

ANNEX III

DRAFT / MODEL SERVICE CONTRACT

INVITATION TO TENDER No AO/014/20

**Provision of services for the Collection of National Key Enforcement
Judgments related to IPR for the European Union Intellectual Property Office**

Contract 1120XXXXXX

The European Union Intellectual Property Office (the Office), with tax identification number V-03965324, and with its seat at Avenida de Europa, 4, 03008 Alicante, Spain, which is represented for the purpose of signing this Contract by **Title Forename Surname, Position,**

and

Official name

Legal form

Address

VAT registration number

For joint tenders without legal capacity, please add all the members submitting the joint tender and identify the leader of the joint tender.

([collectively]** the Contractor),** represented for the purpose of signing this Contract by **Title Forename Surname, Function,**

HAVE AGREED

the **Special Conditions (Part I)**, the **General Terms and Conditions (GTC) (Part II)** and the **Signatures (Part III)** below and the following Annexes, which form an integral part of this Contract.

Annex I	Tender and Technical Specifications (Annexes I and II to the procurement documents) including questions, replies and clarifications published during the tendering stage.
Annex II	Contractor's tender (technical and financial offers) (No XX of date), including all the Contractor's replies to the clarification requests made by the Office during the evaluation of the tenders.
Annex III	Legal entity and financial identification form.
[Annex ...	Declaration on Spanish legislation on health and safety at work if the services will be performed on Spanish territory.]
[Annex ...	Written undertaking agreement (for consortiums without legal capacity).]

- The terms set out in the Special Conditions take precedence over those in the other parts of the Contract.
- The terms set out in the Tender Specifications (Annex I) take precedence over those in the Contractor's tender (Annex II).

Subject to the above, the various instruments forming part of this Contract are to be taken as mutually explanatory. Ambiguities or discrepancies within or between the parts must be explained or rectified by a written instruction from the Office.

PREAMBLE

On **date** the Office published a call for tenders in the *Official Journal of the European Union*, under reference **20XXX/S XXX-XXXXX** of **XXXXXXX20XX** for the provision of services for the Collection of National Key Enforcement Judgments related to IPR.

PART I — SPECIAL CONDITIONS

ARTICLE I.1 — SUBJECT

- I.1.1. The subject of the Contract is the provision of services for the Collection of National Key Enforcement Judgments related to IPR.
- I.1.2. The products and services covered by this Contract are listed in Annex I.

ARTICLE I.2 — ENTRY INTO FORCE AND DURATION

- I.2.1 The Contract will enter into force on **[date][the date on which it is signed by the last Party]**.
- I.2.2 The implementation of the Contract cannot start before its entry into force. Under no circumstances may performance commence before the date on which the Contract enters into force.
- I.2.3 The Contract is concluded for **4 years** with effect from the date on which it enters into force.
- I.2.4 The expenditure under this Contract will be divided over 4 budget years, from year 2020 to year 2024. The validity of this Contract relies on the availability of funds corresponding to each budget year concerned, without any liability for the Office.

ARTICLE I.3 — PRICES

- I.3.1 The price payable under this Contract, excluding price revision is EUR **XXX**.
- I.3.2 Price revision is determined by the conditions and the formula set out in Article II.20.3.
- I.3.3 Benchmarking is not applicable to this Contract.

ARTICLE I.4 — PAYMENT PERIODS

- I.4.1 Payments under the Contract will be made in accordance with Article II.21. Payments will be made only if the Contractor has fulfilled all its contractual obligations by the date on which the invoice is submitted.

I.4.2 **Payment of the entire amount**

This Contract does not allow for the single payment of the entire amount.

I.4.3 **Pre-financing**

This Contract does not allow pre-financing.

I.4.4 Interim payments and payment of the balance

The Contractor must submit an invoice for each interim payment and for the balance in accordance with the payment scheme and conditions referred to in the Contract, and in line with following table:

Invoice for payment	Corresponding to
Interim payment 1 (year 1)	10% of deliverable Year 1
Interim payment 2 (year 1)	90% of deliverable Year 1
Interim payment 3 (year 2)	100% of deliverable Year 2
Interim payment 4 (year 3)	100% of deliverable Year 3
Payment of the balance (year 4)	100% of deliverable Year 4

The Office will make the payment within 30 days of receipt of the respective invoice.

ARTICLE I.5 — IMPLEMENTATION OF THE CONTRACT

The performance of the tasks will start on the date the Contract is duly signed by the last Contracting Party, unless a different date is indicated in Annex I or by the Office.

ARTICLE I.6 — GUARANTEES

The present contract is not subject to guarantees.

ARTICLE I.7 — BANK ACCOUNT

Payments will be made in euro to the Contractor's bank account identified in the Contractor's legal entity and financial identification form in Annex III.

Name of the bank: *Complete*

Full account number including bank codes: *Complete*

IBAN code: *Complete*

ARTICLE I.8 — COMMUNICATION DETAILS

In accordance with Article II.8, any communication relating to the Contract must be made in writing and must bear the Contract number. Correspondence must be sent to the following addresses:

Office:

Title Forename Surname

European Union Intellectual Property Office

Avenida de Europa, 4

03008 Alicante

Spain

Email

Invoices sent by post must be sent to the address provided in Article II.21.7.

Contractor ⁽¹⁾:

Title Forename Surname

Function

Tenderer's name

Contact address in full

Email

ARTICLE I.9 — DATA PROTECTION

I.9.1 Processing of personal data by the Office

For the purposes of Article II.12.1,

- (a) the data controller is the Director of the Observatory
- (b) the data protection notice is available at:
<https://euipo.europa.eu/ohimportal/en/data-protection>.

I.9.2 Processing of personal data by the Contractor

For the purposes of Article II.12.2,

- (a) the subject matter and purpose of the processing of personal data by the Contractor is the provision of services for the Collection of National Key Enforcement Judgments related to IPR;
- (b) the Contractor will be responsible for anonymising personal data when required by the national legislation of a particular Member State, including company data when applicable;
- (c) the localisation of, and access to, the personal data processed by the Contractor must comply with the following ⁽²⁾:
 - i. personal data must only be processed within the territory of the European Union and the European Economic Area and will not leave that territory;

⁽¹⁾ Person indicated as contact point in the Legal Entity and Financial identification form.

- ii. the data must only be held in data centres located within the territory of the European Union and the European Economic Area;
- iii. No access will be given to this data outside of the European Union and the European Economic Area.
- iv. the Contractor may not change the location of the data processing without the Office's prior written authorisation;
- v. any transfer of personal data under the Contract to third countries or international organisations must fully comply with the requirements laid down in Chapter V of Regulation (EU) 2018/1725⁽³⁾.

ARTICLE I.10 — EXPLOITATION OF THE RESULTS OF THE CONTRACT

I.10.1 Detailed list of modes of exploitation of the results

In accordance with Article II.29, whereby the Office acquires ownership of the results as defined in this Contract, including its Annex I, these results may be used for any of the following modes of exploitation:

- (a) use for its own purposes:
 - making them available to the Office's staff;
 - making them available to the persons and entities working for the Office or cooperating with it, including contractors and subcontractors, whether legal or natural persons;
 - making them available to the other European Union institutions, agencies and bodies or Member States' institutions;
 - installing, uploading, processing them;
 - arranging, compiling, combining or retrieving them;
 - copying or reproducing them wholly or in part and in an 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 indices, such as via 'open access' or 'open data' portals, or similar repositories, whether freely accessible or accessible only on subscription;

⁽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>

- (e) modifications by the Office or by a third party in the Office's name, including:
- shortening;
 - summarising;
 - modifying the content or 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 on the result (e.g. source code) with a view to making modifications;
 - addition of new elements, paragraphs, titles, leads, bolds, legends, table of content, summary, graphics, subtitles, sound;
 - addition of metadata, for text and data-mining purposes, addition of right-management information or 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:
 - English, French, German, Italian and Spanish;
 - all official EU languages;
 - languages used within the EU;
 - 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 that this does not apply to pre-existing rights and pre-existing materials, if they are only licensed to the Office, except as provided for by Article II.29.2;
- (g) other adaptations which the Parties may later agree on, in which case the following rules will apply: the Office must consult the Contractor. If necessary, the Contractor must, in turn, seek the agreement of any creator or other rights holder and must reply to the Office within 1 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 their honour or reputation, thereby violating their moral rights.

The list above is in addition to whatever rights already accrue to the Office based on existing exceptions in the applicable legislation, such as the copyright exception to ensure the proper performance or reporting of administrative proceedings, in cases where these exceptions apply.

I.10.2 Licence or transfer of pre-existing rights

All pre-existing rights incorporated in the results, if any, are licensed to the Office as set out in Article II.29.2.

I.10.3 Provision of list of pre-existing rights and documentary evidence

The Contractor must provide the Office with a list of **pre-existing rights** as set out in Article II.29.4 together with the invoice for payment of the balance at the latest.

In addition, if requested by the Office, the Contractor must provide the Office with relevant and exhaustive evidence of the acquisition of all the necessary **pre-existing rights** together with a presentation of the relevant result(s).

ARTICLE I.11 — APPLICABLE LAW AND SETTLEMENT OF DISPUTES

I.11.1 The Contract is governed by the law of the European Union, supplemented, if necessary, by Spanish law.

I.11.2 Any dispute resulting from the interpretation, application or validity of the Contract which cannot be settled amicably between the Parties, will be brought before the Court of Justice of the European Union pursuant to Article 145(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark.

I.11.3 By signing the Contract, the Contractor undertakes to abide by the GTC and to accept that, in the event of any discrepancy with the Contractor's own established terms and conditions of sale, supply or work, the Office's GTC will prevail.

ARTICLE I.12 — TERMINATION BY EITHER PARTY

In addition to the cases set out in Article II.19, either Party may terminate the Contract by sending a formal notification to the other Party giving 3 months' written notice.

If the Contract is terminated on the basis of this Article, neither Party is entitled to compensation and the Contractor is entitled to payment only for the services provided before termination takes effect.

ARTICLE I.13 — COMMUNICATIONS VIA E-PRIOR

I.1X.1 The Parties agree to exchange the following documents via e-PRIOR in line with Article II.8 of the GTC:

- invoices

I.1X.2 The Parties must inform each other about any technical issue with e-PRIOR causing a delay in submitting or receiving documents. In those cases, the Parties may agree to wait until the problem is solved or to exchange documents through the addresses set out in Article I.8.

PART II — GENERAL TERMS AND CONDITIONS

(see separate document)

PART III — SIGNATURES

For the Contractor,
Forename Surname, Function

Signature(s): _____

Done at, on XX Month Year in duplicate in [English].

For the Office,
Forename Surname, Function

Signature(s): _____

Done at Alicante, on XX Month Year in duplicate in [English].