

**GENERAL TERMS AND CONDITIONS (GTC)  
APPLICABLE TO SUPPLIES, SERVICES AND/OR WORKS  
CONTRACTS  
WITH THE EUROPEAN UNION INTELLECTUAL PROPERTY OFFICE  
(the Office)**

**June 2020**

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## Article II.1 — Definitions

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

- **Authorised persons:** persons with access to the system (e-PRIOR), according to the requirements laid down in Article 148 of 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, and who must be identified by the system via established means (authenticated user of the European Commission Authentication System (ECAS)).
- **Authorised representative:** any person who is duly appointed to represent the Contractor (or to take decisions on its behalf).
- **Confidential information or documents:** any information or document – that is not publicly available – identified in writing as confidential by any of the Parties and received by the other Party in the context of the implementation of the Contract.
- **Conflict of interests:** a situation in which the impartial and objective performance of the Contract is compromised for reasons involving family, emotional life, political or national affinity, economic interest, or any other shared interest with the Office or any third party related to the subject matter of the Contract.
- **Contract:** a direct or framework contract (FWC) for supplies, services and/or works, as specified in the title of the Contract.
- **Contractor:** entity signing the Contract with the Office.
- **Creator:** any natural person who contributes to the production of the result.
- **Days:** unless otherwise specified, working days, according to the Office calendar.
- **Electronic Data Interchange (EDI):** the electronic transfer, from computer to computer, of commercial and administrative data using an agreed standard to structure a message.
- **EDI message:** an electronic document structured by using an agreed standard, prepared in a computer-readable format and capable of being automatically and unambiguously processed.
- **e-Ordering User Manual:** document that explains to Contractors how to use the e-Ordering module of the supplier portal.
- **e-PRIOR:** the service-oriented communication platform that provides a series of web services and allows the exchange of standardised electronic messages and documents between the Parties. This is done either through web services, with a machine-to-machine connection between the Parties' back office systems (EDI messages), or through a web application (the supplier portal). The platform may be used to exchange electronic documents (e-documents), such as electronic requests for services, electronic specific contracts, electronic acceptance of services and electronic invoices between the Parties.
- **Force majeure:** any unforeseeable, exceptional situation or event beyond the control of the Parties that prevents either of them from fulfilling any of their obligations under the Contract. The situation or event must not be attributable to error or negligence on

the part of the Parties or on the part of subcontractors and must prove to be inevitable despite their exercising due diligence. Defaults of service, defects in equipment or material or delays in making them available, labour disputes, strikes and financial difficulties may not be invoked as *force majeure*, unless they stem directly from a relevant case of *force majeure*.

- **Formal notification** (or **formally notify**): form of communication between the Parties made in writing by mail or email, which provides the sender with compelling evidence that the message was delivered to the specified recipient.
- **Fraud**: any intentional act or omission affecting the EU's financial interests relating to the use or presentation of false, incorrect or incomplete statements or documents or to the non-disclosure of information in violation of a specific obligation.
- **Implementation of the Contract**: the performance by the Contractor of tasks and/or the delivery of supplies, services and/or works contracted by the Office in pursuance of the Contract which these General Terms and Conditions make reference to.
- **Interface control document**: the guideline document which lays down the technical specifications, message standards, security standards, checks of syntax and semantics, etc. to facilitate machine-to-machine (system-to-system) connection. This document is updated on a regular basis.
- **Irregularity**: any infringement of a provision of EU law resulting from an act or omission by an economic operator, which has or would have, the effect of prejudicing the EU's and/or the Office's budget.
- **Notification** (or **notify**): form of communication between the Parties made in writing including by electronic means.
- **Office**: the Contracting authority.
- **On-site personnel**: the Contractor's personnel who are granted access to the Office's premises for a short- or long-term period to implement a contract.
- **Personnel and/or external resources**: persons employed directly or indirectly or contracted by the Contractor to implement the Contract.
- **Order**: electronic document equivalent to a specific contract or purchase order, by which the Office requests, by electronic means, the provision of services or goods under the conditions and at the prices previously quoted by the Contractor. The order must be signed electronically by the Contractor and returned to the Office for signature.
- **Pre-existing material**: any material, document, technology or know-how which existed prior to the Contractor using it in the implementation of the Contract.
- **Pre-existing right**: any intellectual property right on pre-existing material; it may consist of a right of ownership, a licence right and/or right of use belonging to the Contractor, the creator, the Office or any other third parties.
- **Professional conflicting interest**: a situation in which the Contractor's previous or ongoing professional activities affect its capacity to implement the Contract or to perform a specific contract to an appropriate quality standard.

- **Purchase order:** a simplified version of a direct or specific contract by which the Office orders supplies, services and/or works.
- **Result:** any intended outcome of the implementation of the Contract, whatever its form or nature, which is produced by the Contractor and finally or partially approved by the Office. A result may be further defined in this Contract as a deliverable. A result may, in addition to materials produced by the Contractor or at its request, also include pre-existing materials.
- **Specific contract:** a contract specifying details of a particular purchase based on the Framework Contract.
- **Substantial error:** any infringement of a contract provision resulting from an act or omission, which causes or might cause a loss to the EU's and/or the Office's budget.
- **Supplier or Contractor:** a legal or natural person providing goods or services to the Office and exchanging the relevant electronic documents (listed in the definition of e-PRIOR) with the Office.
- **Supplier Portal:** the e-PRIOR portal, hosted by the European Commission, which allows the Parties to exchange electronic business documents, such as orders and invoices, through a graphical user interface. When necessary, these documents may be signed electronically by the authorised persons.
- **Tasks:** delivery of supplies and/or provision of services and/or works, as specified in the Tender Specifications or request for offer (RfO).

## Article II.2 — Joint tenders

For joint tenders submitted by a group of economic operators and in which the group does not have legal personality or legal capacity, one member of the group is appointed as the leader.

## Article II.3 — Legal personality of the Contractor

- II.3.1 Any change in the legal personality of the Contractor, whether due to a merger, takeover, acquisition or any other cause, must be communicated immediately in writing to the Office.
- II.3.2 If required by the Office, the Contractor must provide without unjustified delay a new Legal Entity and Financial Identification Form, duly completed and signed.

## Article II.4 — 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 of the 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 to 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.14. The Contract must be interpreted as if it had contained the substitute provision since its entry into force.

## **Article II.5 — Performance and implementation of the Contract**

- II.5.1 For FWCs, the signature of the Contract does not guarantee any actual purchase. The Office is only bound by specific contracts implementing the Contract.
- II.5.2 The Contractor must perform the contract to the highest professional standards, according to the state of the art in the industry and the provisions of the Contract, in particular, the Tender Specifications and the terms of its tender.
- II.5.3 The Contractor must comply with the minimum requirements provided for in the Contract, in particular, the technical specifications or RfO.
- II.5.4 In addition, the Contractor must comply with the applicable environmental, social and labour law obligations established by Union law, national legislation, collective agreements or the applicable international social and environmental conventions listed in Annex X to Directive 2014/24/EU<sup>(1)</sup>, as well as with the data protection obligations resulting from Regulation (EU) 2016/679<sup>(2)</sup> and Regulation (EU) 2018/1725<sup>(3)</sup>.
- II.5.5 The Contractor is solely responsible for obtaining any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the tasks assigned to it are to be carried out.
- II.5.6 The Contractor must not present itself as a representative of the Office nor behave in any way that would give this impression; and must inform third parties that it is not part of the European public service. The Contractor may not use the name, logo or image of the Office without the Office's prior consent.
- II.5.7 The Contractor must ensure that the personnel performing the Contract, and any future replacement personnel, possess the professional qualifications and experience required to carry out the tasks assigned to them, and, if necessary, based on the selection criteria set out in the Tender Specifications.
- II.5.8 The Contractor has sole responsibility for the personnel who implement the tasks assigned to them and exercises its authority over its personnel without interference from the Office. The Contractor must inform its personnel that:
  - (a) they may not accept any direct instructions from the Office; and
  - (b) the Office must not, under any circumstance, be considered as the employer of the personnel referred to in point (a) and said personnel must undertake not to invoke against the Office any right arising from the contractual relationship between the Office and the Contractor.

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<sup>(1)</sup> OJ L 94 of 28.03.2014, p. 65

<sup>(2)</sup> 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](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.119.01.0001.01.ENG)

<sup>(3)</sup> Regulation (EU) 2018/1725 of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295/39, 21.11.2018,  
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1725&from=EN>

- II.5.9 If a disruption results from the action of one of the Contractor's personnel working on Office premises, or the expertise of a member of the Contractor's personnel fails to correspond to the profile required by the Contract, or if their behaviour is not adequate to the standards, ethics and integrity of the Office, the Contractor must replace him/her without delay. The Office has the right to make a reasoned request for the replacement of any such personnel. The replacement personnel must have the necessary qualifications and be capable of performing the Contract under the same contractual conditions. The Contractor must bear the cost of replacing its personnel and is responsible for any delay in the implementation of the tasks assigned to it resulting from the replacement of personnel.

If the Contractor's personnel work on the Office's premises, the Contractor is required, at the Office's request, to replace immediately and without compensation any person considered by the Office to be a *persona non grata*.

- II.5.10 Should any unforeseen event, action or omission directly or indirectly hamper the implementation of the tasks, either partially or wholly, the Contractor must immediately and on its own initiative record it and report it to the Office. The report must include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with its obligations under the Contract. In such an event, the Contractor must give priority to solving the problem rather than to determining liability.

- II.5.11 Should the Contractor fail to perform its obligations under the Contract, the Office may – without prejudice to its right to terminate the Contract or Purchase Order or Specific Contract – reduce or recover payments in proportion to the scale of the unperformed obligations. In addition, the Office may claim compensation or impose liquidated damages provided for in Article II.17.

- II.5.12 The Office operates an External Resource Management System (ERMS) to support and promote the optimal use of external resources at the Office and to provide valuable input for the Office's sourcing decision-making process. It covers, besides other measures, the evaluation of contracts (framework or direct) during their lifetime and particularly, the periodic evaluation of the pluriannual contracts as well as the *ex post* evaluation and review of the Contract, including lessons learned and recommendations for the future.

- II.5.13 Use of existing software s

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

- inform the Office about this software explicitly before the conclusion of (specific) contracts;
- indicate whether the use thereof by the Office gives rise to the payment of development or user licences, and, if so, provide an estimate of the cost;
- specify whether the use thereof by third parties (for example, the Member States or other institutions) would give rise to the payment of development or user licences.

The Office must give its agreement to the use of such software



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

## Article II.6 — Integrated management systems

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

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

- Management standards in quality (ISO 9001);
- Environmental management standards — the eco-management and audit scheme (EMAS) (EC Regulation No 1221/2009 of the European Parliament and of the Council of 25 November 2009);
- Management standards in information security (ISO/IEC 27001);
- Management standards in occupational health and safety (ISO 45001);
- Management standards in universal accessibility (UNE 170001);
- Carbon footprint verification following the Greenhouse Gas Protocol / UNE-EN-ISO 14064 / OEF Method;
- Management standards in complaints and claims management systems (ISO 10002).

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

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

## Article II.7 — Benchmarking

If the Special Conditions envisage benchmarking, the following Article applies.

**Benchmarking procedure** — benchmarking is an assessment process carried out by a qualified and objective third party which tests, evaluates and measures the performance of the Contractor by comparison to similar services or products provided by other companies; and/or analyses the change in the relation between the prices laid down in the Contract and the market prices for similar or equivalent items ('the benchmarking').

The Office may undertake the benchmarking of the levels and the charges of the supplies and/or services provided under this Contract by comparison to similar or equivalent supplies

and/or services provided by outsourcing vendors and/or in-house service providers and suppliers. The result of this benchmarking is available in identical form to both the Office and the Contractor.

To guarantee that a valid comparison is made, the Office will ensure that:

- the scope of the supplies and/or services being provided by the Contractor is taken into consideration;
- the comparison group consists of at least four enterprises to ensure statistical significance;
- the relevant comparison data must be guaranteed.

The benchmarking must not exceed 4 months.

For the first benchmarking exercise, the comparison group is defined in a document entitled 'Comparison Group Definition'. The Office reserves the right to change the comparison group algorithm from time to time to reflect any changes in its business.

The independent third party carrying out the benchmarking exercise (the benchmarker) must be a qualified and objective third party selected by the Office through an appropriate market procedure. The Office must pay all of its own costs and the benchmarker's costs during the benchmarking exercise. The Contractor must pay all of its own costs related to the benchmarking exercise. Interpretation of the results of the benchmarking exercise must be the sole prerogative of the benchmarker.

The Office and the Contractor must set aside sufficient time and resources for each stage of the benchmarking exercise, such as:

- identification and location of benchmarking data;
- performing the benchmarking exercise;
- implementation of the benchmarker's conclusions.

The Office and the Contractor will be free to suggest changes in benchmarking parameters as the supplies and/or services evolve over the term of this Contract.

The benchmarker must, in accordance with Article II.11, treat all data provided by the Office and the Contractor as confidential, and must return all material and media once the benchmarking exercise is completed.

If a benchmarking exercise reveals that the level of a supply and/or service does not reach the comparison group's product quality levels, the Contractor must immediately propose a supply and/or service similar or equivalent to the comparison group's level, as specified by the benchmarker.

If a benchmarking exercise reveals that charges are higher than the comparison group's charges, the Contractor must immediately reduce its charges to the comparison group level specified by the benchmarker, with effect from the date on which the results of the benchmarking exercise were delivered to the Parties.

If the Contractor has not proposed a similar or equivalent supply and/or service or reduced the price in line with the benchmarker's specification, the Office may consider that the Contractor is failing to implement the Contract and decide not to use it. The Office may take appropriate measures to terminate the Contract in accordance with Article II.19.1(c). In this case, the Office will send a written notification to the Contractor. The Office is not required to pay compensation.

As a derogation from Article II.11, for the purposes of any benchmarking exercise, and to the extent necessary, the Office is entitled to disclose information or documents to the third-party benchmarker.

## **Article II.8 — Means of communication**

II.8.1 Any communication relating to the Contract or to its performance must:

- (a) be made in writing on paper or in electronic format in the language of the Contract;
- (b) bear the contract number and, if applicable, the Specific Contract or Purchase Order number;
- (c) be made using the relevant communication details set out in Article I.8 of the Special Conditions or to any other address previously agreed by both Parties;
- (d) be sent by mail, email or by any other electronic or digital form mutually recognised and accepted by the Parties or, for the documents specified (where applicable) in the Special Conditions, via e-PRIOR.

II.8.2 Any communication is deemed to have been made when the addressee receives it, unless this Contract refers to the date when the communication was sent.

Email is deemed to have been received by the addressee on the day of dispatch of that email, provided that it is sent to the email address indicated in Article I.8 of the Special Conditions or agreed in writing by both Parties. The sending Party must be able to prove the date of dispatch. If the sender receives a non-delivery report or an automatic message of absence from the addressee, it must make every effort to ensure that the other Party actually receives the communication by email or mail. In these cases, the sender will not be held in breach of its obligation to send such communications within a specified deadline.

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

The paragraph above does not apply to transactions that have been fully managed digitally or electronically, such as the use of e-ordering or electronic signatures.

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

The Parties may agree in writing on the documents that may be exchanged via email or other digital and electronic means.

II.8.3 Mail sent is deemed to have been received by the Office on the date on which it is registered by the department responsible.

II.8.4 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 addressee.

## II.8.5 Submission of e-documents via e-PRIOR

If provided for in the Special Conditions, the exchange of electronic documents (e-documents) such as requests for offers, specific contracts, purchase orders and invoices between the Parties is automated through the use of the e-PRIOR platform. This platform provides two possibilities for these exchanges: either through web services (machine-to-machine connection) or through a web application (the supplier portal).

The Parties agree that, from the entry into force of the Contract and upon the Office's activation request, the Contractor will use the European Commission's supplier portal for communication in the following areas:

- ordering (i.e. receiving the draft specific contract/purchase order, signing it and sending it back to the Office);
- invoicing.

The Parties hereby agree that any data, order and related confirmation and acknowledgement messages exchanged through the supplier portal after the entry into force of the Contract will constitute a real transaction and will have full legal effect. If there is a discrepancy between the data exchanged via the attached pdf documents and the e-order XML, the data in the pdf documents will prevail.

The Office and the European Commission undertake to take the necessary measures to implement and maintain electronic systems that enable the effective use of the supplier portal.

For machine-to-machine connections, 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 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 the Parties, the Parties undertake to notify each other immediately and to take the necessary measures to restore this communication.

If it is impossible to restore communication via the supplier portal within a reasonable period of time, the Office may notify the Contractor that alternative means of communication will be used until the supplier portal or the machine-to-machine connection is restored.

Regarding the use of the supplier portal for e-ordering, for reasons linked to business continuity, the Office reserves the right to use alternative means of communication at any moment.

When a change in the interface control document requires adaptations, the Contractor (or leader, in the case of a joint tender) has up to 6 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 Office's security policy to ensure the integrity, confidentiality and non-repudiation of information and the availability of e-PRIOR, which must be applied immediately.

The Office may terminate the use of e-ordering subject to a notice period of at least 1 month. Notice will be given in writing and will mention the date on which the use of e-ordering is terminated. The notice will specify the reasons for termination.

The Contractor may request that the Office terminate its use of e-ordering by written communication. It must indicate the reasons for this request. The Office will assess the situation and, if considered appropriate, it may terminate the use of e-ordering.

Termination of the use of e-ordering must exclusively concern transactions performed after the date of termination. Its termination will not release the Parties from the obligations that result from earlier e-order transactions.

#### **II.8.6 Validity, acceptance and date of e-documents**

Any electronic document (e-document) and related attachments exchanged via e-PRIOR qualify as an EDI message.

The Parties agree that any e-document, including related attachments exchanged via e-PRIOR:

- (a) is considered equivalent to a paper document;
- (b) is deemed 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;
- (d) constitutes evidence of the information contained in it and is admissible as evidence in judicial proceedings.

This is provided that it does not contain any dynamic features capable of automatically modifying it.

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 the 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 PDF and XML documents generated for the e-document are considered as proof of receipt by the Office.

If 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 1 year after submission. When using e-ordering, the Contractor must, for each electronic order, download the relevant PDF message for each e-document within 1 year of submission and store them securely. After this period, copies of the e-documents are no longer available for automatic download from the supplier portal.

An order is only regarded as a valid transaction once the following steps have been completed:

- a) the order message has been successfully received by the Contractor (all documents listed in the index sent by the Office have been transmitted successfully to the Contractor);
- b) a positive and related order confirmation message has been successfully sent from the Contractor to the Office (equivalent to the Contractor's signature);
- c) a final message endorsing the order has been sent by the Office to the Contractor and successfully received (equivalent to the Office's signature).

To the extent permitted by the applicable law, the Parties agree that in the event of dispute, the e-documents (including, in the case of using web services, the records of the EDI messages maintained according to the terms and conditions of the e-ordering agreement), will be admissible before the Courts and will constitute evidence of the facts contained therein unless evidence to the contrary is adduced.

#### **II.8.7 Authorised persons in e-PRIOR**

The Contractor's legal representative must designate one or more authorised person(s) for the e-Invoicing and/or e-Ordering module of e-PRIOR. These persons are authorised to access the system and, depending on the assigned roles, may consult, sign or submit documents through it.

Upon request from the Office, the European Commission will grant system access to the authorised person(s) designated by the Contractor, provided the latter furnishes the Office with a list of the authorised person(s) indicating their assigned roles for each module. The list must be drawn up using the relevant access rights forms and submitting copies of the respective proxies/official authorisation documents.

The Contractor must submit a request for each person who needs to be assigned the role of 'user' in e-PRIOR. These persons are identified using 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 Office has assigned to them.

The user roles enabling e-PRIOR-authorised persons to sign legally binding documents, such as specific tenders or specific contracts and purchase orders, are only granted upon the submission of supporting documents proving that the authorised person is empowered to act as the Contractor's legal representative.

For the e-Ordering module, the Contractor commits to appointing one or more authorised person(s) as signatory(-ies) who is (are) authorised to represent the Contractor alone. No co-signature is allowed. If the Contractor wishes to opt for co-signature, the Office may decide not to activate e-ordering.

The Contractor's legal representative commits to notifying the Office of any event affecting the list of authorised person(s) in due time.

#### **II.8.8 E-signature**

The Parties may agree, by exchange of letters, before or during the implementation of the Contract, to accept digitally signed documents. In the exchange of letters, the Parties must identify the agreed e-signature system they will use and the documents that would be acceptable if e-signed using that system.

## **Article II.9 — Liability**

- II.9.1 The Contractor is the sole responsible for complying with the legal obligations incumbent on it. In particular, where the Contract is to be implemented on Spanish territory, the Contractor must ensure compliance with the relevant provisions of Spanish legislation concerning health and safety in the workplace and the rights of workers.
- II.9.2 The Office is not liable for any loss or damage caused by the Contractor, including any damage caused by the Contractor to third parties, during, or as a consequence of, performance of the Contract.
- II.9.3 The Contractor must take out an insurance policy against risks and damage or loss relating to the performance of the Contract, if required by the relevant applicable legislation or requested in the Call for Tenders. It must 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 Office.
- II.9.4 The Contractor is liable for any loss or damage caused to the Office during, or as a consequence of, implementation of the Contract, even if subcontracting, but only up to an amount not exceeding three times the total amount of the Contract or, where applicable, of the relevant Purchase Order or Specific Contract.

Nevertheless, if the damage or loss is caused by the gross negligence or wilful misconduct of the Contractor or of its personnel or subcontractors, the Contractor is liable for the whole amount of the damage or loss.

- II.9.5 The Contractor must indemnify and hold the Office harmless for all damages and costs incurred due to any claim. The Contractor must provide compensation in the event of any action, claim or proceeding brought against the Office by a third party as a result of damage caused by the Contractor during the performance of the Contract.
- II.9.6 If action is brought by a third party against the Office in connection with the performance of the Contract, including any alleged breach of intellectual property rights, the Contractor must assist the Office in the legal proceedings, including by intervening in support of the Office upon request. If the Office's liability towards the third party is established and that liability is caused by the Contractor during, or as a consequence of, the implementation of the Contract, Article II.9.4 applies.
- II.9.7 If the Contractor is composed of two or more economic operators who submitted a joint tender, they are all jointly and severally liable to the Office for the implementation of the Contract.

## **Article II.10 — Conflict of interests and professional conflicting interests**

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

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

The Office may do any of the following:

- (a) verify that the Contractor's action is appropriate;
- (b) require the Contractor to take further action within a specified deadline;
- (c) decide not to award a specific contract to the Contractor.

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 implementation 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 a conflict of interests.

A copy of the instructions given, and the undertakings made in this respect, must be provided to the Office, if requested.

II.10.2 Without prejudice to Article II.5, the Contractor must immediately and without compensation from the Office, replace any member of its personnel placed in a situation which could give rise to a conflict of interests or a professional conflicting interest.

II.10.3 The Contractor declares that it has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, where such an advantage constitutes an illegal practice or involves corruption, either directly or indirectly, inasmuch as it is an incentive or reward relating to the performance of the Contract.

## **Article II.11 — Confidentiality**

II.11.1 The Office and the Contractor must treat with confidentiality any information and documents, in any form (disclosed in writing or orally) in relation to the performance of the Contract, and identified in writing as confidential.

II.11.2 Each Party must:

- (a) not use confidential information or documents for any purpose other than to fulfil its obligations under the Contract without the prior written agreement of the other Party;
- (b) ensure the protection of any confidential information or documents with the same level of protection it uses to protect its own confidential information or documents, and in any case, with due diligence;
- (c) not disclose confidential information or documents to third parties directly or indirectly without the prior written agreement of the other Party.



II.11.3 The confidentiality obligations set out in this Article are binding on the Office and on the Contractor throughout 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 means other than in breach of the confidentiality obligation;
- (c) the disclosure of the confidential information or documents is required by law.

II.11.4 The Contractor must obtain a commitment from any natural person with the power to represent it or take decisions on its behalf, as well as from third parties involved in the performance of the Contract, including subcontractors, that they will comply with the confidentiality obligation set out in this Article. A document providing evidence of this commitment must be provided to the Office, if requested.

II.11.5 Any distribution or publication of information relating to the Contract by the Contractor requires the prior written authorisation from the Office. It must state that the opinions expressed are those of the Contractor only and do not represent the Office's official position.

As a consequence, all media and promotional activities carried out by the Contractor, which reference the commercial relationship between the Contractor and the Office, must be cleared in advance by the Office's Communication Service.

In this context, media and promotional activities may include, but are not limited to:

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

Contractors are requested to email the Office's Communication Service at the following email address: [communication@euipo.europa.eu](mailto:communication@euipo.europa.eu) to seek clearance for media and promotional activities that mention the Office.

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

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

## Article II.12 — Processing of personal data

### II.12.1 Processing of personal data by the Office

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

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

Should the Contractor, or any other person whose personal data are processed in relation to this Contract, have any queries concerning the processing of their personal data, they 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.12.2 Processing of personal data by the Contractor

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

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

The Contractor may only act on documented written instructions and under the supervision of the controller, particularly 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 their rights.

The Contractor shall only 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 have committed themselves to confidentiality or are under the appropriate statutory obligation of confidentiality in accordance with the provisions of Article II.11.

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

- (a) the pseudonymisation and encryption of personal data;
- (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of the 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 the technical and organisational measures for ensuring the security of the processing;
- (e) measures to protect personal data from accidental or unlawful destruction, loss, alteration or unauthorised disclosure or access to personal data that is transmitted, stored or otherwise processed.

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

- (a) the 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) the likely consequences of the breach;
- (c) the 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 or RfO.

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

- (a) ensure compliance with their 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 the data processing operations carried out on behalf of the controller, transfers of personal data, security breaches, responses to requests for exercising the rights of people whose personal data is processed and requests for access to personal data by third parties.

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

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

The duration of the processing of personal data by the Contractor will not exceed the period referred to in Article II.23.2. Upon expiry of this period, the Contractor will, at the choice of the controller, return, without any undue delay and in a commonly agreed format, all personal data processed on behalf of the controller and any copies thereof or must effectively delete all personal data unless Union or national law requires a longer storage period for personal data.

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

## **Article II.13 — Subcontracting**

II.13.1 The Contractor may not subcontract beyond the third parties already mentioned in its tender without prior written authorisation from the Office, nor cause the Contract to be performed de facto by third parties.

II.13.2 Even where the Office authorises the Contractor to subcontract to third parties, the Contractor remains bound by its obligations and is solely responsible for the implementation of the Contract. It has a particular contractual obligation to monitor the performance of the subcontractor and, when necessary, ensure its prompt intervention in the performance of the tasks to avoid any wrongdoings by the subcontractor that may jeopardise the correct implementation of the Contract.

II.13.3 The Contractor must make sure that the subcontract does not affect the rights and guarantees to which the Office is entitled by virtue of the Contract, notably Article II.11, Article II.23 and Article II.29.

II.13.4 The Office may request the Contractor to replace a subcontractor found to be in a situation provided for in points (d) and (e) of Article II.19.1.

## **Article II.14 — Amendments**

II.14.1 Any amendment to the Contract, and where applicable, to the Purchase Order or Specific Contract, must be made in writing (including via electronic or digital means) and be signed by the Contracting Parties before the fulfilment of any new contractual obligations.

II.14.2 The amendment must not have the purpose or effect of making changes to the Contract (or Specific Contract or Purchase Order), which might alter the initial conditions of the procurement procedure or result in the unequal treatment of tenderers or contractors.

II.14.3 A purchase order or specific contract must not be deemed to constitute an amendment to a framework contract.

## **Article II.15 — Assignment**

II.15.1 The Contractor must not assign any of the rights and obligations arising from the Contract, including claims for payments or factoring, without the prior written

authorisation of the Office. In these cases, the Contractor must provide the Office with the identity of the intended assignee.

II.15.2 In the absence of this authorisation, or in the event of failure to observe the terms thereof, the assignment of rights or obligations by the Contractor has no effect on the Office and is not enforceable against it.

## **Article II.16 — *Force Majeure***

II.16.1 If either Party is faced with *force majeure*, it must immediately notify the other Party, stating the nature of the circumstances, their likely duration and any probable effects.

II.16.2 The Party faced with *force majeure* is not to be held in breach of its contractual obligations if it has been prevented from fulfilling them by *force majeure*. Where the Contractor is unable to fulfil its contractual obligations due to *force majeure*, it has the right to remuneration only for the tasks actually fulfilled.

II.16.3 The Parties must take all the necessary measures to limit any damage due to *force majeure*.

## **Article II.17 — Liquidated damages and reductions in price**

II.17.1 The Office may impose liquidated damages and/or a reduction in price should the Contractor fail to fulfil its contractual obligations, also with regard to the required quality level, according to the Tender Specifications or RfO.

II.17.2 Should the Contractor fail to fulfil its contractual obligations within the time limits set by the Contract or, where applicable, by the relevant Purchase Order or Specific Contract, then, without prejudice to the Contractor's actual or potential liability or to the Office's right to terminate the Contract or relevant Purchase Order or Specific Contract, the Office may impose liquidated damages for each and every calendar day of delay according to the following formula:

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

where:

- V* is the amount specified in the Special Conditions or, where applicable, the price of the relevant purchase, deliverable or result;
- d* is the duration specified in the Special Conditions or, where applicable, the duration specified in the relevant Purchase Order or Specific Contract or, failing that, the period between the date specified in Article I.2.1 of the Special Conditions, where applicable, and the date of delivery or performance specified in the relevant Purchase Order or Specific Contract, expressed in calendar days.

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

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

The Contractor has 30 calendar days following the date of receipt of the formal notification to submit its observations against this decision.

If the Contractor submits observations, the Office, taking the relevant observations into account, 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.

In the absence of observations from the Contractor, or of a written withdrawal by the Office within 30 calendar days of the receipt of those observations, the decision imposing the liquidated damages will become enforceable.

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

II.17.5 If the Contractor fails to provide the services, supplies or works, according to the Contract, Specific Contract or Purchase Order ('unperformed obligations') or if it fails to provide the services or supplies or complete the works according to the expected quality levels specified in the Tender Specifications or in the Request for Offer ('low quality delivery'), the Office may reduce or recover payments proportionally to the seriousness of the unperformed obligations or low quality delivery. This includes, in particular, cases where the Office cannot approve a result, report or deliverable as defined in Article II.1 where applicable, after the Contractor has submitted the required additional information, correction or new version. A reduction in price may be imposed together with liquidated damages under the conditions of this Article.

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

The Contractor has 30 calendar days following the date of receipt of the formal notification to submit its observations against this decision.

If the Contractor submits observations, the Office, taking the relevant observations into account, 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.

In the absence of observations from the Contractor, or of a written withdrawal by the Office within 30 calendar days of the receipt of those observations, the decision to reduce payment will become enforceable. Failing that, the decision becomes enforceable the day after the time limit for submitting observations has elapsed.

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

## **Article II.18 — Suspension**

II.18.1 Suspension by the Contractor

If the Contractor is affected by *force majeure*, it may suspend the provision of the services or delivery of supplies or performance of the works under a direct or specific contract.

The Contractor must immediately notify the Office of this suspension. The notification must include a description of the *force majeure* and state when the Contractor expects to resume the provision of services or delivery of supplies or performance of the works.

The Contractor must notify the Office as soon as it is able to resume the performance of the direct or Specific Contract, unless the Office has already terminated the Contract or the Specific Contract.

#### II.18.2 Suspension by the Office

The Office may suspend the implementation of the Contract or, where applicable, Purchase Orders or Specific Contracts, or any part thereof:

- (a) if the award procedure for the Contract, Purchase Order or Specific Contract, or if the performance of the Contract, proves to have been subject to substantial errors, irregularities or fraud;
- (b) to verify whether presumed substantial errors, irregularities or fraud have actually occurred.

The Office 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 provided in the formal notification.

The Office 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 or a specific contract under Article II.19.

The Contractor is not entitled to compensation for suspension of any part of the Contract or a specific contract.

In addition, the Office may suspend the time allowed for payments in accordance with Article II.21.12.

### Article II.19 — Termination

#### II.19.1 Grounds for termination by the Office

The Office may terminate the Contract or any ongoing specific contract or purchase order in the following circumstances:

- a) if the provision of the services or delivery of the supplies or implementation of the works under an ongoing specific contract has not actually started within 15 days of the scheduled date and the Office considers that the new date proposed, if any, is unacceptable;
- b) if the Contractor, through its own fault, is unable to obtain any permit or licence required for implementation of the Contract;

- c) if the Contractor does not implement the Contract or perform the Specific Contract in accordance with the Tender Specifications or Request for Offer or is in breach of another substantial contractual obligation or repeatedly refuses to sign specific contracts. For FWCs, termination of three or more specific contracts in these circumstances also constitutes grounds for termination of the FWC with the Contractor;
- 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<sup>(4)</sup>;
- 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 in Article 136(2) of the Financial Regulation;
- f) if the procedure for awarding the Contract or the implementation of the Contract prove to have been subject to irregularities, fraud or breach of obligations;
- g) if the Contractor does not comply with the 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 interests or a professional conflicting interest as referred to in Article II.10;
- i) if a change to the Contractor's legal, financial, technical, organisational or ownership situation is likely to substantially affect the implementation of the Contract or substantially modify the conditions under which the Contract was initially awarded or a change regarding the exclusion situations listed in Article 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 or a specific contract would mean that the Tender Specifications or RfO are no longer complied with or result in the unequal treatment of tenderers or contractors;
- k) if the Office's needs change and it no longer requires new services/goods/works under the Contract; in this case, ongoing specific contracts remain unaffected;
- l) if the termination of the Contract with one or more of the Contractors means that the multiple FWC with reopening of competition no longer has the minimum required level of competition;
- m) if the Contractor is in breach of the data protection obligations resulting from Article II.12;
- n) if the Contractor does not comply with the applicable data protection obligations resulting from Regulation (EU) 2016/679.

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<sup>(4)</sup> 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>



- o) in addition to the above, the Contract may identify other specific grounds for termination.

#### II.19.2 Grounds for termination by the Contractor

The Contractor may terminate the Contract or any ongoing specific contract if the Office fails to comply with its obligations, in particular, the obligation to provide the information needed for the Contractor to implement the (Specific) Contract as provided for in the Tender Specifications or RfO.

#### II.19.3 Procedure for termination

A Party must formally notify the other Party of its intention to terminate the Contract or a specific contract and the grounds for termination.

Unless otherwise specified in the Special Conditions, the other Party has 30 days following the date of receipt of the notification to submit its observations, including the measures it has taken or will take to continue fulfilling its contractual obligations. Failing that, the decision to terminate will become 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) to (n) of Article II.19.1 and in Article II.19.2, the date on which the termination will take effect must be specified in the formal notification.

In the cases referred to in points (e), (f) and (j) of Article II.19.1, the termination will take effect on the day following the date on which the Contractor receives the notification of termination.

In addition, at the Office's request and regardless of the grounds for termination, the Contractor must provide all necessary assistance, including information, documents and files, to allow the Office to complete, continue or transfer the tasks to a new Contractor or internally, without interruption of or adverse effect on the quality or continuity of the tasks. The Parties may agree to draw up a transition plan detailing the Contractor's assistance unless such a plan is already detailed in other contractual documents or in the Tender Specifications. The Contractor must provide such assistance at no additional cost, unless it can demonstrate that it requires substantial additional resources or means. In this case, it must provide an estimate of the costs involved and the Parties will negotiate an arrangement in good faith.

#### II.19.4 Effects of termination

The Contractor is liable for damage incurred by the Office as a result of the termination of the Contract (or a specific contract), including the additional cost of appointing and contracting another Contractor to provide or complete the tasks, unless the damage is a result of a termination in accordance with Article II.19.1(j), (k) or (l) or Article II.19.2. The Office may claim compensation for such damage.

The Contractor is not entitled to compensation for any loss resulting from the termination of the Contract (or a specific contract), including loss of anticipated profits, unless the loss was caused by the situation specified in Article II.19.2.

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 tasks that were provided before the date of termination.

For joint tenders, the Office may terminate the Contract (or a specific contract) with each member of the group separately based on points (d), (e), (g), (m) and (n) of Article II.19.1.

For FWCs using the cascade mechanism, the termination of the Contract with one of the Contractors will have as consequence the reclassification of the other Contractors.

## Article II.20 — Prices

II.20.1 The prices of this Contract will be as listed in an annex to the contract. However, for FWC this must in no way be construed as a commitment by the Office to purchase for the maximum amount.

Prices will be expressed in euro.

II.20.2 Unless otherwise expressly mentioned in the Special Conditions, the Contract prices are fixed and not subject to revision.

II.20.3 If the Special Conditions envisage a price revision, the following rules apply: at the beginning of the second, and every following year of the Contract, each price may be revised upwards or downwards, if such a revision is requested in writing by one of the Parties no later than 3 months before the anniversary of the date on which the Contract entered into force. The other Party must acknowledge receipt within 15 days of reception of the request. The new prices will be communicated as soon as the final index is available. The Office will purchase based on the prices in force on the date on which purchase orders or specific contracts are signed by both Parties. These prices will not be subject to revision.

This revision will be determined by the trend in the harmonised indices of consumer prices (HICP-MUICP) published for the first time by the Eurostat monthly publication at:

[http://ec.europa.eu/eurostat/data/database?node\\_code=prc\\_hicp\\_midx](http://ec.europa.eu/eurostat/data/database?node_code=prc_hicp_midx)

Revisions will be calculated according to the following formula:

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

where:

Pr = revised price;  
Po = price in the original tender or in the last revision;  
Io = index for the month corresponding to the date of entry into force of the Contract or of the last revision;  
Ir = index for the month corresponding to the date of receipt of the request to revise prices.

The resulting coefficient and price are rounded up to the closest two decimals.

- II.20.4 The revised prices will apply from the date of the anniversary of the signature of the Contract. Specific contracts and purchase orders signed before the date of the anniversary on which the revised prices enter into force will keep the prices prior to the revision, regardless of whether their implementation goes beyond the entry into force of the price revision.

## **Article II.21 — Invoicing and payments**

- II.21.1 Payments under this Contract will be paid into the bank account indicated in the legal entity and financial identification form

- II.21.2 Payments are deemed to have been made on the date when they are debited to the Office's account.

- II.21.3 Payments are made in euro.

- II.21.4 The Office 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/infoeuro/infoeuro\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/infoeuro/infoeuro_en.cfm)

- II.21.5 The ordering and invoicing documents are expected to be exchanged between the Contracting Parties via electronic means under the conditions set out in paragraphs 5 to 8 of Article II.8.

- II.21.6 The costs of the transfer are borne as follows:

- (a) costs of dispatch charged by the Office's bank are borne by the Office;
- (b) costs of receipt charged by the Contractor's bank are borne by the Contractor;
- (c) the Party causing repetition of a transfer bears the costs of any repeated transfer.

- II.21.7 Whenever invoices are communicated by post, they must be sent to the following address:

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

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

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

II.21.8 No payments may be made by the Office if the Contractor has not completed the legal entity and financial identification form correctly.

The Contractor must inform the Office of any changes to its tax and/or bank details immediately and provide the Office with a new legal entity and financial identification form.

The Office is not liable for any delay in the payment of invoices due to irregularities or errors in the financial information provided by the Contractor.

II.21.9 Invoices and value added tax

Invoices must contain the Contractor's identification information, the amount and the date, as well as the reference number of the Contract and, where applicable, Purchase Order or Specific Contract.

The Office is a body of the European Union which has legal personality and which enjoys the fiscal benefits granted to the European Institutions by the Member States of the European Union pursuant to the provisions of Articles 3, 4 and 18 of the Protocol on the Privileges and Immunities of the European Union (No°7) annexed to the Treaty of Rome and which apply to the Office by virtue of Article 144 of Regulation (EU) No°2017/1001 of 14 June 2017 on the European Union trade mark. By virtue of the above Protocol, the Office is exempt from all taxes and duties, including value added tax (VAT).

With regard to Spain, the Office is exempt from VAT according to Article 151(1)(a) and (b) of Directive 2006/112/CE within the limits and conditions established in the Seat Agreement between the Kingdom of Spain and the European Union, signed in Madrid on 20 September 2011 and published in the *Boletín Oficial del Estado* No 254 of 21 October 2011.

In Spain, the Office is directly exempt from all taxes and dues, including VAT, when purchasing goods and services for official use for the total amount of each invoice exceeding EUR 300 (all taxes excluded), when the delivery or lease of buildings or parts thereof and annexed land is used as the Office's headquarters, as well as on the construction, renovation and repair of such buildings, provided that the amount of each transaction exceeds EUR 751 (all taxes excluded). In respect of immovable property belonging to it by whatever title, the Office is exempt from the payment of any national, regional or local taxes or fees. Accordingly, the Contractor must complete the necessary formalities with the relevant authorities to ensure that the supplies and services required to perform the Contract are exempt from taxes and duties, including VAT.

Invoices must indicate the Contractor's place of taxation for VAT purposes and must specify the amounts not including VAT separately from the amounts including VAT.

II.21.10 Pre-financing, performance and money retention guarantees

Pre-financing guarantees cover the financial risks connected with payment of pre-financing. The pre-financing guarantee remains in force until the pre-financing is cleared against interim payments or payment of the balance. Where payment of the balance takes the form of a debit note, the pre-financing guarantee remains in force

for 3 months after the debit note is sent to the Contractor. The Office must release the guarantee within the following month.

Performance guarantees cover compliance with substantial contractual obligations until the Office has given its final approval for the services, supplies or works. The performance guarantee must not exceed 10 % of the total price of the Contract (or Specific Contract). The Office must release the guarantee wholly or partially after provisional or final approval, as provided for in the Contract (or Specific Contract).

Retention money guarantees cover the full delivery of services, supplies or works according to the Contract (or Specific Contract) including during the contract liability period and until its final approval by the Office. They aim to ensure that the Contractor remedies defects during the contract liability period. Retention money guarantees must not exceed 10 % of the total price of the Contract (or Specific Contract) and may be constituted by deductions from interim payments as and when they are made and/or by deduction from the final payment. The Office must release the guarantee after the expiry of the contract liability period as provided for in the Contract (or Specific Contract).

Subject to approval by the Office, the Contractor may request to replace the retention money guarantee by a performance guarantee.

The Office must not request a retention money guarantee for a contract (or specific contract) if it has requested a performance guarantee.

Where a financial guarantee is required for the payment of pre-financing, or as a performance guarantee or as a replacement for a retention money guarantee, it must fulfil the following conditions:

- (a) the financial guarantee is provided by a bank or an approved financial institution accepted by the Office or, at the request of the Contractor and with the Office's agreement, by a third party;
- (b) the guarantor stands as first-call guarantor and does not require the Office to have recourse against the principal debtor (the Contractor).

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

#### II.21.11 Interim payments and payment of the balance or sole payments

The Contractor submits an invoice for interim payment upon delivery of intermediary results, accompanied by a progress report or any other documents, as provided for in the Special Conditions, the Tender Specifications, the Purchase Order or Specific Contract.

The Contractor will submit an invoice for payment of the balance within 60 calendar days following the end of the period referred to in the Contract , accompanied by a final progress report or any other documents provided for in the Special Conditions, the Tender Specifications or RfO, in the Purchase Order or Specific Contract.

Upon receipt, the Office will pay the amount due as interim or final payment within the periods specified in the Special Conditions, Purchase Order or Specific Contract, provided the invoice and documents have been approved and without prejudice to Article II.21.12. Approval of the invoice and 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.21.12 Suspension of the time allowed for payment

The Office may suspend the payment periods specified in the Special Conditions, Purchase Order or Specific Contract, at any time by notifying the Contractor that its invoice cannot be processed.

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

- (a) because it does not comply with the Contract;
- (b) because the Contractor has not produced the appropriate documents or deliverables; or
- (c) because the Office has observations on the documents or deliverables submitted with the invoice.

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

Suspension takes effect from the date the notification is sent by the Office. 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 2 months, the Contractor may request the Office to justify the continued suspension.

Where the payment periods have been suspended following rejection of a document referred to in the second subparagraph, and the new document produced is also rejected, the Office reserves the right to terminate the Contract, in accordance with point (c) of Article II.19.1.

#### II.21.13 Interest on late payment

On expiry of the payment periods specified in the Special Conditions, Purchase Order or Specific Contract, and without prejudice to Article II.21.12, the Contractor is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in euro ('the reference rate') plus eight percentage points ('the margin'). The reference rate is the rate in force on the first day of the month in which the payment period ends, as published in the C series of the Official Journal of the European Union.

The suspension of payment periods, in accordance with Article II.21.12, may not be considered as late payment.

Interest on late payment will cover the period from the calendar day following the due date for payment up to and including the day of actual payment as defined in Article II.21.2.

However, when the calculated interest is lower than or equal to EUR 200, it is only paid to the Contractor upon written request submitted within 2 months of receiving late payment.

## **Article II.22 — Recovery**

II.22.1 If an amount is to be recovered under the terms of the Contract, the Contractor must repay the Office the amount in question.

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

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

II.22.2 If the obligation to pay the amount due is not honoured by the date set by the Office in the debit note, the amount due will bear interest at the rate indicated in Article II.21.13.

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

Interest on late payment will cover the period from the calendar day following the due date for payment up to and including the day on which the Office receives the payment of the full amount owed.

II.22.3 If payment has not been made by the due date, the Office may, after informing the Contractor in writing, recover the amounts due by:

- (a) offsetting them against any amounts owed to the Contractor by the Office;
- (b) calling in a financial guarantee, if the Contractor has submitted one to the Office;
- (c) taking legal action.

II.22.4 If the Contract is signed by a group (joint tender), the group is jointly and severally liable under the conditions set out in Article II.9.7. The Office first claims the full amount from the leader of the group.

If the leader does not pay by the due date and, if the amount cannot be offset in accordance with Article II.22.3(a), the Office may claim the full amount from any other member of the group by notifying the debit note already sent to the leader under Article II.22.1.

## **Article II.23 — Checks and audits**

II.23.1 The Office and the European Anti-Fraud Office (OLAF) may check or require an audit on the performance of the Contract. It may be carried out either directly by OLAF's own staff or by any other outside body authorised to do so on its behalf.

Such checks and audits may be initiated during the performance of the Contract and during a period of 5 years starting from the date of expiry of the Contract.

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

II.23.2 The Contractor must keep all original documents stored on any appropriate medium, including digitised originals when they are authorised by national law and under the conditions laid down therein, for a period of 5 years starting from the date of expiry of the Contract.

II.23.3 The Contractor must grant the Office's staff and outside personnel authorised by the Office the appropriate right of access to sites and premises where the Contract is performed and to all the information (including information in electronic format) needed in order to conduct the checks and audits. The Contractor must ensure that the information is readily available at the moment of the check or audit and, if requested, that the information be handed over in an appropriate form.

II.23.4 Based on the findings made during the audit, a provisional report is drawn up. It must be sent to the Contractor, who will have 30 calendar days following the date of receipt to submit observations. The final report must be sent to the Contractor within 60 calendar days following the expiry of that deadline.

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

II.23.5 By virtue of Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities and Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office, 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 EU. Findings arising from an investigation may lead to criminal prosecution under national law.

The investigations may be carried out at any moment during contract implementation and up to 5 years after the payment of the balance of the Contract or the last Specific Contract or Purchase Order issued under the Contract.

II.23.6 The Court of Auditors and the European Public Prosecutor's Office established by Council Regulation (EU) 2017/1939<sup>(5)</sup> (the EPPO) have the same rights as the Office, notably right of access, for the purpose of checks, audits and investigation.

## **Additional Provisions Concerning the Performance of Supplies Contracts**

### **Article II.24 — Packing, shipping, carriage and insurance**

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

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

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<sup>(5)</sup> Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'), OJ L 283, 31.10.2017, p. 1–71.



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

## **Article II.25 — Packaging**

II.25.1 The supplies must be packaged in strong boxes or crates or in any other way that ensures that the contents remain intact and that damage or deterioration is prevented. Packaging, pallets, etc., including contents, must not weigh more than 500 kg.

- The maximum total volume for packed goods (where applicable, pallet included) must not exceed 1250 mm width and 1600 mm height.
- Unless otherwise specified in the Contract, , the packing materials remain the property of the Office.
- Unless otherwise specified in the Contract, pallets are considered as one-way packaging and are not returned.

II.25.2 Each box must be clearly labelled with the following information:

- the address for delivery provided by the Office;
- the name of the Contractor;
- a description of the contents;
- the date of delivery;
- the reference number and date of the Contract and, where applicable, reference number of the Purchase Order or Specific Contract.

## **Article II.26 — Delivery of supplies**

### **II.26.1 Time allowed for delivery**

The time allowed for delivery is a maximum of 4 weeks unless otherwise specified in the Special Conditions of the Contract, Purchase Order or Specific Contract, or the Tender Specifications.

### **II.26.2 Place of delivery**

Unless otherwise specified in the Contract, the delivery of supplies must be made at the goods delivery entrance of the Office's main seat, situated at Avenida de Europa, 4, Polígono Agua Amarga, 03008 Alicante, Spain.

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

### **II.26.3 Procedure for delivery**

The supplies must be unloaded by the Contractor in the goods delivery bay and transferred to the X-ray inspection equipment situated in the warehouse adjacent to the goods delivery bay. Once the inspection has been completed and the supplies have been sealed by the Office's security services, the Contractor must transfer them to the reception storeroom, indicated by the Office staff, or, where specified in the Special Conditions, or, where applicable, Purchase Order or Specific Contract, the

Contractor must reload the supplies onto its vehicle, transport them to the Office building specified in the Special Conditions, Purchase Order or Specific Contract, and unload them definitively in the appropriate goods delivery bay. All of the above actions must be carried out by the Contractor using its personnel and equipment.

#### **II.26.4 Date and time of delivery**

The Office must be notified in writing at least four working days in advance of the exact date of delivery. All deliveries must be made at the agreed place of delivery between 9.00 and 12.00.

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

#### **II.26.5 Consignment note**

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

Signature of the consignment note by the Office is simply an acknowledgement of the fact that the supplies have been delivered and in no way implies conformity of the supplies with the Contract or, where applicable, Purchase Order or Specific Contract.

### **Article II.27 — Conformity**

#### **II.27.1 Certificate of conformity**

Conformity of the supplies delivered must be evidenced by the signature of a certificate to this effect by the Office no later than 1 month after the date of delivery, unless otherwise specified in the Special Conditions and, where applicable, the relevant Purchase Order or Specific Contract, or in the Tender Specifications.

Conformity is declared only where the conditions laid down in the Contract are satisfied and the supplies conform to the Tender Specifications or RfO.

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

#### **II.27.2 Conformity of the supplies delivered with the Contract**

- (a) The supplies delivered by the Contractor to the Office must conform in quantity, quality, price and packaging to the Contract.
- (b) The supplies delivered must:
  - (i) correspond to the description given in the Tender Specifications or RfO and possess the characteristics of the supplies provided by the Contractor to the Office as a sample or model;

- (ii) be fit for any specific purpose required of them by the Office and made known to the Contractor (and accepted by the Contractor) at the time of the conclusion of the Contract;
- (iii) be fit for the purposes for which supplies of the same type are normally used;
- (iv) demonstrate the quality and performance which are normal in supplies of the same type and which the Office can reasonably expect, given the nature of the supplies and taking into account any public statements on the specific characteristics of the supplies made by the Contractor, the producer or its representative, particularly in advertising or on labelling;
- (v) be packaged according to the usual method for supplies of the same type or, failing this, in a way designed to preserve and protect them.

### **II.27.3 Remedy**

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

### **II.27.4 Assembly**

If required, the Contractor must assemble the supplies delivered within a period of 1 month unless otherwise specified in the Special Conditions or, where applicable, in the Purchase Order or Specific Contract.

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

### **II.27.5 Services related to supplies**

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

## **Article II.28 — Guarantee**

- II.28.1 The supplies must be guaranteed against all defects in manufacture or materials for 2 years from the date of delivery, unless provision for a longer period is made in the Tender Specifications.
- II.28.2 The Contractor must guarantee that any permits and licences required for manufacturing and selling the supplies have been obtained.
- II.28.3 The Contractor must replace, at its own expense, and within a reasonable time limit (to be determined by agreement between the Parties), any items which become damaged or defective in the course of normal use during the guarantee period.
- II.28.4 The Contractor is responsible for any conformity defect which exists at the time of delivery, even if this defect does not appear until a later date.

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

- II.28.5 If part of an item is replaced, the replacement part must be guaranteed under the same terms and conditions for a further period of the same duration as that specified above.
- II.28.6 If a defect is found to originate in a systematic flaw in design, the Contractor must replace or modify all identical parts incorporated in the other supplies that are part of the Contract or, where applicable, Purchase Order or Specific Contract, even though they may not have been the cause of any incident. In this case, the guarantee period must be extended as stated above.

## **Additional Provisions Concerning the Performance of Service Contracts**

### **Article II.29 — Intellectual property rights**

#### **II.29.1. Ownership of the rights in the results**

The Office acquires, irrevocably, worldwide ownership of the results and of all intellectual property rights in the newly created materials produced specifically for the Office 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.29.2.

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 the implementation of the Contract. The Office may exploit and use the acquired rights as stipulated in this Contract. The Office acquires all the rights from the moment the Contractor has created the results.

The payment of the price includes any fees payable to the Contractor for the acquisition of ownership of rights by the Office, including for all modes of exploitation and use of the results.

## **II.29.2 Licensing rights on pre-existing materials**

Unless provided otherwise in the Special Conditions, the Office 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 Office, which may use the pre-existing materials for all the modes of exploitation set out in this Contract or in specific contracts. Unless otherwise agreed, the licence is non-transferable and cannot be sublicensed, except in the following circumstances:

- (a) the pre-existing rights can be sublicensed by the Office 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 Office;
- (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'. However, it is understood that this 'reuse' may only be made of the result as a whole, and not of the pre-existing materials taken separately from the result.

All pre-existing rights are licensed to the Office from the moment the results are delivered and approved by the Office.

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

The payment of the price as set out in the (Specific) Contract(s) is deemed to also include any fees payable to the Contractor in relation to the licensing of pre-existing rights to the Office, including for all forms of exploitation and use of the results.

Where implementation of the Contract requires that the Contractor uses pre-existing materials belonging to the Office, the Office may request that the Contractor sign 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.29.3 Exclusive rights**

The Office 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, wholly 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 communication on the 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 the 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 reutilisation of all, or a substantial part of, the contents of the database by the distribution of copies, by renting, by online 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 this patent to the fullest extent;
- (i) where the results are or include logos or subject matter which could be registered as a trade mark: the right to register such a logo or subject matter as a trade mark and to further exploit and use it;
- (j) where the results are or include know-how: the right to use this know-how as necessary to make full use of the results as provided for by this Contract, and the right to make it available to Contractors or subcontractors acting on behalf of the Office, 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, to the extent that it is applicable and the documents fall within its scope and are not excluded by any of its provisions; and
  - (ii) the right to store and archive the results in line with the document management rules applicable to the Office, 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 Office, 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 any of the exclusive rights or of the modes of exploitation set out in this Contract to third parties; however, for pre-existing materials that are

only licensed to the Office, the right to sublicense does not apply, except in the two cases provided for in Article II.29.2;

- (n) to the extent that the Contractor may invoke moral rights, the right for the Office, except where otherwise provided for 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 modes of exploitation may be exercised by the Office 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 Office may accept reasonable restrictions impacting on the above list, provided that those 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 cost to the Office. In this case, the Contractor will have to clearly inform the Office before making such a choice, and the Office has the right to refuse it.

#### **II.29.4 Identification of pre-existing rights**

When delivering the results, the Contractor must warrant that, for any use that the Office 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 Office together with the invoice for payment of the balance at the latest.

#### **II.29.5 Evidence of the granting of pre-existing rights**

Upon request by the Office, the Contractor must, in addition to the list mentioned under Article II.29.4, 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 Office. The Office 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 carry out the transfer and that it has paid or has verified payment of all the fees due, including fees due to collecting societies, related to the final results.

#### **II.29.6 Quotation of works in the result**

In the result, the Contractor must clearly point out all quotations from 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.29.7 Moral rights of creators**

By delivering the results, the Contractor warrants that the creators will not object to the following based on 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 Office;
- (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 the creators regarding the granting or waiver of the relevant moral rights, according to the applicable legal provisions, and be ready to provide documentary evidence upon request.

#### **II.29.8 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 Office. The Contractor must take the necessary measures to obtain this consent according to the applicable legal provisions.

#### **II.29.9 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 — EUIPO All rights reserved. Certain parts are



licensed under conditions to the EUIPO', or with any other equivalent disclaimer that the Office considers most appropriate, or as the Parties may agree on a case-by-case basis. This does not apply if inserting such a reference would be impossible, notably for practical reasons.

#### **II.29.10 Visibility of EUIPO funding and disclaimer**

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

## **Additional Provisions Concerning the Performance of Works Contracts**

### **Article II.30 — Representation of the Office**

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

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

The Office's representative is responsible in particular for:

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

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

The fact that the Office's representative performs supervisory duties, carries out inspections and verifications and issues provisions or stipulations does not release the Contractor from its own obligations or liabilities regarding the correct and full implementation of the Contract. Nor does it release the Contractor from its obligations under the applicable laws, regulations and standards in force.

### **Article II.31 — Suspension of contractual activities**

In addition to Article II.18 on suspension, if unforeseen circumstances temporarily prevent all or some of the contractual activities being performed, the Office may order the suspension of those activities and their subsequent resumption as soon as the grounds for that suspension cease to exist.

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

## **Article II.32 — Prohibition on the Contractor suspending, interrupting or delaying contractual activities**

Notwithstanding the circumstances provided for in Article II.16, the Contractor may not, under any circumstances, take a unilateral decision to suspend, interrupt or delay performance of the contractual activities, even if awaiting the resolution of disputes with the Office.

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

## **Additional Provisions Concerning the Security Applicable to Supply, Services and Works Contracts**

### **Article II.33 — Provision of security documentation**

Employees of the Contractor or subcontractor that regularly access the Office's premises must comply with the established Office's security criteria. These criteria include the provision of authentic information regarding the educational and professional background of the employee and the absence of pending criminal convictions. The Contractor must declare that the employee proposed to EUIPO meets these criteria, by uploading the following documents to the Portal for security and the Portal for security and Health and Safety (H&S) verification of EUIPO external resources (hereafter the Portal).

- declaration of confidentiality (the EUIPO awareness agreement) signed by the employee (template available on the portal);
- educational qualifications of the employee (diplomas/certificates pertinent to the position);
- professional experience and references of the employee (curriculum vitae (CV) where the professional background and contact details of reference persons are indicated);
- declaration signed by the company that the external resource does not have any pending criminal convictions (template available on the Portal).

The link and the credentials to access the Portal will be provided to the Contractor once the (Specific) Contract is signed. All documents must be submitted within the deadlines indicated in the Portal.

The accuracy and the authenticity of the submitted documentation is the responsibility of the Contractor. In case the above documents have not been duly submitted by the Contractor in the portal within the set deadline, the access of the external resource to the EUIPO's premises will be denied (for new external resources) or withdrawn (for external resources already working on the Office premises). The Contractor is obliged to inform the Office immediately if there is a change in the information as declared in the Portal.

## **Article II.34 — Provision of health and safety documentation**

The Contractor is obliged to submit/renew/update all health and safety documents for its employees in the same portal. The submission and renovation of the H&S documents must be completed within the deadline indicated in the Portal.

## **Article II.35 — Data protection**

Articles I.9 and II.12 apply to the processing of personal data in the Portal. Personal data will be processed as described in the privacy statements available on the portal. The Contractor is obliged to:

- make these privacy statements available to their employees prior to the submission of the data in the Portal;
- apply all technical and organisational measures to ensure compliance with the applicable Data Protection Regulation;
- immediately inform the Office if the Contractor receives any requests from its employees for the exercise of their rights as data subjects.

## **Article II.36 — Flexibility clause**

The Office reserves the right to apply different measures or requirements if the security situation requires it, for which the Contractor will be duly informed in a timely fashion.

## **Additional Provisions Concerning the Contracting Modalities**

### **Article II.37 — Contracting modalities**

#### **II.37.1 General scope and definitions**

Direct contracts, specific contracts and purchase orders implementing a FWC must be drafted using one or a combination of the following contracting modalities.

- Time and Means (TM): corresponds to a number of days according to the profiles specified in the FWC. Under the TM modality, the Office specifies the workload (i.e. the estimated number of person-days) and the job profiles needed for the services to be provided.
- Quoted Time and Means (QTM): corresponds to a lump sum detailing the number of days according to the profiles specified in the offer for a defined service (result-oriented detailing the means required to deliver the service). Under the QTM modality, the Office specifies the required deliverable(s) and requests a detailed drill down of the number of person-days needed according to the profiles specified in the FWC. The global definition of the tasks, subtasks and related efforts is specified in the direct or Specific Contract, while the precise deliverables (subtasks) are requested and ordered during the implementation of the Contract, according to the technical annex.
- Fixed Price (FP): corresponds to a lump sum for a defined service (result oriented). Under the FP modality, the Office specifies the required deliverable(s) for the service(s) to be provided.

- Service Mode (SM): this is a variant of FP, to cover continuous services to be provided on-site. In this modality, the Office contracts continuous services to provide solutions. Prices are fixed for a certain period based on one or several parameters.

## **II.37.2 The use of the different modalities**

### Time and Means (TM) orders

TM orders are implemented on the Office's premises (i.e. on-site) or at third-party locations. In a TM order, the Office specifies the expected workload (e.g. number of person-days) and its needs for particular profiles.

The following conditions apply to TM orders.

- The Contractor must present offers that meet the requirements as specified in the technical specifications, Request for Offer (RfO) and/or associated documents. The Contractor's proposed staff must match the requested profile description and the specific needs indicated in those documents.
- The Contractor must be able to propose per requested profile at least two (2) qualified candidates to choose from. The Contractor must be prepared to submit two more CVs within the deadlines established in the FWC until the requested post is filled. For the deployed resources in Europe, they must speak the language of the national office fluently (level C2).
- CVs must be presented using the Europass CV format. All information indicated in the CV must be verified and validated by the Contractor.
- Proposed candidates must be available for interview at the Office, if requested, in order to validate the technical competence of the candidates. Interviews will preferably take place on the Office's premises, although other options may include videoconference or telephone interviews.
- The persons proposed who have been selected must be available as specified in the offer and in line with the Office's request.
- In line with the provisions laid down in Article II.5, at the Office's request, the Contractor must present new candidates to replace any persons unable to carry out the specified tasks to the required standards. The successful replacement candidate will be given sufficient training during a handover period of at least 10 working days, so that he or she will be immediately operational as soon as the original person is withdrawn. Any replacement and training, if required, will be carried out at no additional cost to the Office.
- The Contractor must give at least one calendar month's notice to the Office in the event of a change to the personnel in the team. Approval for any such change will only be granted for justified and imperative reasons by means of written authorisation from the Office. If the above requirement is not met, the Office will reserve the right to put any invoices related to efforts rendered during the last 20 days of service provision on hold. The selected replacement will be given sufficient training during a handover period of at least 10 working days, so that he or she will be immediately operational as soon as the original person

is withdrawn. Any such replacement and training, if required, will be carried out at no additional cost to the Office.

- If requested by the Office, the Contractor may be required to present candidates to temporarily replace team members during holidays or other periods of planned absence. The successful replacement candidate will be given sufficient training during an adequate handover period of at least 10 working days, so that he or she will be immediately operational when the original person goes on leave. Any such replacement and training, if required, will be carried out at no additional cost to the Office.
- The Contractor must ensure the continuity of service required for the good implementation of the Specific Contracts, and is strongly encouraged to minimise or avoid replacements of its team members. Under no circumstances may the Contractor invoke a change in team members to justify a failure to comply with contractual obligations, particularly compliance with deadlines and quality of service.
- Invoicing is based on the number of days delivered and accepted. The minimum unit is half a person-day, which will be charged as 50 % of one person-day.

#### Quoted Time and Means (QTM) orders

In a QTM order, the Office specifies the activities to be undertaken and the time to be devoted to each. It includes several tasks and/or subtasks that can be implemented in parallel or sequentially. The global definition of the tasks, subtasks and related efforts is specified in the Specific Contract, while the precise deliverables (subtasks) are requested and ordered during the implementation of the Contract, according to the technical annex.

The following conditions apply to QTM orders.

- The Contractor must present offers that meet the requirements specified in the technical specifications, RfOs and/or associated documents (e.g. technical annex with description of activities).
- The Contractor's offer must include a technical proposal based on the Office's requirements.
- If requested by the Office, the offer must also include a project plan.
- The Contractor's offer must contain detailed information on profiles, roles, activities, responsibilities and workload (activity days or person-days).
- The Contractor's staff must match the requested profile description.
- The Office will ask the Contractor to provide CVs of the proposed team members to monitor and verify that the Contractor's team for a given activity includes the right profile. For the specific case of 'deployed' profiles, at least three candidates per requested position should be proposed within a maximum of three weeks from dispatch of the request. The Contractor must be ready to submit two more CVs within one week (after the three weeks) until the requested post is filled. For the deployed resources in Europe, they must speak fluently the National Office language (level C2).

- The work is usually carried out off-site but may also be carried out on-site or on third-party premises at the request of the Office. The Contractor must provide all the necessary infrastructure on its premises for the successful completion of the work.
- Invoicing is strictly based on the acceptance of the deliverables by the Office, as well as on the price established in the Specific Contract, regardless of actual workload. Payments will be limited to the part corresponding to accepted deliverables.

#### Fixed Price (FP) orders

In a Fixed Price Contract, the responsibility of the deliveries lies with the Contractor. The service will be evaluated through Service Level Agreements (when applicable) which will be used to measure different parameters like quality, timeliness, performance, etc. Failure to meet these Service Level Agreements might imply the application of penalties which will be deducted from the contractual milestones.

In an FP order, the Office specifies the deliverables corresponding to the work to be delivered within established time frames. Defining expected results/milestones and the associated cost should be based on past experiences, market research or other statistical data.

The following conditions apply to FP orders.

- The offer of the contractor must meet the requirements as specified in the, tender specifications, RfO and/or associated annexes (specifications, work packages, deliverables, activities, deadlines, etc.)
- Work is usually carried out on the Contractor's premises (i.e. off-site) but it may be undertaken on-site or at a third-party location if requested by the Office. The Contractor must provide all the necessary infrastructure on its premises for the successful completion of the work.
- The deliverables must be delivered in line with the specifications and the time frame established in the (Specific) Contract and its annexes.
- The Contractor's offer must be inclusive of all costs.
- The offer must include a project and work organisation plan and give details of the proposed activities, the team structure, the complete list of profiles, responsibilities and workload (person-days) – this is optional, the place of work of the team members, etc.
- The Office may request the Contractor to provide CVs of the proposed team if the Office considers this appropriate, in order to carry out an *ex ante* assessment of the services to be provided by the Contractor prior to acceptance of the offer.
- Meetings with the Contractor's team may be required by the Office without additional costs and at short notice (i.e. 3 working days for off-site projects, 1 working day for on-site projects):
  - for clarifications or Specific Contract implementation purposes;
  - at the place of performance or by means of videoconference.

- Invoicing is strictly based on the acceptance of the deliverables by the Office, as well as on the price established in the Specific Contract, regardless of actual workload. Payments will be limited to the part corresponding to accepted deliverables.

### **II.37.3 Prices in different contracting modalities**

- Time and Means contracts: final price of the (Specific) Contract depends on the actual volume of resources that have been used and is therefore known only after the (Specific) Contract has been completed. The (Specific) Contract will indicate a maximum volume of resources, the fixed unit price for each type of resource covered and a maximum price, but actual use of resources can be lower than foreseen in the (Specific) Contract (TM).
- Result/Deliverable contracts: payments in FP and QTM modes are based on the acceptance of deliverables. A (specific) contract may include several deliverables. The price paid for each deliverable is fixed before ordering. A deliverable not delivered or accepted will not be paid. The total price is fixed in the corresponding (Specific) Contract expressed:
  - as one or several fixed prices corresponding to the implementation of each of the deliverables included in the (Specific) Contract (FP mode);
  - as a maximum price for the implementation of the whole (Specific) Contract , but with a fixed price for each subtask ordered during the lifetime of the Contract (QTM mode);
  - as a fixed price, calculated as a function of one or several parameters (SM).