



[DRAFT] WORKS CONTRACT

‘Office refurbishment works - Chalandri’

CONTRACT NUMBER – ENISA D-CSS-21-CXX

The European Union (hereinafter referred to as "the Union"), represented by the European Union Agency for Cybersecurity (hereinafter referred to as "the contracting authority"), which is represented for the purposes of the signature of this contract by Mr Juhan Lepasaar, Executive Director,

on the one part, and

[full official name]

[official legal form]

[statutory registration number]

[full official address]

[VAT registration number]

hereinafter referred to as ‘the contractor’

on the other part,

HAVE AGREED

the **Special Conditions (Part I)** and the **General Conditions (Part II)** below and the following Annexes:

Annex I – Tender Specifications (Invitation to Tender No [complete] of [complete]).

Annex II – Contractor's Tender (No [complete] of [complete]).

which form an integral part of this 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 tender specifications (Annex I) shall take precedence over those in the tender (Annex II).
- The terms set out in the contract shall take precedence over those in the requests for services.

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

I. SPECIAL CONDITIONS

1.1 SUBJECT

1.1.1 On xx/xx/2021 the Contracting authority launched an Open tender procedure under reference D-CSS-21-T35, for “Office refurbishment works - Chalandri”.

1.1.2 The subject of the Contract is:

- Office refurbishment works for the ENISA office located in Chalandri Athens, as set out in the Tender Specifications (Annex I).

The works covered by this Contract are listed in Annex I.

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

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

1.2 ENTRY INTO FORCE AND DURATION

1.2.1 The Contract shall enter into force on the *[predefined date - or - at the date of its signature]*

1.2.2 Under no circumstances may implementation take place before the date on which the Contract enters into force.

1.2.3 The Contract is concluded for a period of *[from date to date/number of days/months]* with effect from the date on which it enters into force. This contractual period and all other periods specified in the Contract are calculated in calendar days unless otherwise indicated.

1.3 PRICES

1.3.1 The prices of this contract shall be as listed in Annex II.

1.3.2 Prices shall be expressed in euro.

1.4 CERTIFICATES AND INVOICING

1.4.1 **Certificates**

The Contracting authority, based on the advice of its technical representative, shall issue a ‘Statement of Acceptance’ certificate, which will approve all works stipulated in this contract.

1.4.2 **Invoicing**

The Contractor shall invoice the full amount of this contract upon satisfactory completion of all stipulated works.

.The invoice must quote the reference number of the contract and be accompanied by the relevant supporting documents ('Statement of Acceptance' approved by the Contracting authority).

1.5 PAYMENT PERIODS

Payments under the Contract shall be made in accordance with Article II.15 of the General Terms and Conditions. Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted.

Payment shall be made by bank transfer within 30 calendar days of receipt of the invoice. Payment shall be deemed to have been made on the date on which said amount is debited from the contracting authority's bank account.

However, the contracting authority may defer payment if the services covered by the request for payment are disputed by the contracting authority or if the supporting documents accompanying the request for payment are incomplete.

Should invoices not be paid within the time agreed in the contract, the contractor shall send a reminder by registered post. The contracting authority shall then be obliged to explain the reasons for the delay to the contractor and notify the latter of the likely date of payment. The contractor shall not be entitled to interest on any invoices paid after the due date agreed in the contract.

1.5.1 Pre-financing

Not applicable.

1.5.2 Interim payment

Not applicable

1.5.3 Payment of the balance

Upon completion of all works as stipulated in the civil and electromechanical Technical Descriptions, the supervising Architectural Engineer shall approve the Works and sign the 'Statement of Acceptance'. The contractor shall then submit an invoice (together with the signed 'Statement of Acceptance') for payment of the balance.

The Contracting authority shall make the payment within 30 days from receipt of the invoice.

1.6 PERFORMANCE GUARANTEE

Not applicable.

1.7 BANK ACCOUNT

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

Name of the bank:

Full account number including bank codes:

IBAN code: [complete]

1.8 GENERAL ADMINISTRATIVE PROVISIONS

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

Contracting authority:

European Union Agency for Cybersecurity

[Unit [complete]]

[Postcode and city]

Email: [insert functional mailbox]

Contractor:

Mr/Ms Full Name

[Function]

[Company name]

[Contact address in full]

1.9 INSURANCE POLICIES

During the term of the contract, the Contractor assumes public liability in relation to the Contracting authority, for all damage or injury caused by the Contractor, by the persons or objects for which it is responsible and/or those under its control.

‘Damage or injury caused’ shall be understood to mean any injury caused to persons, and damage to buildings, equipment, furnishings and personal effects that may be inside the premises of the Contracting authority’s various buildings, including damage caused by water, fire or smoke.

Damage shall be repaired as quickly as possible, at the Contractor’s expense.

The successful tenderer must, at the time the contract is signed, have taken out at its own expense and with a company previously approved by the Contracting authority, a public liability policy covering the period of execution of the works, including cross-liability cover for any type of claim, in which the Contracting authority appears as co-insured in its capacity as contracting authority of the works and signatory to the works contract.

The insurer shall undertake to indemnify the insured upon first request, without raising any objections to which it may be entitled against the policy holder.

1.10 NOTIFICATION AND ACCEPTANCE OF THE CONTRACT

The Contracting authority shall advise the Contractor of the date on which work under the contract shall commence.

The contractual obligations of the Contracting authority and of the Contractor shall enter into force on the date indicated in the contract.

The Contractor shall return, with the signed contract, the documents listed below, which shall appear as annexes to the contract:

- list of names of the Contractor's work team, including their respective duties, which must correspond to the information given in the tender phase;
- preliminary timetable for activities related to the contractual tasks;

The Contractor must furnish the Contracting authority with the detailed timetable for the works, within 5 days of the date on which notification of the contract award is given.

1.11 DETAILS OF THE FINAL DESIGN

Before execution of the works, the Contractor shall check the final design carefully for any revisions needed to adapt it to the Contractor's technologies and procedures, subject to production of the detailed drawings.

It shall be understood that the contract value includes and makes provision for such surveys and markings-out, verifications, explorations, milestones and the like as may be necessary, including those simply requested by the Project Manager.

All non-substantial revisions that are needed for the final design to comply with the actual condition of the locations shall be the responsibility of the Contractor and shall not be regarded as technical modifications or variants. In any case, any deviation from the graphic documentation in the contract must be approved in writing by the Contracting authority.

1.12 DETAILED TIMETABLE FOR IMPLEMENTATION OF THE WORKS (DTW)

The Contractor shall submit by the deadline indicated in article 1.10, a draft detailed timetable for implementation of the works (DTW) to the Contracting authority and to the Project Manager.

This definitive timetable may not have a duration that is greater – either overall or for the intermediate stages – than that laid down in ANNEX II (Technical Specifications)

The Contracting Authority's Expert Management (comprising the Project Manager and appointed technical experts) shall approve the timetable and monitor compliance therewith.

If, through direct monitoring the Project Manager should become aware of delays or variations in the timetables that may impact on the normal performance of the work, he must make his concerns known to the Contractor, indicating ways, means and deadlines for keeping to the timetable planned.

To this end, the Project Manager may request that the Contractor increase the services furnished outside normal working hours or increase the number of men or increase the number, characteristics and performance levels of the installations and equipment used in the work, or all of these simultaneously.

These instructions do not authorise the Contractor to claim any remuneration or to make claims of any type.

1.13 SUBCONTRACTING AND SUPPLY SCHEDULE

The Contractor must submit to the Project Manager and Expert Management, together with the DTW, a 'Subcontracting Timetable and Plan', listing those activities that it intends to subcontract and the materials, equipment and components it intends to purchase from third parties.

The Plan must be continuously updated.

1.13.1 Subcontracting

The Contractor may not, without the prior express authorisation of the Contracting authority; subcontract performance of the tasks entrusted to it – not even a part thereof - or have the said tasks performed by third parties.

Subcontractors' shall only be liable in relation to the principal contractor, and the latter shall therefore assume full responsibility for the works regarding the Contracting authority just as if the works had been executed by the principal contractor himself/herself. It shall be understood that the Contractor shall continue to be the sole intermediary with the Contracting authority.

Under no circumstances may the Contractor agree to part of the contract being performed by persons who have been suspended or professionally disqualified from entering into contracts.

1.13.2 Supplies of materials

As regards the materials, equipment or components selected by the Contracting authority from those set out in the 'Subcontracting Timetable and Plan', the Contractor shall submit, in due time prior to commencement of works, the documentation required for establishing the suitability of these materials, equipment or components in accordance with contractual provisions.

The Contracting authority may, as appropriate, request a physical sample that is representative of the materials, and the Contractor shall undertake to supply or produce this as soon as possible.

Within 3 days of receipt of the documentation and the instruction to submit the physical sample, the Contracting authority shall forward the relevant approval or observations.

It is understood that all the aforesaid shall in no way affect the obligations and expenses assumed by the Contractor under the contract, nor does it confer upon the latter entitlement to claim any remuneration under any heading or for any reason, or to claim extensions to the contractual deadlines.

1.14 WORKS MANAGEMENT

The Contracting authority shall appoint a Project Manager with the assistance of technical experts (collectively referred to as 'Expert Management') to be responsible for settlement and acceptance of the works,

Expert Management shall be responsible for technical interpretation of the project, issuing orders in respect of its execution and verifying and monitoring proper

completion of the works under contract. For its work Expert Management may call on other persons who shall report to it.

The Contractor shall appoint a person to represent it. This representative must accompany Expert Management and persons working for the latter on their inspection visits.

1.15 QUALITY-CONTROL BODY

The Contracting authority may have recourse to a quality-control body responsible for providing technical assistance in verifying the quality of the project, analyses of materials and execution of the works and the installations thereof in accordance with the project.

The Contractor must provide the control body with every assistance in terms of communication, manpower, resources, etc. so that staff from the control company can correctly perform tests and assays.

1.16 START OF THE WORKS

The works shall commence at the time scheduled in the contract by the Contracting authority.

1.17 AMENDMENTS TO THE PROJECT

The contractor may not make any amendments to the project without the written consent of the contracting authority.

Amendments to the Project deriving from errors and/or omissions - be these work-unit measurements, arithmetical in nature or connected with the assessment of the overall deadline or intermediate deadlines, or of any other type - shall be strictly prohibited, as shall amendments arising from the need to execute work units that, although not appearing in any document, make implementation of subsequent units unviable, together with all those necessary for achieving the object defined in the project.

Only those amendments requested or authorised by the contracting authority, with express mention being made by the contracting authority of its acceptance of the price increase entailed thereby, shall be considered as project amendments for which financial consideration is due.

1.18 REPRESENTATION OF THE CONTRACTOR

The Contractor shall undertake to have available, on site, a representative authorised to represent the Contractor in all matters concerning execution of the works.

Appointment of the Site Representative shall always be subject to the express approval of the Contracting authority.

Without prejudice to the Contractor's specific responsibilities, the Site Representative shall be responsible for:

- a) execution of works in accordance with good practice and compliance of the works with contract plans and with instructions given by the Contracting authority throughout the contract;

b) performance of all management aspects of the contract, paying special attention to compliance with current regulations by the Contractor and subcontractors involved in the works and to compliance with all legal standards or standards mentioned herein with regard to subcontracting, as well as for effective implementation of safety and accident-prevention measures by virtue of the powers specifically conferred on the representative by the Contractor.

To that end, the Site Representative must maintain a 'constant' presence at the site and:

- c) be available and collaborate fully with the Project Manager, with a view to ensuring scrupulous compliance with safe work practices on the part of all workers, companies and subcontractors involved in execution of the works;
- d) ensure that the Contractor in no way enters into subcontracting arrangements that are not authorised by the Contracting authority;
- e) ensure that staff employed on the site are indeed listed on the payroll of the Contractor or of the subcontractor companies authorised for the premises;
- f) duly advise the Project Manager, in writing, of special safety and hygiene in the workplace measures adopted.

Duly proven failure by the Site Representative, or by the manager of the risk-protection and prevention service, to comply with the provisions of the present article may give rise to a request by the Contracting authority that said managers be replaced, without prejudice to any other legal initiative that may be taken.

Said staff shall be replaced by means of a written request signed by the Contracting authority's representative.

1.19 COMMUNICATIONS

1.19.1 Communications from the Contracting authority to the Contractor

All communications with the Contractor shall be made in writing via Expert Management.

Any observations that the Contractor may wish to address to the Contracting authority in response to a communication received from the latter must be forwarded in writing within 3 (three) days of the date of receipt of the communication from the Contracting authority. If the Contractor does not reply within that period, the Contractor shall be deemed to have accepted the Contracting authority's communication in full and without reserve.

The Contracting authority, for its part, shall advise the Contractor in writing of its position regarding the observations sent in writing by the Contractor via the Project Manager, and shall do so within 5 (five) days of receipt of the Contractor's observations.

1.19.2 Communications from the Contractor to the Contracting authority

The Contractor must communicate with the Contracting authority solely in writing and via the Project Manager.

The Contractor must advise the Contracting authority of any occurrence that may affect implementation of the works and/or services that are the object of the contract as quickly as possible and within 24 hours of the occurrence at the latest.

1.19.3 Communications from the Contractor to Project Manager

As regards its obligations under the contract, the Contractor must address all its communications solely and exclusively to the Project Manager, in writing.

As appropriate, the Project Manager shall send a copy of the aforesaid communications to the Contracting authority.

If, for reasons of urgency, the Contractor communicates verbally with the Project Manager, written confirmation of the verbal communications shall forward to the latter by the Contractor as soon as possible.

1.19.4 Communications from Project Manager to the Contractor

As regards its expert management and/or health and safety coordination obligations, all communications from the Project Manager to the contractor must be solely in writing, and a copy of said communications must be sent to the Contracting authority.

If, for reasons of urgency, the Project Manager communicates verbally with the contractor, written confirmation of said verbal orders must be forwarded to the contractor as soon as possible.

Any provision, order or instruction that may directly or indirectly increase or reduce the total cost of the works in any way must be discussed in advance between Expert Management and the Contracting authority.

In the cases described above, the Project Manager may pass on instructions relating to the contractor only after express, written prior authorisation by the Contracting authority.

If, in an emergency, technical measures must be ordered to prevent injury or damage to persons or objects, the Project Manager may revoke the provisions of this article but must immediately produce a report explaining the reasons for having acted thus, which report shall immediately be sent in writing to the Contracting authority.

1.20 CONTRACTUAL OBLIGATIONS

The Contractor shall be responsible for all obligations laid down for performance of the contract, the sole exception being those specifically envisaged in the contract documents as being the Contracting authority's responsibility.

The list of the Contractor's obligations as envisaged in the contract documents should not be regarded as limiting and exhaustive inasmuch as, should the Contractor have to address obligations not defined specifically in the aforesaid documents, such obligations shall all be deemed to be the Contractor's responsibility provided they are necessary for fulfilment of the Contractor's obligations referred to in the contract documents.

In addition to the expenses mentioned in the General Terms and Conditions and other expenses specified in the draft contract, the Contractor shall also be responsible for the following expenses:

1. Provision of the necessary qualified workers and technicians for surveys, markings-out and measurements connected with delivery, verification and accounting of the works.
2. Fees for guarding the works site, the machinery and the materials to be employed while works are in course and until total acceptance thereof, the Contracting authority being free of any liability for possible destruction, damage or theft.
3. Expenses for compliance with standards under current laws and decrees regarding prevention of accidents at work and hygiene in the workplace. In particular, the Contractor shall be obliged to observe, scrupulously and accurately, the legal provisions and corresponding local regulations on safety plans; such expenses as arise from the installations, elements, materials, persons and means of any type that have to be employed in order to comply with current regulations on safety and hygiene at work.
4. The Contractor shall be liable for any damage deriving from the accidental severing of public and private service networks as a result of its activity. In the event of damage to gas and water pipelines, telephone lines, electrical cables, etc., the Contractor must immediately advise the Project Manager of this occurrence and also the company managing said services. The latter may carry out repair work to be charged to the Contractor.
5. The costs of adopting, on its own initiative and when appropriate, all precautions necessary for the movement of vehicles or pedestrians. The Contractor shall not be entitled to any remuneration for the encumbrances that derive from all the aforesaid, even in the event of a lower performance level by the work force or means of transport on account of stoppages or for any other reason.
6. The costs of adopting all the measures that are necessary, during execution of the works or if the works are suspended, to prevent deterioration of any kind affecting the works already completed, it being understood that these costs shall be borne exclusively by the Contractor, and that damage resulting from failure to comply with the present clause shall not be regarded as being due to an instance of force majeure.
7. The costs of adopting all the measures necessary (removal of dust, noise abatement, removal of harmful gases, vibrations, etc.) to guarantee hygiene in the workplace and to reduce inconvenience. Special attention must be paid to activities that give rise to vibrations, given the presence in the building of computerised instruments that may be rendered unserviceable by vibrations induced. If necessary, and at a simple request from the Contracting authority, the Contractor must carry out such works at the time indicated by the Contracting authority with a view to not disrupting the normal running of the Contracting authority, without it being possible for such a circumstance to be cited by the Contractor as grounds for claiming higher fees or for justifying a delay.
8. The Contractor must coordinate its activities to suit the Contracting authority's requirements with a view to not disrupting the activities carried on in the building. If necessary, the Contracting authority may request total interruption of the activities that are causing the inconvenience, without it being possible for such a

circumstance to be adduced by the Contractor as grounds for claiming higher fees or for justifying a delay.

9. The costs of daily cleaning of the working environment or areas intended for use by staff, and of cleaning and refitting the areas of the site that have to be returned to their original condition.
10. The costs of storage, warehousing, maintenance and safekeeping of the materials that have to be incorporated into the works.
11. The costs of coordinating the works with any of the Contracting authority's suppliers or contractors with a view to coordinating the progress of work by all the companies that may be working on fitting out the building.
12. The costs of removing waste materials to legally authorised tips (such as materials from demolitions and excavations, municipal waste, hazardous waste), at its own expense, in accordance with the conditions stipulated in current laws in the field.
13. Before supplying materials, and bearing in mind Article 1.13 ('Subcontracting and Supply Timetable') or if so requested by the Project Manager, the Contractor must submit samples of the materials it intends to use. The Contractor shall also be responsible for preserving the samples approved by the Project Manager throughout the duration of the works. The preservation methods shall be agreed with the Project Manager and must be such as to guarantee the authenticity of the samples preserved.
14. The costs of carrying out the works required to meet completion deadlines, which shall include their scheduling over a number of day and night shifts, if so authorised by the Project Manager, without this generating higher charges for the Contracting authority.
15. The fees for the safety plan and the monitoring and follow-up thereof.
16. The costs arising from the drafting, processing and **legalisation** of all types of installation (plans, reports, OCA certificates, etc.).

It shall be understood that all the costs specified above are included in the unit prices for the individual works.

1.21 THE CONTRACTOR'S LIABILITY IN RELATION TO THE CONTRACTING AUTHORITY AND THIRD PARTIES

The contractor is liable, for all due purposes, for the satisfactory and complete fulfilment of the services specified under the contract, and, by signing the contract, acknowledges that the requirements and stipulations contained in the contract documents are suitable for achieving the purpose of the contract.

Neither the verification and the inspection by the contracting authority of progress on the project design, nor the approval of plans or other documentation by the contracting authority or by the latter's representatives, shall in any way limit or reduce the contractor's responsibilities in the performance of its contractual obligations.

The contractor shall be responsible for the contract services and for the behaviour of its employees, partners, consultants or any subcontractors.

All the personnel employed by the contractor or by the latter's partners, consultants, etc. must comply fully with the stipulations and regulations in force regarding labour recruitment and social security.

If the contracting authority so requests, the contractor must demonstrate that all the personnel cited in the previous paragraph comply with said provisions.

The contractor shall release the contracting authority, in any event, from any claims made by third parties that arise from the services performed by the contractor.

The Contracting authority shall not be deemed liable for damages sustained by the contractor in the performance of the contract unless this is due to incompetence or gross negligence on the part of the Contracting authority.

The contractor shall be liable for any loss or damages caused by itself in the performance of the contract, including in the event of subcontracting under Article II.3 of the General Conditions. The Contracting authority shall not be liable for any act or omission which may be attributed to the contractor in the performance of the contract.

The contractor shall compensate the Contracting authority in the event of any actions, claims or proceedings brought by a third party against the Contracting authority as a result of damage caused by the contractor in the performance of the contract.

In the event of a third party bringing an action against the Contracting authority in connection with the performance of the contract, the contractor shall assist the Contracting authority. In such an event, the costs incurred may be borne by the Contracting authority.

The contractor shall take out insurance against risks and damage connected with performance of the contract if so required under applicable legislation in force. It shall take out supplementary insurance insofar as this is reasonably required by standard practice in the industry. A copy of all the relevant insurance contracts shall be sent to the Contracting authority on request.

1.22 IMPLEMENTATION

1. In order to gain access to the installations, the Contractor shall provide the Contracting authority's representative, **at least two days prior to commencement of the works, and in electronic format**, with a list of its own and its contractors' vehicles and staff, complete with national ID document numbers. On the first day of work, staff shall be required to register at the check point and to show an original of their documents.
2. The works shall be carried out strictly in accordance with the terms stipulated in the Specifications and with the project that forms the basis of the contract and also in accordance with such instructions as may be given by Expert Management (based on the latter's technical interpretation of the Project). The Contractor must comply with these instructions provided they are given in writing.
3. The successful tenderer shall facilitate matters in every way, paying heed to the orders of the Project Manager and Expert Management with a view to achieving

the smooth coordination required for optimum execution of all the works, and may not claim any problem with meeting deadlines.

4. The Contractor must install and maintain, in accordance with relevant regulations, the facilities envisaged in its health and safety in the workplace plan.
5. The Contractor shall be obliged to provide such technical units, machinery and auxiliary means as are necessary for proper implementation of the works.
6. The materials used on the site shall comply with government instructions and regulations relating to general conditions and approval of materials, without prejudice to the specifications found in the Technical Specifications. Expert Management shall require verification of such studies, tests, materials analyses, installations and work units as it deems necessary.
7. In the course of the works, partial setting-out operations shall be performed as Expert Management deems appropriate. A document will be produced in quadruplicate for each operation, together with the corresponding plans. All expenditure on material and staff arising from such operations shall be borne by the Contractor.
8. The Contractor is obliged to comply with current legislation on employment, social security and safety and hygiene at work, and must set up the necessary body with the specific task of monitoring compliance with current legislation on safety and hygiene at work, appointing technical safety staff who will perform the duties concerned.
9. The Contracting authority may require the Contractor, at any time, to submit social security contribution slips, duly stamped by the relevant local authority, and also the pay slips for all workers employed in execution of the works. These obligations shall extend to the staff of any subcontractor companies. The contract with the successful tenderer shall not generate any kind of employment relationship between the workers and the Contracting authority.
10. On acceptance of the work, the Contractor shall leave a stock of materials for small repairs and provide all the documents necessary for producing the Building Manual or User Manual, covering the installations, their operation and their maintenance and upkeep. This Manual must provide the Contracting authority, via the Project Manager and Expert Management, and for all categories of work or equipment, with the list of subcontractors and suppliers from which spare parts for the equipment installed may be obtained.

1.23 DEFECTIVE OR POORLY EXECUTED WORK

During execution of the works, and until the warranty period expires, the Contractor shall be liable for any construction defects that may come to light. The fact that the Contracting authority's representatives may have examined or inspected, during construction, the parts and work units or the materials employed, and the fact that said parts/units/materials may have been included in the intermediate certificates and measurements, shall not exempt the Contractor from any obligation or confer on it any entitlement whatsoever.

If the works should deteriorate seriously after the warranty period has expired, owing to the Contractor's failure to comply with the contract, the Contractor shall be liable for damages for a period of 5 years from the date of acceptance. After that period has elapsed, no damage having become evident, the Contractor's liability shall end.

1.24 CONTRACTING AUTHORITY'S RIGHTS

The Contracting authority reserves the right to carry out, simultaneously, itself, or to have carried out by third parties, jobs not stipulated in the Project or not included in the Contract. In such a case, the successful tenderer shall provide every kind of facility and pay heed to the orders of the Project Manager and Expert Management with a view to achieving the smooth coordination required for optimum execution of all the works.

1.25 MAINTENANCE OF THE WORKS UP TO ACCEPTANCE THEREOF

The Contractor shall remain responsible, at its own expense, for maintenance of the works, until those works are duly accepted.

The Contractor shall not be entitled to compensation or reimbursement for expenses deriving thereof.

The Contractor shall be liable, from both the civil and criminal standpoint, for observance of all the provisions contained in the present article.

Throughout the period between execution and acceptance, the Contractor shall be guarantor of the works and supplies concerned, any necessary repairs, replacements and refurbishments being exclusively at its expense.

During said period, the Contractor shall carry out all routine maintenance prudently. The Contractor shall every so often make necessary repairs without the need for special prompting from the Project Manager doing this, where appropriate and without objection, as part of night-working if Site Management so requests.

When the Contractor does not proceed within the deadlines set by the Project Manager, action shall be taken automatically, the expenses thereof being borne by the Contractor.

1.26 ACCEPTANCE OF THE WORKS

The Contractor shall advise the Project Manager in writing, ten days in advance, of the envisaged date of completion of the works.

Acceptance shall be signed off by the Contracting authority and the Contractor, in a document wherein is stated the date of the final works certificate, the final real implementation cost, the statement of acceptance (with or without reservations), and the period for remedying any defects. If said period elapses without the Contractor having remedied any defects, it may be granted a further, non-extendable period, or the Contract may be declared to have been terminated.

The Contracting authority may refuse acceptance of the works, stating its reasons.

1.27 WARRANTY PERIOD

There shall be a one-year minimum warranty period starting on the date of final acceptance of the works by the Contracting authority.

During that period, the Contractor shall maintain the structure in good condition in accordance with the Technical Specifications and in line with instructions it may receive from Management, provided such works do not impede public use of the structure or the service the latter offers.

The Contractor shall be liable for such damage or deterioration in the structure as may arise, and shall bear such costs as arise thereof unless it is proved that the damage or deterioration has been caused by improper use of the structure by users or the Contracting authority and cannot be attributed to failure to comply with its obligations of supervision and policing of the structure. In such an event, it shall be entitled to reimbursement of the cost of the works to be carried out in order to return the structure to its due condition, but shall not be exempt from the obligation to carry out the aforesaid works.

If the Contractor disregards this obligation, the Contracting authority shall carry out the necessary works at the Contractor's expense and, if appropriate, drawing on the guarantee.

1.28 SETTLEMENT

Within three months of the date of the acceptance document, the settlement amount corresponding thereto must be agreed on, the Contractor must be notified thereof and any balance due to the Contractor must be paid.

1.29 PROCESSING OF PERSONAL DATA

1.29.1 Processing of personal data by the contracting authority

For the purpose of Article II.6.1,

- (a) the data controller is ENISA;
- (b) the data protection notice is available at:

<https://www.enisa.europa.eu/procurement/repository-of-files/privacy-statement-enisa-procurement-procedures>.

1.29.2 Processing of personal data by the contractor

For the purpose of Article II.6.2,

- (a) The subject matter and purpose of the processing of personal data by the contractor is the provision of 'Specifications and design of cybersecurity threat landscapes knowledge base';
- (b) The localisation of and access to the personal data processed by the contractor shall comply with the following:
 - i. the personal data shall only be processed within the territory of the European Union and the European Economic Area and will not leave that territory;

- ii. the data shall only be held in data centres located with the territory of the European Union and the European Economic Area;
- iii. no access shall be given to such data outside of the European Union and the European Economic Area;
- iv. the contractor may not change the location of data processing without the prior written authorisation of the contracting authority;
- v. any transfer of personal data under the contract to third countries or international organisations shall fully comply with the requirements laid down in Chapter V of Regulation (EU)2018/1725¹.

1.30 TERMINATION BY EITHER CONTRACTING PARTY

Either contracting party may, of its own volition and without being required to pay compensation, terminate the Contract by serving two weeks formal prior notice. Should the Contracting authority terminate the Contract, the Contractor shall only be entitled to payment corresponding to the goods and/or services ordered before the termination date. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Conditions for the goods delivered and services rendered up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

1.31 ENVIRONMENTAL POLICY

The Contracting authority aims to minimise the environmental impact of all its activities, including those carried out under contracts. The successful tenderer will, therefore, be requested to consider environmental guidelines in their work, in particular those relating to paper and energy consumption. The Contracting authority recommends to apply as much as possible the Regulation (EC) no 1221/2009 of the European Parliament and of the Council of 25 November 2009 allowing voluntary participation by organisations in a Union eco-management and audit scheme for all goods and services requested by the Contracting authority.

1.32 FAILURE TO COMPLY WITH DEADLINES - PENALTIES

If the Contractor should fall behind the deadlines set in the contract's performance schedule for reasons that can be attributed to it, the Contracting authority reserves the right to impose a penalty on the Contractor up to the maximum limit of 25 per cent of the total budget for the works:

- final deadline: EUR 1.000,00 for each calendar day of delay based on the date agreed to and set in the schedule for completion of the works.

If there are a number of contractors, said milestones shall be laid down in the general works programme.

¹ Regulation (EU) 2018/1725 of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295/39, 21.11.2018, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1725&from=EN>

Payment of penalties for delay shall be by means of their deduction from progress billings or final invoice.

In any case, the guarantee shall ensure their payment (if applicable).

The application and payment of said penalties shall not exclude any compensation to which the Contracting authority may be entitled for damages arising from the delay attributable to the Contractor.

When the penalties for delay reach the sum of 25% of the contract value, the Contracting authority shall be entitled to terminate the contract or to agree to its continuation with the imposition of further penalties.

1.33 DISPUTES

Should any disagreements and/or disputes of any nature arise between the contracting authority and the contractor during the performance of the contract, the parties shall seek an amicable solution before embarking upon a resolution procedure laid down in the general terms and conditions. To this end, all disagreements, which must be duly documented, shall be explained in writing in a letter sent to the representative of the opposing party within 10 days of the occurrence giving rise to the disagreement, subject to loss of the right to claim in respect of such an occurrence.

During the 10 days following the date of receipt of the letter, the opposing party may request clarifications or supplementary information and, within 10 days of receipt of same, must set out its arguments.

Once this period of time has passed, one of the parties shall propose three possible dates for a meeting and the other party shall either accept one of the three dates proposed or propose three alternative dates. Failure to agree on the date of the meeting shall constitute grounds for proceeding in accordance with the measures laid down in the general terms and conditions.

If, during the first meeting or any subsequent meetings, the parties reach an agreement, a Dispute Resolution Document shall be drawn up and signed by both parties. Both parties shall undertake to abide by the resolution.

The venue for the meetings shall be the contracting authority's offices in Athens.

1.34 PERMITS AND AUTHORISATIONS

The contractor shall be solely responsible for taking the necessary steps to obtain any permits or licences required for performance of the contract under the laws and regulations in force at the place where the tasks assigned to him are to be performed.

If the contractor, through his own fault, is unable to obtain any of the permits or authorisations required to carry out the contract, the contracting authority may terminate the contract without notice.

1.35 HEALTH AND SAFETY AT WORK

1.35.1 Greek Regulations on workplace health and safety

- the Contractor shall undertake, for the duration of the contract, to comply with Greek legislation on health and safety at work and the rules on safety and

hygiene at work in force at the Agency. The Contracting authority reserves the right to terminate the contract unilaterally should it ascertain that the Contractor has failed to comply, as regards its staff, with any of the requirements imposed under Greek legislation on health and safety at work or with any rules established by the Contracting authority on health and safety at work;

- in the event that the Contractor fails to comply with the rules laid down by the Contracting authority on this matter, the latter shall reserve the right to impose, without formal notice, any measures which it deems to be necessary to safeguard the health and safety of the Contractor's staff, the expense of which shall be borne by the Contractor. The Contractor may not dispute the appropriateness of these measures. In particular, the Contractor will not have any grounds for refusing to bear the cost thereof. The Contracting authority reserves the right to stop any work where it deems this to be necessary;
- the Contractor shall undertake to inform the Contracting authority in writing, as quickly as possible, of any occupational injury sustained by its staff in the execution of the works specified in this contract, enclosing a report explaining the reasons for the accident and whether the statutory preventive measures had been taken;
- where the Contractor has recourse to a subcontractor for the performance of its contractual obligations, the Contractor shall undertake to sign a contract with said subcontractor containing safety clauses identical to those contained herein.

1.35.2 Appointment of the Contractor's Safety Manager

The Contractor shall state in its tender the name of the person who will act as Safety Manager responsible for applying the Act of 8 November 1995 on safety and welfare of workers in the workplace.

Given his/her position as Safety Manager, this person must hold the proper qualifications and demonstrate that he/she has had specific training and sufficient experience.

The Safety Manager must personally satisfy him/herself, prior to commencement of works, that all technical and administrative safety requirements have been fulfilled.

He/she shall be in charge of keeping the Inspection and Safety Register up-to-date.

1.35.3 Inspection and Safety Register

The Contractor, through its Safety Manager, shall keep an up-to-date 'Inspection and Safety Register' containing all information on staff safety.

This shall include at the very least:

- a record of the start and end of works;
- a record of all incidents and accidents;
- a record of the dates on which inspections were carried out, and of the reports from authorised inspection bodies;
- all procedures and operating conditions connected with this contract;

- general safety requirements approved by the Contractor's Safety Manager;
- agreements signed by all the Contractor's members of staff whereby they undertake to respect safety procedures and requirements;
- 'authorisations to begin work', approved by the Contractor's Safety Manager.

1.36 PROVISIONS CONCERNING LEGISLATION ON WORKERS' RIGHTS

1.36.1 The Contractor hereby declares that it is completely familiar with Greek legislation concerning the provision of services and the assignment of employees.

1.36.2 The Contractor undertakes to provide, at the request of the Contracting authority, any reference concerning the contractual situation of any of its employees whom it proposes using to execute the present contract.

SIGNATURES

For the contractor,
[name],
[position],

For the contracting authority,
Mr Juhan Lepassaar,
Executive Director

signature[s]: _____

signature[s]: _____

Done in [place], [date]

Done in Athens, [date]

In duplicate in English.

II – General Conditions

ARTICLE II.1 – PERFORMANCE OF THE CONTRACT

- II.1.1** The contractor shall perform the contract to the highest professional standards.
- II.1.2** The contractor shall be solely responsible for taking the necessary steps to obtain any permit or licence required for performance of the contract under the laws and regulations in force at the place where the tasks assigned to it are to be executed.
- II.1.3** Without prejudice to Article II.4 any reference made to the contractor's personnel in the contract shall relate exclusively to individuals involved in the performance of the contract.
- II.1.4** The contractor must ensure that the personnel performing the contract possess the professional qualifications and experience required for the execution of the tasks assigned to it.
- II.1.5** The contractor shall neither represent the contracting authority nor behave in any way that would give such an impression. The contractor shall inform third parties that it does not belong to the European public service.
- II.1.6** The contractor shall be solely responsible for the personnel who executes the tasks assigned to the contractor.

The contractor shall stipulate the following employment or service relationships with its personnel:

- (a) personnel executing the tasks assigned to the contractor may not be given orders directly by the contracting authority;
 - (b) the contracting authority may not under any circumstances be considered to be the employer of the personnel referred to in point (a) and the personnel shall undertake not to invoke against the contracting authority any right arising from the contractual relationship between the contracting authority and the contractor.
- II.1.7** In the event of disruption resulting from the action of one of the contractor's personnel working on the contracting authority's premises or in the event that the expertise of a member of the contractor's personnel fails to correspond to the profile required by the contract, the contractor shall replace him without delay. The contracting authority shall have the right to make a reasoned request for the replacement of any such personnel. The replacement personnel must have the necessary qualifications and be capable of performing the contract under the same contractual conditions. The contractor shall be responsible for any delay in the execution of the tasks assigned to it resulting from the replacement of personnel.
- II.1.8** Should the execution of the tasks be directly or indirectly hampered, either partially or totally, by any unforeseen event, action or omission, the contractor shall immediately and on its own initiative record it and report it to the contracting authority. 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 this contract. In such an event the contractor shall give priority to solving the problem rather than determining liability.

- II.1.9** Should the contractor fail to perform its obligations under the contract, the contracting authority may - without prejudice to its right to terminate the contract - reduce or recover payments in proportion to the scale of the unperformed obligations. In addition, the contracting authority may claim compensation or impose liquidated damages in accordance with Article II.12.

ARTICLE II.2 – MEANS OF COMMUNICATION

- II.2.1** Any communication relating to the contract or to its performance shall be made in writing and shall bear the contract number. Any communication is deemed to have been made when it is received by the receiving party unless otherwise provided for in this contract.
- II.2.2** Electronic communication shall be deemed to have been received by the parties on the day of dispatch of that communication provided it is sent to the addressees listed in Article I.6. Without prejudice to the preceding, if the sending party receives a message of non-delivery to or of absence of the addressee, it shall make every effort to ensure the actual receipt of such communication by the other party.
Electronic communication shall be confirmed by an original signed paper version of that communication if requested by any of the parties provided that this request is submitted without unjustified delay. The sender shall send the original signed paper version without unjustified delay.
- II.2.3** Mail sent using the postal services is deemed to have been received by the contracting authority on the date on which it is registered by the department responsible referred to in Article I.6.
Any formal notification shall be made by registered mail with return receipt or equivalent, or by equivalent electronic means.

ARTICLE II.3 – LIABILITY

- II.3.1** The contractor shall be solely responsible for complying with any legal obligations incumbent on it.
- II.3.2** The contracting authority shall not be held liable for any damage caused or sustained by the contractor, including any damage 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 contracting authority.
- II.3.3** The contractor shall be held liable for any loss or damage sustained by the contracting authority in performance of the contract, including in the event of subcontracting, and for any claim by a third party, but only to an amount not exceeding three times the total amount of the contract. Nevertheless, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor or of its personnel or subcontractors, the contractor shall have unlimited liability for the amount of the damage or loss.
- II.3.4** The contractor shall indemnify and hold the Union harmless for all damages and costs incurred due to any claim. The contractor shall provide compensation in the event of any action, claim or proceeding brought against the contracting authority by a third party as a result of damage caused by the contractor during the performance of the contract. In the event of any action brought by a third party against the contracting authority in connection with the performance of the contract, including any alleged breach of intellectual property rights, the contractor shall assist the contracting

authority. Such expenditure incurred by the contractor may be borne by the contracting authority.

- II.3.5** The contractor shall take out an insurance policy against risks and damage relating to the performance of the contract, if required by the relevant applicable legislation. It shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance contracts shall be sent to the contracting authority should it so request.

ARTICLE II.4 - CONFLICT OF INTEREST

- II.4.1** The contractor shall take all the necessary measures to prevent any situation of conflict of interest. Such situation arises where the impartial and objective performance of the contract is compromised for reasons involving economic interest, political or national affinity, family or emotional ties, or any other shared interest.
- II.4.2** Any situation constituting or likely to lead to a conflict of interest during the performance of the contract shall be notified to the contracting authority in writing without delay. The contractor shall immediately take all the necessary steps to rectify the situation. The contracting authority reserves the right to verify that the steps taken are appropriate and may require that additional steps be taken within a specified deadline.
- II.4.3** The contractor declares that it has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, when such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, in so far as it serves as an incentive or reward relating to the performance of the contract.
- II.4.4** The contractor shall pass on all the relevant obligations in writing to its personnel and to any natural person with the power to represent it or take decisions on its behalf and ensure that it is not placed in a situation which could give rise to conflicts of interest. The contractor shall also pass on all the relevant obligations in writing to third parties involved in the performance of the contract including subcontractors.

ARTICLE II.5 – CONFIDENTIALITY

- II.5.1** The contracting authority and the contractor shall treat with confidentiality any information and documents, in any form, disclosed in writing or orally in relation to the performance of the contract and identified in writing as confidential.

The contractor shall:

- (a) not use confidential information and documents for any purpose other than fulfilling its obligations under the contract without prior written agreement of the contracting authority;
- (b) ensure the protection of such confidential information and documents with the same level of protection it uses to protect its own confidential information, but in no case any less than reasonable care;
- (c) not disclose directly or indirectly confidential information and documents to third parties without prior written agreement of the contracting authority.

II.5.2 The confidentiality obligation set out in Article II.5.1 shall be binding on the contracting authority and the contractor during the performance of the contract and for five years starting from the date of the payment of the balance unless:

- (a) the concerned party agrees to release the other party from the confidentiality obligation earlier;
- (b) the confidential information becomes public through other means than in breach of the confidentiality obligation through disclosure by the party bound by that obligation;
- (c) the disclosure of the confidential information is required by law.

II.5.3 The contractor shall 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, an undertaking that they will comply with the confidentiality obligation set out in Article II.5.1.

ARTICLE II.6 – PROCESSING OF PERSONAL DATA

II.6.1 Processing of personal data by the contracting authority

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

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

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

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

II.6.2 Processing of personal data by the contractor

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

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

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

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

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

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

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

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

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

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

- (a) ensure compliance with its data protection obligations regarding the security of the processing, and the confidentiality of electronic communications and directories of users;
- (b) notify a personal data breach to the European Data Protection Supervisor;

- (c) communicate a personal data breach without undue delay to the data subject, where applicable;
- (d) carry out data protection impact assessments and prior consultations as necessary.

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

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

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

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

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

ARTICLE II.7 – SUBCONTRACTING

- II.7.1** The contractor shall not subcontract without prior written authorisation from the contracting authority nor cause the contract to be de facto performed by third parties.
- II.7.2** Even where the contracting authority authorises the contractor to subcontract to third parties, it shall nevertheless remain bound by its contractual obligations and shall be solely responsible for the proper performance of this contract.
- II.7.3** The contractor shall make sure that the subcontract does not affect rights and guarantees granted to the contracting authority by virtue of this contract, notably by Article II.18.

ARTICLE II.8 – AMENDMENTS

- II.8.1** Any amendment to the contract shall be made in writing before fulfilment of any new contractual obligations and in any case before the date of payment of the balance.

II.8.2 The amendment may not have the purpose or the effect of making changes to the contract which might call into question the decision awarding the contract or result in unequal treatment of tenderers.

ARTICLE II.9 – ASSIGNMENT

II.9.1 The contractor shall not assign the rights, including claims for payments, and obligations arising from the contract, in whole or in part, without prior written authorisation from the contracting authority.

II.9.2 In the absence of such authorisation, or in the event of failure to observe the terms thereof, the assignment of rights or obligations by the contractor shall not be enforceable against the contracting authority and shall have no effect on it.

ARTICLE II.10 – OWNERSHIP OF THE RESULTS - INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS

II.10.1 Definitions

In this contract the following definitions apply:

(1) 'results' means any intended outcome of the performance of the contract which is delivered and finally accepted by the contracting authority.

(2) 'creator' means any natural person who contributed to the production of the result and includes personnel of the contracting authority or a third party.

(3) 'pre-existing rights' means any industrial and intellectual property rights, including background technology, which exist prior to the contracting authority or the contractor ordering them for the purpose of the contract execution and include rights of ownership and use by the contractor, the creator, the contracting authority and any third parties.

II.10.2 Ownership of the results

The ownership of the results shall be fully and irrevocably acquired by the Union under this contract including any rights in any of the results listed in this contract. Those rights in the results may include copyright and other intellectual or industrial property rights, as well as all technological solutions and information contained within these technological solutions, produced in performance of the contract. The contracting authority may exploit them as stipulated in this contract. All the rights shall be acquired by the Union from the moment the results are delivered by the contractor and accepted by the contracting authority. Such delivery and acceptance are deemed to constitute an effective assignment of rights from the contractor to the Union.

The payment of the price as set out in the contract is deemed to include any fees payable to the contractor in relation to the acquisition of rights by the Union including all forms of use of the results.

The acquisition of rights by the Union under this contract covers all territories worldwide. Any intermediary sub-result, raw data, intermediary analysis made available by the contractor cannot be used by the contracting authority without the written consent of the contractor, unless the contract explicitly provides for it to be treated as a self-contained result.

II.10.3 Licensing of pre-existing rights

The Union shall not acquire ownership of the pre-existing rights.

The contractor shall license the pre-existing rights on a royalty-free, non-exclusive and irrevocable basis to the Union which may use the pre-existing right as foreseen in Article I.8.1. All the pre-existing rights shall be licensed to the Union from the moment the results were delivered and accepted by the contracting authority.

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

II.10.4 Modes of exploitation

The Union shall acquire ownership of each of the results produced as an outcome of this contract which may be used for any of the following purposes:

- (a) giving access upon individual requests without the right to reproduce or exploit, as provided for by Regulation 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents;
- (b) storage of the original and copies made in accordance with this contract;
- (c) archiving in line with the document management rules applicable to the contracting authority.

II.10.5 Identification and evidence of granting of pre-existing rights and rights of third parties

When delivering the results, the contractor shall warrant that they are free of rights or claims from creators and third parties including in relation to pre-existing rights, for any use envisaged by the contracting authority. This does not concern the moral rights of natural persons.

The contractor shall establish to that effect a list of all pre-existing rights and rights of creators and third parties on the results of this contract or parts thereof. This list shall be provided no later than the date of delivery of the final results.

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

Upon request by the contracting authority, the contractor shall provide evidence of ownership of or rights to use all the listed pre-existing rights and rights of third parties except for the rights owned by the Union.

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

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

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

The contractor 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.10.6 Creators

By delivering the results the contractor warrants that the creators undertake not to oppose that their names be recalled when the results are presented to the public and confirms that the results can be divulged. Names of authors shall be recalled on request in the manner communicated by the contractor to the contracting authority.

The contractor shall obtain the consent of creators regarding the granting of the relevant rights and be ready to provide documentary evidence upon request.

II.10.7 Persons appearing in photographs or films

If natural, recognisable persons appear in a result or their voice is recorded the contractor shall submit a statement of these persons (or of the persons exercising parental authority in case of minors) where they give their permission for the described use of their image or voice on request by the contracting authority. This does not apply to persons whose permission is not required in line with the law of the country where photographs were taken, films shot or audio records made.

II.10.8 Contractor's copyright for pre-existing rights

When the contractor retains pre-existing rights on parts of the results, reference shall be inserted to that effect when the result is used as set out in Article I.8.1 with the following disclaimer: © - year – European Union. All rights reserved. Certain parts are licensed under conditions to the EU.

II.10.9 Visibility of Union funding and disclaimer

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

ARTICLE II.11 – FORCE MAJEURE

II.11.1 'Force majeure' means any unforeseeable and exceptional situation or event beyond the parties' control which prevents either of them from fulfilling any of their obligations under the contract, which was not attributable to error or negligence on their part or on the part of subcontractors and which proves to be inevitable in spite of exercising due diligence. Any default of a service, defect in equipment or material or delays in making them available, unless they stem directly from a relevant case of force majeure, as well as labour disputes, strikes or financial difficulties, cannot be invoked as force majeure.

II.11.2 A party faced with force majeure shall formally notify the other party without delay, stating the nature, likely duration and foreseeable effects.

II.11.3 The party faced with force majeure shall not be held in breach of its contractual obligations if it has been prevented from fulfilling them by force majeure. Where the contractor is unable to fulfil its contractual obligations owing to force majeure, it shall have the right to remuneration only for the tasks actually executed.

II.11.4 The parties shall take all the necessary measures to limit any damage due to force majeure.

ARTICLE II.12 – LIQUIDATED DAMAGES

The contracting authority may impose liquidated damages should the contractor fail to complete its contractual obligations, also with regard to the required quality level, according to the tender specifications.

Should the contractor fail to perform its contractual obligations within the time-limits set by the contract, then, without prejudice to the contractor's actual or potential liability or to the contracting authority's right to terminate the contract, the contracting authority may impose liquidated damages for each and every calendar day of delay according to the following formula:

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

V is the amount specified in Article I.3.1;

d is the duration specified in Article I.2.3 expressed in calendar days.

The contractor may submit arguments against this decision within 30 days of receipt of the formal notification. In the absence of a reaction on its part or of written withdrawal by the contracting authority within 30 days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable.

The parties expressly acknowledge and agree that any sums payable under this article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses incurred due to failure to fulfil obligations which may be reasonably anticipated.

ARTICLE II.13 – SUSPENSION OF THE PERFORMANCE OF THE CONTRACT

II.13.1 Suspension by the contractor

The contractor may suspend the performance of the contract or any part thereof if a case of force majeure makes such performance impossible or excessively difficult. The contractor shall inform the contracting authority about the suspension without delay, giving all the necessary reasons and details and the envisaged date for resuming the performance of the contract.

Once the circumstances allow resuming performance, the contractor shall inform the contracting authority immediately, unless the contracting authority has already terminated the contract.

II.13.2 Suspension by the contracting authority

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

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

Suspension shall take effect on the day the contractor receives formal notification, or at a later date provided in the notification. The contracting authority shall give notice as soon as possible to the contractor to resume the service suspended or inform the contractor that it is proceeding with the termination of the contract. The contractor shall not be entitled to claim compensation on account of suspension of the contract or of part thereof.

ARTICLE II.14 – TERMINATION OF THE CONTRACT

II.14.1 Grounds for termination

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

- (a) if a change to the contractor's legal, financial, technical or organisational or ownership situation is likely to affect the performance of the contract substantially or calls into question the decision to award the contract;
- (b) if execution of the tasks has not actually commenced within three months of the date foreseen, and the new date proposed, if any, is considered unacceptable by the contracting authority, taking into account Article II.8.2;
- (c) if the contractor does not perform the contract as established in the tender specifications or fails to fulfil another substantial contractual obligation;
- (d) in the event of force majeure notified in accordance with Article II.11 or if the performance of the contract has been suspended by the contractor as a result of force majeure, notified in accordance with Article II.13, where either resuming performance is impossible or the modifications to the contract might call into question the decision awarding the contract or result in unequal treatment of tenderers;
- (e) if the contractor is declared bankrupt, is being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (f) if the contractor or any natural person with the power to represent it or take decisions on its behalf has been found guilty of professional misconduct proven by any means;
- (g) if the contractor is not in compliance with its obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which it is established or with those of the country of the applicable law of this contract or those of the country where the contract is to be performed;
- (h) if the contracting authority has evidence that the contractor or natural persons with the power to represent it or take decisions on its behalf have committed fraud, corruption, or are involved in a criminal organisation, money laundering or any other illegal activity detrimental to the Union's financial interests;
- (i) if the contracting authority has evidence that the contractor or natural persons with the power to represent it or take decisions on its behalf have committed substantial errors, irregularities or fraud in the award procedure or the performance of the contract, including in the event of submission of false information;
- (j) if the contractor is unable, through its own fault, to obtain any permit or licence required for performance of the contract.

II.14.2 Procedure for termination

When the contracting authority intends to terminate the contract it shall formally notify the contractor of its intention specifying the grounds thereof. The contracting authority shall invite the contractor to make any observations and, in the case of point (c) of Article II.14.1, to inform the contracting authority about the measures taken to continue the fulfilment of its contractual obligations, within 30 days from receipt of the notification.

If the contracting authority does not confirm acceptance of these observations by giving written approval within 30 days of receipt, the termination procedure shall proceed. In any case of termination the contracting authority shall formally notify the contractor about its

decision to terminate the contract. In the cases referred to in points (a), (b), (c), (e), (g) and (j) of Article II.14.1 the formal notification shall specify the date on which the termination takes effect. In the cases referred to in points (d), (f), (h), and (i) of Article II.14.1 the termination shall take effect on the day following the date on which notification of termination is received by the contractor.

II.14.3 Effects of termination

In the event of termination, the contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the notification of termination, the contractor shall take all the appropriate measures to minimise costs, prevent damages, and cancel or reduce its commitments. The contractor shall have 60 days from the date on which termination takes effect to draw up the documents required by the special conditions for the tasks already executed on the date of termination and produce an invoice if necessary. The contracting authority may recover any amounts paid under the contract.

The contracting authority may claim compensation for any damage suffered in the event of termination.

On termination the contracting authority may engage any other contractor to execute or complete the services. The contracting authority shall be entitled to claim from the contractor all extra costs incurred in this regard, without prejudice to any other rights or guarantees it may have under the contract.

ARTICLE II.15 – REPORTING AND PAYMENTS

II.15.1 Date of payment

Payments shall be deemed to be effected on the date when they are debited to the contracting authority's account.

II.15.2 Currency

The contract shall be in euros.

Payments shall be executed in euros or in the local currency as provided for in Article I.5.

Conversion between the euro and another currency shall be made according to the daily euro exchange rate published in the *Official Journal of the European Union* or, failing that, at the monthly accounting exchange rate established by the European Commission and published on its website, applicable on the day on which the payment order is issued by the contracting authority.

II.15.3 Costs of transfer

The costs of the transfer shall be borne in the following way:

- (a) costs of dispatch charged by the bank of the contracting authority shall be borne by the contracting authority,
- (b) cost of receipt charged by the bank of the contractor shall be borne by the contractor,
- (c) costs for repeated transfer caused by one of the parties shall be borne by the party causing repetition of the transfer.

II.15.4 Invoices and Value Added Tax

Invoices shall contain the contractor's identification, the amount, the currency and the date, as well as the contract reference.

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

The contracting authority is, as a rule, exempt from all taxes and duties, including 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 supplies and services required for performance of the contract are exempt from taxes and duties, including VAT exemption.

II.15.5 Pre-financing and performance guarantees

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

Performance guarantees shall cover performance of the service in accordance with the terms set out in the tender specifications until its final acceptance by the contracting authority. The amount of a performance guarantee shall not exceed the total price of the contract. The guarantee shall provide that it remains in force until final acceptance. The contracting authority shall release the guarantee within a month following the date of final acceptance.

Where, in accordance with Article I.4, a financial guarantee is required for the payment of pre-financing, or as performance guarantee, it shall fulfill the following conditions:

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

The cost of providing such guarantee shall be borne by the contractor.

II.15.6 Interim payments and payment of the balance

The contractor shall submit an invoice for interim payment upon delivery of intermediary results, accompanied by a progress report or any other documents, as provided for in Article I.4 or in the tender specifications.

The contractor shall submit an invoice for payment of the balance within 60 days following the end of the period referred to in Article I.2.3, accompanied by a final progress report or any other documents provided for in Article I.4 or in the tender specifications.

Upon receipt, the contracting authority shall pay the amount due as interim or final payment within the periods specified in Article I.4, provided the invoice and documents have been approved and without prejudice to Article II.15.7. Approval of the invoice and documents shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information they contain.

Payment of the balance may take the form of recovery.

II.15.7 Suspension of the time allowed for payment

The contracting authority may suspend the payment periods specified in Article I.4 at any time by notifying the contractor that its invoice cannot be processed, either because it does not comply with the provisions of the contract, or because the appropriate documents have not been produced.

The contracting authority shall inform the contractor in writing as soon as possible of any such suspension, giving the reasons for it.

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

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph and the new document produced is also rejected, the contracting authority reserves the right to terminate the contract in accordance with Article II.14.1(c).

II.15.8. Interest on late payment

On expiry of the payment periods specified in Article I.4, and without prejudice to Article II.15.7, the contractor is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in Euros (the reference rate), plus eight points. The reference rate 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 periods in accordance with Article II.15.7 may not be considered as a 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 actual payment as defined in Article II.15.1.

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

ARTICLE II.16 - REIMBURSEMENTS

II.16.1 Where provided by the special conditions or by the tender specifications, the contracting authority shall reimburse the expenses which are directly connected with execution of the tasks on production of original supporting documents, including receipts and used tickets, or failing that, on production of copies or scanned originals, or on the basis of flat rates.

II.16.2 Travel and subsistence expenses shall be reimbursed, where appropriate, on the basis of the shortest itinerary and the minimum number of nights necessary for overnight stay at the destination.

II.16.3 Travel expenses shall be reimbursed 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;

In addition, travel outside Union territory shall be reimbursed provided the contracting authority has given its prior written consent.

II.16.4 Subsistence expenses shall be reimbursed 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) daily subsistence allowance shall be payable only on receipt of supporting documents proving that the person concerned was present at the destination;

- (c) daily subsistence allowance shall take the form of a flat-rate payment to cover all subsistence expenses, including meals, local transport which includes transport to and from the airport or station, insurance and sundries;
- (d) daily subsistence allowance shall be reimbursed at the flat rates 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 contracting authority has given prior written authorisation.

II.16.6 Conversion between the euro and another currency shall be made as specified in Article II.15.2.

ARTICLE II.17 – RECOVERY

II.17.1 If an amount is to be recovered under the terms of the contract, the contractor shall repay the contracting authority the amount in question according to the terms and by the date specified in the debit note.

II.17.2 If the obligation to pay the amount due is not honoured by the date set by the contracting authority in the debit note, the amount due shall bear interest at the rate indicated in Article II.15.8. Interest on late payments shall cover the period from the day following the due date for payment, up to and including the date when the contracting authority receives the full payment of the amount owed.

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

II.17.3 If payment has not been made by the due date, the contracting authority may, after informing the contractor in writing, recover the amounts due by offsetting them against any amounts owed to the contractor by the Union or by the European Atomic Energy Community or by calling in the financial guarantee, where provided for in Article I.4.

ARTICLE II.18 – CHECKS AND AUDITS

II.18.1 The contracting authority and the European Anti-Fraud Contracting authority may check or have an audit on the performance of the contract. It may be carried out either directly by their own staff or by any other outside body authorised to do so on their behalf.

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

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

II.18.2 The contractor shall keep all original documents stored on any appropriate medium, including digitised originals when they are authorised by national law and under the

conditions laid down therein, for a period of five years which starts running from the date of payment of the balance.

II.18.3 The contractor shall allow the contracting authority's staff and outside personnel authorised by the contracting authority the appropriate right of access to sites and premises where the contract is performed and to all the information, including information in electronic format, needed 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 form.

II.18.4 On the basis of the findings made during the audit, a provisional report shall be drawn up. It shall be sent to the contractor, which shall have 30 days following the date of receipt to submit observations. The final report shall be sent to the contractor within 60 days following the expiry of that deadline.

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

II.18.5 By virtue of Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspection carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities and Regulation (EC) No 1073/1999 of the European Parliament and the Council of 25 May 1999 concerning investigation conducted by the European Anti-Fraud Contracting authority (OLAF), the OLAF may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by Union law for the protection of the financial interests of the Union against fraud and other irregularities. Where appropriate, the findings may lead to recovery by the contracting authority.

II.18.6 The Court of Auditors shall have the same rights as the contracting authority, notably right of access, for the purpose of checks and audits.

ARTICLE II.19 – REPRESENTATION OF THE CONTRACTING AUTHORITY

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

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

The contracting authority's representative shall be responsible in particular for:

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

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

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

ARTICLE II.20 – SUSPENSION OF CONTRACTUAL ACTIVITIES

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

If the contracting authority orders the suspension of only part of the contractual activities, the Contractor shall continue to perform the remaining activities and shall not be entitled to request compensation for being unable to perform all the contractual activities simultaneously.

ARTICLE II.21 – PROHIBITION ON THE CONTRACTOR SUSPENDING, INTERRUPTING OR DELAYING CONTRACTUAL ACTIVITIES

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

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

ANNEX I

Tender Specifications

ANNEX II

Contractor's tender: