

MODEL SECONDARY CONTRACT

TRA/EU19/2019

SECONDARY CONTRACT [Ranking=02, 03, 04, 05]/Lot [Lot N°]/[Target language code]

BETWEEN

the European Union, represented by the European Parliament,
located at Plateau de Kirchberg, L-2929 Luxembourg,
acting as Contracting Authority on behalf of the Authorising Authorities:

- the European Parliament;
- the European Court of Auditors;
- the European Economic and Social Committee; and
- the European Committee of the Regions,

represented, as regards the signing of this contract,
by Mr Jochen RICHTER, Directorate-General for Translation, Directorate A - Support and
Technological Services for Translation, the Director,
hereinafter referred to as *'the Contracting Authority'*,

of the one part,

AND

..... domiciled at / the registered office of which is located at¹
.....
represented by,
acting in his/her capacity as,
hereinafter referred to as *'the Contractor'*,²

of the other part,

hereinafter referred to jointly as *'the parties'*,

HAVE AGREED THE FOLLOWING

Specific Terms and Conditions and General Terms and Conditions

¹ Depending on whether the tenderer is a natural or legal person. Delete as appropriate.
² In the case of a group of economic operators, all the members of the group should be identified as contractors. To do that, the contract will have to reproduce as many times as necessary the wording in which the name, address and representative of the Contractor are mentioned. In addition, the wording "hereinafter referred to as *'the Contractor'*" will need to be replaced by "hereinafter referred to collectively as *'the Contractor'*". This wording will not be applicable in the case of a group of economic operators established with its own legal personality. In that case, the name of the group must be explicitly specified in the contract as being 'the Contractor', but the individual economic operators which formed the group must be identified explicitly in the clause relating to joint and several liability.

I – SPECIFIC TERMS AND CONDITIONS

ARTICLE I.1 – SUBJECT OF THE CONTRACT

1. In accordance with the terms and conditions set out in this contract and in the annexes hereto, which form an integral part hereof, the Contractor undertakes to provide translation services into [target language] from the following source languages [source languages] for the Authorising Authorities. The services are detailed in Annex I (the specifications and all the annexes thereto).
2. The signing of this contract shall not entail any obligation on the Authorising Authorities to place orders. This contract shall be applied by means of order forms established individually by the Authorising Authorities without competition being reopened.
3. The Contractor is ranked in [ranking=second, third, fourth or fifth] position on the list of Contractors established for the lot after the award procedure.
4. This secondary contract lays down the terms and conditions on which the Authorising Authorities will place orders for translation assignments with the Contractor in the event of refusal of an assignment by the contractor ranked in first position ('the main contractor') for the lot.
5. When an order is placed in accordance with Article I.7 of this contract, the Contractor shall provide the services requested in accordance with the terms and conditions set out in this contract and in the annexes hereto.
6. In the event of termination of the contract with the main contractor for the lot, the Contracting Authority will invite the highest-ranked secondary contractor for that lot to sign a main contract for the remaining duration of the contractual period. The offer to sign a main contract will remain valid for 28 days from the date of dispatch of the offer. Upon entry into force of a new main contract, the existing secondary contract between the parties will cease to apply.

ARTICLE I.2 – DURATION

1. This contract shall enter into force on 1 January 2020 or the date on which it is signed by the last contracting party if the last contracting party signs after 1 January 2020, and shall run until the end of 2020.
2. The contract shall be renewed tacitly on an annual basis, but its duration may not exceed five years, unless one of the parties objects thereto by registered letter sent at least three months before the expiry of the initial duration or before each annual renewal date. Such renewal shall not entail any modification or deferment of existing obligations.
3. In no circumstances may order forms be signed before the date on which this contract enters into force. In no circumstances may provision of the services begin before the date on which the order form enters into force.
4. The order forms must be signed by the Authorising Authorities before this contract expires. The terms of this contract shall continue to apply to these order forms after it expires.

ARTICLE I.3 – REPORTS AND DOCUMENTS

(Not applicable)

ARTICLE I.4 – PRICE AND PAYMENT

1. The unit price per page expressed in euros exclusive of value added tax (VAT):

Lot [Lot N°] :.....EUR

The price shall cover all the costs borne by the Contractor in performance of each order. The number of standard pages of an assignment shall be counted as detailed in Annex I to the specifications, title 'Page count rules'.

2. Payments under the contract shall be made in accordance with this article, and only if the Contractor has fulfilled all his contractual obligations by the date on which his payment request is dispatched. In no circumstances will new payment requests be considered admissible if requests sent previously by the Contractor were not paid by the Authorising Authorities for reasons of partial or total non-performance, incorrect performance or negligence.
3. Payment requests shall be sent only after the acceptance procedure as set out in Article I.9 and shall take into account any reduction in payment resulting from the Quality Mark obtained and from any late delivery as set out in Article I.11.
4. Every payment request must contain the information specified in Article II.3 of the General Terms and Conditions. More detailed invoicing arrangements may be set out by the Authorising Authorities as referred to in the specifications and annexes thereto.
5. The Contractor must send all payment requests or credit notes relating to the performance of this contract as detailed hereunder:

For the European Parliament:

Official Mail Service
DG TRAD
Authorising officer code:
Konrad Adenauer Building, Room 00D001
L-2929 Luxembourg

For the European Court of Auditors

European Court of Auditors
Budget and Accounting Unit
12, rue Alcide de Gasperi
L-1615 Luxembourg

For the European Economic and Social Committee:

European Economic and Social Committee
The Accounting Unit
Rue Belliard/Belliardstraat 99
B-1040 Bruxelles/Brussel

For the European Committee of the Regions:

European Committee of the Regions
Directorate for Administration
Budget and Finance Unit
Accounting service
Rue Belliard/Belliardstraat 101
B-1040 Bruxelles/Brussel

The Contractor must forward payment requests or credit notes to the relevant Authorising Authority in envelopes, packages or equivalent items, on which the words 'payment request' or 'credit note' shall be clearly visible and identifiable.

To be admissible, payment requests must be accompanied by the relevant invoices and submitted after the assessment of quality procedure is completed. The amount invoiced must take into account any reduction in payment resulting from the Quality Mark obtained or from late delivery, as detailed in chapter 12 of the specifications, title 'Invoicing'.

The Authorising Authority shall have 30 calendar days as from the date of registration of the request for payment by the Accounting Officer of the Authorising Authority during which sums due have to be paid for the performance of this contract. Payments shall be deemed to have been made on the value date on which the Authorising Authority's bank account is debited.

6. The Authorising Authority may suspend the payment period at any time following receipt of the payment request by notifying the Contractor that his request cannot be met for the following reasons:
 - a) the amounts referred to in the payment request are not due on the date of its receipt;
 - b) the Contractor has not submitted all the supporting documents required by the law applicable or by this contract, but the Authorising Authority considers that the Contractor can remedy this omission without the payment request being rejected in accordance with paragraph 7;
 - c) the Authorising Authority deems it necessary to carry out additional checks to verify that the amounts referred to in the payment request are due;
 - d) the Contractor has not complied with the provisions of the second and/or third subparagraphs of paragraph 5;

The Authorising Authority shall notify the Contractor of such a suspension via electronic means. Suspension shall take effect on the date indicated in the notification. The payment period shall recommence when the suspension is lifted, which shall take place:

- in respect of a), on the due date of the payment in question, as confirmed by the Authorising Authority in the notification;
- in respect of b), with effect from the date on which the Authorising Authority's Official Mail Service referred to in paragraph 5 receives the supporting documents in question, as described in the notification;
- in respect of c), upon the expiry of a reasonable period, as determined by the Authorising Authority and communicated to the Contractor in the notification; and
- in respect of d), on the date on which the Authorising Authority is able to identify the information omitted by the Contractor and registers the payment request; the Contractor shall be informed of that date in the notification.

7. Payment requests may be rejected by the Authorising Authority via electronic means for the following reasons:
 - a) the payment referred to in the request is not due;
 - b) the payment request is erroneous and must be rectified by means of a credit note; or
 - c) the payment request or the invoice is not accompanied by all the essential supporting documents and information required by this contract or by the law applicable, or the payment request has been drawn up with disregard for the tax rules applicable.

8. In the event of late payment, the Contractor shall be entitled to receive interest on arrears. The interest shall be calculated in accordance with the rate applied most recently by the European Central Bank to its main refinancing operations (*the reference rate*) plus eight percentage points. The reference rate in force on the first day of the month in which the payment is due shall apply. That rate is published in the C series of the Official Journal of the European Union. The interest shall apply to the period elapsed between the calendar day following the payment deadline and the date of payment.

Where interest on arrears is equal to or less than EUR 200, it shall be paid to the Contractor only on presentation by the Contractor of a request no later than two months after the date of receipt of payment.

9. Payments shall be made by transfer to the Contractor's bank account, denominated in euros, for which the Contractor shall provide details using the 'Supplier's financial data sheet' provided by the Authorising Authority, or, in exceptional circumstances, an equivalent document accepted by the Authorising Authority. Any change to the bank details shall require a new form to be duly completed and submitted.

ARTICLE I.5 – PRICE REVISION

1. With effect from the second year of the contract, the price may be revised upwards or downwards each year on 1 January at the request of one of the contracting parties, sent by e-mail to the other contracting party no later than three months (no later than 30 September) before the anniversary date.
2. Price revision shall be carried out on the basis of changes in the MUICP (euro area) harmonised index of consumer prices, published every month by the Statistical Office of the European Union.
3. Such revision shall be based on the following formula:

$$Pr = Pi \times Ir/li$$

Pr: revised price to be calculated;

Pi: price specified when the contract entered into force or price resulting from the last revision if the price has already been revised;

Ir: index for the month of October before the renewal entered into force (1 January);

li: index for the month of October before the contract entered into force or before the last price revision entered into force if the price has already been revised;

The revised price will be rounded down/up to the second decimal place as follows:

- If the digit of the third decimal is 4, 3, 2, or 1, all digits to the right of the second decimal will be dropped;

- If the digit of the third decimal is 5, 6, 7, 8, or 9, one digit will be added to the second decimal and all digits to the right of the second decimal will be dropped.

ARTICLE I.6 – FINANCIAL GUARANTEES

(not applicable)

ARTICLE I.7 – PERFORMANCE OF THE CONTRACT

The Contractor must comply with the minimum requirements provided for in the tender specifications. This includes compliance with applicable obligations under environmental, social and labour law established by Union law, national law and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU (OJ L 94 of 28.03.2014, p. 65).

1. Performance of the Contract shall follow the procedure laid down in chapter 12 of the specifications.
2. Whenever the Authorising Authorities wish to purchase the services indicated in Article I.1 from a secondary contractor, the relevant department will offer the translation assignment in electronic file format via electronic means to the Contractor, specifying the details of the assignment including the source language/s, the date and time for delivery and the number of standard pages to be translated.
3. The Contractor is required to accept as soon as possible and no later than two hours following the dispatch of the offer all translation assignments offered by the Authorising Authorities.
4. Any unjustified refusal by the Contractor to accept a translation assignment shall be subject to a penalty of 500 EUR per assignment, recoverable from a future invoice.
5. A refusal to accept a translation assignment is justified when the workload of the Contractor exceeds the minimum translation capacity per calendar day for any source language as defined in paragraphs 8 and 9 below on five consecutive calendar days. The day of dispatch of the offer must be one of the five consecutive calendar days.
6. Following a justified refusal, the Authorising Authorities will stop offering new translation assignments to the Contractor until such time as the Contractor's workload for the source language in question ceases to exceed the minimum translation capacity per calendar day.
7. Where a translation assignment cannot be placed with the Contractor, it will be offered to the next highest ranked secondary contractor for the lot.
8. The Contractor must be able to ensure the following minimum translation capacity per calendar day:

For all target language lots (apart from lot 5 - EN target language and lot 8 - FR target language)

- For EN source language: 50 standard pages per calendar day;
- For ES, DE, FR and IT source languages (if applicable for the lot concerned): 20

standard pages per calendar day for each of these source languages;

For lot 5 - EN target language:

- For FR source language: 50 standard pages per calendar day;
- For all other source languages: 20 standard pages per calendar day for each source language;

For lot 8 - FR target language:

- For EN source language: 50 standard pages per calendar day;
- For all other source languages: 20 standard pages per calendar day for each source language.

9. The workload of the Contractor is calculated in standard pages separately for each source language and per calendar day as a rolling daily average of all assigned, but not yet delivered, translation orders placed by all Authorising Authorities.
10. Upon receipt of the Contractor's acceptance of the assignment offer, the Authorising Authority will issue a signed order form. The acceptance of the assignment offer equates to the Contractor's acceptance of the assignment and of the order form corresponding to the offer, together with all contractual conditions attached to it.
11. The period allowed for performance of the services laid down in each order form shall not begin to run until the date on which the order form is signed by the Authorising Authority, unless that document refers to a different date.
12. The Contractor shall deliver the translation within the time limits set out in the order form. A possible delay in delivery must be reported to the Authorising Authority not later than 48 hours before the deadline or immediately when the causes of such delay arise. The Contractor shall report any technical problem preventing delivery within the contractual deadline to the Authorising Authority as soon as possible, and in any case before the expiry of the deadline.
13. If the Authorising Authority cancels an assignment before the Contractor delivers it, the Contractor will have two hours, starting from the time the notification of the cancellation is sent, to deliver the pages already translated. Payment will be calculated on the basis of the work already executed and delivered within the deadline of two hours.
14. The Contractor shall ensure that the delivered translation assignment, including segments already (pre)translated, is ready to be used, does not require further correction by the Institutions and meets the quality requirements set out in chapter 12 of the specifications, title "Quality requirements".
15. It is an essential contractual obligation for the Contractor to thoroughly revise the entire translation before delivery and not doing so is a breach of the contract. Should the assessment of quality show that the Contractor has in fact not revised a translation, the contract may be terminated in accordance with Article II.16.
16. The translation assignments shall be performed exclusively by the named translators and revisers declared in Annex XI of the specifications.
17. The list of named translators and revisers declared in Annex XI of the specifications may be modified during the validity of the contract. The Contractor should submit a request in writing to the Contracting Authority together with an updated Annex XI to replace or add new named translators or revisers to the list before those persons may perform any

translation assignments under the contract.

18. Software provided by the Authorising Authorities, including plug-ins, configuration files and macros, shall be used by the Contractor without any extra remuneration. The Contractor shall be required to work on assignments using computer-assisted translation (CAT) software and on assignments that have been processed using such software. The CAT software used by the Contractor must be able to produce output files that are fully compatible with the CAT tool(s) used by the Authorising Authorities, thus allowing the translations produced by the Contractor to be subsequently re-inserted seamlessly into the appropriate stage of the workflow of the Authorising Authorities. In case of the introduction of new software by the Authorising Authorities, the Contractor is required to integrate such software into their workflow and start using it in accordance with the instructions provided by the Authorising Authorities within six months from the date on which the Authorising Authorities inform the Contractor in writing.

ARTICLE I.8 – EVALUATION OF THE CONDITIONS ORIGINALLY LAID DOWN IN THE CONTRACT

(not applicable)

ARTICLE I.9 – ACCEPTANCE PROCEDURES

1. The acceptance procedure aims at verifying that the services have been provided in compliance with the contract and its annexes. It will consist of an assessment of quality according to chapter 12, title “Assessment of quality” of the specifications.
2. Where an assignment is delivered incomplete, the Contractor will be obliged, upon request, to make good any omissions.
3. The Contractor may be required to carry out supplementary work related to the translation assignment, as defined in chapter 12, title “Secondary obligations” of the specifications without extra remuneration.
4. The quality of each delivered translation assignment will be assessed and marked by the relevant Authorising Authority against the criteria stipulated in the title “Quality requirements” according to the title “Assessment of quality” of chapter 12 of the specifications.
5. The Quality Mark of each delivered translation assignment will be notified to the Contractor via electronic means by the relevant Authorising Authority within 15 calendar days following the delivery.

The relevant Authorising Authority may send instructions to the Contractor outlining a different procedure for the notification.

The Contractor may request in writing within a period of 5 calendar days from the date of notification of the Quality Mark additional information regarding the Quality Mark obtained.

The Authorising Authority will answer within a period of 7 calendar days following the date of receipt of the request.

6. If the Contractor does not introduce a request for additional information regarding the Quality Mark obtained within the deadline referred to above, then the acceptance procedure is deemed to be completed on the date of expiry of the time limit for the introduction of a request for additional information.

If the Contractor introduces a request for additional information on the Quality Mark obtained within the time limit referred to above, then the acceptance procedure is deemed to be completed on the date of notification to the Contractor of the Authorising Authority's answer to the request for additional information.

7. If the quality of a translation delivered is judged unsatisfactory, the Authorising Authority reserves the right to require the Contractor to remedy this without extra remuneration. This corrective work must be carried out and the new version redelivered within a deadline established by the Authorising Authority.

ARTICLE I.10 – WARRANTY

(not applicable)

ARTICLE I.11 – DELAY, MANIFEST NEGLIGENCE, NON-PERFORMANCE, NON-CONFORMITY AND INCORRECT PERFORMANCE

1. In the event of delay, negligent performance, complete or partial non-performance, non-conformity with the contractual requirements or incorrect performance of this contract or the order forms, the Authorising Authority may, by way of sufficient reparation for the loss sustained, deduct damages in the relevant amount from the remaining amount payable to the Contractor, supplemented, if applicable, by late-performance interest and the costs that it has borne in connection with that loss, as indicated in Article II.2 of the General Terms and Conditions. If the amounts deducted prove insufficient to compensate adequately for the loss sustained, the Authorising Authority may take any other action in addition to making that deduction. Without prejudice to any proceedings initiated by the Contractor, the Authorising Authority shall determine the amount of damages, late-performance interest and costs with a view to the deduction thereof and/or subsequent claims following notification to the Contractor by registered letter with acknowledgement of receipt of the failure to comply with the contract.
2. Without prejudice to paragraph 1, late deliveries according to Article I.7 and Quality Marks obtained in the context of the acceptance procedure described in Article I.9, will have the following consequences on payment:
 - 50% reduction in payment of the total amount of the assignment if the translation assignment is delivered without justification after the deadline established in the order form;
 - 50% reduction in payment of the total amount of the assignment if the Quality Mark of the delivered translation assignment is between 30 and less than 60 points (unsatisfactory translation quality);
 - 100% reduction in payment of the total amount of the assignment if the Quality Mark is less than 30 points (unacceptable translation quality).

Reductions in payment for late delivery and unsatisfactory/unacceptable quality may be cumulated, but the maximum reduction in payment cannot exceed 100 % of the total amount of the assignment.

In case of redelivery, where the translation was corrected by the Contractor in accordance with the request of the Authorising Authority, the reduction in payment for a Quality Mark below 60 points will not be applied.

3. In the circumstances referred to in paragraph 1 and without prejudice to any administrative and financial penalties imposed by the Authorising Authorities in accordance with Article II.18 of the General Terms and Conditions, the Contracting Authority may, if notice has been served on the Contractor by registered letter with acknowledgement of receipt and no action, or inadequate action has been taken in response within 15 calendar days of its dispatch, terminate the contract with immediate effect by notification by registered letter with acknowledgement of receipt, without compensating the Contractor. It may also require performance by substitution under the terms provided for in Article II.16 of the General Terms and Conditions.

ARTICLE I.12 – LAW APPLICABLE, GENERAL TERMS AND CONDITIONS AND ADVERTISING OF THE CONTRACT

1. European Union law complemented by Luxembourg law shall apply to this contract.
2. The Contractor hereby waives his own contractual terms and conditions. He declares that he is familiar with and accepts the General Terms and Conditions which form a part of this contract.
3. The Contractor also declares that he accepts that certain information relating to this contract, namely his name or company name and the subject and value of the contract awarded, should be published as required by Regulation (EU, Euratom) No 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 European Union (hereinafter ‘Regulation (EU, Euratom) No 2018/1046’ or ‘the Financial Regulation’).
4. Any document supplied by the Contractor in connection with the submission of his tender shall become the property of the European Parliament and may be made accessible to the public subject to the restrictions and in accordance with the procedures laid down in Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, without prejudice to the advertising measures required by Points 2 and 3 of Annex I of Regulation (EU, Euratom) No 2018/1046.

ARTICLE I.13 – JURISDICTION

Any dispute between the Contracting Authority and the Contractor relating to this contract which cannot be resolved by amicable settlement shall be submitted to the General Court of the Court of Justice of the European Union pursuant to Article 256(1) of the Treaty on the Functioning of the European Union.

ARTICLE I.14 – DATA PROTECTION

1. The controller of the processing of personal data is the following organisational entity of the European Parliament: Jochen Richter - Director, Directorate A - Support and Technological Services for Translation, DG TRAD, European Parliament, Luxembourg.

ARTICLE I.15 – JOINT AND SEVERAL LIABILITY OF THE CONTRACTOR *(If applicable)*³

1. The parties identified in this contract as ‘the Contractor’ shall be jointly and severally liable vis-à-vis the Authorising Authorities in respect of the performance of this contract.⁴
2. *(Indicate the name of the lead Contractor)* shall be designated the lead Contractor. Without prejudice to paragraph 1, in respect of the performance of this contract, the lead Contractor shall act in the name of *(indicate the names of the other contracting parties)*. All communications between the Authorising Authorities and the Contractor shall be conducted through the lead Contractor. Payments shall also be made by the Authorising Authorities to the account of the lead Contractor.⁵

ARTICLE I.16 - EXPLOITATION OF THE RESULTS OF THE CONTRACT

1. Detailed list of modes of exploitation of the results⁶

In accordance with Article II.9.2 whereby the Union acquires ownership of the *results* as defined in this contract, including the tender specifications, these *results* may be used for any of the following modes of exploitation:

[(a) use for its own purposes⁷:

- 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, Union institutions, agencies and bodies, 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 file⁸;

³ Article to be included where the Contractor is a group of economic operators which submitted a joint tender in the procurement procedure.

⁴ In the case of a group of economic operators with its own legal personality, paragraph 1 should be replaced by the following: ‘Parties forming the group of economic operators and assuming the role of Contractor shall be jointly and severally liable vis-à-vis the Authorising Authorities in respect of the performance of this contract’. Paragraph 2 can be deleted.

⁵ The current wording of this article should be retained in the model contract to be supplied together with the invitation to submit a tender. However, depending on the results of the invitation to tender, other forms of groups of economic operators may emerge (with a designated lead tenderer but with the group itself having its own bank account, a ‘genuine’ group with its own legal personality and bank account, etc). Consequently, this clause will need to be adapted subsequently, once the outcome of the invitation to tender is known. At all events, the members of the group, whether or not it has its own legal personality, will always be required to assume joint and several liability vis-à-vis the Authorising Authorities.

⁶ This list is as exhaustive as possible for any type of service. Please delete all items irrelevant to the subject of your contract.

⁷ This provision refers to cases where an extensive internal use may be envisaged, even if the results are not openly distributed to the public. Such a possibility should be explicitly described. It is the same logic as in the case of IT licences that may envisage a limited number of client’s computers on which the software can be installed.

⁸ The publication itself allows the public to read and download the results but it does not allow using them in any way even though it is technically possible. When procuring, the contracting authority purchases all the rights to the results, but there are pre-existing rights or third parties’ rights in most cases, which are not fully acquired. However, if the results are published, they shall include a warning on the limitation to use them within the

- [(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) modifications⁹ 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;¹⁰
 - 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 cropping and cutting, the *results* or parts thereof in other works, such as on websites and webpages
 - translating, inserting subtitles, dubbing in different language versions¹¹:
 - English, French, German;
 - all official languages of EU;
 - languages used within EU;
 - languages of candidate countries;
 - [*list or name other languages*].]
- [(f) rights to authorise, license, or sub-license in case of licensed *pre-existing rights*, the modes of exploitation set out in any of the points (a) to (e) to third parties.]
- [(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 contract.

contracting authority's copyright notice. This is necessary to avoid the readers or web-users to be misled and to believe that the documents published by the contracting authority are public and freely reusable.

⁹ All possible modifications that may need to be introduced into the result after completion of the contract should be envisaged from the outset

¹⁰ Technical changes should be comprehensive because listing precisely some possible modifications can be seen as excluding others

¹¹ The contract should envisage the possibility to translate and use the results in language versions other than those in which they were provided by the contractor. If languages are not envisaged from the outset, it will not be possible to translate the results later on without asking permission to the contractor. The lists of envisaged languages should remain realistic

2. Licence or transfer of pre-existing rights

All *pre-existing rights* incorporated in the *results*, if any, are licensed on a non- exclusive basis.

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.9.5 together with the invoice for payment of the balance at the latest.

The contractor shall inform the contracting authority immediately if some of the pre-existing rights as required by the contracting authority cannot be acquired under conditions of this framework contract or the related specific contract either for a reason that a diligent search conducted by the contractor does not result in the identity or location of the copyright holder (so-called Orphan Works), or for a reason that the rights holders are not willing to transfer or grant the necessary rights under the conditions of this framework contract or the related specific contract. The contractor shall provide the contracting authority with detailed proof of conducted diligent searches or proof of negotiations and related results between the rights holders and the contractor. The contracting authority reserves the right either to substitute the required pre-existing right with another pre-existing work which meet the conditions of the contract or the related specific contract, or accept the conditions under which the contractor is able to obtain the pre-existing right. Failure to inform the contracting authority of the above-mentioned hindrance is deemed to mean that the contractor has obtained the pre-existing rights under conditions of this contract or the related specific contract as initially ordered by the contracting authority.

4. Territorial scope and duration of exclusive rights

The territorial scope of the exclusive rights is worldwide.

In case of a license, the duration of the exclusive rights is the entire duration of intellectual property rights protection.

ARTICLE I.17 – GENERAL ADMINISTRATIVE PROVISIONS

All communications relating to the contract shall be in writing and shall indicate the contract reference number. Ordinary mail shall be deemed to have been received by the Authorising Authorities on the date on which it is registered by the department responsible indicated below. Communications (with the exception of the payment requests and credit notes referred to in Article I.4.5) shall be sent by e-mail if instructed by the Authorising Authority or in writing to the following addresses:

For the European Parliament

Official Mail Service
DG TRAD - External Translation Unit
Konrad Adenauer Building, Room 00D001
L-2929 Luxembourg

For the European Court of Auditors

European Court of Auditors
SG3-Coordination and Planning
12, rue Alcide De Gasperi
L-1615 Luxembourg

For the European Economic and Social Committee:

European Economic and Social Committee
Translation Management Unit
DT-Finance sector
Rue Belliard/Belliardstraat 99
B-1040 Bruxelles/Brussel

For the European Committee of the Regions:

European Committee of the Regions
Translation Management Unit
DT-Finance sector
Rue Belliard/Belliardstraat 101
B-1040 Bruxelles/Brussel

For the Contractor:

Mr/Ms *(complete)*
(insert position)
(insert company name)
(insert full official address)

ARTICLE I.18 – FINAL PROVISIONS AND ANNEXES

1. The following documents are annexed to this contract and form an integral part hereof:

Annex I: The specifications and all the annexes thereto

Annex II: The model order forms of the European Parliament, the European Court of Auditors, the European Economic and Social Committee and the European Committee of the Regions;

Annex III: The Contractor's tender of *(insert date)*

2. The provisions of the Specific Terms and Conditions, the General Terms and Conditions and the annexes shall apply at all times. However, in the event of contradictions between these different documents, the provisions of the Specific Terms and Conditions shall take precedence over those of the other parts of the contract. The provisions laid down in the General Terms and Conditions shall take precedence over those in the annexes. The annexes shall take precedence over each other in the order in which they are numbered.
3. Subject to the above, the various documents making up the contract are to be taken as mutually explanatory. Any ambiguity or divergence within the same part or between different parts shall be explained and corrected by written instruction from the Authorising Authorities.

II – GENERAL TERMS AND CONDITIONS

ARTICLE II.1 – GENERAL TERMS AND CONDITIONS RELATING TO PERFORMANCE OF THE CONTRACT

1. Unless specifically provided otherwise, the time limits for performance laid down in the contract, the specific contracts or the order forms shall start from the date on which they enter into force. They shall be extended in cases of *force majeure*. In such cases the parties shall agree new time limits in writing.
2. The Contractor shall perform the contract in good faith and to the highest professional standards. The Contractor shall have sole responsibility for complying with any legal obligations incumbent on him, notably those resulting from employment, tax, social and environmental protection legislation.
3. The Contractor shall have the sole responsibility for obtaining, in a timely manner, any permit, licence or accreditation required for performance of the contract under the laws and regulations in force at the place where the tasks assigned to him are to be carried out. Such permit, licence or accreditation might include, but shall not be limited to security accreditation and (or) security clearance of the Contractor or any person acting on his behalf, necessary for access to premises, locations and (or) events in the context of execution of the contract. The Contracting Authority may terminate the contract without prior notice if the Contractor is unable to obtain any of the permits, licences, accreditations or clearances required for performance of the contract and (or) assure that the contract is executed by the persons having all the necessary licences, permits, accreditations and (or) clearances.
4. The Contractor shall take out the insurance policies against risks and damage relating to performance of the contract which are required by the relevant legislation, including third-party liability insurance. He shall take out the additional policies which are customary in his field of activity. In addition, he shall take out professional insurance to cover the risks associated with non-conformity in the performance of the contract. A copy of all the insurance policies concerned shall be forwarded to the Contracting Authority, should it so request, within 15 calendar days of such a request being dispatched in writing.
5. Any reference made to the Contractor's staff in the contract shall relate exclusively to individuals involved in performing the contract.
6. The Contractor shall ensure that any person acting on his behalf or any member of his staff involved in performing the contract has the professional qualifications and experience required for the performance of the tasks assigned to the Contractor in accordance with the criteria laid down in the tender documents, including the specifications.
7. In the event of any incident connected with an act or omission by a member of the Contractor's staff working on the Authorising Authorities' premises, or in the event of the qualifications and/or experience of a member of the Contractor's staff failing to comply with the profile required under the contract, the Contractor shall replace that person immediately. The Contracting Authority shall be entitled to have the member of staff in question replaced, stating its reasons. Replacement staff must have the necessary qualifications and experience in accordance with the terms of the invitation to tender and be capable of performing the contract under the same contractual conditions. The Contractor shall be responsible for any delay in the performance of the tasks assigned to him which results from the replacement of staff in accordance with this article.

8. The Contractor shall have sole responsibility for the staff who perform the tasks assigned to him. The Contractor must be able to prove to the Contracting Authority at any time that his staff are employed in compliance with the applicable rules.
9. The Contractor shall take all appropriate measures (insurance and other measures) to cover his staff against all risks to which they may be exposed during performance of the contract.
10. The contract shall be performed in such a way as to rule out the Contractor or his staff being in a position identical to that of persons employed by the Authorising Authorities. In particular:
 - the staff performing the tasks assigned to the Contractor may not receive any direct orders from the Authorising Authorities, and neither the Contractor nor his staff may be integrated into the Authorising Authorities' administrative organisation;
 - in no circumstances may the Authorising Authorities be considered the employer of the Contractor's staff.
11. Should any unforeseen event, act or omission directly or indirectly hamper the performance of the contract, either in part or in full, the Contractor shall immediately and on his own initiative record it and report it to the Contracting Authority. The report shall include a description of the problem, an indication of the date on which it arose and details of the steps taken by the Contractor to comply with all his contractual obligations. In such an event the Contractor shall give priority to solving the problem rather than to determining who is responsible.
12. If the Contractor fails to fulfil his contractual obligations in accordance with the provisions of the contract, the Contracting Authority may, without prejudice to its right to terminate the contract, reduce its payments, or recover them, in proportion to the non-performance ascertained. The Contracting Authority may also apply penalties or damages as provided for in Article I.11 of the Specific Terms and Conditions and Article II.18 of the General Terms and Conditions.
13. The Contractor undertakes to provide the Contracting Authority with any information it may request for the purpose of managing the contract.
14. The Contractor and his staff may neither represent the Contracting Authority nor behave in any way which would give such an impression. They shall be required to inform third parties that they are not members of the European Union civil service.
15. The Contractor undertakes to transfer to the Contracting Authority, when the contract expires, all the information and documents in his possession concerning the tasks assigned to him for the performance of the contract.

ARTICLE II.2 – LIABILITY

1. Other than in cases of wilful misconduct or serious negligence on its part, the Authorising Authorities may not be held liable for damage or harm sustained by the Contractor or his staff while performing the tasks which are the subject of the contract. The Authorising Authorities shall not accept any claim for compensation or repairs in respect of any such damage or harm.

2. Other than in cases of *force majeure*, the Contractor shall be liable for any loss, direct or consequential damage to property and personal injury which he or any person acting on his behalf or any member of his staff causes to the Authorising Authorities or to third parties during performance of the contract, including in connection with the subcontracting provided for in Article II.6. He shall also be liable for quality defects and delays in performance of the contract. The Authorising Authorities may not be held liable for any act or omission on the part of the Contractor during performance of the contract.
3. The Contractor shall assume liability for any compensation in the event of an action, claim or proceedings brought against the Authorising Authorities by a third party following any damage or harm caused by the Contractor during performance of the contract.
4. Should an action be brought by a third party against the Authorising Authorities in connection with performance of the contract, the Contractor shall assist the Authorising Authorities. Expenditure incurred by the Contractor as a result may be defrayed by the Authorising Authorities.
5. Without prejudice to the provisions relating to acceptance and warranty, the Contractor shall be required to compensate the Authorising Authorities for any loss and direct or consequential damage resulting from non-performance, defective performance or late performance of the contract.

ARTICLE II.3 – INVOICING

1. The Contractor undertakes to draw up invoices in accordance with the contractual provisions covering one or more order forms.
2. Each invoice must contain, without fail, the following information: the purchase order number (PO n°). If the PO n° does not exist, the order form reference and/or date is mandatory together with a description of the services provided, the prices in euros¹², and the Contractor's bank details, including IBAN and BIC codes, and VAT number. Invoices shall be marked '*For the official use of the (insert name of the Authorising Authority)*'. The invoice may also make separate reference to the final recipient.
3. Invoices shall be sent to the Authorising Authorities:
 - European Parliament Official Mail Unit (DG TRAD), 1 Place de l'Europe, L-2929 Luxembourg;
 - European Court of Auditors, Accounting Department, 12 rue Alcide de Gasperi, L-1615 Luxembourg;
 - European Economic and Social Committee - The Accounting Unit, Rue Belliard/Belliardstraat 99, B-1040 Bruxelles/Brussel;
 - European Committee of the Regions - Directorate for Administration Budget and Finance Unit - Accounting service , Rue Belliard/Belliardstraat 101, B-1040 Bruxelles/Brussel.
4. E-invoicing

¹² Another currency could be indicated if the invitation to tender provides for tenders to be submitted in a currency other than the euro.

If provided for in the special conditions, the contractor submits invoices in electronic format if the conditions regarding electronic signature specified by Directive 2006/112/EC on VAT are fulfilled, i.e. using a qualified electronic signature or through electronic data interchange.

Reception of invoices by standard format (pdf) or email is not accepted.

5. Without prejudice to his entitlement to any interest on arrears, the Contractor shall accept any financial constraints arising from the system of provisional twelfths, in accordance with Article 16 of Regulation (EU, Euratom) No 2018/1046, should the general budget of the European Union not have been adopted at the beginning of the financial year.

ARTICLE II.4 – TAXATION

1. The Contractor shall be solely responsible for compliance with the tax laws which apply to him. Any failure to do so shall invalidate the payment requests submitted.
2. The Contractor acknowledges that the Authorising Authorities, as European Union institutions or bodies, are exempt from all duties and indirect taxes, in particular VAT, pursuant to Article 3 of the Protocol on the privileges and immunities of the European Union. That exemption is granted to the Authorising Authorities by the governments of the Member States either in the form of *a posteriori* reimbursement on the basis of supporting documents, or in the form of direct exemption.
3. If the Contractor is required to apply VAT to the payments received under this contract, by virtue of the applicable tax legislation, the Authorising Authorities shall pay to the Contractor, in addition to the price specified in Article I.4 of the Specific Terms and Conditions, the amount of VAT applied and shall subsequently request reimbursement thereof from the competent national authorities. To that end, the Contractor must submit to the Authorising Authorities an invoice complying with the applicable legislation concerning VAT and indicating his place of taxation for VAT purposes. The invoice must show clearly that the services are intended for the Authorising Authority and must indicate separately the amount payable for the services and related supplies, excluding VAT and the amount of VAT due.
4. For Contractors established in Belgium, order forms and specific contracts shall include the following: *'En Belgique la présentation de ce bon de commande vaut présentation d'une demande d'exonération de la TVA n° 450, article 42, paragraphe 3.3 du Code de la TVA (circulaire 1978)'* or an equivalent statement in Dutch or German. The Contractor's invoices must state the following: *'Facture exonérée de la TVA, article 42, paragraphe 3.3 du Code de la TVA'* or the equivalent in Dutch or German.

ARTICLE II.5 – RECOVERY

1. If the total payments made exceed the amount actually due under the specific contract or order form or if recovery is justified pursuant to the contract, the Contractor shall reimburse the corresponding amount in euros, upon receipt of the debit note, in accordance with the procedures and within the time limits laid down by the Authorising Authorities.
2. In the event of failure to pay within the time limit specified in the debit note, the sum due shall bear interest on arrears at the rate indicated in Article I.4 of the Specific Terms and

Conditions. Interest shall be payable with effect from the calendar day following the date on which payment is due until the calendar day on which the claim is repaid in full.

3. The Authorising Authorities may, after informing the Contractor, recover amounts established as certain, of a fixed amount and due by offsetting, in cases where the Contractor also has a claim against the European Union which is certain, of a fixed amount and due. The Authorising Authorities may also claim against any guarantee provided for.

ARTICLE II.6 – SUBCONTRACTING

1. The Contractor may not conclude subcontracting contracts, or cause them to be performed in fact by third parties, without the written authorisation of the Contracting Authority. The acceptance of a tender, submitted prior to the signing of the framework contract or a specific contract, referring to the use of one or more subcontractors, shall be deemed tacit acceptance of those subcontractors by the Contracting Authority.
2. Even if the Contracting Authority authorises the Contractor to subcontract, the Contractor shall remain solely and fully liable for the proper performance of the contract, both vis-à-vis the Contracting Authority and vis-à-vis third parties.
3. Contracts with subcontractors shall be concluded in writing. The Contractor shall be required to include in any contracts concluded with subcontractors provisions enabling the Contracting Authority to enjoy the same rights and guarantees in relation to those subcontractors as in relation to the Contractor himself.
4. The Contracting Authority reserves the right to require the Contractor to supply information on compliance by any subcontractor with the exclusion criteria and his legal, regulatory, financial, economic, technical and professional capacities including the minimum requirements provided for in the tender specifications. This includes compliance with applicable obligations under environmental, social and labour law established by Union law, national law and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU (OJ L 94 of 28.03.2014, p. 65).
5. 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.16.1.
6. In the absence of the authorisation referred to in paragraph 1 above, or in the event of failure to observe the terms thereof, subcontracting by the Contractor shall not be enforceable against, and shall have no effect on the Contracting Authority.

ARTICLE II.7 – ASSIGNMENT

1. The Contractor shall not assign the rights and obligations arising from the contract, in whole or in part, without the prior written authorisation of the Contracting Authority.
2. The Contractor shall be required to include in any contracts concluded with assignees provisions enabling the Contracting Authority to enjoy the same rights and guarantees in relation to those assignees as in relation to the Contractor himself.
3. In the absence of the authorisation referred to in paragraph 1 above, or in the event of failure to observe the terms thereof, assignment by the Contractor shall not be enforceable against, and shall have no effect on, the Contracting Authority.

ARTICLE II.8 – CONFLICTS OF INTEREST AND PROFESSIONAL CONFLICTING INTEREST

1. The Contractor shall take all the requisite measures to prevent any situation arising which could compromise the impartial and objective performance of the contract. A conflict of interest may arise in particular as a result of economic interests, political or national affinities, family or emotional ties, or any other relevant connection or direct or indirect personal interest. A conflict of interest may in particular occur when the situation described in Article 141, paragraph 1. (c) of the Financial Regulation applies. A professional conflicting interest is any situation in which the Contractor's previous or ongoing professional activities affect its capacity to implement the contract or to perform a specific contract to an appropriate quality standard as defined in Point 20.6 of Annex I of the Financial Regulation. Any suspicion of conflict of interest or any professional conflicting interest arising during performance of the contract must be reported immediately to the Contracting Authority in writing. In the event of such a conflict, the Contractor shall immediately take all the requisite measures to resolve it.
2. The Contracting Authority reserves the right to verify that such measures are appropriate and to require additional measures to be taken, if necessary, within a time limit that it shall stipulate.
3. The Contractor shall ensure that his staff, board and directors are not placed in a situation which could give rise to a conflict of interest. The Contractor shall replace, immediately and without requiring any compensation from the Contracting Authority, any member of his staff exposed to such a situation.
4. The Contractor hereby declares:
 - that he has not made and will not make any offer of any type whatsoever from which an advantage could be derived under the contract;
 - that he has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept any advantage, financial or in kind, respectively to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, inasmuch as it is an incentive or reward relating to performance of the contract.
5. The Contractor shall pass on in writing all the obligations arising from this article to his staff, board and directors as well as to third parties involved in performance of the contract. A copy of the instructions given and the undertakings made in this respect shall be sent to the Contracting Authority should it so request.

ARTICLE II.9 – INTELLECTUAL PROPERTY RIGHTS

1. Definitions

'Creator': means any natural person who contributes to the production of the result.

'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 this contract*,

'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;

'Result': any intended outcome of the *implementation of this contract*, whatever its form or nature, which is delivered and finally or partially approved by the contracting authority. A *result* may be further defined in this contract as a deliverable. A *result* may, in addition to materials produced by the contractor or at its request, also include *pre-existing materials*.

2. Ownership of the results and exclusive rights

The Union acquires irrevocably worldwide ownership of the *results* and of all intellectual property rights under the contract. 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 contract. The contracting authority may exploit and use the acquired rights as stipulated in this contract. The Union acquires all the rights from the moment the contracting authority approves the *results* delivered by the contractor. Such delivery and approval are deemed to constitute an effective assignment of rights from the contractor to the Union.

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

3. Licensing rights on pre-existing materials

The Union does not acquire ownership of *pre-existing rights* under this contract.

The contractor licenses the *pre-existing rights* on a royalty-free, non-exclusive and irrevocable basis to the Union, which may use the *pre-existing materials*, including associated rights, for all the modes of exploitation set out in this contract or in specific contracts. All *pre-existing rights* are licensed to the Union from the moment the *results* are delivered and approved by the contracting authority.

The licensing of *pre-existing rights* to the Union under this contract 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 and/or transfer of *pre-existing rights* by or to the Union, including for all forms of exploitation and of use of the *results* as defined in the special conditions or specific contracts, if any.

Where implementation of the contract 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 contract.

4. Exclusive rights

The Union acquires the following exclusive rights:

- (a) reproduction: the right to authorise or prohibit direct or indirect, temporary or permanent reproduction of the *results* by any means (mechanical, digital or other) and in any form, in whole or in part;

- (b) communication to the public: the exclusive right to authorise or prohibit any display, performance or communication to the public, by wire or wireless means, including the making available to the public of the *results* in such a way that members of the public may access them from a place and at a time individually chosen by them; this right also include the communication and broadcasting by cable or by satellite;
- (c) distribution: the exclusive right to authorise or prohibit any form of distribution of *results* or copies of the *results* to the public, by sale or otherwise;
- (d) rental: the exclusive right to authorise or prohibit rental or lending of the *results* or of copies of the *results*;
- (e) adaptation: the exclusive right to authorise or prohibit any modification of the *results*;
- (f) translation: the exclusive right to authorise or prohibit any translation, adaptation, arrangement, creation of derivative works based on the *results*, and any other alteration of the *results*, subject to the respect of moral rights of authors, where applicable;
- (g) where the *results* are or include a database: the exclusive right to authorise or prohibit the extraction of all or a substantial part of the contents of the database to another medium by any means or in any form; and the exclusive right to authorise or prohibit the re-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 framework contract, 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; “reuse” means the use of documents by persons or legal entities of documents, for commercial or non-commercial purposes other than the initial purpose for which the documents were produced;
 - (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 which result from this contract and from the intention of the parties, both by the Union or by subcontractors acting on behalf of the Union;
 - (ii) the rights to decompile or disassemble the software;
- (m) the right to license, or sub-license in case of licensed *pre-existing rights*, to third parties any of the exclusive rights or of the modes of exploitation set out in this framework contract;
- (n) to the extent that the contractor may invoke moral rights, the right for the contracting authority, except where otherwise provided in this framework contract, to publish the *results* with or without mentioning the *creator(s)*’ name(s), and the right to decide when and whether the *results* may be disclosed and published.

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

Where *pre-existing materials* are inserted in the *results* on contractor's own initiative, 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.

5. 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 contract, the *results* and the *pre-existing material* incorporated in the *results* are free of claims from *creators* or from any third parties and all the necessary *pre-existing rights* have been obtained or licensed.

To that effect, the contractor must establish a list of all *pre-existing rights* to the *results* of this contract 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.

6. Evidence of granting of pre-existing rights

Upon request by the contracting authority, the contractor must 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 Union. The contracting authority may request this evidence even after the end of this contract.

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, composer, musician, 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*.

7. 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.

8. 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.

9. 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.

10. 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.16.1, with the following disclaimer: '© — year — European Union. All rights reserved. Certain parts are licensed under conditions to the EU', or with any other equivalent disclaimer as the contracting authority may consider best appropriate, or as the parties may agree on a case-by-case basis. This does not apply where inserting such reference would be impossible, notably for practical reasons.

11. Visibility of Union funding and disclaimer

When making use of the *results*, the contractor must declare that they have been produced under a contract with the Union and that the opinions expressed are those of the contractor only and do not represent the contracting authority's official position. The contracting authority may waive this obligation in writing or provide the text of the disclaimer.

ARTICLE II.10 – CONFIDENTIALITY AND DISCRETION

1. Save where prior authorisation in writing has been obtained from the Authorising Authorities, the Contractor shall be required not to disclose to any unauthorised person any facts, information, knowledge, documents or other matters which the Authorising Authorities may have communicated to him as confidential. The Contractor shall continue

to be bound by this undertaking after completion of the tasks. This obligation shall continue to apply in respect of each such item of information until it has been lawfully disclosed.

2. The Contractor shall require any agents, employees, partners, subcontractors and assignees he may have to maintain confidentiality.
3. The Contractor undertakes, in respect of himself and his staff, not to make use of, for purposes other than performance of the contract, and not to disclose to third parties any facts, information, knowledge, documents or other matters communicated to him or brought to his attention in connection with performance of the contract, or any results arising from his services, without the prior written authorisation of the Authorising Authorities. These obligations shall continue to apply following performance of this contract.
4. This article shall be without prejudice to any obligations incumbent on the Contractor arising from the rules applicable or from those laid down by the relevant courts or other authorities.

ARTICLE II.11 - DATA PROTECTION

1. All processing of personal data by the Contracting Authority is subject to Regulation (EU) 2018/1725 of the European Parliament and of the Council 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.

The processing of personal data by the Contractor on behalf of the Contracting Authority is also subject to the Regulation 2018/1725.

Any other processing of personal data by the Contractor in connection with this contract is subject to 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. Without prejudice to the other cases provided for in that Regulation, processing of personal data in connection with this contract is authorised only if it is necessary for its execution.

2. The following paragraphs apply to the processing of personal data by the Contractor on behalf of the Contracting Authority to the extent that the present contract provides for such processing.
3. The servers and other data processing equipment used for the execution of this contract shall be located in the territory of the European Union or in the territory of a third country of which the Commission has decided in accordance with Article 45 of Regulation 2016/679 that it ensures in all of its territory, in part of it, or in one or more specified sectors an adequate level of protection. In the absence of such a decision, locating the servers or other data processing equipment in the territory of a third country shall be possible only under the conditions laid down in Articles 48 and 50 of Regulation 2018/1725.
4. The Contractor may act only on documented instructions from the controller designated in Article I.14, paragraph 1, including with regard to transfers of personal data to a third country or an international organisation, unless required to do so by Union or Member State law to which the processor is subject. In such a case, the processor shall inform the controller of that legal requirement before processing, unless the law in question prohibits such information on important grounds of public interest.

The processor shall notify the controller without undue delay after becoming aware of a personal data breach.

The processor shall immediately inform the controller if, in its opinion, an instruction infringes this Regulation or other Union or Member State data protection provisions.

5. The Contractor shall ensure that all contracts it concludes with its subcontractors for carrying out processing activities on behalf of the Contracting Authority lay down the same data protection obligations as set out in the present contract.

In case the Contractor wishes to add or replace a subcontractor processing personal data on behalf of the Contracting Authority, it shall inform the controller of any intended changes, thereby giving the controller the opportunity to object to such changes.

6. The Contractor shall:
 - a) ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - b) taking into account the nature of the processing, assist the controller by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the controller's obligation to respond to requests for exercising the data subject's rights;
 - c) assist the controller in ensuring compliance with the obligations imposed by Union law taking into account the nature of processing and the information available to the Contractor;
 - d) at the choice of the controller, delete or return, in a structured, commonly used and machine-readable format, all the personal data to the controller after the end of the provision of services relating to processing, and delete existing copies unless Union or Member State law requires storage of the personal data;
 - e) make available to the controller all information necessary to demonstrate compliance with the obligations laid down in this Article and allow for and contribute to audits, including inspections, conducted by the controller or another auditor mandated by the controller.
7. The Contractor shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including, inter alia, 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.
8. The Contractor shall take steps to ensure that any natural person acting under its authority who has access to personal data does not process them except on instructions from the controller, unless he or she is required to do so by Union law.

9. The Contracting Authority reserves the right to verify the Contractor's compliance with the obligations, and its implementation of the measures, foreseen in this Article. The Contractor undertakes to provide the Contracting Authority with any information which it may require in this regard.

ARTICLE II.12 – BAN ON USING THE AUTHORISING AUTHORITIES' IMAGE

1. The Contractor may not use photographs of the exterior or interior of the Authorising Authorities' buildings for advertising or commercial purposes without the Authorising Authorities' prior authorisation in writing.
2. The Authorising Authorities' authorisation referred to in paragraph 1 may be subject to specific conditions and limited to a fixed period.

ARTICLE II.13 – USE, DISTRIBUTION AND PUBLICATION OF INFORMATION

1. The Contractor shall authorise the Contracting Authority to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in or relating to the contract, in particular the identity of the Contractor, the subject and duration of the contract, the amount paid and the reports. In the case of personal data, the relevant provisions of the Specific Terms and Conditions shall apply.
2. Any distribution or publication by the Contractor of information relating to the contract shall require the Contracting Authority's prior authorisation in writing. For the purposes of that authorisation the Contracting Authority may require the Contractor to make reference to the amount paid by the European Union, or may make the authorisation subject to other conditions. The information published or distributed shall at all events state that the opinions expressed are those of the Contractor only and do not represent the Contracting Authority's official position.
3. The use of information obtained by the Contractor in connection with the contract for purposes other than its performance shall be prohibited unless the Contracting Authority has expressly granted prior authorisation in writing.

ARTICLE II.14 – MATERIALS, COMPONENTS, APPLIANCES, DESIGNS, SAMPLES, SUPPLIES, MODELS, TEMPLATES, GAUGES AND SOFTWARE BELONGING TO THE AUTHORISING AUTHORITIES AND HELD BY THE CONTRACTOR

1. The Contractor shall be liable in the event of loss of or damage to any materials, components, appliances, designs, samples, supplies, models, templates, gauges and software belonging to the Authorising Authorities which he holds with a view to performance of the contract, whether delivered to him for that purpose or purchased by him on behalf of the Authorising Authorities.
2. Compensation for the loss or damage referred to in paragraph 1 shall be effected, at the Authorising Authorities' choice after consulting the Contractor, either in kind (replacement or repair) or by payment of a sum equivalent to the replacement cost on the date of the loss or damage, plus any duties or indirect taxes which might be applied to that amount by the national authorities.

3. Where the items referred to in paragraph 1 are subject to depreciation, only their residual value shall be taken into account.

ARTICLE II.15 – FORCE MAJEURE

1. *Force majeure* shall mean any unforeseeable and exceptional situation or event beyond the control of the parties, preventing either of them from performing any of their obligations under the contract, which was not due to error or negligence on their part, and which could not have been avoided by the exercise of due diligence. Defects in equipment or materials or delays in making them available, labour disputes, strikes, non-performance by a subcontractor or financial problems may not be invoked as *force majeure* unless they stem directly from an established case of *force majeure*.
2. If either of the parties is faced with a case of *force majeure*, it shall notify the other party without delay by registered letter with acknowledgement of receipt or by an equivalent method, stating the nature, likely duration and foreseeable effects.
3. Neither party shall be held in breach of its contractual obligations if it has been prevented from performing those obligations by a case of *force majeure*. If, as a result of *force majeure*, the Contractor is unable to perform the tasks which have been assigned to him, he shall not be entitled to payment or compensation. If the contract has been partially performed he shall receive payment in the appropriate amount. These provisions shall not affect the entitlement of the Contractor to reimbursement of his travel and subsistence expenses and of the costs of shipment of equipment that he has incurred in performance of the contract.
4. The parties shall take all the requisite measures to minimise any losses that they may incur.

ARTICLE II.16 – TERMINATION BY THE CONTRACTING AUTHORITY

1. The Contracting Authority may terminate this contract as of right, either in full or in part, without recourse to legal proceedings and without compensation, by registered letter with acknowledgement of receipt, in the following cases:
 - a) 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) or (b) of Article 136(1) of the Financial Regulation¹³;
 - b) if the contractor or any *person within the meaning of Article 136 (4) points a), or c) of the Financial Regulation*, is subject to any of the situations provided for in points (c) to (h) of Article 136(1) or to Article 136(2) of the Financial Regulation;
 - c) 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;
 - d) 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.8;

¹³ Regulation (EU, EURATOM) No 2018/1046 on the financial rules applicable to the general budget of the Union (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018R1046&qid=1538384366424>)

- e) If the contractor has misrepresented the information required as a condition for participating in the procedure or has failed to supply that information;
 - f) if the Contracting Authority considers that a change in the Contractor's legal, financial, technical or organisational situation could have a material effect on performance of the contract;
 - g) if the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the contract;
 - h) if notice, specifying the nature of the breach of contractual obligations, in which the Contracting Authority states that performance is not in compliance with the provisions of the contract, the specifications and all the annexes thereto or the Contractor's tender, has been served on the Contractor by registered letter with acknowledgement of receipt and no action, or inadequate action, has been taken in response within 15 calendar days of its dispatch;
 - i) if the Contractor is subject to a penalty referred to in Article 138(1) of the Financial Regulation ;
 - j) if, after the contract has been awarded, the procurement procedure or performance of the contract is found to be subject to material errors, irregularities, corruption or fraud; if these errors, irregularities, corruption or fraud are attributable to the Contractor, the Contracting Authority may furthermore refuse to make payment, recover the sums already paid or terminate all contracts concluded with the Contractor in question, in proportion to the seriousness of the errors, irregularities, corruption or fraud;
 - k) if the contract is in an area of activity subject to rapid changes in prices and technology and at the end of a mid-term review carried out by the Contracting Authority the terms and conditions originally laid down no longer reflect current prices or technology;
 - l) if fundamental changes resulting from the withdrawal of the United Kingdom of the European Union disrupt the assumptions of the parties underlying the contract that the continuation of the contract can no longer be reasonably expected from the Contracting Authority or would be in conflict with its legal obligations.
2. In the event of *force majeure* notified in accordance with Article II.15, either party may terminate the contract, specific contract(s) or order form(s) in force if they cannot be performed for a period corresponding to at least one fifth of the period indicated in the Specific Terms and Conditions or in the specific contract or order form.
 3. Prior to any termination of the contract under paragraph 1, point (i), the Contractor shall have an opportunity to present his observations within a period not exceeding 15 calendar days with effect from the date of dispatch of the notice by registered letter with acknowledgement of receipt.
 4. Termination shall take effect on the date of receipt of the registered letter with acknowledgement of receipt terminating the contract, or on any other date referred to in the letter of termination.
 5. Consequences of termination:
 - a) Should the Contracting Authority terminate the contract in accordance with this article, and subject to the other provisions of the contract, the Contractor shall waive any claim

for direct or consequential damages, including any loss of expected profits as a consequence of uncompleted services. On receipt of the letter terminating the contract, specific contract or order form in force, the Contractor shall take all the requisite measures to minimise costs, prevent damage and cancel or reduce his commitments. He shall draw up the documents required by the Specific Terms and Conditions for the tasks performed up to the date on which termination takes effect, within a period not exceeding 60 calendar days from that date.

- b) The Contracting Authority may demand compensation for any loss or direct or consequential damage caused and may recover any sums paid to the Contractor in connection with the contract.
- c) Following termination, the Contracting Authority may have the contract performed by substitution, and may commission any other contractor to complete the services. The Contracting Authority shall have the right to insist on the contract being performed by substitution, following written notification to the Contractor, even if it does not terminate the contract, in order to guarantee the proper performance of the services provided for in the contract. In that case, without prejudice to any other rights or guarantees stipulated in this contract in the Contracting Authority's favour, it shall be entitled to claim from the Contractor reimbursement of any additional costs occasioned by the completion of those services.
- d) Following termination, the Contracting Authority may impose administrative and financial penalties under the conditions set out in Articles 136 to 141 of the Financial Regulation.

ARTICLE II.17 – DISPUTES, EXPERT REPORTS

- 1. In the event of a dispute requiring verification of the facts or technical examination, the party raising the issue may obtain an expert's report before taking legal action. To that end, the party raising the issue shall inform the other party in writing of the subject of the dispute and shall propose an expert.
- 2. The other party shall indicate within 15 calendar days whether or not it accepts the proposed expert and, if it does not, shall make a counter-proposal, which must be replied to within 15 calendar days. Such correspondence shall be conducted by registered letter with acknowledgement of receipt.
- 3. If the two parties fail to reach agreement the party raising the issue shall submit the dispute to the competent court pursuant to Article I.13 and shall ask it, if need be, to appoint an expert.

ARTICLE II.18 – ADMINISTRATIVE AND FINANCIAL PENALTIES

- 1. The Contracting Authority may impose administrative or financial penalties in the following cases:
 - a) a contractor who is in an exclusion situation established in accordance with Article 136 of the Financial Regulation;
 - b) a contractor who has been guilty of misrepresenting the information required by the Contracting Authority as a condition of participation in the procurement procedure or has failed to supply that information;

In all cases, however, the Contracting Authority or the Panel established by Article 143 of the Financial Regulation must first give the Contractor an opportunity to present his observations.

2. Administrative and financial penalties shall be proportionate to the size of the contract and the seriousness of the misconduct, and may consist of:
 - a) the exclusion of the Contractor from contracts and grants financed by the budget of the European Union; and/or
 - b) the payment of financial penalties by the Contractor up to 10% of the value of the contract in question and/or
 - c) the publication of the name of the contractor, the exclusion situation and the duration of the exclusion pursuant to Article 140 (1) of the Financial Regulation.

ARTICLE II.19 – CHECKS AND AUDITS

1. Pursuant to Article 257 of Regulation (EU, Euratom) No 2018/1046, the European Court of Auditors is empowered to audit the documents held by natural or legal persons receiving payments from the budget of the European Union, from the signing of the contract until five years after the date of payment of the balance.
2. The Contracting Authority, an outside body of its choice or, for the processing of personal data, the European Data Protection Supervisor shall have the same rights as the European Court of Auditors in respect of inspections and checks on compliance with contractual provisions, from the signing of the contract until five years after the date of payment of the balance.
3. In addition, the European Anti-Fraud Office may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities, and Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, from the signing of the contract up to five years after the date of payment of the balance.
4. In accordance with Regulation (EU) No 2018/1725 of the European Parliament and of the Council and with Article 57 of Regulation 2018/1046, for the purposes of safeguarding the financial interests of the Union the personal data referred to in Article I.14 may be transferred to internal audit services, to the European Court of Auditors, to the Panel established by Article 143 Financial Regulation or to the European Anti-Fraud Office.

[The Contractor shall be required to inform the authorising officer by delegation of any suspected illegal activity, fraud or corruption which may harm the interests of the Union.]¹⁴

¹⁴ This statement applies only to contracts with auditors within the meaning of Article 74(8), second subparagraph, of Regulation (EU, Euratom) No 2018/1046.

ARTICLE.II.20 - ENVIRONMENTAL AND SOCIAL PROVISIONS

1. The Contracting Authority reserves the right to carry out itself any inspections and checks on the Contractor which are necessary to ensure compliance with the environmental and social and labour law requirements laid down in Article I.7. Such inspections and checks may be carried out in part or in full by an external body duly authorised by the Contracting Authority.
2. Any failure on the Contractor's part to comply with the obligations laid down or any refusal to allow inspection by the Contracting Authority or a duly authorised body shall entitle the Contracting Authority to terminate this contract.

ARTICLE II.20bis - SECURITY PROVISIONS

1. In performance of this contract the Contractor undertakes to comply himself and to assure that persons acting on his behalf comply with the national and internal safety and security rules which apply to access to the Authorising Authorities' premises, locations or events and with any other comparable restrictions in force. The Contractor is aware that such compliance might include, but shall not be limited to, the obligation to obtain a security clearance for himself and any person acting on his behalf in the context of execution of the contract from the competent services of the Authorising Authorities and (or) national authorities.
2. The Contractor shall cooperate with the competent security service of the Authorising Authorities in order to assist the latter in carrying out its security duties and tasks. Such cooperation includes, but is not limited to, immediate reporting to the said competent service of any changes of persons authorised to act on behalf of the Contractor in execution of this Contract as well as any matters of potential security concern.
3. In the event a person acting on the Contractor's behalf and entering the Authorising Authorities' premises fails to obtain or loses security accreditation or security clearance the Contractor shall replace him immediately. Any other failure to comply with the applicable safety and security rules shall entitle the Authorising Authorities to have the member of staff in question replaced. Replacement staff must have obtained the necessary security accreditations and (or) security clearances and be capable of performing the contract under the same contractual conditions. The Contractor shall be responsible for any delay in the performance of the tasks assigned to it which results from the replacement of staff in accordance with this article.
4. Any failure on the Contractor's part to comply with the security obligations and (or) any refusal to undergo the necessary security accreditation and (or) the security clearing check shall entitle the Contracting Authority to terminate this contract without prior notice.

ARTICLE II.21 – MODIFICATION OF THE CONTRACT

1. Any modification of this contract or its annexes, including additions or deletions, shall require a supplementary written agreement concluded on the same terms as the contract. No oral agreement may bind the parties for that purpose.
2. Should a court with jurisdiction rule that a provision of this contract is invalid or unenforceable, the other provisions of the contract shall remain applicable, and the parties

undertake to replace the invalid or unenforceable provision by another provision having an economic effect as similar as possible to that of the provision in question.

3. Should the Contracting Authority refrain from exercising or ensuring the application of its rights arising from any provision of this contract, or fail to exercise them or ensure the application thereof, this shall not constitute a waiver by the Contracting Authority of any provision of this contract.

Done at on in two originals

For the Contractor

For the Contracting Authority