

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

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

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

#### **II.13.4 Identification of pre-existing rights**

When delivering the *Results*, the contractor must warrant that, for any use that the contracting authority may envisage within the limits set in this FWC, 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 FWC or parts thereof, including identification of the rights' owners. If there are no *Pre-existing rights* to the *Results*, the contractor must provide a declaration to that effect. The contractor must provide this list or declaration to the contracting authority together with the invoice for payment of the balance at the latest.

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

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

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, 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.