

Annex 3 to the Invitation to Submit a Request to Participate
Draft Framework Contract for the Acquisition of Studies supporting Multisource
Analytical Assessments

1. The European Union Satellite Centre (hereinafter referred to as “SatCen” or “contracting authority”), whose registered address is at Base Aérea de Torrejón de Ardoz, Avenida de Cádiz, Ed. 457, 28850 Torrejón de Ardoz (Madrid) Spain, with registration number N0063121H, which is represented for the purpose of the signature of this contract by its Director, Sorin Ducaru,

on the one part, and

2 [Full official name]

[Official legal form]

[Statutory registration number or ID or passport number]

[Full official address]

[VAT registration number]

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

[For joint tenders, repeat these data as many times as there are contractors and continue numbering]

([collectively] ‘the contractor’), represented for the purposes of the signature of this framework contract by [forename, surname, function of legal representative and name of company in the case of a joint tender]

on the other part

HAVE AGREED

to the **Special Conditions** and the **General Conditions of the Framework Contract for the Acquisition of Studies Supporting Multisource Analytical Assessments**, and the following Annexes:

Annex I Tender specifications (procurement procedure ref. SatCen-RP-02/20)

Annex II Contractor's tender (reference No [complete] of [insert date])

Annex III Order Form Template

which form an integral part of this framework contract (the "FWC").

This FWC sets out:

1. the procedure by which the contracting authority may order services from the contractor;
2. the provisions that apply to any *specific contract* which the contracting authority and the contractor may conclude under this FWC; and
3. the obligations of the parties during and after the duration of this FWC.

All documents issued by the contractor (end-user agreements, general terms and conditions, etc.) except its tender are held inapplicable, unless explicitly mentioned in the special conditions of this FWC. In all circumstances, in the event of contradiction between this FWC and documents issued by the contractor, this FWC prevails, regardless of any provision to the contrary in the contractor's documents.

I. SPECIAL CONDITIONS

I.1. ORDER OF PRIORITY OF PROVISIONS

If there is any conflict between different provisions in this FWC, the following rules must be applied:

- (a) The provisions set out in the special conditions take precedence over those in the other parts of the FWC.
- (b) The provisions set out in the general conditions take precedence over those in the *order forms* and *specific contracts* (Annex III)
- (c) The provisions set out in the *order forms* and *specific contracts* (Annex III) take precedence over those in the other annexes.
- (d) The provisions set out in the tender specifications (Annex I) take precedence over those in the tender (Annex II).
- (e) The provisions set out in the FWC take precedence over those in the *specific contracts*.

Any reference to *specific contracts* applies also to *order forms*.

I.2. SUBJECT MATTER

The subject matter of the FWC is acquisition of on-demand studies (i.e. full reports and short reports) supporting multisource analytical assessments in the field of border security, according to the tender specifications and its appendixes, enclosed as Annex I.

I.3. TYPE OF CONTRACT

I.3.1 The contractor is selected for a single FWC.

1.3.2 Signature of the FWC imposes no obligation on the contracting authority to purchase services or to place orders and does not give the contractor any exclusive rights to provide the services covered by the FWC. In any case, SatCen reserves the right, at any time during the FWC, to cease placing orders without the contractor thereby having the right to any compensation.

1.3.3 Only the countersignature by the contracting authority of *order forms*, based on the template provided as Annex III, is binding on the SatCen and authorises the *implementation of the FWC*.

1.3.4 All *order forms* giving rise to the *implementation of the FWC* shall conform to the terms set out herein.

I.4. ENTRY INTO FORCE AND DURATION OF THE FWC

- I.4.1** The FWC enters into force on 1 January 2021, upon its signature by both contracting parties.
- I.4.2** The *implementation of the FWC* cannot start before its entry into force.
- I.4.3** The FWC is concluded for a period of 12 (twelve) months with effect from the date of its entry into force.
- I.4.4** The parties must sign any *specific contract* before the FWC expires.
- I.4.5** The FWC continues to apply to such *specific contracts* after its expiry. The services relating to such *specific contracts* must be performed no later than six months after the expiry of the FWC.

I.4.5 Renewal of the FWC

The FWC may be renewed automatically up to three times for periods of twelve months each, unless one of the parties receives *formal notification* to the contrary at least three months before the end of the ongoing duration. Renewal does not change or postpone any existing obligations. The overall duration of the FWC may in no event exceed four years.

I.5. MAXIMUM VALUE OF THE FWC AND MAXIMUM PRICES

- I.5.1** The maximum amount covering all purchases under this FWC, including all renewals, is 2,000,000.00 EUR (two million euro). However, this does not bind the contracting authority to purchase for the maximum amount.
- I.5.2** The prices of the services, as per the contractor's tender (Annex II), are as follows:
- *Price of Full Report:*
[complete]
 - *Price of Short Report:*
[complete]
- I.5.3** It is agreed that the prices offered in the contractor's tender (Annex II) and in *the order forms* are all-inclusive and cover all expenditure that may be incurred by the contractor in producing and supplying reports under this FWC, including, without limitations, the following items:
- All expenses (including overheads, shipping costs of reports and contract management) incurred by the contractor in the *implementation of the FWC*.
 - Any fees in relation to the acquisition by the SatCen of the ownership and rights of use over the *results* of the FWC.

- Any deliverables under the FWC.
- Travel, subsistence, accommodations or any other related expenses.

I.5.4 The prices quoted in the contractor's Tender (Annex II) can only be maintained or lowered during the term of the FWC, including possible renewals.

I.5.5 Prices quoted in the *order forms* shall be expressed in Euro and shall not contain VAT or any other taxes and/or duties, in accordance with Article II.19.1, having regard to the privileges and immunities of the SatCen.

I.5.6 The prices quoted in the tender (Annex II) are not subject to revision and apply for the whole duration of the FWC, including possible renewals.

I.6. ORDERING PROCEDURE

I.6.1 Ordering procedure for full reports

I.6.1.1 The reports will be ordered, produced and supplied on-demand, based on varying user's needs. Every time a need arises, the SatCen will issue an *order form* using the *order form* template provided as Annex III. Whenever a new report is required, the contractor will receive an *order form* at the email address provided as point of contact address.

I.6.1.2 Within five (5) working days from the day of dispatch of an *order form*, the contractor must propose to the SatCen the first version of the Research Plan, as defined in section *[complete]* of the tender specifications.

I.6.1.3 Within two (2) working days from the proposal of the first version of the Research Plan by the contractor, an *order form* teleconference will be held between the contracting authority and the contractor, resulting on the agreed Research Plan, as defined in section *[complete]* of the tender specifications.

I.6.1.4 Within 8 (eight) working days from receiving the signed *order form*, the contractor must return to the SatCen the same *order form*, duly filled-in. The return of the signed *order form* by the contractor entails the contractor's confirmation of its availability to fulfil the order within the requested timeframe.

I.6.1.5. The SatCen will countersign the *order form* as its acceptance of the contractor's offer and will return it to the contractor by email. *Specific contracts* under the FWC will become effective upon countersignature of the *order forms* by SatCen. *Implementation of the FWC* shall commence immediately on the date the countersigned *order form* is dispatched by the contracting authority.

I.6.1.6 The reports must be delivered within the timeframe indicated in each *order form*.

I.6.2 Ordering procedure for short reports

I.6.2.1 Within three (3) working days after the date of dispatch of the *order form*, the contractor must return to SatCen the same *order form*, duly filled-in (quoting the price), signed and dated. The return of the signed *order form* by the contractor entails

the contractor's confirmation of its availability to fulfil the order within the requested timeframe.

I.6.2.2 The contractor cannot reject an *order form* and has the obligation to respond to each *order form*.

I.6.2.3 Within two (2) working days, the SatCen will countersign the *order form* as its acceptance of the contractor's offer and will return it to the contractor by email. *Specific contracts* under the FWC will become effective upon countersignature of the *order forms* by SatCen.

I.6.2.4 Production shall commence immediately on the date the countersigned *order form* is dispatched by the contracting authority.

I.6.2.5 The contractor shall submit the report within five (5) working days from the dispatch of the countersigned *order form*.

I.7. PLACE OF PERFORMANCE

The place of performance shall be the contractor's premises (or, if applicable, the subcontractor's premises), unless otherwise specified in the *order forms*.

I.8. INVOICING AND PAYMENTS

I.8.1 Payments shall only be made on the basis of an invoice issued by the contractor, after the contracting authority has verified and validated the *results*, reports or deliverables submitted under a *specific contract* and has accepted the corresponding invoice. Payment requests may not be made if payments for previous periods have not been executed due to default or negligence on the part of the contractor.

I.8.2 The invoices shall be sent by email to finance.Invoices@satcen.europa.eu.

I.8.3 Payments will be made by SatCen in Euro, without VAT and any other taxes, within 30 days from acceptance of the invoice.

I.8.4 The contracting authority reserves the right to set off any amount owing to it by the contractor from any amount payable by it to the contractor.

I.8.5 The contracting authority may suspend the time limit for payment specified in Article I.8.3 in accordance with Article II.20.5. Once the suspension is lifted, the contracting authority shall give its approval and pay within the remainder of the time-limit indicated in Article I.8.3, unless it rejects partially or fully the submitted documents or deliverables.

I.9. BANK ACCOUNT

I.9.1 Payments must be made to the contractor's (or leader's in the case of a joint tender) bank account denominated in euro, identified as follows:

Name of bank: [complete]
Full address of branch: [complete]
Exact denomination of account holder: [complete]
Full account number including bank codes: [complete]
IBAN code: [complete]

I.9.2 The bank account number indicated in the FWC must be reproduced on all invoices. Changes to the contractor's bank account require prior notification to the contracting authority.

I.10. DATA CONTROLLER AND POINTS OF CONTACT

I.10.1 For the purpose of Article II.9.1:

- (a) the Data Controller shall be the Head of the Copernicus Unit at SatCen.
- (b) the data protection notice is available at:

<https://www.satcen.europa.eu/procurement/procurement-policy-and-procedure>

I.10.2 Any *notification* relating to the FWC or to its *implementation* shall be made in writing and shall bear the *specific contract* and FWC reference. Ordinary mail shall be deemed to have been received by the SatCen on the date on which it is registered by the point of contact indicated below.

All notices and *notifications* shall be sent to the following Parties' addresses and contact persons:

The contracting authority:

European Union Satellite Centre
Avenida de Cádiz, Ed. 457
Base Aérea de Torrejón
E-28850 Torrejon de Ardoz
Madrid, Spain

Point of contact for legal and administrative matters:

E-mail: procurement.satcen@satcen.europa.eu

Telephone: + 34 91 678 60 00

Point of contact for technical, production and invoicing matters:

E-mail: bms@satcen.europa.eu

Telephone: + 34 91 678 60 67

The contractor (or leader in the case of a joint tender):

Mr/Mrs/Ms [complete]

[Title]
[Company name]
[Official address in full]
[e-mail and phone number]

[Complete with 2 points of contact]

By derogation from this Article, different contact details for the contracting authority or the contractor may be provided in the *specific contracts*.

I.11. APPLICABLE LAW AND SETTLEMENT OF DISPUTES

I.11.1 The FWC shall be governed and construed in accordance with the common laws (*Derecho común*) of Spain.

I.11.2 Any dispute between the parties resulting from the interpretation or application of the FWC which cannot be settled amicably, shall be finally settled by compulsory arbitration in accordance with the arbitration rules of the International Chamber of Commerce (ICC), with the following specifications:

- The place of the arbitration will be Madrid, Spain; and the language of the arbitration proceedings will be English.
- The arbitration tribunal will consist of three (3) arbitrators chosen in accordance with the rules of the ICC. The arbitrators will be empowered to, at either Party's request, grant injunctive relief.
- The arbitral award will be the exclusive remedy of the Parties for all claims, counterclaims, issues, or accountings presented or pled to the arbitrators.
- The right of appeal by either Party to Spanish courts or any other national courts on a question of law arising in the course of any arbitral proceedings or out of an award made in any arbitral proceedings is hereby agreed to be excluded.
- Any additional costs, fees, or expenses incurred in enforcing the arbitral award will be charged against the Party that resists its enforcement.
- The arbitrator will have the discretionary authority to award reasonable attorney's fees.
- Except as may be required by law, neither a Party nor the arbitrator shall disclose the existence, content, or results of any arbitration or dispute hereunder without the prior written consent of both Parties.

I.12. EXPLOITATION OF THE RESULTS OF THE FWC

I.12.1. Detailed list of modes of exploitation of the results

In accordance with Article II.13.1 whereby the SatCen acquires ownership of the *results* as defined in this FWC, including the tender specifications, these *results* may be used for any of the following modes of exploitation:

- (a) use for its own purposes:
- making available to the staff of the contracting authority;
 - making available to the persons and entities working for the contracting authority or cooperating with it, including contractors, subcontractors whether legal or natural persons;
 - making it available to the European Union institutions, agencies and bodies and Member States' institutions;
 - installing, uploading, processing;
 - arranging, compiling, combining, retrieving;
 - copying, reproducing in whole or in part and in unlimited number of copies.
- (b) distribution to the public in hard copies, in electronic or digital format, on the internet including social networks as a downloadable or non-downloadable file;
- (c) communication through press information services;
- (d) inclusion in widely accessible databases or indexes, such as via 'open access' or 'open data' portals, or similar repositories, whether freely accessible or accessible only upon subscription;
- (e) modifications by the contracting authority or by a third party in the name of the contracting authority, including:
- shortening;
 - summarising;
 - modifying the content, the dimensions;
 - making technical changes to the content (necessary correction of technical errors), adding new parts or functionalities, changing functionalities, providing third parties with additional information concerning the *result* (e.g. source code) with a view to making modifications;
 - addition of new elements, paragraphs, titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound;
 - addition of metadata, for text and data-mining purposes; addition of right-management information; addition of technological protection measures;
 - preparation in audio form, preparation as a presentation, animation, pictograms story, slide-show, public presentation;
 - extracting a part or dividing into parts;
 - incorporating, including by cropping and cutting, the *results* or parts thereof in other works, such as on websites and webpages;
 - translating, inserting subtitles, dubbing in different language versions, including all official languages of EU, languages used within EU and languages of candidate countries;

- (f) rights to authorise or license the modes of exploitation set out in any of the points (a) to (e) to third parties, provided however that this does not apply to *pre-existing rights* and *pre-existing materials*, if they are only licensed to the SatCen, except as foreseen by Article II.13.2.;
- (g) other adaptations which the parties may later agree; in such case, the following rules apply: the contracting authority must consult the contractor. If necessary, the contractor must in turn seek the agreement of any *creator* or other right holder and must reply to the contracting authority within one month by providing its agreement, including any suggestions of modifications, free of charge. The contractor may refuse the intended modification only if a *creator* can demonstrate that the intended modification may harm his/her honour or reputation, thereby violating his/her moral rights.

The modes of exploitation may be defined in more details in the *specific contracts*.

I.12.2. Licence of pre-existing rights

All pre-existing rights (including rights over satellite imagery) incorporated in the *results*, if any, are licensed to the SatCen (not acquired by SatCen) as set out in Article II.13.2.

I.12.3. Provision of list of pre-existing rights and documentary evidence

The contractor must provide the contracting authority with a list of *pre-existing rights* as set out in Article II.13.4

I.13. TERMINATION BY EITHER PARTY

- I.13.1** Either Party may at its own discretion and without being required to pay compensation, terminate the FWC by giving a three (3)-month prior notice in writing to the other Party.
- I.13.2** Should the contractor terminate the FWC, the contractor shall only be entitled to any outstanding payment corresponding to reports already delivered, verified and validated and to invoices previously accepted by the contracting authority.
- I.13.3** Should the contracting authority terminate the FWC, the contractor shall only be entitled to payments corresponding to the reports delivered under valid orders forms and accepted by the contracting authority before the date termination is notified to become effective ("Termination Date"). On receipt of such notice from the contracting authority the contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce its commitments in relation to the contracting authority. It shall draw up any documents required by the FWC and its Annexes for the reports delivered up to the Termination Date, within a period not exceeding sixty days from the Termination Date.

I.13.4 In the event of termination, the contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work.

I.14. PENALTIES FOR UNDERPERFORMANCE

Without prejudice to SatCen's right to liquidated damages under Articles II.15, to reduction in price under Article II.16, and to Contract termination under Article II.18, contractor's underperformance is subject to the penalties detailed below.

I.14.1 Penalties before the award of an order form

The contracting authority reserves the right to terminate an *order form* and/or the FWC if no response is provided to the SatCen within 3 working days from the dispatch of the *order form*.

I.14.2 Penalties after the award of an order form

I.14.2.1 The contractor shall be penalised with 4% of the *order form* price per day of delay and possibility to terminate the FWC in case of non-compliance with the delivery date of a short report.

I.14.2.2 The contractor shall be penalised with 2% of *order form* price per day of delay and possibility to terminate the FWC in case of non-compliance with the delivery date of a full report.

All the penalties indicated in this Section are cumulative.

I.15. CHANGE OF TEAM MEMBERS

I.15.1 The SatCen expects the FWC to be executed by the same team members identified in the tender.

I.15.2 Whenever a replacement is necessary, the contractor must ensure the continuity of the service.

I.15.3 In case the contractor proposes new team members (replacement or additional personnel) that were not initially included in the tender, the contractor must send a formal request to SatCen, at least two weeks in advance, with the names and CVs of the proposed new consultant(s) or team members for SatCen's approval. It should be noted that the aforementioned information must be accurate and subject to audits.

I.15.4 The staff proposed must have at least the same level of qualifications (both experience and language skills) as the staff replaced. If this condition is not fulfilled the SatCen reserves the right to refuse the replacement and cancel the relevant specific contract.

I.15.5 Any replacement of personnel will not oblige the SatCen to pay any remuneration, fees or costs additional to those laid down in the initial contract. The contractor must bear any additional costs arising from or incidental to such a replacement.

I.16. OTHER SPECIAL CONDITIONS

- I.16.1** Without prejudice to the checks and audits mentioned in Article II.22, the contracting authority reserves the right to access the contractor's premises, with a prior notice of at least 24-hour, in order to check the progress of production, the organisation of the works, review the *results* being produced by the contractor before delivery and, in general, obtain any information regarding compliance with the FWC and *order forms*. The contractor shall not pass on to the contracting authority any expenses incurred as a result of or in connection with these visits.
- I.16.2** If an amendment to the delivered reports is needed and requested by the contracting authority, the contracting authority can suspend the payment of the relevant *order form*, according to the General Conditions of this Contract, until the delivery of the amended reports takes place. Any additional costs required for the amendment of the reports need the prior approval of the contracting authority in order to be invoiced.
- I.16.3** The contracting authority reserves the right to amend at any time and for any reason a signed *order form* by notifying the changes to the contractor. In such a case, any additional costs that might occur for the completion of the amended task to be performed will need the prior approval of the contracting authority in order to be invoiced.

SIGNATURES

For the contractor,

[Company
name/forename/surname/position]

For the contracting authority,

Sorin Ducaru, Director of the European
Union Satellite Centre

Signature[s]: _____

Signature: _____

Done at [place], [date]

Done at Torrejón de Ardoz, [date]

In duplicate in English.

II. GENERAL CONDITIONS

II.1. DEFINITIONS

For the purpose of this FWC, the following definitions (indicated in *italics* in the text) apply:

‘Breach of obligations’: failure by the contractor to fulfil one or more of its contractual obligations.

‘Confidential information or document or proprietary information’: any information or document received by either party from the other or accessed by either party in the context of the *implementation of the FWC*, that any of the parties has identified in writing as confidential or proprietary. It may not include information that is publicly available;

‘Conflict of interest’: a situation where the impartial and objective *implementation of the FWC* by the contractor is compromised for reasons involving family, emotional life, political or national affinity, economic interest, any other direct or indirect personal interest, or any other shared interest with the contracting authority or any third party related to the subject matter of the FWC;

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

‘Force majeure’: any unforeseeable, exceptional situation or event beyond the control of the parties that prevents either of them from fulfilling any of their obligations under the FWC. The situation or event must not be attributable to error or negligence on the part of the parties or on the part of the subcontractors and must prove to be inevitable despite their exercising due diligence. Defaults of service, defects in equipment or material or delays in making them available, labour disputes, strikes and financial difficulties may not be invoked as *force majeure*, unless they stem directly from a relevant case of *force majeure*;

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

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

‘Grave professional misconduct’: a violation of applicable laws or regulations or ethical standards of the profession to which a contractor or a related person belongs, including any conduct leading to sexual or other exploitation or abuse, or any wrongful conduct of the

contractor or a related person which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence.

‘Implementation of the FWC’: the purchase of services envisaged in the FWC through the signature and *performance of specific contracts*;

‘Irregularity’: any infringement of a provision of applicable laws resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the SatCen’s budget.

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

‘Order form’: a simplified form of specific contract by which the contracting authority orders services under this FWC;

‘Performance of a specific contract’: the execution of tasks and delivery of the purchased services by the contractor to the contracting authority;

‘Personnel’: persons employed directly or indirectly or contracted by the contractor to implement the FWC;

‘Pre-existing material’: any material, document, technology or know-how which exists prior to the contractor using it for the production of a *result* in the *implementation of the FWC*;

‘Pre-existing right’: any industrial and intellectual property right on *pre-existing material*; it may consist in a right of ownership, a licence right and/or right of use belonging to the contractor, the *creator*, the contracting authority as well as to any other third parties;

‘Professional conflicting interest’: a situation in which the contractor’s previous or ongoing professional activities affect its capacity to implement the FWC or to perform a specific contract to an appropriate quality standard.

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

‘Request for services’: a document from the contracting authority requesting that the contractors in a multiple FWC with re-opening of competition provide a specific tender for services whose terms are not entirely defined under the FWC;

‘Result’: any intended outcome of the *implementation of the FWC*, whatever its form or nature. A *result* may be further defined in this FWC as a deliverable. A *result* may, in addition to newly created materials produced specifically for the contracting authority by the contractor or at its request, also include *pre-existing materials*;

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

II.2. ROLES AND RESPONSIBILITIES IN THE EVENT OF A JOINT TENDER

In the event of a joint tender submitted by a group of economic operators and where the group does not have legal personality or legal capacity, one member of the group is appointed as leader of the group.

II.3. SEVERABILITY

Each provision of this FWC is severable and distinct from the others. If a provision is or becomes illegal, invalid or unenforceable to any extent, it must be severed from the remainder of the FWC. This does not affect the legality, validity or enforceability of any other provisions of the FWC, which continue in full force and effect. The illegal, invalid or unenforceable provision must be replaced by a legal, valid and enforceable substitute provision which corresponds as closely as possible with the actual intent of the parties under the illegal, invalid or unenforceable provision. The replacement of such a provision must be made in accordance with Article II.11. The FWC must be interpreted as if it had contained the substitute provision as from its entry into force.

II.4. PROVISION OF SERVICES

- II.4.1** Signature of the FWC does not guarantee any actual purchase. The contracting authority is bound only by specific contracts implementing the FWC.
- II.4.2** The contractor must provide services of high quality 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. Where the SatCen has the right to make modifications to the *results*, they must be delivered in a format and with the necessary information which effectively allow such modifications to be made in a convenient manner.
- II.4.3** 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 European 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/EU¹, compliance with data protection obligations resulting from Regulation (EU) 2016/679² and Regulation (EU) 2018/1725³.

- II.4.4** The contractor must obtain any permit or licence required in the State where the services are to be provided.
- II.4.5** All periods specified in the FWC are calculated in calendar days, unless otherwise specified.
- II.4.6** The contractor must not present itself as a representative of the contracting authority and must inform third parties that it is not part of the European public service.
- II.4.7** The contractor is responsible for the *personnel* who carry out the services and exercises its authority over its *personnel* without interference by the contracting authority. The contractor must inform its *personnel* that:
- (a) they may not accept any direct instructions from the contracting authority; and
 - (b) their participation in providing the services does not result in any employment or contractual relationship with the contracting authority.
- II.4.8** The contractor must ensure that the *personnel* implementing the FWC and any future replacement personnel possess the professional qualifications and experience required to provide the services, as the case may be on the basis of the selection criteria set out in the tender specifications.
- II.4.9** At the contracting authority's reasoned request, the contractor must replace any member of *personnel* who:
- (a) does not have the expertise required to provide the services; or
 - (b) has caused disruption at the premises of the contracting authority.

The contractor bears the cost of replacing its *personnel* and is responsible for any delay in providing the services resulting from the replacement of *personnel*.

¹ OJ L 94 of 28.03.2014, p. 65

² Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, OJ L 119, 4.5.2016, p. 1, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.119.01.0001.01.ENG

³ Regulation (EU) 2018/1725 of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295/39, 21.11.2018, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1725&from=EN>

II.4.10 The contractor must record and report to the contracting authority any problem that affects its **ability** to provide the services. The report must describe the problem, state when it started and what action the contractor is taking to resolve it.

II.4.11 The *results* delivered by the contractor to the contracting authority must be in conformity in quantity, quality and price with the FWC and the relevant *specific contract*.

II.4.12 Remedy

The contractor must be liable to the contracting authority for any lack of conformity which exists at the time the *results* are delivered.

In case of lack of conformity, without prejudice to Article I.14 on Penalties for underperformance, to Article II.15 on liquidated damages and to Article II.16 on reduction in price, the contracting authority is entitled to have the *results* brought into conformity, free of charge, by repair or replacement.

Any repair or replacement must be completed within a reasonable time and without any significant inconvenience to the contracting authority, taking account of the nature of the purchase and the purpose for which it is required by the contracting authority.

The term 'free of charge' in paragraph (a) refers to the costs incurred to bring the *results* into conformity, particularly the cost of postage, labour and materials.

II.4.13 The contractor must immediately inform the contracting authority of any changes in the exclusion situations as declared, according to Article 137 (1) of Regulation (EU) 2018/1046.

II.5. COMMUNICATION BETWEEN THE PARTIES

II.5.1. Form and means of communication

Any communication of information, notices or documents under the FWC must:

- (a) be made in writing in paper or electronic format in the language of the contract;
- (b) bear the FWC number and, if applicable, the *specific contract* number;
- (c) be made using the relevant communication details set out in Article I.10; and

If a party requests written confirmation of an e-mail within a reasonable time, the other party must provide an original signed paper version of the communication as soon as possible.

The parties agree that any communication made by email has full legal effect and is admissible as evidence in judicial proceedings.

II.5.2. Date of communications by mail and email

Any communication is deemed to have been made when the receiving party receives it, unless this FWC contract refers to the date when the communication was sent.

E-mail is deemed to have been received by the receiving party on the day of dispatch of that e-mail, provided that it is sent to the e-mail address indicated in Article I.10. The sending party must be able to prove the date of dispatch. In the event that the sending party receives a non-delivery report, it must make every effort to ensure that the other party actually receives the communication by email or mail. In such a case, the sending party is not held in breach of its obligation to send such communication within a specified deadline.

Mail sent to the contracting authority is deemed to have been received by the contracting authority on the date on which the department or person responsible referred to in Article I.10 registers it.

Formal notifications are considered to have been received by the receiving party on the date of receipt indicated in the proof received by the sending party that the message was delivered to the specified recipient.

II.6. LIABILITY

- II.6.1** The contracting authority is not liable for any damage or loss caused by the contractor, including any damage or loss to third parties during or as a consequence of *implementation of the FWC*.
- II.6.2** If required by the relevant applicable legislation, the contractor must take out an insurance policy against risks and damage or loss relating to the *implementation of the FWC*. It must also take out supplementary insurance as reasonably required by standard practice in the industry. Upon request, the contractor must provide evidence of insurance coverage to the contracting authority.
- II.6.3** The contractor is liable for any loss or damage caused to the contracting authority during or as a consequence of *implementation of the FWC*, including in the event of subcontracting, but only up to an amount not exceeding three times the total amount of the relevant *specific contract*. However, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor or of its *personnel* or subcontractors, as well as in the case of an action brought against the contracting authority by a third party for breach of its intellectual property rights, the contractor is liable for the whole amount of the damage or loss.
- II.6.4** If a third party brings any action against the contracting authority in connection with the *implementation of the FWC*, including any action for alleged breach of intellectual property rights, the contractor must assist the contracting authority in the legal proceedings, including by intervening in support of the contracting authority upon request.

If the contracting authority's liability towards the third party is established and that such liability is caused by the contractor during or as a consequence of the *implementation of the FWC*, Article II.6.3 applies.

- II.6.5** 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*.
- II.6.6** The contracting authority is not liable for any loss or damage caused to the contractor during or as a consequence of *implementation of the FWC*, unless the loss or damage was caused by wilful misconduct or gross negligence of the contracting authority.

II.7. CONFLICT OF INTEREST AND PROFESSIONAL CONFLICTING INTERESTS

- II.7.1** The contractor must take all the necessary measures to prevent any situation of *conflict of interest* or *professional conflicting interest*.
- II.7.2** The contractor must *notify* the contracting authority in writing as soon as possible of any situation that could constitute a *conflict of interest* or a *professional conflicting interest* during the *implementation of the FWC*. The contractor must immediately take action to rectify the situation.

The contracting authority may do any of the following:

- (a) verify that the contractor's action is appropriate;
 - (b) require the contractor to take further action within a specified deadline;
 - (c) decide not to award a *specific contract* to the contractor.
- II.7.3** The contractor must pass on all the relevant obligations in writing to:
- (a) its *personnel*;
 - (b) any natural person with the power to represent it or take decisions on its behalf;
 - (c) third parties involved in the *implementation of the FWC*, including subcontractors.

The contractor must also ensure that the persons referred to above are not placed in a situation which could give rise to conflicts of interest.

II.8. CONFIDENTIALITY

- II.8.1.** The contracting authority and the contractor must treat with confidentiality any information or documents, in any format, disclosed in writing or orally, relating to the *implementation of the FWC* and identified in writing as "confidential" or "proprietary information".
- II.8.2.** Each party must:

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

II.8.3 The confidentiality obligations set out in this Article are 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 receiving party from the confidentiality obligation earlier;
- (b) the *confidential information or documents or proprietary information* 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 or proprietary information*.

II.8.4 The contractor must 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* a commitment that they will comply with this Article. At the request of the contracting authority, the contractor must provide a document providing evidence of this commitment.

II.9. PROCESSING OF PERSONAL DATA

II.9.1 Processing of personal data by the contracting authority

Any personal data included in or relating to the FWC, including its *implementation*, shall be processed in accordance with Regulation (EU) 2018/1725. Such data shall be processed solely for the purposes of the *implementation*, management and monitoring of the FWC by the data controller.

The contractor or any other person whose personal data is processed by the data controller in relation to this FWC has specific rights as a data subject under Chapter III (Articles 14-25) of Regulation (EU) 2018/1725, in particular the right to access, rectify or erase their personal data and the right to restrict or, where applicable, the right to object to processing or the right to data portability.

Should the contractor or any other person whose personal data is processed in relation to this FWC have any queries concerning the processing of its personal data, it shall address itself to the data controller. They may also address themselves to the Data Protection Officer of the data controller. They have the right to lodge a complaint at any time to the European Data Protection Supervisor.

Details concerning the processing of personal data are available in the data protection notice referred to in Article I.10.

II.9.2 Processing of personal data by the contractor

The processing of personal data by the contractor shall meet the requirements of Regulation (EU) 2018/1725 and be processed solely for the purposes set out by the controller.

The contractor shall assist the controller for the fulfilment of the controller's obligation to respond to requests for exercising rights of person whose personal data is processed in relation to this FWC as laid down in Chapter III (Articles 14-25) of Regulation (EU) 2018/1725. The contractor shall inform without delay the controller about such requests.

The contractor may act only on documented written instructions and under the supervision of the controller, in particular with regard to the purposes of the processing, the categories of data that may be processed, the recipients of the data and the means by which the data subject may exercise its rights.

The contractor shall grant personnel access to the data to the extent strictly necessary for the *implementation*, management and monitoring of the FWC. The contractor must ensure that personnel authorised to process personal data has committed itself to confidentiality or is under appropriate statutory obligation of confidentiality.

The contractor shall adopt appropriate technical and organisational security measures, giving due regard to the risks inherent in the processing and to the nature, scope, context and purposes of processing, in order to ensure, in particular, as appropriate:

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

The contractor shall notify relevant personal data breaches to the controller without undue delay and at the latest within 48 hours after the contractor becomes aware of the breach. In such cases, the contractor shall provide the controller with at least the following information:

- (a) nature of the personal data breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
- (b) likely consequences of the breach;
- (c) measures taken or proposed to be taken to address the breach, including, where appropriate, measures to mitigate its possible adverse effects.

The contractor shall immediately inform the data controller if, in its opinion, an instruction infringes Regulation (EU) 2018/1725, Regulation (EU) 2016/679, or other data protection provisions as referred to in the tender specifications.

The contractor shall assist the controller for the fulfilment of its obligations pursuant to Article 33 to 41 under Regulation (EU) 2018/1725 to:

- (a) ensure compliance with its data protection obligations regarding the security of the processing, and the confidentiality of electronic communications and directories of users;
- (b) notify a personal data breach to the European Data Protection Supervisor;
- (c) communicate a personal data breach without undue delay to the data subject, where applicable;
- (d) carry out data protection impact assessments and prior consultations as necessary.

The contractor shall maintain a record of all data processing operations carried on behalf of the controller, transfers of personal data, security breaches, responses to requests for exercising rights of people whose personal data is processed and requests for access to personal data by third parties.

The contracting authority is subject to Protocol 7 of the Treaty on the Functioning of the European Union on the privileges and immunities of the European Union, particularly as regards the inviolability of archives (including the physical location of data and services) and data security, which includes personal data held on behalf of the contracting authority in the premises of the contractor or subcontractor.

The contractor shall notify the contracting authority without delay of any legally binding request for disclosure of the personal data processed on behalf of the contracting authority made by any national public authority, including an authority from a third country. The contractor may not give such access without the prior written authorisation of the contracting authority.

The duration of processing of personal data by the contractor will not exceed the period referred to in Article II.22.2. Upon expiry of this period, the contractor shall, at the choice of the controller, return, without any undue delay in a commonly agreed format, all personal

data processed on behalf of the controller and the copies thereof or shall effectively delete all personal data unless European Union or national law requires a longer storage of personal data.

For the purpose of Article II.10, if part or all of the processing of personal data is subcontracted to a third party, the contractor shall pass on the obligations referred to in Article II.9.2 in writing to those parties, including subcontractors. At the request of the contracting authority, the contractor shall provide a document providing evidence of this commitment.

II.10. SUBCONTRACTING

- II.10.1** The contractor must not subcontract and have the FWC implemented by third parties beyond the third parties already mentioned in its tender without prior written authorisation from the contracting authority.
- II.10.2** Even if the contracting authority authorises subcontracting, the contractor remains bound by its contractual obligations and is solely responsible for the *implementation of the FWC*.
- II.10.3** The contractor must ensure that the subcontract does not affect the rights of the contracting authority under this FWC, particularly those under Articles II.8, II.13 and II.22.
- II.10.4** 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.18.1.

II.11. AMENDMENTS

- II.11.1** Any amendment to the FWC or a *specific contract* must be made in writing before all contractual obligations have been fulfilled. A *specific contract* does not constitute an amendment to the FWC.
- II.11.2** Any amendment must not make changes to the FWC or a *specific contract* that might alter the initial conditions of the procurement procedure or result in unequal treatment of tenderers or contractors.

II.12. ASSIGNMENT

- II.12.1** The contractor must not assign any of the rights and obligations arising from the FWC, including claims for payments or factoring, without prior written authorisation from the contracting authority. In such cases, the contractor must provide the contracting authority with the identity of the intended assignee.
- II.12.2** Any right or obligation assigned by the contractor without authorisation is not enforceable against the contracting authority.

II.13. INTELLECTUAL PROPERTY RIGHTS

II.13.1. Ownership of the rights in the results

The Satcen acquires irrevocably worldwide ownership of the *results* and of all intellectual property rights on the newly created materials produced specifically for the SatCen under the FWC and incorporated in the *results*, without prejudice however to the rules applying to *pre-existing rights on pre-existing materials*, as per Article II.13.2.

The intellectual property rights so acquired include any rights, such as copyright and other intellectual or industrial property rights, to any of the *results* and in all technological solutions and information created or produced by the contractor or by its subcontractor in *implementation of the FWC*. The contracting authority may exploit and use the acquired rights as stipulated in this FWC. The SatCen acquires all the rights as from the moment the contractor has created the *results*.

The payment of the price includes any fees payable to the contractor about the acquisition of ownership of rights by the SatCen including for all modes of exploitation and of use of the *results*.

II.13.2. Licensing rights on pre-existing materials

Unless provided otherwise in the special conditions, the SatCen does not acquire ownership of *pre-existing rights* under this FWC.

The contractor licenses the *pre-existing rights* on a royalty-free, non-exclusive and irrevocable basis to the SatCen, which may use the *pre-existing materials* for all the modes of exploitation set out in this FWC or in *specific contracts*. Unless otherwise agreed, the licence is non-transferable and cannot be sub-licensed, except as provided hereafter:

(a) the *pre-existing rights* can be sub-licensed by the contracting authority to persons and entities working for it or cooperating with it, including contractors and subcontractors, whether legal or natural persons, but only for the purpose of their mission for the SatCen;

(b) if the *result* is a "document" such as a report or a study, and it is meant to be published, the existence of *pre-existing materials* in the *result* may not prevent the publication of the document, its translation or its "reuse", it being understood however that the "reuse" may only be made of the *result* as a whole and not of the *pre-existing materials* taken separately from the *result*; for the sake of this provision, "reuse" and "document" have the meaning given by the Commission Decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU).

All *pre-existing rights* are licensed to the SatCen from the moment the *results* are delivered and approved by the contracting authority.

The licensing of *pre-existing rights* to the SatCen under this FWC covers all territories worldwide and is valid for the duration of intellectual property rights protection.

The payment of the price as set out in the *specific contracts* is deemed to also include any fees payable to the contractor in relation to the licensing of *pre-existing rights* to the SatCen, 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.13.3. Exclusive rights

The SatCen 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 also includes the communication on Internet 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-utilization 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:
- (i) the right to authorise the reuse of the documents in conformity with the Commission Decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU), to the extent it is applicable and the documents fall within its scope and are not excluded by any of its provisions; for the sake of this provision, "reuse" and "document" have the meaning given to them by this Decision;
 - (ii) the right to store and archive the *results* in line with the document management rules applicable to the contracting authority, including digitisation or converting the format for preservation or new use purposes;
- (l) where the *results* are or incorporate software, including source code, object code and, where relevant, documentation, preparatory materials and manuals, in addition to the other rights mentioned in this Article:
- (i) end-user rights, for all uses by the SatCen or by subcontractors which result from this FWC and from the intention of the parties;
 - (ii) the rights to receive both the source code and the object code;
- (m) the right to license to third parties any of the exclusive rights or of the modes of exploitation set out in this FWC; however, for *pre-existing materials* which are only licensed to the SatCen, the right to sub-license does not apply, except in the two cases foreseen by Article II.13.2.;
- (n) 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 SatCen on all parts of the *results*, be it via a transfer of ownership of the rights, on those parts which were specifically created by the contractor, or via a licence of the pre-existing rights, on those parts 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.13.4. Identification of pre-existing rights

When delivering the *results*, the contractor must warrant that, for any use that the contracting authority may envisage within the limits set in this FWC, the newly created parts and the *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.

To that effect, the contractor must establish a list of all *pre-existing rights* to the *results* of this FWC or parts thereof, including identification of the rights' owners. 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.

II.13.5. Evidence of granting of pre-existing rights

Upon request by the contracting authority, the contractor must, in addition to the list mentioned under Article II.13.4., provide evidence that it has the ownership or the right to use all the listed *pre-existing rights*, except for the rights owned or licensed by the SatCen. The contracting authority may request this evidence even after the end of this FWC.

This provision also applies to image rights and sound recordings.

This evidence may refer, for example, to rights to: parts of other documents, images, graphs, sounds, music, tables, data, software, technical inventions, know-how, IT development tools, routines, subroutines or other programs ('background technology'), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin.

This evidence must 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 if it is found that it does not hold the necessary rights, regardless of when and by whom this fact is 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.13.6. Quotation of works in the result

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

II.13.7. Moral rights of creators

By delivering the *results*, the contractor warrants that the *creators* will not object to the following on the basis of their moral rights under copyright:

- (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.

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

II.13.8. Image rights and sound recordings

If natural persons appear in a *result* or their voice or any other private element is recorded in a recognisable manner, the contractor must obtain a statement by these persons (or, in the case of minors, by the persons exercising parental authority) giving their permission for the described use of their image, voice or private element and, on request, submit a copy of the permission to the contracting authority. The contractor must take the necessary measures to obtain such consent in accordance with the applicable legal provisions.

II.13.9. Copyright notice for pre-existing rights

When the contractor retains *pre-existing rights* on parts of the *results*, reference must be inserted to that effect when the *result* is used as set out in Article I.12.1, with the following disclaimer: '© — year — SatCen. All rights reserved. Certain parts are licensed under conditions to the SatCen', 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.14. FORCE MAJEURE

II.14.1 If a party is affected by *force majeure*, it must immediately *notify* the other party, stating the nature of the circumstances, their likely duration and foreseeable effects.

II.14.2 A party is not liable for any delay or failure to perform its obligations under the FWC if that delay or failure is a *result of force majeure*. If the contractor is unable to fulfil its contractual obligations owing to *force majeure*, it has the right to remuneration only for the services actually provided.

II.14.3 The parties must take all necessary measures to limit any damage due to *force majeure*.

II.15. LIQUIDATED DAMAGES

II.15.1. Delay in delivery

If the contractor fails to perform its contractual obligations within the applicable time limits set out in this FWC, the contracting authority may claim liquidated damages for each day of delay using the following formula:

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

where:

V is the price of the relevant purchase or deliverable or *result*;

d is the duration specified in the relevant *specific contract* for delivery of the relevant purchase or deliverable or *result*, expressed in days.

Liquidated damages may be imposed together with a reduction in price under the conditions laid down in Article II.16.

II.15.2. Procedure

The contracting authority must *formally notify* the contractor of its intention to apply liquidated damages and the corresponding calculated amount.

The contractor has 30 days following the date of receipt to submit observations. Failing that, the decision becomes enforceable the day after the time limit for submitting observations has elapsed.

If the contractor submits observations, the contracting authority, taking into account the relevant observations, must *notify* the contractor:

(a) of the withdrawal of its intention to apply liquidated damages; or

(b) of its final decision to apply liquidated damages and the corresponding amount.

II.15.3. Nature of liquidated damages

The parties expressly acknowledge and agree that any amount payable under this Article is not a penalty and represents a reasonable estimate of fair compensation for the damage incurred due to failure to provide the services within the applicable time limits set out in this FWC.

II.15.4. Claims and liability

Any claim for liquidated damages does not affect the contractor's actual or potential liability or the contracting authority's rights under Article II.18.

II.16. REDUCTION IN PRICE

II.16.1. 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 as defined in Article I.8 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.15.

II.16.2. 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.16.3. 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.18.

II.17. SUSPENSION OF THE IMPLEMENTATION OF THE FWC

II.17.1. Suspension by the contractor

If the contractor is affected by *force majeure*, it may suspend the provision of the services under a *specific contract*.

The contractor must immediately *notify* the contracting authority of the suspension. The *notification* must include a description of the *force majeure* and state when the contractor expects to resume the provision of services.

The contractor must *notify* the contracting authority as soon as it is able to resume *performance of the specific contract*, unless the contracting authority has already terminated the FWC or the *specific contract*.

II.17.2. Suspension by the contracting authority

The contracting authority may suspend the *implementation of the FWC* or *performance of a specific contract* or any part of it:

- (a) if the procedure for awarding the FWC or a *specific contract* or the *implementation of the FWC* proves to have been subject to *irregularities, fraud or breach of obligations*;
- (b) in order to verify whether the presumed *irregularities, fraud or breach of obligations* have actually occurred.

The contracting authority must *formally notify* the contractor of the suspension and the reasons for it. Suspension takes effect on the date of *formal notification*, or at a later date if the *formal notification* so provides.

The contracting authority must *notify* the contractor as soon as the verification is completed whether:

- (a) it is lifting the suspension; or
- (b) it intends to terminate the FWC or a *specific contract* under Article II.18.1(f) or (j).

The contractor is not entitled to compensation for suspension of any part of the FWC or a *specific contract*.

The contracting authority may in addition suspend the time allowed for payments in accordance with Article II.20.5.

II.18. TERMINATION OF THE FWC

II.18.1. Grounds for termination by the contracting authority

The contracting authority may terminate the FWC or any on-going *specific contract* in the following circumstances:

- (a) if provision of the services under an on-going *specific contract* has not actually started within 15 days of the scheduled date and the contracting authority considers that the new date proposed, if any, is 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 136(1) of the Financial Regulation⁴;
- (e) if the contractor or any *related person* is in one of the situations provided for in points (c) to (h) of Article 136(1) or to Article 136(2) of the Financial Regulation;
- (f) if the procedure for awarding the FWC or the *implementation of the FWC* prove to have been subject to *irregularities, fraud or breach of obligations*;
- (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 or a change regarding the exclusion situations listed in Article 136 of Regulation (EU) 2018/1046 that calls into question the decision to award the contract;
- (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;

⁴ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, OJ L 193 of 30.7.2018, p.1 <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1544791836334&uri=CELEX:32018R1046>

- (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;
- (m) if the contractor is in breach of the data protection obligations resulting from Article II.9.2;
- (n) if the contractor does not comply with the applicable data protection obligations resulting from Regulation (EU) 2016/679.

II.18.2. Grounds for termination by the contractor

The contractor may terminate the FWC or any on-going *specific contract* if 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.18.3. 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 or will take 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) to (n) of Article II.18.1 and in Article II.18.2, 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.18.1, 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.18.4. 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 additional cost of appointing and contracting another contractor to provide or complete the services, except if the damage is a result of a termination in accordance with Article II.18.1(j), (k) or (l) or Article II.18.2. 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.18.2.

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), (g), (m) and (n) of Article II.18.1, under the conditions set out in Article II.11.2.

II.19. INVOICES AND VALUE ADDED TAX

II.19.1 Invoices must be in euro and contain the contractor's (or leader's in the case of a joint tender) identification data, the amount and the date, as well as the FWC reference and reference to the *specific contract*.

The contracting authority is exempt from all taxes and duties, including VAT, in accordance with Article 13 of Council Decision 2014/401/CFSP, of 26 June 2014, on the European Union Satellite Centre, which are set out in Protocol 7 of the Treaty on the Functioning of the European Union on the privileges and immunities of the European Union.

Accordingly, the contractor (or leader in the case of a joint tender) must complete the necessary formalities with the relevant authorities to ensure that the supplies and services required for *implementation of the FWC* are exempt from taxes and duties, including VAT.

II.20. PAYMENTS

II.20.1. Date of payment

The date of payment is deemed to be the date on which the contracting authority's account is debited.

II.20.2. Currency

Payments are made in euros, unless another currency is provided for in Article I.8.

II.20.3. Conversion

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

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

http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm

II.20.4. Costs of transfer

The costs of the transfer are borne as follows:

- (a) the contracting authority bears the costs of dispatch charged by its bank;
- (b) the contractor bears the costs of receipt charged by its bank;
- (c) the party causing repetition of the transfer bears the costs for repeated transfer.

II.20.5. Suspension of the time allowed for payment

The contracting authority may suspend the payment periods specified in Article I.8 at any time by *notifying* the contractor (or leader in the case of a joint tender) that its invoice cannot be processed. The reasons the contracting authority may cite for not being able to process an invoice are:

- (a) because it does not comply with the FWC;
- (b) because the contractor has not produced the appropriate documents or deliverables;
or
- (c) because the contracting authority has observations on the documents or deliverables submitted with the invoice.

The contracting authority must *notify* the contractor (or leader in the case of joint tender) as soon as possible of any such suspension, giving the reasons for it. In cases b) and c) referred above, the contracting authority shall notify the contractor (or leader in case of a joint tender) the time limits to submit additional information or corrections or a new version of the documents or deliverables if the contracting authority requires it.

Suspension takes effect on the date the contracting authority sends the *notification*. The remaining payment period resumes 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 (or leader in the case of a joint tender) 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 of this Article and the new document produced is also rejected, the contracting authority reserves the right to terminate the *specific contract* in accordance with Article II.18.1(c).

II.20.6. Interest on late payment

On expiry of the payment periods specified in Article I.8, the contractor (or leader in the case of a joint tender) 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 is the rate in force, as published in the C series of the *Official Journal of the European Union*, on the first day of the month in which the payment period ends.

Suspension of the payment period as provided for in Article II.20.5 is not considered as giving rise to late payment.

Interest on late payment covers the period running from the day following the due date for payment up to and including the date of payment as defined in Article II.20.1.

However, when the calculated interest is EUR 200 or less, it must be paid to the contractor (or leader in the case of a joint tender) only if it requests it within two months of receiving late payment.

II.21. RECOVERY

II.22.1 If an amount is to be recovered under the terms of the FWC, the contractor must repay the contracting authority the amount in question.

II.21.2. Recovery procedure

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.

If the contractor does not pay by the due date, the contracting authority may, after informing the contractor in writing, recover the amounts due:

- (a) by offsetting them against any amounts owed to the contractor by the SatCen;
- (b) by calling in a financial guarantee if the contractor has submitted one to the contracting authority;
- (c) by taking legal action.

II.21.3. Interest on late payment

If the contractor does not honour the obligation to pay the amount due by the date set by the contracting authority in the debit note, the amount due bears interest at the rate indicated in Article II.20.6. Interest on late payments will cover the period starting on the day after the due date for payment and ending on the date when the contracting authority receives the full amount owed.

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

II.21.4. Recovery rules in the case of joint tender

If the contract is signed by a group (joint tender), the group is jointly and severally liable under the conditions set out in Article II.6 (liability). The contracting authority shall send the debit note first to the leader of the group.

If the leader does not pay by the due date the whole amount, and if the amount due cannot be offset or can only be offset partially in accordance with Article II.21.2 (a), then the contracting authority may claim the amount still due to any other member or members of the group by respectively *notifying* them with a debit note in conformity with the provisions laid down in Article II.21.2.

II.22. CHECKS AND AUDITS

- II.22.1** The contracting authority may check or perform 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.
- II.22.2** Such checks and audits may be initiated during the performance of the FWC and during a period of five years which starts running from the date of expiry of the FWC.

- II.22.3** 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.22.4** 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 form.
- II.22.5** The contractor and its sub-contractors shall keep all original documents stored on any appropriate support or format, 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 from the date of expiry of the FWC.
- II.22.6** All products and original documents relating to the FWC and/or the provision of the services under the FWC must be either destroyed or returned to the contracting authority after five years from the date of expiry of the FWC.
- II.22.7** In accordance with the contracting authority's Financial Regulation, the SatCen's College of Auditors shall be entitled upon reasonable notice to access, inspect and audit the records held by the contractor in connection with the performance of the FWC up to five years after the last payment is made to the contractor by the contracting authority. The contracting authority or an outside body of its choice shall have the same rights as the SatCen's College of Auditors for the purpose of access, inspection and audit of the records.
- II.22.8** 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 thirty (30) days following the date of receipt to submit observations. The final report shall be sent to the contractor within sixty (60) days following the expiry of that deadline. On the basis of the final audit findings, the contracting authority may recover all or part of the payments made and may take any other measures which it considers necessary.

II.23. USE, DISTRIBUTION AND PUBLICATION OF INFORMATION ABOUT THE FWC

- II.23.1** The contractor shall authorise the SatCen to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever support or format, any data contained in or relating to the FWC, in particular the identity of the contractor, the subject matter, the duration, and the amount paid. Where personal data is concerned, Article II.9 shall apply.
- II.23.2** Unless otherwise provided, the SatCen shall not be required to distribute or publish documents or information supplied in performance of the FWC. If it decides not to

distribute or publish the documents or information supplied, the contractor may not have them distributed or published elsewhere without prior written authorisation from the SatCen.

II.23.3 Any distribution or publication of information relating to the FWC and the *implementation* thereof shall require prior written authorisation from the SatCen and, if so requested, shall mention that it was produced within a contract with the SatCen and financed by the SatCen. It shall state that the opinions expressed are those of the contractor only and do not represent the SatCen's official position.

II.23.4 The use of information obtained by the contractor in the course of the FWC for purposes other than its performance shall be forbidden, unless the SatCen has specifically given prior written authorisation to the contrary.

SIGNATURES

For the contractor,

[Company
name/forename/surname/position]

For the contracting authority,

Sorin Ducaru, Director of the European
Union Satellite Centre

Signature[s]: _____

Signature: _____

Done at [place], [date]

Done at Torrejón de Ardoz, [date]

In duplicate in English.



EUROPEAN UNION SATELLITE CENTRE

REFERENCE: SATCEN-RP-02/20

ANNEX I
TENDER SPECIFICATIONS



EUROPEAN UNION SATELLITE CENTRE

REFERENCE: SATCEN-RP-02/20

ANNEX II

CONTRACTOR'S TENDER

ANNEX III

ORDER FORM TEMPLATE

Information	
Request Number:	
Submission Date:	
From:	European Union Satellite Centre <Point of Contact>; <E-mail>; <Phone Number>
To:	Provider <Point of Contact>; <E-mail>; <Phone Number>
Deadline:	
Analytical Report Type requested	<input type="checkbox"/> Full <input type="checkbox"/> Short
StoryMaps:	<input type="checkbox"/> YES <input type="checkbox"/> NO
On-the-ground polling	<input type="checkbox"/> YES <input type="checkbox"/> NO

Location Information	
Country(-ies) Name(s):	
Area Of Interest:	<Shapefile> or <KML>
Key Information Requirements	

Product Reply	
Acceptance:	<input type="checkbox"/> Accepted <input type="checkbox"/> Rejected
Price:	
Time	<Number of working days>
Delivery date	<Exact delivery date taking into account the previous working days.>
Personnel:	<Number of geospatial analysts assigned to accomplish this Product> <Name and Surname of the people assigned to the task and dedication effort per person>
Additional comments:	

This order form shall enter into force on the date on which it is signed by the contracting authority (see below).

The duration of the execution of this task shall not exceed the delivery date indicated in the previous page, although it may be extended, only with the express written agreement of the parties before such period elapses.

This order form may be subject to variations if SatCen will consider appropriate for the better execution of the task. In that case, SatCen will inform the contractor accordingly and discuss with all parties the actions to be taken, as well as the re-definition of the delivery date (if necessary).

Payments shall be made in line with Articles I.8 and II.20 of the FWC. The payment shall be deemed to have been effected on the day SatCen financial account is debited.

SIGNATURES	
For the contractor,	For the contracting authority,
Signature: _____	Signature: _____
Done at [_____]	Done at [_____]



Date []	Date []
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