



INTER-AGENCY FRAMEWORK SERVICE CONTRACT EEA/BHR/23/005/LOT 1

The European Environment Agency (hereinafter referred to as “*the Agency*”, or “*the leading contracting authority*”),

and

the European Food Safety Authority (hereinafter referred to as “*EFSA*” or “*the participating contracting authority*”),

collectively referred to as “*the contracting authorities*” when a provision applies equally to both of them,

which are represented for the purposes of signature of this framework contract by Martin Adams, Head of Programme Biodiversity, Health and Resources,

on the one part,

and the consortium led by

Stichting Wageningen Research, Wageningen Environmental Research Foundation

Statutory registration number: 09098104

Droevendaalsesteeg 3, 6708 PB Wageningen, The Netherlands

VAT registration number: NL806511618B01

and composed in addition by

Ecologic Institute

Gemeinnützige GmbH

Statutory registration number: HRB 57947 B

Pfalzburger Strasse 43-44, 10717 Berlin, Germany

VAT registration number: DE811963464

Space4environment sàrl

Limited liability company

Statutory registration number: B124588

48, rue Gabriel Lippmann, L-6947 Niederanven

VAT registration number: LU21621837

Institute of Landscape Ecology of the Slovak Academy of Sciences

Public research institution

Statutory registration number: 00679119

Stefánikova 3, 914 99 Bratislava, Slovakia

VAT registration number: 2020831076

Universidad de Málaga

Public Entity form for Higher Education

Statutory registration number: RD 2566/1972

Avda. Cervantes, 2-29071 Málaga, Spain

VAT registration number: Q2918001E

Sveriges Lantbruksuniversitet / Swedish University of Agricultural Sciences
Statutory registration number: 202100-2817
Ulls hus, Almas allé 8, 75007 Uppsala, Sweden
VAT registration number: SE202100281701

hereinafter referred to as "*the Contractor*", represented for the purposes of signature of this framework contract by Dr.Ir. S. (Sjoukje) Heimovaara, President, and L.A.C. (Rens) Buchwaldt MBA, Member Executive Board Stichting Wageningen Research,

on the other part,

HAVE AGREED

to the **Special Conditions** and the **General Conditions** below and the following annexes:

- Annex I –** Tender specifications EEA/BHR/23/005
- Annex II –** Contractor's tender Submission ID: 300081021 from 06/10/2023
- Annex III –** Model for specific contracts
- Annex IV –** Model Contractor's statement concerning rights to delivered results

which form an integral part of this framework contract (hereinafter referred to as "*the Contract*").

The terms set out in the Special Conditions shall take precedence over those in the other parts of the Contract.

The terms set out in the General Conditions shall take precedence over those in the Annexes.

The terms set out in the Tender specifications (Annex I) shall take precedence over those in the specific contract or order form (Annex III), the latter taking precedence over the Contractor's tender (Annex II). Any reference to specific contracts applies also to order forms and vice-versa, unless otherwise specified.

All documents issued by the Contractor (end-agreements, general terms and conditions, etc.) except its tender (Annex II) are held inapplicable, unless explicitly specified in the Special Conditions of this Contract. In all circumstances, in the event of contradiction between the provisions in this Contract and documents issued by the Contractor, this Contract shall prevail, regardless of any provision to the contrary in the Contractor's documents.

Subject to the above, the several instruments forming part of the Contract are to be taken as mutually explanatory. Ambiguities or discrepancies within or between such parts shall be explained or rectified by a written instruction issued by the Agency, subject to the rights of the Contractor under Article I.8 should he dispute any such instruction.

Furthermore, each provision in the Special Conditions and General Conditions 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 provisions of the Contract. This does not affect the legality, validity or enforceability of any other provisions of the Contract, which continue in full force and effect. The illegal, invalid, or unenforceable provision must be replaced by a legal, valid and enforceable

substitute provision, which corresponds as closely as possible with the actual intent of the parties under the illegal, invalid or unenforceable provision. The replacement of such provision must be made in accordance with Article II.20. The Contract must be interpreted as if it had contained the substitute provision as from its entry into force.

I – SPECIAL CONDITIONS

ARTICLE I.1 – SUBJECT

I.1.1 The subject of the Contract is the provision of support to integrated assessment on biodiversity and ecosystems:

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I.1.2 This Contract is Inter-Agency. The Agency acts on its own behalf and on behalf of the participating contracting authority for which it has received power of attorney before the Contract signature. The Agency signs the Contract and any possible amendments thereto on its own behalf and on behalf of the participating contracting authority. The contracting authorities to whom this Contract is applicable shall implement it individually, independently and in complete legal autonomy, through specific contracts, which alone shall be binding on the respective contracting authority having concluded them.

I.1.3 In the event of the Contractor having a complaint against one of the contracting authorities to whom this Contract is applicable, in particular in relation to the conclusion, implementation or termination of specific contracts, the Contractor remains bound to its obligations under this Contract and the specific contracts signed with the other contracting authority. Without prejudice to Article I.8, the Contractor explicitly renounces hereby to compensate or suspend the implementation of specific contracts signed with the other contracting authority.

I.1.4 Signature of the Contract imposes no obligation on the contracting authorities to purchase. Only implementation of the Contract through specific contracts is binding on the contracting authorities.

I.1.5 Once implementation of the Contract has been asked or has commenced, the Contractor shall reply and provide the services in accordance with all the terms and conditions of the Contract and the relevant specific contract.

ARTICLE I.2 – ENTRY INTO FORCE AND DURATION

I.2.1 The Contract shall enter into force on the date on which it is signed by the last contracting party.

I.2.2 Under no circumstances may implementation of the Contract commence before the date on which it enters into force. Similarly, provision of services may under no circumstances begin before the date on which the relevant specific contract or order form enters into force.

I.2.3 The Contract is concluded for a period of 48 (forty-eight) months with effect from the date on which it enters into force as specified in Article I.2.1. These contractual periods and other periods specified in the Contract are calculated in calendar days unless otherwise indicated.

- I.2.4** The parties must sign any specific contract or order form before the Contract expires. The contract shall continue to apply to such specific contract or order forms after its expiry. The services relating to such specific contracts or order forms must be performed no later than 6 (six) months after the expiry of the Contract.

ARTICLE I.3 – PRICES

- I.3.1** The maximum budget available for the Contract is EUR 1.000,000.00 (one million euros) over a maximum period of 48 (forty-eight) months. However, this binds in no way the contracting authorities to purchase for the maximum budget.
- I.3.2** The prices of the services shall be as listed in the Contractor's tender (Annex II) and expressed in EUR. The prices indicated in the specific contracts or order forms cover any fees payable to the Contractor in relation to the vesting of rights in the Union and where applicable the transfer of rights to the Union and any use of the results by the Agency.
- I.3.3** The prices shall be fixed and not subject to revision for the first year of performance of the Contract.

At the beginning of the second year of performance of the Contract and every following year, each price may be revised upwards or downwards at the request of one of the contracting parties. A contracting party may request the price revision in writing (by email, supported by automatic delivery receipt which shall serve as proof of sending the request) no later than three months before the anniversary date of entry into force of the Contract. The other contracting party shall acknowledge the price revision request in writing (by email) within fourteen calendar days of receipt.

The price revision shall be determined by the trend in the harmonised indices of consumer prices (HICP) published by the European Commission on Eurostat web page at <https://ec.europa.eu/eurostat/data/database> (Theme - Economy and finance; Prices (prc); Harmonised indices of consumer prices (HICP) (prc_hicp); HCIP (2015 = 100) – monthly data (index) (prc_hicp_midx); GEO – Euro Area (EA11-2000, EA-12-2006, EA13-2007, EA15-2008, EA16-2010, EA17-2013, EA18-2014, EA19).

The price revision shall be calculated by the Agency and communicated to the Contractor in accordance with the following formula:

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

where:

Pr = revised price;

Po = price in the original tender;

Ir = Index for the month corresponding to the date of receipt of the letter requesting the price revision;

Io = index of the month in which the Contract enters into force.

The revised prices shall enter into force on the first day following the anniversary of the signature date of the contract. The contracting authorities shall purchase based on the prices in force at the date of the request for services. Such prices shall not be subject to revision.

ARTICLE I.4 – IMPLEMENTATION OF THE CONTRACT

- I.4.1** All services under this Contract will be the subject of a written specific contract. The specific contract will specify the terms of the performance including in particular the period for the provision of the services, the type of services and the amount.
- I.4.2** Within five working days of receipt of a specific contract, the Contractor shall return it to the relevant contracting authority duly dated and signed.
- I.4.3** The period for the provision of the services shall start to run from the date on which the specific contract or order form is signed by both contracting parties, unless indicated otherwise in the specific contract or order form.

ARTICLE I.5 – INVOICING AND PAYMENT

- I.5.1** Payments under the Contract shall be made in accordance with the provisions in Article II.15 and the relevant provisions specified in each specific contract or order form. Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted. Payment requests may not be made if payments for previous periods have not been executed as a result of default or negligence of the Contractor.
- I.5.2** Upon provision of the services requested, the Contractor shall submit to the contracting authority concerned an invoice indicating the reference number of the Contract and of the specific contract or order form to which it refers, accompanied by the relevant supporting documents relating to the services carried out.
- I.5.3.** After the entry into force of this Contract, at any time during its course the contracting authorities may formally notify in writing the contractor that certain communications will be made by electronic means through the EU Funding & Tenders Portal (the Portal), in accordance with the Portal Terms and Conditions and using the forms and templates provided there. The Portal can be accessed via the following URL: <https://ec.europa.eu/info/funding-tenders/opportunities/portal/> The notification shall indicate whether all or only certain communications under the Contract will take place through the Portal. The notification shall have full legal effect from the date specified therein, which shall allow a reasonable period of time for the contractor to complete all necessary steps to have access to the Portal. The activation of the use of the Portal shall be at no additional cost for the contracting authority.

If the use of the Portal is activated, any communication covered by the activation notification related to the implementation of this Contract and any specific contracts shall be made through the Portal (except if explicitly instructed otherwise by the contracting authority or if communication via the Portal is hindered by factors beyond the control of the parties).

Communications by contractors through the Portal must be made by persons authorised according to the Portal Terms and Conditions. For naming the authorised persons to use the Portal, each contractor must designate before the date of effect of the activation notification a 'legal entity appointed representative (LEAR)'. The role and tasks of the LEAR are stipulated in their appointment letter (see Portal Terms and Conditions).

If the communication via the Portal is hindered, instructions will be provided by the contracting authority by email and may also be published on the Portal.

During the course of the Contract, the contracting authorities reserve the right to further extend the coverage of the communications made through the Portal (if its use has been

already activated) or to activate the use of other electronic exchange systems, at no additional cost for the contracting authority.

In case of discrepancy between the clauses of the Portal Terms and Conditions or Terms and Conditions of other electronic exchange system and the clauses of this Contract, the clauses of this Contract (including its annexes) shall prevail.

ARTICLE I.6 – BANK ACCOUNT

Payments shall be made to the Contractor's bank account denominated in euro¹, identified as follows:

Bank name: Rabobank
Branch address: Galvanistraat 2, 6716 AE EDE, The Netherlands
Account holder: Stichting Wageningen Research
IBAN code: NL83RABO0367054612
BIC/Swift Code: RABONL2U

ARTICLE I.7 – GENERAL ADMINISTRATIVE PROVISIONS

- I.7.1** Any communication relating to the Contract or its implementation shall be made in writing, in paper or electronic format in the language of the Contract and shall bear the Contract and relevant specific contract or order form references.
- I.7.2** Electronic communication must be confirmed by paper communication when requested by either party. The parties agree that electronic communication has full legal effect and is admissible as evidence in judicial proceedings.
- I.7.3** Any communication is deemed to have been made when the receiving party receives it, unless this Contract refers to the date when the communication was sent.

Electronic communication is deemed to have been received by the receiving party on the date of dispatch of that communication, provided that it is sent to the e-mail address indicated in Article I.7.4 below. The sending party must be able to prove the date of dispatch. In the event that the sending party receives a non-delivery report, it must take every effort to ensure that the other party actually receives the communication by electronic or normal mail. In such a case, the sending party is not held in breach of its obligation to send such communication within a specified deadline.

Ordinary mail shall be deemed to have been received by the Agency on the date on which it is registered by the department responsible indicated in Article I.7.4. 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 communication was delivered to the specified recipient.

- I.7.4** Communications shall be sent to the following addresses:

For the participating contracting authorities:
European Environment Agency

¹ Or local currency where the receiving country does not allow transactions in EUR.

Att.: Brian MacSharry
Kongens Nytorv 6
1050 Copenhagen K
Denmark
Tel.: +45 4038 2450
E-mail: Brian.MacSharry@eea.europa.eu

European Food Safety Authority

Att.: Julia Fabrega
Via Carlo Magno 1A
43126 Parma
Italy

For the Contractor:

Stichting Wageningen Research, Wageningen Environmental Research

Att.: E. (Jenny) Lazebnik
Droevendaalsesteeg 3
6708 PB Wageningen
The Netherlands
Tel.: +31 317 484 359
E-mail: jenny.lazebnik@wur.nl

By derogation from this Article, different contact details for the Agency or the Contractor may be provided in specific contracts or order forms.

ARTICLE I.8 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES

I.8.1 The Contract is governed by the national substantive law of Denmark.

I.8.2 Any dispute between the parties resulting from the interpretation, application or validity of the Contract which cannot be settled amicably shall be brought before the courts of Copenhagen, Denmark.

ARTICLE I.9 – EXPLOITATION OF THE RESULTS OF THE CONTRACT

I.9.1 Modes of exploitation

In accordance with Article II.7.2 whereby the Agency acquires ownership of the results as defined in this Contract, including Annex I thereof, these results may be used for any of the following modes of exploitation:

(a) Use for its own purposes:

- (i) making available to the staff of the Agency;
- (ii) making available to the persons and entities working for the Agency or cooperating with it, including contractors, subcontractors whether legal or natural persons, Union institutions, agencies and bodies, Member States' institutions;
- (iii) installing, uploading, processing;
- (iv) arranging, compiling, combining, retrieving;

- (v) copying, reproducing in whole or in part and in unlimited number of copies.
- (b) Distribution to the public in hard copies, in electronic or digital format, on the internet including social networks as a downloadable or non-downloadable file.
- (c) Communication through press information services.
- (d) Inclusion in widely accessible databases or indexes, such as via “*open access*” or “*open data*” portals, or similar repositories, whether freely accessible or accessible only upon subscription.
- (e) Modification by the Agency or by a third party in the name of the Agency, including:
 - (i) shortening;
 - (ii) summarizing;
 - (iii) modifying of the content, the dimensions;
 - (iv) making technical changes to the content: necessary correction of technical errors; adding new parts or functionalities; changing functionalities; providing third parties with additional information concerning the result (e.g. source code) with a view of making modifications;
 - (v) addition of new elements, paragraphs, titles, leads, bolds, legend, table of content, summary, graphics, subtitles, sound, etc...;
 - (vi) addition of metadata, for text and data-mining purposes; addition of right-management information; addition of technological protection measures;
 - (vii) preparation in audio form, preparation as a presentation, animation, pictograms story, slide-show, public presentation, etc...;
 - (viii) extracting a part or dividing into parts;
 - (ix) translating, inserting subtitles, dubbing in different languages versions;
- (f) Rights to authorise, license, or sub-license in case of licensed pre-existing rights, the modes of exploitation set out in any of the points (a) to (e) above to third parties.
- (g) Other adaptations which the parties may later agree; in such case, the following rules apply: the Agency must consult the Contractor and, if necessary, the Contractor shall in turn seek the agreement of any creator or other right holder and shall reply to the Agency within 1 (one) month by providing its agreement, including any suggestions of modifications, free of charge. The Agency may refuse the intended modification only if a creator can demonstrate that the intended modification may harm his/her honour or reputation, thereby violating his/her moral rights.

The modes of exploitation may be defined in more details in the specific contract or order form.

I.9.2 Pre-existing rights and transmission of rights

All pre-existing rights incorporated in the results, if any, are licensed to the Agency as set out in Article II.7.3.

The Contractor shall provide the Agency with a list of relevant pre-existing rights and third parties' rights as provided for in Article II.7.5, together with the payment of the balance at the latest.

In addition, the Contractor shall present relevant and exhaustive evidence about acquisition of all the necessary pre-existing rights and third parties' rights together with a presentation of relevant results. This obligation shall be fulfilled by presentation of the Contractor's statement prepared in accordance with Annex IV and the relevant evidence listed in Article II.7.5 as appropriate.

ARTICLE I.10 - PROCESSING OF PERSONAL DATA

I.10.1 Processing of personal data by the Agency

For the purpose of Article II.5.1,

- (a) the data controller is the contact person for the Agency as specified in Article I.7.4;
- (b) the data protection notice is available at [Privacy statement](#).

I.10.2 Processing of personal data by the Contractor

For the purpose of Article II.5.2,

- (a) the subject matter and purpose of the processing of personal data by the Contractor are provision of support to integrated assessment on biodiversity and ecosystems;

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- (b) the localisation of and access to the personal data processed by the contractor shall comply with the following:
 - (i) the personal data shall only be processed within the territory of the European Union and the European Economic Area and will not leave that territory;
 - (ii) the data shall only be held in data centres located with the territory of the European Union and the European Economic Area;
 - (iii) no access shall be given to such data outside of the European Union and the European Economic Area;
 - (iv) the Contractor may not change the location of data processing without the prior written authorisation of the Agency;
 - (v) any transfer of personal data under the Contract to third countries or international organisations shall fully comply with the requirements laid down in Chapter V of Regulation (EU)2018/1725.

II – GENERAL CONDITIONS

ARTICLE II.1 – PERFORMANCE OF THE CONTRACT

- II.1.1** The Contractor shall provide services of high quality standards, in accordance with the state of the art in the industry and the provisions of this Contract, in particular in the tender specifications (Annex I) and the terms of its tender (Annex II). Where the Agency has the right to make modifications to the results, they must be delivered in a format and with the necessary information, which effectively allow such modifications to be made in a convenient manner.
- II.1.2** The Contractor must comply with the minimum requirements provided for in the tender specifications (Annex I). This includes compliance with applicable obligations under environmental, social and labour law established by Union law, national law and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU², compliance with data protection obligations resulting from Regulation (EU) 2016/679³ and Regulation (EU) 2018/1725⁴.
- II.1.3** The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or license required for the performance of the Contract under the laws and regulations in force at the place where the tasks assigned to him are to be executed.
- II.1.4** Without prejudice to Article II.3 any reference made to the Contractor's personnel in the Contract shall relate exclusively to individuals involved in the performance of the Contract.
- II.1.5** The Contractor shall neither represent the Agency nor behave in any way that would give such an impression. The Contractor shall inform third parties that he does not belong to the European public service.
- II.1.6** The Contractor is responsible for the personnel who carry out the services and exercises its authority over its personnel without any interference by the Agency. The Contractor must inform its personnel that (i) they may not accept direct instructions from the Agency, and (ii) their participation in providing the services does not result in any employment or contractual relationship with the Agency.
- II.1.7** The Contractor must ensure that the personnel performing the Contract and any future replacement personnel possess the professional qualifications and experience required to provide the services, as the case may be on the basis of the selection criteria set out in the tender specifications (Annex I).

² OJ EU L 94/65 of 28.3.2014.

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

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

- II.1.8** At the Agency's reasoned request, the Contractor shall replace any member of personnel who (i) does not have the expertise required to provide the services or (ii) has caused disruption at the premises of the Agency. The Contractor bears the cost of replacing its personnel and is responsible for any delay in providing the services resulting from the replacement of personnel.
- II.1.9** Should any unforeseen event, action or omission directly or indirectly hamper provision of the services, either partially or totally, the Contractor shall immediately and on its own initiative record it and report it to the Agency. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with its obligations under the Contract.
- II.1.10** The Contractor must immediately inform the Agency of any changes in the exclusion situations as declared, according to Article 137 (1) of the Financial Regulation⁵.
- II.1.11** Should the Contractor fail to perform its obligations under the Contract, the Agency may – without prejudice to its right to terminate the Contract or an order form – reduce or recover payments in proportion to the scale of the failure. In addition, the Agency may impose penalties or liquidated damages provided for in Article II.13.

ARTICLE II.2 – LIABILITY

- II.2.1** The Agency shall not be liable for any damage or loss caused or sustained by the Contractor, including any damage or loss caused by the Contractor to third parties, during or as a consequence of performance of the Contract, except in the event of wilful misconduct or gross negligence on the part of the Agency.
- II.2.2** The Contractor shall be liable for any loss or damage caused to or sustained by the Agency during or as a consequence of performance of the Contract, including in the event of subcontracting, but only up to 3 (three) times the total amount of the relevant specific contract or order form. Nevertheless, if the damage or loss is caused by the gross negligence or wilful misconduct of the Contractor or by its personnel or subcontractors, the Contractor shall remain liable without any limitation as to the amount of the damage or loss.
- II.2.3** In the event of any action brought by a third party against the Agency in connection with performance of the Contract, including any action for alleged breach of intellectual property rights, the Contractor shall assist the Agency in the legal proceedings, including by intervening in support of the Agency upon request. Expenditure incurred by the Contractor to this end may be borne by the Agency. If the Agency's liability towards the third party is established and that such liability is caused by the Contractor during or as a consequence of the performance of the Contract, the provisions of Article II.2.2 shall apply.
- II.2.4** The Contractor shall take out insurance against risks and damages relating to performance of the Contract if required by the relevant applicable legislation. The Contractor shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance certificates shall be sent to the Agency should it so request.

⁵ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, 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, OJEU L 193/1 of 30.07.2018.

- II.2.5** Neither party shall be liable to the other party for loss or use of any results, loss for any indirect or consequential loss of damage, howsoever arising, which may be suffered by the other party in connection with the performance of the contract.

ARTICLE II.3 – CONFLICT OF INTEREST AND PROFESSIONAL CONFLICTING INTERESTS

- II.3.1** The Contractor shall take all necessary measures to prevent any situation of conflict of interest or professional conflicting interest.

Such conflict of interest could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest. Professional conflicting interest is a situation in which the Contractor's previous or on-going professional activities affect its capacity to perform the Contract or a specific contract or order form to an appropriate quality standard.

- II.3.2** Any situation that could constitute a conflict of interest or professional conflicting interest during performance of the Contract must be notified to the Agency in writing without delay. In the event of such situation, the Contractor shall immediately take all necessary actions to resolve it.

The Agency reserve the right to verify that such actions are appropriate and to require the Contractor to take further actions, if necessary, within a time limit which it shall set. The Agency also reserve the right not to award a specific contract or order form to the contractor.

- II.3.3** The Contractor shall ensure that its personnel, board and directors are not placed in a situation which could give rise to conflicts of interest. Without prejudice to Article II.1, the Contractor shall replace, immediately and without compensation from the Agency, any member of its personnel exposed to such a situation.

The Contractor shall pass on all the relevant obligations in writing to its personnel, board and directors as well as to third parties involved in the performance of the Contract. A copy of the instructions given and the undertakings made in this respect shall be sent to the Agency should it so request.

- II.3.4** The Contractor shall abstain from any contact likely to compromise its independence.

- II.3.5** The Contractor declares: (i) that he has not made and will not make any offer of any type whatsoever from which an advantage can be derived under the Contract, and (ii) that he has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, inasmuch as it is an incentive or reward relating to performance of the Contract.

ARTICLE II.4 – CONFIDENTIALITY

- II.4.1** The Agency and the Contractor must treat with confidentiality any information or documents, in any format, disclosed in writing or orally, relating to the performance of the Contract and identified in writing as confidential.

II.4.2 Each party must:

- (a) not use confidential information or documents for any purpose other than to perform its obligations under the Contract or a specific contract or order form without the prior written agreement of the other party;
- (b) ensure the protection of such confidential information or documents with the same level of protection as its own confidential information or documents and in any case with due diligence;
- (c) not disclose, directly or indirectly, confidential information or documents to third parties without the prior written agreement of the other party.

II.4.3 The confidentiality obligations set out in this article are binding on the Agency and the Contractor during the performance of the Contract and for as long as the information or documents remain confidential unless:

- (a) the disclosing party agrees to release the receiving party from the confidentiality obligation earlier;
- (b) the confidential information or documents become public through other means than a breach of the confidentiality obligation;
- (c) the applicable law requires the disclosure of the confidential information or documents.

II.4.4 The Contractor must obtain from any natural person with the power to represent it or take decisions on its behalf, as well as from third parties involved in the performance of the Contract a commitment that they will comply with this article. At the request of the Agency, the Contractor must provide a document providing evidence of this commitment.

II.5 – PROCESSING OF PERSONAL DATA

II.5.1 Processing of personal data by the Agency

Any personal data included in or relating to the Contract, including its implementation, shall be processed in accordance with Regulation (EU) 2018/1725. Such data shall be processed solely for the purposes of the implementation, management and monitoring of the Contract by the data controller.

The Contractor or any other person whose personal data is processed by the data controller in relation to this Contract has specific rights as a data subject under Chapter III (Articles 14-25) of Regulation (EU) 2018/1725, in particular the right to access, rectify or erase their personal data and the right to restrict or, where applicable, the right to object to processing or the right to data portability.

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

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

II.5.2 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 data controller.

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

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

The Contractor shall grant personnel access to the data to the extent strictly necessary for the implementation, management and monitoring of the Contract. The Contractor must ensure that personnel authorised to process personal data has committed itself to confidentiality or is under appropriate statutory obligation of confidentiality in accordance with the provisions of Article II.4.

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

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

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

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

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

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

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

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

The Agency is subject to Protocol 7 of the Treaty on the Functioning of the European Union on the privileges and immunities of the European Union, particularly as regards the inviolability of archives (including the physical location of data and services as set out in Article I.10.2) and data security, which includes personal data held on behalf of the EEA in the premises of the Contractor or subcontractor.

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

The duration of processing of personal data by the Contractor will not exceed the period referred to in Article II.19.2. Upon expiry of this period, the Contractor shall, at the choice of the data controller, return, without any undue delay in a commonly agreed format, all personal data processed on behalf of the data controller and the copies thereof or shall effectively delete all personal data unless Union or national law requires a longer storage of personal data.

For the purpose of Article II.9, if part or all of the processing of personal data is subcontracted to a third party, the Contractor shall pass on the obligations referred to in Articles I.10.2 and II.5.2 in writing to those parties, including subcontractors. At the request of the Agency, the Contractor shall provide a document providing evidence of this commitment.

II.6 – USE, DISTRIBUTION AND PUBLICATION OF INFORMATION ABOUT THE CONTRACT

- II.6.1** The Contractor shall authorise the Agency to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in or relating to the Contract, in particular the identity of the Contractor, the subject matter, the duration, the amount paid and the reports. Where personal data is concerned, Article II.5 shall apply.
- II.6.2** Any distribution or publication of information relating to the Contract by the Contractor shall require prior written authorisation from the Agency and shall mention the amount paid by the Agency. It shall state that the opinions expressed are those of the Contractor only and do not represent the Agency's official position.
- II.6.3** The use of information obtained by the Contractor in the course of the Contract for purposes other than its performance shall be forbidden, unless the Agency has specifically given prior written authorisation to the contrary.

II.7 – INTELLECTUAL PROPERTY RIGHTS

II.7.1 Definitions

In this Contract the following definitions apply:

- (a) *'results'* means any intended outcome of the performance of the Contract, whatever its form or nature, which is delivered and finally or partially approved by the Agency; 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;
- (b) *'creator'* means any natural person who contributed to the production of the result and includes personnel of the Agency or a third party;
- (c) *'pre-existing material'* means any material, document, technology or know-how which exists prior to the Contractor using it for the production of the result in the performance of the Contract;
- (d) *'pre-existing right'* means any industrial an intellectual property right on pre-existing material; it may consist in a right of ownership, a license right and/or right of use belonging to the Contractor, the creator, the Agency as well as to any other third parties;

II.7.2 Ownership of the rights in the results

The Agency acquires irrevocably worldwide ownership of the results and of all intellectual property rights on the newly created materials produced specifically for the Agency under the Contract and incorporated in the results. 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 his subcontractors in performance of the Contract or order forms. The Agency may exploit and use the acquired rights as stipulated in this Contract. The Agency acquires all the rights from the moment it approves the results delivered by the Contractor. Such delivery and approval are deemed to constitute an effective assignment of rights from the Contractor to the Agency.

Any intermediary sub-result, raw data, intermediary analysis made by the Contractor cannot be used by the Agency without the written consent of the Contractor, unless the Contract or the order form explicitly provides for it to be treated as self-contained result.

II.7.3 Licensing rights on pre-existing materials

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

The Contractor shall license the pre-existing rights on a royalty-free, non-exclusive and irrevocable basis to the Agency, which may use the pre-existing materials for all the modes of exploitation as set in Article I.9 or in order forms. All pre-existing rights shall be licensed to the Agency from the moment the results were delivered and approved by the Agency.

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

The payment of the price as set out in the order forms is deemed to include any fees payable to the Contractor in relation to the acquisition of ownership of rights by the Agency including for all forms of exploitation and use of the results.

Where performance of the Contract requires that the Contractor uses pre-existing materials belonging to the Agency, the Agency may request that the Contractor signs an adequate licence agreement. Such use by the Contractor will not entail any transfer of rights to the Contractor and is limited to the needs of this Contract.

II.7.4 Exclusive rights

The Agency acquires the following exclusive rights:

- (a) reproduction: the right to authorise or prohibit direct or indirect, temporary or permanent reproduction of the results by any means (mechanical, digital or other) and in any form, in whole or in part;
- (b) communication to the public: the exclusive right to authorise or prohibit any display, performance or communication to the public, by wire or wireless means, including the making available to the public of the results in such a way that members of the public may access them from a place and at a time individually chosen by them; this right also include the communication and broadcasting by cable or by satellite;
- (c) distribution: the exclusive right to authorise or prohibit any form of distribution of results or copies of the results to the public, by sale or otherwise;
- (d) rental: the exclusive right to authorise or prohibit rental or lending of the results or of copies of the results;
- (e) adaptation: the exclusive right to authorise or prohibit any modification of the results;
- (f) translation: the exclusive right to authorise or prohibit any translation, adaptation, arrangement, creation of derivative works based on the results, and any other alteration of the results, subject to the respect of moral rights of authors, where applicable;
- (g) where the results are or include a database: the exclusive right to authorise or prohibit the extraction of all or a substantial part of the contents of the database to another medium by any means or in any form; and the exclusive right to authorise or prohibit the re-utilisation of all or a substantial part of the contents of the database by the distribution of copies, by renting, by on-line or other forms of transmission;
- (h) where the results are or include a patentable subject-matter: the right to register them as a patent and to further exploit such patent to the fullest extent;
- (i) where the results are or include logos or subject-matter which could be registered as a trademark: the right to register such logo or subject-matter as a trademark and to further exploit and use it;
- (j) where the results are or include know-how: the right to use such know-how as is necessary to make use of the results to the full extent provided for by this Contract, and the right to make it available to contractors or subcontractors acting on behalf of the Agency, subject to their signing of adequate confidentiality undertakings where necessary;

- (k) where the results are documents:
 - (i) the right to authorise the reuse of the documents in conformity with the Commission Decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU), to the extent it is applicable and the documents fall within its scope and are not excluded by any of its provisions; for the sake of this provision, the terms “reuse” and “document” have the meaning given to them by this Decision;
 - (ii) the right to store and archive the results in line with the document management rules applicable to the Agency, including digitalisation or converting the format for preservation or new use purposes;
- (l) where the results are or incorporate software, concerning 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 as it results from this Contract and the intention of the parties, both by the Agency or by subcontractors acting on behalf of the Agency;
 - (ii) the rights to decompile or disassemble the software;
 - (iii) the rights to receive both the source code and the object code;
- (m) the right to license, or sub-license in case of licensed pre-existing rights, to third parties any of the exclusive rights or of the modes of exploitation set out in this Contract;
- (n) to the extent that the Contractor may invoke moral rights, the right for the Agency, except where otherwise provided in this Contract, to publish the results with or without mentioning the creator(s)’ name(s), and the right to decide when and whether the results may be disclosed and published.

The Contractor warrants that the exclusive rights and the modes of exploitation may be exercised by the Agency on all parts of the results, be they created by the Contractor or consisting of pre-existing materials.

Where pre-existing materials are inserted in the results, the Agency 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 Agency. In such case, the Contractor will have to clearly inform the Agency before making such choice and the Agency has the right to refuse it.

II.7.5 Identification of pre-existing rights

When delivering the results, the Contractor shall warrant that, for any use that the Agency may envisage within the limits set in this Contract, the results and the pre-existing material incorporated in the results are free of rights or 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 shall establish a list of all pre-existing rights to the results of this Contract or parts thereof, including identification of the owners of the rights. If there are no pre-existing rights to the results, the Contractor shall provide a declaration to that effect. The

Contractor shall provide the list or declaration to the Agency together with the invoice for payment of the balance at the latest.

II.7.6 Evidence of granting of pre-existing rights

Upon request by the Agency, the Contractor shall 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 Agency. The Agency may request this evidence even after the end of this Contract.

The evidence may refer, inter alia, to rights to: parts of other documents, images, graphs, tables, data, software, technical inventions, know-how, etc... (delivered in paper, electronic or other form), IT development tools, routines, sub-routines and/or other programs ("*background technology*") concepts, designs, installations or pieces of art, data, source or backgrounds materials or any other parts of external origin.

The evidence shall 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 license to use the product or of the agreement granting the relevant rights to the Contractor or a reference to this license;
- (d) a copy of the agreement or extract from the employment contract granting the relevant rights to the Contractor where parts of the results were created by its personnel;
- (e) the text of the disclaimer notice if any.

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

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

II.7.7 Quotation of works in the results

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

II.7.8 Moral rights of creators

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

- (a) that their names be mentioned or not mentioned when the results are presented to the public;
- (b) that the results be divulged or not after they have been delivered in their final version to the Agency;

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

II.7.9 Image rights and sound recording

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 Agency. The Contractor shall take the necessary measures to obtain such consent in accordance with the applicable legal provisions.

II.7.10 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 results is used as set out in Article I.9, with the following disclaimer: "*© - year – European Union. All rights reserved. Certain parts are licensed under conditions to the European Union*", or with any other equivalent disclaimer as the Agency may consider best appropriate, or as the parties may agree on a case-by-case basis. This does not apply where inserting such reference would be impossible, notably for practical reasons.

II.7.11 Visibility of the Union funding and disclaimer

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

II.8 – FORCE MAJEURE

II.8.1 Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from performing any of their obligations under the Contract, was not due to error or negligence on their part or on the part of a subcontractor, and could not have been avoided by the exercise of due diligence. Defaults of service, defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.

II.8.2 Without prejudice to the provisions of Article II.1.9, if either contracting party is faced with force majeure, it shall notify the other party without delay in writing stating the nature of the circumstances, their likely duration and foreseeable effects.

II.8.3 Neither contracting party shall be held liable for any delay or failure to perform its obligations under the Contract if that delay or failure is a result of force majeure. Where the Contractor is unable to perform its contractual obligations owing to force majeure, it shall have the right to remuneration only for tasks actually executed or services actually provided.

II.8.4 The contracting parties shall take all necessary measures to reduce any damage due to force majeure to a minimum.

II.9 – SUBCONTRACTING

II.9.1 The Contractor shall not subcontract and have the Contract implemented by third parties beyond the third parties already mentioned in its tender (Annex II) without prior written authorisation from the Agency or the participating contracting authority.

II.9.2 Even where the Agency authorised the Contractor to subcontract to third parties, it shall none the less remain bound by its obligations to the Agency under the Contract and it shall bear exclusive liability for proper performance of the Contract.

II.9.3 The Contractor shall ensure that the subcontract does not affect rights and guarantees to which the Agency is entitled by virtue of the Contract, notably those under Articles II.4, II.7 and II.19.

II.9.4 The Agency may request the Contractor to replace a subcontractor found to be in a situation provided for in points (d) and (e) of Article II.12.1.

II.10 – ASSIGNMENT

II.10.1 The Contractor shall not assign in whole or in part any of the rights and obligations arising from the Contract, including claims for payments or factoring, without prior written authorisation from the Agency. In such cases, the Contractor must provide the Agency with the identity of the intended assignee.

II.10.2 In the absence of the authorisation referred to in Article II.10.1, or in the event of failure to observe the terms thereof, any right or obligation assigned by the Contractor shall not be enforceable against and shall have no effect on the Agency.

II.11 – SUSPENSION OF THE IMPLEMENTATION OF THE CONTRACT

II.11.1 Suspension by the Contractor

If the Contractor is affected by force majeure, it may suspend the provision of the services under an order form. The Contractor shall immediately notify the Agency in writing of the suspension, stating the nature of the circumstances of force majeure and when the Contractor expects to resume provision of the services. The Contractor shall notify in writing the Agency as soon as it is able to resume performance of an order form, unless the Agency has already terminated the Contract or the order form.

II.11.2 Suspension by the Agency

If the Agency is affected by force majeure, it may suspend the performance of an on-going specific contract or order form. The Agency shall immediately notify the Contractor in writing of the suspension, stating the nature of the circumstances of force majeure and when the Agency expects resuming performance of the specific contract or order form. The Agency shall notify in writing the Contractor as soon as it is able to resume performance of the specific contract or order form, or, on the contrary, of its intention to terminate the specific contract or order form pursuant to the provisions in Article II.12.1 point (j).

Without prejudice to the Agency's right to terminate the Contract, the Agency may suspend implementation of the Contract or performance of an order form or any part thereof, if the

procedure for awarding the Contract or an order form, or the implementation of the Contract proves to have been subject to substantial errors, irregularities or fraud; or in order to verify whether the presumed substantial errors, irregularities or fraud actually occurred.

The Agency shall notify the Contractor in writing of the suspension. Suspension shall take effect on the day the Contractor receives the notification or at a later date where the notification so provides. The Agency shall as soon as possible give written notice to the Contractor whether the suspension is lifted and provision of the services shall resume or inform that it intends to terminate the Contract or an order form pursuant to the provisions in Article II.12.1 point (f) or (j).

The Contractor shall not be entitled to claim compensation on account of suspension of the Contract, of an order form or of part thereof.

II.12 – TERMINATION OF THE CONTRACT

II.12.1 Grounds for termination by the Agency

The Agency may terminate the Contract in the following circumstances:

- (a) if provision of the services under the contract has not actually started within 15 (fifteen) calendar days of the scheduled date and the Agency considers the new date proposed, if any, unacceptable, taking into account the provisions in Article II.20.2;
- (b) if the Contractor is unable, through its own fault, to obtain any permit or licence required for performance of the Contract;
- (c) if the Contractor does not implement the Contract in accordance with the tender specifications (Annex I) or is in breach of another substantial contractual obligation;
- (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;
- (e) if the Contractor or any related person is subject to any of the situations provided for in points (c) to (h) of Article 136(1) or to Article 136(2) of the Financial Regulation;
- (f) if the procedure for awarding the Contract or the performance of the Contract prove to have been subject of substantial errors, irregularities or fraud;
- (g) if the Contractor does not comply with applicable obligations under environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;
- (h) if the Contractor is in a situation that could constitute a conflict of interest or a professional conflicting interest as referred to in Article II.3;
- (i) if a change to the Contractor's legal, financial, technical, organisational or ownership situation is likely to substantially affect the performance of the Contract or substantially modify the conditions under which the Contract was initially awarded or a change regarding the exclusion situations listed in Article 136 of the Financial Regulation that calls into question the decision to award the contract;

- (j) in the event of force majeure, where either resuming implementation is impossible or the necessary ensuing amendments to the Contract would mean that the tender specifications (Annex I) are no longer fulfilled or result in unequal treatment of tenderers or contractors, or where performance thereof cannot be ensured for a period corresponding to at least one fifth of the period laid down in Article I.2.3;
- (k) if the Contractor is in breach of the data protection obligations resulting from Article II.5.2;
- (l) if the Contractor does not comply with the applicable data protection obligations resulting from Regulation (EU) 2016/679.

II.12.2 Grounds for termination by the Contractor

The contractor may terminate the Contract if the Agency fails to comply with its obligations, in particular the obligation to provide information needed for the Contractor to perform the Contract as provided in the tender specifications (Annex I).

II.12.3 Procedure for termination

A party shall formally notify the other party in writing of its intention to terminate the Contract stating the grounds for termination.

The other party shall have 30 (thirty) calendar days following the date of receipt of the notification to submit observations, including the measures it has taken to continue fulfilling its contractual obligations. Failing that, the decision to terminate becomes enforceable the day after the time limit for submitting observations has elapsed.

Within 15 (fifteen) calendar days of receipt of the observations, the party intending to terminate the Contract shall formally notify the other party 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) and (g) to (i) and (l) of Article II.12.1 and in Article II.12.2, the date on which the termination takes effect must be specified in the formal notification.

In the cases referred to in points (e), (f) and (j) of Article II.12.1, the termination takes effect on the day following the date on which the contractor receives notification of the termination.

In addition, at the request of the Agency and regardless of the grounds for termination, the Contractor shall provide all necessary assistance, including information, documents and files, to allow the Agency to complete, continue or transfer the services to a new contractor or internally, without interruption or adverse effect on the quality or continuity of the services. The parties may agree to draw up a transition plan detailing the Contractor's assistance unless such a plan is already detailed in other contractual documents or in the tender specifications (Annex I). The Contractor shall provide such assistance at no additional cost, except if it can demonstrate that it requires substantial additional resources or means, in which case it must provide an estimate of the costs involved and the parties will negotiate an arrangement in good faith.

II.12.4 Effects of termination

In the event of the Agency terminating the Contract in accordance with the provisions in Article II.12.1, and without prejudice to any other measures provided for in the Contract, the Contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted services, unless the loss was caused by one of the situations specified in Article II.12.2.

On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce its commitments. It shall draw up the documents required by the Special Conditions for the tasks already executed or the services already provided up to the date on which termination takes effect, and produce an invoice if necessary, within a period not exceeding 60 (sixty) calendar days from that date.

The Contractor is liable for any damage incurred by the Agency as a result of termination of the Contract in the cases referred to under points (a) to (i) of Article II.12.1, including the cost of appointing another contractor to provide or complete the services, unless the damage was caused by the situation specified in Article II.12.1 (j) or in Article II.12.2. The Agency may claim compensation for any such damage and recover any sums paid to the Contractor under the Contract.

II.13 – LIQUIDATED DAMAGES

II.13.1 Delay in delivery

If the Contractor fails to perform its contractual obligations within the applicable time limits set out in the Contract, including the tender specifications (Annex I), the Agency may claim liquidated damages for each and every calendar day of delay according to the formula $0.3 \times (V/d)$, where V is the price of the relevant purchase or deliverable or result, and d is the duration specified in the relevant order form for delivery of the relevant purchase or deliverable or result, or failing that, the period between the date specified in Article I.4.2 and the date of delivery or performance specified in the relevant order form, expressed in calendar days.

Liquidated damages may be imposed together with a reduction in price under the conditions laid down in Article II.14.

II.13.2 Procedure

The Agency shall formally notify the Contractor of its intention to apply liquidated damages and the corresponding calculated amount.

The Contractor may submit observations against this decision within 30 (thirty) calendar days of receipt of the formal notification. In the absence of reaction on the part of the Contractor, the decision becomes enforceable the day after the time limit for submitting observations has elapsed.

If the Contractor submits observations, the Agency shall notify the contractor in writing within 15 (fifteen) calendar days of receipt of the observations of the withdrawal of its intention to apply liquidated damages, or of its final decision to apply liquidated damages and the corresponding amount.

II.13.3 Nature of the liquidated damages

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

II.13.4 Claims and liability

Any claim for liquidated damages does not affect the Contractor's actual or potential liability or the Agency's rights under Article II.12.

II.14 – REDUCTION IN PRICE

II.14.1 Quality standards

If the Contractor fails to provide the service in accordance with the Contract or an order form ("*unperformed obligations*") or if it fails to provide the services in accordance with the expected quality levels specified in the tender specifications (Annex I) ("*low quality delivery*"), the Agency may reduce or recover payments proportionally to the seriousness of the unperformed obligations or low quality delivery. This includes in particular cases where the Agency cannot approve a result, report or deliverable as specified in Article II.15.5 after the Contractor has submitted the required additional information, correction or new version.

A reduction in price may be imposed together with liquidated damages under the conditions set in Article II.13.

II.14.2 Procedure

The Agency shall formally notify the Contractor in writing of its intention to reduce payment and the corresponding calculated amount.

The Contractor may submit observations against this decision within 30 (thirty) calendar days from receipt of the formal notification. In the absence of reaction on the part of the Contractor, the decision becomes enforceable the day after the time limit for submitting observations has elapsed.

If the Contractor submits observations, the Agency shall notify the contractor in writing within 15 (fifteen) calendar days of receipt of the observations of the withdrawal of its intention to reduce payment, or of its final decision to reduce payment and the corresponding amount.

II.14.3 Claims and liability

Any reduction of price does not affect the Contractor's actual or potential liability or the Agency's rights under Article II.12.

II.15 – PAYMENT ARRANGEMENTS

II.15.1 Payments shall be deemed to have been made on the date when the Agency's or the participating contracting authority's account is debited.

II.15.2 Payments shall be made in EUR or in the currency provided for in Article I.6.

II.15.3 The Agency 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 its website⁶, 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 European Commission and published on its website⁷, applicable on the date of the invoice.

II.15.4 The costs of transfer are borne as follows:

- The Agency bears the costs of dispatched charged by its bank;
- The Contractor bears the costs of receipt charged by its bank;
- The party causing repetition of transfer bears the costs for repeated transfer.

II.15.5 The Agency may suspend the payment period referred to in Article I.5 at any time by notifying the Contractor that its invoice cannot be processed either because it does not comply with the Contract, or because the contractor has not produced the appropriate documents or deliverables, or because the Agency has observations on the documents or deliverables submitted with the invoice.

The Agency shall notify the Contractor accordingly as soon as possible, stating the reason for suspension of the payment. Suspension shall take effect from the date of dispatch of the notification. The remaining payment period shall resume from the date on which the requested information or revised documents are received or the necessary further verifications, including on-the-spot checks, are carried out. Where the suspension period exceeds 2 (two) months, the Contractor may request the Agency to justify the continued suspension.

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph of this article and the new document produced is also rejected, the Agency reserves the right to terminate the order form in accordance with Article II.12.1 (c).

II.15.6 On expiry of the payment period specified in Article I.5, and without prejudice to the provisions in Article II.15.5, the Contractor is entitled to claim interest on late payment at the rate applied by the European Central Bank for its refinancing operations in euros (*"the reference rate"*) plus 8 (eight) points (*"the margin"*). The reference rate shall be the rate in force on the first day of the month in which the payment period ends, as published in the C series of the Official Journal of the European Union.

The suspension of the payment period in accordance with Article II.15.5 may not be considered as giving rise to late payment.

Interest on late payment shall cover the period running from the day following the due date for payment up to and including the date of the actual payment as defined in Article II.15.1. However, when the calculated interest is EUR 200 or less, it shall be paid to the Contractor only upon request within 2 (two) months of receiving late payment.

⁶ http://ec.europa.eu/budget/contracts_grants/info_contracts/infoeuro/infoeuro_en.cfm

⁷ http://ec.europa.eu/budget/contracts_grants/info_contracts/infoeuro/infoeuro_en.cfm

II.16 – REIMBURSEMENTS

- II.16.1** If provided for in the Special Conditions or in the tender specifications (Annex I), the Agency shall reimburse expenses directly connected with the provision of the services either on production of supporting documents (including receipts and used tickets) or on the basis of flat rates.
- II.16.2** The Agency shall reimburse travel and subsistence expenses on the basis of the shortest itinerary and the minimum number of nights necessary for overnight stay at the destination.
- II.16.3** The Agency shall reimburse travel expenses as follows:
- (a) travel by air shall be reimbursed up to the maximum cost of an economy class ticket at the time of the reservation;
 - (b) travel by boat or rail shall be reimbursed up to the maximum cost of a first class ticket;
 - (c) travel by car shall be reimbursed at the rate of one first class rail ticket for the same journey and on the same day;
 - (d) travel outside Union territory shall be reimbursed under the general conditions stated above provided the Agency has given its prior written agreement.
- II.16.4** The Agency shall reimburse subsistence expenses on the basis of a daily subsistence allowance as follows:
- (a) for journeys of less than 200 km for a return trip no subsistence allowance shall be payable;
 - (b) the daily subsistence allowance shall be payable only on receipt of supporting documents proving that the person concerned was present at the place of destination;
 - (c) the daily subsistence allowance shall take the form of a flat-rate payment to cover all subsistence expenses, including meals, local transport including transport from the airport or station, insurance and sundries;
 - (d) the daily subsistence allowance, where applicable, shall be reimbursed at the rate specified in Article I.3;
 - (e) accommodation shall be reimbursed on receipt of supporting documents proving the necessary overnight stay at the destination, up to the flat-rate ceilings specified in Article I.3.
- II.16.5** The cost of shipment of equipment or unaccompanied luggage shall be reimbursed, provided the Agency has given its prior written authorisation.

II.17 – RECOVERY

- II.17.1** If an amount is to be recovered under the terms of the Contract, the Contractor shall repay the Agency the amount in question.
- II.17.2** Before recovery, the Agency shall formally notify the Contractor of its intention to recover the amount it claims, specifying the amount due and the reasons for recovery and inviting the Contractor to make any observations within 30 (thirty) calendar days of receipt.

In the absence of reaction from the part of the Contractor or if, despite the observations submitted, the Agency 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 shall pay in accordance with the provisions specified in the debit note.

In the event of failure to pay by the due date specified in the debit note, the Agency may, after informing the Contractor in writing, recover the amounts due either by offsetting them against any amounts owed to the Contractor by the Agency, or by calling in a financial guarantee if the Contractor has provided one to the Agency, or by taking legal action.

- II.17.3** If the Contractor does not honour the obligation to pay the amounts due by the date set by the Agency in the debit note, the amount due shall bear interest at the rate indicated in Article II.15.6. Interest shall be payable from the calendar day following the due date for payment up to the date when the Agency receives the full amount owed. Any partial payment is first entered against charges and interest on late payment and then against the principal amount.

II.18 – TAXATION

- II.18.1** The Contractor shall have sole responsibility for compliance with the tax laws which apply to it. Failure to comply shall make the relevant invoices invalid.

- II.18.2** The Contractor acknowledges that the Agency is, as a rule, exempt from all taxes and duties, including value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the privileges and immunities of the European Union.

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

- II.18.3** Invoices presented by the Contractor shall contain the Contractor's identification data, the amount, the currency and the date, as well as the reference to the Contract and the order form. In addition, invoices presented by the Contractor shall indicate its place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

- II.18.4** If provided for in the Special Conditions, the Contractor shall submit invoices in electronic format if the conditions regarding electronic signature specified by Council Directive 2006/112/EC⁸ on VAT are fulfilled, i.e. using a qualified electronic signature or through electronic data interchange. Reception of invoices by standard format (PDF) or e-mail is not accepted.

II.19 – CHECKS AND AUDITS

- II.19.1** The Agency and the European Anti-Fraud Office may check or require an audit on the performance of the Contract. This may be carried out either by the Agency's or the European Anti-Fraud Office's own staff or by any other outside body authorised to do so on their behalf.

Such checks and audit may be initiated at any time during the performance of the Contract and up to 5 (five) years starting from the date of payment of the balance of the last order form issued under this Contract.

⁸ OJEU L 347/1 of 11.12.2006.

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

II.19.2 The Contractor shall keep all original documents stored on any appropriate medium, including digitised originals when they are authorised by the national law and under the conditions laid down therein, for a period of 5 (five) years starting from the date of payment of the balance of the last order form issued under this Contract.

II.19.3 The Contractor shall allow the Agency's staff and outside personnel authorised by the Agency the appropriate right of access to sites and premises where the Contract is performed and to all the information, including information in electronic format, needed in order to conduct such checks and audits. The Contractor shall ensure that the information is readily available at the moment of the check or audit and, if so requested, that information be handed over in an appropriate format.

II.19.4 On the basis of the findings made during the audit, a provisional report shall be drawn up and communicated to the Contractor who shall have 30 (thirty) calendar days following the date of receipt to submit observations. The final report shall be sent to the Contractor within 60 (sixty) calendar days following expiry of that deadline.

On the basis of the final audit findings, the Agency may recover all or part of the payments made in accordance with Article II.17 and may take any other measures which it considers necessary.

II.19.5 In accordance with Council Regulation (Euratom, EC) No 2185/96 concerning on-the-spot checks and inspection carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities⁹ and Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council concerning investigations conducted by the European Anti-Fraud Office¹⁰, the European Anti-Fraud Office may carry out investigations, including on-the-spot checks and inspections, to establish whether there has been fraud, corruption or any other illegal activity under the contract affecting the financial interests of the Union. Findings arising from an investigation may lead to criminal prosecution under national law.

The investigations may be carried out at any moment during the performance of the Contract and up to 5 (five) years after the payment of the balance of the last order form issued under this Contract.

II.19.6 The Court of Auditors and the European Public Prosecutor's Office established by Council Regulation (EU) 2017/1939¹¹ shall have the same rights as the Agency, notably right of access, for the purpose of checks, audits and investigations.

II.20 – AMENDMENTS

II.20.1 Any amendment to the Contract or an order form shall be the subject of a written agreement concluded between the contracting parties before fulfilment of all their contractual

⁹ OJEU L 292/2 of 15.11.1996.

¹⁰ OJEU L 248/1 of 18.9.2013.

¹¹ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office.

obligations. An oral amendment shall not be binding on the contracting parties. An order form may not be deemed to constitute an amendment to the Contract.

II.20.2 Any amendment may not have the purpose or the effect of making changes to the Contract or to order forms, which might alter the initial conditions of the procurement procedure or result in unequal treatment of tenderers or contractors.

II.21 – SUBMISSION OF ELECTRONIC DOCUMENTS THROUGH E-PRIOR

II.21.1 For the purposes of this contract the following definitions apply:

‘Authorised persons’: persons with access to the system (e-PRIOR) and which must be identified by the system via established means (authenticated user in ECAS – European Commission Authentication System).

‘Back office’: the internal system(s) used by the parties to process electronic documents, such as invoices;

‘Electronic Data Interchange (EDI)’: the electronic transfer, from computer to computer, of commercial and administrative data using an agreed standard to structure an EDI 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-Invoicing’ is the module in e-PRIOR enabling suppliers to view all credit notes and cost claims and related supporting documents, sent to and received from the contracting authority (i.e. the Agency). For suppliers authorised to do so, the e-Invoicing module also allows the creation of invoices, credit and debit notes, and their sending to contracting authorities.

‘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/supplies (request for quotation, final offer, etc.) electronic order forms, electronic transmission of timesheets, deliverables and its acceptance (service receipt, dispatch advices and receipt advices) or electronic invoices between the parties. Technical specifications (i.e. the interface control document), details on access and user manuals are available at the following website: <https://webgate.ec.europa.eu/fpfis/wikis/display/ePRIOR/Home>

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

‘Supplier portal’: the e-PRIOR portal, which allows the Contractor to receive or exchange electronic documents, such as quotations, orders, dispatch and receiving advices or invoices, through a graphical user interface. When necessary, these documents can be signed electronically by the authorised persons.

'Third-party service provider': company enabling the exchange of financial and business documents electronically on behalf of the Contractor to and from e-PRIOR via a machine-to-machine communication.

'Web services': machine-to-machine system allowing the Contractor to receive or exchange electronic business documents such as quotations, orders, dispatch and receiving advices or invoices, either through a direct interface or a third-party service provider.

II.21.2 If provided for in the special conditions, the exchange of electronic documents (e-documents) such as requests for services, specific contract or order forms and invoices between the parties is automated through the use of the e-PRIOR platform. This platform provides two possibilities for such exchanges: either through web services or through a web application (the supplier portal). The Agency takes the necessary measures to implement and maintain electronic systems that enable the supplier portal to be used effectively. In the case of machine-to-machine connection, a direct connection is established between the parties' back offices. In this case, the parties take the measures necessary on their side to implement and maintain electronic systems that enable the machine-to-machine connection to be used effectively. The electronic systems are specified in the interface control document. The Contractor (or leader in the case of a consortium) must take the necessary technical measures to set up a machine-to-machine connection and at its own cost. If communication via the supplier portal or via the web services (machine-to-machine connection) is hindered by factors beyond the control of one party, it must notify the other immediately and the parties must take the necessary measures to restore this communication.

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

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

II.21.3 Validity and date of e-documents

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

- (a) is considered as equivalent to a paper document;
- (b) is deemed to be the original of the document;
- (c) is legally binding on the parties once an e-PRIOR authorised person has performed the *'sign'* action in e-PRIOR and has full legal effect; and
- (d) constitutes evidence of the information contained in it and is admissible as evidence in judicial proceedings.

The parties expressly waive any rights to contest the validity of such a document solely on the grounds that communications between the parties occurred through e-PRIOR or that the document has been signed through e-PRIOR. If a direct connection is established between the

parties' back offices to allow electronic transfer of documents, the parties agree that an e-document, sent as mentioned in the interface control document, qualifies as an EDI message.

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

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

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

II.21.4 Authorised persons in e-PRIOR

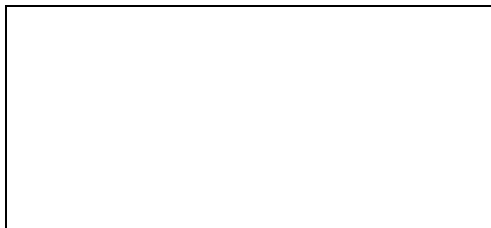
The Contractor submits a request for each person who needs to be assigned the role of '*user*' in e-PRIOR. These persons are identified by means of the European Communication Authentication Service (ECAS) and authorised to access and perform actions in e-PRIOR within the permissions of the user roles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

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

SIGNATURES

For Stichting Wageningen Research,
Dr.Ir. S. (Sjoukje) Heimovaara,
President, Executive Board Stichting
Wageningen Research

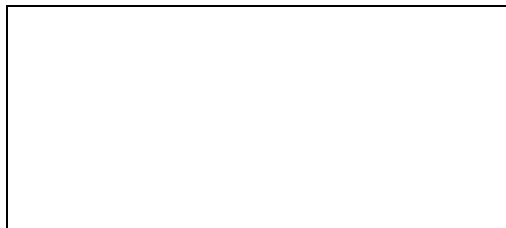
Signature:



Done at Wageningen,

For the European Environment Agency,
Martin Adams,
Head of Programme Biodiversity, Health
and Resources

Signature:



Done at Copenhagen,

L.A.C. (Rens) Buchwaldt MBA,
Member Executive Board
Stichting Wageningen Research

Signature:



Done at Wageningen,