and third parties working for the GSA
Annex VI	Declarations of background and foreground intellectual property rights
Annex VII	Non Disclosure Agreement/s signed by the tenderer
Annex VIII	GSA mission rules for reimbursement
Annex IX	Compliance Matrix To Security Aspect Letter (only for lot 5)
Annex X	Security Aspect Letter (only for lot 5)

which form an integral part of this framework contract (hereinafter referred to as "the Contract" or "the FWC").

- The terms set out in the special conditions shall take precedence over those in the other parts of the FWC;
- The terms set out in the general conditions shall take precedence over those in the model specific contract;
- The terms set out in the model specific contract shall take precedence over those in the other annexes.
- The terms set out in the tender specifications (Annex I) and the Declaration on confidentiality and absence of conflict of interest (Annex IV) shall take precedence over those in the tender (Annex II).
- The terms set out in the framework contract shall take precedence over those in the specific contracts.

Subject to the above, the several instruments forming part of the contract are to be taken as mutually explanatory. Ambiguities or discrepancies within or between such parts shall be explained or rectified



by a written instruction issued by the Agency; subject to the rights of the Contractor under Article I.7 should he dispute any such instruction.



I – SPECIAL CONDITIONS

ARTICLE I.1 – SUBJECT MATTER

- I.1.1** The subject matter of the FWC is provision of services in the area of [description of the lot].
- I.1.2** Signature of the FWC imposes no obligation on the Agency to purchase. Only implementation of the FWC through specific contracts are binding on the Agency.

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** Under no circumstances may performance commence before the date on which the FWC enters into force. Execution of the tasks may under no circumstances begin before the date on which the specific contract enters into force.
- I.2.3** The FWC is concluded for a period of 12 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 contract 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 be executed no later than six months after its expiry.

I.2.5 Renewal of the FWC

The FWC is renewed automatically up to 3 times under the same conditions, unless written notification to the contrary is sent by the Contracting Authority at least three months before the end of the ongoing duration. Renewal does not change or postpone any existing obligations.

I.3 IMPLEMENTATION OF THE FWC

- I.3.1** The present Contract shall be implemented through specific contracts, which will, once signed by the Parties, constitute integral and substantial part of the Contract.
- I.3.2** The Contracting Authority shall order services by sending the Contractors the terms of reference for the service. Within the time frame indicated in the Terms of Reference the Contracting Authority shall receive an offer in compliance with the Terms of Reference and the FWC, duly signed and dated. In lack of indication, a time frame of 10 (ten) working days shall apply.



- I.3.3 Unless otherwise requested by the Contracting Authority, within 10 (ten) working days of a specific contract being sent by the Contracting Authority to the Contractor, the Contracting Authority shall receive it back, duly signed and dated.
- I.3.4 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.3.5 If the Contractor repeatedly refuses to sign the specific contracts or repeatedly fails to send them back on time, the Contractor may be considered in breach of its obligations under this FWC as set out in Article II.15.1 (c).

ARTICLE I.4 –PRICES AND REIMBURSES OF EXPENSES

- I.4.1 The maximum amount of the FWC shall be xxxxx EUR [amount in figures and in word] over the total maximum duration of the Contract. However, this must in no way be construed as a commitment on the Contracting Authority to purchase for the maximum amount.
- I.4.2 Prices shown in Article I.4.3 are firm, fixed, and are not subject to revision during the maximum duration, including renewals as shown in Article I.2 of the contract.

I.4.3 Maximum unit prices

The maximum unit prices of the services and relevant daily subsistence and accommodation allowances shall be as follows: [grid to be inserted]

I.4.4 Pricing of any specific contract

Specific offers submitted by the Contractor in the frame of a specific contract process shall include an estimation of man-days showing the estimated maximum number of man-days to be spent by the Contractor to perform the tasks under the relevant specific contract and the maximum total price for the performance of the tasks under such specific contract.

The unit prices applied in the relevant specific contract shall comply with the price grid, and be strictly presented by the Contractor according to the above price format, without exception.

I.4.5 Reimbursement of expenses

- I.4.5.1 Only missions to destinations not foreseen in the price table under **Article I.4.3** shall be reimbursed according to **Article II.17** and Annex VIII of the contract (mission rules of the GSA staff as to reimbursement of travel expenses), however in no case exceeding the maximum overall amount of the contract and the specific value committed under the specific contract applicable to such costs.



ARTICLE I.5 – PAYMENT ARRANGEMENTS AND PERFORMANCE OF THE FRAMEWORK CONTRACT

I.5.1 Pre-financing

I.5.1.1 No pre-financing is foreseen.

I.5.2 Interim Payment

I.5.2.1 If interim payment(s) are foreseen by a specific contract, the Contractor shall submit an invoice, indicating the reference number of the FWC and of the relevant specific contract, of the amount corresponding to what is stated in the relevant specific contract.

I.5.2.2 Invoices for interim payment shall be accompanied by

- a progress report and/or deliverable(s) in accordance with the instructions laid down in the relevant specific contract,
- deliverables acceptance sheet, duly dated and signed by the Contractor and the Contracting Authority's project officer,
- a detailed justification of all expenses incurred, including but not limited to, justification timesheets justifying the amount of days spent to perform the tasks,
- a table of travel expenses and subsistence expenses in case of services outside of the European Union (if applicable);
- any other document in accordance with the relevant specific contract,

I.5.2.3 The Contracting Authority shall have thirty 30 (thirty) days from receipt to approve or reject the progress report and/or deliverable(s) with the associated supporting documents, and, unless otherwise specified by the Contracting Authority in the terms of reference of the relevant specific contract, the Contractor shall have 15 (fifteen) days in which to submit additional information or a new progress report and/or updated deliverable(s).

I.5.2.4 Provided the progress report and/or deliverable(s) have been approved, the Contracting Authority shall make the payment within 30 (thirty) days from receipt of the invoice.

I.5.3 Payment of the balance

I.5.3.1 The Contractor shall submit an invoice for payment of the balance.

I.5.3.2 The invoice shall be accompanied by

- a final report and/or deliverable(s) in accordance with the instructions laid down in the relevant specific contract,
- deliverables acceptance sheet, duly dated and signed by the Contractor and the Contracting Authority's project officer,
- a detailed justification of all expenses incurred, including but not limited to, justification timesheets justifying the amount of days spent to perform the tasks,



- any other document in accordance with the relevant specific contract,

I.5.3.3 The GSA shall have 30 (thirty) days from receipt to approve or reject the final report and/or deliverable(s) with the associated supporting documents, and, unless otherwise specified by the GSA 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).

I.5.3.4 Provided the final report and/or deliverable(s) have been approved, the Contracting Authority shall make the payment within 30 (thirty) days from receipt of the invoice.

I.5.4 Payment of reimbursable costs

Claim for reimbursement of travel and subsistence expenses incurred by the Contractor for services provided outside the European Union shall be invoiced, together with the proof of the expenses, once as part of the payment of the balance, in accordance with **Article II.17** and the conditions set forth in the mission rules of the GSA staff as to reimbursement of travel expenses (Annex VII).

No subsistence and accommodation costs and daily rates shall be payable for the travel days, unless if explicitly agreed by GSA in writing in advance of the mission performance.

I.5.5 Electronic submission of invoices

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

ARTICLE I.6 – PLACE OF PERFORMANCE

Place of performance of services shall be the specified in the specific contract.

ARTICLE I.7 – BANK ACCOUNT

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

Name of bank:

Full address of branch:

Exact designation of account holder:

Full account number including [bank] codes:



[IBAN code:]

ARTICLE I.8 – COMMUNICATION DETAILS AND DATA CONTROLLER

For the purpose of Article II.6, the data controller shall be the Executive Director of the Contracting Authority.

Communications shall be sent to the following addresses:

Contracting Authority:

European GNSS Agency
Legal and Procurement Department
Janovskeho 438/2
170 00 Prague 7 – Holesovice
Czech Republic
Email: contracts@gsa.europa.eu

Contractor:

[Full name]
[Function]
[Company name]
[Full official address]
Email: [complete]

ARTICLE I.9 – APPLICABLE LAW, SETTLEMENT OF DISPUTES – SPECIFIC PROVISIONS FOR LONG TERM SERVICES

- I.9.1** The FWC shall be governed by European Union law, complemented, where necessary, by the law of Belgium.
- I.9.2** 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 courts of the Brussels.

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

- I.10.1.** The Contractor shall ensure that the ownership of all copyrights, patents, trademarks, software database and other intellectual property rights, including but not limited to any documentation, data, technical information and know-how, resulting from performance of this FWC and any SC thereunder ("foreground IPRs") shall become the exclusive ownership of the European GNSS Agency and/or the European Union¹, which shall be put in the position to use, publish, modify, assign or transfer them as it sees fit, without geographical or other limitation, except where intellectual property rights, including third parties' rights, that already exist prior to the SC on an assignment for a specific task being entered into

¹ Depending on the source of financing that will be clarified by the GSA to the Contractor for filling in of the Annex II.X regarding foreground IPR.



("background IPRs" or "pre-existing rights"), have been declared by the Contractor as per Annex VI prior to starting the implementation of the relevant part of the SC – in which latter case the Contractor shall:

- (i) ensure (through cost-free perpetual licence or otherwise) that the GSA (or the relevant GSA's assignee) can freely use (in the broadest sense meant above without limitation of time, scope or otherwise, i.e. including publish, modify, assign, transfer...) any result delivered to it under the FWC and any SC thereunder without violating/infringing any such rights and without any costs/charges and;
- (ii) hold the GSA (or the relevant GSA's assignee) harmless of any claims in connection with such use.

I.10.2 Notwithstanding the GSA's rights under Article I.10.1 the Contractor shall ensure that any foreground IPR is immediately entered into the template provided in Annex VI, and brought to the GSA's attention. The Contractor shall present relevant and exhaustive evidence about the acquisition of all the necessary pre-existing rights and third parties' rights together with presentation of foreground IPR, whenever relevant for any use of the results.

ARTICLE I.11 –TERMINATION BY GSA

The GSA may, without being required to pay compensation, terminate either the contract or the specific contracts by formally notifying the Contractor and by giving 6-(six) month notice. Should the Contracting Authority terminate the contract, or specific contracts, the Contractor shall only be entitled to payment corresponding to the part-performance of the services ordered before the termination date. The first paragraph of **Article II.15.4** shall apply.

ARTICLE I.12 –CONFLICT OF INTEREST

I.12.1 Confidentiality and Conflicts of Interest

I.12.1.1 Without prejudice to Article II.4 the Contractor, with the signing of the FWC, irrevocably and explicitly declares confidentiality and the absence of any conflict of interest in the meaning of Article II.4 and II.5 existing at the signing of the FWC. In addition, the Contractor irrevocably and explicitly declares the absence of any conflict of interest in relation to previous and/or current involvement in the Galileo and EGNOS programme and circumstances referred to in the GSA policy on prevention and management of conflict of interest for staff and third party working for the GSA (Annex IV to the Framework Contract) existing at the signing of the FWC. 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 and shall be signed together with each specific contract, by each tenderer and subcontractor involved in the implementation of the tasks.

- I.12.1.2 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.12.1.3 In case the GSA becomes aware of a conflict of interest in the meaning of Article II.4 having existed at the signing of the FWC or at any time during its term of application it shall follow the process described under Article II.4.2. If the measures applied according Article II.4.2 prove to be insufficient and the GSA assessment proves that the situation of Conflict Interest persists – the provisions of Article II.15 shall apply accordingly and, following the rejection of the Contractor's observation, the GSA 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.14 applying accordingly.
- I.12.1.4 The Contractor shall be held responsible for and take any appropriate measures to ensuring that the provisions under this Article I.12.1 and under Article II.4 are extended to, acknowledged, and followed by all members of the Contractor's group/consortium and all the subcontractors.

I.12.2 Commitment to the GSA policy

- I.12.2.1 The Contractor commits that he will abide by the GSA's policy on conflicts of interests as may become universally applicable to all GSA Contractors pursuant to a decision by the GSA's Administrative Board and shall sign the declarations, such as but not limited to declarations of interests, which may be required thereunder and may be conditional for continuation of activities under this FWC according to the general GSA policy (Annex V to the FWC).
- I.12.2.2 The Contractor shall further ensure that also its personnel providing the services under the contract complies with any specific GSA policy applicable to Contractors' staff and, in case required by such policy, ensures its staff signs the relevant declarations, with this requirement applying to any consortium member's and subcontractor's staff accordingly.
- I.12.2.3 Should the Contractor not comply with these requirements and should such failure seriously affect the provision of the services as required by the GSA under the contract, it shall follow the process described under Article II.15 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 Framework Contract, including any specific contract submitted thereunder, shall be suspended, with the provisions of Article II.15 applying accordingly.

I.12.3 Participation in public procurements

- 12.3.1 In case the Contractor plans to participate in any of the procurements it was involved preparing or advising under this contract, he/she shall inform the Contracting Authority's contracts officer of this plan, immediately.
- 12.3.2 The Contracting Authority shall evaluate the consequences of the Contractor's participation in view of the possibilities of upholding the procurement principles of 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 in its work under the contract. The Contractor is asked to support the GSA in its efforts to provide a level playing field for other potential tenderers.
- 12.3.3 Following the outcome of its evaluation, the Contracting authority shall finally decide with binding effect, whether the Contractor will be allowed to participate in the procurement process in question. 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 – COMPLIANCE WITH LAW

- I.13.1 It shall be the Contractor's duty and corresponding sole responsibility to comply and ensure full compliance with all applicable laws of any part of performance under the FWC. The Contractor shall hold the GSA harmless from any third party claims as may arise from or in connection with this FWC, related SCs or their implementation, in particular (without limitation) any claims brought about by its staff members/consultants/dedicated advisors working with GSA, whether on employment grounds/arguments or otherwise, to the maximum extent permitted by law.
- I.13.2 No contract of employment shall be established between GSA 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 the GSA 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.13.3 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.13.4 The Contractor shall guarantee to the Contracting Authority that the personnel providing services will not acquire any legal right with respect to Contracting Authority under any employment laws or other similar/related laws or rules, whether by reason of duration or other circumstances of services to the Contracting Authority.
- I.13.5 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.13.6 In cooperation with the GSA, the Contractor shall ensure that its staff members providing services under this FWC or related SCs on GSA premise(s) / site(s) are informed of applicable internal rules of the GSA (notably on site security and access) and that they comply with these rules.

ARTICLE I.14 NON-SOLICITATION UNDERTAKING

Without prejudice to the provisions of Article I.12 the Contractor undertakes (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 GSA and (ii) not to recruit, attempt to recruit or directly or indirectly participate in the recruitment of, employ or constitute as its own Contractors/subcontractors present or former employees of the GSA — in each of (i) and (ii) except with the prior written approval of the GSA. 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.

I.15 NON-DISCLOSURE AGREEMENT

- I.15.1 Signature of the non-disclosure agreement (Annex VII) by the Contractor, including any of the members of his/her group/consortium and subcontractors if applicable of this contract (based on need-to-know principle) is identified as a mandatory precondition for the validity of this contract and for placing any specific contract hereunder.
- I.15.2 In the frame of the non-disclosure agreement, the Contractor shall ensure and be responsible towards the Contracting Authority that the provisions of the non-disclosure agreement are followed by any legal entity as well as natural person involved in or performing tasks under this contract, regardless of fault.
- I.15.3 The Contractor may not exonerate him-/herself from any failure of this duty in view of the non-performance of the non-disclosure agreement's provisions by any third-party.



ARTICLE I.16- SECURITY ASPECTS (ONLY FOR LOT 5)

I.16.1 APPLICATION OF SECURITY ASPECTS LETTER

I.16.1.1 Any additions or changes of requirements to the security aspects letter (Annex X) made by the GSA in compliance with new, compulsory requirements imposed by law, shall become effective immediately, constituting an integral part of the contract and shall not be considered and subject to the provisions under Article II.8.

I.16.1.2. In addition to and without prejudice to the termination rights of the Contracting Authority under Article II.15 all termination rights of the Contracting Authority mentioned in the security aspects letter (Annex X and subject to the conditions mentioned therein, including compensation rights of the Contractor, if any, shall apply without limitation.

I.16.2 SECURITY REQUIREMENTS APPLICABLE TO DEDICATED ADVISERS

I.16.2.1 Before the signature of a specific contract, the GSA will reserve the right to request evidence that Contractor's proposed dedicated advisor holds a valid PSC up to SECRET UE/EU SECRET.

I.16.2.2 When required to access PRS information, dedicated advisors may also be requested to have an authorisation from the appropriate Competent PRS Authority (CPA).

I.17 COMPLIANCE WITH MINIMUM REQUIREMENTS

When implementing the FWC, the Contractor shall at all times ensure full compliance with the minimum requirements as laid down in **section 2.2.7 of Annex I** In case of failure of such compliance, the contractor shall be considered in breach of a substantial contractual obligation in the sense of **Article II.15.1 (c)**.



SIGNATURES

For the Contractor,

[*Company name/forename/surname/function*]

signature[s]: _____

Done in [place], [date]

In duplicate in English.

For the Agency,

Carlo Des Dorides, Executive Director

signature: _____

Done in Prague, [date]



II – GENERAL CONDITIONS FOR SERVICE FRAMEWORK CONTRACTS

ARTICLE II. 1 – IMPLEMENTATION OF THE FWC

- II.1.1** 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.
- II.1.2** The Contractor must comply with the minimum requirements provided for in the tender specifications. This includes 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/EU².
- II.1.3** The Contractor shall be solely responsible for taking the necessary steps to obtain any permit or licence required for implementation of the FWC under the laws and regulations in force at the place where the tasks assigned to him are to be executed.
- II.1.4** 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 implementation of the FWC.
- II.1.5** 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.1.6** 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.1.7** The Contractor shall be solely responsible for the personnel who executes the tasks assigned to him.

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

- (a) personnel executing the tasks assigned to the Contractor may not be given orders directly by the Contracting Authority;
- (b) the Contracting Authority may not under any circumstances be considered to be the employer of the personnel referred to in point (a) and the personnel shall undertake not to invoke against the Contracting Authority any right arising from the contractual relationship between the Contracting Authority and the Contractor.

² OJ L 94 of 28.03.2014, p. 65



- II.1.8** 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 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 him resulting from the replacement of personnel.
- II.1.9** 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.1.10** Should the Contractor fail to perform its obligations under the FWC or specific contract, the Contracting Authority may - without prejudice to its right to terminate the FWC or specific contract or - reduce or recover payments in proportion to the scale of the unperformed obligations in accordance with Articles II.13 and II.18. In addition, the Contracting Authority may claim compensation or impose liquidated damages in accordance with Article II.12.

ARTICLE II.2 – MEANS OF COMMUNICATION

- II.2.1** Any communication relating to the FWC or to its performance shall be made in writing 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.2.2** Electronic communication shall be deemed to have been received by the parties on the day of dispatch of that communication provided it is sent to the addressees listed in Article I.6. Without prejudice to the preceding, if the sending party receives a message of non-delivery to or of absence of the addressee, it shall make every effort to ensure the actual receipt of such communication by the other party.

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

- II.2.3** Mail sent using the postal services is deemed to have been received by the Contracting Authority on the date on which it is registered by the department responsible referred to in Article I.6.

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

ARTICLE II. 3 – LIABILITY

- II.3.1** The Contractor shall be solely responsible for complying with any legal obligations incumbent on it.
- II.3.2** The Contracting Authority shall not be held liable for any damage caused or sustained by the Contractor, including any damage caused by the Contractor to third parties during or as a consequence of implementation of the FWC, except in the event of wilful misconduct or gross negligence on the part of the Contracting Authority.
- II.3.3** The Contractor shall be held liable for any loss or damage sustained by the Contracting Authority in the implementation of the FWC, including in the event of subcontracting, and for any claim by a third party, but only to an amount not exceeding 130 (one hundred thirty)%the total amount of the relevant specific contract. Nevertheless, if the damage or loss is caused by the gross negligence or wilful misconduct of the Contractor or of its personnel or subcontractors, the Contractor shall have unlimited liability for the amount of the damage or loss.
- II.3.4** The Contractor shall indemnify and hold the Union harmless for all damages and costs incurred due to any claim. The Contractor shall provide compensation in the event of any action, claim or proceeding brought against the Contracting Authority by a third party as a result of damage caused by the Contractor during the implementation of the FWC. In the event of any action brought by a third party against the Contracting Authority in connection with the implementation implementation of the FWC including any alleged breach of intellectual property rights, the Contractor shall assist the Contracting Authority.
- II.3.5** The Contractor shall take out an insurance policy against risks and damage relating to the implementation of the FWC if required by the relevant applicable legislation. It shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance contracts shall be sent to the Contracting Authority should it so request.
- II.3.6.** If the Contractor is composed of two or more economic operators (i.e. who submitted a joint tender), they are all jointly and severally liable to the Contracting Authority for the implementation of the FWC.

ARTICLE II. 4 - CONFLICT OF INTERESTS AND PROFESSIONAL CONFLICTING INTERESTS

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

ARTICLE II.5 – CONFIDENTIALITY

- II.5.1.** The Contracting Authority and the Contractor shall treat with confidentiality any information and documents, in any form, disclosed in writing or orally in relation to the implementation of the FWC and identified in writing as confidential.

Each party shall:

- (a) not use confidential information and documents for any purpose other than fulfilling its obligations under the FWC or specific contract without prior written agreement of the Contracting Authority;
- (b) ensure the protection of such confidential information and documents with the same level of protection it uses to protect its own confidential information or document and in any case with due diligence;
- (c) not disclose directly or indirectly confidential information and documents to third parties without prior written agreement of the other party.

II.5.2 The confidentiality obligation set out in Article II.5.1 shall be binding on the Contracting Authority and the Contractor during the implementation of the FWC and for as long as the information or documents remain confidential unless:

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

II.5.3 The Contractor shall obtain from any natural person with the power to represent it or take decisions on its behalf, as well as from third parties involved in the implementation of the FWC or specific contract a commitment that they will comply with the confidentiality obligation set out in Article II.5.1. At the request of the Contracting Authority, the Contractor must provide a document providing evidence of this commitment.

ARTICLE II.6— PROCESSING OF PERSONAL DATA

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

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

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

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

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

- II.6.6** The Contractor undertakes to adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to:
- (a) prevent any unauthorised person from gaining access to computer systems processing personal data, and especially:
 - (i) unauthorised reading, copying, alteration or removal of storage media;
 - (ii) unauthorised data input, as well as any unauthorised disclosure, alteration or erasure of stored personal data;
 - (iii) unauthorised use of data-processing systems by means of data transmission facilities;
 - (b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
 - (c) record which personal data have been communicated, when and to whom;
 - (d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the Contracting Authority;
 - (e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
 - (f) design its organisational structure in such a way that it meets data protection requirements.

ARTICLE II. 7 – SUBCONTRACTING

- II.7.1** The Contractor shall not subcontract without prior written authorisation from the Contracting Authority nor cause the FWC to be de facto performed by third parties.
- II.7.2** Even where the Contracting Authority authorises the Contractor to subcontract to third parties, it shall nevertheless remain bound by its contractual obligations and shall be solely responsible for the proper implementation of this FWC.
- II.7.3** The Contractor shall make sure that the subcontract does not affect rights and guarantees granted to the Contracting Authority by virtue of this FWC, notably by Article II.19.
- II.7.4** The Contracting Authority may request the Contractor to replace a subcontractor found to be in a situation provided for in points (d) and (e) of Article II.15.1.



ARTICLE II. 8 – AMENDMENTS

- II.8.1** Any amendment to the FWC or specific contract shall be made in writing before fulfilment of all contractual obligations. An specific contract may not be deemed to constitute an amendment to the FWC.
- II.8.2** The amendment may not have the purpose or the effect of making changes to the FWC or to specific contracts which might alter the initial conditions of the procurement procedure, specific contract or result in unequal treatment of tenderers or Contractors.

ARTICLE II. 9 – ASSIGNMENT

- II.9.1** The Contractor shall not assign the rights, including claims for payments, and obligations arising from the FWC, in whole or in part, without prior written authorisation from the Contracting Authority.
- II.9.2** In the absence of such authorisation, or in the event of failure to observe the terms thereof, the assignment of rights or obligations by the Contractor shall not be enforceable against the Contracting Authority and shall have no effect on it.

ARTICLE II. 10 – OWNERSHIP OF THE RESULTS - INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS

II.10.1 Definitions

In this FWC the following definitions apply:

- (1) 'results' means any intended outcome of the implementation of the FWC which is delivered and finally accepted by the Contracting Authority.
- (2) 'creator' means any natural person who contributed to the production of the result and includes personnel of the Contracting Authority or a third party.
- (3) 'pre-existing rights' means any industrial and intellectual property rights, including background technology, which exist prior to the Contracting Authority or the Contractor ordering them for the purpose of the FWC performance and include rights of ownership and use by the Contractor, the creator, the Contracting Authority and any other third parties.

II.10.2 Ownership of the results

The ownership of the results shall be fully and irrevocably acquired by the Union under the FWC including any rights in any of the results listed in the FWC and specific contracts, including copyright and other intellectual or industrial property rights, and all technological solutions and information contained therein, created or produced by the Contractor or by its subcontractors in implementation of the FWC. The Contracting Authority may exploit them as stipulated in this FWC or specific contracts. All the rights shall be acquired by the Union from the moment the results are delivered by the

Contractor and accepted by the Contracting Authority. Such delivery and acceptance are deemed to constitute an effective assignment of rights from the Contractor to the Union.

The payment of the price as set out in the specific contracts is deemed to include any fees payable to the Contractor in relation to the acquisition of ownership of rights by the Union including all forms of exploitation and use of the results.

The acquisition of ownership of rights by the Union under this FWC covers all territories worldwide.

Any intermediary sub-result, raw data, intermediary analysis made available by the Contractor cannot be used by the Contracting Authority without the written consent of the Contractor, unless the FWC or specific contract explicitly provides for it to be treated as a self-contained result.

II.10.3 Licensing of pre-existing rights

Unless provided otherwise in the special conditions, the Union shall not acquire ownership of the pre-existing rights.

The Contractor shall license the pre-existing rights on a royalty-free, non-exclusive and irrevocable basis to the Union which may use the pre-existing right as foreseen in Article I.8.1 or in specific contracts. All the pre-existing rights shall be licensed to the Union from the moment the results were delivered and accepted by the Contracting Authority.

The licensing of pre-existing rights to the Union under this FWC covers all territories worldwide and is valid for the whole 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 pre-existing rights by the Union, including for all forms of exploitation and of use of the results.

Where implementation of the FWC requires that the Contractor uses pre-existing materials belonging to the Contracting Authority, the Contracting Authority may request that the Contractor signs an adequate licence 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.

II.10.4 Exclusive rights

The Union acquires the following exclusive rights:

- a) reproduction: the right to authorise or prohibit direct or indirect, temporary or permanent reproduction of the results by any means (mechanical, digital or other) and in any form, in whole or in part;
- b) communication to the public: the exclusive right to authorise or prohibit any display, performance or communication to the public, by wire or wireless means, including the making available to the public of the results in such a way that members of the public may access them from a place and at a time individually chosen by them; this right also includes the communication and broadcasting by cable or by satellite;
- c) distribution: the exclusive right to authorise or prohibit any form of distribution of results or copies of the results to the public, by sale or otherwise;
- d) rental: the exclusive right to authorise or prohibit rental or lending of the results or of copies of the results;
- e) adaptation: the exclusive right to authorise or prohibit any modification of the results;
- f) translation: the exclusive right to authorise or prohibit any translation, adaptation, arrangement, creation of derivative works based on the results, and any other alteration of the results, subject to the respect of moral rights of authors, where applicable;
- g) where the results are or include a database: the exclusive right to authorise or prohibit the extraction of all or a substantial part of the contents of the database to another medium by any means or in any form; and the exclusive right to authorise or prohibit the re-utilisation of all or a substantial part of the contents of the database by the distribution of copies, by renting, by on-line or other forms of transmission;
- h) where the results are or include a patentable subject-matter: the right to register them as a patent and to further exploit such patent to the fullest extent;
- i) where the results are or include logos or subject-matter which could be registered as a trademark: the right to register such logo or subject-matter as a trademark and to further exploit and use it;
- j) where the results are or include know-how: the right to use such know-how as is necessary to make use of the results to the full extent provided for by this FWC, and the right to make it available to Contractors or subcontractors acting on behalf of the Contracting Authority, subject to their signing of adequate confidentiality undertakings where necessary;
- k) where the results are documents:
 - a. the right to authorise the reuse of the documents in conformity with the Commission Decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU), to the extent it is applicable and the documents fall within its scope and are not excluded by any of its provisions; for the sake of this provision, 'reuse' and 'document' have the meaning given to it by this Decision;



- b. the right to store and archive the results in line with the document management rules applicable to the Contracting Authority, including digitisation or converting the format for preservation or new use purposes;
- l) where the results are or incorporate software, including source code, object code and, where relevant, documentation, preparatory materials and manuals, in addition to the other rights mentioned in this Article:
 - a. end-user rights, for all uses by the Union or by subcontractors which result from this FWC and from the intention of the parties;
 - b. the rights to decompile or disassemble the software;
- m) to the extent that the Contractor may invoke moral rights, the right for the Contracting Authority, except where otherwise provided in this 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.

The Contractor warrants that the exclusive rights and the modes of exploitation may be exercised by the Union on all parts of the results, be they created by the Contractor or consisting of pre-existing materials.

Where pre-existing materials are inserted in the results, the Contracting Authority may accept reasonable restrictions impacting on the above list, provided that the said materials are easily identifiable and separable from the rest, that they do not correspond to substantial elements of the results, and that, should the need arise, satisfactory replacement solutions exist, at no additional costs to the Contracting Authority. In such case, the Contractor will have to clearly inform the Contracting Authority before making such choice and the Contracting Authority has the right to refuse it.

II.10.5 Identification and evidence of granting of pre-existing rights and rights of third parties

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

The Contractor shall establish to that effect a list of all pre-existing rights and rights of creators and third parties on the results of this FWC or parts thereof. If there are no pre-existing rights to the results, the Contractor must provide a declaration to that effect. The Contractor must provide this list or declaration to the Contracting Authority together with the invoice for payment of the balance at the latest.

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



Upon request by the Contracting Authority, the Contractor shall provide evidence of ownership or rights to use all the listed pre-existing rights and rights of third parties except for the rights owned by the Union. The Contracting Authority may request this evidence even after the end of this FWC.

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

The evidence shall include, as appropriate:

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

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

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

II.10.6 Moral rights of creators

By delivering the results the Contractor warrants that the creators undertake not to oppose to the following on the basis of their moral rights under copyright:

- (a) that their names be mentioned or not mentioned when the results are presented to the public;
- (b) that the results be divulged or not after they have been delivered in their final version to the Contracting Authority;
- (c) that the results be adapted, provided that this is done in a manner which is not prejudicial to the creator's honour or reputation. The Contractor shall obtain the consent of creators regarding the granting or waiving of the relevant moral rights and be ready to provide documentary evidence upon request.



II.10.7 Persons appearing in photographs or films

If natural, recognisable persons appear in a result or their voice or any other private element is recorded in a recognisable manner, the Contractor shall obtain a statement of these persons (or of the persons exercising parental authority in case of minors) where they give their permission for the described use of their image or voice or private element and submit a copy of this statement on request by the Contracting Authority. This does not apply to persons whose permission is not required in line with the law of the country where photographs were taken, films shot or audio records made.

II.10.8 Copyright for pre-existing rights

When the Contractor retains pre-existing rights on parts of the results, reference shall be inserted to that effect when the result is used as set out in Article I.8.1 with the following disclaimer: © - year – European Union. All rights reserved. Certain parts are licensed under conditions to the EU, or with any other equivalent disclaimer as the Contracting Authority may consider best appropriate, or as the parties may agree on a case-by-case basis. This does not apply where inserting such reference would be impossible, notably for practical reasons.

II.10.9 Visibility of Union funding and disclaimer

When making use of the results, the Contractor shall declare that they have been produced within a contract with the Union and that the opinions expressed are those of the Contractor only and do not represent the Contracting Authority's official position. The Contracting Authority may waive this obligation in writing or provide the text of the disclaimer.

ARTICLE II. 11 – FORCE MAJEURE

II.11.1 'Force majeure' means any unforeseeable and exceptional situation or event beyond the parties' control which prevents either of them from fulfilling any of their obligations under the FWC, which was not attributable to error or negligence on their part or on the part of subcontractors and which proves to be inevitable in spite of exercising due diligence. Any default of a service, defect in equipment or material or delays in making them available, unless they stem directly from a relevant case of force majeure, as well as labour disputes, strikes or financial difficulties, cannot be invoked as force majeure.

II.11.2 A party faced with force majeure shall formally notify the other party without delay, stating the nature, likely duration and foreseeable effects.

II.11.3 The party faced with force majeure shall not be held in breach of its contractual obligations if it has been prevented from fulfilling them by force majeure. Where the Contractor is unable to fulfil its contractual obligations owing to force majeure, it shall have the right to remuneration only for the tasks actually executed.



II.11.4 The parties shall take all the necessary measures to limit any damage due to force majeure.

ARTICLE II. 12 – LIQUIDATED DAMAGES

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 purchase;

d is the duration specified in the relevant specific contract or, failing that, the period between the date specified in Article I.4.1 and the date of delivery or performance specified in the relevant specific contract, expressed in calendar days

The Contractor may submit arguments against this decision within 30 days of receipt of the formal notification of the intent of the Contracting Authority to apply liquidated damages. In the absence of a reaction on its part or of written withdrawal by the Contracting Authority within 30 days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable.

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

Liquidated damages may be imposed together with a reduction in price under the conditions laid down in Article II.13.

ARTICLE II. 13 – REDUCTION IN PRICE

II.13.1. Quality standards

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



A reduction in price may be imposed together with liquidated damages under the conditions of Article II.12.

II.13.2. Procedure

The Contracting Authority must formally notify the Contractor of its intention to reduce payment 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:

- (a) of the withdrawal of its intention to reduce payment; or
- (b) of its final decision to reduce payment and the corresponding amount,.

II.13.3. Claims and liability

Any reduction in price does not affect the Contractor's actual or potential liability or the Contracting Authority's rights under Article II.15.

ARTICLE II. 14 – SUSPENSION OF THE IMPLEMENTATION OF THE FWC

II.14.1 Suspension by the Contractor

The Contractor may suspend the implementation 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 notify the Contracting Authority about the suspension without delay, giving all the necessary reasons and details and the envisaged date for resuming the implementation of the FWC or specific contract.

Once the circumstances allow resuming performance, the Contractor shall notify the Contracting Authority immediately, unless the Contracting Authority has already terminated the FWC or specific contract.

II.14.2 Suspension by the Contracting Authority

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

- (a) if the FWC or specific contract award procedure or the implementation of the FWC prove to have been subject to substantial errors, irregularities or fraud;

- (b) in order to verify whether presumed substantial errors, irregularities or fraud have actually occurred.

Suspension shall take effect on the day the Contractor receives formal notification, or at a later date where the notification so provides. The Contracting Authority shall as soon as possible give notice to the Contractor to resume the service suspended or notify the Contractor of its intent to terminate 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. 15 – TERMINATION OF THE FWC

II.15.1 Grounds for termination by the Contracting Authority

The Contracting Authority may terminate the FWC, a 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.11.2;
- (b) if the Contractor is unable, through its own fault, to obtain any permit or licence required for implementation of the FWC;
- (c) 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 or repeatedly refuses to sign specific contracts. Termination of three 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 106(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 106(1) or to Article 106(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 substantial errors, irregularities or fraud;
- (g) if the Contractor does not comply with applicable obligations under environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;



- (h) if the Contractor is in a situation that could constitute a conflict of interest or a professional conflicting interest as referred to in Article II.7;
- (i) 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;
- (j) in the event of force majeure, where either resuming implementation 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;
- (k) if the needs of the Contracting Authority change and it no longer requires new services under the FWC; in such cases ongoing specific contracts remain unaffected;
- (l) if the termination of the FWC with one or more of the Contractors means that the multiple FWC with reopening of competition no longer has the minimum required level of competition.

II.15.2 Grounds for termination by the Contractor

The Contractor may terminate the FWC or a specific contract if:

- (a) it has evidence that the Contracting Authority has committed substantial errors, irregularities or fraud 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.15.3 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 decision to terminate becomes enforceable the day after the time limit for submitting observations has elapsed.

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

In the cases referred to in points (a) to (d), (g) to (i), (k) and (l) of Article II.15.1 and in Article II.15.2, the date on which the termination takes effect must be specified in the formal notification.

In the cases referred to in points (e), (f) and (j) of Article II.15.1, the termination takes effect on the day following the date on which the Contractor receives notification of termination.

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

II.15.4 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 including the cost of appointing another Contractor to provide or complete the services, unless the damage was caused by the situation specified in Article II.15.1(j), (k) or (l) or in Article II.15.2. The Contracting Authority may claim compensation for such damage.

The Contractor is not entitled to compensation for any loss resulting from the termination of the FWC or a specific contract, including loss of anticipated profits, unless the loss was caused by the situation specified in Article II.15.2.

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

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

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) or (g) of Article II.15.1, under the conditions set out in Article II.8.2.

ARTICLE II. 16 – REPORTING AND PAYMENTS

II.16.1 Date of payment

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

II.16.2 Currency

The FWC shall be in euros.

Payments shall be executed in euros or in the local currency as provided for in Article I.5.

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

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

http://ec.europa.eu/budget/contracts_grants/info_contracts/infoeuro/infoeuro_en.cfm

II.16.3 Costs of transfer

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

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

II.16.4 Invoices and Value Added Tax

Invoices shall contain the Contractor's identification, the amount, the currency and the date, as well as the FWC reference and reference to the specific contract.

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

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

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

II.16.5 Pre-financing and performance guarantees

Pre-financing guarantees shall remain in force until the pre-financing is cleared against interim payments or payment of the balance and, in case the latter takes the form of a debit note, three months after the debit note is notified to the Contractor. The Contracting Authority shall release the guarantee within the following month.

Performance guarantees cover compliance with substantial contractual obligations until the Contracting Authority has given its final approval for the service. The performance guarantee must not exceed 10 % of the total price of the specific contract. The Contracting Authority must release the guarantee fully after final approval of the service, as provided for in the specific contract.

Where, in accordance with Article I.4, a financial guarantee is required for the payment of pre-financing, or as performance guarantee, it shall fulfil the following conditions:

- (a) the financial guarantee is provided by a bank or an approved financial institution or, at the request of the Contractor and agreement by the Contracting Authority, by a third party;
- (b) the guarantor stands as first-call guarantor and does not require the Contracting Authority to have recourse against the principal debtor (the Contractor).

The cost of providing such guarantee shall be borne by the Contractor.

Retention money guarantees cover full delivery of the service in accordance with the specific contract including during the contract liability period and until its final approval by the Contracting Authority. The retention money guarantee must not exceed 10 % of the total price of the specific contract. The Contracting Authority must release the guarantee after the expiry of the contract liability period as provided for in the specific contract.

The Contracting Authority must not request a retention money guarantee for a specific contract where it has requested a performance guarantee.

II.16.6 Interim payments and payment of the balance

The Contractor shall submit an invoice for interim payment upon delivery of intermediary results, accompanied by a progress report or any other documents, as provided for in Article I.4 or in the tender specifications or in the specific contract.

The Contractor shall submit an invoice for payment of the balance within 60 days following the end of the period of provision of the services, accompanied by a final progress report or any other documents provided for in Article I.4 or in the tender specifications or in the specific contract.

Upon receipt, the Contracting Authority shall pay the amount due as interim or final payment, within the periods specified in Article I.4, provided the invoice and documents have been approved and without prejudice to Article II.16.7. Approval of the invoice and documents shall not imply recognition

of the regularity or of the authenticity, completeness and correctness of the declarations and information they contain.

Payment of the balance may take the form of recovery.

II.16.7 Suspension of the time allowed for payment

The Contracting Authority may suspend the payment periods specified in Article I.4 at any time by notifying the Contractor that its invoice cannot be processed, either because it does not comply with the provisions of the FWC, 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 shall inform the Contractor in writing as soon as possible of any such suspension, giving the reasons for it.

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

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph and the new document produced is also rejected, the Contracting Authority reserves the right to terminate the specific contract in accordance with Article II.15.1(c).

II.16.8 Interest on late payment

On expiry of the payment periods specified in Article I.4, and without prejudice to Article II.16.7, the Contractor is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in Euros (the reference rate) plus eight points. The reference rate shall be the rate in force on the first day of the month in which the payment period ends, as published in the C series of the *Official Journal of the European Union*.

The suspension of the payment period in accordance with Article II.16.7 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.16.1.

However, when the calculated interest is lower than or equal to EUR 200, it shall be paid to the Contractor only upon request submitted within two months of receiving late payment.

ARTICLE II. 17 - REIMBURSEMENTS

- II.17.1** Where provided by the special conditions or by the tender specifications, the Contracting Authority shall reimburse the expenses that are directly connected with execution of the tasks on production of original supporting documents, including receipts and used tickets, or failing that, on production of copies or scanned originals, or on the basis of flat rates.
- II.17.2** Travel and subsistence expenses shall be reimbursed, where appropriate, on the basis of the shortest itinerary and the minimum number of nights necessary for overnight stay at the destination.
- II.17.3** 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;
 - (d) The daily subsistence allowance is considered to cover all expenses on taxis fares/parking incurred by the Contractor.

In addition, travel outside Union territory shall be reimbursed provided the Contracting Authority has given its prior written consent for the expenses.

- II.17.4** Subsistence expenses shall be reimbursed on the basis of a daily subsistence allowance as follows:
- (a) for journeys of less than 200 km for a return trip, no subsistence allowance shall be payable;
 - (b) daily subsistence allowance shall be payable only on receipt of supporting documents proving that the person concerned was present at the destination;
 - (c) daily subsistence allowance shall take the form of a flat-rate payment as specified in Annex IX to cover all subsistence expenses, including meals, local transport which includes transport to and from the airport or station, insurance and sundries;
 - (d) accommodation shall be reimbursed on receipt of supporting documents proving the necessary overnight stay at the destination, up to the flat-rate ceilings specified in Annex IX. Accommodation shall be arranged and paid directly by the Contractor.

- II.17.5** The cost of shipment of equipment or unaccompanied luggage shall be reimbursed provided the Contracting Authority has given prior written authorisation.
- II.17.6.** Conversion between the euro and another currency shall be made as specified in Article II.16.2.

ARTICLE II. 18 – RECOVERY

- II.18.1** 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.18.2** If the obligation to pay the amount due is not honoured by the date set by the Contracting Authority in the debit note, the amount due shall bear interest at the rate indicated in Article II.16.8. 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 amount owed.

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

- II.18.3** If payment has not been made by the due date, the Contracting Authority may, after informing the Contractor in writing, recover the amounts due by offsetting them against any amounts owed to the Contractor by the Union or by the European Atomic Energy Community, by taking legal action or by calling in the financial guarantee, where provided for in Article I.4 or in the specific contract.

ARTICLE II. 19 – CHECKS AND AUDITS

- II.19.1** The Contracting Authority and the European Anti-Fraud Office may check or have an audit on the implementation of the FWC. It may be carried out either directly by its own staff or by any other outside body authorised to do so on its behalf.

Such checks and audits may be initiated during the implementation of the FWC and during a period of five years which starts running 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.19.2** The Contractor shall keep all original documents stored on any appropriate medium, including digitised originals when they are authorised by national law and under the conditions laid down therein, for a period of five years which starts running from the payment of the balance of the last specific contract issued under this FWC.
- II.19.3** 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 shall ensure that the information is readily available at the moment of the check or audit and, if so requested, that information be handed over in an appropriate format.
- II.19.4** 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 in accordance with Article II.18 and may take any other measures which it considers necessary.

- II.19.5** In accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspection carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities and Regulation No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office, the European Anti-Fraud Office may carry out investigations, including on the spot checks and inspections, to establish whether there has been fraud, corruption or any other illegal activity under the contract affecting the financial interests of the Union. Findings arising from an investigation may lead to criminal prosecution under national law.

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

- II.19.6** The Court of Auditors shall have the same rights as the Contracting Authority, notably right of access, for the purpose of checks and audits.



Annex III

Model specific contract

SPECIFIC CONTRACT No GSA/OP/09/16/Lot[x]/SCX

Implementing Framework contract No **GSA/OP/09/16**

The European GNSS Agency (hereinafter referred to as the "GSA", "the Agency" or the "the Contracting Authority"), represented for the purposes of the signature of this specific contract by Mr Carlo des Dorides, Executive Director,

on the one part,

and

[full official name]

[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 III.1: SUBJECT MATTER

- III.1.1. This specific contract implements framework contract (hereinafter, "the FWC") No GSA/OP/09/16 signed by the Contracting Authority and the Contractor on [insert date].
- III.1.2. The objective of this specific contract is [insert].
- III.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 Task: [insert]

ARTICLE III.2: ENTRY INTO FORCE AND DURATION

- III.2.1 This specific contract shall enter into force on the date on which it is signed by the last party.
- III.2.2 The duration of the contracts shall not exceed [X months]. Execution of the tasks shall start from [the date of the Kick-Off Meeting][the entry into force of this specific contract].
- III.2.3 The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

ARTICLE III.3: PLACE OF PERFORMANCE

The place of performance shall be [insert]

ARTICLE III.4: PRICE AND PAYMENT PLAN

- III.4.1 The maximum total price to be paid under this specific contract shall be EUR [insert amount], covering all tasks executed.
- III.4.2 Payment Plan

[insert as appropriate]
- III.4.4 Respecting the schedule of payment milestones set in this specific contract, the request for payments of the Contractor shall be admissible if accompanied by:
- a) The relevant invoice, indicating the reference number of the FWC and of the specific contract to which they refer;



- b) Relevant Progress Report;
- c) Proof of delivery to and acceptance by the Contracting Authority for each deliverable (template in Annex C);
- d) a detailed justification of all expenses incurred, including but not limited to, justification timesheets justifying the amount of hours spent to perform the tasks.

ARTICLE III.5: CONFIDENTIALITY AND CONFLICT OF INTEREST

The Contractor, all members of the Contractor's group/consortium and all subcontractors involved in the specific contract hereby explicitly declares confidentiality and the absence of any conflict of interest, in the meaning of annex IV and Articles I.12 and II.4 of the framework contract.

The Contractor hereby declares that the submitted presentation of personnel and mechanisms for monitoring the absence of conflict of interests shall be applicable during the execution of the specific contract

Should a conflict of interests arise during the execution of the specific contract, GSA policy on the prevention and management of conflicts of interest for staff and third parties working for the GSA (annex IV of the framework contract), articles I.12 and II.4 of the contract shall apply.

ARTICLE III.6: PERFORMANCE GUARANTEE

Not applicable to this specific contract.

ARTICLE III.7: EXPLOITATION OF THE RESULTS

The terms set in FWC apply.

ARTICLE III.8: ANNEXES AND PRIORITY

The terms set out in the Specific Contract shall take precedence over those in the Annexes. The terms set out in the Terms of Reference (Annex A) shall take precedence over those in the Contractor's Offer (Annex B).

ANNEX A:	TERMS OF REFERENCE [GIVE REFERENCE]
ANNEX B:	CONTRACTOR'S OFFER [GIVE REFERENCE]
ANNEX C:	DELIVERABLE ACCEPTANCE SHEET
ANNEX D:	DECLARATION ON CONFIDENTIALITY AND ABSENCE OF CONFLICT OF INTERESTS

SIGNATURES

For the Contractor,

For the Contracting Authority,

Company name/forename/surname/function]



signature[s]: _____
Done in [place], [date]
In duplicate in English.

signature: _____
Done in [place], [date]

Annex C

To Specific Contract No X implementing Framework contract GSA/OP/09/16/Lot[x]

Deliverable acceptance sheet

Framework contract reference: GSA/OP/09/2016/Lot[x]

Specific contract reference: GSA/OP/09/2016/Lot[x]/SCX

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
/add or delete lines as necessary/					

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 the GSA.	
Name	
Position	



Signature	
Date	

For the GSA:

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 the GSA.	
Name	
Position	
Signature	
Date	



ANNEX D

Declaration on confidentiality and absence of conflict of interests

Contract reference: GSA/OP/09/16/Lot[x]/Sc[x]

[to be signed by all external professionals supporting GSA: experts, consultants, interims, trainees, etc.]

I, the undersigned, _____, understand and agree that my involvement/assignment –direct or indirect– in/to, or in support of, any activities of the European GNSS Agency ("GSA") is subject to strict requirements, in particular regarding confidentiality and impartiality/objectivity – absence of conflict of interests.

I hereby undertake that in any part that I will take in or in support of any activities of the GSA and during the full term of my involvement in / assignment to such activities I shall act with utmost care and apply the highest professional standards, in full impartiality and objectivity, in the sole and best interest of the GSA.

I confirm that I have no conflict of interests³ or bias whatsoever, whether actual or potential, with regard to any such GSA activities and shall prevent any such conflict of interests or bias from arising at any time in the course of my service to the GSA.

I undertake to re-assess and monitor my situation at all stages of my involvement in / assignment to GSA activities and, should I become aware –beyond my undertaking to avoid any such conflict– that I am or threaten to be in a situation of conflict of interests or bias (whether actual or potential) I shall immediately declare it to the GSA and I understand and accept that the GSA may take measures to appropriately address such situation, including without limitation requiring information and further details about it, discharging me from my involvement in such activities in whole or in part etc. I undertake to provide all reasonable support to this effect and acknowledge that I shall not be entitled to or claim any compensation as a result of any such measures.

I undertake to treat and keep in strict confidentiality any information given to or obtained by me in the course or as a result of my assignment to/with the GSA and to abide by all applicable rules on personal data protection⁴. I agree that such undertaking (as well as that of avoiding conflict of interest) shall to the extent required for the fulfilment of its full purpose survive the completion, expiry or termination of the term of my assignment/service to the GSA.

For the avoidance of doubt I confirm my full understanding and agreement that I am not employed by the GSA and shall refrain from any acts or representations which might give the impression of or suggest or (mis)lead to conclude to or believe in the existence of such an employment relationship, as

³ For the purpose of this Declaration I understand that a "conflict of interests" shall be deemed to exist in case of any situation in which the impartial and objective exercise of my functions / service provision for the GSA is or could be compromised for reasons involving my family, emotional life, friends or acquaintances, political or national affinity, economic interest or any other shared interest with certain economic or scientific operators, in particular such as might have a potential interest (whether financial or otherwise) in the outcome of any (part of) assignment entrusted to me.

⁴ I acknowledge and accept that the GSA is required to process personal data in compliance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community [European Union] institutions and bodies and on the free movement.



well as from any claim based on, relating to or connected with such (non-existing) employment relationship –I hereby expressly and irrevocably waive any such claim. In particular I also shall refrain from representing or purporting to represent the GSA, as well as from issuing any opinions or making any statements in its name or on its behalf.

Done in _____, on _____.