

INVITATION TO TENDER N° AO/006/19

Provision of IT Software Development and Maintenance Services

ANNEX III

DRAFT / MODEL SERVICE FRAMEWORK CONTRACT

Framework Contract 4020XXXXXX

The European Union Intellectual Property Office (hereinafter referred to as "the Office"), with tax identification number V-03965324, and with its seat at Avenida de Europa, 4, E-03008 Alicante, Spain, which is represented for the purposes of the signature of this Framework Contract by Mr, Director of,

and

[Official name in full] 1

[Official legal form] 1

[Official address in full] 1

VAT registration number

(hereinafter referred to as "the Contractor"), represented for the purposes of the signature of this Framework Contract by Mr/Ms full name and function 1,

HAVE AGREED

the **Special Conditions (Part 1)**, the **General Terms and Conditions (Part 2)** and the **Signatures (Part 3)** below and the following Annexes:

Annex I	Tender Specifications (Invitation to Tender N° AO/006/19 of [date]), including questions, replies and clarifications published during the tendering stage.
Annex II	Contractor's Tender (No [complete] of [complete]), including all replies of the Contractor to the clarification requests made by the Office during the evaluation of the tenders.
Annex III	Specific Contracts – Model and contracting methods
Annex IV	Power of Attorney
Annex V	Financial Identification Form
[Annex VI]	Declaration on Spanish legislation on health and safety at work if the services will be performed on Spanish territory]
[Annex VII]	Security requirements]
[Annex VIII]	Service level agreement]

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

- The terms set out in the Special Conditions shall take precedence over those in the other parts of the Framework Contract.
- The terms set out in the General Terms and Conditions shall take precedence over those in the model purchase order and model Specific Contract.
- The terms set out in the purchase order form and model Specific Contract shall take precedence over those in the other annexes.
- The terms set out in the tender specifications (Annex I) shall take precedence over those in the tender (Annex II).
- The terms set out in the Framework Contract shall take precedence over those in the order forms and Specific Contracts.
- The terms set out in the Specific Contracts shall take precedence over those in the requests for services.
- The terms set out in the requests for services shall take precedence over those in the specific tenders.

Subject to the above, the several instruments forming part of this Contract are to be taken as mutually explanatory. Ambiguities or discrepancies within or between such parts shall be explained or rectified by a written instruction issued by the Office; subject to the rights of the Contractor under Article 6 of the General Terms and Conditions (Part 2 of the present Contract) should the Contractor dispute any such instruction.

This Contract contains all the conditions for concluding and executing Specific Contracts. Please note that reference to Specific Contracts in the different parts of the Framework Contract may be understood, where relevant, as references to Purchase Orders.

PREAMBLE

On the [date], the Office published in the Official Journal of the European Union, an invitation to tender under reference **20.../S ...-.....**, for the provision of IT Software Development and Maintenance Services.

The Contractor was selected, as the [first][second][third] contractor of a multiple contract at the conclusion of the evaluation process, on the basis of its tender submitted on .../.../20.... in response to the invitation to tender.

The first Contractor of the multiple Contract is ... with contract N° ...

The second Contractor of the multiple Contract is ... with contract N° ...

The third Contractor of the multiple Contract is ... with contract N° ...

1 SPECIAL CONDITIONS

1.1 SUBJECT

1.1.1 The subject of the Contract is:

- the provision of IT Software Development and Maintenance Services, as set out in the Tender Specifications (Annex I).

The Products and Services covered by this Contract are listed in Annex I.

1.1.2 Upon implementation of the Contract, the Contractor shall execute the tasks in accordance with the Tender Specifications in Annex I and his tender in Annex II.

1.1.3 The Contract does not confer on the Contractor any exclusive right to supply the goods or to provide services referred to in the above paragraph.

1.1.4 Signature of the Contract imposes no obligation on the Office to purchase. Only the implementation of the Contract through Purchase Orders and Specific Contracts is binding on the Office.

1.1.5 All Specific Contracts and Purchase Orders implementing the Contract shall conform to the terms set out therein. This Framework Contract contains all the conditions for concluding and executing Specific Contracts. Please note that reference to Specific Contracts in the different parts of the Framework Contract may be understood, where relevant, as references to Purchase Orders or Order Forms.

1.2 ENTRY INTO FORCE AND DURATION

1.2.1 The Contract shall enter into force on the date on which it is signed by the last party.

1.2.2 Under no circumstances may performance commence before the date on which the Contract enters into force. Execution of tasks may under no circumstances begin before the date on which the Specific Contract enters into force.

1.2.3 The Contract is concluded for a period of two (2) years with effect from the date on which it enters into force. This contractual period and all other periods specified in the Contract are calculated in calendar days unless otherwise indicated.

1.2.4 Specific Contracts shall be signed by both parties before the Contract expires.

The Contract shall continue to apply to such Specific Contracts after its expiry. They shall be executed no later than six (6) months after its expiry.

1.2.5 The Framework Contract shall be renewed automatically up to three times, each time for a period of one (1) year and on the same conditions, unless written notification to the contrary is sent by one of the parties and received by the other at the latest three months before expiry of the period indicated in Article 1.2.3. Renewal does not imply any modification or deferment of

existing obligations. The overall duration of the Framework Contract may in no event exceed five (5) years.

1.3 PRICES

- 1.3.1 The prices of this Contract shall be as listed in Annex II. However, this must in no way be construed as a commitment on the Office to purchase for the maximum amount.
- 1.3.2 Prices shall be expressed in euro.
- 1.3.3 Prices shall be fixed and not subject to revision for Specific Contracts placed during the first year of performance of the Contract or Amendment. The prices or fees may be subject to revision on the basis of indexation.
- 1.3.4 At the beginning of the second and every following year of the Contract, each price may be revised upwards or downwards, if such revision is requested by one of the parties in writing no later than three months before the anniversary of the date on which it was signed. The other party shall acknowledge receipt within 15 days of reception of the request. The new prices shall be communicated as soon as the final index is available. The Office shall purchase on the basis of the prices in force on the date on which order forms or Specific Contracts are signed by both parties. Such prices shall not be subject to revision.
- 1.3.5 This revision shall be determined by the trend in the harmonised indices of consumer prices (HICP-MUICP) published for the first time by the Eurostat monthly publication at:
http://ec.europa.eu/eurostat/data/database?node_code=prc_hicp_midx.

For the third party location profiles, the applicable correction coefficients will be taken from Eurostat at the beginning of each year of the Framework Contract implementation as specified in Annex I.

- 1.3.6 Revision shall be calculated in accordance with the following formula:

$$Pr = Po \times (Ir/Io)$$

where:

- Pr = revised price;
- Po = price in the original tender or of the last revision;
- Io = index for the month corresponding to the final date for submission of tenders or of the last revision;
- Ir = index for the month corresponding to the date of receipt of the request to revise prices.

1.4 IMPLEMENTATION OF THE CONTRACT

- 1.4.1 The Office operates an External Resource Management System (ERMS) to support and promote the optimal use of external resources at the Office and to provide valuable input for the Office's sourcing decision-making process. It

covers, besides other measures, the evaluation of contracts (framework or direct) during their lifetime and, in particular, the periodic evaluation of the pluriannual contracts as well as the ex-post evaluation and review of the Contract, including lessons learned and recommendations for the future.

- 1.4.2** As and when required, the Office shall communicate to the Contractor specific orders which shall be covered by this Framework Contract. These specific orders may take the form of a Purchase Order or a Specific Contract in accordance with the model forms and contracting methods attached as Annex III.

1.4.3 Contracting methods

Offers and Specific Contracts (SC) for services shall be elaborated according to 1 of the 3 following modalities:

- **Fixed Price (FP):** corresponds to a lump sum for a defined service (result orientated).

Under the Fixed Price modality, the Office specifies the required deliverable(s) for the service(s) to be provided.

- **Quoted Time & Means (QTM):** corresponds to a lump sum detailing the number of days according to the profiles specified in the Framework Contract for a defined service (result-oriented detailing the means required to deliver the service).

Under the Quoted Time & Means modality, the Office specifies the required deliverable(s) and requests a detailed drill-down of the number of person-days needed according to the profiles specified in the Framework Contract.

- **Time & Means (TM):** corresponds to a number of days according to the profiles specified in the Framework Contract.

Under the Time & Means modality, the Office specifies the workload (i.e. the estimated amount of person-days) and the job profiles needed for the services to be provided.

- 1.4.4** The process is initiated by the Office via a Request for Offer (RfO) which is communicated to the Contractor by the appropriate means, describing the required services, the specific conditions if they differ from those described in the Framework Contract and the timeframe for submitting the offer.

The Contractor must confirm immediately receipt of the request and communicate to the Office its intention to make an offer within three (3) working days from the receipt. If the Contractor refuses to make an offer, the Office may activate the cascade mechanism as described in the Technical Specifications.

After having confirmed its intention to make an offer to the Office, the Contractor must, as soon as possible and within the timeframe indicated in

the RfO, submit an offer. If necessary, it can be mutually agreed between parties to extend the timeframe in the case of doubts are arising or clarifications are needed for drafting a correct offer.

If the Office accepts the offer, the next step is the signature of a Specific Contract between parties. In the event of rejection of the offer by the Office, the Office may activate the cascade mechanism as described in the Technical Specifications.

1.4.5 Within 15 working days of a Specific Contract being sent by the Office, the Contractor shall return it, duly signed and dated. The performance of the services shall start on the date the Specific Contract is duly signed by the last Contracting Party, unless a different date is indicated by the Office.

1.4.6 If the contractor does not accept the Specific Contract or fails to observe the deadline or if it is in a situation of conflicting interests that may negatively affect the performance of the Specific Contract (see Article II.7), the Contractor shall be considered unavailable and the Office may place the order with the next contractor on the cascade as described in the Technical Specifications.

If the contractor repeatedly refuses to sign Specific Contracts or repeatedly fails to send them back on time, the Contractor may be considered in breach of its obligations under this Framework Contract as set out in Article II.19.1 (c).

1.5 PAYMENT PERIODS

Payments under the Contract shall be made in accordance with Article 20 of the General Terms and Conditions. Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted.

1.5.1 Pre-financing

Pre-financing is not applicable to this Contract.

1.5.2 Interim payment

The Contractor shall submit an invoice for an interim payment, according to the prices and payments referred to in the relevant Specific Contract.

Invoices for interim payment shall be accompanied by any document in accordance with the relevant Specific Contract. The Office must approve the submitted documents or deliverables and shall make the payment within 60 days from receipt of the invoice (maximum 90 days for complex contracts).

The Contractor shall have 10 days in which to submit additional information or corrections, a new progress report or other documents if it is required by the Office.

1.5.3 Payment of the balance

The Contractor shall submit an invoice for payment of the balance.

The invoice shall be accompanied by any document in accordance with the relevant Specific Contract. The Office must approve the submitted documents or deliverables and shall make the payment within 60 days from receipt of the invoice (maximum 90 days for complex contracts).

The Contractor shall have 10 days in which to submit additional information or corrections, a new progress report or other documents if it is required by the Office.

1.6 GUARANTEES

A performance guarantee constituted by a bank guarantee may be requested for the amount provided in the relevant Specific Contract.

1.7 BANK ACCOUNT

Payments shall be made to the Contractor's bank account denominated in euro, stated in the Contractor's identification form set out in Annex V.

Name of the bank:

Full account number including bank codes:

IBAN code:

1.8 GENERAL ADMINISTRATIVE PROVISIONS

Any communication relating to the Contract shall be made in writing and shall bear the Contract and Specific Contract numbers. Ordinary mail shall be deemed to have been received by the Office on the date on which it is registered by the department responsible. Correspondence should be sent to the following addresses:

Office:

Mr/Ms Full Name
European Union Intellectual Property Office
Avenida de Europa, 4
E-03008 Alicante
Spain

Contractor:

Mr/Ms Full Name
[Function]
[Tenderer name]
[Contact address in full]

1.9 DATA PROTECTION

1.9.1 Processing of personal data by the Office

For the purpose of Article 12.1 of the General Terms and Conditions,

(a) the data controller is the Director of Digital Transformation Department;

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

1.9.2 Processing of personal data by the Contractor

For the purpose of Article 12.2 of the General Terms and Conditions,

- (a) the subject matter and purpose of the processing of personal data by the Contractor are the implementation of the Contract;
- (b) The localisation of and access to the personal data processed by the Contractor shall comply with the following:
- i. the personal data shall only be processed within the territory of the European Union and the European Economic Area and will not leave that territory;
 - ii. the data shall only be held in data centres located within the territory of the European Union and the European Economic Area;
 - iii. access to data may be given on a need to know basis only to authorised persons established in a country which has been recognised by the European Commission as providing adequate protection to personal data;
 - iv. the Contractor may not change the location of data processing without the prior written authorisation of the Office;
 - v. any transfer of personal data under the Contract to third countries or international organisations shall fully comply with the requirements laid down in Chapter V of Regulation (EU) 2018/1725¹.

1.10 TERMINATION BY EITHER CONTRACTING PARTY

Either contracting party may, of its own volition and without being required to pay compensation, terminate the present Contract by serving six (6) months' formal prior notice. Should the Office terminate the present Contract, the Contractor shall only be entitled to payment corresponding to the goods and/or services ordered before the termination date.

On receipt of the letter terminating the present Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Conditions for the goods delivered and services rendered up to the date on which termination takes effect, within a period not exceeding 60 days from that date.

¹ Regulation (EU) 2018/1725 of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L295/39, 21.11.2018, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1725&from=EN>

1.11 BENCHMARKING

1.11.1 Definitions

Benchmarking:

Assessment process carried out by a qualified and objective third party which tests, evaluates and measures the performance of the Contractor by reference to the specific quality indicators defined in the Specific Contract, or by comparison with similar contracts performed by other economic operators; and/or analyses the evolution of the relation between the prices laid down in the Framework Contract and the market prices for similar contracts.

Quality indicators:

Measurable targets serving as a reference for evaluating the quality of the Services to be provided by the Contractor, and determined in the Service level agreement.

1.11.2 Benchmarking

The Office may undertake a Benchmarking by comparison with similar contracts performed by other economic operators and/or Office's contractors. The results of such Benchmarking shall be available in identical form to both the Office and the Contractor.

In order to guarantee that a valid comparison is made, the Office will ensure that:

- the scope of the Framework Contract being provided by the Contractor is taken into consideration;
- the comparison group consists of at least four economic operators to ensure statistical significance;
- the relevant comparison data must be guaranteed.

The Benchmarking shall not exceed four (4) months.

The Benchmarking shall be a qualified and objective third party selected by the Office through an appropriate market procedure. The Office will pay all of its own costs and the Benchmarking's costs during the Benchmarking. The Contractor will pay all of its own costs. Interpretation of the results of the Benchmarking shall be the sole prerogative of the Benchmarking.

The Office and the Contractor shall set aside sufficient time and resources for each stage of the Benchmarking, such as:

- identification and location of Benchmarking data,
- performing the Benchmarking, and
- implementation of the conclusions of the Benchmarking.

The Office and the Contractor will be free to suggest changes in Benchmarking parameters, as regard the subject of the present Framework Contract, which evolves over the period of its implementation.

The Benchmarking shall be treated as confidential, in accordance with Article 11 of the General Terms and Conditions, all data provided by the Office and the Contractor, and will return all material and media once the Benchmarking is completed.

If a Benchmarking reveals that the level of the Services/Supplies/Works contracted under this Framework Contract does not reach the comparison group's service levels, the Contractor shall immediately prepare an action plan, which will specify all actions necessary to rectify the deviations. The full and measurable implementation of the action plan shall in no circumstances exceed one (1) year. If the Contractor fails to fully implement the action plan, the Office may decide to apply Article 17 of the General Terms and Conditions.

The Contractor undertakes to reduce its charges down to the comparison group level in the event the results of the Benchmarking reveal that its charges are higher than that group, with effect from the date on which the results of the Benchmarking are delivered to the Parties.

1.12 CONTRACTUAL GUARANTEE OF THE PROPER FUNCTIONING OF SOFTWARE DEVELOPED, MAINTAINED, CONFIGURED OR IMPLEMENTED

With the exception of latent defects, for which the Contractor shall be liable indefinitely, the Contractor shall guarantee the proper functioning of software for the contractual guarantee period of twelve months from the official date of approval. The Contractor shall be responsible for rectification, without delay and at his/her own expense, of all failures occurring within the contractual guarantee period, insofar as he/she cannot prove that such failures are attributable to causes other than defective performance, manufacturing defects or design faults in that part of the services performed by the Contractor.

The Office shall inform the Contractor of the type and extent of the failure as soon as it occurs. If the Contractor does not proceed, without delay, to restoring the system to proper working order, the Office may have recourse to a third party to this end, the risks and cost of which shall be borne by the Contractor.

The parties shall define jointly any major problems which may affect the software or the system.

The contractual guarantee period shall be extended by a period equal to the time between notification of a major problem to the Contractor and acceptance of its rectification by the Office.

1.13 USE OF EXISTING SOFTWARE

If the Contractor uses software of which he/she is the proprietor or which is owned by a third party, or if the software provided incorporates software of which the Contractor is the proprietor or which is owned by a third party, the Contractor shall:

- mention this software explicitly in the tender submitted in response to the invitation to tender;

- indicate whether the use thereof by the Office gives rise to the payment of development or user licences, and provide an estimate of the cost;
- specify whether the use thereof by third parties (for example, the Member States or other institutions) would give rise to the payment of development or user licences.

The Office shall give its agreement in writing to the use of such software within the framework of the Specific Contract on software development.

The Office reserves the right to disseminate and/or distribute the results of any software development to third parties, even where this includes existing software, subject to compliance with licensing rights as regards any software owned by the Contractor or a third party mentioned in the tender submitted in response to the invitation to tender.

1.14 OWNERSHIP OF SOURCE CODES

The Office shall become the proprietor of the sources, objects, documentation and test decks corresponding to payments already made.

1.15 MANUALS AND DOCUMENTATION

The Contractor shall draw up the manuals and documentation necessary for the satisfactory and proper operation of the software and shall place these at the disposal of the Office. In drawing up these documents, the Contractor shall comply with the norms and standards in force.

In general, these documents shall include:

- an installation manual;
- an administration manual;
- a user manual;
- installation documentation.

The Contractor shall, as necessary, update and replace the manuals.

1.16 INTERFACES AND COMPATIBILITY

Where mention is made in the Specific Contract of interfaces to be complied with, any changes to such interfaces by the Contractor shall be subject to the prior written agreement of the Office.

Where the software provided uses the software of a third party which is subsequently upgraded, the Contractor shall ensure that the software concerned is adapted in accordance with the functional and technical arrangements agreed jointly between the Contractor and the Office.

The Contractor shall ensure that all software supplied under the Contract is compatible and operates with all other software provided for in the Contract through the interfaces.

1.17 SOURCE PROGRAMS

In the event that one of the scenarios provided for in Article 14.1 of the Tender Specifications should arise, the Contractor shall:

- insofar as he/she is legally entitled to do so, immediately place in a safe location a copy of the source programs, and of any other information or documentation necessary for maintenance of the software supplied. In the event that the Office needs the source programs or if it exercises its right to terminate the Contract, the access codes and any other information or documentation shall be provided immediately to the Office, at no cost and free of charge;
- at the request of the Office, supply, at no cost, any diagrams and source programs for the software necessary for the Office to ensure the satisfactory operation of this software.

1.18 PROVISION OF REFERENCE MATERIAL

In accordance with Article 28 of the General Terms and Conditions, the Office shall be the sole proprietor of any documentation specifically developed for the Office.

The provision of reference material shall be subject to the obtaining of a collective use licence, the terms of which shall be appropriate to the nature and subject of the training concerned.

1.19 INTEGRATED MANAGEMENT SYSTEM

The Contractor is obliged to comply with all the conditions imposed by the Office and to provide all the information the Office deems necessary to ensure that standards, instructions, regulations, management systems and certifications implemented at the Office are duly observed, the Contractor being solely liable in that respect for any consequences resulting from non-compliance.

Specifically, the Contractor must take responsibility for compliance with the following regulations and management systems currently implemented at the Office:

- Management standards in Quality (ISO 9001)
- Management standards in Environment EMAS
- Management standards in Information Security (ISO 27001)
- Management standards in Occupational Health and Safety (OHSAS 18001)
- Management standards in Universal Accessibility (UNE 170001)
- Management standards in Energy Certification Systems (ISO 50001)
- Management standards in Complaints and Claims Management Systems (ISO 10002).

One of these management systems is the EMAS environmental management scheme, which aims to minimise the environmental impact of all the Office's

activities, including those carried out by external contractors. The successful tenderer must therefore follow the Office's environmental guidelines in the work it undertakes ([Office Integrated Management Systems Policy](#)). In accordance with that policy, the Office recommends that all the required goods, services and works comply, wherever possible, with Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS).

If, during the term of the contract, the Office implements any standards, instructions, regulations, management systems or certifications additional to those indicated above, the Contractor is obliged to comply with them and to deliver the requisite documentation for maintenance and management thereof.

2 GENERAL TERMS AND CONDITIONS

**GENERAL TERMS AND CONDITIONS
APPLICABLE TO WORKS, SUPPLIES AND SERVICES
CONTRACTS
WITH THE EUROPEAN UNION INTELLECTUAL PROPERTY
OFFICE**

(hereinafter referred to as the "Office")

January 2019

PART I: GENERAL PROVISIONS	19
Article 1 – Compliance	19
Article 2 – Prices	19
Article 3 – Severability	19
Article 4 – Definitions	20
Article 5 – Legal Personality of the Contractor	23
Article 6 – Applicable Law and Settlement of Disputes	23
Article 7 – Performance of the Contract	23
Article 8 – Means of Communication	25
Article 9 – Liability	27
Article 10 – Conflict of Interests and professional conflicting interests	28
Article 11– Confidentiality	29
Article 12 – Processing of Personal Data	30
Article 13 – Subcontracting	33
Article 14 – Amendments	34
Article 15 – Assignment	34
Article 16 – Force Majeure	34
Article 17 – Liquidated Damages and Reductions in Price	34
Article 18 – Suspension	36
Article 19 - Termination	37
Article 20 – Invoicing and Payments	40
Article 21 - Recovery	44
Article 22 – Checks and Audits	44
PART II – ADDITIONAL PROVISIONS CONCERNING THE PERFORMANCE OF SUPPLIES CONTRACTS	47
Article 23 – Packing, Shipping, Carriage and Insurance	47
Article 24 – Packaging	47
Article 25 – Delivery of supplies	47
Article 26 – Conformity	48
Article 27 – Guarantee	50
PART III – ADDITIONAL PROVISIONS CONCERNING THE PERFORMANCE OF SERVICE CONTRACTS	52

Article 28 – Ownership of the Results – Intellectual and Industrial Property Rights	52
PART IV – ADDITIONAL PROVISIONS CONCERNING THE PERFORMANCE OF WORKS CONTRACTS	56
Article 29 – Representation of the Office	56
Article 30 – Suspension of contractual activities	56
Article 31 – Prohibition on the contractor suspending, interrupting or delaying contractual activities	57

Article I. Part I: General Provisions

ARTICLE 1 – COMPLIANCE

The contractor commits itself to provide the services/supplies/works in full compliance with the invitation to tender or request for offer and annexes and must comply with the minimum requirements provided for in the Contract. This includes compliance with applicable environmental, social and labour law obligations established by Union law, national legislation, collective agreements or the applicable international social and environmental conventions listed in Annex X of Directive 2014/24/EU², compliance with data protection obligations resulting from Regulation (EU) 2016/679³ and Regulation (EU) 2018/1725⁴.

ARTICLE 2 – PRICES

- 2.1 The Office concludes contracts and effects payments in euro.
- 2.2 Save as otherwise expressly provided in the Special Conditions, the contract prices are fixed and not subject to revision.
- 2.3 The submission of a tender in response to an invitation to tender or a request for offer and annexes issued by the European Union Intellectual Property Office entails:
 - (i) acceptance by the tenderer of all the terms and conditions stipulated in the invitation to tender or the request for offer, in this document (General Terms and Conditions) and in the special terms and conditions, if any;
 - (ii) waiver of the economic operator's own conditions of sale or work.

ARTICLE 3 – SEVERABILITY

Each provision of this Contract is severable and distinct from the others. If a provision is or becomes illegal, invalid or unenforceable to any extent, it must be severed from the remainder of the Contract. This does not affect the legality, validity or enforceability of any other provisions of the Contract, which continue in full force and

² OJ L 94 of 28.03.2014, p. 65

³ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, OJ L 119, 4.5.2016, p. 1, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.119.01.0001.01.ENG

⁴ Regulation (EU) 2018/1725 of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295/39, 21.11.2018, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1725&from=EN>

effect. The illegal, invalid or unenforceable provision must be replaced by a legal, valid and enforceable substitute provision which corresponds as closely as possible with the actual intent of the parties under the illegal, invalid or unenforceable provision. The replacement of such a provision must be made in accordance with Article 14. The Contract must be interpreted as if it had contained the substitute provision as from its entry into force.

ARTICLE 4 – DEFINITIONS

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

- **‘Confidential information or documents’**: any information or document – that is not publicly available - identified in writing as confidential by any of the party and received by the other party in the context of the implementation of the Contract;
- **‘Conflict of interest’**: a situation where the impartial and objective exercise of the functions of a financial actor or other person of the Office involved in budget implementation and management is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with the Contractor or any third party related to the subject matter of the Contract;
- **‘Contract’** means a direct or framework contract for works and/or supplies and/or services, as specified in the title of the Contract;
- **‘Creator’**: means any natural person who contributes to the production of the result;
- **‘e-PRIOR’**: service-oriented communication platform that provides a series of web services and allows the exchange of standardised electronic messages and documents between the parties. This is done either through web services, with a machine-to-machine (system-to-system) connection between the parties’ back office systems (EDI messages), or through a web application (the Supplier Portal). The Platform may be used to exchange electronic documents (e-documents) such as electronic requests for services, electronic specific contracts, and electronic acceptance of services or electronic invoices between the parties. Technical specifications (i.e. the interface control document), details on access and user manuals are available at the following website:
http://ec.europa.eu/dgs/informatics/supplier_portal/documentation/documentation_en.htm

- **‘Force majeure’**: any unforeseeable, exceptional situation or event beyond the control of the parties that prevents either of them from fulfilling any of their obligations under the Contract. The situation or event must not be attributable to error or negligence on the part of the parties or on the part of the subcontractors and must prove to be inevitable despite their exercising due diligence. Defaults of service, defects in equipment or material or delays in making them available, labour disputes, strikes and financial difficulties may not be invoked as force majeure, unless they stem directly from a relevant case of force majeure;
- **‘Formal notification’** (or ‘formally notify’): form of communication between the parties made in writing by mail or email, which provides the sender with compelling evidence that the message was delivered to the specified recipient;
- **‘Fraud’**: any intentional act or omission affecting the Union’s financial interests relating to the use or presentation of false, incorrect or incomplete statements or documents or to non-disclosure of information in violation of a specific obligation;
- **Implementation of the contract**: the execution by the Contractor of tasks and/or the delivery of works, supplies and/or services contracted by the Office in pursuance of the contract which these General Terms and Conditions make reference to.
- **‘Interface control document’**: the guideline document which lays down the technical specifications, message standards, security standards, checks of syntax and semantics, etc. to facilitate machine-to-machine (system-to-system) connection. This document is updated on a regular basis;
- **‘Irregularity’**: any infringement of a provision of Union law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the Union’s and/or the Office’s budget;
- **‘Notification’** (or ‘notify’): form of communication between the parties made in writing including by electronic means;
- **‘Personnel’ and/or “External staff”**: persons employed directly or indirectly or contracted by the Contractor to implement the Contract. Also, personnel

from a Contractor who is granted access to the Office’s premises for a short or long term period for executing a contract.

- **‘Pre-existing material’**: any material, document, technology or know-how which exists prior to the Contractor using it for the production of a result in the implementation of the Contract;
- **‘Pre-existing right’**: any intellectual property right on pre-existing material; it may consist in a right of ownership, a licence right and/or right of use belonging to the Contractor, the creator, the contracting authority as well as to any other third parties;
- **‘Professional conflicting interest’**: a situation in which the Contractor’s previous or ongoing professional activities affect its capacity to implement the Contract or to perform a specific contract to an appropriate quality standard;
- **‘Purchase order form’**: a simplified form of specific or direct contract by which the contracting authority orders works, supplies or services;
- **‘Authorised representative’**: any person who has the power to represent the Contractor or to take decisions on its behalf;
- **‘Result’**: any intended outcome of the implementation of the Contract, whatever its form or nature, which is delivered and finally or partially approved by the Office. A result may be further defined in this Contract as a deliverable. A result may, in addition to materials produced by the Contractor or at its request, also include pre-existing materials;
- **‘Specific contract’**: a contract specifying details of a particular purchase based on a framework contract;
- **‘Substantial error’**: any infringement of a contract provision resulting from an act or omission, which causes or might cause a loss to the Union’s and/or the Office’s budget;
- **‘Supplier Portal’**: the e-PRIOR portal, which allows the Contractor to exchange electronic business documents, such as electronic invoices, electronic requests for services, electronic specific contracts, through a graphical user interface; its main features can be found in the Supplier Portal overview document available on:

http://ec.europa.eu/dgs/informatics/supplier_portal/doc/um_supplier_portal_overview.pdf

- ‘Tasks’ refers to the delivery of supplies and/or the provision of services and/or works, as specified in the tender specifications.

ARTICLE 5 – LEGAL PERSONALITY OF THE CONTRACTOR

- 5.1 Any change in the legal personality of the Contractor, whether due to a merger, takeover, acquisition or any other cause, must be communicated immediately in writing to the Office.
- 5.2 Where required by the Office, the Contractor must provide without unjustified delay a new third-party file form, duly completed and signed.
- 5.3 In the event of a joint tender submitted by a group of economic operators and where the group does not have legal personality or legal capacity, one member of the group is appointed as leader of the group.

ARTICLE 6 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES

- 6.1 The Contract is governed by Union law, complemented, where necessary, by Spanish law.
- 6.2 Any dispute between the parties resulting from the interpretation, application or validity of the Contract shall be brought before the Court of justice of the European Union pursuant to Article 145(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark.

ARTICLE 7 – PERFORMANCE OF THE CONTRACT

- 7.1 The Contractor must perform the Contract to the highest professional standards, in accordance with the state of the art in the industry and the provisions of the Contract, in particular the tender specifications and the terms of its tender.
- 7.2 The Contractor is solely responsible for obtaining any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the tasks assigned to it are to be executed.
- 7.3 Without prejudice to Article 10, any reference made to the Contractor’s personnel in the Contract relates exclusively to individuals involved in the performance of the Contract.

- 7.4 The Contractor must ensure that the personnel performing the Contract and any future replacement personnel possess the professional qualifications and experience required for the execution of the tasks assigned to them, as the case may be on the basis of the selection criteria set out in the tender specifications.
- 7.5 The Contractor and its personnel must neither represent the Office nor behave in any way that would give such an impression. The Contractor must inform third parties that it does not belong to the European public service.
- 7.6 The Contractor has sole responsibility for the personnel who execute the tasks assigned to them and exercises its authority over its personnel without interference by the Office. The Contractor must inform its personnel that:
- (a) they may not accept any direct instructions from the Office; and;
 - (b) the Office shall not, under any circumstances, be considered to be the employer of the personnel referred to in point (a) and the said personnel must undertake not to invoke against the Office any right arising from the contractual relationship between the Office and the Contractor.
- 7.7 In the event of a disruption resulting from the action of one of the Contractor's personnel working on Office premises or in the event that the expertise of a member of the Contractor's personnel fails to correspond to the profile required by the Contract, or that his/her behaviour is not adequate to the standards, ethics and integrity of the Office, the Contractor must replace him/her without delay. The Office has 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 Contract under the same contractual conditions. The Contractor must bear the cost of replacing its personnel and is responsible for any delay in the execution of the tasks assigned to it resulting from the replacement of personnel.
- In the event that the Contractor's personnel work on the Office's premises, the Contractor is required, at the Office's request, to replace immediately and without compensation any person considered by the Office to be *persona non grata*.
- 7.8 Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor must immediately and on its own initiative record it and report it to the Office. The report must 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 the Contract. In such an event the Contractor must give priority to solving the problem rather than to determining liability.
- 7.9 Should the Contractor fail to perform its obligations under the Contract, the Office may – without prejudice to its right to terminate the Contract or purchase order form or specific contract – reduce or recover payments in proportion to the scale of the unperformed obligations. In addition, the Office

may claim compensation or impose liquidated damages provided for in Article 17.

ARTICLE 8 – MEANS OF COMMUNICATION

- 8.1 Any communication relating to the Contract or to its performance must:
- (a) be made in writing in paper or electronic format in the language of the Contract;
 - (b) bear the Contract number and, if applicable, the specific contract or purchase order form number;
 - (c) be made using the relevant communication details set out in Article 1.8 of the Special Conditions, where applicable; and
 - (d) be sent by mail, email or, for the documents specified, where applicable, in the Special Conditions, via e-PRIOR.

Any communication is deemed to have been made when it is received by the receiving party unless otherwise provided for in the Contract.

- 8.2 Electronic communication is deemed to have been received by the parties on the day of dispatch of that communication provided it is sent to the addressees listed in Article 1.8 of the Special Conditions of the Contract. The sending party must be able to prove the date of dispatch. Without prejudice to the preceding, if the sending party receives a message of non-delivery to or of absence of the addressee, it must make every effort to ensure the actual receipt of such communication by the other party. In such a case, the sending party is not held in breach of its obligation to send such communication within a specified deadline.

Electronic communication must be confirmed by an original signed paper version of that communication if so requested by any of the parties, provided that such request is submitted without unjustified delay. The sender must send the original signed paper version without unjustified delay.

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

- 8.3 Mail sent using the postal services is deemed to have been received by the Office on the date on which it is registered by the Department responsible referred to, in Article 1.8 of the Special Conditions of the Contract.
- 8.4 Any formal notification must 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 recipient.
- 8.5 **Submission of e-documents via e-PRIOR**

The ordering and invoicing documents are foreseen to be exchanged between the contracting parties via electronic means. At the request of the

Office, the use of such applications will become mandatory during the execution of the Contract and will replace the current ordering and invoicing procedures which are based on postal or email exchanges.

The ordering procedure may cover the steps going from the Request for Offers to the signature of specific contracts or purchase order forms. The electronic documents are exchanged using the e-PRIOR platform, either via a system-to-system connection (web services) or through a web application (the Supplier Portal).

The links below further detail the technical and functional characteristics of the e-PRIOR platform. The Supplier Portal can be found at:

http://ec.europa.eu/dgs/informatics/supplier_portal/index_en.htm

The related documentation can be found at:

http://ec.europa.eu/dgs/informatics/supplier_portal/documentation/documentation_en.htm

Contractors should be aware of the fact that other applications currently under development may be implemented on a voluntary basis during the Contract execution.

The above links might change over time during the lifetime of the Contract and therefore should be only indicative of where to find the information at the time this Contract is signed.

- 8.6 The parties agree that any e-document, including related attachments exchanged via e-PRIOR:
- (a) is considered as equivalent to a paper document;
 - (b) is deemed to be the original of the document;
 - (c) is legally binding on the parties once an e-PRIOR authorised person has performed the ‘sign’ action in e-PRIOR and has full legal effect; and
 - (d) constitutes evidence of the information contained in it and is admissible as evidence in judicial proceedings.
- 8.7 In case of submission of documents via e-PRIOR, the following conditions apply:
- (a) The Office takes the necessary measures to implement and maintain electronic systems that enable the Supplier Portal to be used effectively.
 - (b) In case of system-to-system connection (web services), the parties take the measures necessary on their side to implement and maintain electronic systems that enable the system-to-system connection to be used effectively. The Contractor must take the necessary technical measures to set up a system-to-system connection and at its own cost.

- (c) If communication via the Supplier Portal or via the web services is hindered by factors beyond the control of one party, it must notify the other immediately and the parties must take the necessary measures to restore this communication.
- (d) If it is impossible to restore the communication within two working days, one party must notify the other that alternative means of communication specified in Article 8.1 will be used until the Supplier Portal or the system-to-system connection is restored.
- (e) If an e-document is dispatched through the Supplier Portal, it is deemed to have been legally issued or sent when the Contractor is able to successfully submit the e-document without any error messages. The generated PDF and XML document for the e-document are considered as a proof of receipt by the Office.
- (f) If an e-document is dispatched using a direct connection (web services), the e-document is deemed to have been legally issued or sent when its status is 'received' as defined in the interface control document.
- (g) When using the Supplier Portal, the Contractor can download the PDF or XML message for each e-document for one year after submission. After this period, copies of the e-documents are no longer available for automatic download from the Supplier Portal.

ARTICLE 9 – LIABILITY

- 9.1 The Contractor is solely responsible for complying with any legal obligations incumbent on it. In particular, where the Contract is to be executed on Spanish territory, the Contractor must ensure compliance with the relevant provisions of Spanish legislation concerning health and safety in the workplace and the rights of workers
- 9.2 The Office is not liable for any loss or damage caused by the Contractor, including any damage caused by the Contractor to third parties, during or as a consequence of performance of the Contract.
- 9.3 The Contractor is liable for any loss or damage caused to the Office during or as a consequence of implementation of the Contract, including in the event of subcontracting, but only up to an amount not exceeding three times the total amount of the Contract or, where applicable, of the relevant purchase order form or specific contract.

Nevertheless, if the damage or loss is caused by the gross negligence or wilful misconduct of the Contractor or of its personnel or subcontractors, the Contractor is liable for the whole amount of the damage or loss.
- 9.4 The Contractor must indemnify and hold the Office harmless for all damages and costs incurred due to any claim. The Contractor must provide compensation in the event of any action, claim or proceeding brought against

the Office by a third party as a result of damage caused by the Contractor during the performance of the Contract.

- 9.5 In the event of any action brought by a third party against the Office in connection with the performance of the Contract, including any alleged breach of intellectual property rights, the Contractor must assist the Office in the legal proceedings, including by intervening in support of the Office upon request. If the Office's liability towards the third party is established and that such liability is caused by the Contractor during or as a consequence of the implementation of the Contract, Article 9.3 applies.
- 9.6 The Contractor must take out an insurance policy against risks and damage or loss relating to the performance of the Contract if required by the relevant applicable legislation. It must take out supplementary insurance as reasonably required by standard practice in the industry. Evidence of insurance coverage must be provided to the Office should it so request.
- 9.7 If the Contractor is composed of two or more economic operators who submitted a joint tender, they are all jointly and severally liable to the Office for the implementation of the Contract.

ARTICLE 10 – CONFLICT OF INTERESTS AND PROFESSIONAL CONFLICTING INTERESTS

- 10.1 The Contractor must take all necessary measures to prevent any situation of conflict of interests or professional conflicting interest.

Any situation constituting or likely to lead to a conflict of interests or a professional conflicting interest during the performance of the Contract must be notified to the Office in writing without delay. The Contractor must immediately take all the necessary steps to rectify the situation.

The Office may do any of the following:

- (a) verify that the Contractor's action is appropriate;
 - (b) require the Contractor to take further action within a specified deadline;
 - (c) decide not to award a specific contract to the Contractor.
- 10.2 The Contractor declares that it has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, inasmuch as it is an incentive or reward relating to the performance of the Contract.
- 10.3 The Contractor must pass on all the relevant obligations in writing to its personnel and to any natural person with the power to represent it or take decisions on its behalf and ensure that it is not placed in a situation which could give rise to a conflict of interests or a professional conflicting interest. The Contractor must also pass on all the relevant obligations in writing to third

parties involved in the performance of the Contract, including subcontractors. A copy of the instructions given and the undertakings made in this respect must be provided to the Office, should it so request.

- 10.4 Without prejudice to Article 7 the Contractor must replace, immediately and without compensation from the Office, any member of its personnel placed in a situation which could give rise to a conflict of interests or a professional conflicting interest.

ARTICLE 11– CONFIDENTIALITY

- 11.1 The Office and the Contractor must treat with confidentiality any information and documents, in any form, disclosed in writing or orally in relation to the performance of the Contract and identified in writing as confidential.
- 11.2 Each party must:
- (a) not use confidential information or documents for any purpose other than fulfilling its obligations under the Contract without prior written agreement of the other party;
 - (b) ensure the protection of such confidential information or documents with the same level of protection it uses to protect its own confidential information or documents, and in any case with due diligence;
 - (c) not disclose directly or indirectly confidential information or documents to third parties without the prior written agreement of the other party.
- 11.3 The confidentiality obligations set out in this Article are binding on the Office and on the Contractor during the performance of the Contract and for as long as the information or documents remain confidential, with a minimum confidentiality period of five years starting from the date of the payment of the balance, unless:
- (a) the disclosing party agrees to release the receiving party from the confidentiality obligation earlier;
 - (b) the confidential information or document becomes public through other means than in breach of the confidentiality obligation, through disclosure by the party bound by that obligation;
 - (c) the disclosure of the confidential information or document is required by law.
- 11.4 The Contractor must obtain from any natural person with the power to represent it or take decisions on its behalf, as well as from third parties involved in the performance of the Contract, including subcontractors, a commitment that they will comply with the confidentiality obligation set out in this Article. A document providing evidence of this commitment must be provided to the Office, should it so request.
- 11.5 Any distribution or publication of information relating to the Contract by the Contractor requires prior written authorisation from the Office. It must state

that the opinions expressed are those of the Contractor only and do not represent the Office's official position.

As a consequence, all media and promotion actions carried out by contractors which reference the commercial relationship between the contractor and the Office **must be pre-cleared by the Communication Service of the Office.**

In this context, media and promotion actions can include, but are not limited to:

- The issuing of press releases mentioning the commercial relationship between the contractor and the Office,
- The addition of information about the commercial relationship between the contractor and the Office on the contractor's own website, brochures, promotional materials, etc., or via any third parties with which the contractor is affiliated
- The addition of photographs and/or other audio-visual material featuring the Office on the contractor's own websites, brochures, promotional material, etc., or via any third parties with which the contractor is affiliated
- The mention of the commercial relationship between the Office and the contractor in third party publications (interviews, advertorials, etc.),

Contractors are requested to email the Communication Service of the Office at the following email address: communication@euipo.europa.eu to seek clearance for media and promotion actions that mention the Office.

Contractors are moreover reminded that the use of the Office's logo is governed by the [Office's Guidelines](#) for Third Party Use. Requests for permission to use the logo must be submitted by email to communication@euipo.europa.eu.

- 11.6 The use of information obtained by the Contractor in the course of the Contract for purposes other than its performance is forbidden, unless the Office has specifically given prior written authorisation to the contrary.

ARTICLE 12 – PROCESSING OF PERSONAL DATA

12.1 Processing of personal data by the Office

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

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

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

Details concerning the processing of personal data are available in the data protection notice referred to in Article 1.9.

12.2 Processing of personal data by the Contractor

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

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

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

The Contractor shall grant personnel access to the data to the extent strictly necessary for the implementation, management and monitoring of the Contract. The Contractor must ensure that personnel authorised to process personal data has committed itself to confidentiality or is under appropriate statutory obligation of confidentiality in accordance with the provisions of Article 11.

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

- (a) the pseudonymisation and encryption of personal data;
- (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;

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

The Contractor shall notify relevant personal data breaches to the controller without undue delay and at the latest within 24 hours after the Contractor becomes aware of the breach. In such cases, the Contractor shall provide the controller with at least the following information:

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

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

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

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

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

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

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

The duration of processing of personal data by the Contractor will not exceed the period referred to in Article 22.2. Upon expiry of this period, the Contractor shall, at the choice of the controller, return, without any undue delay in a commonly agreed format, all personal data processed on behalf of the controller and the copies thereof or shall effectively delete all personal data unless Union or national law requires a longer storage of personal data.

For the purpose of Article 13, if part or all of the processing of personal data is subcontracted to a third party, the Contractor shall pass on the same obligations as set out in the Contract in writing to those parties, including Subcontractors. At the request of the Office, the Contractor shall provide a document providing evidence of this commitment.

ARTICLE 13 – SUBCONTRACTING

- 13.1 The Contractor must not subcontract and have the Contract implemented by third parties beyond the third parties already mentioned in its tender without prior written authorisation from the Office, nor cause the Contract to be performed *de facto* by third parties.
- 13.2 Even where the Office authorises the Contractor to subcontract to third parties, the Contractor nevertheless remains bound by its contractual obligations and is solely responsible for the proper performance of the Contract.
- 13.3 The Contractor must make sure that the subcontract does not affect rights and guarantees to which the Office is entitled by virtue of the Contract, notably Article 11, Article 22 and Article 28.
- 13.4 The Office may request the Contractor to replace a subcontractor found to be in a situation provided for in points (e) and (f) of Article 19.1.1.

ARTICLE 14 – AMENDMENTS

- 14.1 Any amendment to the Contract or, where applicable, to the purchase order form or specific contract, must be made in writing and signed by the contracting parties before fulfilment of any new contractual obligations.
- 14.2 The amendment may not have the purpose or the effect of making changes to the Contract or, where applicable, to purchase order forms or specific contracts, which might alter the initial conditions of the procurement procedure or result in unequal treatment of economic operators or contractors.
- 14.3 A purchase order form or specific contract must not be deemed to constitute an amendment to a framework contract.

ARTICLE 15 – ASSIGNMENT

- 15.1 The Contractor must not assign any of the rights and obligations arising from the Contract, including claims for payments or factoring, without prior written authorisation from the Office. In such cases, the Contractor must provide the Office with the identity of the intended assignee.
- 15.2 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 is not enforceable against the Office and have no effect on the Office.

ARTICLE 16 – FORCE MAJEURE

- 16.1 The definition of force majeure is provided in Article 4 of the present General Conditions.
- 16.2 If either party is faced with force majeure, it must formally notify the other party without delay, stating the nature, likely duration and foreseeable effects.
- 16.3 The party faced with force majeure is not to be held in breach of its contractual obligations if it has been prevented from fulfilling them by force majeure. Where the Contractor is unable to fulfil its contractual obligations owing to force majeure, it has the right to remuneration only for the tasks actually executed.
- 16.4 The parties must take all the necessary measures to limit any damage due to force majeure.

ARTICLE 17 – LIQUIDATED DAMAGES AND REDUCTIONS IN PRICE

- 17.1 The Office may impose liquidated damages and/or reduction in price should the Contractor fail to complete its contractual obligations, also with regard to the required quality level, according to the tender specifications.

- 17.2 Should the Contractor fail to perform its contractual obligations within the time limits set by the Contract or, where applicable, by the relevant purchase order form or specific contract, then, without prejudice to the Contractor's actual or potential liability or to the Office's right to terminate the Contract or relevant purchase order form or specific contract, the Office may impose liquidated damages for each and every calendar day of delay according to the following formula:

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

where:

- V* is the amount specified in the Special Conditions or, where applicable, the price of the relevant purchase or deliverable or result;
- d* is the duration specified in the Special Conditions or, where applicable, the duration specified in the relevant purchase order form or specific contract or, failing that, the period between the date specified in Article 1.2.1 of the Special Conditions, where applicable, and the date of delivery or performance specified in the relevant purchase order form or specific contract, expressed in calendar days.

Liquidated damages may be imposed together with a reduction in price under the conditions of the present Article.

- 17.3 The Office must formally notify the Contractor of its intention to apply liquidated damages and the corresponding calculated amount.

The Contractor may submit arguments against this decision within 30 calendar days of receipt of the formal notification. In the absence of a reaction on its part or of written withdrawal by the Office within 30 calendar days of the receipt of such arguments, the decision imposing the liquidated damages becomes enforceable.

If the Contractor submits observations, the Office, taking into account the relevant observations, must notify the Contractor:

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

- 17.4 The parties expressly acknowledge and agree that any sums payable under Articles 17.1 to 17.3 are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the damage and losses incurred due to failure to fulfil obligations within the applicable time limits.

- 17.5 If the Contractor fails to provide the service, supplies or works, in accordance with the Contract or a specific contract or purchase order form ('unperformed obligations') or if it fails to provide the service or supplies or execute the works in accordance with the expected quality levels specified in the tender specifications ('low quality delivery'), the Office may reduce or recover payments proportionally to the seriousness of the unperformed obligations or

low quality delivery. This includes in particular cases where the Office cannot approve a result, report or deliverable as defined in Article 1.5 of the Special Conditions, where applicable, after the Contractor has submitted the required additional information, correction or new version.

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

- 17.6 The Office must formally notify the Contractor of its intention to reduce payment and the corresponding calculated amount.

The Contractor has 30 calendar 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 Office, taking into account the relevant observations, must notify the Contractor:

- (a) of the withdrawal of its intention to reduce payment; or
- (b) of its final decision to reduce payment and the corresponding amount.

- 17.7 Any claim for liquidated damages and/or reduction of payment does not affect the Contractor's actual or potential liability or the Office's rights under Article 19.

ARTICLE 18 – SUSPENSION

18.1 Suspension by the Contractor

The Contractor may suspend the performance of the Contract or, where applicable, purchase order form or specific contract, or any part thereof if a case of force majeure makes such performance impossible or excessively difficult. The Contractor must notify the Office immediately about the suspension, giving all the necessary reasons and details and the envisaged date for resuming the performance of the Contract or purchase order form or specific contract.

Once the circumstances allow resuming performance, the Contractor must notify the Office immediately, unless the Office has already terminated the Contract, purchase order form or specific contract.

18.2 Suspension by the Office

The Office may suspend the performance of the Contract or, where applicable, pending purchase order forms or specific contracts, or any part thereof:

- (a) if the award procedure for the Contract, purchase order form or specific contract, or if the performance of the Contract proves to have been subject to substantial errors, irregularities or fraud;
- (b) in order to verify whether presumed substantial errors, irregularities or fraud have actually occurred.

The Office must formally notify the Contractor of the suspension. Suspension takes effect on the date of formal notification, or at a later date provided in the formal

notification. The Office must notify the Contractor as soon as possible to resume performance of the Contract or, where applicable, pending purchase order forms or specific contracts, or inform the Contractor that it is proceeding with the termination of the Contract under Article 19.1.1.d or Article 19.1.1.i.

The Contractor is not entitled to claim compensation on account of suspension of any part of the Contract or, where applicable, purchase order forms or specific contracts, or of part thereof.

ARTICLE 19 - TERMINATION

19.1 Grounds for termination

1. The Office may terminate the Contract and, where applicable, a purchase order form or specific contract, in the following circumstances:
 - (a) if a change to the Contractor's legal, financial, technical, organisational or ownership situation is likely to affect substantially the performance of the Contract or, where applicable, purchase order form or specific contract, or substantially modify the conditions under which the Contract was initially awarded;
 - (b) if execution of the tasks under the Contract or, where applicable, under a pending purchase order form or specific contract, has not actually started within fifteen calendar days of the date foreseen, and the new date proposed, if any, is considered unacceptable by the Office, taking into account Article 14.2;
 - (c) if the Contractor does not perform the Contract or, where applicable, purchase order form or specific contract, as established in the tender specifications or request for service, supplies or works, or fails to fulfil another substantial contractual obligation, or repeatedly refuses to sign specific contracts; termination of three or more purchase order forms or specific contracts in these circumstances also constitutes ground for termination of the framework contract;
 - (d) in the event of force majeure notified in accordance with Article 16 or if the performance of the Contract or, where applicable, purchase order form or specific contract, has been suspended by the Contractor as a result of force majeure, notified in accordance with Article 18, where either:
 - i. resuming performance is impossible; or
 - ii. the necessary ensuing amendments to the Contract, purchase order form or specific contract would mean that the tender specifications are no longer fulfilled, or result in unequal treatment of economic operators or contractors;

- (e) if the Contractor or any person that assumes unlimited liability for the debts of the Contractor is in one of the situations provided for in points (a) and (b) of Article 136(1) of the Financial Regulation⁵;
 - (f) if the Contractor or any person who has the power to represent it or to take decisions on its behalf is subject to any of the situations provided for in points (c) to (f) of Article 136(1) or to Article 136(2) of the Financial Regulation;
 - (g) if the Contractor does not comply with applicable obligations under environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;
 - (h) if the Contractor is in a situation that could constitute a conflict of interest or a professional conflicting interest as referred to in Article 10;
 - (i) if the procedure for awarding the Contract or the implementation of the Contract proves to have been subject to substantial errors, irregularities or fraud, including in the event of submission of false information;
 - (j) if the Contractor is unable, through its own fault, to obtain any permit or licence required for performance of the Contract;
 - (k) in the case of a framework contract, if the needs of the Office change and it no longer requires new supplies and/or services under the Contract; in such cases ongoing specific contracts remain unaffected;
 - (l) in the case of a multiple framework contract with reopening of competition, when due to the termination of the Contract with one or more of the Contractors, there is no longer the minimum required level of competition.
 - (m) if the Contractor is in breach of the data protection obligations resulting from Article 12.2;
 - (n) if the Contractor does not comply with the applicable data protection obligations resulting from Regulation (EU) 2016/679.
2. The Contractor may terminate the Contract and, where applicable, a purchase order form or specific contract, in the following circumstances:
- (a) it has evidence that the Office has committed substantial errors, irregularities or fraud in the procedure for awarding the Contract or the implementation of the Contract, specific contract or purchase order form;
 - (b) the Office fails to comply with its obligations, in particular the obligation to provide the information needed for the Contractor to implement the Contract or to perform a specific contract or purchase order form as provided for in the tender specifications.

19.2 Procedure for termination

⁵ 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 <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1534930827492&uri=CELEX:32018R1046>

When a party intends to terminate the Contract, purchase order form or specific contract, it must formally notify the other party of its intention specifying the grounds thereof. The other party has 30 calendar days following the date of receipt to submit observations, including the measures it has taken to continue fulfilling its contractual obligations. Failing that, the decision to terminate becomes enforceable the day after the time limit for submitting observations has elapsed.

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

In the cases referred to in points (a), (b), (c), (e), (g), (h), (j), (k) and (l) of Article 19.1.1 and in Article 19.1.2, the formal notification must specify the date on which the termination takes effect. In the cases referred to in points (d), (f), and (i) of Article 19.1.1, the termination takes effect on the day following the date on which notification of termination is received by the Contractor.

In addition, at the request of the Office and regardless of the grounds for termination, the Contractor must provide all necessary assistance, including information, documents and files, to allow the Office to complete, continue or transfer the tasks to a new contractor or internally, without interruption or adverse effect on the quality or continuity of the services, provision of goods, or execution of works. 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.

19.3 Effects of termination

Without prejudice to any other measures provided for in the Contract, the Contractor is liable for damage incurred by the Office as a result of the termination of the Contract or a specific contract or purchase order form, including the cost of appointing another contractor to provide or complete the services, unless the damage was caused by the situation specified in Article 19.1.1(d), (k) or (l) or in Article 19.1.2. The Office may claim compensation for such damage, may refuse to make payments to the Contractor and may recover amounts already paid under the Contract.

The Contractor is not entitled to compensation for any loss resulting from the termination of the Contract or a specific contract or purchase order form, including loss of anticipated profits, unless the loss was caused by the situation specified in Article 19.1.2.

On receipt of the notification of termination, the Contractor must take all the appropriate measures to minimise costs, prevent damages, and cancel or reduce its commitments. The Contractor has 60 calendar days from the date of termination to draw up the documents required by the Special Conditions or purchase order forms or specific contracts for the tasks performed on the date of termination and produce the corresponding invoice, if necessary.

In the case of joint tenders, where the group does not have legal personality, the Office may terminate the Contract or a specific contract with each member of the group separately on the basis of points (e), (f) or (g) of Article 19.1.1, under the conditions set out in Article 14.2.

ARTICLE 20 – INVOICING AND PAYMENTS

20.1 Date of payment

Payments are deemed to have been made on the date when they are debited to the Office's account.

20.2 Electronic document exchange

The ordering and invoicing documents are foreseen to be exchanged between the contracting parties via electronic means under the conditions set out in Articles 8.5, 8.6 and 8.7.

20.3 Costs of transfer

The costs of the transfer are borne in the following way:

- (a) costs of dispatch charged by the Office's bank are borne by the Office,
- (b) cost of receipt charged by the bank of the Contractor are borne by the Contractor,
- (c) costs for repeated transfer caused by one of the parties are borne by the party causing repetition of the transfer.

20.4 Address for submission of invoices

Whenever invoices are communicated through postal exchange, they must be sent to the following address:

European Union Intellectual Property Office
Accountancy
Avenida de Europa, 4
E-03008 Alicante
SPAIN.

The Office is not liable for any delay in the payment of invoices sent to any other address.

The Office reserves the right to require the Contractor to send its invoices electronically.

20.5 Third-party file

No payments may be made by the Office if the Contractor has not completed the third-party file form correctly.

The Contractor must inform the Office immediately of any changes to its tax and/or bank information and, where necessary, duly fill out and submit a new third-party file form to the Office.

The Office is not liable for any delay in the payment of invoices due to irregularities or errors in the third-party file of the Contractor.

20.6 Invoices and Value Added Tax

Invoices must contain the Contractor's identification information, the amount in euro and the date, as well as the reference number of the Contract and, where applicable, purchase order form or specific contract.

The Office is a body of the European Union which has legal personality and which enjoys the fiscal benefits granted to the European Institutions by the Member States of the European Union pursuant to the provisions of Articles 3, 4 and 18 of the Protocol on the Privileges and Immunities of the European Union (n°7) annexed to the Treaty of Rome and which apply to the Office by virtue of Article 117 of Council Regulation (EC) n° 207/2009 of 26 February 2009 as amended.

By virtue of the above Protocol, the Office is exempt from all taxes and duties, including the value-added tax (VAT).

With regard to Spain, the Office is exempt of VAT according to Article 151.1.a.b. of Directive 2006/112/CE within the limits and conditions established in the Seat Agreement between the Kingdom of Spain and the European Union, signed in Madrid on the 20/09/2011 and published in the “Boletín Oficial del Estado” of the 21/10/2011.

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

Invoices must indicate the place of taxation of the Contractor for value-added tax (VAT) purposes and must specify separately the amounts not including VAT and the amounts including VAT.

20.7 Pre-financing, performance and money retention guarantees

1. Pre-financing guarantees cover the financial risks connected with payment of pre-financing. The pre-financing guarantee remains in force until the pre-financing is cleared against interim payments or payment of the balance. Where the payment of the balance takes the form of a debit note, the pre-financing guarantee remains in force for three months after the debit note is sent to the Contractor. The Office must release the guarantee within the following month.
2. Performance guarantees cover compliance with substantial contractual obligations until the Office has given its final approval for the service, supplies or works. The performance guarantee must not exceed 10 % of the total price of Contract or specific contract. The Office must release the guarantee partially or fully after provisional or final approval, as provided for in the Contract or specific contract.

3. Retention money guarantees cover full delivery of the service, supplies or works in accordance with the Contract or specific contract including during the contract liability period and until its final approval by the Office. It aims at ensuring that the Contractor remedies defects during the contract liability period. The retention money guarantee must not exceed 10 % of the total price of the Contract or specific contract and may be constituted by deductions from interim payments as and when they are made and/or by deduction from the final payment. The Office must release the guarantee after the expiry of the Contract liability period as provided for in the Contract or specific contract.

Subject to approval by the Office, the Contractor may request to replace the retention money guarantee by a financial guarantee referred to in Article 20.7.4.

The Office must not request a retention money guarantee for a Contract or specific contract where it has requested a performance guarantee.

4. Where a financial guarantee is required for the payment of pre-financing, or as performance guarantee, or as a replacement for a retention money guarantee, it must fulfill the following conditions:
 - (a) the financial guarantee is provided by a bank or an approved financial institution accepted by the Office or, at the request of the Contractor and with agreement of the Office, by a third party;
 - (b) the guarantor stands as first-call guarantor and does not require the Office to have recourse against the principal debtor (the Contractor).

The cost of providing such guarantee(s) is borne by the Contractor.

20.8 Interim payments and payment of the balance

The Contractor submits an invoice for interim payment upon delivery of intermediary results, accompanied by a progress report or any other documents, as provided for in the Special Conditions or in the tender specifications or in the purchase order form or specific contract.

The Contractor submits an invoice for payment of the balance within 60 calendar days following the end of the period referred to in the Special Conditions, where applicable, accompanied by a final progress report or any other documents provided for in the Special Conditions or in the tender specifications or in the purchase order form or specific contract.

Upon receipt, the Office pays the amount due as interim or final payment within the periods specified in the Special Conditions, purchase order form or specific contract, provided the invoice and documents have been approved and without prejudice to Article 20.9. Approval of the invoice and documents does 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.

20.9 Suspension of the time allowed for payment

The Office may suspend the payment periods specified in the Special Conditions, purchase order form or specific contract, at any time by notifying the Contractor that its invoice cannot be processed.

The reasons the Office may cite for not being able to process an invoice are:

- a. because it does not comply with the Contract, purchase order form or specific contract;
- b. because the Contractor has not produced the appropriate documents or deliverables; or
- c. because the Office has observations on the documents or deliverables submitted with the invoice.

The Office must inform the Contractor in writing as soon as possible of any such suspension, giving the reasons for it.

Suspension takes effect from the date the notification is sent by the Office. The remaining payment period starts to run again from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension period exceeds two months, the Contractor may request the Office to justify the continued suspension.

Where the payment periods have been suspended following rejection of a document referred to in the second paragraph and the new document produced is also rejected, the Office reserves the right to terminate the Contract or, where applicable, the purchase order form or specific contract, in accordance with point (c) of Article 19.1.1.

20.10 Interest on late payment

On expiry of the payment periods specified in the Special Conditions, purchase order form or specific contract, and without prejudice to Article 20.9, the Contractor is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in euro (“the reference rate”) plus eight percentage points (“the margin”). The reference rate is 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 payment periods in accordance with Article 20.9 may not be considered as a late payment.

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

However, when the calculated interest is lower than or equal to EUR 200, it is paid to the Contractor only upon written request submitted within two months of receiving late payment.

ARTICLE 21 - RECOVERY

- 21.1 If an amount is to be recovered under the terms of the Contract, the Contractor must repay the Office the amount in question.

Before recovery, the Office 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 calendar days of receipt.

If no observations have been submitted or if, despite the observations submitted, the Office 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.

- 21.2 If the obligation to pay the amount due is not honoured by the date set by the Office in the debit note, the amount due bears interest at the rate indicated in Article 20.10. Interest on late payments covers the period from the calendar day following the due date for payment, up to and including the calendar day on which the Office receives full payment of the amount owed.

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

- 21.3 If payment has not been made by the due date, the Office may, after informing the Contractor in writing, recover the amounts due:
- a. by offsetting them against any amounts owed to the Contractor by the Union or by the European Atomic Energy Community;
 - b. by calling in a financial guarantee if the Contractor has submitted one to the Office;
 - c. by taking legal action.

- 21.4 If the Contract is signed by a group (joint tender), the group is jointly and severally liable under the conditions set out in Article 9.7. The Office first claims the full amount to the leader of the group.

If the leader does not pay by the due date and if the amount cannot be offset in accordance with Article 21.3(a), the Office may claim the full amount to any other member of the group by notifying the debit note already sent to the leader under Article 21.1.

ARTICLE 22 – CHECKS AND AUDITS

- 22.1 The Office and the European Anti-Fraud Office (OLAF) may check or require an audit on the performance of the Contract. It may be carried out either directly by OLAF's staff or by any other outside body authorised to do so on its behalf.

Such checks and audits may be initiated during the performance of the Contract and during a period of five years which starts running from the date of expiry of the Contract.

The audit procedure is deemed to be initiated on the date of receipt of the relevant letter sent by the Office. Audits are carried out on a confidential basis.

- 22.2 The Contractor must keep all original documents stored on any appropriate medium, including digitised originals when they are authorised by national law and under the conditions laid down therein, for a period of five years which starts running from the date of expiry of the Contract.
- 22.3 The Contractor must allow the Office's staff and outside personnel authorised by the Office the appropriate right of access to sites and premises where the Contract is performed and to all the information, including information in electronic format, needed 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.
- 22.4 On the basis of the findings made during the audit, a provisional report is drawn up. It must be sent to the Contractor, which shall have 30 calendar days following the date of receipt to submit observations. The final report must be sent to the Contractor within 60 calendar days following the expiry of that deadline.

On the basis of the final audit findings, the Office may recover all or part of the payments made and may take any other measure which it considers necessary.

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

The investigations may be carried out at any moment during contract implementation and up to five years after the payment of the balance of the Contract or the last specific contract or purchase order form issued under the Contract.

- 22.6 The Court of Auditors, the European Public Prosecutor's Office established by Council Regulation (EU) 2017/1939⁶ ('the EPPO') and, for the processing of personal data, the European Data Protection Supervisor have the same rights as the Office, particularly right of access, for the purpose of checks, audits and investigations.

⁶ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office

Article II. Part II – Additional Provisions concerning the Performance of Supplies Contracts

ARTICLE 23 – PACKING, SHIPPING, CARRIAGE AND INSURANCE

The packing, shipping, carriage and insurance of supplies is the responsibility of the Contractor.

The Contractor must complete or cause to be completed all the formalities involved in shipping, in particular those involved in exportation.

The Contractor must complete or cause to be completed all the formalities involved in importation or must provide all the documents required for the purpose, as required by the tender conditions.

ARTICLE 24 – PACKAGING

24.1 The supplies must be packaged in strong boxes or crates or in any other way that ensures that the contents remain intact and prevents damage or deterioration. Packaging, pallets, etc., including contents, must not weigh more than 500 kg.

The maximum total volume for packed goods (where applicable, pallet included) must not exceed 1250 mm width and 1600 mm height.

24.2 Unless otherwise specified in the Special Conditions of the Contract or the purchase order form or the specific contract or in the tender specifications, the packing materials remain the property of the Office. Pallets are considered as one-way packaging and are not returned.

24.3 Each box must be clearly labelled with the following information:

- European Union Intellectual Property Office and address for delivery;
- name of Contractor;
- description of contents;
- date of delivery;
- reference number and date of the Contract and, where applicable, reference number of purchase order form or specific contract.

ARTICLE 25 – DELIVERY OF SUPPLIES

25.1 Time allowed for delivery

The time allowed for delivery is a maximum of four weeks unless otherwise specified in the Special Conditions of the Contract or the purchase order form or the specific contract or the tender specifications.

25.2 Place of delivery

The delivery of the supplies must be made at the goods delivery entrance of the Office's main seat, situated in Avenida de Europa, 4, Polígono Agua Amarga, 03008 Alicante, Spain. The place of delivery might also be any other building in the area of Alicante where the Office has premises.

The Office reserves the right to change the delivery address, giving sufficient notice. In such a case, the cost of carriage may be adjusted by mutual agreement.

25.3 Procedure for delivery

The supplies must be unloaded by the Contractor in the goods delivery bay and transferred to the X-ray inspection equipment situated in the warehouse adjacent to the goods delivery bay. Once the inspection has been completed and the supplies have been sealed by the Office's security services, the Contractor must transfer them to the reception storeroom, indicated by Office staff or, where specified in the Special Conditions or, where applicable, purchase order form or specific contract, the Contractor must reload the supplies onto its vehicle, transport them to the Office building specified in the Special Conditions, purchase order form or specific contract, and unload them definitively in the appropriate goods delivery bay. All of the above actions must be carried out by the Contractor using its staff and equipment.

25.4 Date and time of delivery

The Office must be notified in writing at least four working days in advance of the exact date of delivery. All deliveries must be made at the agreed place of delivery between 09:00h and 12:00h.

The Contractor bears all costs and risks involved in delivering the supplies to the place of delivery.

25.5 Consignment note

Each delivery must be accompanied by a consignment note in duplicate, duly signed and dated by the Contractor or its carrier. The consignment note must give the Contract number and, where applicable, the purchase order form or specific contract number and particulars of the supplies delivered. Where applicable, a copy of the purchase order form, stamped by the Contractor, must be annexed to the consignment note. One copy of the consignment note must be countersigned by the Office and returned to the Contractor or to its carrier.

Signature of the consignment note by the Office is simply an acknowledgment of the fact that the supplies have been delivered and in no way implies conformity of the supplies with the Contract or, where applicable, purchase order form or specific contract.

ARTICLE 26 – CONFORMITY

26.1 Certificate of conformity

Conformity of the supplies delivered must be evidenced by the signature of a certificate to this effect by the Office no later than one month after the date of

delivery, unless otherwise specified in the Special Conditions or in the tender specifications.

Conformity is declared only where the conditions laid down in the Contract and, where applicable, purchase order form or specific contract, are satisfied and the supplies conform to the tender specifications.

Where, for reasons attributable to the Contractor, the Office is unable to accept the supplies, the Contractor must be notified in writing.

26.2 Conformity of the supplies delivered with the Contract

- a) The supplies delivered by the Contractor to the Office must be in conformity in quantity, quality, price and packaging with the Contract and, where applicable, the relevant purchase order form or specific contract.
- b) The supplies delivered must:
 - (i) correspond to the description given in the tender specifications and possess the characteristics of the supplies provided by the Contractor to the Office as a sample or model;
 - (ii) be fit for any specific purpose required of them by the Office and made known to the Contractor at the time of conclusion of the Contract and accepted by the Contractor;
 - (iii) be fit for the purposes for which supplies of the same type are normally used;
 - (iv) demonstrate the quality and performance which are normal in supplies of the same type and which the Office can reasonably expect, given the nature of the supplies and taking into account any public statements on the specific characteristics of the supplies made by the Contractor, the producer or its representative, particularly in advertising or on labelling;
 - (v) be packaged according to the usual method for supplies of the same type or, failing this, in a way designed to preserve and protect them.

26.3 Remedy

- a) The Contractor is liable to the Office for any lack of conformity which exists at the time the supplies are verified.
- b) In case of lack of conformity, without prejudice to Article 17 regarding damages applicable to the total price of the supplies concerned, the Office is entitled:
 - (i) either to have the supplies brought into conformity, free of charge, by repair or replacement;
 - (ii) or to have an appropriate reduction made in the price.
- c) Any repair or replacement must be completed within a reasonable time and without any significant inconvenience to the Office, taking account of the nature of the supplies and the purpose for which they are required by the Office.

- d) The term 'free of charge' in paragraph b) refers to the costs incurred to bring the goods into conformity, particularly the cost of carriage, labour and materials.

26.4 Assembly

If required, the Contractor must assemble the supplies delivered within a period of one month unless otherwise specified in the Special Conditions or, where applicable, in the purchase order form or specific contract.

Any lack of conformity resulting from incorrect installation of the supplies delivered is deemed to be equivalent to lack of conformity of the supplies if installation forms part of the Contract and the supplies were installed by the Contractor or under its responsibility. This applies equally if the product was to be installed by the Office and was incorrectly installed owing to a shortcoming in the installation instructions.

26.5 Services provided to supplies

If required by the Special Conditions or the tender specifications, services related to supplies must be provided accordingly.

ARTICLE 27 – GUARANTEE

27.1 The supplies must be guaranteed against all defects in manufacture or materials for two years from the date of delivery, unless provision for a longer period is made in the tender specifications.

27.2 The Contractor must guarantee that any permits and licences required for manufacturing and selling the supplies have been obtained.

27.3 The Contractor must replace at its own expense, within a reasonable time limit to be determined by agreement between the parties, any items which become damaged or defective in the course of normal use during the guarantee period.

27.4 The Contractor is responsible for any conformity defect which exists at the time of delivery, even if this defect does not appear until a later date.

The Contractor is also responsible for any conformity defect which occurs after delivery and is ascribable to non-compliance with his obligations, including failure to provide a guarantee that, for a certain period, supplies used for the purposes for which they are normally used or for a specific purpose will preserve their qualities or characteristics as specified.

27.5 If part of an item is replaced, the replacement part must be guaranteed under the same terms and conditions for a further period of the same duration as that specified above.

27.6 If a defect is found to originate in a systematic flaw in design, the Contractor must replace or modify all identical parts incorporated in the other supplies that are part of the Contract, or, where applicable, purchase order form or specific contract, even though they may not have been the cause of any incident. In this case, the guarantee period must be extended as stated above.

Article III. Part III – Additional Provisions concerning the Performance of Service Contracts

ARTICLE 28 – OWNERSHIP OF THE RESULTS – INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS

- 28.1 Any results or rights therein, including copyright and other intellectual or industrial property rights, obtained as a result of the performance of the Contract, are owned solely by the Office. All the rights are acquired by the Office from the moment the results are delivered by the Contractor and accepted by the Office. The payment of the price as set out in the Contract, or purchase order forms or specific contracts is deemed to include any fees payable to the Contractor in relation to the acquisition of ownership of rights by the Office including all forms of use of the results. The acquisition of ownership of rights by the Office under the Contract covers all territories worldwide.
- 28.2 The Office may use, publish, exploit, assign or transfer results and rights referred to in paragraph 1 as it sees fit, without geographical or other limitation, except where limitations are imposed by the existence of any industrial or intellectual property rights prior to the Contract being entered into. The Contractor must possess all rights, powers and licences that are needed to license the pre-existing rights on a royalty-free, non-exclusive and irrevocable basis to the Office. All the pre-existing rights must be licensed to the Office from the moment the results were delivered and accepted by the Office. The licensing of pre-existing rights to the Office under the Contract covers all territories worldwide and is valid for the whole duration of intellectual property rights protection.
- 28.3 When delivering the results, the Contractor must warrant that they are free of rights or claims from creators and third parties including in relation to pre-existing rights, for any use envisaged by the Office. This does not concern the moral rights of natural persons. The Contractor must establish to that effect a list of all pre-existing rights and rights of creators and third parties on the results of this Contract or parts thereof. This list must be provided no later than the date of delivery of the final results. In the result the Contractor shall clearly point out all quotations of existing textual works. The complete reference must 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.
- 28.4 Upon request by the Office, the Contractor must provide evidence of ownership or rights to use all the listed pre-existing rights and rights of third parties except for the rights owned by the Office. This evidence may refer, inter alia, to rights to: parts of other documents, images, graphs, tables, data, software, technical inventions, know-how etc. (delivered in paper, electronic

or other form), IT development tools, routines, subroutines and/or other programs ("background technology"), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin. The evidence must include, as appropriate:

- a) the name and version number of a software product;
- b) the full identification of the work and its author, developer, creator, translator, data entry person, graphic designer, publisher, editor, photographer, producer;
- c) a copy of the licence to use the product or of the agreement granting the relevant rights to the Contractor or a reference to this licence;
- d) a copy of the agreement or extract from the employment contract granting the relevant rights to the Contractor where parts of the results were created by its personnel;
- e) the text of the disclaimer notice if any.

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

The Contractor hereby undertakes that it possesses the relevant rights, licences and powers indicated in Article 28.2 and those that would be needed to execute the transfer of the results and that it has paid or has verified payment of all due fees including fees due to collecting societies, related to the final results.

28.5 By delivering the results the Contractor warrants that the creators undertake not to oppose that their names be recalled when the results are presented to the public and confirms that the results can be divulged. Names of authors are recalled on request in the manner communicated by the Contractor to the Office. The Contractor must obtain the consent of creators regarding the granting of the relevant rights and be ready to provide documentary evidence upon request. If natural, recognisable persons appear in a result or their voice is recorded the Contractor must submit a statement of these persons (or of the persons exercising parental authority in case of minors) where they give their permission for the described use of their image or voice on request by the Office. This does not apply to persons whose permission is not required in line with the law of the country where photographs were taken, films shot or audio records made.

28.6 Should performance of the Contract involve the use of patents, trade-marks, industrial designs, copyrights or any other industrial or intellectual right belonging to third parties, the Contractor must indemnify the Office against any action for infringement which may be brought against it.

The Contractor must not indemnify the Office in cases where the action for infringement is the consequence of:

- the Office imposing the use of any industrial property rights indicated in the first sub-paragraph and belonging to a third party;

- use of the industrial property rights by the Office for a purpose other than that indicated in the Contract or contrary to the purposes specified in the Contract;
- an unjustified refusal from the Office of changes to the provisions of the Contract proposed by the Contractor to mitigate the risks of infringements of intellectual or industrial property rights.

The Office and the Contractor must inform each other of any information that could lead to an intellectual or industrial property right impeding performance of the Contract. At the first indication that an action has been brought by a third party, in particular the lodging of a claim, even after performance of the Contract, the party implicated must notify the other party without delay, whereupon both parties must act jointly and must exchange all information and evidence they may possess or obtain.

- 28.7 The Contractor must obtain from third parties involved in the performance of the Contract, including subcontractors, a commitment that they will comply with the obligations set out in this Article. A copy of these written undertakings must be provided to the Office, should it so request.

Article IV. Part IV – Additional Provisions concerning the Performance of Works Contracts

ARTICLE 29 – REPRESENTATION OF THE OFFICE

The Office must appoint a representative to oversee the Contractor to ensure that all the stipulations and provisions contained in the contract documents are fully observed.

The Office must inform the Contractor of the name of its representative, and the name of person who will stand in for the representative in the event of the latter's absence, within 15 calendar days of the signature of the Contract.

The Office's representative is responsible in particular for:

- authorising the entry of the Contractor's staff to the Office's premises;
- monitoring the services provided by the Contractor under the Contract and verifying that the provisions of the Contract are adhered to;
- proposing alterations or amendments that may improve progress of the task in hand;
- checking and certifying the number of persons employed by the Contractor, and their qualifications, against the requirements of the Contract;
- indicating defects and failures in the performance of the Contract.

The Contractor must afford and must ensure that its staff afford due respect to the representatives of the Office, and must ensure that they have free access to the Contractor's work locations, all works areas and stores of materials to be used in the works, for their inspection.

The fact that the Office's representative performs supervisory duties, carries out inspections and verifications and issues provisions or stipulations does not release the Contractor from its own obligations or liabilities regarding the correct and full implementation of the Contract and does not release the Contractor from its obligations under the applicable laws, regulations and standards in force.

ARTICLE 30 – SUSPENSION OF CONTRACTUAL ACTIVITIES

In the event that unforeseen circumstances temporarily prevent all or some of the contractual activities being performed, the Office may order suspension of those activities and their subsequent resumption as soon as the grounds for that suspension cease to exist.

If the Office orders the suspension of only part of the contractual activities, the Contractor must continue to perform the remaining activities and is not entitled to request compensation for being unable to perform all the contractual activities simultaneously.

ARTICLE 31 – PROHIBITION ON THE CONTRACTOR SUSPENDING, INTERRUPTING OR DELAYING CONTRACTUAL ACTIVITIES

The Contractor may not, under any circumstances, take a unilateral decision to suspend, interrupt or delay performance of the contractual activities even in the event of disputes with the Office awaiting resolution.

A unilateral decision by the Contractor to suspend, interrupt or delay the contractual activities constitutes a failure to perform and may give rise to the immediate termination of the Contract on the grounds of breach of contract by the Contractor.

3 SIGNATURES

For the Contractor,
[Name/surname/function]

signature[s]: _____

Done at, on the in duplicate in English.

For the Office,
[Name /surname/function]

signature[s]:_____

Done at Alicante, on the in duplicate in English.