



EUROPEAN
COURT
OF AUDITORS

European Court of Auditors

Open call for tenders No AO 635

“Study on the European Union’s liabilities for pension and other employee benefits - actuarial services”

ANNEX 1 SERVICE CONTRACT

October 2017



SERVICE CONTRACT

“Study on EU’s liabilities for pension and other employee benefits - actuarial services”

Contract number: DQC 635

The Court of Auditors of the European Union (hereinafter referred to as "the Court"), represented for the purposes of the signature of this Contract by Mr. Geoffrey Simpson

of the one part,

and

[*official name in full*]

[*official legal form*]

[*statutory registration number*]

[*official address in full*]

[*VAT registration number*]

(hereinafter referred to as "the Contractor"), represented for the purposes of the signature of this 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 Court for the performance of this Contract.] ¹

of the other part,

¹ This clause is to be used if the Contractor is a consortium of economic operators.

HAVE AGREED

the following Annexes:

Annex I – Invitation to Tender of *[insert date]* with its annexes

Annex II – Contractor's Tender (of *[insert date]*)

which form an integral part of this Contract.

- The terms set out in the Special Conditions shall take precedence over those in the other parts of the Contract.
- The terms set out in the General Conditions shall take precedence over those in the other Annexes.
- The terms set out in the Tender Specifications (Annex I) shall take precedence over those in the Tender (Annex II).

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 Court.

I – Special Conditions

ARTICLE I.1 - SUBJECT

- I.1.1.** The subject of the Contract is the provision to the European Court of Auditors (hereafter referred to as the “Court”) of an expert study on the verification of the yearly calculations made by the Directorate General of the European Commission responsible for statistics (Eurostat) of the amount of the European Union’s liabilities for pension and other employee benefits for 2017 and 2018, as described in the Tender Specifications annexed to the Contract (Annex I).
- I.1.2.** The Contractor shall execute the tasks assigned to him in accordance with all the terms and conditions of the Contract.

ARTICLE I.2 - DURATION

- I.2.1** The Contract shall enter into force on the date on which it is signed by the last party. The execution of the tasks shall start at the latest on 1 April 2018 provided that the contract has been signed at this date.
- I.2.2.** Under no circumstances may implementation commence before the date on which the Contract enters into force.
- I.2.3.** The Contract will be concluded for the period needed for the execution of the requested tasks.

ARTICLE I.3 – CONTRACT PRICE

- I.3.1.** The price to be paid by the contracting authority under the contract shall be the price offered in the Price Schedule (Annex II) covering all tasks executed, including use of software, travel and subsistence expenses or any other costs.
- I.3.2** The prices shall be fixed and not subject to revision.
- I.3.3** Prices shall be expressed in EUR.

ARTICLE I.4 - PAYMENT ARRANGEMENTS

Payments under the Contract shall be made in accordance with Article 6 of General Conditions. Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which its invoice is submitted.

Within thirty (30) days of the date on which the duly formatted invoice is received by the Court, payment shall be made.

The Contractor shall submit a request for payment of the balance.

For the first and second instalment, the request for payment shall be accompanied by the following:

- the final report concerning the 2017 liability for the first instalment of 40% of the price; or

- the final report concerning the 2018 liability for the second instalment of 40% of the price; and for each
- the relevant invoice(s), indicating the reference number of the Contract to which they refer.

The third instalment of 20% of the price shall be requested by the Contractor within 30 days after 31 December 2019 accompanied by the relevant invoice, indicating the reference number of the Contract to which it refers.

The request for payment shall indicate the reference number of the Contract and the instalment to which it refers.

The Court shall have 30 (thirty) calendar days from receipt to approve or reject the deliverables and to pay the balance. For the third instalment the Court shall have 30 days to reject the invoice in case the Contractor did not fulfil the requirements of the Contract. The Contractor shall have 10 (ten) calendar days in which to submit additional information or corrections or a new report or documents if required by the Court.

ARTICLE I.5 – BANK ACCOUNT

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

Name of bank:
Address of branch in full:
Exact designation of account holder:
Full account number including IBAN codes:
BIC or SWIFT code :

ARTICLE I.6 – GENERAL ADMINISTRATIVE PROVISIONS

Any communication relating to the Contract or to its implementation shall be made in writing in paper or electronic form and shall bear the Contract number. Ordinary mail shall be deemed to have been received by the Court on the date on which it is registered by the responsible department indicated below.

Electronic communication must be confirmed by paper communication when requested by any of the parties. The parties agree that paper communication can be replaced by electronic communication with electronic signature.

Communications shall be sent to the following addresses:

European Court of Auditors:

European Court of Auditors
Chamber V
For the attention of Mr. Bertrand Albugues
12, Rue Alcide de Gasperi
L-1615 Luxembourg
e-mail: bertrand.albugues@eca.europa.eu

Contractor:

Mr/Mrs/Ms [complete]

[Function]

[Company name]

[Official address in full]

ARTICLE I.7 – PENALTIES

- I.7.1** Notwithstanding Article 10 of the General conditions, should the Contractor fail to provide the deliverables as stipulated in section 4 of the Technical Specification (part B of the Tender Specifications in Annex I) within the time limits set out in the Tender specifications (Annex II), the Court may apply the penalty of EUR 300 per each day of delay.
- I.7.2** In case the Contractor replaces an expert which is not due to unforeseen circumstances outside the control of the Contractor, the Court may apply the penalty of EUR 3 000.
- I.7.3** In case the Contractor fails to replace an expert within two weeks, the Court may apply the penalty of EUR 300 per each day of delay.
- I.7.4** In the case of non-acceptance of deliverables delivered in a lower quality than the quality set out in the Tender specifications, penalties corresponding to EUR 300 per day of delay might be calculated by the Court until the date of a new delivery of the deliverables.
- I.7.5** In case the Contractor fails to reply in an adequate manner to a request of assistance in task 5, the Court may apply the penalty of EUR 3 000.
- I.7.6** In case the Contractor fails to reply within the agreed time to a request of assistance in task 5, the Court may apply the penalty of EUR 300 per each day of delay.
- I.7.7** The penalties shall be directly deducted from the amount of the task to which the deficient deliverables refer.



II - GENERAL CONDITIONS FOR SUPPLY, SERVICE AND WORKS CONTRACTS OF THE EUROPEAN COURT OF AUDITORS

1. DEFINITION AND SCOPE OF THE GENERAL CONDITIONS

1.1. The General Conditions shall govern the contractual relationship between the European Court of Auditors (hereinafter "the Court of Auditors") and its suppliers, service providers and work contractors.

1.2. In the absence of derogating contractual provisions, the General Conditions shall apply automatically to all contracts dealing with the purchase by the European Court of Auditors of services, products and works signed between the Court of Auditors and the contractor. The General Conditions shall be an integral part of the contract.

1.3. The term "contract" shall refer to direct contracts, framework contracts, specific contracts and "purchase orders".

1.4. In the event of conflicting interpretations, the Special Conditions of the contract shall take precedence over the General Conditions and the General Conditions shall take precedence over the contractor's tender. If the tender specifications and the contractor's tender are annexed to the contract, the tender specifications shall take precedence over the tender and the contract shall take precedence over both. The terms set out in the framework contract shall take precedence over those in the specific contracts. All the documents shall be an integral part of the contract and, subject to the above, they shall be taken as mutually explanatory.

1.5. The applicable General Conditions shall be those in force at the time of performance of the contractual obligations and shall be binding on the parties as soon as they are officially published on the website of the Court of Auditors (<http://www.eca.europa.eu/en/Pages/General-conditions.aspx>).

1.6. The contractor shall waive the right to assert its own general conditions for services, sales or works against the Court of Auditors.

2. PERFORMANCE OF THE CONTRACT

2.1. The contractor shall undertake to provide the products and services and/or carry out the works described in the contract (hereinafter "the tasks") at the price and within the time limits stipulated therein.

2.2. All periods specified in the contract are calculated in calendar days, unless otherwise specified.

2.3. The contractor shall comply with the requirements provided for in the tender specifications.

2.4. The contract shall not confer on the contractor any exclusive right to perform the tasks described therein.

2.5. The contractor shall perform the contract to the highest professional standards. It shall have sole responsibility for complying with any legal obligations incumbent on it, and in particular those resulting from employment, tax, social and environmental legislation under Union law, national law and collective arrangements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU.

2.6. The contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the contract under the laws and regulations in force at the place where the tasks assigned to it are to be executed.

2.7. The contractor shall take the necessary steps to ensure that its performance of the contract does not lead to withdrawal of the SuperDrecksKëscht fir Betriber® label awarded to the Court of Auditors.

2.8. Without prejudice to Article 4 any reference made to the contractor's staff in the contract shall relate exclusively to individuals involved in the performance of the contract. The contractor shall ensure that all persons performing the contract possess the professional qualifications and experience required for the execution of the tasks assigned to them.

2.9. The contractor may not represent the Court or behave in a manner likely to give this impression. The contractor shall inform third parties that it does not belong to the European civil service.

2.10. The contractor shall have sole responsibility for the staff who execute the tasks assigned to the contractor. The contractor shall make provision for the following employment or service relationships with its staff:

- the staff performing the tasks entrusted to the contractor may not receive direct orders from the Court of Auditors;
- the Court of Auditors cannot in any circumstances be considered the employer of the said staff and the latter shall undertake not to invoke in respect of the Court of Auditors any rights arising from the contractual relationship between the Court of Auditors and the contractor.

2.11. In the event of disruption resulting from the action of a member of the contractor's staff working on the Court of Auditors' premises or if the experience and/or expertise of a member of the contractor's staff does not correspond to the profile required by the contract, the contractor shall replace him or her without delay. The Court of Auditors shall have the right to request the replacement of any such member of staff, stating its reasons for so doing. The replacement staff shall have the necessary qualifications and be capable of performing the contract under the same contractual conditions. The contractor shall be responsible for any delay in the execution of the tasks assigned to it resulting from the replacement of staff in accordance with this Article.

2.12. The contractor shall agree to provide the Court of Auditors with the information requested by it for the purposes of managing the contract. Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the contractor shall immediately and on its own initiative record it and report it to the Court of

Auditors. The report shall include a description of the problem, state the date on which it started and the remedial action taken by the contractor to ensure full compliance with its obligations under the contract. In such a case the contractor shall give priority to solving the problem rather than determining liability.

2.13. The contract shall enter into force on the date on which it is signed by the last contracting party.

2.14. Execution of the tasks may under no circumstances begin before the date on which the contract or the purchase order enters into force.

2.15. In the case of a framework contract, signature of the contract does not imply any purchase obligation on the part of the Court of Auditors. Only the application of the said contract by means of a specific contract (also called a "purchase order") shall be binding on the Court of Auditors.

2.16. When the Court of Auditors has sent a purchase order to the contractor, it should be returned duly signed and dated by the latter within 5 (five) business days of the date on which it was sent by the Court of Auditors.

2.17. The period allowed for the performance of the tasks shall start to run on the date the contractor signs the purchase order, unless a different date is indicated on the form, provided that it has been signed by the Court.

2.18. Purchase orders shall be returned signed by the contractor before the corresponding framework contract expires. After its expiry, the framework contract shall remain in force with regard to these purchase orders. They shall be executed at the latest within 60 business days of the date of expiry of the framework contract.

2.19. Where the parties agree on more detailed arrangements for the performance of tasks, these may be annexed to the contract, in particular in the form of tender specifications.

3. LIABILITY

3.1. The contractor shall be liable for any loss or damage caused to the Court of Auditors in performance of the contract, including in the event of subcontracting under Article 17, but only to an amount not exceeding three times the total amount of the contract. However, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor or of a member of its staff or subcontractors, the contractor is liable for the whole amount of the damage or loss.

3.2. 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 Court of Auditors for the performance of the contract, unless otherwise specified in the technical specifications or specific conditions.

3.3. The Court of Auditors shall not be liable for any loss or damage caused by the contractor, including any damage or loss to third parties during or as a consequence of performance of the contract.

3.4. The Court of Auditors shall not be liable for damage sustained by the contractor in performance of the contract except in the event of wilful misconduct or gross negligence on the part of the Court of Auditors.

3.5. The contractor shall provide compensation in the event of any action, claim or proceeding brought against the Court of Auditors by a third party as a result of damage caused by the contractor during performance of the contract.

3.6. In the event of any action brought by a third party against the Court of Auditors in connection with performance of the contract, the contractor shall assist the Court of Auditors, including by intervening in support of the Court upon request.

3.7. The contractor shall take out insurance against risks and damage relating to performance of the contract if required by the 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 Court of Auditors, should it so request.

4. CONFLICTS OF INTEREST

4.1. The contractor shall take all necessary measures to prevent any situation of conflict of interest or professional conflicting interest. A conflict of interest could arise in particular where the impartial and objective performance of the contract by the contractor is compromised for reasons involving family, emotional life, political or national affinity, economic interest, or any other shared interest with the Court of Auditors or any third party related to the subject matter of the contract. A professional conflicting interest could arise when the contractor's previous or ongoing professional activities affect its capacity to perform the contract to an appropriate quality standard.

4.2. The contractor shall notify the Court of Auditors in writing as soon as possible of any situation that could constitute a conflict of interest or a professional conflicting interest during the performance of the contract. The contractor shall immediately take action to rectify the situation. The Court of Auditors shall reserve the right to verify that such measures are adequate and may require that additional measures be taken, if necessary, within a time limit which it shall set.

4.3. The contractor shall ensure that its staff and administrative and management bodies are not placed in a situation which could give rise to a conflict of interest. Without prejudice to Article 4.2, the contractor shall replace, immediately and without compensation from the Court of Auditors, any member of its staff exposed to such a situation.

4.4. The contractor shall refrain from any contact likely to compromise its independence.

4.5. The contractor shall declare that:

- it has not made and will not make any offer of any type whatsoever from which an advantage could be derived under the contract;
- 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, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, inasmuch as it is an incentive or reward relating to performance of the contract.

4.6. The contractor shall pass on all the relevant obligations in writing to its staff and administrative and management bodies as well as to third parties involved in performance of the

contract. A copy of the instructions given and undertakings made in this respect shall be sent to the Court of Auditors, should it so request.

5. PRICE AND REIMBURSEMENT OF COSTS

5.1. Prices shall be fixed and not subject to revision with regard to the prices shown in the contract, unless otherwise stipulated in the Specifications or the Special Conditions of the contract.

5.2. The prices cover all tasks executed and include all expenses and costs incurred by the contractor for the execution of the tasks, including mailing and delivery costs.

5.3. Where provided by the special conditions or by the tender specifications, the Court of Auditors shall reimburse the expenses which 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.

5.4. 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.

5.5. 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.

5.6. In addition, travel outside Union territory shall be reimbursed provided the Court of Auditors has given its prior written consent.

5.7. Subsistence expenses shall be reimbursed on the basis of a daily subsistence allowance as follows:

- a) for journeys of less than 200 km for a return trip, no subsistence allowance shall be payable;
- b) daily subsistence allowance shall be payable only on receipt of supporting documents proving that the person concerned was present at the destination;
- c) daily subsistence allowance shall take the form of a flat-rate payment to cover all subsistence expenses, including meals, local transport which includes transport to and from the airport or station, insurance and sundries;
- d) daily subsistence allowance shall be reimbursed at the flat rate of 100 EUR per day;
- e) accommodation shall be reimbursed on receipt of supporting documents proving the necessary overnight stay at the destination, up to 150 EUR.

5.8. The cost of shipment of equipment or unaccompanied luggage shall be reimbursed provided the Court of Auditors has given prior written authorisation.

6. INVOICING AND PAYMENTS

6.1. Within sixty days of completion of the tasks referred to in the contract, specific contract or purchase order, the contractor shall submit the invoice to the Court of Auditors.

6.2. Each invoice shall contain the following information:

- reference to the contract number (specific contract or purchase order, etc.);
- a description of the products, services or work provided or completed, fully compliant with the contract;
- the prices;
- the contractor's bank details, including its IBAN and BIC codes and VAT number.

6.3. The invoice shall be addressed to the Court of Auditors, at the address given in the contract. All invoices shall be accompanied by supporting documentation proving that the tasks invoiced have been received. Partial invoicing shall not be accepted unless it is specifically provided for by the contract. Tasks completed prior to receipt of a purchase order cannot be invoiced.

6.4. Without prejudice to its right to interest for late payment, the contractor shall accept any financial constraints caused by the provisional twelfths system in the event that the European Union general budget has not been adopted at the beginning of the financial year, in accordance with Article 16 of Financial Regulation².

6.5. The Contractor shall take the appropriate measures to be compliant with the e-invoicing system and e-ordering system in place or that the Court of Auditors would decide to put in place during the duration of the contract, without additional charges for the Court of Auditors. The contractor undertakes to use the system(s) upon the request of the Court of Auditors.

6.6. Payments shall be made only when the contractor has met all the obligations incumbent on it under the terms of the contract on the date on which the invoice is submitted. The contractor will give the Court of Auditors access to all the supporting documentation necessary to check the invoices.

6.7. The invoice shall be paid within thirty calendar days of the date on which the Court of Auditors registers a payment request, unless otherwise provided for in the contract. Payments shall be deemed to have been made on the date on which the Court of Auditors' account is debited.

6.8. The Court of Auditors may suspend this payment period by informing the contractor, at any point during the thirty-day period from the date of first registration of the payment request, that this request is not admissible, either because the amount is not due or because the necessary supporting documents have not been properly produced, or because it considers that the payment request needs to be verified further.

² Regulation (EU, EURATOM) no. 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/ 2002, as last amended by Regulation [\[EU, EURATOM\) 2015/1929 of the European Parliament and of the Council of 28 October 2015 available at http://ec.europa.eu/budget/biblio/documents/regulations/regulations_en.cfm](http://ec.europa.eu/budget/biblio/documents/regulations/regulations_en.cfm)

6.9. The Court of Auditors shall notify the contractor of the suspension and the reasons therefore by registered letter with acknowledgment of receipt or equivalent. Suspension shall take effect from the date of dispatch of the letter. The remainder of the payment period shall begin to run again once the suspension has been lifted.

6.10. Where the suspension period exceeds two months, the contractor may ask the relevant authority to take a decision on continued suspension.

6.11. Where the payment periods have been suspended following rejection of a document and the new document produced is also rejected, the Court of Auditors reserves the right to terminate the contract in accordance with Article 18.

6.12. In the event of late payment, the contractor shall be entitled to interest, provided the calculated interest exceeds EUR 200. Should the interest not exceed EUR 200, the contractor may claim late payment interest within two months of receiving the late payment. Interest shall be calculated at the rate applied by the European Central Bank to its most recent main refinancing operations ("the reference rate") plus eight percentage points ("the margin"). The reference rate applicable shall be that in force on the first day of the month in which the payment is due. This interest rate is published in the C series of the Official Journal of the European Union. Interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment up to the day of payment inclusive. Suspension of payment by the Court of Auditors may not be deemed to constitute late payment.

6.13. The Court of Auditors, after notifying the contractor and by means of offsetting, shall have the right to deduct automatically from payments to the contractor amounts which the contractor owes it for whatever reason.

6.14. Payments shall be made by bank transfer into the bank account shown on the contractor's tender in the form of the IBAN and BIC codes.

6.15. The contract shall be denominated in euros and the payments shall be executed in euros or in the local currency as provided for in the contract. 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, applicable on the day on which the payment order is issued by the Court of Auditors.

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

- a) costs of dispatch charged by the bank of the Court of Auditors shall be borne by the Court of Auditors,
- 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.

7. FINANCIAL GUARANTEES

7.1. If a financial guarantee is required for the payment of pre-financing, as performance guarantee or as retention money guarantee, it shall fulfil the following conditions:

- a) the financial guarantee is provided by a bank or a financial institution approved by the Court of Auditors or, at the request of the contractor and with the agreement of the Court of Auditors, by a third party;

- b) the guarantor stands as first-call guarantor and does not require the Court of Auditors to have recourse against the principal debtor (the contractor).

7.2. The contractor bears the cost of providing such guarantee.

7.3. Pre-financing guarantees shall remain in force until the pre-financing is cleared against interim payments or payment of the balance. Where the payment of the balance takes the form of a debit note, the pre-financing guarantee shall remain in force for three months after the debit note is sent to the contractor. The Court of Auditors shall release the guarantee within the following month.

7.4. Performance guarantees cover compliance with substantial contractual obligations until the Court of Auditors has given its final approval for the supply, service or works. The Court of Auditors will release the guarantee fully after final approval of the supply, service or works, as provided for in the contract.

7.5. Retention money guarantees cover full delivery of the supplies, services or works in accordance with the contract including during the contract liability period and until their final approval by the Court of Auditors. The Court of Auditors will release the guarantee after the expiry of the contract liability period as provided for in the contract.

8. RECOVERY

8.1. If recovery is justified in accordance with the terms of the contract, the contractor shall reimburse the appropriate amount in euros on receipt of the debit note.

8.2. The Court of Auditors will 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 fifteen days of receipt. If the Court of Auditors decides to pursue the recovery procedure, it will confirm recovery by notifying a debit note to the contractor, specifying the deadline for payment. The contractor shall pay in accordance with the provisions specified in the debit note.

8.3. In the event of failure to pay by the deadline specified in the request for reimbursement, the sum due shall bear interest at the rate indicated in Article 6.12. The interest shall be payable as of the calendar day following the due date until the calendar day on which the debt is repaid in full. Any partial payment shall first be entered against charges and interest on late payment and then against the principal amount.

8.4. If payment has not been made by the due date, the Court of Auditors may, after informing the contractor in writing, recover the amounts due by offsetting or by any means offered by the law, including, where appropriate, by enforcement of any guarantee lodged in advance.

8.5. If the contract is signed by a group of economic operators (joint tender), the group is jointly and severally liable under the conditions set out in Article 3(2), unless otherwise specified in the technical specifications or specific conditions. The Court of Auditors' first claims the full amount from the leader of the group. If the leader does not pay by the due date and if the amount cannot be offset, the Court of Auditors may claim the full amount from any other member of the group.

9. GUARANTEE

9.1. The contractor shall guarantee, for a period specified in the contract, that the tasks comply with the specifications set out in the contract.

9.2. If the Court of Auditors considers that the tasks do not comply with the contract, it shall inform the contractor of this non-compliance. Unless otherwise specified in the contract, the contractor shall remedy the tasks which do not comply with the contract within fifteen days of the date on which the Court of Auditors informed the contractor of the non-compliance. In this case, a new guarantee period, as indicated in the contract, shall apply with effect from the date of this correction.

9.3. The contractor shall bear all the costs resulting from the application of this article and shall reimburse the Court of Auditors for all costs incurred. The contractor shall at its own expense correct the tasks which do not comply with the contract, as decided by the Court of Auditors. If the correction of the tasks is not carried out satisfactorily, the Court of Auditors may reject the services and/or products provided or the works carried out.

9.4. The Court of Auditors shall reserve the right to apply damages and interest in accordance with Article 10 for the period starting on the day on which the Court of Auditors notifies the contractor of the non-conformity of the tasks and ending on the day on which the tasks are corrected.

10. DAMAGES

10.1. The Court of Auditors may impose damages should the contractor fail to complete its contractual obligations, or not meet the required quality level, as set out in the contract.

10.2. Should the contractor fail to perform its contractual obligations within the time limits set by the contract, then, without prejudice to the contractor's actual or potential liability or to the Court of Auditors's right to terminate the contract and/or the specific contract, the Court of Auditors may impose damages for every calendar day of delay according to the following formula:

$0.3 \times (V/d)$

V = the value of the contract, purchase order or specific contract

d = the duration, expressed in calendar days, as set out in the relevant contract, purchase order or specific contract for the execution of the tasks.

10.3. The daily rate for damages may be modified in the contract where the subject of the contract so justifies.

10.4. The Court of Auditors will formally notify the contractor of its intention to apply liquidated damages and the corresponding calculated amount. The contractor may, within fifteen days of notification of the damages payment decision, submit arguments against this decision by registered letter with acknowledgement of receipt or equivalent. In the absence of a response on the contractor's part or of written withdrawal by the Court of Auditors within fifteen days of the receipt of such arguments, the decision imposing the damages shall be the subject of a recovery procedure by the Court of Auditors. These damages shall not be imposed where there is provision in the contract for specific penalties for late completion. The Court of Auditors and the contractor shall expressly acknowledge and agree that any sums payable under this Article shall be in the nature of damages and not penalties, and shall represent a reasonable estimate of fair

compensation for the losses that may be reasonably anticipated from such failure to perform obligations.

10.5. If the contractor fails to perform its obligations under the contract or fails to meet the quality levels set out in the specifications, the Court of Auditors may reduce or recover payments in accordance with Article 8 proportionally to the scale of the failure, without prejudice to the Court of Auditors's right to terminate the contract. A reduction in price or recovery of payments may be imposed together with liquidated damages.

10.6. The Court of Auditors will formally notify the contractor of its intention to reduce payment and the corresponding calculated amount. The contractor has fifteen days following the date of receipt to submit observations. If the contractor submits observations, the Court of Auditors, taking into account the relevant observations, shall formally notify the contractor of the withdrawal of its intention to reduce payment or of its final decision to reduce payment and the corresponding amount.

11. OWNERSHIP OF THE RESULTS – INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS

11.1. Definitions

In this contract the following definitions shall apply:

- i) "results" means any intended outcome of the performance of the contract which is delivered and finally accepted by the Court of Auditors;
- ii) "creator" means any natural person who contributed to the production of the result and includes staff of the Court of Auditors or a third party;
- iii) "pre-existing rights" means any industrial and intellectual property rights, including background technology, which exist prior to the Court of Auditors or the contractor ordering them for the purpose of the performance of the contract and include rights of ownership and use by the contractor, the creator, the Court of Auditors and any third parties.

11.2. Ownership of the results

- 11.2.1. The ownership of the results shall be fully and irrevocably acquired by the European Union under this contract, including any rights in any of the results listed in this contract and to all technological solutions and information contained within these technological solutions, produced in performance of the contract. Those rights may include copyright and other intellectual or industrial property rights. The Court of Auditors may exploit and use the acquired rights as stipulated in this contract. All the rights shall be acquired by the European Union from the moment the results are delivered by the contractor and accepted by the Court of Auditors. Such delivery and acceptance shall be deemed to constitute an effective assignment of rights from the contractor to the European Union.
- 11.2.2. The payment of the price as set out in the contract shall be deemed to include any fees payable to the contractor in relation to the acquisition of rights by the European Union, including all forms of exploitation and use of the results.
- 11.2.3. The acquisition of rights by the European Union under this contract shall cover all territories worldwide.

- 11.2.4. Any intermediate sub-result, raw data or intermediate analysis made available by the contractor cannot be used by the Court of Auditors without the written consent of the contractor, unless the contract explicitly provides for it to be treated as a self-contained result.

11.3. Licensing of pre-existing rights

- 11.3.1. Unless provided otherwise in the special conditions, the European Union shall not acquire ownership of the pre-existing rights.
- 11.3.2. The contractor shall license the pre-existing rights on a royalty-free, non-exclusive and irrevocable basis to the European Union. The Court of Auditors may use pre-existing materials for all modes of exploitation set out in this contract. All the pre-existing rights shall be licensed to the European Union from the moment the results were delivered and accepted by the Court of Auditors.
- 11.3.3. The licensing of pre-existing rights to the European Union under this contract shall cover all territories worldwide and shall be valid for the whole duration of intellectual property rights protection. The payment of the price as set out in the contract is deemed to also include any fees payable to the contractor in relation to the licensing of pre-existing rights to the Union, including all forms of exploitation and of use of the results.
- 11.3.4. Where performance of the contract requires that the contractor uses pre-existing materials belonging to the Court of Auditors, the latter may request that the contractor signs an appropriate licence agreement. Such use by the contractor will not entail any transfer of rights to the contractor and is limited to the needs of that contract.

11.4. Exclusive rights

The European Union acquires the following exclusive rights:

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

- another medium by any means or in any form; and the exclusive right to authorise or prohibit the re-utilisation of all or a substantial part of the contents of the database by the distribution of copies, by renting, by on-line or other forms of transmission;
- h) where the results are or include a patentable subject-matter: the right to register them as a patent and to further exploit such patent to the fullest extent;
 - i) where the results are or include logos or subject-matter which could be registered as a trademark: the right to register such logo or subject-matter as a trademark and to further exploit and use it;
 - j) where the results are or include know-how: the right to use such know-how as is necessary to make use of the results to the full extent provided for by this contract, and the right to make it available to contractors or subcontractors acting on behalf of the Court of Auditors, subject to their signing of adequate confidentiality undertakings where necessary;
 - k) where the results are documents: the right to store and archive the results in line with the document management rules applicable to the Court of Auditors, 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:
 - i) end-user rights, for all uses by the Union or by subcontractors which result from this contract and from the intention of the parties;
 - ii) the rights to decompile or disassemble the software;
 - m) to the extent that the contractor may invoke moral rights, the right for the Court of Auditors, except where otherwise provided in this contract, 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 Court of Auditors 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 Court of Auditors. In such case, the contractor will have to clearly inform the Court of Auditors before making such choice and the Court of Auditors has the right to refuse it.

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

- 11.5.1. When delivering the results, the contractor shall warrant that, for any use that the Court of Auditors may envisage within the limits set in this contract, the results and the pre-existing material incorporated in the results are free of claims from creators or from any third parties and all the necessary pre-existing rights have been obtained or licensed.
- 11.5.2. 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 contract or parts thereof, including identification of the rights' owners. If there are not pre-existing rights to the results, the

- contractor shall provide a declaration to that effect. This list shall be provided no later than the date of delivery of the final results.
- 11.5.3. In the results the contractor shall clearly point out all quotations of existing textual works. The complete reference should include as appropriate: name of the author, title of the work, date and place of publication, date of creation, address of publication on internet, number, volume and other information which allows the origin to be easily identified.
- 11.5.4. Upon request by the Court of Auditors, the contractor shall provide evidence of ownership of or rights to use all the listed pre-existing rights and rights of third parties except for the rights owned or licensed by the European Union.
- 11.5.5. This evidence may refer, inter alia, to rights to: parts of other documents, images, graphs, fonts, 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 works of art, data, source or background materials or any other parts of external origin.
- 11.5.6. 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 and 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.
- 11.5.7. Provision of evidence shall not release the contractor from its responsibilities if it is found that it does not hold the necessary rights, regardless of when and by whom this fact was revealed.
- 11.5.8. The contractor shall also guarantee 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.

11.6. Creators

- 11.6.1. By delivering the results the contractor shall guarantee that the creators undertake not to object, 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 Court of Auditors;
 - 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.

- 11.6.2. If moral rights on parts of the results protected exist, the contractor must obtain the consent of creators regarding the granting or waiver of the relevant moral rights in accordance with the applicable legal provisions and be ready to provide documentary evidence upon request.

11.7. Persons appearing in photographs or films

If natural, recognisable persons appear in a result or if their voices are recorded, the contractor shall, at the request of the Court of Auditors, submit a statement by these persons (or by the persons exercising parental authority in the case of minors) authorising the described use of their image or voice. The contractor shall take the necessary measures to obtain such consent in accordance with the applicable legal provisions.

11.8. Contractor's 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, with the following disclaimer: “© - year – European Union. All rights reserved. Some parts are licensed to the European Union under certain conditions” or with any other equivalent disclaimer that the Court of Auditors may consider appropriate, or as the parties may agree on a case by case basis. This does not apply when inserting such reference would be impossible, notably for practical reasons.

11.9. Visibility of Court of Auditors' funding and disclaimer

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

12. Patents, registered designs ("Gebrauchsmuster"), trademarks and brand names, industrial designs and models

12.1. If the performance of the contract involves the use of patents, registered designs ("Gebrauchsmuster"), trademarks or brand names, or industrial designs or models belonging to third parties and this leads to litigation, the contractor shall indemnify the Court of Auditors against any action for infringement which may be brought against it.

12.2. The Court of Auditors and the contractor shall communicate to each other any information indicating that an industrial property right could impede performance of the contract.

12.3. At the first indication of any action by a third party, in particular the lodging of a claim, even after performance of the contract, the party implicated shall notify the other party without delay, whereupon both parties shall act conjointly and shall exchange all information and evidence which they may possess or obtain.

12.4. The fact that the products or work or any part thereof are covered by an industrial property right owned by the contractor or in respect of which it possesses a licence shall not prevent the Court of Auditors repairing them or having them repaired by whomsoever it thinks fit, save where the contractor itself possesses an industrial property right in respect of the repair process and, after having been consulted first, offers to effect the repairs within a reasonable time limit and at a reasonable price.

13. CONFIDENTIALITY, USE, CIRCULATION AND PUBLICATION OF INFORMATION

13.1. The contractor shall undertake, in respect of itself and its staff, not to make use of, for purposes other than performance of the contract, and not to disclose or publish to third parties any facts, information, knowledge, documents or other matters communicated to it or brought to its attention in connection with performance of the contract, or any results arising from its services without the prior written authorisation of the Court of Auditors. These obligations shall continue to apply following performance of this contract.

13.2. The contractor shall require any agents, employees, partners, subcontractors and assignees it may have to maintain confidentiality.

13.3. Any distribution or publication by the contractor of information relating to the contract shall require the Court of Auditors' prior authorisation in writing. For the purposes of that authorisation the Court of Auditors may require the contractor to state the amount paid by the European Union, or may make the authorisation subject to other conditions. The information published or distributed shall in any case specify that the opinions expressed are those of the contractor only and do not represent the Court of Auditors' official position.

13.4. The contractor shall authorise the Court of Auditors to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in or relating to the contract, in particular the identity of the contractor, the subject matter and duration of the contract and the amount paid.

13.5. Unless otherwise stipulated, the Court of Auditors shall not be required to distribute or publish documents or information supplied in performance of the contract. If it decides not to publish the documents or information supplied, the contractor may not have them distributed or published elsewhere without prior written authorisation from the Court of Auditors.

13.6. The Court of Auditors shall treat with confidentiality any information or documents identified in writing by the contractor as confidential.

13.7. The Court of Auditors shall:

- a) ensure the protection of such confidential information or documents with the same level of protection as its own confidential information;
- b) abstain from disclosing, directly or indirectly, to any unauthorised persons any facts, information, knowledge, documents or other matters which have been communicated as confidential without the prior written agreement of the contractor.

13.8. The confidentiality obligations set out in Articles 13.6 and 13.7 are binding on the Court of Auditors during the performance of the contract and for as long as the information or documents remain confidential unless:

- a) the contractor agrees to release the Court of Auditors from the confidentiality obligation earlier;
- b) the confidential information or documents become public through other means than a breach of the confidentiality obligation;
- c) the applicable law requires the disclosure of the confidential information or documents.

14. PUBLICITY

14.1. The contractor, subcontractor and their staff shall not be authorised to advertise by any means (including social media) the fact that it is a contractor or subcontractor of the Court of Auditors. In accordance with this provision, articles drafted in the form of publicity material to be published, whether intended for a specialist magazine or for the daily press shall not be authorised.

14.2. All other articles, publications or illustrations which are not specifically publicity-orientated but where the contractor is mentioned in connection with the activity that is the object of this contract, shall be submitted to the Court of Auditors for its prior written authorisation.

14.3. The contractor shall not under any circumstances use photographs of the exterior or interior of the Court of Auditors' buildings, the logo or official stamp of the Court or any other versions of these, in the context of its activity or otherwise, without the Court of Auditors' prior written authorisation. This authorisation may be subject to specific conditions and limited to a fixed period.

14.4. It shall be prohibited to display notices or publicity material on the Court of Auditors' premises unless the Court has specifically given prior written authorisation.

15. TAXATION

15.1. The contractor shall have sole responsibility for compliance with the tax laws which apply to it. Failure to comply shall make the relevant invoices invalid.

15.2. The contractor shall recognise that the Court of Auditors is, as a rule, exempt from all taxes and duties, including value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union and the relevant legislation in the Member States.

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

15.4. Invoices presented by the contractor shall indicate its place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

16. FORCE MAJEURE

16.1. *Force majeure* shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from performing any of their obligations under the contract, was not due to error or negligence on their part or on the part of a subcontractor, and could not have been avoided by the exercise of due diligence. Defects in equipment, plant or materials or delays in making them available, labour disputes, strikes or financial problems may not be invoked as force majeure unless they themselves stem directly from an established case of force majeure.

16.2. Without prejudice to the provisions of Article 2.12, if either contracting party is faced with force majeure, it shall formally notify the other party without delay, stating the nature, likely duration and foreseeable effects.

16.3. Either of the contracting parties may suspend the performance of the contract, purchase order or specific contract or any part thereof if a case of force majeure makes such performance impossible or excessively difficult. It shall inform the other party about the suspension without delay, giving all the necessary reasons and details and the envisaged date for resuming the performance of the contract, purchase order or specific contract.

16.4. Once the circumstances allow performance to be resumed, the party which requested the suspension shall immediately inform the other party, unless the Court of Auditors has already terminated the contract, purchase order or specific contract.

16.5. Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing 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.

16.6. The contracting parties shall take the necessary measures to reduce damage to a minimum.

17. SUBCONTRACTING AND ASSIGNMENT

17.1. The contractor may not, without the prior written authorisation of the Court of Auditors, assign the rights and obligations arising out of the contract in whole or in part, nor subcontract any part of it, nor cause it to be performed in fact by third parties apart from those already mentioned in its tender.

17.2. In the absence of the authorisation referred to in Article 16.1 above, or in the event of failure to observe the terms thereof, assignment by the contractor shall not be enforceable against and shall have no effect on the Court of Auditors.

17.3. Even where the Court of Auditors authorises the contractor to subcontract all or part of the supplies, services or works to third parties, the contractor shall nonetheless remain solely responsible towards the Court of Auditors for the performance of the obligations under the contract.

17.4. The contractor shall ensure that the subcontract does not affect the rights of the Court of Auditors under this contract.

17.5. The Court of Auditors may request the contractor to replace a subcontractor found to be in a situation mentioned in Article 18.

17.6. Save where the Court of Auditors expressly authorises an exception, the contractor shall be required to include in any contracts signed with third parties, for all or part of the contract, provisions enabling the Court of Auditors to enjoy the same rights and guarantees in relation to third parties as in relation to the contractor itself.

18. TERMINATION

18.1. The Court of Auditors may terminate the contract in the following circumstances:

- a) if the contractor or any person that assumes unlimited liability for the debts of the contractor is bankrupt, subject to insolvency or winding-up procedures, where its assets are being administered by a liquidator or by a court, where it is in an

- arrangement with creditors, where its business activities are suspended, or where it is in any analogous situation arising from a similar procedure provided for under national laws or regulations;
- b) where it has been established by a final judgment or a final administrative decision that the contractor or any person that assumes unlimited liability for the debts of the contractor is in breach of its obligations relating to the payment of taxes or social security contributions;
 - c) where it has been established by a final judgement or a final administrative decision or on the basis of a preliminary classification carried out with the modalities laid down in Article 108 of the Financial Regulation that the contractor or any related person is guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the economic operator belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence, including, in particular, any of the following:
 - i) fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of selection criteria or in the performance of a contract;
 - ii) entering into agreement with other economic operators with the aim of distorting competition;
 - iii) violating intellectual property rights;
 - iv) attempting to influence the decision-making process of the Court of Auditors during the procurement procedure;
 - v) attempting to obtain confidential information that may confer upon it undue advantages in the procurement procedure;
 - d) where it has been established by a final judgement or on the basis of a preliminary classification carried out with the modalities laid down in Article 108 of the Financial Regulation that the contractor or any related person is guilty of fraud, corruption, participation in a criminal organisation, money laundering, terrorist-related offences or offences linked to terrorist activities, child labour or other forms of trafficking in human beings;
 - e) if the contractor or any related person, on the basis of a preliminary classification carried out with the modalities laid down in Article 108 of the Financial Regulation, has shown significant deficiencies in complying with main obligations in the performance of a contract financed by EU budget, which has led to its early termination or to the application of liquidated damages or other contractual penalties, or which has been discovered following checks, audits or investigations by an authorising officer, OLAF or the Court of Auditors;
 - f) where it has been established by a final judgment or on the basis of a preliminary classification carried out with the modalities laid down in Article 108 of the Financial Regulation that the contractor or any related person has committed an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95;
 - g) if the Court of Auditors has evidence that the contractor or persons with powers of representation, decision-making or control over it have committed substantial errors, irregularities or fraud in the award procedure or the performance of the contract;
 - h) where the contractor is in breach of its obligations under Article 4;

- i) where a change in the contractor's legal, financial, technical, organisational or control situation could have a significant effect on the performance of the contract or call into question the decision to award the contract;
- j) where performance of the tasks has not actually commenced within the delivery or performance period provided for by the contract, specific contract or purchase order, and the new date proposed, if any, is considered unacceptable by the Court of Auditors;
- k) if the contractor is unable, through its own fault, to obtain any permit or licence required for performance of the contract or if it causes the SuperDrecksKëscht fir Betriber® label to be withdrawn from the Court of Auditors;
- l) where the contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in breach of its substantive contractual obligations.;
- m) 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.

18.2. In the event of force majeure, notified in accordance with Article 16, either contracting party may terminate the contract, where performance thereof cannot be ensured for a period corresponding to at least one fifth of the period laid down in the contract, the specific contract or the purchase order, where resuming performance is impossible or a modification to the contract might call into question the decision awarding the contract or result in unequal treatment of tenderers.

18.3. The Court of Auditors shall formally notify the contractor of its intention to terminate the contract and the grounds for termination. The contractor has fifteen days following the date of receipt to submit observations. Failing that, the decision to terminate becomes enforceable the day after the time limit for submitting observations has elapsed. If the contractor submits observations, the Court of Auditors shall formally notify the termination.

18.4. Termination shall take effect on the date of receipt of the registered letter with acknowledgement of receipt terminating the contract, or on any other date referred to in the letter of termination.

18.5. At the request of the Court of Auditors and regardless of the grounds for termination, the contractor shall provide all necessary assistance, including information, documents and files, to allow the Court of Auditors to transfer the tasks laid down in the contract to a new contractor or to an internal service. The parties may agree to draw up a transition plan detailing the contractor's assistance. The contractor shall provide such assistance at no additional cost, except if it can demonstrate that it requires substantial additional resources or means, in which case it shall provide an estimate of the costs involved and the parties will negotiate an arrangement in good faith.

18.6. Consequences of termination:

18.6.1. In the event of the Court of Auditors terminating the contract in accordance with Article 18.2 and without prejudice to the other provisions of the contract, the contractor shall waive any claim for consequential damages, including loss of anticipated profits following non-completion of work. On receipt of the letter terminating the contract, the

contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce its commitments. It shall draw up the documents required for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

- 18.6.2. Without prejudice to any administrative and financial penalties imposed by the Court of Auditors in accordance with Article 105a and 106 of the Financial Regulation, the Court of Auditors may claim compensation for any damage suffered and recover any sums paid to the contractor under the contract.
- 18.6.3. Following termination, the Court of Auditors may commission any other contractor to complete the tasks. Without prejudice to any other rights or guarantees stipulated in the contract in the Court of Auditors' favour, it shall be entitled to claim from the contractor reimbursement of any additional costs occasioned by the completion of those tasks.

19. MATERIAL ERRORS, IRREGULARITIES AND FRAUD

19.1. If, after the contract has been awarded, the procurement procedure or performance of the contract is found to be subject to material errors, irregularities or fraud, the Court of Auditors shall suspend its execution or, if applicable, terminate it.

19.2. If these errors, irregularities or fraud are attributable to the contractor, the Court of Auditors may, furthermore, refuse to make payment, recover the sums already paid or terminate all contracts concluded with the contractor in question, in proportion to the seriousness of the errors, irregularities or fraud, without prejudice to any administrative and financial penalties imposed by the Court of Auditors in accordance with Article 106 of the Financial Regulation.

19.3. The purpose of any suspension of the contract shall be to verify whether presumed material errors or irregularities or fraud have actually occurred. If they are not confirmed, performance of the contract shall resume as soon as possible.

19.4. A material error or irregularity shall be any infringement of a provision of a contract or regulation resulting from an act or an omission which causes or might cause a loss to the European Union budget.

19.5. Without prejudice to the Court of Auditors' right to terminate the contract and to the application of liquidated damages, contractual penalties, recovery or price reduction the Court of Auditors may impose exclusion and financial penalties within the meaning of Articles 105a and 106(13) of the Financial Regulation in the situations referred to letter c), d), e) and f) of Article 18(1).

20. CHECKS AND AUDITS

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

20.2. Such checks and audits may be initiated during the performance of the contract and for a period of five years from the date of payment of the balance.

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

20.4. The contractor shall keep all original documents stored on any appropriate medium, including digitised originals where authorised by national law and under the conditions laid down therein, for a period of five years starting from the date of payment of the balance.

20.5. The contractor shall allow the Court of Auditors' staff and outside personnel authorised by it the appropriate right of access to sites and premises where the contract is performed and to all the information, including information in electronic format, needed in order to conduct such checks and audits. The contractor shall ensure that the information is readily available at the time of the check or audit and, if so requested, that information be handed over in an appropriate form.

20.6. By virtue of Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities and Regulation (UE, EURATOM) n° 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, OLAF may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by Union law for the protection of the financial interests of the Union against fraud and other irregularities. Where appropriate, the findings may lead to recovery by the Court of Auditors.

21. AMENDMENTS

21.1. Any amendment to the contract shall be the subject of a written agreement concluded by the contracting parties. An oral agreement shall not be binding on the contracting parties.

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

21.3. In the context of a framework contract, the Court of Auditors may ask the contractor to supplement its tender in writing. Any supplements thus added may not have the effect of substantially amending the initial tender.

22. DATA PROTECTION

22.1. Any personal data included in or pertaining to the contract, including those relating to its performance, shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the EU institutions and bodies and on the free movement of such data. Such data shall be processed solely for the purposes of the performance, management and monitoring of the contract by the Court of Auditors, without prejudice to the possible transmission of such data to the bodies charged with monitoring or inspection tasks in application of European Union law.

22.2. The contractor shall have the right to access its personal data and the right to rectify any such data. Should the contractor have any queries concerning the processing of its data, it shall address them to the Court of Auditors. The contractor may contact the Court of Auditors' Data

Protection Officer (ECA-data-protection@eca.europa.eu) and shall have right of recourse at any time to the European Data Protection Supervisor (edps@edps.europa.eu).

22.3. The contractor shall inform all staff and sub-contractors, as well as other persons whose data are processed, of their right of access to and rectification of their personal data and of their right to contact the Court's Data Protection Officer (ECA-data-protection@eca.europa.eu) and of recourse to the European Data Protection Supervisor.

22.4. Where this contract requires the processing of personal data by the contractor, the contractor may act only under the supervision of the data controller (Court of Auditors), 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 or her rights.

22.1 The contractor shall limit access to the data to the staff strictly necessary for the performance, management and monitoring of the contract.

22.5. The contractor shall adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to prevent unauthorised disclosure or access, accidental or unlawful destruction or accidental loss or alteration and to prevent any unlawful form of processing.

22.6. In the case of automated processing, 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:
 - prevent unauthorised reading, copying, alteration or removal of storage media;
 - unauthorised memory input as well as any unauthorised disclosure, alteration or erasure of stored personal data;
 - prevent 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 it will be subsequently possible to check which personal data have been processed, at what times and by whom;
- e) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting institution or body;
- f) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
- g) design its organisational structure in such a way that it meets data protection requirements.

23. APPLICABLE LAW AND SETTLEMENT OF DISPUTES

23.1. Save as otherwise expressly provided, the contract shall be governed by the law of the European Union, including the Financial Regulation and its implementing rules³, supplemented, if necessary, by Luxembourg law.

23.2. Any dispute between the Court of Auditors and the contractor resulting from the interpretation or application of the contract which cannot be settled amicably shall, unless otherwise stipulated in the contract, be brought before the General Court of the European Union, pursuant to Article 272 of the Treaty on the Functioning of the European Union.

24. MEANS OF COMMUNICATION

24.1. Any communication relating to the contract or to its performance shall be made in writing and shall bear the contract number. Any communication shall be deemed to have been made once it is received by the receiving party, unless otherwise provided for in this contract.

24.2. 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 the contract. 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.

24.3. Electronic communication shall be confirmed by an original signed paper version of that communication if requested by any of the parties provided that this request is submitted without undue delay. The sender shall send the original signed paper version without undue delay. The parties agree that any communication made by e-mail has full legal effect and is admissible as evidence in judicial proceedings.

24.4. Mail sent using the postal services shall be deemed to have been received by the Court of Auditors on the date on which it is registered by the department responsible referred to in the contract.

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

³ Commission Delegated Regulation (EU) No 1268/2012 of 29 October on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union as last amended by Commission Delegated Regulation (EU) 2015/2642 of 30 October 2015 available at http://ec.europa.eu/budget/biblio/documents/regulations/regulations_en.cfm.

SIGNATURES

For the Contractor,
[Company name/forename/surname/function]

For the European Court of Auditors,
Mr. Geoffrey Simpson, Directorate of the
Quality Control Committee

signature[s]: _____

signature[s]: _____

Done at [], [date]

Done at [], [date]

Done in duplicate in English