European Maritime Safety Agency

SERVICE CONTRACT

CONTRACT NUMBER – *20XX/EMSA/OP/16/2019*

The European Maritime Safety Agency (hereinafter referred to as "the contracting authority"), with its seat at Praça Europa 4, 1249-206 Lisbon, Portugal, VAT registration No.: 507 685 326, for the purposes of signing this contract represented by Manuela Tomassini, Head of Safety & Standards - Department B,

on the one part, and

[*full official name*]

[*official legal form*]

[*statutory registration number or ID or passport number*]

[*full official address*]

[*VAT registration number*]

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

(hereinafter referred to as "the contractor"), [*represented by* [*forename, surname and function*,]]

on the other part,

HAVE AGREED

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

Annex I Tender specifications (reference No. EMSA/OP/16/2019 of [*insert date*])

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

Annex III IPR Identification form

which form an integral part of this contract (hereinafter referred to as “the contract”).

This contract sets out the obligations of the parties during and after the duration of this contract.

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

I - SPECIAL CONDITIONS

ARTICLE I.1 – ORDER OF PRIORITY OF PROVISIONS

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

(a) The provisions set out in the special conditions take precedence over those in the other parts of the contract.
(b) The provisions set out in the general conditions take precedence over those in the other annexes.
(c) The provisions set out in the tender specifications (Annex I) take precedence over those in the tender (Annex II).

ARTICLE I.2 – SUBJECT MATTER

The subject matter of the contract is: Development of an interactive web-based reporting module for statistical review by EMSA and public users based on the data available in the STCW-IS database; Development of a set of reports related with Identity Management accounts and surrounding configurations; Maintenance of the interactive web-based reporting module developed; Identification and analysis of the statistical information on seafarers published at EU level and the needs of the shipping industry at this level; and Integration of the industry needs in terms of statistics into the system.

ARTICLE I.3 - ENTRY INTO FORCE AND DURATION

I.3.1 The contract shall enter into force on the date on which it is signed by the last party.

I.3.2 The performance of the contract cannot start before its entry into force.

I.3.3 The duration of the performance of the contract shall not exceed 18 months. Performance of the contract shall start from the date of entry into force of the contract.

The period of performance of the contract may be extended only with the express written agreement of the parties before the expiration of such period.

I.3.4 The contract may be renewed up to 2 times, each time for a period of execution of maintenance tasks of 6 months, only three months before payment of the balance and with the express written agreement of the parties, indicating the date on which execution of the tasks shall start. Renewal does not change or postpone any existing obligations.

ARTICLE I.4 – PRICE

I.4.1. Maximum price of the contract

The maximum price covering all purchases under this contract is EUR [*amount in figures and in words*]. The maximum price covering the maintenance for the possible period of two renewals is EUR [*amount in figures and in words*].

I.4.2. Price revision index

Price revision is not applicable to this contract.

ARTICLE I.5 – PAYMENT ARRANGEMENTS

I.5.1 Pre-financing

Pre-financing is not applicable to this contract.

I.5.2.1 1st Interim payment

1. The contractor (or leader in the case of a joint tender) may claim an interim payment equal to 30% of the total price defined for Work Package 1 and 30% of the total price for Work Package 3 after completing milestone T2 as provided for in the tender specifications and in accordance with Article II.21.6.

The contractor must send an invoice in paper format or via e-PRIOR for the interim payment as provided for in the tender specifications, accompanied by the following:

(a) a list of all pre-existing rights to the results or parts of the results or a declaration stating that there are no such pre-existing rights, as provided for in Article II.13.4;
(b) delivery of the functional prototype as foreseen in Work Package 1 and delivery of the study medium-term report as foreseen in Work Package 3, Task 1.

2. All invoices shall indicate both the contractor's and the contracting authority's VAT number.

3. The contracting authority must approve any submitted documents or deliverables and pay within 30 days from receipt of the invoice.

4. If the contracting authority has observations to make, it must send them to the contractor (or leader in the case of a joint tender) and suspend the time limit for payment in accordance with Article II.21.7. The contractor (or leader in case of a joint tender) has 10 days to submit additional information or corrections or a new version of the documents if the contracting authority requires it.

5. The contracting authority must give its approval and pay within the remainder of the time limit indicated in point (3) unless it rejects partially or fully the submitted documents or deliverables.

I.5.2.2 2nd Interim payment

1. The contractor (or leader in the case of a joint tender) may claim an interim payment equal to 60% of the total price defined for Work Package 1 and 70% of the total price for Work Package 3 after completing milestone T4 as provided for in the tender specifications and in accordance with Article II.21.6.

The contractor must send an invoice in paper format or via e-PRIOR for the interim payment as provided for in the tender specifications, accompanied by the following:

(c) a list of all pre-existing rights to the results or parts of the results or a declaration stating that there are no such pre-existing rights, as provided for in Article II.13.4;
(d) delivery and final acceptance in Production by EMSA of Work Package 1 and delivery of the study final report as foreseen in Work Package 3, Task 1.

2. All invoices shall indicate both the contractor's and the contracting authority's VAT number.

3. The contracting authority must approve any submitted documents or deliverables and pay within 30 days from receipt of the invoice.

4. If the contracting authority has observations to make, it must send them to the contractor (or leader in the case of a joint tender) and suspend the time limit for payment in accordance with Article II.21.7. The contractor (or leader in case of a joint tender) has 10 days to submit additional information or corrections or a new version of the documents if the contracting authority requires it.

5. The contracting authority must give its approval and pay within the remainder of the time-limit indicated in point (3) unless it rejects partially or fully the submitted documents or deliverables.

I.5.2.3 3rd Interim payment

1. The contractor (or leader in the case of a joint tender) may claim an interim payment for the maintenance costs covering the period between the final acceptance of the Work Package 1 and until the end of the performance period of the contract as stipulated under Article I.3.3. This period may not exceed 6 months.

The maintenance costs will be maximum of 80% of the price defined for Work Package 2.

The contractor must send an invoice in paper format or via e-PRIOR

2. All invoices shall indicate both the contractor's and the contracting authority's VAT number.

3. The contracting authority must approve any submitted documents or deliverables and pay within 30 days from receipt of the invoice.

4. If the contracting authority has observations to make, it must send them to the contractor (or leader in the case of a joint tender) and suspend the time limit for payment in accordance with Article II.21.7. The contractor (or leader in case of a joint tender) has 10 days to submit additional information or corrections or a new version of the documents if the contracting authority requires it.

5. The contracting authority must give its approval and pay within the remainder of the time limit indicated in point (3) unless it rejects partially or fully the submitted documents or deliverables.

I.5.3 Payment of the balance

The contractor (or leader in the case of a joint tender) may claim the payment of the balance in accordance with Article II.21.6.

The contractor (or leader in the case of a joint tender) must send an invoice in paper format or via e-PRIOR for payment of the balance due under the contract, as provided for in the tender specifications and accompanied by the following:

(a) a list of all pre-existing rights to the results or parts of the results or a declaration stating that there are no such pre-existing rights, as provided for in Article II.13.4;
(b) delivery of the maintenance report as foreseen in Work Package 2 and delivery and final acceptance in Production by EMSA of Work Package 3, Task 2.

All invoices shall indicate both the contractor's and the contracting authority's VAT number.

The contracting authority must approve the submitted documents or deliverables and pay within 30 days from receipt of the invoice.

If the contracting authority has observations to make, it must send them to the contractor (or leader in the case of a joint tender) and suspend the time limit for payment in accordance with Article II.21.7.

The contractor (or leader in the case of a joint tender) has 10 days to submit additional information or corrections or a new version of the documents if the contracting authority requires it.

The contracting authority must give its approval and pay within the remainder of the time-limit indicated unless it rejects partially or fully the submitted documents or deliverables.

I.5.4 VAT on telecommunications, broadcasting and electronic services

The place of taxation for digital services corresponds to the Member State where the contracting authority (customer) is established, namely Portugal[1].

The contractor (or leader in the case of a joint tender) must ensure that the correct methodology is applied and in the case of digital services the VAT rate for Portugal, corresponding to the payment amount, shall be included on the invoice.

ARTICLE I.6 GUARANTEES

Guarantees are not applicable to this contract.

I.6.1. Performance guarantee

Performance guarantee is not applicable to this contract.

I.6.2. Retention money guarantee

Retention money guarantee is not applicable to this contract

ARTICLE I.7 – BANK ACCOUNT

Payments shall be made to the contractor's bank account denominated in [*euro*], identified as follows:

Name of bank: [*complete*]
Full address of branch: [*complete*]
Exact designation of account holder: [*complete*]
IBAN code: *[complete]*

ARTICLE I.8 – COMMUNICATION DETAILS

For the purpose of this contract, communications must be sent to the following addresses:

The contracting authority:

[1] Further information can be found at the European Commission Webpage below or with the local authorities of the country where the supplier is established: http://ec.europa.eu/taxation_customs/taxation/vat/how_vat_works/telecom/index_en.htm#qanda

European Maritime Safety Agency
Manuela Tomassini
Head of Safety & Standards - Department B
Praça Europa 4
1249-206 Lisbon
Portugal

Contractor:

[*Full name*]
[*Function*]
[*Company name*]
[*Full Official address*]
Email: [*complete*]

Invoices shall be sent to the following address:

The contracting authority:

European Maritime Safety Agency
Invoice Registration (IR)
Unit A.2 – Legal and Financial Affairs
Praça Europa 4
1249-206 Lisbon
Portugal

ARTICLE I.9 – PROCESSING OF PERSONAL DATA

I.9.1 Processing of personal data by the contracting authority

For the purpose of Article II.9,

(a) the data controller is Head of Unit B.1 – Visits and Inspections;
(b) the data protection notice is available on the EMSA website.

I.9.2 Processing of personal data by the contractor

For the purpose of Article II.9.2,

(a) the subject matter and purpose of the processing of personal data by the contractor is the processing of data of seafarers' certificates for statistical purpose;
(b) The localisation of and access to the personal data processed by the contractor shall comply with the following:

i. the personal data shall only be processed within the territory of the European Union and the European Economic Area and will not leave that territory;
ii. the data shall only be held in data centres located with the territory of the European Union and the European Economic Area;

iii. no access shall be given to such data outside of the European Union and the European Economic Area;
iv. the contractor may not change the location of data processing without the prior written authorisation of the contracting authority;
v. any transfer of personal data under the contract to third countries or international organisations shall fully comply with the requirements laid down in Chapter V of Regulation (EU)2018/1725[2].

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

I.10.1 Ownership of the results

The ownership of the results as defined in the tender specifications (Annex I) shall be fully and irrevocably transferred by the contractor to the contracting authority in accordance with Article II.13.1.

I.10.2 Licence or transfer of pre-existing rights

All pre-existing rights incorporated in the results, if any, are licensed to the contracting authority as set out in Article II.13.2.

I.10.3 Provision of list of pre-existing rights

The contractor must provide the contracting authority with an exhaustive list of intellectual property rights applicable to the results and of pre-existing rights, including incorporated trade secrets and third parties' rights, as set out in Article II.13.4, together with the invoice for payment of the balance at the latest. To that effect, Annex VI - IPR Identification Form - shall be duly completed and signed by the contractor.

ARTICLE I.11 – TERMINATION BY EITHER PARTY

Either party may, terminate the contract by sending formal notification to the other party with one month written notice.

If the contract is terminated:

(a) neither party is entitled to compensation;

(b) the contractor is entitled to payment only for the services provided before termination takes effect.

The second, third and fourth paragraphs of Article II.18.4 apply.

ARTICLE I.12 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES

I.12.1 The contract shall be governed by Union law, complemented, where necessary, by the law of Portugal.

[2] Regulation (EU) 2018/1725 of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No. 1247/2002/EC.

I.12.2 Any dispute between the parties in relation to the interpretation, application or validity of the contract which cannot be settled amicably shall be brought before the courts of Lisbon, Portugal.

ARTICLE I.13 – E-PROCUREMENT

The execution of the contract between the contracting authority and the contractor may be automated by the use of one or more of the following applications: e-Request, e-Catalogue, e-Ordering and e-Fulfilment and e-Invoicing.
At the request of the contracting Authority, the use of the above applications may be mandatory during the lifetime of the contract.

SIGNATURES

For the contractor,	For the contracting authority
[*Company name/forename/surname/function*]	Manuela Tomassini
	Head of Safety & Standards - Department B
signature: _____	signature: _____
Done at:	Done at Lisbon
Date:	Date:

In duplicate in English.

II – GENERAL CONDITIONS FOR SERVICE CONTRACTS

ARTICLE II.1 – DEFINITIONS

For the purpose of this contract, the following definitions apply:

'Back office': the internal system(s) used by the parties to process electronic invoices;

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

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

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

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

'EDI message' (electronic data interchange): a message created and exchanged through the electronic transfer, from computer to computer, of commercial and administrative data using an agreed standard;

'e-PRIOR': the service-oriented communication platform that provides a series of web services and allows the exchange of standardised electronic messages and documents between the parties. This is done either through web services, with a machine-to-machine connection between the parties' back office systems (EDI messages), or through a web application (the supplier portal). The Platform may be used to exchange electronic documents (e-documents) such as electronic requests for services, electronic specific contracts, electronic acceptance of services and electronic invoices between the parties.

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

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

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

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

exploitation or abuse, or any wrongful conduct of the contractor or a related person which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence.

'Interface control document': the guideline document which lays down the technical specifications, message standards, security standards, checks of syntax and semantics, etc. to facilitate machine-to-machine connection. This document is updated on a regular basis;

'Irregularity': any infringement of a provision of Union law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the Union's budget.

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

'Performance of the contract': the execution of tasks and delivery of the purchased services by the contractor to the contracting authority;

'Personnel': persons employed directly or indirectly or contracted by the contractor to implement the contract;

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

'Professional conflicting interest': a situation in which the contractor's previous or ongoing professional activities affect its capacity to implement the contract to an appropriate quality standard;

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

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

'Supplier portal': the e-PRIOR portal, which allows the contractor to exchange electronic business documents, such as invoices, through a graphical user interface.

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

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

ARTICLE II.3 SEVERABILITY

Each provision of this contract is severable and distinct from the others. If a provision is or becomes illegal, invalid or unenforceable to any extent, it must be severed from the remainder of the contract. This does not

affect the legality, validity or enforceability of any other provisions of the contract, which continue in full force and effect. The illegal, invalid or unenforceable provision must be replaced by a legal, valid and enforceable substitute provision which corresponds as closely as possible with the actual intent of the parties under the illegal, invalid or unenforceable provision. The replacement of such a provision must be made in accordance with Article II.11. The contract must be interpreted as if it had contained the substitute provision as from its entry into force.

ARTICLE II.4 PERFORMANCE OF THE CONTRACT

II.4.1 The contractor must provide services of high quality standards, in accordance with the state of the art in the industry and the provisions of this contract, in particular the tender specifications and the terms of its tender.

II.4.2 The contractor must comply with the minimum requirements provided for in the tender specifications. This includes compliance with applicable obligations under environmental, social and labour law established by Union law, national law and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU[3] and compliance with data protection obligations resulting from Regulation (EU) 2016/679[4] and Regulation (EU) 2018/1725[5].

II.4.3 The contractor must obtain any permit or licence required in the State where the services are to be provided.

II.4.4 All periods specified in the contract are calculated in calendar days, unless otherwise specified.

II.4.5 The contractor must not present itself as a representative of the contracting authority and must inform third parties that it is not part of the European public service.

II.4.6 The contractor is responsible for the personnel who carry out the services and exercises its authority over its personnel without interference by the contracting authority. The contractor must inform its personnel that:

(a) they may not accept any direct instructions from the contracting authority; and
(b) their participation in providing the services does not result in any employment or contractual relationship with the contracting authority.

II.4.7 The contractor must ensure that the personnel performing the contract and any future replacement personnel possess the professional qualifications and experience required to provide the services, as the case may be on the basis of the selection criteria set out in the tender specifications.

II.4.8 At the contracting authority's reasoned request, the contractor must replace any member of personnel who:

[3] OJ L 94 of 28.03.2014, p. 65

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

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

(a) does not have the expertise required to provide the services; or
(b) has caused disruption at the premises of the contracting authority.

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

II.4.9 The contractor must record and report to the contracting authority any problem that affects its ability to provide the services. The report must describe the problem, state when it started and what action the contractor is taking to resolve it.

II.4.10 The contractor must immediately inform the Contracting authority of any changes in the exclusion situations as declared, according to Article 137(1) of the Financial Regulation (Regulation (EU) 2018/1046).

ARTICLE II.5 – COMMUNICATION BETWEEN THE PARTIES

II.5.1 Form and means of communication

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

(a) be made in writing in paper or electronic format in the language of the contract;
(b) bear the contract number;
(c) be made using the relevant communication details set out in Article I.8; and
(d) be sent by mail, email or, for the documents specified in the special conditions, via e-PRIOR.

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

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

II.5.2 Date of communications by mail and email

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

Email is deemed to have been received by the receiving party on the day of dispatch of that email, provided that it is sent to the email address indicated in Article I.8. The sending party must be able to prove the date of dispatch. In the event that the sending party receives a non-delivery report, it must make every effort to ensure that the other party actually receives the communication by email or mail. In such a case, the sending party is not held in breach of its obligation to send such communication within a specified deadline.

Mail sent to the contracting authority is deemed to have been received by the contracting authority on the date on which the department responsible referred to in Article I.8 registers it.

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

II.5.3 Submission of e-documents via e-PRIOR

1. If provided for in the special conditions, the exchange of electronic documents (e-documents) such as invoices between the parties is automated through the use of the e-PRIOR platform. This platform provides two possibilities for such exchanges: either through web services (machine-to-machine connection) or through a web application (the supplier portal).
2. The contracting authority takes the necessary measures to implement and maintain electronic systems that enable the supplier portal to be used effectively.
3. In the case of machine-to-machine connection, a direct connection is established between the parties' back offices. In this case, the parties take the measures necessary on their side to implement and maintain electronic systems that enable the machine-to-machine connection to be used effectively. The electronic systems are specified in the interface control document. The contractor (or leader in the case of a joint tender) must take the necessary technical measures to set up a machine-to-machine connection and at its own cost.
4. If communication via the supplier portal or via the web services (machine-to-machine connection) is hindered by factors beyond the control of one party, it must notify the other immediately and the parties must take the necessary measures to restore this communication.
5. If it is impossible to restore the communication within two working days, one party must notify the other that alternative means of communication specified in Article II.5.1 will be used until the supplier portal or the machine-to-machine connection is restored.
6. When a change in the interface control document requires adaptations, the contractor (or leader in the case of a joint tender) has up to six months from receipt of the notification to implement this change. This period can be shortened by mutual agreement of the parties. This period does not apply to urgent measures required by the security policy of the contracting authority to ensure integrity, confidentiality and non-repudiation of information and the availability of e-PRIOR, which must be applied immediately.

II.5.4 Validity and date of e-documents

1. The parties agree that any e-document, including related attachments exchanged via e-PRIOR:

   (e) is considered as equivalent to a paper document;
   (f) is deemed to be the original of the document;
   (g) is legally binding on the parties once an e-PRIOR authorised person has performed the 'sign' action in e-PRIOR and has full legal effect; and
   (h) constitutes evidence of the information contained in it and is admissible as evidence in judicial proceedings.

2. The parties expressly waive any rights to contest the validity of such a document solely on the grounds that communications between the parties occurred through e-PRIOR or that the document has been signed through e-PRIOR. If a direct connection is established between the parties' back offices to allow electronic transfer of documents, the parties agree that an e-document, sent as mentioned in the interface control document, qualifies as an EDI message.
3. If the e-document is dispatched through the supplier portal, it is deemed to have been legally issued or sent when the contractor (or leader in the case of a joint tender) is able to successfully submit the e-document without any error messages. The generated PDF and XML document for the e-document are considered as a proof of receipt by the contracting authority.
4. In the event that an e-document is dispatched using a direct connection established between the parties' back offices, the e-document is deemed to have been legally issued or sent when its status is 'received' as defined in the interface control document.
5. When using the supplier portal, the contractor (or leader in the case of a joint tender) can download the PDF or XML message for each e-document for one year after submission. After this period, copies of the e-documents are no longer available for automatic download from the supplier portal.

II.5.5 Authorised persons in e-PRIOR

The contractor submits a request for each person who needs to be assigned the role of 'user' in e-PRIOR. These persons are identified by means of the European Communication Authentication Service (ECAS) and authorised to access and perform actions in e-PRIOR within the permissions of the user roles that the contracting authority has assigned to them.

User roles enabling these e-PRIOR authorised persons to sign legally binding documents such as specific tenders or specific contracts are granted only upon submission of supporting documents proving that the authorised person is empowered to act as a legal representative of the contractor.

ARTICLE II.6 – LIABILITY

II.6.1 The contracting authority is not liable for any damage or loss caused by the contractor, including any damage or loss to third parties during or as a consequence of performance of the contract.

II.6.2 If required by the relevant applicable legislation or if requested by the contracting authority, the contractor must take out an insurance policy against risks and damage or loss relating to the performance of the contract. It must also take out supplementary insurance as reasonably required by standard practice in the industry. Upon request, the contractor must provide evidence of insurance coverage to the contracting authority.

II.6.3 The contractor is liable for any loss or damage caused to the contracting authority during or as a consequence of performance of the contract, including in the event of subcontracting, but only up to an amount not exceeding three times the total amount of the contract. However, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor or of its personnel or subcontractors, as well as in the case of an action brought against the contracting authority by a third party for breach of its intellectual property rights, the contractor is liable for the whole amount of the damage or loss.

II.6.4 If a third party brings any action against the contracting authority in connection with the performance of the contract, including any action for alleged breach of intellectual property rights, the contractor must assist the contracting authority in the legal proceedings, including by intervening in support of the contracting authority upon request. If the contracting authority's liability towards the third party is established and that such liability is caused by the contractor during or as a consequence of the performance of the contract, Article II.6.3 applies.

II.6.5 If the contractor is composed of two or more economic operators (i.e. who submitted a joint tender), they are all jointly and severally liable to the contracting authority for the performance of the contract.

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

ARTICLE II.7 - CONFLICT OF INTEREST AND PROFESSIONAL CONFLICTING INTERESTS

II.7.1 The contractor must take all the necessary measures to prevent any situation of conflict of interest or professional conflicting interest.

II.7.2 The contractor must notify the contracting authority in writing as soon as possible of any situation that could constitute a conflict of interest or a professional conflicting interest during the performance of the contract. The contractor must immediately take action to rectify the situation.

The contracting authority may do any of the following:

(a) verify that the contractor's action is appropriate;
(b) require the contractor to take further action within a specified deadline;

II.7.3 The contractor must pass on all the relevant obligations in writing to:

(a) its personnel;
(b) any natural person with the power to represent it or take decisions on its behalf;
(c) third parties involved in the performance of the contract, including subcontractors.

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

ARTICLE II.8 – CONFIDENTIALITY

II.8.1 The contracting authority and the contractor must treat with confidentiality any information or documents, in any format, disclosed in writing or orally in relating to the performance of the contract and identified in writing as confidential.

II.8.2 Each party must:

(a) not use confidential information or documents for any purpose other than to perform its obligations under the contract without the prior written agreement of the other party;

(b) ensure the protection of such confidential information or documents with the same level of protection as its own confidential information and in any case with due diligence;

(c) not disclose, directly or indirectly, confidential information or documents to third parties without the prior written agreement of the other party.

II.8.3 The confidentiality obligations set out in this Article are binding on the contracting authority and the contractor during the performance of the contract and for as long as the information or documents remain confidential unless:

(a) the disclosing party agrees to release the receiving party from the confidentiality obligation earlier;

(b) the confidential information or documents become public through other means than a breach of the confidentiality obligation;

(c) the applicable law requires the disclosure of the confidential information or documents.

II.8.4 The contractor must obtain from any natural person with the power to represent it or take decisions on its behalf, as well as from third parties involved in the performance of the contract, a commitment that

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

ARTICLE II.9 – PROCESSING OF PERSONAL DATA

II.9.1 Processing of personal data by the contracting authority

Any personal data included in or relating to the contract, including its implementation, shall be processed in accordance with Regulation (EU) No 2018/1725. Such data shall be processed solely for the purposes of the implementation, management and monitoring of the contract by the data controller.

The contractor or any other person whose personal data is processed by the data controller in relation to this contract has specific rights as a data subject under Chapter III (Articles 14-25) of Regulation (EU) No 2018/1725, in particular the right to access, rectify or erase their personal data and the right to restrict or, where applicable, the right to object to processing or the right to data portability.

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

Details concerning the processing of personal data are available in the data protection notice referred to in Article I.9.

II.9.2 Processing of personal data by the contractor

The processing of personal data by the contractor shall meet the requirements of Regulation (EU) No 2018/1725 and be processed solely for the purposes set out by the controller.

The contractor shall assist the controller for the fulfilment of the controller's obligation to respond to requests for exercising rights of person whose personal data is processed in relation to this contract as laid down in Chapter III (Articles 14-25) of Regulation (EU) No 2018/1725.
The contractor shall inform without delay the controller about such requests.

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

The contractor shall grant personnel access to the data to the extent strictly necessary for the implementation, management and monitoring of the contract. The contractor must ensure that personnel authorised to process personal data has committed itself to confidentiality or is under appropriate statutory obligation of confidentiality in accordance with the provisions of Article II.8.

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

a) the pseudonymisation and encryption of personal data;
b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;

d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;
e) measures to protect personal data from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed.

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

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

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

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

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

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

The contracting authority is subject to Protocol 7 of the Treaty on the Functioning of the European Union on the privileges and immunities of the European Union, particularly as regards the inviolability of archives (including the physical location of data and services as set out in Article I.9.2) and data security, which includes personal data held on behalf of the contracting authority in the premises of the contractor or subcontractor.

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

The duration of processing of personal data by the contractor will not exceed the period referred to in Article II.24.2. Upon expiry of this period, the contractor shall, at the choice of the controller, return, without any undue delay in a commonly agreed format, all personal data processed on behalf of the controller and the copies thereof or shall effectively delete all personal data unless Union or national law requires a longer storage of personal data.

For the purpose of Article II.10, if part or all of the processing of personal data is subcontracted to a third party, the contractor shall pass on the obligations referred to in Articles I.9.2 and II.9.2 in writing to those

parties, including subcontractors. At the request of the contracting authority, the contractor shall provide a document providing evidence of this commitment.

ARTICLE II.10 – SUBCONTRACTING

II.10.1 The contractor must not subcontract and have the contract performed by third parties beyond the third parties already mentioned in its tender without prior written authorisation from the contracting authority.

II.10.2 Even if the contracting authority authorises subcontracting, the contractor remains bound by its contractual obligations and is solely responsible for the performance of this contract.

II.10.3 The contractor must ensure that the subcontract does not affect the rights of the contracting authority under this contract, particularly those under Articles II.8, II.13 and II.24.

II.10.4 The contracting authority may request the contractor to replace a subcontractor found to be in a situation provided for in points (d) and (e) of Article II.18.1.

ARTICLE II.11 – AMENDMENTS

II.11.1 Any amendment to the contract must be made in writing before all contractual obligations have been fulfilled.

II.11.2 Any amendment must not make changes to the contract that might alter the initial conditions of the procurement procedure or result in unequal treatment of tenderers.

ARTICLE II.12 – ASSIGNMENT

II.12.1 The contractor must not assign the rights and obligations arising from the contract, including claims for payments or factoring, without prior written authorisation from the contracting authority. In such cases, the contractor must provide the contracting Authority with the identity of the intended assignee.

II.12.2 Any right or obligation assigned by the contractor without authorisation is not enforceable against the contracting authority.

ARTICLE II.13 – INTELLECTUAL PROPERTY RIGHTS

II.13.1 Ownership of the rights in the results

The contracting authority 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 to all technological solutions and information created or produced by the contractor or by its subcontractor in performance of the contract. The contracting authority may exploit and use the acquired rights as stipulated in this contract. The contracting authority acquires all the rights from the moment it 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 contracting authority.

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

II.13.2 Licensing rights on pre-existing materials

Unless provided otherwise in the special conditions, the contracting authority 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 contracting authority, which may use the pre-existing materials for all the modes of exploitation set out in this contract. All pre-existing rights are licensed to the contracting authority from the moment the results are delivered and approved by the contracting authority.

The licensing of pre-existing rights to the contracting authority under this contract covers all territories worldwide and is valid for the duration of intellectual property rights protection. Under observance of the limitations, if any, provided by applicable law, the pre-existing materials may be used for any of the following purposes:

(a) use for its own purposes:

I. making available to the staff of the contracting authority
II. 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
III. installing, uploading, processing
IV. arranging, compiling, combining, retrieving
V. copying, reproducing in whole or in part and in unlimited number of copies

(b) distribution to the public:

I. publishing in hard copies
II. publishing in electronic or digital format
III. publishing on the internet as a downloadable/non-downloadable file
IV. broadcasting by any kind of technique of transmission
V. public presentation or display
VI. communication through press information services
VII. inclusion in widely accessible databases or indexes
VIII. otherwise in any form and by any method

(c) modifications by the contracting authority or by a third party in the name of the contracting authority:

I. shortening
II. summarizing
III. modifying of the content
IV. 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

V. addition of new elements, paragraphs titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound, etc.
VI. preparation in audio form, preparation as a presentation, animation, pictograms story, slide-show, public presentation etc.
VII. extracting a part or dividing into parts
VIII. use of a concept or preparation of a derivate work
IX. digitisation or converting the format for storage or usage purposes
X. modifying dimensions
XI. translating, inserting subtitles, dubbing in different language versions (including, but not limited to all official languages of the EU and languages of candidate countries)

(d) the modes of exploitation listed in article II.13.3

(e) 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 (d) to third parties.

Where the contracting authority becomes aware that the scope of modifications exceeds that envisaged in this contract, the contracting authority shall consult the contractor. Where necessary, the contractor shall in turn seek the agreement of any creator or other right holder. The contractor shall reply to the contracting authority within one month and shall provide its agreement, including any suggestions of modifications, free of charge. The creator may refuse the intended modification only when it may harm his honour, reputation or distort integrity of the work.

The payment of the price as set out in this contract is deemed to also include any fees payable to the contractor in relation to the licensing of pre-existing rights to the contracting authority, including for all forms of exploitation and of use of the results.

Where the performance 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.

II.13.3 Exclusive rights

The contracting authority acquires the following exclusive rights:

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

(g) where the results are or include a database: the exclusive right to authorise or prohibit the extraction of all or a substantial part of the contents of the database to another medium by any means or in any form; and the exclusive right to authorise or prohibit the re-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 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) giving access upon individual requests without the right to reproduce or exploit, as provided for by Regulation 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents;
    (ii) the right to store and archive the results or copies of the results in line with the document management rules applicable to the contracting authority, including digitisation or converting the format for preservation or new use purposes;

(l) where the results are or incorporate software, including source code, object code and, where relevant, documentation, preparatory materials and manuals, in addition to the other rights mentioned in this Article:

    (i) end-user rights, for all uses by the contracting authority or by subcontractors which result from this contract and from the intention of the parties;
    (ii) the rights to decompile or disassemble the software;

(m) to the extent that the contractor may invoke moral rights, the right for the contracting authority, except where otherwise provided in this contract, to publish the results with or without mentioning the creator(s)' name(s), and the right to decide when and whether the results may be disclosed and published.

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

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

II.13.4 Identification of pre-existing rights

When delivering the results, the contractor must warrant that, for any use that the contracting authority may envisage within the limits set in this 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.

II.13.5 Evidence of granting of pre-existing rights

Upon request by the contracting authority, the contractor must provide evidence that it has the ownership of or the right to use all the listed pre-existing rights, except for the rights owned or licensed by the contracting authority. 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, fonts, tables, data, software, technical inventions, know-how, IT development tools, routines, subroutines or other programmes ('background technology'), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin.

This evidence must include, as appropriate:

(a) the name and version number of a software product;

(b) the full identification of the work and its author, developer, creator, translator, data entry person, graphic designer, publisher, editor, photographer, producer;

(c) a copy of the licence to use the product or of the agreement granting the relevant rights to the contractor or a reference to this licence;

(d) a copy of the agreement or extract from the employment contract granting the relevant rights to the contractor where parts of the results were created by its personnel;

(e) the text of the disclaimer notice if any.

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

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

II.13.6 Quotation of works in the result

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

II.13.7 Moral rights of creators

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

(a) that their names be mentioned or not mentioned when the results are presented to the public;
(b) that the results be divulged or not after they have been delivered in their final version to the contracting authority;
(c) that the results be adapted, provided that this is done in a manner which is not prejudicial to the creator's honour or reputation.

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

II.13.8 Image rights and sound recordings

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

II.13.9 Copyright notice for pre-existing rights

When the contractor retains pre-existing rights on parts of the results, reference must be inserted to that effect when the result is used as set out in Article I.10.1, with the following disclaimer: '© — year — the contracting authority. All rights reserved. Certain parts are licensed under conditions to the contracting authority', or with any other equivalent disclaimer as the contracting authority may consider best appropriate, or as the parties may agree on a case-by-case basis. This does not apply where inserting such reference would be impossible, notably for practical reasons.

II.13.10 Visibility of the contracting authority funding and disclaimer

When making use of the results, the contractor must declare that they have been produced under a contract with the contracting authority 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.

II.13.11 Trade secrets

Under observance of the limitations, if any, provided by applicable laws, the contracting authority shall have the right to disclose trade secrets which are incorporated in the results and/or pre-existing rights to a third party who is modifying the results and/or pre-existing rights in the name of the contracting authority provided that the trade secrets are used solely in connection with the modification of the result and/or the pre-existing rights on behalf of the contracting authority. The contracting authority shall ensure that the third party is bound by the confidentiality obligations contained in this contract or by essentially corresponding confidentiality terms.

ARTICLE II.14 – FORCE MAJEURE

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

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

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

ARTICLE II.15 – LIQUIDATED DAMAGES

II.15.1 Delay in delivery

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

0.3 x (V/d)

where:

V is the price of the relevant purchase or deliverable or result or, failing that, the price specified in Article I.4.1;

d is the duration specified in the contract for delivery of the relevant purchase or deliverable or result or, failing that, the duration of performance of the contract specified in Article I.3.3 expressed in days.

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

II.15.2 Procedure

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

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

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

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

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

II.15.3 Nature of liquidated damages

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

II.15.4 Claims and liability

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

ARTICLE II.16 – REDUCTION IN PRICE

II.16.1 Quality standards

If the contractor fails to provide the service in accordance with the contract ('unperformed obligations') or if it fails to provide the service in accordance with the expected quality levels specified in the tender specifications ('low quality delivery'), the contracting authority may reduce or recover payments proportionally to the seriousness of the unperformed obligations or low quality delivery. This includes in particular cases where the contracting authority cannot approve a result, report or deliverable as defined in Article I.5 after the contractor has submitted the required additional information, correction or new version.

A reduction in price may be imposed together with liquidated damages under the conditions of Article II.15.

II.16.2 Procedure

The contracting authority must formally notify the contractor of its intention to reduce payment and the corresponding calculated amount.

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

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

(a) of the withdrawal of its intention to reduce payment; or

(b) of its final decision to reduce payment and the corresponding amount.

II.16.3 Claims and liability

Any reduction in price does not affect the contractor's actual or potential liability or the contracting authority's rights under Article II.18.

ARTICLE II.17 – SUSPENSION OF THE PERFORMANCE OF THE CONTRACT

II.17.1 Suspension by the contractor

If the contractor is affected by force majeure, it may suspend the performance of the contract.

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

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

II.17.2 Suspension by the contracting authority

The contracting authority may suspend the performance of the contract or any part of it:

(a) if the procedure for awarding the contract or the performance of the contract proves to have been subject to irregularities, fraud or breach of obligations;

(b) in order to verify whether the presumed irregularities, fraud or breach of obligations actually occurred.

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

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

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

The contractor is not entitled to compensation for suspension of any part of the contract.

The contracting authority may in addition suspend the time allowed for payments in accordance with Article II.21.7.

ARTICLE II.18 – TERMINATION OF THE CONTRACT

II.18.1 Grounds for termination by the contracting authority

The Contracting Authority may terminate the contract in the following circumstances:

(a) if provision of the services under the contract has not actually started within 15 days of the scheduled date and the contracting authority considers the new date proposed, if any, unacceptable, taking into account Article II.11.2;
(b) if the contractor is unable, through its own fault, to obtain any permit or licence required for performance of the contract;
(c) if the contractor does not perform the contract in accordance with the tender specifications or is in breach of another substantial contractual obligation.
(d) if the contractor or any person that assumes unlimited liability for the debts of the contractor is in one of the situations provided for in points (a) and (b) of Article 136(1) of the Financial Regulation[6];
(e) if the contractor or any related person 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.
(f) if the procedure for awarding the contract or the performance of the contract prove to have been subject to irregularities, fraud or breach of obligations;
(g) if the contractor does not comply with applicable obligations under environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;
(h) if the contractor is in a situation that could constitute a conflict of interest or a professional conflicting interest as referred to in Article II.7;
(i) if a change to the contractor's legal, financial, technical, organisational or ownership situation is likely to substantially affect the performance of the contract or substantially modify the conditions under

[6] Regulation (EU, EURATOM) No 2018/1046 on the financial rules applicable to the general budget of the Union.

which the contract was initially awarded or a change regarding the exclusion situations listed in Art 136 of the Financial Regulation that calls into question the decision to award the contract;

(j) in the event of force majeure, where either resuming implementation is impossible or the necessary ensuing amendments to the contract would mean that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or contractors;

(k) if the contractor is in breach of the data protection obligations resulting from Article II.9.2;

(l) if the contractor does not comply with the applicable data protection obligations resulting from Regulation (EU) 2016/679.

II.18.2 Grounds for termination by the contractor

The contractor may terminate the contract if the contracting authority fails to comply with its obligations, in particular the obligation to provide the information needed for the contractor to perform the contract as provided for in the tender specifications.

II.18.3 Procedure for termination

A party must formally notify the other party of its intention to terminate the contract and the grounds for termination.

The other party has 30 days following the date of receipt to submit observations, including the measures it has taken to continue fulfilling its contractual obligations. Failing that, the decision to terminate becomes enforceable the day after the time limit for submitting observations has elapsed.

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

In the cases referred to in points (a) to (d), (g) to (i) and (l) of Article II.18.1 and in Article II.18.2, the date on which the termination takes effect must be specified in the formal notification.

In the cases referred to in points (e), (f), (j) and (k) of Article II.18.1, the termination takes effect on the day following the date on which the contractor receives notification of termination.

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

II.18.4 Effects of termination

The contracting authority may claim compensation for such damage. The contractor is liable for damage incurred by the contracting authority as a result of the termination of the contract including the additional cost of appointing and contracting another contractor to provide or complete the services, except if the damage was caused by the situation specified in Article II.18.1 (j) or in Article II.18.2. The contracting authority may claim compensation for such damage.

The contractor is not entitled to compensation for any loss resulting from the termination of the contract, including loss of anticipated profits, unless the loss was caused by the situation specified in Article II.18.2.

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

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

In the case of joint tenders, the contracting authority may terminate the contract with each member of the group separately on the basis of points (d), (e), (g), (k) and (l) of Article II.18.1, under the conditions set out in Article II.11.2.

ARTICLE II.19 – INVOICES, VALUE ADDED TAX AND E-INVOICING

II.19.1 Invoices and value added tax

Invoices must contain the contractor's (or leader's in the case of a joint tender) identification data, the amount, the currency and the date, as well as the contract reference.

Invoices must indicate the place of taxation of the contractor (or leader in the case of a joint tender) for value added tax (VAT) purposes and must specify separately amounts not including VAT and amounts including VAT.

All invoices shall indicate both the contractor's and the contracting authority's VAT number.

The contracting authority is exempt from all taxes and duties, including VAT, in accordance with Articles 3 and 4 of the Protocol on the privileges and immunities of the European Union.

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

II.19.2 E-invoicing

If provided for in the special conditions, the contractor (or leader in the case of a joint tender) 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.

ARTICLE II.20 – PRICE REVISION

If a price revision index is provided in Article I.4.2, this Article applies to it.

Prices are fixed and not subject to revision during the first year of the contract.

At the beginning of the second and every following year of the contract, each price may be revised upwards or downwards at the request of one of the parties.

A party may request a price revision in writing no later than three months before the anniversary date of entry into force of the contract. The other party must acknowledge the request within 14 days of receipt.

At the anniversary date, the contracting authority must communicate the final index for the month in which the request was received, or failing that, the last provisional index available for that month. The contractor establishes the new price on this basis and communicates it as soon as possible to the contracting authority for verification.

The price revision is calculated using the following formula:

$$Pr = Po \times \left(\frac{Ir}{Io} \right)$$

where: Pr = revised price;

Po = price in the tender;

Io = index for the month in which the contract enters into force;

Ir = index for the month in which the request to revise prices is received.

ARTICLE II.21 – PAYMENTS AND GUARANTEES

II.21.1 Date of payment

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

II.21.2 Currency

Payments are made in euros or in the currency provided for in Article I.7.

II.21.3 Conversion

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

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

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

II.21.4 Costs of transfer

The costs of the transfer are borne as follows:

(a) the contracting authority bears the costs of dispatch charged by its bank;
(b) the contractor bears the costs of receipt charged by its bank;

(c) the party causing repetition of the transfer bears the costs for repeated transfer.

II.21.5 Pre-financing, performance and money retention guarantees

If, as provided for in Articles I.5 or I.6, a financial guarantee is required for the payment of pre-financing, as performance guarantee or as retention money guarantee, it must fulfil the following conditions:

(a) the financial guarantee is provided by a bank or a financial institution approved by the contracting authority or, at the request of the contractor and with the agreement of the contracting authority, by a third party; and
(b) the guarantee shall have the effect of making the bank or financial institution or the third party provide irrevocable collateral security, or stand as first-call guarantor of the contractor's obligations without requiring that the contracting authority has recourse against the principal debtor (the contractor).

The contractor bears the cost of providing such guarantee.

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

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

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

The contracting authority must not request a retention money guarantee where it has requested a performance guarantee

II.21.6 Interim payments and payment of the balance

The contractor (or leader in the case of a joint tender) must send an invoice for interim payment, as provided for in Article I.5 or in the tender specifications.

The contractor (or leader in the case of a joint tender) must send an invoice for payment of the balance within 60 days of the end of the period of provision of the services, as provided for in Article I.5 or in the tender specifications.

Payment of the invoice and approval of documents does not imply recognition of the regularity, authenticity, completeness and correctness of the declarations and information they contain.

Payment of the balance may take the form of recovery.

II.21.7 Suspension of the time allowed for payment

The contracting authority may suspend the payment periods specified in Article I.5 at any time by notifying the contractor (or leader in the case of a joint tender) that its invoice cannot be processed. The reasons the contracting authority may cite for not being able to process an invoice are:

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

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

Suspension takes effect on the date the contracting authority sends the notification. The remaining payment period resumes from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension period exceeds two months, the contractor (or leader in the case of a joint tender) may request the contracting authority to justify the continued suspension.

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph of this Article and the new document produced is also rejected, the contracting authority reserves the right to terminate the contract in accordance with Article II.18.1(c).

II.21.8 Interest on late payment

On expiry of the payment periods specified in Article I.5, the contractor (or leader in the case of a joint tender) is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in euros (the reference rate) plus eight points. The reference rate is the rate in force, as published in the C series of the Official Journal of the European Union, on the first day of the month in which the payment period ends.

Suspension of the payment period as provided for in Article II.21.7 is not considered as giving rise to late payment.

Interest on late payment covers the period running from the day following the due date for payment up to and including the date of payment as defined in Article II.21.1.

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

ARTICLE II.22 – REIMBURSEMENTS

II.22.1 Where provided by the special conditions or by the tender specifications, the contracting authority shall reimburse the expenses which are directly connected with execution of the tasks on production of original supporting documents, including receipts and used tickets.

II.22.2 Travel expenses are reimbursed on the following basis:

(a) The shortest and most economical normal route by rail (first class) between the seat of the contractor and the place where the task is to be executed.

(b) If the journey includes at least six hours of night travel between 22:00 and 7:00, the cost of accommodation in a double sleeper.

(c) Seat reservations and transport of necessary luggage, and supplements for high-speed trains.

(d) Expenses arising for journeys by sea are reimbursed on presentation of the supporting documents. The cost of transporting a car by sea is not reimbursed.

(e) Where the person concerned travels by car, travel expenses are reimbursed on the basis of the first class rail fare, excluding any supplements. The person is requested to provide supporting documents as to the actual price of a first class rail ticket for the journey in question at the occasion the experts is participating in.

(f) Where the distance by rail exceeds 400 km, or where the route includes a sea crossing, the cost of travel by air will be reimbursed on the basis of the fare in economy class or, if that is not available, business class.

(g) Taxi fares are not reimbursed

II.22.3 Subsistence expenses are reimbursed on the following basis:

(a) For journeys of less than 200 km (return trip) no subsistence expenses shall be payable.

(b) Reimbursement of accommodation is based on actual costs of accommodation on production of an original invoice up to the ceiling as indicated in Annex III per necessary over night stay related to the tasks executed. Accommodation shall be arranged and paid directly by the contractor.

(c) Flat rate daily allowance as specified in Annex III shall be reimbursed for days during which the tasks are executed. This amount covers all expenses at the place where the tasks related to the contract are executed, including the cost of meals and local transport (incl. taxi).

(d) Daily allowance for up to two days may be paid for extra over night stays necessary to qualify for a reduced transport fare through e.g. a stay over from Saturday to Sunday, provided the reduction amounts at least to the extra allowance paid.

II.22.4 The cost of shipment of equipment or unaccompanied luggage shall be reimbursed provided the contracting authority has given prior written authorisation.

II.22.5 Conversion between the euro and another currency shall be made as specified in Article II.21.3.

ARTICLE II.23 – RECOVERY

II.23.1 If an amount is to be recovered under the terms of the contract, the contractor must repay the contracting authority the amount in question.

II.23.2 Recovery procedure

Before recovery, the contracting authority must formally notify the contractor of its intention to recover the amount it claims, specifying the amount due and the reasons for recovery and inviting the contractor to make any observations within 30 days of receipt.

If no observations have been submitted or if, despite the observations submitted, the contracting authority decides to pursue the recovery procedure, it must confirm recovery by formally notifying a debit note to the contractor, specifying the date of payment. The contractor must pay in accordance with the provisions specified in the debit note.

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

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

II.23.3 Interest on late payment

If the contractor does not honour the obligation to pay the amount due by the date set by the contracting authority in the debit note, the amount due bears interest at the rate indicated in Article II.21.8. Interest on late payments will cover the period starting on the day after the due date for payment and ending on the date when the contracting authority receives the full amount owed.

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

II.23.4 Recovery rules in the case of joint tender

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

If the leader does not pay by the due date and if the amount cannot be offset or can only be offset partially in accordance with Article II.23.2 (a), then the contracting authority may claim the amount still due to any other member or members of the group by respectively notifying them with a debit note in conformity with the provisions laid down in Article II.23.2.

ARTICLE II.24 – CHECKS AND AUDITS

II.24.1 The contracting authority and the European Anti-Fraud Office may check or require an audit on the performance of the contract. This may be carried out either by OLAF's own staff or by any other outside body authorised to do so on their behalf.

Such checks and audits may be initiated at any moment during the performance of the contract and up to five years starting from the payment of the balance.

The audit procedure is initiated on the date of receipt of the relevant letter sent by the contracting authority. Audits are carried out on a confidential basis.

II.24.2 The contractor must keep all original documents stored on any appropriate medium, including digitised originals if authorised under national law, for a period of five years starting from the payment of the balance.

II.24.3 The contractor must grant the contracting authority's staff and outside personnel authorised by the contracting authority the appropriate right of access to sites and premises where the contract is performed and to all the information, including information in electronic format, needed to conduct such checks and audits. The contractor must ensure that the information is readily available at the moment of the check or audit and, if so requested, that information is handed over in an appropriate format.

II.24.4 On the basis of the findings made during the audit, a provisional report is drawn up. The contracting authority or its authorised representative must send it to the contractor, who has 30 days following the date of receipt to submit observations. The contractor must receive the final report within 60 days following the expiry of that deadline to submit observations.

On the basis of the final audit findings, the contracting authority may recover all or part of the payments made in accordance with Article II.23 and may take any other measure which it considers necessary.

II.24.5 In accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspection carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities and Regulation (EU, Euratom) No 883/2013 of the European Parliament and the Council of 11 September 2013 concerning investigation conducted by the European Anti-Fraud Office , the European Anti-Fraud Office may carry out investigations, including on-the-spot checks and inspections, to establish whether there has been fraud, corruption or any other illegal activity under the contract affecting the financial interests of the Union. Findings arising from an investigation may lead to criminal prosecution under national law.

The investigations may be carried out at any moment during the provision of the services and up to five years starting from the payment of the balance.

II.24.6 The Court of Auditors and the European Public Prosecutor's Office established by Council Regulation (EU) 2017/19397 ('the EPPO') have the same rights as the contracting authority, particularly right of access, for the purpose of checks, audits and investigations.

[7] Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office.

ANNEX I

Tender specifications

ANNEX II

Contractor's tender (No [complete] of [complete])

ANNEX III

IPR Identification Form

This form must be provided to the contracting authority together with the delivery of the results, duly completed and signed by the authorised representative of the contractor.

1. CONTRACT INFORMATION

Contract number:

……..

Contractor:

……

2. RESULTS

Do results incorporate pre-existing rights? YES ☐ NO ☐

(If yes, please complete part 3)

Do results/pre-existing rights incorporate trade secrets? YES ☐ NO ☐

(If yes, please complete part 4)

3. PRE-EXISTING RIGHTS (if applicable)

Please indicate below separately the different pre-existing rights incorporated in the results.
(In order to add another pre-existing IPR, please add [an] additional page[s])

Pre-existing IP (short description)	
IPR applicable	*(Please identify IPR: copyright and/or related rights; database right; patent, trademark; design; etc.)*
Registered IPR?	YES ☐ NO ☐ *(If Yes, please provide proof of registration)*
IPR duration (according to national law)	

IP ownership	CONTRACTOR ☐		
	THIRD PARTY ☐	PROPRIETARY license ☐	
		OPEN SOURCE license ☐	

4. TRADE SECRETS (if applicable)

Please indicate below separately the different trade secrets incorporated in the results/pre-existing material. (In order to add another trade secret, please add [an] additional page[s])

Trade secret (short description)	
Ownership	CONTRACTOR ☐
	THIRD PARTY ☐

I, [*insert name of the authorised representative of the contractor*], declare that this statement is true and accurate.

Date, place and signature: