

**MULTIPLE FRAMEWORK CONTRACT FOR SERVICES IN CASCADE**  
**EUSPA/OP/37/23/Lot [X]**

**(updated after Corrigendum 3)**

The European Union Agency for the Space Programme (hereinafter referred to as "EUSPA", the "Agency" or the "Contracting Authority"), represented for the purposes of the signature of this framework contract (hereinafter referred to as the "Framework Contract" or "FWC") by Mr Rodrigo da Costa, Executive Director,

representing also the European Commission under authorisation with the Memorandum of Understanding of [DATE] as additional Contracting Authority under an inter-institutional procurement (hereinafter referred to as "EC", or also as the "Contracting Authority"),

with the term "Contracting Authority" equally referring to both EUSPA and EC interchangeably and individually,

on the one part, and

[Contractor's full official name]

[Contractor's official legal form]

[Contractor's statutory registration number or ID or passport number]

[Contractor's full official address]

[VAT registration number]

the "Contractor", represented for the purposes of the signature of this Framework Contract by [first name, last name, function of Contractor's authorised representative],

on the other part,

<b>MULTISUPPLIER FRAMEWORK CONTRACT FOR SERVICES IN CASCADE .....</b>	<b>1</b>
<b>GSA/OP/05/20/Lot 1 .....</b>	<b>1</b>
<b>I. SPECIAL CONDITIONS .....</b>	<b>5</b>
ARTICLE I.1 – SUBJECT MATTER.....	5
ARTICLE I.2 – ENTRY INTO FORCE AND DURATION OF THE FWC .....	5
ARTICLE I.3 – IMPLEMENTATION OF THE FWC AND THE CASCADE .....	5
ARTICLE I.4 – PRICES AND COST REIMBURSEMENT .....	8
ARTICLE I.5 – CHARGING OF DAILY RATES .....	11
ARTICLE I.6 – PAYMENT ARRANGEMENTS .....	12
ARTICLE I.7 – BANK ACCOUNT .....	15
ARTICLE I.8 – COMMUNICATION DETAILS .....	16
ARTICLE I.9 – PROCESSING OF PERSONAL DATA .....	17
ARTICLE I.10 – LIABILITY .....	17
ARTICLE I.11 – COMPLIANCE WITH LABOUR LAW .....	18
ARTICLE I.12 – CONFIDENTIALITY AND PARTICIPATION IN PUBLIC PROCUREMENT .....	19
ARTICLE I.13 – INTELLECTUAL PROPERTY RIGHTS AND OTHER RESULTS .....	20
ARTICLE I.14 – LIQUIDATED DAMAGES .....	27
ARTICLE I.15 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES .....	28
ARTICLE I.16 – Not Used .....	28
ARTICLE I.17 – Not Used .....	28
ARTICLE I.18 – EXCHANGE OF CONSULTANTS, ADDITIONAL CONSULTANTS, NON-SOLICITATION ....	28
ARTICLE I.19 – PARTIAL TERMINATION .....	29
<b>II. GENERAL CONDITIONS .....</b>	<b>33</b>
ARTICLE II. 1 – DEFINITIONS .....	33
ARTICLE II.2 – PROVISION OF SERVICES .....	36
ARTICLE II.3 – COMMUNICATION BETWEEN THE PARTIES.....	37
ARTICLE II.4 – PROFESSIONAL CONFLICTING INTEREST .....	38
ARTICLE II.5 – PROCESSING OF PERSONAL DATA .....	39
ARTICLE II.6 – SUBCONTRACTING .....	41
ARTICLE II.7 – AMENDMENTS .....	42
ARTICLE II.8 – ASSIGNMENT .....	42
ARTICLE II.9 – FORCE MAJEURE .....	43
ARTICLE II.10 – PARTIAL PAYMENT AND RETENTION OF PAYMENT .....	43
ARTICLE II.11 – SUSPENSION OF THE IMPLEMENTATION OF THE CONTRACT .....	44
ARTICLE II.12 – TERMINATION OF THE FWC .....	45
ARTICLE II.13 – PAYMENTS AND GUARANTEES .....	49
ARTICLE II.14 – REIMBURSEMENTS .....	51

<b>ARTICLE II.15 – RECOVERY .....</b>	<b>51</b>
<b>ARTICLE II.16 – CHECKS AND AUDITS .....</b>	<b>52</b>
<b>ANNEX II.IV – DRAFT SPECIFIC CONTRACT .....</b>	<b>53</b>
<b>ANNEX II.VIII – DELIVERABLES ACCEPTANCE SHEET.....</b>	<b>57</b>

HAVE AGREED

to the **special conditions, general conditions for the Framework Contract**, and the following annexes:

<b>Annex II.I</b>	Statements of Compliance to the Statement of Work for Lot [x] of EUSPA/OP/37/23 /Lot [x] Framework Contract <b>(Signed)</b>
<b>Annex II.II</b>	Tender Specifications and its annexes
<b>Annex II.III</b>	Contractor's Tender (dated [date])
<b>Annex II.IV</b>	Draft Specific Contract – TEMPLATE (enclosed in the present document)
<b>Annex II.V</b>	Declaration on confidentiality and absence of conflicting professional interest – TEMPLATE
<b>Annex II.VI</b>	Security Aspects Letter (SAL)
<b>Annex II.VII</b>	Deliverables acceptance sheet – TEMPLATE (enclosed in the present document)
<b>Annex II.VIII</b>	Declaration of Background Intellectual Property Rights
<b>Annex II.IX</b>	Declaration of Foreground Intellectual Property Rights
<b>Annex II.X</b>	List of 'EU cities'
<b>Annex II.XI</b>	EUSPA policy on the prevention and management of conflicts of interest with regard to staff members and external workforce & its implementing rules
<b>Annex. II.XII</b>	Mission guidelines for locations not included in the Mission Travel Prices table, Financial Proposal (part of Annex II.III)

All documents issued by the Contractor except its tender (such as end-user agreements or general terms and conditions) are held inapplicable, unless explicitly mentioned in the special conditions of this FWC. If there is any conflict between different provisions in this FWC, the following rules must be applied:

- a) The terms set out in the Special Conditions shall take precedence over those in the General Conditions;
- b) The terms set out in the Contract shall take precedence over the Annexes;
- c) The terms set out in Annex II.I shall take precedence over those in Annex II.II and Annex II.III;
- d) Subject to the provisions under Annex I, the terms set out in Annex II.II shall take precedence over those in Annex II.III;
- e) The terms set out in Annex II.III shall take precedence over those in Annexes II.IV-VII;
- f) The provisions set out in the FWC take precedence over those in the specific contracts;
- g) The provisions set out in the specific contracts take precedence over those in terms of references for service provision;
- h) The provisions set out in the terms of references for services take precedence over those in the respective offer for a request for services, unless otherwise agreed in the Specific Contract.

## **I. SPECIAL CONDITIONS**

### **ARTICLE I.1 – SUBJECT MATTER**

**I.1.1.** The subject matter of the FWC is the provision of [Lot 1 – Mission, Services Engineering and Uptake Support / Lot 2 – Ground and Space Segments Engineering Support / Lot 3 – Security-Cyber and Risk Analysis Support / Lot 4 – Project Management & Quality Support / Lot 5 – Operations and Service Provision and Management Support] to the European Union Agency for the Space Programme and the European Commission further described in Annex II.II to the FWC.

**I.1.2.** Signature of the FWC imposes no obligation on the Contracting Authority to conclude any Specific Contract for the purchase of any services from the Contractor and nothing in this agreement shall be interpreted or construed as a commitment to the entire amount of the FWC.

### **ARTICLE I.2 – ENTRY INTO FORCE AND DURATION OF THE FWC**

**I.2.1** The FWC shall enter into force on the date on which the last party signs it.

**I.2.2** Execution of the tasks may under no circumstances begin before the date on which the FWC and Specific Contract enter into force.

**I.2.3** The FWC is concluded for a period of 12 (twelve) months with effect from the date on which it enters into force.

The FWC is renewed automatically 3 (three) times for 12 (twelve) months each, unless one of the parties receives Formal Notification from the other party to the contrary at the latest 3 (three) months before expiry of the on-going duration. Renewal does not change, postpone or defer of any existing obligations.

**I.2.4** The specific contracts shall be signed by the parties before the FWC expires. The FWC shall continue to apply to such specific contracts also after its expiry. However specific contracts shall expire no later than 6 (six) months after the expiry of the FWC.

### **ARTICLE I.3 – IMPLEMENTATION OF THE FWC AND THE CASCADE**

**I.3.1.** The present Contract will be implemented through Specific Contracts to be awarded in cascade.

**I.3.2.** The Contractor is ranked [FIRST / SECOND] in cascade.

**I.3.3.** The Contracting Authority may, from the contractor ranked first in cascade, request at any time the provision of services falling within the scope of this Contract, through the issuing of a request for services.

**I.3.4.** The Contracting Authority has the right to request the provision of services from the contractor ranked second in cascade, if the contractor ranked first:

- a. fails to confirm to the Contracting Authority within maximum 5 calendar days since the

request for services has been dispatched its intention to submit an offer or informs the Contracting Authority that it will not submit an offer for any reason,

- b. fails to reply with an acceptable offer to the request for services within 2 (two) weeks from reception of request for services,
- c. replies with an offer which is only partially compliant with the scope and/or requirements set out in the request for services,
- d. fails to send the signed Specific Contract to the Contracting Authority within 5 calendar days from reception of the Specific Contract signed by the Contracting Authority (Article I.3.8.), or
- e. is in a situation of professional conflicting interest or in a situation likely to compromise its independence and therefore cannot perform the specific contract, or
- f. fails to provide the personnel included in its offer to the service request within 1 (one) month as of the moment agreed in the specific contract, which shall also be considered a ground for termination under Article II.12.1 o), or
- g. gives rise to any other grounds for termination or partial termination of the FWC or the specific contract, including, without limitation, partial termination of a Specific Contract for the part terminated or partially terminated.
- h. without prejudice to letter c) above, the Contracting Authority may trigger the cascade also for a consolidated part of the specific contract's tasks, whose implementation is not linked with the implementation of the other Tasks in the specific contract, to the extent that this possibility was clearly identified in the request for services, and the specific contract proposal for the tasks at stake has been considered as not acceptable.

**I.3.5.** Except in case of proven Force Majeure as per **ARTICLE II.9 – FORCE MAJEURE**, the Contractor shall under no circumstances refuse to conclude specific contracts, provided that such specific contracts are compliant with the Tender Specifications under Annex II.II and with the provisions of the present Contract.

**I.3.6.** The Contracting Authority's requests for services shall include Terms of Reference for a specific contract, defining the mode through which the respective tasks to be covered by the specific contract are to be implemented (i.e., Deliverables Mode or Services Mode), including as a minimum:

- a. For the tasks to be implemented in Service Mode, following elements, as appropriate:
  - i. Period of implementation (start / end date, requirements on the schedule, if any),
  - ii. Requirements on the team to be proposed – indicative level of effort, possession of PSC, language proficiency, experience, knowledge, expertise in a particular domain
  - iii. Any further requirements, as relevant (e.g. timing of the support provision – work days only / 24/7, other)
- b. For the tasks to be implemented in Deliverables Mode:
  - i. List and Deliverables requirements
  - ii. Delivery Schedule
  - iii. Any further requirements, as relevant
- c. For both Service and Deliverable's Mode tasks
  - i. Description of the task (background, scope, requirements, need to access EUCI / PRS / Crypto information, as relevant)
  - ii. Request for provision of analysis and justification of the absence or existence of

- a professional conflict of interest with respect the scope of the tasks,
- iii. Place of the tasks' performance,
- iv. Specification of the needed missions (number, frequency, location, etc.)
- v. Payment Plan,
- vi. Deadline for submission of the Contractor's specific offer. By default, the time-limit for the submission of a specific offer is two weeks from dispatch of the request for services by the Contracting Authority to the Contractor.

**I.3.7.** Within the default time period or as indicated by the Contracting Authority in the request for services, which must in any case be reasonable for preparing the offer, the Contractor shall reply by submitting to the Contracting Authority a Specific Contract which shall consist of technical and financial part including:

**I.3.7.1 Specific contract technical proposal**

- a. For the tasks to be implemented in Service Mode, all elements proving the compliance with the requirements specified as per Article I.3.6 a, including as a minimum:
  - i. period and modalities of implementation,
  - ii. the team proposed including presentation of the experts (CVs), included in each team, their seniority, area of expertise, language proficiency, PSC level, and all other relevant information,
  - iii. justification of the coverage of all necessary areas of expertise, and of the adequacy of the balance between the profiles, having in mind the tasks complexity ad specifics
- b. For the tasks to be implemented in Deliverable Mode, all elements proving the compliance with the requirements specified as per Article I.3.6 b, including as a minimum:
  - i. analysis of the scope of the task, identification of the main challenges and risks and the proposed mitigation measures,
  - ii. proposed and implementation methods and approach, presentation of the rationale behind their selection, identified (alternative) solutions and analysis of their pros and cons;
  - iii. proposed schedule for the deliverables producing and its justification
  - iv. indication of the team of the consultant that will be engaged in the deliverables production, for the purposes of Article I.3.6, and the compliance to the EUCI requirements
- c. For both Service and Deliverable's Mode task - all elements proving the compliance with the requirements specified as per Article I.3.6 c, including as a minimum:
  - i. Description of the engagement of the consortia members and / or subcontractors in the respective tasks, demonstration of the compliance of the entities / team proposed to be engaged compliant to the PRS / EUCI / crypto requirements relevant for the task
  - ii. Analysis and justification of the absence or existence of a professional conflict of interest with respect the scope of the tasks,

**I.3.7.1 Specific Contract financial proposal, including as a minimum:**

- a. For the tasks to be delivered in a Service Mode - maximum price per task, based on the Daily Rates of the consultants proposed to be engaged, which should not exceed the rates specified in the FWC financial Proposal (Annex II.III) and the number of man-days of each consultant needed for the tasks implementation,
- b. For the tasks to be delivered in a Deliverable Mode - maximum price per task, based on the FUPs of each deliverable, based on the Daily Rates of the consultants proposed to be engaged in each deliverable implementation, which should not exceed the rates specified in the FWC financial Proposal (Annex II.III) and the number of man-days of each consultant needed for

each deliverable implementation,

- c. For both Service and Deliverable's Mode tasks:
  - i. mission costs estimation per task based on the Travel Rates and the Daily Rates, specified in the FWC financial Proposal (Annex II.III)
  - ii. payment plan for the Specific Contract, reflecting the implementation arrangement proposed in the Specific Contract technical proposal
  - iii. the documents listed in the Management Requirements, attached to the SoW (Annex II.II)
  - iv. statistic information in a format pre-defined by the Contracting Authority to support Agency's reporting obligations towards the European Commission / EU Member States, which shall include the names of the entities that will be involved in the Specific Contract implementation, their role (primes / subcontractors (at least level N-1)), country of registration, status (Small and Medium Enterprise, public/ private), and the share of the Specific Contract price to be paid to them.

**I.3.8.** Within 5 (five) calendar days of a Specific Contract signed by the Contracting Authority, being dispatched to the Contractor, the Contractor shall provide the Contracting Authority the Specific Contract back, duly signed and dated.

**I.3.9.** The period allowed for the execution of the tasks shall start to run on the date indicated in the Specific Contract. It shall not exceed the term of the Specific Contract.

#### **ARTICLE I.4 – PRICES AND COST REIMBURSEMENT**

##### **I.4.1 PRICES**

**I.4.1.1.** The maximum amount, covering all purchases under this FWC, including all renewals and reimbursement of expenses, is EUR [amount] [xx].

**I.4.1.2.** The prices for the services shall be the ones listed in the Financial Tables of Answers – Annex F.I.1 – 5 forming part of the Contractor's tender – Annex II.III and reported here-below for convenience. The prices shall comprise effort for all the activities necessary for their performance and all related costs (including but not limited to daily subsistence allowance) unless otherwise provided in this FWC.

**I.4.1.3.** Prices for the "all-inclusive daily rates 1" for Assignment Days of a Consecutive Assignment Period with a duration of up to 6 (six) months as indicated in Table 'FWC Unit prices' of the Financial Proposal (part of Annex II.III) are:

	[Location]	[Location]
--	------------	------------



<b>F1 – Principal Consultant</b>		
<b>F2 – Senior Consultant</b>		
<b>F3 – Junior Consultant</b>		
<b>O1 - Operational Support Provider I</b>		
<b>O2 - Operational Support (24 h)</b>		

**I.4.1.4.** Prices for the “all-inclusive daily rates 2” for Assignment Days of a Consecutive Assignment Period with a duration above 6 (six) months as indicated in Table ‘FWC Unit prices’ of the Financial Proposal (part of Annex II.III) are:

	<b>[Location]</b>	<b>[Location]</b>
<b>F1 – Principal Consultant</b>		
<b>F2 – Senior Consultant</b>		
<b>F3 – Junior Consultant</b>		
<b>O1 - Operational Support Provider</b>		
<b>O2 - Operational Support (24 h)</b>		

**I.4.1.5.** The prices of travel costs for a return trip for a mission by any means of transportation to destinations listed in Table ‘Mission travel prices’ of the Financial Proposal (part of Annex II.III) (without travel at the destination, hotel and daily subsistence allowance, included in the all-inclusive daily rate) are to be reimbursed on the basis of the fixed amount as follows:

<b>[Location]</b>	<b>[Location]</b>	<b>[Location]</b>	<b>[Location]</b>
-------------------	-------------------	-------------------	-------------------

--	--	--	--

**I.4.1.6.** When no fixed amounts are stipulated in Article I.4.1.5 for a given destination, the travel costs are to be reimbursed according to the Mission Guidelines (Annex II.XII).

**I.4.1.7.** The all-inclusive daily rates 1 and 2 indicated in Articles I.4.1.3 and I.4.1.4 shall comprise effort for all the activities necessary for their performance regarding the indicated duration (up to, or above 6 (six) months), including all costs incurred directly and indirectly by the Contractor in performance of the tasks by the personnel's Deployment to one of the destinations defined in Articles I.4.1.3 and I.4.1.4 and specifically defined in the Specific Contract. These rates shall comprise in particular:

- a. daily subsistence allowance covering also:
  - i. any travel at the Assignment destination (travel to this destination being excluded), and
  - ii. accommodation incurred for the performance of tasks at one of the Destinations listed in Articles I.4.1.3 and I.4.1.4
- b. management of the project, drawing up quotations and reports coordination, quality control, support resources, subcontracting, procurement, manufacturing, assembly, quality control, documentation, storage);
- c. all overheads (such as management costs, secretarial services, social security, wages).

The all-inclusive daily rates 1 and 2 do not include travel costs subject to Article I.4.1.5.

**I.4.1.8.** Prices for a "single daily rate" for services at the Contractor's premises and authorised Missions to a destination other than the ones listed for the all-inclusive daily rates 1 or 2 indicated in Articles I.4.1.3 and I.4.1.4 are:

<b>F1 – Principal Consultant</b>	
<b>F2 – Senior Consultant</b>	
<b>F3 – Junior Consultant</b>	

**I.4.1.9.** The "single daily rates" indicated in Article I.4.1.8 above shall comprise all the effort and costs indicated in the Article I.4.1.7, accordingly, except for daily subsistence allowance and accommodation incurred for the performance of tasks at the Assignment / Mission destination, and travel costs.

**I.4.1.10.** The prices represent firm and fixed prices. This is without prejudice to the possibility for the

Contractor to provide the services at lower prices.

**I.4.1.11.** Prices are not subject to revision during the validity of the FWC.

**I.4.1.12.** Without prejudice to Article I.6, payment of prices indicated in Article I.4.1.5 (travel costs) and reimbursement of Mission expenses to destinations not mentioned in Article I.4.1.5 is subject to Article I.4.2 and payment of prices indicated in Articles I.4.1.3, I.4.1.4 and I.4.1.8 (daily rates) is subject to Article I.5.

#### **I.4.2. TRAVEL COSTS AND REIMBURSEMENT OF MISSION EXPENSES**

**I.4.2.1.** Payment of travel costs under Article I.4.1.5 and reimbursement of Assignment / Mission expenses is possible only if the Assignment / Mission was approved in advance in writing by the Contracting Authority's Project Manager, identified in the Specific Contract, if such approval is not already included in the Specific Contract. When approving the Assignment / Mission, the Project Manager shall approve the share/s of the Mission / Assignment Day (if any), during which the consultant shall provide services during the day/s when he / she travels, whereby it may authorise 8 (eight) or 4 (four) hours of service provision.

**I.4.2.2.** The Contractor is entitled to charge the Contracting Authority the price of travel costs indicated in Article I.4.1.5 once per Consecutive Assignment Period per Contractor's Personnel to the therein indicated Destination, if the consultant performed a return travel to the place of the assignment

**I.4.2.3.** The assignments of Contractor's Personnel to destinations not listed in in Article I.4.1.5. shall be considered Missions, whereby the Contractor is entitled to reimbursement of the Mission expenses according to the Annex II.XII.

#### **ARTICLE I.5 – CHARGING OF DAILY RATES**

**I.5.1.** If the individual Contractor personnel implements an Assignment at a destination mentioned in Article I.4.1.5 for 8 (eight) hours which he/she has actually worked for the Contracting Authority on the same day at the destination of the Deployment, the Contractor shall charge a full "all-inclusive daily rate 1" indicated in Article I.4.1.3, under the conditions that the Consecutive Assignment Period is not more than 6 (six) months. If the individual Contractor personnel implements an Assignment at a destination of the Deployment mentioned in Article I.4.1.5 for 8 (eight) hours which he/she has actually worked for the Contracting Authority on the same day at the Destination, the Contractor shall charge a full "all-inclusive daily rate 2" indicated in Article I.4.1.4, under the conditions that the Consecutive Assignment Period is more than 6 (six) months. The above-mentioned provisions shall apply to the respective profile.

*[for lot 5 only]*

**I.5.1.A** If the Contractor's personnel implements an Assignment for Operator 24H at a destination mentioned in Article I.4.1.5 for 24 (twenty-four) hours which the Contractor's consultants have actually

worked for the Contracting Authority on the same day at the destination of the Deployment, the Contractor shall charge a full “all-inclusive daily rate 1” for Operator 24H indicated in Article I.4.1.3, under the conditions that the Consecutive Assignment Period is not more than 6 (six) months. If the individual Contractor personnel implements an Assignment for Operator 24H at a destination of the Deployment mentioned in Article I.4.1.5 for 24 (twenty-four) hours which the Contractor’s consultants have actually worked for the Contracting Authority on the same day at the Destination, the Contractor shall charge a full “all-inclusive daily rate 2” for Operator 24H indicated in Article I.4.1.4, under the conditions that the Consecutive Assignment Period is more than 6 (six) months. The above-mentioned provisions shall apply to the respective profile.]

**I.5.2.** If on Mission at a destination not mentioned in Article I.4.1.5 or at the Contractor’s Premises, the Contractor shall charge a full “single daily rate” applicable to the respective profile indicated in Article I.4.1.7, for 8 (eight) hours which individual Contractor personnel has actually worked for the Contracting Authority on the same day at the respective venue, the Contractor may charge a full “single daily rate” applicable to the respective profile indicated in Article I.4.1.7.

**I.5.3.** For avoidance of doubt, the Contractor cannot invoice any daily rates or fractions thereof for Travel Days. The Contractor may invoice either 50% or 100% of the Daily Rates for the days when the consultant travels, only when the consultant was explicitly requested to perform Tasks during the time, when he/she is not traveling, and where the dedicated hours of service provision (i.e., 4 hours or 8 hours respectively) have been pre-approved in writing by the Contracting Authority’s Project Manager, as provided in Article I.4.2.1.

## **ARTICLE I.6 – PAYMENT ARRANGEMENTS**

### **I.6.1. Interim payments**

Unless the Specific Contract details otherwise, the Contractor shall submit an invoice every 3 (three) months, indicating the reference number of the Framework Contract and of the Specific Contract to which it refers for an interim payment. The invoice shall concern the services provided to and/or deliverables accepted by the Contracting Authority within the invoicing period.

Invoices shall be accompanied by the following:

For the Specific Contracts implemented in Service Mode:

- a) the approved activity report in accordance with the instructions laid down in the relevant specific contract,
- b) timesheets stating at least the names of the consultants, the consultants’ profile, the Tasks implemented, the place of Tasks’ performance, the respective activities performed (as relevant), the dates of service provision and the service provision pattern of each consultant (i.e. full time or part time),
- c) a table on actual consumption of travel, accommodation and subsistence expenses, including, if applicable, statements of reimbursable expenses, in accordance with Annex II.XII;
- d) a list of all created Foreground IPRs, by attaching the filled-in Annex II.IX or a declaration stating that there are no such rights were created;
- e) a list of all Background IPR to the results or parts of the results by attaching the filled-in Annex II.VIII or a declaration stating that there are no such Background IPR, as provided for in Article I.13.1;

f) any other document in accordance with the relevant specific contract.

For the Specific Contracts implemented in Deliverables Mode

- a) the approved deliverable(s) in accordance with the instructions laid down in the relevant specific contract,
- b) a deliverables acceptance sheet, duly dated and signed by the Contractor and the Contracting Authority's project officer,
- c) a table on actual consumption of travel, accommodation and subsistence expenses, including, if applicable, statements of reimbursable expenses, for the mission locations to which no flat rate applies, in accordance with Annex II.XII;
- d) a list of all created Foreground IPRs, by attaching the filled-in Annex II.IX or a declaration stating that there are no such rights were created;
- e) a list of all Background IPR to the results or parts of the results by attaching the filled-in Annex II.VIII or a declaration stating that there are no such Background IPR, as provided for in Article I.13.1;
- f) any other document in accordance with the relevant specific contract.

The acceptance of deliverables by the Contracting Authority shall be performed as provided in the Management Requirements, part of Annex II.II., and be evidenced via the signature of a deliverables' acceptance sheet. The schedule and priority of the specific deliverables defined in the Specific Contract may be revised on a quarterly basis at each Quarterly Progress Meeting (QPM), as provided in the Management Requirements, part of Annex II.II, under the condition that the overall duration of the Specific Contract and its value remains unchanged.

For the Specific Contracts implemented in both Service and Deliverables Modes, the invoices for interim payments shall be accompanied accordingly by all supporting documents listed above under each Mode respectively.

The Contracting Authority shall have 30 (thirty) days from their receipt to approve or reject the progress report and/or deliverable(s) with the associated supporting documents, and, unless otherwise specified by the Contracting Authority in the terms of reference of the relevant specific contract, the Contractor shall have 15 (fifteen) days to submit additional information or a new progress report and/or updated deliverable(s) requested by the Contracting Authority.

Following the approval of the progress report and/or deliverable(s), the Contractor shall submit the invoice. The Contracting Authority shall make the payment within 60 (sixty) days from receipt of the invoice.

#### **I.6.2. Payment of the balance**

The Contractor shall submit an invoice for payment of the balance for any services or deliverables due under a Specific Contract not invoiced yet by an interim payment.

The invoice shall be accompanied by the following:

For the Specific Contracts tasks implemented in Service Mode

- a) the approved final report in accordance with the instructions laid down in the relevant specific contract,
- b) timesheets stating at least the names of the consultants, the consultants' profile, the Tasks implemented, the place of Tasks' performance, the respective activities performed (as relevant), the dates of service provision and the service provision pattern of each consultant (i.e. full time or part time);
- c) a final table on the actual consumption of travel, accommodation and subsistence expenses under the Specific Contract including, if applicable, statements of reimbursable expenses, for the mission locations to which no flat rate applies, in accordance with Annex II.XII;
- d) a list of all created Foreground IPRs, by attaching the filled-in Annex II.IX or a declaration stating that there are no such rights were created;
- e) a list of all Background IPR to the results or parts of the results by attaching the filled-in Annex II.VIII or a declaration stating that there are no such Background IPR, as provided for in Article I.13.10,
- f) any other document in accordance with the relevant specific Contract.

For the Specific Contracts tasks implemented in Deliverables Mode

- a) the approved final deliverable(s) in accordance with the instructions laid down in the relevant specific contract,
- b) a deliverables acceptance sheet, duly dated and signed by the Contractor and the Contracting Authority's project officer,
- c) a final table on the actual consumption of travel, accommodation and subsistence expenses under the Specific Contract including, if applicable, statements of reimbursable expenses, for the mission locations to which no flat rate applies, in accordance with Annex II.XII;
- d) a list of all created Foreground IPRs, by attaching the filled-in Annex II.IX or a declaration stating that there are no such rights were created;
- e) a list of all Background IPR to the results or parts of the results by attaching the filled-in Annex II.VIII or a declaration stating that there are no such Background IPR, as provided for in Article I.13.1,
- f) any other document in accordance with the relevant specific Contract.

The acceptance of deliverables by the Contracting Authority shall be performed as provided in the Management Requirements, part of Annex II.II., and be evidenced via the signature of a deliverables acceptance sheet. The schedule and priority of the specific deliverables defined in the Specific Contract may be revised on a quarterly basis at each Quarterly Progress Meeting (QPM), as provided in the Management Requirements, part of Annex II.II, under the condition that the overall duration of the Specific Contract and its value remains unchanged.

For the Specific Contracts implemented in both Service and Deliverables Modes, the invoice for the payment of balance shall be accompanied accordingly by all supporting documents listed above under each Mode respectively.

The Contracting Authority shall have thirty 30 (thirty) days from their receipt to approve or reject the final report and/or deliverable(s) with the associated supporting documents, and, unless otherwise specified by the Contracting Authority in the terms of reference of the relevant specific contract, the Contractor shall have 15 (fifteen) days in which to submit additional information or a new progress report and/or updated deliverable(s) requested by the Contracting Authority.

Following the approval of the final report and/or deliverable(s), the Contractor shall submit the invoice. The Contracting Authority shall make the payment within 30 (thirty) days from receipt of the invoice.

Any payments against invoice made under the Specific Contract are payments for provision of services and do not represent and shall not be understood as salary payments or replacement of such. Payment of salaries for Personnel performing the services shall remain the sole responsibility of the Contractor.

#### **I.6.3. Rejection of double financing across lots and tasks**

The Contracting authority will not accept double financing of Contractor's staff and expenses across lots and tasks. The Contractor shall, therefore, ensure through a precise breakdown attached to each invoice, whereby the consultants' engagement in tasks delivered in 'Service Mode' are clearly identified together with the period/s of their engagement, declaring as well if any of them was engaged during the invoicing period in other tasks in Service or Deliverable Mode in the Specific Contract under which the payment is requested, in other Specific Contracts under same or other Lots, or under other contracts with EUSPA. Furthermore, the Contractor shall declare that the invoiced amounts are neither included nor shall be included in any other invoice towards the Contracting Authority under such other contracts and that all resources, related activities, costs and expenses subject to reimbursement under this Contract are clearly allocated to this individual lot and task and do not overlap with activities, costs and expenses in other lots and tasks. If a deliverable (defined as part of the Deliverables Mode) is implemented by a consultant who also work in Service Mode, for the days spent to produce it, daily rates cannot be charged as a for the Service Mode Tasks.

Should the invoice indicate an overlap, the Contracting Authority may reject the higher of the invoiced amounts for the resource, activities, costs or expenses affected by the overlap provided it has prior informed the Contractor about such intention in writing, including reasons for the assumed overlap and the Contractor, following a 10 (ten) days' notice period after receipt of the Contracting Authority's observations could not explain to the Contracting Authority's conviction, that the overlap does not exist. The Contracting Authority may verify the circumstances declared by the Contractor in this respect by an audit on the FWC performance as per Article II.16 and the Management Requirements attached to the Statement of Work (Annex II.II), whereby the Contracting Authority may recover all or part of the performed payments covering any double-financing identified and may take any other measures which it considers necessary.

#### **I.6.4. Performance guarantee**

Performance guarantee is not applicable to this FWC.

#### **I.6.5. Retention money guarantee**

Retention money guarantee is not applicable to this FWC.

### **ARTICLE I.7 – BANK ACCOUNT**

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

Name of bank: [insert bank name]

Exact denomination of account holder: [full name of account holder]

Bank account number: [insert bank account number].

## **ARTICLE I.8 – COMMUNICATION DETAILS**

**1.8.1** For the purposes of this FWC, communications shall be made in writing, including via e-mail, and sent to the following contacts:

**1.8.2** Contractor:

Project officer:

[Full name]

[Function]

[Company name]

[Full official address]

[Email]

Contract officer:

[Full name]

[Function]

[Company name]

[Full official address]

[Email]

**1.8.3** Leading Contracting Authority:

Project officer:

Name:

Email:

Telephone number:

European Union Agency for the Space Programme

Janovskeho 438/2 170 00 Prague Czech Republic

Contract officer:

Name:

Email: [Contracts@euspa.europa.eu](mailto:Contracts@euspa.europa.eu)

Telephone number:

European Union Agency for the Space Programme

Legal and Procurement Department

Janovskeho 438/2 170 00 Prague Czech Republic

**1.8.4** Participating Contracting Authority:

Project officer:

Name:

Email:

Telephone number:

European Commission



Contract officer:

Name:

Email:

Telephone number:

European Commission

**1.8.5** The contact persons may be changed by exchange of emails between a representative of the Contractor and a representative of the Contracting Authority's Legal and Procurement Department and sent to/from [contracts@euspa.europa.eu](mailto:contracts@euspa.europa.eu).

#### **ARTICLE I.9 – PROCESSING OF PERSONAL DATA**

For the purpose of **ARTICLE II.5 – PROCESSING OF PERSONAL DATA**, the data controller is:

Head of [x], Department [x] European Union Agency for the Space Programme  
Janovskeho 438/2 170 00 Prague Czech Republic  
and provisions under **ARTICLE II.5 – PROCESSING OF PERSONAL DATA** apply.

#### **ARTICLE I.10 – LIABILITY**

**I.10.1.** The Contractor is liable for any loss or damage caused or sustained to the Contracting Authority during or as a consequence of implementation of the FWC, including in the event of subcontracting, but only up to an amount not exceeding 50 % of the maximum amount of this FWC. 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 limitation of liability above shall not apply.

**I.10.2.** The Contractor shall indemnify and hold the Contracting Authority harmless for all damages and costs incurred due to any claim within the limit of liability under Article I.10.1 above. The Contractor shall provide compensation in the event of any action, claim or proceeding brought against the Contracting Authority by a third party as a result of damage caused by the Contractor during the performance of the FWC. If a third party brings any action against the Contracting Authority in connection with the implementation of the FWC, including any action for alleged breach of intellectual property rights, the Contractor must assist the Contracting Authority in the legal proceedings, including by intervening in support of the Contracting Authority upon request.

**I.10.3.** If required by the relevant applicable legislation, the Contractor must take out an insurance policy against risks and damage or loss relating to the implementation of the FWC. It must also take out supplementary insurance as reasonably required by standard practice in the industry. Upon request, the Contractor must provide evidence of insurance coverage to the Contracting Authority.

**I.10.4.** The Contracting Authority is not liable for any loss or damage caused to the Contractor during or as a consequence of implementation of the FWC, unless the loss or damage was caused by wilful misconduct or gross negligence of the Contracting Authority.

#### **ARTICLE I.11 – COMPLIANCE WITH LABOUR LAW**

**I.11.1** No contract of employment shall be established between the Contracting Authority and the Contractor's Personnel providing services under specific contracts. It shall be the Contractor's sole responsibility to ensure that its Personnel providing services under specific contracts understand that they are not employed by the Contracting Authority and shall not interpret any part of their services to the Contracting Authority as creating any employment relationship between them and the Contracting Authority. It shall be the Contractor's sole duty and responsibility to ensure that no employment relationship between the Contracting Authority and the Contractor's Personnel providing services are ever construed, argued or claimed.

**I.11.2** The Contractor shall immediately notify the Contracting Authority of any other circumstances that might give rise to claims against the Contracting Authority on the part of Contractor's Personnel providing services related to status of employment. In any event the Contractor shall take all measures to prevent such claims from arising and shall hold the Contracting Authority harmless of any such claim.

**I.11.3** The Contractor shall also hold the Contracting Authority harmless from any third party claim as may arise from or in connection with the Contract or its implementation on grounds or argument of employment.

**I.11.4** The Contractor acknowledges that personnel providing services to the Contracting Authority are not meant to replace the Contracting Authority's personnel but to provide expertise and assistance not available in-house.

**I.11.5** Any Contractor's personnel working on Contracting Authority premises shall remain fully under the responsibility of the Contractor's supervision and its responsibility as employer. Any working area at the Contracting Authority site is purely provided for ease of service provision and does not replace that personnel's workplace with his/her employer. Any Contractor personnel working at Contracting Authority premises is expected to coordinate, in terms of logistics and working time, with the needs and working hours of the Contracting Authority.

**I.11.6** The Contractor acknowledges that this FWC and any Specific Contract to be signed is (i) not meant to establish any employment relationship between the Contracting Authority and the Contractor's personnel performing the services and (ii) shall not be interpreted as establishing such a relationship. The Contractor shall take all measures to ensure this understanding with its personnel and shall indemnify and hold the Contracting Authority harmless against any claim which the Contracting Authority would face in this respect. The Contractor shall take all necessary steps, towards its personnel executing the FWCs to ensure the full applicability of FWCs conditions.

## **ARTICLE I.12 – CONFIDENTIALITY AND PARTICIPATION IN PUBLIC PROCUREMENT**

**I.12.1** The Contractor must treat and shall cause its employees and consultants to treat with confidentiality any information or documents, in any format, disclosed in writing or orally or got to know relating to the performance of the Contract. The Contracting Authority must treat with confidentiality any information which is identified by the Contractor in writing as confidential.

**I.12.2** Each party must:

- a) use Confidential Information for the sole purpose to perform its obligations under the Contract unless agreed otherwise in writing by the other party;
- b) ensure the protection of such Confidential Information with the same level of protection and pursuant to applicable security rules as its own Confidential Information or documents, and in any case with due diligence;
- c) not disclose directly or indirectly Confidential Information to third parties without the prior written agreement by the Contracting Authority.

The parties are allowed to disclose Confidential Information to its directors, employees and representatives, as well as external legal, accounting, financial and other advisors on a strict need to know basis and provided that they act under a written or statutory confidentiality obligation equivalent to the one provided in this Article.

**I.12.3** The confidentiality obligation 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 become public or was lawfully obtained through other means than in breach of the confidentiality obligation;
- c) the disclosure of the Confidential Information is necessitated by due protection of the interests of the party in the frame of court proceedings or other equivalent legal proceedings; in such case the Party shall immediately give the other Party a written notice of the intention to disclose it and shall reasonably cooperate in order to regulate such disclosure;
- d) the Confidential Information was already lawfully developed or acquired by the party at the date of receipt of the information from the other party;
- e) was lawfully obtained by the party without restriction and without breach of this Contract from a third party, who is in lawful possession thereof, and under no obligation of confidence;
- f) is disclosed pursuant to a request of a governmental or jurisdictional authority or is disclosed according to the law or regulations of any country with jurisdiction over the Parties; in either case the Party, subject to possible constraints of such governmental or jurisdictional authority, shall immediately give the other Party a written notice of the above request and shall reasonably cooperate in order to regulate such disclosure.

**I.12.4** When the Contractor becomes aware of any unauthorised use of the Confidential Information or of any unauthorised copy of the Confidential Information, it shall immediately inform the Contracting Authority thereof.

**I.12.5** Should the Contractor breach any of its obligations under this Article, and without prejudice to the right of the Contracting Authority to seek damages, or suspend or terminate the contract, the Contracting Authority may, by written notice to the Contractor, withdraw the right to use the Confidential Information for the implementation of the Contract.

**I.12.6** In case the Contractor plans to participate in any of the procurements it was involved preparing or advising under this Contract, it shall inform the Contracting Authority's contracts officer of this plan immediately. The Contractor shall take any appropriate measure to ensure that the same information is promptly provided to it and the Contracting Authority, in case any of the Contractor's employee or consultants plans to participate in the above-mentioned procurements.

**I.12.7** The Contracting Authority shall evaluate the consequences of the Contractor's or the Contractors' employees' or consultants' participation in view of ensuring equal treatment and non-discrimination, also through implementation of effective measures, e.g. extending the period for submission of tenders, dissemination of and/or providing access to information gained exclusively by the Contractor or the Contractor's employees/consultants in its work under the Contract. The Contractor shall support the Contracting Authority in its efforts to provide a level playing field for other potential tenderers.

**I.12.8** Following the outcome of its evaluation, the Contracting Authority shall decide with binding effect, whether the Contractor or the Contractor's employees/consultants are allowed to participate in the procurement process in question. Any breach by the Contractor or the Contractor's employees of a possible prohibition decided by the Contracting Authority following the process under previous articles, shall constitute a material breach of the Contractor's obligations under this contract. This is without prejudice to the consequences of the breach as far as the participation in the procurements referred to above is concerned both for the Contractor and the Contractors' employees/consultants. The Contracting Authority shall inform the Contractor of its decision without delay. The Contracting Authority may also take any other measures it finds appropriate to deal with any conflict of interests, whether potential or actual, without this entitling the Contractor to any compensation.

## **ARTICLE I.13 – INTELLECTUAL PROPERTY RIGHTS AND OTHER RESULTS**

### **FOREGROUND IPR AND OTHER RESULTS**

**I.13.1.** The European Union acquires the following exclusive rights on the Foreground IPR, including, without limitation to, the following rights:

- a) the right to permanently or temporarily reproduce or copy, store, publish, load, run, display, make publicly available or distribute in tangible or intangible form, on any hardware (virtual or physical) or other medium, offline or online (via private or public networks, by any means, including active-service-providing, software-as-a-service, cloud computing or any other form of remote service), in part or in whole, the subject-matter of the Foreground IPR in original format or in any reverse-engineered, decompiled, recompiled, translated, decoded, edited, amended, adapted or otherwise modified form;

- 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 Foreground IPRs 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 Foreground IPRs or copies of the Foreground IPRs to the public, by sale or otherwise;
- d) rental: the exclusive right to authorise or prohibit rental or lending of the Foreground IPRs or of copies of the Foreground IPRs;
- e) adaptation: the exclusive right to authorise or prohibit any modification of the Foreground IPRs;
- f) the right to prepare derivative works of the subject matter of Foreground IPR;
- g) the right to install, operate and execute, reverse-engineer, decompile, (re-) compile, translate, decode, edit, amend, adapt or otherwise modify the subject-matter of the Foreground IPR by the European Union or any licensee of the European Union for any purposes the European Union or the licensee sees fit;
- h) the right to incorporate, embed or merge the subject matter of the Foreground IPR into any other product,
- i) the right to grant wire-connected or wireless public access to the subject matter of the Foreground IPR for any purpose, including commercial or free service bureau services for Third Parties;
- j) translation: the exclusive right to authorise or prohibit any translation, adaptation, arrangement, creation of derivative works based on the Foreground IPRs , and any other alteration of the FIPR, subject to the respect of moral rights of authors, where applicable;
- k) where the Foreground IPRs are or include a database: the exclusive right to authorise or prohibit the extraction of all or a substantial part of the contents of the database to another medium by any means or in any form; and the exclusive right to authorise or prohibit the re-utilisation of all or a substantial part of the contents of the database by the distribution of copies, by renting, by on-line or other forms of transmission;
- l) where the Foreground IPRs 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;
- m) where the Foreground IPRs 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;
- n) where the Foreground IPRs are or include know-how: the right to use such know-how as is necessary to make use of the FIPR to the full extent provided for by this Contract, and the right to make it available to contractors or sub-contractors acting on behalf of the European Union/Agency, subject to their signing of adequate confidentiality undertakings where necessary;
- o) in its sole discretion, distribute the subject matter of the Foreground IPR under any open source licence the European Union deems fit and this shall include also the right for the European Union to grant such rights to another organisation which will distribute the software under an open source license;
- p) where the FIPR are documents:

- (i) the right to authorise the reuse of the documents in conformity with the Commission Decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU), to the extent it is applicable and the documents fall within its scope and are not excluded by any of its provisions; for the sake of this provision, 'reuse' and 'document' have the meaning given to it by this decision;
- (ii) the right to store and archive the FIPR in line with the document management rules applicable to the European Union/Agency, including digitisation or converting the format for preservation or new use purposes;
- q) where the FIPR 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 European Union or by sub-contractors which result from this Contract and from the intention of the Parties;
  - (ii) the rights to decompile or disassemble the software;
- r) to the extent that the Contractor may invoke moral rights, the right for European Union/Agency, except where otherwise provided in this Contract, to publish the FIPR with or without mentioning the Creator(s)' name(s), and the right to decide when and whether the FIPR may be disclosed and published.

I.13.2. The European Union may make use of the Foreground IPR in any known manner and for any known type of use, as well as all yet unknown types of use. For the avoidance of doubt, no royalty fee shall be paid by the European Union for such use.

I.13.3. The intended purpose of the permanent assignment of full ownership of all Intellectual Property Rights to the European Union is to enable the European Union to act as the full and only owner of the Foreground IPR without any limitation. Therefore, subject to the condition that under the law applying to the Contract a permanent assignment of some or all IPR is lawfully not possible, the Contractor agrees to and herewith grants to the European Union an irrevocable and worldwide exclusive license for the Foreground IPR, including the grant of the exclusive and perpetual usage, distribution and exploitation rights, not restricted in respect of territory, time or purpose and including all the rights as listed in this Article. For the avoidance of doubt, no royalty fee shall be paid by the European Union for such license grant in addition to what is included in the agreed price.

I.13.4. The European Union may permanently or temporarily transfer all or single rights granted to the European Union in whole or in part to a Third Party in its sole discretion.

I.13.5. The Contractor warrants that the exclusive rights and the modes of exploitation may be exercised by the European Union on all parts of the Foreground IPR. When delivering the Foreground IPR, the Contractor shall warrant that they are free of rights or claims from Creators and Third Parties, for any use envisaged by the European Union/Agency. This does not concern the moral rights of natural persons.

I.13.6. In the Foreground IPR the Contractor shall clearly point out all quotations of existing textual works. The complete reference should include as appropriate: name of the author, title of the work, date and place of publication, date of creation, address of publication on internet, number, volume and other information which allows the origin to be easily identified.

I.13.7. By delivering the Foreground IPR the Contractor warrants that the Creators undertake not to oppose that their names be recalled when the FIPR are presented to the public and confirms that the FIPR can be divulged. Names of authors shall be recalled on request in the manner communicated by the Contractor to the European Union/Agency.

I.13.8. The Contractor shall obtain the consent of Creators regarding the granting of the relevant rights and be ready to provide documentary evidence upon request.

I.13.9. The Contractor shall use the template in Annex VII of the Contract to declare any Foreground IPR and bring such declaration to Agency's attention without delay and in any case no later the submission of the payment request, as per Article I.6.

I.13.10. The Agency on behalf of the European Union hereby grants the Contractor and the Contractor Parties a non-transferable, sublicensable, unrestricted, free of charge, non-exclusive right to use Foreground IPRs; such license shall be granted exclusively for the purpose of implementation of the Contract and shall expire upon the expiry of the Contract. This is without prejudice that the license may be revoked with immediate effect following Agency's or the European Commission's written notice should the Contractor fail to comply with its obligations under this Contract. The Agency shall not provide the Contractor with any representation or warranties in respect of the use of the Foreground IPR and the Contractor shall have no claim whatsoever against the European Union, the Agency or its institutional assignees arising out of the use of the Foreground IPR.

I.13.11. The licence only refers to the use of the subject-matter of the Foreground IPR and does not refer to or cover anything subject to Third Party IPR that may be contained in or combined with such subject-matter in any form. The Contractor bears the sole responsibility for ensuring that all Third Party IPR is licensed properly. In particular, the Contractor guarantees that he is compliant with all licence conditions of the respective providers and owners of Third Party IPR. In case of any claim based on an alleged infringement of such Third Party IPR, the Contractor is obliged to indemnify the European Union, and the Agency on the basis of Article I.10.

I.13.12. The Contractor shall keep secret and confidential the subject matter of the Foreground IPR and anything related to them, including preparatory specification, plan, drawing, pattern, sample or information, in order to ensure that:

(i) only and exclusively the Agency and the European Commission, as legal representative of the European Union, are aware of and know such intellectual property and

(ii) novelty requirements in accordance with the applicable intellectual property legislation as well as any other conditions required by the legislation, are secured and met.

I.13.13. The Contractor shall not take any action which jeopardises or affects the ability of the European Union to legally protect the subject matter of the Foreground IPR.

I.13.14. The Contractor shall upon the European Union's or Agency's request provide technical support to the European Union or the Agency and to experts appointed by them, for matters related to the protection and filing of the Foreground IPRs.

I.13.15. In case the Contractor modifies, enhances or makes another alteration to an existing IPR



developed under the present Contract, and the Contractor has identified such pre-existing product to be used for the activities under this Contract, such modification, enhancement or alteration shall be considered as Foreground IPR and shall be subject to the same provisions of the present Article.

I.13.16. The Contractor shall without delay notify the Agency of the patentable invention created in the frame of the present Contract. Such notification shall contain:

- (a) a description of the invention;
- (b) an initial assessment of patentability;
- (c) the technical assessment of the programmatic value of the invention;
- (d) invention declaration form, using the template under Annex VII;
- (e) if possible, information whether the Contractor intends to file a patent application for the notified invention, if the Agency authorises it to do so.

I.13.17. The Contractor shall take measures to ensure that the invention is not disclosed to persons and bodies other than those with the need to know and bound by a confidentiality obligation until:

- (a) the Agency authorises the Contractor to file a patent application for the notified inventions in its own name, or
- (b) The date of publication of the patent application by the patent office, if the Agency does not authorise the Contractor.

I.13.18. The Contractor shall not undertake, any activity having the purpose or the effect of restricting the European Union's rights under the invention or its registration process, including through protecting or attempting to protect any Intellectual Property Right related or connected with the invention.

I.13.19. The Contractor shall not be entitled to any residual Intellectual Property Rights in the notified invention.

I.13.20. The Contractor shall provide technical support in the drafting of the patent application. Such obligation does not extend beyond twelve months from the time the Agency receives the complete notification of the invention. The Contractor shall provide technical assistance in the patent prosecution process if the Agency files the patent application within twelve months from the time it receives the complete notification of the invention. This duty of the Contractor does not extend beyond forty-two months from the time the Agency receives the complete notification of the invention or twelve months after the expiration or termination of the Contract, whichever is the longer period.

I.13.21. The European Union shall retain all rights in the invention unless the Agency notifies in writing the Contractor, within four (4) months from the time it receives the complete notification, that it authorises the Contractor to file a patent application for the notified invention in the Contractor's name.

I.13.22. If the Contractor after authorisation from the Agency, files a patent application for the notified invention, it shall, with its own responsibility, license the patent application or the ensuing patent on fair, reasonable and non-discriminatory (FRAND) terms to economic operators involved in the POCP-U manufacturing, deployment, test and validation and maintenance. The Contractor shall negotiate the license terms in good faith with every willing economic operator. In case agreement on license terms cannot be reached within six (6) months from the time the willing economic operator declares in writing its interest to obtain a license on the patent, the terms of the license shall be decided by recourse to arbitration. The Contractor is entitled to enforce its patent through litigation in front of national courts only if the willing economic operator refuses to enter into binding arbitration agreement with respect to the terms of the license.



I.13.23. For the patentable inventions, the Contractor shall provide for the European Union and for the Agency a non-exclusive, royalty-free license to a patent application or a patent with the right to grant sublicenses for the purposes of the EU Space Programme and space component of Horizon Europe.

## **BACKGROUND IPRS**

**I.13.24** The Contractor must declare Background IPR before the start of performance of tasks and creation of the Results, using Annex II.VIII hereto. The information shall include identification of the rights' owners. With prior written agreement of the Contracting Authority, the Contractor may declare the Background IPR later but at the latest together with the invoice for payment of the balance. The Contracting Authority may require that the Contractor provide it with relevant and exhaustive evidence of the acquisition of all the necessary Background IPR together with a presentation of the Result.

**I.13.25** The Contracting Authority does not acquire ownership of Background IPR. The Contractor licenses the Background IPR on a royalty-free, non-exclusive and irrevocable basis to the Contracting Authority, which may use the Background IPRs which is necessary for exploitation of the results, as described notably in Article **I.13.1**, or for exploitations mentioned in the specific contracts. Unless otherwise agreed, the licence is non-transferable and cannot be sub-licensed, except as provided hereafter:

- a) the Background IPR can be sub-licensed by the Contracting Authority to persons and entities working for it or cooperating with it, including its contractors and subcontractors, whether legal or natural persons, but only for the purpose of their projects for the Union or the Contracting Authority;
- b) if the Result is a "document" such as a report or a study, the existence of Background IPRs in the result may not prevent the use, communication to third parties or publication of the document, its translation or its "reuse", it being understood however that the "reuse" may only be made of the Result as a whole and not of the Background IPRs taken separately from the Result; for the sake of this provision, "reuse" and "document" have the meaning given by the Commission Decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU).

All Background IPR are licensed to the Contracting Authority from the moment the Results are delivered and approved by the Contracting Authority. The licensing of Background IPR under this FWC covers all territories worldwide and is valid for the duration of intellectual property rights protection. The payment of the price as set out in the specific contracts is deemed to also include any fees payable to the Contractor in relation to the licensing of Background IPR to the Contracting Authority, including for all forms of exploitation and of use of the results.

**I.13.26** Where COTS products and open source software are concerned and/or the standard license terms of a third-party vendor apply, the Contractor shall ensure that such license shall grant to the Contracting Authority the right and license to use such COTS and open source software to the extent as set out in Article I.13.2.

**I.13.27** Where implementation of the FWC requires that the Contractor uses IPR belonging to the Contracting Authority, the Contracting Authority may request that the Contractor signs an adequate licence agreement. Such use by the Contractor will not entail any transfer of rights to the Contractor and is limited to the needs of this FWC.

**I.13.28** When delivering the results, the Contractor must warrant that, for any use that the Contracting Authority may envisage within the limits set in this FWC, the newly created parts and the Background IPRs incorporated in the results are free of claims from Creators or from any third parties and all the necessary Background IPR have been obtained or licensed.

**I.13.29** During the FWC and after its termination or expiry, the Contractor shall inform the Contracting Authority of any important modification or improvement of software protected by Background IPR, necessary to use the Results, and its documentation. During the FWC, the Contractor shall provide the Contracting Authority with these modifications and improvements without additional cost. After the termination or expiry of FWC the Contractor shall offer to the Contracting Authority the possibility to negotiate the availability of such modification or improvement at FRAND Terms. This obligation shall cease five years after the expiration of the Contract.

## **MORAL RIGHTS OF CREATORS**

**I.13.30** 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.

**I.13.31** The Contractor warrants that the use of foreground IPRs and background IPRs in accordance with this Article will not infringe any IPR of any third party. The Contractor shall indemnify and hold the Contracting Authority, its assignees, and licensees, free and harmless of any claims for infringement of third party rights in connection with the use of Foreground IPRs and Background IPRs as set out in the Articles above, except where the Contractor demonstrates that the infringement is caused by the unauthorized adaptations or modifications made by the Contracting Authority, its assignees, and licensees.

**ARTICLE I.14 – LIQUIDATED DAMAGES**

**I.14.1** The Contracting Authority may impose liquidated damages should the Contractor fail to complete its contractual obligations, within the applicable time limits set out in the FWC, including, without limitation, the compliance with the obligation to change the consultants within the time limits specified in Article I.18 and the compliance with the obligation to timely obtain the necessary personal security clearance(s) for the consultant(s) involved in performance of relevant activities.

**I.14.2** Should the Contractor fail to perform its contractual obligations within the time limits and as per requirements set by the FWC or the relevant Specific Contract (Underperformance), including, without limitation the implementation of an exchange of consultant, then, without prejudice to the Contractor's actual or potential liability or to the Contracting Authority's right to terminate the FWC or the relevant specific contract, the Contracting Authority may impose liquidated damages for each and every calendar day of Underperformance according to the following formula:

**0.03 x (V/d)**, where

**V** is

**For the task implemented in Service Mode:** the maximum price of the relevant Specific Contract Task for which the Underperformance was identified, or

**For the task implemented in Deliverable Mode:** the price of the deliverable, for which the Underperformance was identified

**d** is:

**For the task implemented in a Service Mode:** the period for implementation for the relevant Specific Contract Task, for which the Underperformance was identified, specified in the Specific Contract, or

**For the task implemented in a Deliverable Mode:** the period for the production of the deliverable, as defined in the Specific Contract,

expressed in days.

The overall aggregate amount of liquidated damages which may be imposed per Specific Contract shall not exceed 5% of the price of the relevant Specific Contract).

**I.14.2A** [only for Lot 5: In case of Contractor's underperformance when delivering services under Task 6 under Lot 5, the Liquidated Damages, defined in Service Level Agreement, attached to the SoW (part of Annex II.II) shall apply.]

**I.14.3** The parties acknowledge that any sums payable under this article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses incurred due to failure to fulfil obligations which may be reasonably anticipated.

Liquidated damages may be imposed together with a partial payment or retention of payment under the conditions laid down in Article II.10.1. Any claim for liquidated damages does not affect the Contractor's actual or potential liability or the Contracting Authority's rights under **ARTICLE I.10 – LIABILITY**.

**I.14.4** The Contracting Authority must formally notify the Contractor of its intention to apply liquidated damages and the corresponding calculated amount. The Contractor has 30 (thirty) 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:

- of the withdrawal of its intention to apply liquidated damages; or
- of its final decision to apply liquidated damages and the corresponding amount.

#### **ARTICLE I.15 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

**I.15.1** The FWC shall be governed by European Union law, complemented, where necessary, by the law of Belgium.

**I.15.2** Any dispute between the parties in relation to the interpretation, application or validity of the FWC, which cannot be settled amicably, shall be brought before the French-speaking courts of Brussels.

**I.15.3** It is the Contractor's sole responsibility and duty, also beyond legal acts listed in Annex II.II, to comply and ensure full compliance with all applicable laws of any part of performance under the Framework Contract and Specific Contracts.

**ARTICLE I.16 – Not Used**

**ARTICLE I.17 – Not Used**

#### **ARTICLE I.18 – EXCHANGE OF CONSULTANTS, ADDITIONAL CONSULTANTS, NON-SOLICITATION**

**I.18.1.** Consultants originally assigned to the team for performing a task under a Specific Contract may only be exchanged following written request by the Contractor's project officer and corresponding agreement by the Contracting Authority's project officer in writing, not to be unreasonably withheld, provided the following conditions are fulfilled:

- (1) The request must be made at least 30 (thirty) calendar days prior to the suggested date of exchange, unless such notification would not be possible given the circumstances justifying the request, or within 20 (twenty) calendar days of the Contractor's notification to EUSPA of an arisen need of consultant's exchange, that given the circumstances justifying the request could not have been predicted.
- (2) The exchange must be duly justified in the request such as e.g., resignation, termination of contract, illness or other unavailability of the consultant;
- (3) Attached to the request must be the CV and any ancillary information which may be required to support that the new consultant fulfils the profile of the exchanged consultant in line with the requirements detailed under section 2.1.2 – "Table 3 – Personnel functions and profiles" of Annex II.II relevant for the task to be performed under the specific contract; and
- (4) Measures are to be described in the request and subsequently applied to ensure that the quality of the services to the Contracting Authority is not affected due to or in relation to the exchange.

**I.18.2.** The Contracting Authority may also request the change of any consultant whose quality of performance is not satisfactory or who is not in line with other requirements of the FWC or the specific contract. In such case, the Contractor shall, not later than 20 (twenty) calendar days following receipt of the Contracting Authority's request, suggest replacement profiles in line with section 2.1.2 – "Table 2 – Personnel functions and profiles" of Annex II.II equivalent to the consultants requested to be exchanged for the Contracting Authority's agreement in writing. Any suggestion shall be accompanied with CV and any ancillary documents which may be needed to verify the equivalence of the profile.

**I.18.3.** Without prejudice of the Contracting Authorities rights under Article I.14, failure of the Contractor to comply with the time limit of Articles I.18.1 and I.18.2. to suggest profiles equivalent to the consultants requested to be exchanged, shall constitute a ground for termination of a Specific Contract under Article II.12.1 o). This termination may be only partial and may concern only the asks affected by the incompliance above. Following this termination, the Contracting Authority may request the next contractor in cascade to perform these tasks.

**I.18.4.** The exchange of a consultant against a different one according to this Article I.18 shall be implemented by the Contractor within maximum 10 (ten) calendar days following the date at which it received the Contracting Authority's project officer's agreement to the exchange, unless if other date of the start of the new consultant is agreed with the Contracting Authority;

For the purpose of this Article 18, the receipt of communication from the Contracting Authority by the Contractor shall be assumed to have taken place not later than 2 (two) working days after its dispatch unless proven otherwise by any of the Parties.

Without prejudice of the Contracting Authorities rights under Article I. 14, failure of the Contractor to comply with the time limits of this Article I.18.4 shall constitute a ground for termination under Article II.12.1 o).

**I.18.5.** During the validity of FWC and for a period of 24 (twenty-four) months from termination of the FWC, the Contractor shall neither directly or indirectly solicit, induce, recruit or encourage any of the Contracting Authority's employees to terminate their relationship with the Contracting Authority, or attempt to solicit, induce, recruit, encourage or take away employees of the Contracting Authority, either for itself or for any other person or entity. Any breach of this obligation in view of any individual Contracting Authority employee shall be subject to liquidated damages to the amount of 3 % of the value of the last Specific Contract awarded the Contractor under the FWC, with the provisions of Article I.14 on Liquidated Damages otherwise applying accordingly.

**I.18.6.** The Contractor may propose to engage in the Specific Contracts additional consultants, as per the provisions of Article II.2.4.

## **ARTICLE I.19 – PARTIAL TERMINATION**

In case the Contracting Authority would have the right to terminate a Specific Contract under this FWC, it may also choose to only terminate a part or parts of the specific contract, provided this does not affect the Contractor's ability to perform the remaining part or parts. Such partial termination may in particular and without limitation, be performed through a de-scoping of a Specific Contract by reduction of tasks and/or assigned consultants.

## **ARTICLE I.20 – CUSTOMER FURNISHED ITEMS (CFIs)**

For the implementation of the Specific Contracts, the Agency may undertake to provide to the Contractor CFIs at times and with a scope specified therein.

**I.20.1** The Agency shall make available and the Contractor shall accept and take into custody the CFIs, as provided in the SC.

The Contractor shall take responsibility for the proper usage according to Good Industry Practice, handling, maintenance, and storage of the CFIs upon their receipt. The Contractor shall utilise and / or modify the CFIs only for the purposes and in the way specified in the Specific Contract.

**I.20.2** The risk of loss, damage or degradation to any CFI shall lie down with the Contractor from the time the CFI is delivered to the Contractor until the time specified in the Specific Contract. Upon being made available, the Contractor shall take into custody and as soon as reasonably practicable inspect any CFI for visible damage and, as far as possible in consideration of its nature, immediately test the CFI on suitability for its defined purpose under the Contract and as, may be necessary to verify its full functionality, subject it to a functional test. If the full functionality of a CFI can only be tested after its installation or integration into another object, the Contractor shall carry out the integration or installation as soon as possible in due consideration of the work schedule applicable under the Specific Contract and availability of test facilities in order to verify the functionality.

During time of custody of a CFI, the Contractor shall, on its own costs, handle and store, as may be necessary, the CFI and safeguard it against any loss, damage or degradation with exception of normal wear and tear when using the CFI for the purposes under the Contract.

**I.20.3** The Contractor shall assume liability for loss or damage to the CFI caused by the Contractor (including by its subcontractors, or employees) from the time the CFI delivery to the until the time specified in the Contract.

**I.20.4** The rights granted in relation to the handed-over CFIs shall be revoked with immediate effect in the case of termination of the Contract. At termination or expiry of the Specific Contract, the Contractor shall return back, the CFI.

**I.20.5** The ownership of the CFI shall remain with the Agency or with its specified owner.

**I.20.6** The Contractor shall be required to keep a permanent inventory of the CFI(s) supplied by the Agency under the present clause and, unless already marked by the Agency, to mark these items in an unambiguous way as being the property of the Agency or of any other identified owner.

The Contractor shall not dispose of any non-consumable CFI unless and until the Agency has specifically consented to such disposal in writing.

**I.20.7** Failure of the Agency to deliver the CFI under this clause, shall not relieve the Contractor from fulfilling its own obligations and shall not give the right to the Contractor to request a change to the Specific Contract. The Contractor shall take all reasonable measures to eliminate or limit the consequences of the Agency's omission or delay and shall be entitled to relief only insofar as it can provide evidence that such relief is necessary in order to compensate for the consequences of the Agency's intentional failure to execute its undertaking. Should the failure of the Agency be due to a failure of the Contractor to meet their obligations towards the Agency under this or any other contract connected with the subject of this Contract, the Contractor shall not be entitled to any relief.

**I.20.7.1** In case of failure, omission or delay of the Agency to provide the CFI according to the Contract, the Contractor shall:

- (a) provide Notice to the Agency, not later than three (3) working days of coming to its notice, of any failure, omission or delay of the Agency to fulfil its obligations subject to this Article;
- (b) analyse and report on the impact of such failure, omission or delay, if any, on the Contract affected and propose mitigation actions, including amendments;
- (b) take all reasonable measures to eliminate or limit the consequences of the Agency's failure, omission or delay on its performance.

**I.20.7.2** Failure, omission or delay of the Agency to provide the CFI as required under this Contract shall relieve the Contractor from fulfilling its obligations only insofar as:

- (a) the Contractor has notified the Agency in accordance with Article I.20.7.1(a) above, and
- (b) the Contractor can prove that the direct cause of such non-fulfilment was the Agency's failure, omission or delay to execute its obligations to provide the CFI as required under this Contract.

**I.20.7.3** The Agency responsibility for breach of its obligations shall not go beyond the following:

- (a) extension of contractual milestones and relief of associated Liquidated Damages (as per Article I.14), to the extent that the delay is proven to be the direct result of an Agency's failure, omission or delay;
- (b) total or partial waiver of KPIs, if any, including temporary, to the extent that the non-compliance with KPIs is proven to be the direct result of an Agency's failure, omission or delay.

## **ARTICLE I.21 INTER-INSTITUTIONAL CONTRACT**

**I.21.1** This framework contract is inter-institutional. EUSPA acts on its own behalf and on behalf of the European Commission for which it has received power of attorney before contract signature. EUSPA signs the Framework Contract and possible amendments on behalf of itself and the European Commission.

**I.21.2** EUSPA is the lead Contracting Authority responsible for the Framework Contract, representing the European Commission. EUSPA and the European Commission may individually, in their name and on their behalf, award specific contracts as Contracting Authority for implementing this Framework Contract. EUSPA or the European Commission shall be responsible for particular specific contracts they award on their own behalf.

**I.21.3** In the event of the Contractor having a complaint in relation to the conclusion, validity, interpretation, performance, or termination of a specific contract, the Contractor remains bound to its obligations under the Framework Contract and all other specific contracts. Without prejudice to Article I.15, the Contractor expressly commits not to compensate or suspend the execution of other specific contracts.

## SIGNATURES

For the Contractor,

[first name, last name, function of  
Contractor's authorised  
representative],

signature[s]: \_\_\_\_\_

Done in \_\_\_\_\_, [date]

For the Contracting Authorities,

Rodrigo da Costa, Executive Director

signature: \_\_\_\_\_

Done in Prague, [date]

In duplicate in English.



## II. GENERAL CONDITIONS

### ARTICLE II. 1 – DEFINITIONS

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

**‘Background IPRs’:** shall mean Intellectual property rights, including third parties’ IPR (especially – but not limited to – Commercial Off-The-Shelf or “COTS” and Open Source Software), obtained prior to the execution or developed outside the present Contract by the Contractor, the Contractor Parties or a third party, and that is needed to perform the contract or update or modify the Results under other projects subject to the GNSS Programmes of the European Union, including through third parties, however without prejudice to any mandatory security requirements imposed by public entities. A “need” in the aforementioned sense is considered, if, without the relevant rights of access and/or use of the Results to perform the Contract or, the update or modification of the Results under other projects subject to the GNSS Programmes of the European Union, including through third parties would be technically or legally impossible, impaired or incomplete.

**‘Business days’ or ‘working day’:** days on which the premises that are the place of performance of tasks are open, i.e. excluding Saturdays, Sundays and public holidays applicable to these premises. For the Contracting Authority premises, the applicable public holidays are the Contracting Authority public holidays related to the premises concerned. For other premises, the applicable public holidays are the official public holidays of the State where the premises are located.

**‘Confidential Information’:** any information or document received by either party from the other or accessed by either party in the context of the implementation of the FWC, that the party must treat with confidentiality according to the specific conditions of this FWC;

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

**‘Consecutive Assignment Period’:** means a consecutive period of Assignment Days at the same Deployment initiated with 1 (one) travel to and ending with 1 (one) travel from the Deployment, whereas in-between weekends, local holidays and any travels from and to the Deployment for private reasons shall not be considered as interrupting the Consecutive Assignment Period.

**‘Contractor Parties’:** means subcontractors at any tier to the Contractor.

**‘Customer Furnished Items (“CFIs”):** means all equipment, facilities, documentation or services, which are to be provided to Contractor by the Agency pursuant to this Contract, that shall be defined in the Specific Contract.

**‘Daily Rate’:** means all-inclusive daily rates, specified in Articles I.4.1.3, I.4.1.4 and I.4.1.9.

**‘Day’ or ‘calendar day’:** unless otherwise specified, all periods in FWC are calculated in calendar days;

**‘Deliverable Mode’:** means Mode 2 as per section 2.3.3 of the Tender Specification (Annex II.II) whereby Specific Contract tasks implementation whereby the tasks implementation shall be handled by teams proposed by the Contractor in the respective Specific Contract proposal and the performed services shall be paid on the basis of the Fixed Unit Price (FUP) per deliverable, based on Daily Rates and the level of effort required for the deliverable production, and the number of the deliverables submitted by the team and accepted by the Contracting Authority during the respective payment period. The FUPs for the deliverables are set at FWC level (in the FWC financial proposal, part of Annex II.II), and may be established, as well, at a Specific Contract level, at the time of the assignment of the Specific Contract.

**‘Deployment’:** the assignment of the Contractor’s personnel to a specific location for the provision of services. The location shall be established in Specific Contract and/or its Annexes.

**‘EU main cities’:** Cities within the European Union territory with a population of at least 500,000.00 citizens as per the available EUROSTAT data at the time of the procurement procedure launch – Annex II.XII.

**‘Financial regulation’:** Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012.

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

**‘Foreground IPR’ or ‘Foreground Intellectual Property Rights’:** results within the meaning below including Intellectual Property Rights. This definition comprises all phases and stages of development and includes also rights relating to modifications of and add-ons to the subject-matter of Results, as well as modifications of and add-ons to the subject-matter of Background IPR made by the Contractor and the Parties in the scope of this Contract;

**‘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 respectively to the specified Contractor or the Contracting Authority;

**‘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.

**‘Gross negligence’:** unintentional act or omission by which the person responsible commits a patent breach of the duty of care which he should have and could have complied with in view of his attributes, knowledge, abilities and individual situation.

**‘Intellectual Property Rights’ or ‘IPR’:** rights having the meaning stated in Clause 2 of the Convention establishing the World Intellectual Property Organisation done in Stockholm on 14 July 1967, in particular “intellectual property” shall include the rights relating to

- literary, artistic and scientific works;
- performances of performing artists, phonograms, and broadcasts;
- inventions in all fields of human endeavour;
- scientific discoveries;
- industrial designs;
- trademarks, service marks, and commercial names and designations;
- protection against unfair competition; and

all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

**‘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.

**‘Man Day’:** the man-day is defined as a working day of 8 (eight) consecutive hours (plus a launch break), with the exception for the Operational support 24H under Task 6 of Lot 5 whereby the support shall be of a duration of 24 hours per day: the maximum number of man-days that can be invoiced for each profile should be equal to the man-days effectively worked and shall not exceed in any case the number of working days of the agency in the same period.

**‘Assignment’:** work of Contractor’s personnel, having been requested by the Contracting Authority for the performance of tasks at a destination specified in Articles I.4.1.3, I.4.1.4 and from Contractor's premises. Work in any specified in Articles I.4.1.3, I.4.1.4 and Contractor’s premises shall not be considered an Assignment.

**‘Assignment Day’:** day on which the personnel of the Contractor performs the tasks for which he/she was sent on Assignment, such as e.g. participation in a meeting.

**‘Mission’:** work of Contractor’s personnel, having been requested by the Contracting Authority for the performance of tasks at a destination other than the ones specified in Articles I.4.1.3, I.4.1.4 and other than from Contractor's premises. Work in any specified in Articles I.4.1.3, I.4.1.4 and Contractor’s premises shall not be considered a Mission.

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

**‘Order form’:** a simplified form of Specific Contract by which the Contracting Authority orders services under the FWC;

**‘Performance of a Specific Contract’:** the execution of tasks and delivery of the purchased services / deliverables by the Contractor to the Contracting Authority;

**‘Personnel’:** persons employed directly or indirectly or contracted by the Contractor or subcontractor(s) to implement the FWC;

**‘Professional Conflicting Interest’:** a situation in which the Contractor’s previous or ongoing professional activities affect its capacity to implement the FWC or to perform a Specific Contract to an appropriate quality standard.

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

**‘Result’:** any tangible or intangible output, such as data, knowledge and information whatever their form or nature, whether or not they can be protected, stemming from the execution of the Contract which are generated by the Contractor and the Contractor Parties under the Contract, as well as any attached rights, and including IPR.

**‘Services-based mode’:** means Mode 1 as per section 2.3.3 of the Tender Specification (Annex II.II) - mode of Specific Contract performance whereby the tasks implementation shall be handled by teams proposed by the Contractors in the respective Specific Contract proposal and the performed services shall be paid on the basis of defined man-day rates and the level of engagement of the respective team members for the particular period / task.

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

**‘Standard Place for Performance of Tasks’:** the location where the Contractor’s individual personnel is regularly placed for performance of activities, as defined in particular in the terms of reference of the applicable Specific Contract which could be the location where the Contracting Authority or its branch is

regularly active and shall provide the support from, the locations specified in Articles I.4.1.3, I.4.1.4.

**'Travel Day'**: day on which the Personnel of the Contractor **only** travels to/from the destination of performance of such tasks. A Travel Day is not considered as an Assignment / Mission Day and not subject to daily rates.

## **ARTICLE II.2 – PROVISION OF SERVICES**

**II.2.1** The Contractor shall perform the FWC to the highest professional standards, in accordance with the state of the art in the industry and the provisions of this FWC, in particular the tender specifications and the terms of its tender. The Contractor must comply with the exclusion, selection criteria, participation conditions and minimum requirements provided for in the tender specifications throughout the duration of the Contract. This includes, without limitation, 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, compliance with data protection obligations resulting from Regulation (EU) 2016/679 and Financial Regulation and compliance with obligations resulting from the Financial Regulation on the financial rules applicable to the general budget of the Union.

**II.2.2** The Contractor shall be solely responsible for taking the necessary steps to obtain any permit or licence required for performance of the FWC under the laws and regulations in force at the place where the tasks assigned to it are to be executed.

**II.2.3** Without prejudice to Article II.4 any reference made to the Contractor's Personnel in the FWC shall relate exclusively to individuals involved in the performance of the FWC.

**II.2.4** When the Contractor identified in the offer for FWC or for Specific Contract the Personnel who will perform the tasks, it may replace or add Personnel only if the new Personnel has equivalent qualifications and only with prior agreement confirmed by a letter co-signed by the Contracting Authority's project and Legal officers.

**II.2.5** The Contractor must ensure that the Personnel performing the FWC possesses the professional qualifications and experience required for the execution of the tasks assigned to it.

**II.2.6** The Contractor shall neither represent the Contracting Authority nor behave in any way that would give such an impression. The Contractor shall inform third parties that it does not belong to the European public service.

**II.2.7** The Contractor is responsible for the Personnel who carry out the services and exercises its authority over its Personnel without interference by the Contracting Authority. The Contractor must inform its Personnel that:

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

**II.2.8** In the event of disruption resulting from the action of one of the Contractor's Personnel working on the Contracting Authority's premises or in the event that the expertise of one of the Contractor's Personnel fails to correspond to the profile required by the FWC, the Contractor shall replace him/her without delay. The Contracting Authority shall have the right to make a reasoned request for the replacement of any such Personnel. The replacement Personnel must have the necessary qualifications and be capable of performing the FWC under the same contractual conditions. The Contractor shall be responsible for any delay in the execution of the tasks assigned to it resulting from the replacement of Personnel. The Contractor bears the cost of replacing its Personnel.

**II.2.9** Should the execution of the tasks be directly or indirectly hampered, either partially or totally, by any unforeseen event, action or omission, the Contractor shall immediately and on its own initiative record it and report it to the Contracting Authority. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with its obligations under this FWC. In such an event the Contractor shall give priority to solving the problem rather than determining liability.

**II.2.10** The Contractor must record and report to the Contracting Authority any problem that affects its ability to provide the services. The report must describe the problem, state when it started and what action the Contractor is taking to resolve it.

**II.2.11** 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.

## **ARTICLE II.3 – COMMUNICATION BETWEEN THE PARTIES**

**II.3.1** Any communication relating to the FWC or to its performance shall be made in writing to the relevant contact details identified in the specific conditions and shall bear the FWC number, and if applicable the Specific Contract number. Any communication is deemed to have been made when it is received by the receiving party unless otherwise provided for in this FWC.

**II.3.2** Unless otherwise agreed, any communication made by email has full legal effect and is admissible as evidence in judicial proceedings. E-mail is deemed to have been received by the receiving party on the day of dispatch of that e-mail, provided that it is sent to the e-mail address indicated in Article I.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.

**II.3.3** Electronic communication shall be confirmed by an original signed paper version of that communication if requested by any of the parties provided that this request is submitted without unjustified delay. The sender shall send the original signed paper version without unjustified delay.

**II.3.4** Mail sent using the postal services is deemed to have been received by the Contracting Authority on the date on which it is registered by the department responsible referred to in the specific conditions. Any Formal Notification shall be made by registered mail with return receipt or equivalent, or by equivalent electronic means. 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 Contractor.

#### **ARTICLE II.4 – PROFESSIONAL CONFLICTING INTEREST**

**II.4.1** The Contractor shall take all the necessary measures to prevent any situation of Professional Conflicting Interest. The Contractor particularly, but without limitation, undertakes for a period of 5 (five) years following the termination of this FWC or any Specific contract thereunder, whichever the later date, not to engage directly or indirectly, either as proprietor, stockholder, partner, officer, employee, consultant or otherwise in activities that may generate conflict of interests in relation to the activities performed for EUSPA.

**II.4.2** With the signing of the Contract, irrevocably and explicitly declares the absence of any conflict of interest in the meaning of **annex XI** existing at the signing of the contract. This declaration shall extend to and cover any members of the contractor's group/consortium and any of the subcontractors and dedicated advisors part of his/her tender.

**II.4.3** The contractor must notify the contracting authority in writing as soon as possible of any situation that could constitute a conflict of interest or a professional conflicting interest during the implementation of the FWC. The contractor must immediately take action to rectify the situation.

The contracting authority may do any of the following:

- (a) verify that the contractor's action is appropriate;
- (b) require the contractor to take further action within a specified deadline to rectify the situation;
- (c) decide not to award any Specific Contract to the contractor until the situation has been rectified.

**II.4.4** The contractor must pass on all the relevant obligations in writing to:

- (a) its personnel;
- (b) any related person;
- (c) third parties involved in the implementation of the FWC, including subcontractors.

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

**II.4.5** The Contractor shall further ensure that also its Personnel providing the services under the Specific Contract complies with any specific EUSPA policy applicable to Contractors' Personnel and, in case required by such policy, ensures its Personnel signs the relevant declarations, with this requirement applying to any consortium member's and subcontractor's Personnel accordingly.

**II.4.6** Should the Contractor not comply with these requirements and should such failure seriously affect the provision of the services as required by the Contracting Authority under the FWC, it shall follow the process described under Article II.12.3.

## **ARTICLE II.5 – PROCESSING OF PERSONAL DATA**

**II.5.1** Any personal data included in the FWC must be processed in accordance with the applicable rules on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data<sup>1</sup>. Such data shall be processed by the data controller (the Contracting Authority) and by the Contractor, which is hereby appointed as data processor solely for the purposes of the performance, management and monitoring of the FWC without prejudice to its possible transmission to the bodies charged with monitoring or inspection tasks in application of Union law.

**II.5.2** The following categories of personal data are expected to be processed by the data controller: contact details of the Contractor's Personnel or its Contractors that may be included in deliverables, such as name and last name, gender, telephone number, email address, postal address, organisation and position within organisation. The provision of the aforementioned data is a contractual requirement.

**II.5.3** The recipients of the personal data mentioned under Article II.5.1 shall be (1) a limited number of staff of the Contracting Authority managing the FWC or having a need-to-know for its execution, (2) a limited number of Personnel of the Contracting Authority Contractors assisting Contracting Authorities staff in the management of the FWC, (3) a limited number of Personnel of the Contracting Authority Contractors providing hosting services for the Contracting Authority servers. The personal data will be stored in the premises of the aforementioned Contractors, all of which are located within Union territory, and will be retained for up to 7 (seven) years after the expiry of the present FWC for audit and discharge purposes.

**II.5.4** The Contractor shall have the right to request from the data controller access to, rectification or erasure of its personal data, restriction of processing, the right to object to the processing and the right to data portability, provided that there are grounds for the exercise of any of these rights, as per the applicable rules.

**II.5.5** The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

---

<sup>1</sup> Currently Regulation (EU) 2018/1725.



**II.5.6** If, throughout the duration of the FWC, the Contractor is required to process any personal data (acting as data processor), the Contractor shall:

- a) inform in writing without delay the data controller and act only on documented instructions from the data 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;
- b) with regard to transfers of personal data to a country outside the European Union or an international organisation, act only on documented instructions from the data controller, unless required to do so by Union or Member State law to which the processor is subject; in such a case, the processor shall inform the data controller of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;
- c) ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- d) without prejudice to Article II.5.8, take all necessary measures to ensure the security of the processing of personal data, as may be instructed by the controller;
- e) not engage another processor or sub-processor without prior specific written authorisation of the controller;
- f) taking into account the nature of the processing, assist the controller by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the controller's obligation to respond to requests for exercising the data subject's rights laid down in the applicable rules;
- g) assist the controller for the fulfilment of its obligations to:
  - ensure compliance with its obligations regarding the security of the processing, and the confidentiality of electronic communications and directories of users;
  - notify a personal data breach to the European Data Protection Supervisor;
  - communicate a personal data breach without undue delay to the data subject, where applicable;
  - carry out data protection impact assessments and prior consultations as necessary.
- h) 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:
  - 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;
  - likely consequences of the breach;
  - measures taken or proposed to be taken to address the breach, including, where appropriate, measures to mitigate its possible adverse effects.
- i) 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;
- j) delete all the personal data after the end of the provision of services relating to processing;
- k) make available to the data controller all information necessary to demonstrate compliance with the obligations laid down in this Article and allow for and contribute to audits, including inspections, conducted by the controller or another auditor mandated by the controller.



**II.5.7** The Contractor shall grant Personnel access to the data to the extent strictly necessary for the performance, management and monitoring of the FWC.

**II.5.8** The Contractor shall adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to ensure:

- 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.

**II.5.9** If the Contractor infringes the provisions of the present Article by determining the purposes and means of processing, the Contractor shall be considered to be a controller in respect of that processing under the General Data Protection Regulation (EU) 2016/679 (Article 29(10) Regulation (EU) 2018/1725).

**II.5.10** The Contracting Authority as the data controller processes personal data of the Contractor as the data subject. The detailed information on processing the Contractor's personal data and the Contractor's rights in connection with personal data processing is provided in Privacy Statements related to applicable purposes of data processing.

## **ARTICLE II.6 – CHANGE OF SUBCONTRACTORS OR CONSORTIA MEMBERS**

**II.6.1** After the signature of the FWC, the Contractor shall request the Contracting Authority's prior written approval to introduce any newly selected subcontractor(s), including when part of the Core Team. The Contracting Authority will decide whether or not to approve the proposed new subcontractor on the basis of the assessment of its compliance with exclusion and selection criteria, and participation conditions.

**II.6.2** Even where the Contracting Authority authorises the Contractor to subcontract to third parties, the Contractor shall nevertheless remain solely responsible for the proper performance of this FWC, including with regard to the activities and responsibilities undertaken by the subcontractors.

**II.6.3** The Contractor shall make sure that the subcontract does not affect rights and guarantees granted to the Contracting Authority by virtue of this FWC, notably by Article II.8.1.

**II.6.4** The Contracting Authority shall request the Contractor to remove or replace subcontractor(s), including when part of the Core Team, found to be in a situation provided for in points (e) to (q) of Article II.12.1. In such case, the Contractor shall undertake, on the basis of its written request and subject to the Contracting Authority's prior written approval, to absorb the part of the FWC previously performed by the concerned subcontractor(s) at its level. Alternatively, the Contractor may introduce new subcontractor(s) pursuant to the applicable provisions of this Article II.6.

#### **II.6.5 CHANGE OF CONSORTIA MEMBERS**

Changes in consortia members during contract execution are in principle acceptable in the context of universal successions or when the Contracting Authority terminates the Contract with a member of the consortium separately as per Article II.12.1. last paragraph.

In the latter case changes may happen either by replacing the terminated member or by absorbing the relevant tasks and responsibilities by the remaining ones, subject to Agency's prior written approval.

The replacing consortium member and/or newly formed consortium shall comply with the relevant cumulative conditions elaborated on in section 2.2.13 of the Tender Specifications.

The Contracting Authority reserves the right to terminate the FWC in its entirety, should the newly formed consortium not be in alignment with relevant cumulative conditions elaborated on in section 2.2.13 of the Tender Specifications.

### **ARTICLE II.7 – AMENDMENTS**

**II.7.1** Any amendment to the FWC or Specific Contract shall be made in writing before fulfilment of all contractual obligations. A Specific Contract may not be deemed to constitute an amendment to the FWC.

**II.7.2** The amendment may not have the purpose or the effect of making changes to the FWC or the specific contracts that might alter the initial conditions of the procurement procedure or Specific Contract or result in unequal treatment of tenderers or Contractors.

**II.7.3** Within 5 (five) calendar days of an Amendment signed by the Contracting Authority, being sent dispatched to the Contractor, the Contractor shall provide the Contracting Authority the Amendment back, duly signed and dated.

### **ARTICLE II.8 – ASSIGNMENT**

#### **BY THE CONTRACTOR**

**II.8.1** The Contractor shall not assign the rights, including claims for payments or factoring, and obligations arising from the FWC, in whole or in part, 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.8.2** In the absence of such authorisation, or in the event of failure to observe the terms thereof, the assignment of rights or obligations by the Contractor shall not be enforceable against the Contracting Authority and shall have no effect on it.

#### **BY THE AGENCY**

**II.8.3** The Contractor expresses hereby its consent and grants its authorisation to the assignment of the Contract to the European Commission, with the exception of the Agency's rights regarding checks and audits under Article II.16, with effect as of 31 December 2027 and subject to Article I.2.2.

**II.8.4** The Agency shall cause the European Commission to undertake all obligations and be vested with all the rights arising out of the Contract.

**II.8.5** The Agency shall remain bound by any obligations and liabilities arising out of or in relation to the Contract prior to the date of assignment.

**II.8.6** The assignment shall be notified by the Agency by means of registered letter with return receipt by 30 November ~~2021~~ 2027<sup>Corrig.3</sup> at the latest. In case the assignment is not notified by that date, the Contract shall not be assigned.

#### **ARTICLE II.9 – FORCE MAJEURE**

**II.9.1.** If a party is affected by Force Majeure, it shall immediately and formally notify the other party without delay, stating the nature of the circumstances, likely duration and foreseeable effects.

**II.9.2.** A party is not liable for any delay or failure to perform its obligations under the FWC if that delay or failure is a result of Force Majeure. If the Contractor is unable to fulfil its contractual obligations owing to Force Majeure, it has the right to remuneration only for the services actually provided.

**II.9.3.** The parties shall take all the necessary measures to limit any damage due to Force Majeure.

**II.9.4.** If the force majeure event lasts for more than 30 (thirty) days each party is entitled to terminate the FWC or specific contract. Article II.12.1 shall be used accordingly.

#### **ARTICLE II.10 – PARTIAL PAYMENT AND RETENTION OF PAYMENT**

**II.10.1.** If the Contractor fails to provide the service in accordance with the FWC or a specific contract, the Contracting Authority may reduce or retain payments proportionally to the seriousness of the unperformed obligations.

**II.10.2.** In cases where a payment milestone is partially achieved, the Agency may:

- perform partial payments, subject to the Contractor providing adequate evidence of the portion of the payment milestone which has been actually achieved. The execution of a partial payment is without prejudice to the application of liquidated damages at the completion of the affected milestone whenever occurring. The liquidated damages shall be calculated on the residual amount of the milestone not accepted and already covered by the partial payment;

or

- retain payment of the corresponding milestone, without prejudice of the application of liquidated damages in the full amount when the required performance is met or the milestone accepted.

#### **II.10.3. Procedure for a partial payment or retention of payment**

The Contracting Authority must formally notify the Contractor of its intention to partially pay a corresponding calculated amount or retain the payment. Upon such notification, the invoice shall be suspended until the Contractor submits a dedicated credit note, covering the amount of the reduction.

The Contracting Authority shall perform the payment of the amount that is certain, upon the receipt of the credit note.

As regards the partial payment, the amount of the partial payment is clearly assessed by the Parties acting in good faith as a function of the value created to the Agency by the partial achievement of the payment milestone concerned.

The Contractor has 15 (fifteen) 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 either of:

- i. the withdrawal of its intention to partial payment or the retention of payment; or of
- ii. its final decision to partial payment and the corresponding amount or the retention of payment,

whereby in case of (i) the Contractor shall issue an invoice for the amount of credit note and the Contracting Authority shall pay the amount which was debatable.

### **ARTICLE II.11 – SUSPENSION OF THE IMPLEMENTATION OF THE CONTRACT**

#### **II.11.1 Suspension by the Contractor**

The Contractor may suspend the implementation the FWC or performance of a Specific Contract or any part thereof if a case of Force Majeure makes such performance impossible or excessively difficult. The Contractor shall inform immediately the Contracting Authority about the suspension without delay, giving all the necessary reasons and details and the envisaged date for resuming the implementation of the FWC.

The Contractor must notify the Contracting Authority as soon as it is able to resume performance of the specific contract, unless the Contracting Authority has already terminated the FWC or the specific contract.

#### **II.11.2 Suspension by the Contracting Authority**

The Contracting Authority may suspend the implementation of the FWC or performance of a Specific Contract or any part thereof:

- a) if the FWC or Specific Contract award procedure or the implementation of the FWC prove to have been

- subject to irregularities, fraud or substantial breaches of obligations;
- b) in order to verify whether presumed irregularities, fraud or substantial breaches of obligations have actually occurred;
  - c) if the Contractor is in a situation of Professional Conflicting Interest under ARTICLE II.4 – **PROFESSIONAL CONFLICTING INTEREST** and pending the definition and implementation of rectification actions as set out under Article II.4.3;
  - d) if the performance of the contract is considered to materially affect, directly or indirectly, the interests of the European Union, such as but not limited to security threats;
  - e) if the Contractor is considered to be in non-compliance with the confidentiality obligations and is required to submit relevant observations pursuant to **ARTICLE I.12 – CONFIDENTIALITY**;
  - f) if, due to a change of circumstances, the Contractor, the Contractor Parties or any entity having a role in the performance of the Contract do not comply anymore with the EU Restrictive Measures **referred to in section 3.1 of the Tender Specifications (Annex II.II) <sup>Corrig.3</sup>**, and if the Contractor has not promptly taken the necessary actions upon EUSPA request.

**II.11.3** During suspension for events under points (a) attributable to the Contractor, (c), (d), (e) and (f) no payments shall be due by the Contracting Authority on the affected specific contract

**II.11.4** Suspension shall take effect on the day the Contractor receives Formal Notification, or at a later date provided in the Notification. The Contracting Authority shall as soon as possible give notice to the Contractor to resume the service suspended or inform the Contractor that it is proceeding with termination of the FWC or specific contract. The Contractor shall not be entitled to claim compensation on account of suspension of the FWC or Specific Contract or of part thereof.

## **ARTICLE II.12 – TERMINATION OF THE FWC**

### **II.12.1 Grounds for termination by the contracting authority**

The Contracting Authority may terminate the FWC, and any on-going Specific Contract respectively in the following circumstances:

- a) if provision of the services under a pending Specific Contract has not actually started within 15 (fifteen) days of the scheduled date and the Contracting Authority considers the new date proposed, if any, unacceptable, taking into account Article II.7.2;
- b) if the Contractor is unable, through its own fault, to obtain any permit or licence required for implementation of the FWC or the specific contract;
- c) if the Contractor on more than two occasions fails to submit offers in response to Contracting Authority's requests for services, or refuses to sign specific contracts or fails to send them back on time. Termination of two or more specific contracts in these circumstances also constitutes grounds for termination of the FWC;
- d) if the Contractor or any Related Person is subject to any of the following situations:
  - i. the person or entity is bankrupt, subject to insolvency or winding-up procedures, its assets are being administered by a liquidator or by a court, it is in an arrangement with creditors, its business activities are

suspended, or it is in any analogous situation arising from a similar procedure provided for under Union or national law <sup>Corrig.3</sup>;

ii. the person or entity is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the applicable law <sup>Corrig.3</sup>;

iii. it has been established by any means which the Agency, acting in good faith, can justify that the Contractor or persons having powers of representation, decision making or control over it have been guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the person or entity belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence, including, in particular, any of the following <sup>Corrig.3</sup>:

- fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of eligibility or selection criteria or in the implementation of the Contract;
- entering into agreement with other persons or entities with the aim of distorting competition;
- violating intellectual property rights;
- attempting to influence the decision-making of the authorising officer responsible during the award procedure;
- attempting to obtain confidential information that may confer upon it undue advantages in the award procedure;

iv. it has been established by any means which the Agency, acting in good faith, can justify that the person or entity is responsible of any of the following conducts <sup>Corrig.3</sup>:

- fraud, within the meaning of Article 3 of Directive (EU) 2017/1371 of the European Parliament and of the Council<sup>2</sup> and Article 1 of the Convention on the protection of the European Communities' financial interests, drawn up by the Council Act of 26 July 1995<sup>3</sup>;
- corruption, as defined in Article 4(2) of Directive (EU) 2017/1371 or active corruption within the meaning of Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997<sup>4</sup>, or conduct referred to in Article 2(1) of Council Framework Decision 2003/568/JHA<sup>5</sup>, or corruption as defined in other applicable laws;
- conduct related to a criminal organisation as referred to in Article 2 of Council Framework Decision 2008/841/JHA<sup>6</sup>;

<sup>2</sup> Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).

<sup>3</sup> OJ C 316, 27.11.1995, p. 48.

<sup>4</sup> OJ C 195, 25.6.1997, p. 1.

<sup>5</sup> Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ L 192, 31.7.2003, p. 54).

<sup>6</sup> Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42)

- money laundering or terrorist financing within the meaning of Article 1(3), (4) and (5) of Directive (EU) 2015/849 of the European Parliament and of the Council<sup>7</sup>;
  - terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA<sup>8</sup>, respectively, or inciting, aiding, abetting or attempting to commit such offences, as referred to in Article 4 of that Decision;
  - child labour or other offences concerning trafficking in human beings as referred to in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council<sup>9</sup>;
    - v. the person or entity has shown significant deficiencies in complying with main obligations in the implementation of a legal commitment, other than the Contract, financed by the budget which has Corrig.3;
  - led to the early termination of a legal commitment;
  - led to the application of liquidated damages or other contractual penalties; or
  - been discovered by an authorising officer, OLAF or the Court of Auditors following checks, audits or investigations;
    - vi. the person or entity has committed an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95<sup>10</sup>; Corrig.3
    - vii. the person or entity has created an entity in a different jurisdiction with the intent to circumvent fiscal, social or any other legal obligations in the jurisdiction of its registered office, central administration or principal place of business; Corrig.3
    - viii. an entity has been created with the intent referred to in point (vii). Corrig.3
- e) if the procedure for awarding the FWC or the implementation of the FWC prove to have been subject to errors, irregularities, fraud or substantial breaches of obligations on the side of the Contractor;
- f) if the Contractor does not comply with applicable laws, including, without limitation to, 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;
- g) if the Contractor fails to notify the Contracting Authority that it is in a situation of Professional Conflicting Interest as referred to in Article II.4.1; or fails to take immediate action for rectification or additional action for rectification as required by Contracting Authority; or if the proposed rectification actions are, in the opinion of Contracting Authority acting reasonably, not effective;
- h) if a change to the Contractor's legal, financial, technical, organisational or ownership situation is likely to substantially affect the implementation of the FWC or substantially modify the conditions under which the FWC was initially awarded
- i) in case of a change regarding the exclusion situations listed in Article 136 of Financial Regulation that calls into question the decision to award the contract;

<sup>7</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

<sup>8</sup> Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (OJ L 164, 22.6.2002, p. 3).

<sup>9</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 15.4.2011, p. 1).

<sup>10</sup> Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.1995, p. 1).



- j) in the event of Force Majeure, where either resuming implementation or the performance is impossible or the necessary ensuing amendments to the FWC or a Specific Contract would mean that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or Contractors;
- k) in case of persistent breach, intended as a repeated breach of the same obligation under the contract or a specific contract, notwithstanding written warnings sent by the Contracting Authority;
- l) if the Contractor is in breach of the confidentiality obligations resulting from ARTICLE I.12 – **CONFIDENTIALITY**;
- m) if the Contractor takes any step to recruit a member of the Contracting Authority staff;
- n) if the contractor is in breach of the data protection obligations resulting from ARTICLE II.5 – PROCESSING OF PERSONAL DATA;
- o) if the Contractor does not comply with the applicable data protection obligations resulting from Regulation (EU) 2016/679;
- p) if the Contractor does not implement the FWC or perform the Specific Contract in accordance with the tender specifications or request for service or is in breach of another substantial contractual obligation;
- q) if, due to a change of circumstances, the Contractor, the Contractor Parties or any entity having a role in the performance of the Contract do not comply anymore with the EU Restrictive Measures **referred to in section 3.1 of the Tender Specifications (Annex II.II) <sup>Corrig.3</sup>**, and if the Contractor has not promptly taken the necessary actions upon EUSPA request.
- r) if the needs of the contracting authority change and it no longer requires new services under the FWC; in such cases ongoing specific contracts remain unaffected.

In the case of joint tenders, the Contracting Authority may terminate the FWC or a Specific Contract with any member of the consortium separately on the basis of points (b), (d), (f) (g), (h), (i), (l) , (m), (o), (q) of Article II.12.1, pursuant to Article II.12.3 and Article II.6.5.

#### **II.12.2 Grounds for termination by the Contractor**

The Contractor may terminate the FWC or an on-going Specific Contract only if:

- a) it has evidence that the Contracting Authority has committed irregularities, fraud, substantial breaches of obligations in the procedure for awarding the FWC or the implementation of the FWC;
- b) the Contracting Authority fails to comply with its obligations, in particular the obligation to provide the information needed for the Contractor to implement the FWC or to perform a Specific Contract as provided for in the tender specifications.

#### **II.12.3 Procedure for termination**

II.12.3.1 A party must formally notify the other party of its intention to terminate the FWC or a Specific Contract and the grounds for termination ("Formal Notification").

II.12.3.2 The other party has 15 (fifteen) days following the date of receipt of the Formal Notification to submit observations, including the measures it has taken to continue fulfilling its contractual obligations. Failing that, the Formal Notification becomes enforceable the day after the time limit for submitting observations has elapsed.

II.12.3.3 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 ("Confirmatory Notification"). Provided there is no Confirmatory Notification delivered to the other party, it shall be deemed



that the intention to terminate was withdrawn.

II.12.3.4. Unless stated otherwise in the Confirmatory Notification, the date on which the termination takes effect shall be 1 (one) month as of dispatch of the Confirmatory Notification.

II.12.3.5 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.12.4 Effects of termination**

The Contractor is liable for damage incurred by the Contracting Authority as a result of the termination of the FWC or a Specific Contract for the situation specified under Article II.12.1 a), b), c), d), e), f), g), i), k), l), m), n), o), p), q) ("Contractor Default"), including the cost of appointing another Contractor to provide or complete the services.

The Contractor is not entitled to compensation for any loss resulting from the termination of the FWC or a specific contract, unless the loss was caused by the situation specified in Article II.12.2. The parties agree that only direct damage, not loss of anticipated profit, will be compensated to the Contractor.

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

Within 60 (sixty) 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.

### **ARTICLE II.13 – PAYMENTS AND GUARANTEES**

#### **II.13.1 Date of payment**

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

#### **II.13.2 Currency**

The FWC shall be in euro. Payments shall be executed in euro. Upon agreement of the Contracting Authority, the payments may be executed in the local currency.

#### **II.13.3 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](http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm)

#### **II.13.4 Costs of transfer**

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

- 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.13.5 Invoices and Value Added Tax**

Invoices shall contain the Contractor's identification data (or leader's in the case of a joint tender), the amount, the currency and the date, as well as the FWC reference and reference to the specific contract. Invoices shall be sent electronically to the following address: [finance@euspa.europa.eu](mailto:finance@euspa.europa.eu) or to any other address as communicated by the Contracting Authority.

Invoices shall indicate the place of taxation of the Contractor (or leader in the case of a joint tender) for value added tax (VAT) purposes and shall specify separately the amounts not including VAT and the amounts including VAT. The Contracting Authority is, as a rule, exempt from all taxes and duties, including VAT, pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.

The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the supplies and services required for performance of the FWC are exempt from taxes and duties, including VAT exemption.

#### **II.13.6 Interim payments and payment of the balance**

Upon receipt, the Contracting Authority shall pay the amount due as interim or final payment, within the periods specified in Article I.6.1, provided the invoice, deliverables and documents have been approved by the Contracting Authority and without prejudice to Article II.10.1. Approval of the invoice, deliverables and documents shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information they contain. Payment of the balance may take the form of recovery.

#### **II.13.7 Suspension of the time allowed for payment**

The Contracting Authority may suspend the payment periods specified in Article II.11.1 at any time by notifying the Contractor (or leader in the case of a joint tender) that its invoice cannot be processed, either because it does not comply with the provisions of the FWC, or because the appropriate documents or deliverables have not been produced, or 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. The Contracting Authority shall notify the Contractor (or leader in case of a joint tender) of the need to submit additional information or corrections or a new version of the documents or deliverables if the Contracting Authority requires it.

Suspension shall take effect on the date the Notification is sent by the Contracting Authority. The remaining payment period resumes from the date on which the requested information or revised documents are received by the Contracting Authority or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension period exceeds two months, the Contractor 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 and the new document produced is also rejected, the Contracting Authority reserves the right to terminate the Specific Contract in accordance with Article II.12.1(c).

#### **II.13.8 Interest on late payment**

On expiry of the payment periods specified in Article I.6.1, the Contractor 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 shall be the rate in force on the first day of the month in which the payment period ends, as published in the C series of the Official Journal of the European Union.

The suspension of the payment period in accordance with Article II.12.1 may not be considered as a late payment. Interest on late payment shall cover the period running from the day following the due date for payment up to and including the date of actual payment as defined in Article II.12.1. However, when the calculated interest is lower than or equal to EUR 200, it shall be paid to the Contractor only upon request submitted within two months of receiving late payment.

#### **ARTICLE II.14 – not used**

#### **ARTICLE II.15 – RECOVERY**

**II.15.1** If an amount is to be recovered under the terms of the FWC or the specific contract, the Contractor shall repay the Contracting Authority the amount in question according to the terms and by the date specified in the debit note.

**II.15.2** 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 (thirty) 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.

**II.15.3** If the Contractor does not pay by the due date, the Contracting Authority may, after informing the Contractor in writing, recover the amounts due:

- by offsetting them against any amounts owed to the Contractor by the Contracting Authority, Union or by the European Atomic Energy Community or by an executive agency when it implements the Union budget;
- by calling in a financial guarantee if the Contractor has submitted one to the Contracting Authority;

- by taking legal action.

#### **II.15.4 Interest on late payment**

If the obligation to pay the amount due is not honoured by the date set by the Contracting Authority in the debit note, the amount due shall bear interest at the rate indicated in Article II.13.8. Interest on late payments shall cover the period from the day following the due date for payment up to and including the date when the Contracting Authority receives the full payment of the amount owed.

**II.15.5** Any partial payment shall first be entered against charges and interest on late payment and then against the principal amount.

**II.15.6** If the contract is signed by a group (joint tender), the group is jointly and severally liable under the conditions set out in Article I.10.1 (liability). The Contracting Authority shall send the debit note first to the leader of the group.

**II.15.7** If the leader does not pay by the due date and if the amount cannot be offset in accordance with Article II.15.3(a), the Contracting Authority may claim the amount still due to any other member of the group by respectively notifying them with the debit note already sent to the leader under this Article

### **ARTICLE II.16 – CHECKS AND AUDITS**

**II.16.1** The Contracting Authority and the European Anti-Fraud Office may check or have an audit on the performance of the FWC. It may be carried out either directly by their own Personnel 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 FWC and during a period of up to five years which starts from the payment of the balance of the last Specific Contract issued under this FWC. The audit procedure shall be deemed to be initiated on the date of receipt of the relevant letter sent by the Contracting Authority. Audits shall be carried out on a confidential basis.

**II.16.2** The Contractor must keep all original documents stored on any appropriate medium, including digitised originals if authorised by national law and under the conditions laid down therein, for a period of five years which starts running the payment of the balance of the last Specific Contract issued under this FWC.

**II.16.3** The Contractor shall allow the Contracting Authority's staff and outside Personnel authorised by the Contracting Authority the appropriate right of access to sites and premises where the FWC is performed and to all the information, including information in electronic format, needed in order to conduct such checks and audits. The Contractor must ensure that the information is readily available at the moment of the check or audit and, if so requested, that information be handed over in an appropriate form.

**II.16.4** On the basis of the findings made during the audit, a provisional report shall be drawn up. It shall be sent to the Contractor, which shall have 30 (thirty) days following the date of receipt to submit observations. The final report shall be sent to the Contractor within 60 (sixty) days following the expiry of that deadline. On the basis of the final audit findings, the Contracting Authority may recover all or part of the payments made and may take any other measures which it considers necessary.

**II.16.5** The Court of Auditors and the European Public Prosecutor's Office established by Council Regulation (EU) 2017/1939 ('the EPPO') shall have the same rights as the Contracting Authority, notably right of access, for the purpose of checks and audits.

## ANNEX II.IV – DRAFT SPECIFIC CONTRACT

(separate document)

SPECIFIC CONTRACT No GSA/OP/37/23/Lot [x]/SC[#]  
implementing Framework Contract No **GSA/OP/37/23/Lot [x]**

The European Union Agency for the Space Programme (hereinafter referred to as "EUSPA", the "Agency" or the "Contracting Authority"), represented for the purposes of the signature of this contract (hereinafter referred to as the "contract" or "specific contract" or "SC") by Mr Rodrigo da Costa, Executive Director, on the one part, and

[Contractor's full official name]

[Contractor's official legal form]

[Contractor's statutory registration number or ID or passport number]

[Contractor's full official address]

[VAT registration number]

the "Contractor", represented for the purposes of the signature of this Framework Contract by [first name, last name, function of Contractor's authorised representative],

on the other part,

HAVE AGREED

## ARTICLE 1: SUBJECT MATTER

- 1.1 This Specific Contract implements Framework Contract (FWC) EUSPA/OP/37/23/Lot [x] signed by the Contracting Authority and the Contractor on [complete date].
- 1.2 The subject matter of this Specific Contract is [short description of subject].
- 1.3 The Contractor undertakes, in accordance with the terms set out in the FWC and in this Specific Contract and the annexes thereto, which form an integral part thereof, to perform the tasks specified in Annexes SC.I and SC.II:

## ARTICLE 2: ENTRY INTO FORCE AND DURATION

- 2.1 This Specific Contract shall enter into force on the date on which it is signed by the last party.
- 2.2 The execution of the tasks shall start by the date mutually agreed between the parties at the kick-off meeting (KOM) of this SC and recorded in the relevant minutes. The execution of the tasks shall end at expiry of the Specific Contract, as set out in article 2.1 or upon budget exhaustion, whichever is earlier.
- 2.3 The duration of the Specific Contract may be extended only with the express written agreement of the parties before such period elapses.
- 2.4 The execution of the tasks under this SC shall respect the schedule presented in delivery schedule (Annex SC.III) and the duration of the SC.
- 2.5 The delivery schedule may be updated monthly through written communication by the Contracting Authority to the Contractor, on the condition that the total duration of the SC and the total maximum price to be paid under this SC remain unchanged.
- 2.6 Following the communication by the Contracting Authority, the Contractor shall have 5 (five) working days to comment on the updated delivery schedule. In case the Contracting Authority receives no communication from the Contractor within this period, the delivery schedule shall be considered formally updated and applicable. The updated delivery schedule shall be also presented to the following progress report as agreed between the Parties.
- 2.7 The allocation of budget for each task/deliverable can be changed by a letter co-signed by the EUSPA's responsible Project Officer & the EUSPA's Head of Finance and sent by the Contracting Authority to the Contractor, on the condition that the total duration of the Specific Contract and the maximum total price to be paid under this Specific Contract remain unchanged [and that the budget reallocation is done within the same EU Space programme component]. It is herewith clarified that (i) the allocation of the budget and effort between profiles and (ii) the allocation of budget for missions (without prejudice to the provisions of Article I.4.2.1 of the FWC and respecting the upper budgetary limit set out in the mission plan) and consultancy services within one task/deliverable is indicative and the re-allocation of the said budget and effort between profiles is possible without the additional communication between the contracting parties.
- 2.8 Following the communication by the Contracting Authority, the Contractor shall have 5 (five) working days to comment on the updated allocation of budget. In case the Contracting Authority receives no communication from the Contractor within this period, the allocation of budget shall be considered formally updated and applicable.

### ARTICLE 3: PRICE

**3.1** The maximum total price to be paid under this Specific Contract shall be EUR [amount in figures and in words] covering all tasks executed.

**3.2** Travel expenses, accommodation costs and daily subsistence allowance for Missions are part of the maximum total price of the SC and shall be reimbursed in line with Article I.3 of the FWC.

**3.3** In addition to the maximum total price, no other reimbursable expenses are foreseen.

### ARTICLE 4: PAYMENTS

**4.1** Payments and approval of payments shall be made in accordance with Articles I.4, I.5, I.6, I.7, II.13, II.14, II.15, II.16 of the FWC.

**4.2** In accordance with Article I.4, payments shall be executed only if the Contractor has fulfilled all its contractual obligations by the date on which the invoice is submitted (with all required information and supporting documents), including submission to the Contracting Authority of [adjust per SC]:

- a) The deliverables,
- b) Copies of time sheets for verifying continuous service provision according to the requirements of the 'Financial Table of Answers' (distinguishing between senior and junior quality technicians as applicable and – including a summary/detailed justification of the tasks achieved),
- c) Proof of costs and a table on the actual costs incurred for short term Missions and subject to reimbursement, and
- d) Proof of acceptance of the deliverables, duly dated and signed by the Contractor and the Contracting Authority's project officer.

If by any reason the submission of a deliverable is delayed or not complete by the payment milestone planned, the request for its payment shall be delayed accordingly and may be submitted with the payment request following its delivery.

**4.3** As part of the Final Progress Report, the Contractor shall release a final version of the information submitted under Article 4.2 gathering all the costs of the Specific Contract split among the interim payment periods.

**4.4** The contractor undertakes to include in each invoice to be issued the following references pertaining to the EU Space programme components: [xxx].

### ARTICLE 5: FOLLOW-UP OF BUDGET

**5.1** Tasks under this SC include the project management of such tasks. The Contractor is obliged to monitor the consumption of the budget for this SC. In order to prevent exceeding the budget ceiling for this SC, the Contractor shall alert, in writing and in due time, the Contracting Authority when the budget consumption exceeds 70%, 80% and 90%. The Contractor will not invoice any tasks going beyond the budget ceiling unless it receives a prior written agreement of the contacting authority.

### ANNEXES



Annex SC.I: Terms of reference

Annex SC.II: Contractor's specific offer (No [complete] of [insert date])

[Annex SC.III: Delivery Schedule]

[Annex SC.IV: Deliverables Acceptance Sheet]

## **SIGNATURES**

For the Contractor,

For the Contracting Authority,

CGI Nederland B.V.,  
Mr. Bas van der Hoeven, Vice President Consulting  
Services - Space

Rodrigo da Costa, Executive Director

signature[s]: \_\_\_\_\_

signature[s]: \_\_\_\_\_

Done in [place], [date]

Done in Prague, [date]

In duplicate in English.

## ANNEX II.VII – DELIVERABLES ACCEPTANCE SHEET

[Annex SC.IV: Deliverables Acceptance Sheet]

implementing Framework Contract No **GSA/OP/37/23/Lot 1**

Specific contract reference: GSA/OP/37/23/Lot 1/**SC[#]**

Reference of Task/Deliverable	Due date (Annex II.I to the contract)	Actual Delivery date	Format/Manner of delivery	Price of deliverable
Fill-in				

### For the Contractor:

1) hereby certify that the task(s), deliverable(s) listed above have been <input type="checkbox"/> completed according to the terms and conditions of the above-mentioned contract and submitted to the Contracting Authority. <input type="checkbox"/> [specify]	
2) I hereby confirm that the number of the man-days / hours rendered for the deliverables subject to acceptance herewith are as defined in the (specific) contract for the respective deliverables <sup>1</sup> .	
Name	
Position	
Signature	
Date	

### For the Contracting Authority:

I hereby certify that the Task(s) and Deliverable(s) listed above have been <input type="checkbox"/> completed according to the terms of the contract, received and accepted by the Contracting Authority <input type="checkbox"/> [specify]	
Name	
Position	
Signature	
Date	

For the avoidance of the doubt, the present acceptance sheet is without prejudice to the check of the relevance and completeness of the Contractor's related invoice and its supporting documents and the authorisation of the payment by EUSPA Authorising Officer and to any rights of the Contracting Authority stemming from the provisions of the framework contract.

---

<sup>1</sup>.

