EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR COMMUNICATION

Directorate B – Strategy and Corporate Communication
DG COMM B2 – Interinstitutional Relations, Corporate Contracts and EDCC

European Commission

Dynamic Purchasing System (DPS)

for

Communication Services

COMM/B2/DPS/2021/0001

Category _____

Direct service contract and annexes (templates)[1]

Annex II to the Invitation to Participate

[1] The contracting authority may adjust the templates provided to concrete situations.

EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR COMMUNICATION

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DG COMM B2 – Interinstitutional Relations, Corporate Contracts and EDCC

DIRECT SERVICE CONTRACT

NUMBER – **[***complete***]**

1. The European Union ('the Union'), represented by the European Commission ('the contracting authority') represented for the purposes of signing this contract by [*forename, surname, function, department of authorising officer*],

on the one part, and

2. [*Full official name*]

[Only in case of legal persons: *Official legal form*]

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

[*Full official address*]

[*VAT registration number*]

[In case of joint tenders:

2. Company [A] (acting as group leader)
[*Full official name*]
[*Official legal form*]
[*Statutory registration number or ID or passport number*]
[*Full official address*]
[*VAT registration number*]

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

3. Company [B]
[*Full official name*]
[*Official legal form*]
[*Statutory registration number or ID or passport number*]
[*Full official address*]
[*VAT registration number*]

[For joint tenders, repeat these data as many times as there are contractors and continue numbering]

([collectively] 'the contractor'), represented for the purposes of the signature of this contract by [*forename, surname, function of legal representative and name of company in the case of a joint tender*],

on the other part,

HAVE AGREED

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

Annex I	DPS specifications (enclosed with the Invitation to Participate for DPS with Reference No [*complete*] of [*insert date*]), including the Commission's replies to questions raised by the economic operators) – Original stored by the Commission
Annex II	Tender specifications of the mini-competition (enclosed with the Invitation to Tender for mini-competition with Reference No [complete] of [insert date]), including the Commission's replies to questions raised by the economic operators) – Original stored by the contracting authority
Annex III	Contractor's tender (for mini-competition with Reference No [*complete*] of [*insert date*]) – Original stored by the Contracting authority
Annex IV	Consent form for on-site personnel (template)
Annex V	Electronic list of relevant personal data for on-site personnel (template)
Annex VI	Code of conduct for contractors and contractors' personnel
Annex VII	Service Level Agreement (SLA)[2]
Annex VIII	Declaration on the list of pre-existing rights (template)
Annex IX	Performance guarantee model (template)

which form an integral part of this contract ('the contract').

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

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

[2] The Service level Agreement (SLA) will be included at the level of the mini-competition.

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PREAMBLE

On [../../20XX], the Commission, acting on its own behalf, launched the DPS FOR COMMUNICATION SERVICES under the reference n° COMM/B2/DPS/2021/0001

The contractor was selected for mini-competition [No. …] of the DPS FOR COMMUNICATION SERVICES under the reference n° COMM/B2/DPS/2021/0001 – for Category [insert category] at the conclusion of the evaluation process, on the basis of its tender submitted on [.../../20XX] in response to the invitation to tender.

I. SPECIAL CONDITIONS

I.1. ORDER OF PRIORITY OF PROVISIONS

If there is any conflict between different provisions in this contract, the following order of precedence shall apply:

(a) Special conditions of the Direct Contract;

(b) Service Level Agreement;

(c) DPS specifications;

(d) Tender specifications of the mini-competition;

(e) General conditions for the service Direct Contract;

(f) Contractor's tender.

I.2. SUBJECT MATTER

The subject matter of the contract is the provision of communication services in the Category of [insert category].

I.3. ENTRY INTO FORCE AND DURATION

I.3.1 The contract enters into force

[on the date on which the last party signs it.]

[on [*insert date*] if both parties have already signed it.]

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

I.3.3 The duration of the *performance of the contract* must not exceed [*complete*] months. *Performance of the contract* starts from [the date of entry into force of the contract] [*insert date*].

[The contracting authority shall determine in Stage 2 of the DPS, which of the following options shall apply.]

[Option: execution in phases]

I.3.4 [The *performance of the contract* is divided into [*complete*] phases of [*complete*] months each. The contractor is authorised to continue the *performance of the contract* in the next phase only on the condition that the necessary funding is available from the Union's budget and that the project is still in progress. The contracting authority must notify the contractor in writing in case the above conditions are no longer met at the latest two months before the start of the next phase.

[Option: renewal of the contract]

I.3.4 The contract is renewed automatically [*complete*] times for [*complete*] months each, unless one of the parties receives *formal notification* to the contrary at least [*two*] months before the end of the ongoing duration. Renewal does not change or postpone any existing obligations.

I.4. PRICE

I.4.1. Price of the contract and maximum amount

The maximum amount covering all purchases under this contract and excluding price revision is EUR [*amount in figures and in words*]. It includes reimbursement of expenses as specified below and pursuant to the Tender specifications of the mini-competition [and] [EUR [*amount in figures and in words*] for the [first] [second] […] [phase/renewal].

However, this does not bind the contracting authority to purchase for the maximum amount.

I.4.2. Price revision index

Price revision is not applicable to this contract.

However, exception is made if the index, as indicated below, is 5% lower or higher compared to the index of the previous year, then each party to this contract has the right to request price revision. In that case, price revision is determined by the formula set out in Article II.20 and using the trend in the index "Harmonised Indices of Consumer Prices (HICP) (prc_hicp)", under "First published data (prc_hicp_fp)", published on Eurostat's official website. The index to be used is the one corresponding to EU-27, using the classification "All-items HICP" and the latest base year (currently: Index, 2015=100).

Following the price revision, the prices shall be rounded to the closest euro cent, with the exception of the daily prices for provision of services, which shall be rounded to the closest even number of euro cents.

I.4.3. Reimbursement of expenses

When required by the contracting authority, travel costs, accommodation and daily allowances associated with the provision of services outside the normal places of delivery shall be reimbursed.

Travel costs to the normal places of delivery set out in the Tender Specifications for the mini-competition will not be reimbursed. However, where the Tender Specifications for the mini-competition envisages exceptional service provision (like attendance in meetings or on-site interventions) related to travels to places of delivery different from the place of service provision, then travel costs, accommodation and daily allowances shall be reimbursed.

The daily subsistence allowance referred to in Article II.22.4(d) and the accommodation flat-rate ceiling referred to in Article II.22.4(e) are as listed in Article 13 of Annex VII of the Staff Regulations[3].

[The total value of expenses may not exceed EUR [amount in figures and in words] throughout the duration of the contract including renewals.]

I.5. PAYMENT ARRANGEMENTS

1. Payments under the contract shall be made in accordance with Article II.21, which is complemented by the relevant provisions of the General Conditions and the Tender specifications of the mini-competition.

2. Payments shall be executed only if the contractor has fulfilled all its contractual obligations by the date on which the invoice is submitted. Payments requests may not be made if previous payments have not been executed as a result of default or negligence on the part of the contractor.

3. In the event of its budget not being adopted, the contracting authority may, after giving prior notice, pay invoices by monthly instalments. In such cases, it shall notify the contractor once it is in a position to resume normal payment arrangements.

I.5.1. Pre-financing

Pre-financing is not applicable to this contract.

I.5.2. Interim payment(s)

1. Interim payment(s), if provided for in the Tender specifications of the mini-competition, shall be made in accordance with the provisions of those specifications.

The contractor (or leader in case of a joint tender) must send an invoice, in paper or electronic format, for the interim payment accompanied by (as applicable) the progress report, other supporting documents and/or deliverables in accordance with the instructions laid down in the Tender specifications of the mini-competition.

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

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[3] REGULATION No. 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community.

3. The contracting authority may suspend the time limit for payment specified in point (2) in accordance with Article II.21.7. Once the suspension is lifted, the contracting authority shall give its approval and pay within the remainder of the time-limit indicated in point (2) unless it rejects partially or fully the submitted documents or deliverables.

I.5.3. Payment of the balance

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

The contractor (or leader in the case of a joint tender) must send an invoice, in paper or electronic format, for payment of the balance due under the contract, as provided for in the Tender Specifications of the mini-competition and accompanied by the following:

(a) a declaration on the list of all *pre-existing rights* to the *results* or parts of the *results*, as provided for in Article II.13.4;

(b) as applicable, the progress report, other supporting documents and/or deliverables as provided for in the Tender Specifications of the mini-competition;

(c) if relevant, statements of reimbursable expenses in accordance with Article II.22.

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

3. The contracting authority may suspend the time limit for payment specified in point (2.) in accordance with Article II.21.7. Once the suspension is lifted, the contracting authority shall give its approval and pay within the remainder of the time-limit indicated in point (2.) unless it rejects partially or fully the submitted documents or deliverables.

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In Belgium, use of this contract constitutes a request for VAT exemption No 450, Article 42, paragraph 3.3 of the VAT code (circular 2/1978), provided the invoice includes the statement: “Exonération de la TVA, Article 42, paragraphe 3.3 du code de la TVA (circulaire 2/1978).”

In Luxembourg, the contractor must include the following statement in the invoices: “Commande destinée à l’usage officiel de l’Union européenne. Exonération de la TVA Article 43 § 1 k 2ème tiret de la loi modifiée du 12.02.79. ” In the case of intra-Community purchases, the statement to be included in the invoices is: “For the official use of the European Union. VAT Exemption / European Union/ Article 151 of Council Directive 2006/112/EC.”

I.6. GUARANTEES

I.6.1. Performance guarantee

Performance guarantee is not applicable to this contract.

I.6.2. Retention money guarantee

[**For TM/PTM**

[Retention money guarantee is not applicable to this contract.]

[**For FP/QTM**

[Retention money guarantee is not applicable to this contract.]

[A retention money guarantee is requested for an amount of EUR [*amount in figures and in words*] and constituted by a corresponding deduction on each payment. At the request of the contractor, and subject to approval by the contracting authority, the deduction on payment may be replaced by a bank guarantee in accordance with the conditions laid down in Article II.21.5.]

I.7. BANK ACCOUNT

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

Name of bank:

Full address of branch:

Exact denomination of account holder:

Full account number including bank codes:

[IBAN[4] code:]

I.8. COMMUNICATION DETAILS

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

Contracting authority:

European Commission

Directorate-General Informatics

Directorate [*complete*]

Unit [*complete*]

[*Postcode and city*]

E-mail: [*insert functional mailbox*]

Contractor (or leader in the case of a joint tender):

[*Full name*]

[*Function*]

[4] BIC or SWIFT code for countries with no IBAN code.

[*Company name*]

[*Full official address*]

E-mail: [*complete*]

I.9. PROCESSING OF PERSONAL DATA

I.9.1 Processing of personal data by the contracting authority

For the purpose of Article II.9.1,

(a) the data controller is the Directorate-General for Communication of the European Commission;

(b) the data protection notice is available at https://ec.europa.eu/info/data-protection-public-procurement-procedures_en.

I.9.2 Processing of personal data by the contractor

For the purpose of Article II.9.2,

(a) the subject matter and purpose of the processing of personal data by the contractor are: processing of personal data in the framework of the provision of communication services as described in the Tender specifications and whenever needed for a proper execution of the tasks requested;

(b) The localisation of and access to the personal data processed by the contractor shall comply with the following:

i. the personal data shall only be processed within the territory of the European Union and the European Economic Area and will not leave that territory;

ii. the data shall only be held in data centres located with the territory of the European Union and the European Economic Area;

iii. no access shall be given to such data outside of the European Union and the European Economic Area;

iv. the contractor may not change the location of data processing without the prior written authorisation of the contracting authority.

I.10. EXPLOITATION OF THE RESULTS OF THE CONTRACT

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

In accordance with Article II.13.1 whereby the Union acquires ownership of the *results* as defined in this contract, including the tender specifications, these *results* may be used for any of the following modes of exploitation:

(a) use for its own purposes:

- making available to the staff of the contracting authority;

- making available to the persons and entities working for the contracting authority or cooperating with it, including contractors, subcontractors whether legal or natural persons;
- making it available to the other Union institutions, agencies and bodies, Member States' institutions;
- installing, uploading, processing;
- arranging, compiling, combining, retrieving;
- copying, reproducing in whole or in part and in unlimited number of copies.

(b) distribution to the public in hard copies, in electronic or digital format, on the internet including social networks as a downloadable or non-downloadable file;

(c) communication through press information services;

(d) inclusion in widely accessible databases or indexes, such as via 'open access' or 'open data' portals, or similar repositories, whether freely accessible or accessible only upon subscription;

(e) modifications by the contracting authority or by a third party in the name of the contracting authority, including:

- shortening;
- summarising;
- modifying the content, the dimensions;
- making technical changes to the content (necessary correction of technical errors), adding new parts or functionalities, changing functionalities, providing third parties with additional information concerning the result (e.g. source code) with a view to making modifications;
- addition of new elements, paragraphs, titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound;
- addition of metadata, for text and data-mining purposes; addition of right-management information; addition of technological protection measures;
- preparation in audio form, preparation as a presentation, animation, pictograms story, slide-show, public presentation;
- extracting a part or dividing into parts;
- incorporating, including by cropping and cutting, the *results* or parts thereof in other works, such as on websites and webpages;

- translating, inserting subtitles, dubbing in different language versions:

  - English, French, German;
  - all official languages of EU;
  - languages used within EU;
  - languages of candidate countries.

(f) rights to authorise or license the modes of exploitation set out in any of the points (a) to (e) to third parties, provided however that this does not apply to *pre-existing rights* and *pre-existing materials*, if they are only licensed to the Union, except as foreseen by Article II.13.2.;

(g) other adaptations which the parties may later agree; in such case, the following rules apply: the contracting authority must consult the contractor. If necessary, the contractor must in turn seek the agreement of any *creator* or other right holder and must reply to the contracting authority within one month by providing its agreement, including any suggestions of modifications, free of charge. The contractor may refuse the intended modification only if a *creator* can demonstrate that the intended modification may harm his/her honour or reputation, thereby violating his/her moral rights.

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

I.10.2. Licence or transfer of pre-existing rights

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

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

The contractor must provide the contracting authority with a list of *pre-existing rights* as set out in Article II.13.4 together with the invoice for payment of the balance at the latest.

In addition, at the contracting authority's request, the contractor must provide the contracting authority with relevant and exhaustive evidence of the acquisition of all the necessary *pre-existing rights* together with a presentation of relevant *result*. To this effect, the contracting authority may request the contractor to provide a statement in accordance with Annex VIII, and/or the relevant evidence listed in Article II.13.5 as appropriate or, failing that, third parties' statements in accordance with Annex VIII.

I.11. TERMINATION BY EITHER PARTY

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

If the contract is terminated:

(a) neither party is entitled to compensation;

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

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

I.12. APPLICABLE LAW AND SETTLEMENT OF DISPUTES

I.12.1. The contract is governed by Union law, complemented, where necessary, by the law of Belgium.

I.12.2. Any dispute regarding the application or validity of the contract and/or resulting from its interpretation and implementation will be subject to the jurisdiction of the Court of Justice of the European Union, as laid down in article 272 of the Treaty on the Functioning of the European Union.

I.13. SERVICE PROVIDED ON THE PREMISES OF THE CONTRACTING AUTHORITY[5]

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

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

'On-Site Personnel': personnel who is granted access rights to the Contracting Authority premises in Belgium for a short or long term period, when necessary for executing the contract.

I.13.1 Pursuant to Articles 3, 7 and 8 of Commission Decision (EU, Euratom) 2015/443 of 13.3.2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41), background checks can be carried out on *on-site personnel* in order to prevent and control risks to the security of Commission staff, assets and information. In addition and pursuant to the Belgian Act of 11.12.1998 on classification and security clearances, security certificates and security advices (Belgian Official Gazette of 7.5.1999, p. 15.752), as further amended, access rights for *on-site personnel* to the premises of the contracting authority may be conditional on a positive security advice to be delivered by the Belgian authorities.

I.13.2 In order to allow the Belgian authorities to give a security advice, the Contractor will submit to the relevant On-Site Personnel the attached form (Consent form[6]). The duly

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[5] This clause must be used in case of personnel working within the premises of the Contracting Authority (on-site); otherwise it must be deleted.

[6] The Consent Form attached contains: full official name and forenames; function or occupation; nationality; national Belgian registry number; passport or ID number, place of birth; date of birth;

completed and signed Consent Form and the taking note of the attached privacy statements will be returned to the Commission Department of Security (European Commission, HR.DS (Security screenings) - Rue de la Loi 200, office BERL 3/190, B-1049 Brussels/Belgium). An up-to-date electronic list of relevant personal data as listed in the attached template[7] will be sent to the address "EC-SECURITY-SCREENING@ec.europa.eu" at least 30 days before the start date of a new contract.

I.13.3 Failure or refusal to complete the Consent Form may result in refusal of access rights to Commission buildings for the *personnel*.

I.13.4 The contracting authority acknowledges that in exceptional cases it may not be possible for the contractor to provide at short-term o*n-site personnel* having received a positive security advice. Nevertheless the contractor undertakes to provide at all times only *on-site personnel* having received a positive security advice for the following Commission buildings: Berlaymont, Breydel, Charlemagne, Centre Albert Borschette, Luxembourg 46, Montoyer 59 and Madou. This list can be subject to modification upon request from the Commission Department of Security. In such case, the contracting authority will duly notify the contractor of such modification. The contracting authority may terminate the contract if the contractor is unable to provide at all times only *on-site personnel* having received a positive security advice for the listed Commission buildings.

I.13.5 If access rights for *on-site personnel* are granted by means of a Commission access card, this card remains the property of the Commission and must be returned to the Service Card Office (Rue Montoyer 34 — 1049 Brussels – MEZ/120 – Monday to Friday 08:30-16:30) upon request, upon expiry or where the access conditions are no longer met and in particular where the *on-site personnel* does not benefit anymore from a positive security advice.

If the Commission access card is not returned, the contracting authority may claim liquidated damages of 100 EUR from the contractor for each day of delay up to a maximum of EUR 1.000. This represents a reasonable estimate of fair compensation for the damage incurred.

I.14. EXTENSION OF BACKGROUND CHECKS TO OTHER CASES

The background checks, as described under Article I.13 for on-site Personnel working in the premises of the contracting authority, may be extended at any time to the Commission's places of work located outside Belgium.

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official complete address (including house or flat number and postal code); company and number of company.

[7] The compulsory template of the electronic list attached to be transferred to the Belgian authorities summarizes the information as provided by the proposed on-site personnel in the Consent Form.

The Commission that decides to extend the procedure as provided for above shall notify to the Contractor the practical modalities for its implementation. This notification shall have full legal effect under the Direct Contract as from the date indicated in the notification.

I.15. CODE OF CONDUCT FOR CONTRACTORS AND CONTRACTORS' PERSONNEL

The contractor commits itself and its personnel to the behaviour and rules as defined in Annex VI.

I.16. EMAS COMPLIANCE

The contractor shall assist the Commission to perform its commitments as set in the EMAS EC Environmental Policy and shall follow EMAS best practices. The Commission's EMAS Environmental Policy is contained in Annex XV.

Environmental considerations are taken into account throughout the complete life cycle of a product or a service.

I.17. EQUAL OPPORTUNITIES

The contractor shall observe a policy on the promotion of equality and diversity in the implementation of the Direct contract, by applying the principles of non-discrimination and equality set out in the EU Treaties in full and in their entirety.

In the implementation of the Direct contract, the contractor shall establish, maintain and promote an open and inclusive working environment which respects human dignity and the principles of equal opportunities, especially through the removal of all obstacles to recruitment and all potential discrimination based on sex, race or ethnic origin, religion or convictions, disability, age or sexual orientation.

I.18. SUBCONTRACTING

I.18.1. Definitions

Subcontracting is the situation where a contract has been or is to be established between the contracting authority and the contractor and where the contractor, in order to carry out that contract, enters into legal commitments with other entities for performing part of the contract.

The contracting authority has no direct legal commitment with the subcontractor(s).

Subcontracting by subcontractors (2nd level of subcontracting) is the situation where a subcontractor enters into legal commitments with other entities (2nd level subcontractors) for performing part of the contract.

For this direct contract, subcontracting by subcontractors is **not** authorised.

All contractual tasks may be subcontracted unless the Service Requirements or Tender Specifications expressly reserve the execution of certain critical tasks to the sole tenderer itself, or in case of a joint tender, to a member of the group.

I.18.2. Contractual relations not considered as subcontracting

The following shall not be considered subcontracting:

a) Use of workers posted to the contractor by another company owned by the same group and established in a Member State ("intra-group posting" as defined by Article 1, 3, (b) of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services).

b) Use of workers hired out to the contractor by a temporary employment undertaking or placement agency established in a Member State ("hiring out of workers" as defined by Article 1, 3, (c) of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services).

c) Use of workers temporarily transferred to the contractor from an undertaking established outside the territory of a Member State and that belongs to the same group ("intra-corporate transfer" as defined by Article 3, (b) of Directive 2014/66/EU on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer).

d) Use of staff without employment contract ("self-employed persons working for the contractor"), without the tasks of the self-employed persons being particular well-defined parts of the contract. These can be either individuals (self-employed natural persons who do not employ other IT service providers), or service providers in one of the following situations: i) sole proprietorships in which only one person (employee or not) is active in providing IT services; ii) companies in which only one person (employee or not) is active in providing IT services and iii) companies in which maximum two persons (employees or not) with family ties are active in providing IT services.

e) Use of suppliers of goods and/or transporters by the contractor, in order to perform the contract at the place of performance, unless the economic activities of the suppliers and/or the transporting services are within the subject of this call for tender.

f) Performance of part of the contract by members of an EEIG (European Economic Interest Grouping), when the EEIG is itself a contractor or a group member.

The persons mentioned in points a), b), c) and d) above will be considered as "personnel" of the contractor as defined in the contract. In said cases, the contractor must ensure they comply with all obligations and administrative requirements linked to performing their tasks that derive from the legislation in force of the country(/ies) in which they will provide their services under the contract. These obligations may include, amongst others, any obligation to be registered for VAT purposes and/or in an enterprise register or database (e.g. *Banque-Carrefour des Entreprises* in Belgium). At the request of the contracting authority, the

contractor must submit any relevant information, including evidence for the compliance of said persons/ entities with their aforementioned obligations.

I.18.3. Rules on replacing or adding subcontractors during contract execution

During contract execution, the contractor may wish to replace a subcontractor or to add a new subcontractor.

The contracting authority may also request the contractor to replace a subcontractor found to be in a situation provided for in points (d) and (e) of Article I.19.2.

A contractor may subcontract without the need to require the contracting authority's prior written authorisation in the case of subcontractors already proposed in its Tender (Annex III to this document) who were not excluded, replaced or removed before the contract signature.

Prior authorisation from the contracting authority is necessary for all other cases.

The procedures to request authorisation for the use of subcontractors are described below.

I.18.4. Procedure to request authorisation for subcontractors

To replace a subcontractor or to add a new one, the contractor shall submit a formal request for authorisation by e-mail to contracting authority's e-mail address specified in Article I.8. The authorisation request should contain:

- exact name, official address, registration/VAT number of the new subcontractor and its contact details;
- updated descriptive document on subcontracting, requested at tender submission, containing, among others, a list and clear identification of all subcontractors, reasons to subcontract, roles and activities of each subcontractor and the volume / proportion of the subcontracting in question.
- all documents requested at tender submission for the replaced subcontractors (in case of replacement) or for subcontractors on whose capacity the tenderer did not rely to fulfil the selection criteria, if any (in case of adding a new subcontractor).

The new subcontractor may not start performing tasks under the contract until the contracting authority provides an explicit written authorisation for subcontracting.

I.18.5. Obligations of the contractor in case of subcontracting

In case of subcontracting, the contractor remains bound by its contractual obligations and is solely responsible for the implementation of the contract.

The contractor must ensure that the subcontracting does not affect the rights of the contracting authority under this contract.

For services provided at a facility that is directly under the oversight of the contracting authority (intra-muros services), the contractor must, at the contracting authority's request,

indicate the names, contacts and authorised representatives of subcontractors involved in the performance of the contract, including any changes of subcontractors.

I.19. OTHER SPECIAL CONDITIONS

[Other special conditions or derogations to the general conditions may be considered. Article II.15 (liquidated damages) must be adapted to each specific purchase and each deliverable, depending on the potential delays and potential damage and provided that clear deadlines are indicated in the tender specifications.

SIGNATURES

For the contractor,	For the contracting authority,
[*Company name/forename/surname/position*]	[*forename/surname/position*]
Signature: _____	Signature:_____
Done at [*place*], [*date*]	Done at [*place*], [*date*]

In duplicate in English.

II. GENERAL CONDITIONS FOR THE SERVICE CONTRACT

II.1. DEFINITIONS

For the purpose of this contract, the following definitions (indicated in *italics* in the text) apply:

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

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

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

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

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

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

'e-PRIOR': the service-oriented communication platform that provides a series of web services and allows the exchange of standardised electronic messages and documents between the parties. This is done either through web services, with a machine-to-machine connection between the parties' *back office* systems (*EDI messages*), or through a web application (the s*upplier 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.

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

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

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

‘Grave professional misconduct’: a violation of applicable laws or regulations or ethical standards of the profession to which a contractor or a related person belongs, including any conduct leading to sexual or other exploitation or abuse, or any wrongful conduct of the contractor or a related person which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence.

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

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

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

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

‘Personnel’: persons employed directly or indirectly or contracted by the contractor to perform the contract;

‘Pre-existing material’: any material, document, technology or know-how which exists prior to the contractor using it for the production of a *result* in the *performance of the contract*;

‘Pre-existing right’: any industrial and intellectual property right on *pre-existing material*; it may consist in a right of ownership, a licence right and/or right of use belonging to the contractor, the *creator*, the contracting authority as well as to any other third parties;

‘Professional conflicting interest’: a situation in which the contractor’s previous or ongoing professional activities affect its capacity to perform the contract to an appropriate quality standard.

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

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

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

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

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

II.3. SEVERABILITY

Each provision of this contract is severable and distinct from the others. If a provision is or becomes illegal, invalid or unenforceable to any extent, it must be severed from the remainder of the contract. This does not affect the legality, validity or enforceability of any other provisions of the contract, which continue in full force and effect. The illegal, invalid or unenforceable provision must be replaced by a legal, valid and enforceable substitute provision which corresponds as closely as possible with the actual intent of the parties under the illegal, invalid or unenforceable provision. The replacement of such a provision must be made in accordance with Article II.11. The contract must be interpreted as if it had contained the substitute provision as from its entry into force.

II.4. PERFORMANCE OF THE CONTRACT

II.4.1 The contractor must provide services of high quality standards, in accordance with the state of the art in the industry and the provisions of this contract, in particular the tender specifications and the terms of its tender. Where the Union has the right to make modifications to the *results*, they must be delivered in a format and with the necessary information which effectively allow such modifications to be made in a convenient manner.

II.4.2 The contractor must comply with the minimum requirements provided for in the tender specifications. This includes compliance with applicable obligations under environmental, social and labour law established by Union law, national law and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU[8] and compliance with data

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

protection obligations resulting from Regulation (EU) 2016/679[9] and Regulation (EU) 2018/1725[10].

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

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

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

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

(a) they may not accept any direct instructions from the contracting authority; and

(b) their participation in providing the services does not result in any employment or contractual relationship with the contracting authority.

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

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

(a) does not have the expertise required to provide the services; or

(b) has caused disruption at the premises of the contracting authority.

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

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[9] 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

[10] Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data 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

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

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

II.5. COMMUNICATION BETWEEN THE PARTIES

II.5.1 Form and means of communication

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

(a) be made in writing in paper or electronic format in the language of the contract;

(b) bear the contract number;

(c) be made using the relevant communication details set out in Article I.8; and

(d) be sent by mail, email or, for the documents specified in the special conditions, via *e-PRIOR*.

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

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

II.5.2 Date of communications by mail and email

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

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

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

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

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

If provided for in the special conditions, the exchange of electronic documents (e-documents) such as invoices between the parties is automated through the use of the *e-PRIOR* platform. This platform provides two possibilities for such exchanges: either through web services (machine-to-machine connection) or through a web application (the *supplier portal*).

The contracting authority takes the necessary measures to implement and maintain electronic systems that enable the *supplier portal* to be used effectively.

In the case of machine-to-machine connection, a direct connection is established between the parties' *back offices*. In this case, the parties take the measures necessary on their side to implement and maintain electronic systems that enable the machine-to-machine connection to be used effectively. The electronic systems are specified in the *interface control document*. The contractor (or leader in the case of a joint tender) must take the necessary technical measures to set up a machine-to-machine connection and at its own cost.

If communication via the *supplier portal* or via the web services (machine-to-machine connection) is hindered by factors beyond the control of one party, it must *notify* the other immediately and the parties must take the necessary measures to restore this communication.

If it is impossible to restore the communication within two working days, one party must *notify* the other that alternative means of communication specified in Article II.5.1 will be used until the *supplier portal* or the machine-to-machine connection is restored.

When a change in the *interface control document* requires adaptations, the contractor (or leader in the case of a joint tender) has up to six months from receipt of the *notification* to implement this change. This period can be shortened by mutual agreement of the parties. This period does not apply to urgent measures required by the security policy of the contracting authority to ensure integrity, confidentiality and non-repudiation of information and the availability of *e-PRIOR*, which must be applied immediately.

II.5.4 Validity and date of e-documents

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.

The parties expressly waive any rights to contest the validity of such a document solely on the grounds that communications between the parties occurred through *e-PRIOR* or that the document has been signed through *e-PRIOR*. If a direct connection is established between the parties' *back offices* to allow electronic transfer of documents, the parties agree that an e-document, sent as mentioned in the *interface control document*, qualifies as an *EDI message*.

If the e-document is dispatched through the *supplier portal*, it is deemed to have been legally issued or sent when the contractor (or leader in the case of a joint tender) is able to successfully submit the e-document without any error messages. The generated PDF and XML document for the e-document are considered as a proof of receipt by the contracting authority.

In the event that an e-document is dispatched using a direct connection established between the parties' *back offices*, the e-document is deemed to have been legally issued or sent when its status is 'received' as defined in the *interface control document*.

When using the *supplier portal*, the contractor (or leader in the case of a joint tender) can download the PDF or XML message for each e-document for one year after submission. After this period, copies of the e-documents are no longer available for automatic download from the *supplier portal*.

II.5.5 Authorised persons in e-PRIOR

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

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

II.6. LIABILITY

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

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

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

II.6.4 If a third party brings any action against the contracting authority in connection with the *performance of the contract*, including any action for alleged breach of intellectual property rights, the contractor must assist the contracting authority in the legal proceedings, including by intervening in support of the contracting authority upon request.

If the contracting authority's liability towards the third party is established and that such liability is caused by the contractor during or as a consequence of the *performance of the contract*, Article II.6.3 applies.

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

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

II.7. CONFLICT OF INTEREST AND PROFESSIONAL CONFLICTING INTERESTS

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

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

The contracting authority may do any of the following:

(a) verify that the contractor's action is appropriate;

(b) require the contractor to take further action within a specified deadline;

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

(a) its *personnel*;

(b) any natural person with the power to represent it or take decisions on its behalf;

(c) third parties involved in the *performance of the contract*, including subcontractors.

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

II.8. CONFIDENTIALITY

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

II.8.2 Each party must:

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

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

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

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

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

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

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

II.8.4 The contractor must obtain from any natural person with the power to represent it or take decisions on its behalf, as well as from third parties involved in the *performance of the contract*, a commitment that they will comply with this Article. At the request of the contracting authority, the contractor must provide a document providing evidence of this commitment.

II.9. PROCESSING OF PERSONAL DATA

II.9.1 Processing of personal data by the contracting authority

Any personal data included in or relating to the contract, including its implementation, shall be processed in accordance with Regulation (EU) 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) 2018/1725, in particular the right to access, rectify or erase their personal data and the right to restrict or, where applicable, the right to object to processing or the right to data portability.

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

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

II.9.2 Processing of personal data by the contractor

The processing of personal data by the contractor shall meet the requirements of Regulation (EU) 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) 2018/1725. The contractor shall inform without delay the controller about such requests.

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

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

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

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

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

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

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

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

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

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

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

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

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

For the purpose of Article II.10, if part or all of the processing of personal data is subcontracted to a third party, the contractor shall pass on the obligations referred to in Articles I.9.2 and II.9.2 in writing to those parties, including subcontractors. At the request of the contracting authority, the contractor shall provide a document providing evidence of this commitment.

II.10. SUBCONTRACTING

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

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

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

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

II.11. AMENDMENTS

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

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

II.12. ASSIGNMENT

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

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

II.13. INTELLECTUAL PROPERTY RIGHTS

II.13.1. Ownership of the rights in the results

The Union acquires irrevocably worldwide ownership of the *results* and of all intellectual property rights on the newly created materials produced specifically for the Union under the contract and incorporated in the *results*, without prejudice however to the rules applying to *pre-existing rights* on *pre-existing materials*, as per Article II.13.2.

The intellectual property rights so acquired include any rights, such as copyright and other intellectual or industrial property rights, to any of the *results* and in all technological solutions and information created or produced by the contractor or by its subcontractor in *in performance of the contract*. The contracting authority may exploit and use the acquired rights as stipulated in this contract. The Union acquires all the rights as from the moment the contractor has created the *results*.

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

II.13.2. Licensing rights on pre-existing materials

Unless provided otherwise in the special conditions, the Union does not acquire ownership of *pre-existing rights* under this contract.

The contractor licenses the *pre-existing rights* on a royalty-free, non-exclusive and irrevocable basis to the Union, which may use the *pre-existing materials* for all the modes of exploitation set out in this contract. Unless otherwise agreed, the licence is non-transferable and cannot be sub-licensed, except as provided hereafter:

(a) the *pre-existing rights* can be sub-licensed by the contracting authority to persons and entities working for it or cooperating with it, including contractors and subcontractors, whether legal or natural persons, but only for the purpose of their mission for the Union;

(b) if the *result* is a "document" such as a report or a study, and it is meant to be published, the existence of *pre-existing materials* in the *result* may not prevent the publication of the document, its translation or its "reuse", it being understood however that the "reuse" may only be made of the *result* as a whole and not of the *pre-existing materials* taken separately from the *result*; for the sake of this provision, "reuse" and "document" have the meaning given by the Commission Decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU).

All *pre-existing rights* are licensed to the Union from the moment the *results* are delivered and approved by the contracting authority.

The licensing of *pre-existing rights* to the Union under this contract covers all territories worldwide and is valid for the duration of intellectual property rights protection.

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

Where *implementation of the contract* requires that the contractor uses *pre-existing materials* belonging to the contracting authority, the contracting authority may request that the contractor signs an adequate licence agreement. Such use by the contractor will not entail any transfer of rights to the contractor and is limited to the needs of this contract.

II.13.3. Exclusive rights

The Union acquires the following exclusive rights:

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

(b) communication to the public: the exclusive right to authorise or prohibit any display, performance or communication to the public, by wire or wireless means, including the making available to the public of the *results* in such a way that members of the public may access them from a place and at a time individually chosen by them; this also includes the communication on Internet and broadcasting by cable or by satellite;

(c) distribution: the exclusive right to authorise or prohibit any form of distribution of *results* or copies of the *results* to the public, by sale or otherwise;

(d) rental: the exclusive right to authorise or prohibit rental or lending of the *results* or of copies of the *results*;

(e) adaptation: the exclusive right to authorise or prohibit any modification of the *results*;

(f) translation: the exclusive right to authorise or prohibit any translation, adaptation, arrangement, creation of derivative works based on the *results*, and any other alteration of the *results*, subject to the respect of moral rights of authors, where applicable;

(g) where the *results* are or include a database: the exclusive right to authorise or prohibit the extraction of all or a substantial part of the contents of the database to another medium by any means or in any form; and the exclusive right to authorise or prohibit the re-utilization of all or a substantial part of the contents of the database by the distribution of copies, by renting, by on-line or other forms of transmission;

(h) where the *results* are or include a patentable subject-matter: the right to register them as a patent and to further exploit such patent to the fullest extent;

(i) where the *results* are or include logos or subject-matter which could be registered as a trademark: the right to register such logo or subject-matter as a trademark and to further exploit and use it;

(j) where the *results* are or include know-how: the right to use such know-how as is necessary to make use of the *results* to the full extent provided for by this contract, and the right to make it available to contractors or subcontractors acting on behalf of the contracting authority, subject to their signing of adequate confidentiality undertakings where necessary;

(k) where the *results* are documents:

    (i) the right to authorise the reuse of the documents in conformity with the Commission Decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU), to the extent it is applicable and the documents fall within its scope and are not excluded by any of its provisions; for the sake of this provision, “reuse” and “document” have the meaning given to them by this Decision;

    (ii) the right to store and archive the *results* in line with the document management rules applicable to the contracting authority, including digitisation or converting the format for preservation or new use purposes;

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

    (i) end-user rights, for all uses by the Union or by subcontractors which result from this contract and from the intention of the parties;

    (ii) the rights to receive both the source code and the object code;

(m) the right to license to third parties any of the exclusive rights or of the modes of exploitation set out in this contract; however, for *pre-existing materials* which are only licensed to the Union, the right to sub-license does not apply, except in the two cases foreseen by Article II.13.2.;

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

The contractor warrants that the exclusive rights and the modes of exploitation may be exercised by the Union on all parts of the *results*, be it via a transfer of ownership of the rights, on those parts which were specifically created by the contractor, or via a licence of the pre-existing rights, on those parts consisting of *pre-existing materials*.

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

II.13.4. Identification of pre-existing rights

When delivering the *results*, the contractor must warrant that, for any use that the contracting authority may envisage within the limits set in this contract, the newly created parts and the *pre-existing material* incorporated in the *results* are free of claims from *creators* or from any third parties and all the necessary *pre-existing rights* have been obtained or licensed.

To that effect, the contractor must establish a list of all *pre-existing rights* to the *results* of this contract or parts thereof, including identification of the rights' owners. If there are no *pre-existing rights* to the *results*, the contractor must provide a declaration to that effect. The contractor must provide this list or declaration to the contracting authority together with the invoice for payment of the balance at the latest.

II.13.5. Evidence of granting of pre-existing rights

Upon request by the contracting authority, the contractor must, in addition to the list mentioned under Article II.13.4., provide evidence that it has the ownership or the right to use all the listed *pre-existing rights*, except for the rights owned or licensed by the Union. The contracting authority may request this evidence even after the end of this contract.

This provision also applies to image rights and sound recordings.

This evidence may refer, for example, to rights to: parts of other documents, images, graphs, sounds, music, tables, data, software, technical inventions, know-how, IT development tools, routines, subroutines or other programs ('background technology'), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin.

This evidence must include, as appropriate:

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

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

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

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

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

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

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

II.13.6. Quotation of works in the result

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

II.13.7. Moral rights of creators

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

(a) that their names be mentioned or not mentioned when the *results* are presented to the public;

(b) that the *results* be divulged or not after they have been delivered in their final version to the contracting authority;

(c) that the *results* be adapted, provided that this is done in a manner which is not prejudicial to the *creator*'s honour or reputation.

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

II.13.8. Image rights and sound recordings

If natural persons appear in a *result* or their voice or any other private element is recorded in a recognisable manner, the contractor must obtain a statement by these persons (or, in the case of minors, by the persons exercising parental authority) giving their permission for the described use of their image, voice or private element and, on request, submit a copy of the

permission to the contracting authority. The contractor must take the necessary measures to obtain such consent in accordance with the applicable legal provisions.

II.13.9. Copyright notice for pre-existing rights

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

II.13.10. Visibility of Union funding and disclaimer

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

II.14. FORCE MAJEURE

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

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

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

II.15. LIQUIDATED DAMAGES

II.15.1. Delay in delivery

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

0.3 x (*V/d)*

where

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

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

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

II.15.2. Procedure

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

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

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

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

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

II.15.3. Nature of liquidated damages

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

II.15.4. Claims and liability

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

II.16. REDUCTION IN PRICE

II.16.1. Quality standards

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

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

II.16.2. Procedure

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

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

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

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

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

II.16.3. Claims and liability

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

II.17. SUSPENSION OF THE PERFORMANCE OF THE CONTRACT

II.17.1. Suspension by the contractor

If the contractor is affected by *force majeure*, it may suspend the *performance of the contract*. The contractor must immediately *notify* the contracting authority of the suspension. The *notification* must include a description of the *force majeure* and state when the contractor expects to resume the *performance of the contract*.

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

II.17.2. Suspension by the contracting authority

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

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

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

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

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

(a) it is lifting the suspension; or

(b) it intends to terminate the contract under Article II.18.1(f) or (j).

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

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

II.18. TERMINATION OF THE CONTRACT

II.18.1. Grounds for termination by the contracting authority

The contracting authority may terminate the contract in the following circumstances:

(a) if provision of the services under the contract has not actually started within 15 days of the scheduled date and the contracting authority considers that the new date proposed, if any, unacceptable, taking into account Article II.11.2;

(b) if the contractor is unable, through its own fault, to obtain any permit or licence required for *performance of the contract*;

(c) if the contractor does not perform the contract in accordance with the tender specifications or is in breach of another substantial contractual obligation (including the Code of Conduct).

(d) if the contractor or any person that assumes unlimited liability for the debts of the contractor is in one of the situations provided for in points (a) and (b) of Article 136(1) of the Financial Regulation[11];

(e) if the contractor or any *related person* is in one of the situations provided for in points (c) to (h) of Article 136(1) or to Article 136(2) of the Financial Regulation.

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

(g) if the contractor does not comply with applicable obligations under environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;

(h) if the contractor is in a situation that could constitute a *conflict of interest* or a *professional conflicting interest* as referred to in Article II.7;

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[11] Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, OJ L 193 of 30.7.2018, p.1 https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1544791836334&uri=CELEX:32018R1046

(i) if a change to the contractor's legal, financial, technical, organisational or ownership situation is likely to substantially affect the *performance of the contract* or substantially modify the conditions under which the contract was initially awarded, or a change regarding the exclusion situations listed in Art 136 of Regulation (EU) 2018/1046 that calls into question the decision to award the contract;

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

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

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

II.18.2. Grounds for termination by the contractor

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

II.18.3. Procedure for termination

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

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

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

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

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

In addition, at the request of the contracting authority and regardless of the grounds for termination, the contractor must provide all necessary assistance, including information, documents and files, to allow the contracting authority to complete, continue or transfer the services to a new contractor or internally, without interruption or adverse effect on the quality or continuity of the services. The parties may agree to draw up a transition plan detailing the contractor's assistance unless such plan is already detailed in other contractual documents or

in the tender specifications. The contractor must provide such assistance at no additional cost, except if it can demonstrate that it requires substantial additional resources or means, in which case it must provide an estimate of the costs involved and the parties will negotiate an arrangement in good faith.

II.18.4. Effects of termination

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

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

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

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

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

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

II.19.1. Invoices and value added tax

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

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

The contracting authority is exempt from all taxes and duties, including VAT, in accordance with Articles 3 and 4 of the Protocol 7 of the Treaty on the Functioning of the European Union on the privileges and immunities of the European Union.

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

II.19.2. E-invoicing

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

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

II.20. YEARLY PRICE REVISION

For the purposes of the exception foreseen in Article I.4.2, the provisions set out in this Article apply.

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

In the second year and every following year of the contract, each price may be revised upwards or downwards according to the provisions set out below.

II.20.1. Date of effect of the yearly price revisions

For a Direct Contract signed in month M of calendar year N, the first price revision shall be calculated as set out below during year N+1 and become applicable on the 1st of M+4.

However, exception is made if the index, as indicated below, is 5% lower or higher compared to the index of the previous year, then each party to this contract has the right to request price revision. In that case, price revision is determined by the formula set out in Article II.20 and using the trend in the index "Harmonised Indices of Consumer Prices (HICP) (prc_hicp)", under "First published data (prc_hicp_fp)", published on Eurostat's official website. The index to be used is the one corresponding to EU-27, using the classification "All-items HICP" and the latest base year (currently: Index, 2015=100).

II.20.2. Procedure for calculating the yearly price revision

Within 30 calendar days from the anniversary date of contract signature, the contractor may send to the contracting authority a written notification requesting the application of the yearly price revision and indicating the % difference between the applicable index of the current year as compared to the applicable index of the previous year as set out in Article I.4.2.

The contracting authority has 30 days following the date of receipt of the contractor's notification sent pursuant to paragraph 1 to send to the contractor an initial written notification informing the latter about the result of the calculation of the yearly price revision.

The contractor has 30 days following the date of receipt of the contracting authority's notification sent pursuant to paragraph 2 to submit observations against the result of the calculation made by the contracting authority. In absence thereof, the initial written notification sent by the contracting authority shall acquire the status of an amendment with

full legal effect and enters into force the day after the time limit for submitting observations has elapsed.

Should the contractor formulate any observations on the correctness of the calculation made pursuant to paragraph 2 above within the deadline set out in paragraph 3 above, the contracting authority shall carefully and expediently consider them.

Following this assessment, the contracting authority shall send to the contractor, within one month from the receipt of contractor's letter, a final written notification including the result of the calculation of the yearly price revision. If applicable, this letter should state the reasons having led to the rejection of the observations put forward by the contractor.

The final written notification sent by the contracting authority shall immediately enter into force and acquire the status of an amendment with full legal effect, but the contractor shall be free to seek appropriate remedies.

Should the contractor fail to initiate the procedure as set out above, the contracting authority may, within 60 calendar days of the anniversary of contract signature, may initiate the procedure for the calculation of the yearly price revision by sending to the contractor an initial written notification informing the latter about the result of the calculation of the yearly price revision. Paragraphs 3, 4, 5 and 6 above shall apply thereafter.

Should the contractor not act as provided for in paragraph 1 above, nor the contracting authority as provided for in paragraph 7, the yearly price revision shall not apply for the relevant yearly period.

II.20.3. Formula for the yearly price revisions

The yearly price revisions shall be calculated using the following formula:

$Pr = Po \times Ir/Io$

where:

Pr = Revised price

Po = Original price in the tender

Ir = Index for the month of May of the year in which the yearly price revision is calculated

Io = Index for the month in which the Direct Contract entered into force

the quotient of Ir/Io is rounded to the fourth decimal.

II.20.4. Indices to be used for the yearly price revisions

For services: As regards Services, the revision shall be based on the trend in the index "Harmonised Indices of Consumer Prices (HICP all items)", under "First Published Data (prc_hicp_fp)", published on Eurostat's official website. The index to be used is the one corresponding to EU-27, using the classification "All-items HICP" and the latest base year (currently: Index, 2015=100).

In case of a change in the base year of an index, the values of Io and Ir shall be adapted accordingly on the basis of the official figures published by Eurostat using the latest base year.

Should Eurostat cease to publish any of the indices referred to above, the contracting authority shall —at the contractor's request and as part of the procedure set out in paragraph II.20.2 above— provide the most similar index which is available, providing reasons for its choice.

II.21. PAYMENTS AND GUARANTEES

II.21.1. Date of payment

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

II.21.2. Currency

Payments are made in euros, unless another currency is provided for in Article I.7.

II.21.3. Conversion

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

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

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

II.21.4. Costs of transfer

The costs of the transfer are borne as follows:

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

(b) the contractor bears the costs of receipt charged by its bank;

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

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

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

(a) the financial guarantee is provided by a bank or a financial institution approved by the contracting authority or, at the request of the contractor and with the agreement of the contracting authority, by a third party; and

(b) the guarantee shall have the effect of making the bank or financial institution or the third party provide irrevocable collateral security, or stand as first-call guarantor of the contractor's obligations without requiring that the contracting authority has recourse against the principal debtor (the contractor).

The contractor bears the cost of providing such guarantee.

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

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

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

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

II.21.6. Interim payments and payment of the balance

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

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

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

Payment of the balance may take the form of recovery.

II.21.7. Suspension of the time allowed for payment

The contracting authority may suspend the payment periods specified in Article I.5 at any time by *notifying* the contractor (or leader in the case of a joint tender) that its invoice cannot

be processed. The reasons the contracting authority may cite for not being able to process an invoice are:

(a) because it does not comply with the contract;

(b) because the contractor has not produced the appropriate documents or deliverables; or

(c) because the contracting authority has observations on the documents or deliverables submitted with the invoice.

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

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

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

II.21.8. Interest on late payment

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

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

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

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

II.22. REIMBURSEMENTS

II.22.1 If provided for in the special conditions or in the tender specifications, the contracting authority must reimburse expenses directly connected with the provision of the services either when the contractor provides it with supporting documents or on the basis of flat rates.

II.22.2 The contracting authority reimburses travel and subsistence expenses on the basis of the shortest itinerary and the minimum number of nights necessary for overnight stay at the destination.

II.22.3 The contracting authority reimburses travel expenses as follows:

(a) travel by air: up to the maximum cost of an economy class ticket at the time of the reservation;

(b) travel by boat or rail: up to the maximum cost of a first class ticket;

(c) travel by car: at the rate of one first class rail ticket for the same journey and on the same day;

In addition, the contracting authority reimburses travel outside Union territory if it has given its prior written approval for the expenses.

II.22.4 The contracting authority reimburses subsistence expenses on the basis of a daily subsistence allowance as follows:

(a) for journeys of less than 200 km for a return trip, no subsistence allowance is payable;

(b) the daily subsistence allowance is payable only on receipt of supporting documents proving that the person concerned was present at the destination;

(c) the daily subsistence allowance takes the form of a flat-rate payment to cover all subsistence expenses, including meals, local transport including transport to and from the airport or station, insurance and sundries;

(d) the daily subsistence allowance is reimbursed at the flat rates specified in Article I.4.3;

(e) accommodation is reimbursed on receipt of supporting documents proving the necessary overnight stay at the destination, up to the flat-rate ceilings specified in Article I.4.3.

II.22.5 The contracting authority reimburses the cost of shipment of equipment or unaccompanied luggage if it has given prior written approval for the expense.

II.23. RECOVERY

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

II.23.2. Recovery procedure

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

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

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

(a) by offsetting them against any amounts owed to the contractor by the Union or by the European Atomic Energy Community or by an executive agency when it implements the Union budget;

(b) by calling in a financial guarantee if the contractor has submitted one to the contracting authority;

(c) by taking legal action.

II.23.3. Interest on late payment

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

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

II.23.4. Recovery rules in the case of joint tender

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

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

II.24. CHECKS AND AUDITS

II.24.1 The Contracting authority and/or the European Anti-Fraud Office (OLAF) may check or require an audit on the performance of the contract themselves, or authorise any outside body to do so on their behalf.

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

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

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

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

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

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

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

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

II.24.6 The Court of Auditors and the European Public Prosecutor's Office established by Council Regulation (EU) 2017/1939[12] ('the EPPO') have the same rights as the contracting authority, particularly right of access, for the purpose of checks, audits and investigations.

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