

GENERAL CONDITIONS OF THE CONTRACT

ARTICLE 1 – SCOPE OF APPLICATION, DEFINITIONS, RELATION TO PURCHASE ORDER

1.1. These General Conditions are applicable to contracts on supply of goods, services, and works, ordered by EUSPA via purchase orders.

1.2. Unless the context indicates otherwise, the terms and expressions set forth hereunder, if capitalized, shall have the following meaning in the Contract and in these General Conditions:

“Contract” means the contract concluded through the acceptance of the Purchase Order (including its attachments such as specification and these General Conditions therein referenced or attached in printed form) by the Contractor. EUSPA must receive the Purchase Order duly countersigned by the Contractor for the conclusion of the Contract. The receipt of an electronic copy of the signed Purchase Order is sufficient for the conclusion of the Contract. The Contract constitutes an entire agreement between EUSPA and the Contractor

“Contractor” means the entity/economic operator entering into the Contract with EUSPA; where the Contract is being entered into between EUSPA and two or more or a group or consortium of entities/economic operators, the Contractor means all of such entities/economic operators.

“Contractor Parties” means entities or persons engaged by the Contractor to execute on its behalf tasks in relation to this Contract and/or with a structural link with the Contractor, in particular a legal or capital link, sub-contractors, consultants or agents.

“Financial Regulation” means Regulation (EU, Euratom) No 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012;

“General Conditions” means these general conditions.

“Gross negligence”: unintentional act or omission by which the person responsible commits a patent breach of the duty of care which he should have and could have complied with in view of his attributes, knowledge, abilities and individual situation.

“Goods” means any tangible assets being the subject matter of the Contract, such as IT hardware or office supplies.

“EUSPA” means the European Union Agency for the Space Programme, having its headquarters in Prague.

“Purchase Order” means EUSPA’s purchase order (including its attachments such as specification and these General Conditions therein referenced or attached in printed form) on delivery/provision of goods, services or works addressed (or to be addressed) to the Contractor.

“Results” means intangible assets being the subject-matter of or resulting from the performance of the Contract.

“Services” means any services being the subject-matter of the Contract not subject to acceptance, notwithstanding any other quality assurance as, e.g. consulting services.

“**Works**” means tangible or intangible assets being the subject-matter of or resulting from the performance of the Contract and subject to acceptance as, e.g. software developed for EUSPA, results of craftsman services or individual expert opinions specifically ordered by EUSPA.

1.3. The General Conditions provide general rules for the Contract between EUSPA and the respective Contractor. The Purchase Order contains specific provisions for the respective Contract. In the event of conflicting interpretations, the Purchase Order shall take precedence over the General Conditions if the former explicitly deviates from the General Conditions. If the specification and the Contractor's quote are annexed to the Purchase Order, the specification shall take precedence over the quote, and the Contract shall take precedence over both. The several instruments shall be an integral part of the Contract and, subject to the above, they shall be taken as mutually explanatory. The Contractor's general terms and conditions, if any, shall not apply and will be disregarded.

ARTICLE 2 - PERFORMANCE OF THE CONTRACT

2.1. The Contractor shall perform the Contract to the highest professional standards with due care and in compliance with any legal obligations incumbent on him.

2.2. The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for the performance of the Contract under the laws and regulations in force at the place where the tasks assigned to him are to be executed.

2.3. The Contractor shall neither represent EUSPA nor behave in any way that would give such an impression. The Contractor shall inform third parties that he does not belong to the European public service if he becomes aware that any third party is under such impression.

2.4. The Contractor shall have sole responsibility for the staff who executes the tasks assigned to him. The Contractor shall make provision for the following employment or service relationships with his staff:

- staff executing the tasks assigned to the Contractor may not be given orders directly by EUSPA;
- EUSPA may not under any circumstances be considered to be the staff's employer and the said staff shall undertake not to invoke in respect of EUSPA any right arising from the contractual relationship between EUSPA and the Contractor.

2.5. In the event of disruption resulting from the action of a member of the Contractor's staff working on EUSPA premises or in the event of the expertise of a member of the Contractor's staff failing to correspond to the profile required by the Contract, the Contractor shall replace him without delay. EUSPA shall have the right to request the replacement of any such member of staff, stating its reasons for so doing. Replacement staff 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 him resulting from the replacement of staff in accordance with this Article.

2.6. Without prejudice to the provisions of article 11, should any unforeseen event, action or omission directly or indirectly hamper the execution of the tasks, either partially or totally, the Contractor shall immediately and on his own initiative record it and report it to EUSPA. 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 his obligations under the Contract. In such an event, the Contractor shall give priority to solving the problem rather than determining liability.

2.7. Should the Contractor fail to perform his obligations under the Contract in accordance with the provisions laid down therein, EUSPA may - without prejudice to its right to terminate the Contract - reduce or recover payments in proportion to the scale of the failure. In addition, EUSPA may impose liquidated damages provided for in Article 15 hereof.

Where tasks referred to in the Purchase Order consist in delivering goods (including intangible assets stored on tangible media), the Contractor shall notify EUSPA in writing (e-mail) and at least three (3) working days in advance of the exact date of delivery thereof. The Contractor shall deliver the goods at the place as specified in the Purchase Order. If no place of delivery is specified in the Purchase Order or in any communication related to the Contract, the Contractor shall request by e-mail that EUSPA communicates a place of delivery unless there are no reasonable doubts regarding the place of delivery. The Contractor shall bear all costs and risks in connection to delivering the goods to the place of delivery.

2.8. Goods and works shall be considered as accepted after the expiration of a period of 15 working days since their delivery unless the goods or works are refused and/or a remedy is requested in writing or by e-mail.

2.9. Acceptance of the goods or works or failure to refuse them shall be without prejudice to any right of EUSPA under the Contract or applicable law, including, but not limited to, the right to claim remedies in connection to defective goods or resulting from warranty, to reject a request for payment pursuant to Article 4.2 hereof, to suspend the payment period pursuant to Article 4.8 hereof or the rights pursuant to Article 2.7 hereof.

ARTICLE 3 - CONFLICTS OF INTEREST

3.1. The Contractor shall take all necessary measures to prevent any situation that could compromise the impartial and objective performance of the Contract. A conflict of interests exists where the impartial and objective performance of the Contract is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other direct or indirect personal interest. Any conflict of interest which could arise during the performance of the Contract must be notified to EUSPA in writing without delay. In the event of such conflict, the Contractor shall immediately take all necessary steps to resolve it.

EUSPA reserves the right to verify that such measures are adequate and may require additional measures to be taken, if necessary, within a time limit which it shall set. The Contractor shall ensure that his staff, board, directors, Contractor Parties or a third party involved in the performance of the Contract are not placed in a situation that could give rise to conflicts of interest. Without prejudice to Article 2 hereof, the Contractor shall replace, immediately and without compensation from EUSPA, any member of his staff, Contractor Parties or a third party exposed to such a situation.

3.2. The Contractor shall abstain from any contact likely to compromise his independence.

ARTICLE 4 - PROVISIONS CONCERNING PAYMENT

4.1. Requests for payments (invoices) presented by the Contractor shall contain his identification data, the amount, the currency and the date, the reference number of the Purchase Order, as well as further information required for taxation purposes pursuant to Article 5 hereof.

4.2. Where the request of payment does not comply with the requirements as set out in Article 4.1 hereof, EUSPA shall be entitled to reject the request of payment and notify the Contractor in

writing of the rejection and the reasons for it within thirty (30) days from the date on which the payment request was received. If rejected pursuant to the previous sentence, the request of payment shall be deemed to have had no legal effects and the Contractor shall submit to EUSPA a new request for payment; in such a case, the previous sentence shall apply *per analogiam*. Rejecting the request of payment or failing to do so shall be without any prejudice to any other right of EUSPA under the Contract, including, but not limited to, the right to suspend the payment period pursuant to Article 4.8 hereof or the rights pursuant to Article 2.7 hereof.

4.3. Unless otherwise stipulated in the Purchase Order, any request(s) for payment shall be sent electronically to finance@euspa.europa.eu.

4.4. The price quoted in the Purchase Order is firm, non-revisable and all-inclusive unless otherwise specified in the Purchase Order.

4.5. Payment of the invoiced amount and/or acceptance of the related supporting documents does not imply recognition of the regularity, authenticity, completeness and correctness of the declarations and information they contain.

4.6. The Contractor acknowledges that under Article 111(3) of the Financial Regulation, any payment under the Contract from EUSPA to the Contractor shall be subject to prior verification and approval by EUSPA of completion of the tasks referred to in the Purchase Order as well as of compliance of the request for payment with the requirements as set out in Article 4.1 hereof.

4.7. EUSPA shall pay the amount due within the period stipulated in the Purchase Order or, if no such period is stipulated in the Purchase Order, within the period of thirty (30) days, in either case commencing upon receipt of a request for payment that has not been rejected pursuant to Article 4.2 hereof, and provided that EUSPA has verified and approved completion of tasks referred to in the Purchase Order as well as compliance of the request for payment with the requirements as set out in Article 4.1 hereof.

4.8. The payment period stipulated pursuant to Article 4.7 may be suspended by EUSPA within a timely manner after the receipt of a request for payment if it informs the Contractor that his payment request is not admissible because

- (a) the amount is not due,
- (b) the necessary supporting documents for the payment have not been properly produced, or
- (c) EUSPA has observations on fulfilment of any of the grounds pursuant to letters (a) or (b) of this Article 4.8.

EUSPA shall notify the Contractor as soon as possible of any such suspension and give the reasons for it by e-mail. The suspension shall take effect from the date of dispatch of the e-mail. The remainder of the period shall begin to run again on the date EUSPA has lifted the suspension; EUSPA shall lift the suspension without undue delay after the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out.

4.9. In the event of late payment, the Contractor shall be entitled to interest. Interest shall be calculated at the rate applied by the European Central Bank to its most recent main refinancing operations ("the reference rate") plus eight (8) percentage points ("the margin"). The reference rate in force on the first day of the month in which the payment is due shall apply. Such interest rate is published in the C series of the Official Journal of the European Union. Interest shall be payable for the period elapsing from the calendar day following the expiry of the time limit for payment up to the day of payment. Suspension of payment by EUSPA may not be deemed to constitute late payment. In case interest does not exceed EUR 200, the Contractor's right to claim interest ceases to exist unless the Contractor raises the claim for interest within two months of receiving the late payment.

ARTICLE 5 – TAXATION

5.1. The Contractor shall have sole responsibility for compliance with the tax laws which apply to him. Failure to comply shall make the relevant invoices invalid.

5.2. The Contractor recognises that EUSPA is, as a rule, exempt from all taxes and duties, including value-added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.

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

Invoices presented by the Contractor shall also indicate his place of taxation for VAT purposes and shall specify the amounts separately, not including VAT and the amounts including VAT.

ARTICLE 6 – RECOVERY

6.1. If total payments made by EUSPA exceed the amount actually due under the Contract or if recovery is justified in accordance with the terms of the Contract, the Contractor shall issue a debit note and reimburse the appropriate amount in euro, in the manner and within the time limits set by EUSPA.

6.2. In the event of failure to issue a debit note and pay by the deadline specified in the request for reimbursement, the sum due shall bear interest at the rate indicated in Article 4.9 hereof. Interest shall be payable from the calendar day following the due date up to the calendar day on which the debt is repaid in full.

6.3. EUSPA may, after informing the Contractor, recover amounts established as certain of a fixed amount and due by offsetting against any amount the Contractor has on EUSPA that is certain of a fixed amount and due.

ARTICLE 7 – INTELLECTUAL PROPERTY RIGHTS

7.1. Ownership of the rights in the results

EUSPA acquires irrevocably worldwide ownership of the *results* and all intellectual property rights on the newly created materials specifically produced for EUSPA under the Contract and incorporated in the *results*, without prejudice, however to the rules applying to *pre-existing rights* on *pre-existing materials*, as per Article 7.2.

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

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

7.2. Licensing rights on pre-existing materials

EUSPA does not acquire ownership of *pre-existing rights* under this Contract.

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

- (a) the *pre-existing rights* can be sub-licensed by EUSPA to persons and entities working for it or cooperating with it, including Contractors and subcontractors, whether legal or natural persons, but only for the purpose of their mission for EUSPA;
- (b) if the *result* is a "document" such as a report or a study, and it is meant to be published, the existence of *pre-existing materials* in the *result* may not prevent the publication of the document, its translation or its "reuse", it being understood however that the "reuse" may only be made of the result as a whole and not of the *pre-existing materials* taken separately from the *result*; for the sake of this provision, "reuse" and "document" have the meaning given by the Commission Decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU).

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

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

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

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

7.3. Exclusive rights

Unless if stated differently in the Purchase Order, t EUSPA acquires the following exclusive rights:

- (a) use, reproduction, communication to the public, distribution, rental, translation;
- (b) where the *results* are or include a database: the exclusive right to authorise or prohibit the extraction of all or a substantial part of the contents of the database to another medium by any means or in any form; and the exclusive right to authorise or prohibit the re-utilization of all or a substantial part of the contents of the database by the distribution of copies, by renting, by on-line or other forms of transmission;
- (c) where the *results* are or include a patentable subject-matter: the right to register them as a patent and to further exploit such patent to the fullest extent;
- (d) where the *results* are or include logos or subject-matter which could be registered as a trademark: the right to register such logo or subject-matter as a trademark and to further exploit and use it;
- (e) where the *results* are documents:
 - (i) the right to authorise the reuse of the documents in conformity with the Commission Decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU), to the extent it is applicable, and the documents fall within its scope

- and are not excluded by any of its provisions; for the sake of this provision, “reuse” and “document” have the meaning given to them by this Decision;
- (ii) the right to store and archive the *results* in line with the document management rules applicable to EUSPA, including digitisation or converting the format for preservation or new use purposes;
- (f) where the *results* are or incorporate software, including source code, object code and, where relevant, documentation, preparatory materials and manuals, in addition to the other rights mentioned in this Article:
- (i) end-user rights, for all uses by EUSPA or by subcontractors which result from this Contract and from the intention of the parties;
 - (ii) the rights to receive both the source code and the objectcode;
- (g) the right to license to third parties any of the exclusive rights or of the modes of exploitation set out in this Contract; however, for *pre-existing materials* which are only licensed to EUSPA, the right to sub-license does not apply, except in the two cases foreseen by Article 7.2.;
- (h) to the extent that the Contractor may invoke moral rights, the right for EUSPA, except where otherwise provided in this Contract, to publish the *results* with or without mentioning the *creator(s)*’ name(s), and the right to decide when and whether the *results* may be disclosed and published.

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

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

7.4. Identification of pre-existing rights

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

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

7.5. Evidence of granting of pre-existing rights

Upon request by EUSPA, the Contractor must, in addition to the list mentioned under Article 7.4, provide evidence that it has the ownership or the right to use all the listed *pre-existing rights*, except for the rights owned or licensed by EUSPA. EUSPA may request this evidence even after the end of this Contract.

This provision also applies to image rights and sound recordings.

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

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

7.6. Quotation of works in the result

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

7.7. Moral rights of creators

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

- (a) that their names be mentioned or not mentioned when the *results* are presented to the public;
- (b) that the *results* be divulged or not after they have been delivered in their final version to EUSPA;
- (c) that the *results* be adapted, provided that this is done in a manner that is not prejudicial to the *creator's* honour or reputation.

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

7.8. Image rights and sound recordings

If natural persons appear in a *result* or their voice or any other private element is recorded in a recognisable manner, the Contractor must obtain a statement by these persons (or, in the case of minors, by the persons exercising parental authority) giving their permission for the described use of their image, voice or private element and, on request, submit a copy of the permission to EUSPA. The Contractor must take the necessary measures to obtain such consent in accordance with the applicable legal provisions.

7.9. Copyright notice for pre-existing rights

When the Contractor retains *pre-existing rights* on parts of the *results*, reference must be inserted to that effect when the result is used as set out in Article 7.3, with the following disclaimer: '© — year — European Union Agency for the Space Programme. All rights reserved. Certain parts are licensed under conditions to the EU', or with any other equivalent disclaimer as EUSPA may consider best appropriate, or as the parties may agree on a case-by-case basis. This does not apply where inserting such reference would be impossible, notably for practical reasons.

7.10. Visibility of EUSPA funding and disclaimer

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



the disclaimer.

ARTICLE 8 – CONFIDENTIALITY

The Contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to the performance of the Contract. Especially, the Contractor shall not, without the prior written consent of EUSPA, use such information or documents for any purposes other than for the performance of the Contract or disclose them, whether directly or indirectly, to any third party. The Contractor shall continue to be bound by this undertaking after completion of the tasks for a duration of at least five (5) years. The Contractor shall pass the obligations under this Article to any third party involved in the performance of the Contract; at request, the Contractor shall provide the evidence thereof to EUSPA.

ARTICLE 9 - USE, DISTRIBUTION AND PUBLICATION OF INFORMATION

9.1. The Contractor shall authorise EUSPA to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in or relating to the Contract, in particular the identity of the Contractor, the subject matter, the duration, and the amount paid. *[Where personal data is concerned, Article 19 hereof shall apply.]*

9.2. Unless otherwise provided, EUSPA shall not be required to distribute or publish documents or information supplied in the performance of the Contract. If it decides not to publish the documents or information supplied, the Contractor may not have them distributed or published elsewhere without prior written authorisation from EUSPA.

9.3. Any distribution or publication of information relating to the Contract by the Contractor shall require prior written authorisation from EUSPA and shall mention the amount paid by EUSPA. It shall state that the opinions expressed are those of the Contractor only and do not represent EUSPA's official position.

9.4. The use of information obtained by the Contractor in the course of the Contract for purposes other than its performance shall be forbidden unless EUSPA has specifically given prior written authorisation to the contrary.

ARTICLE 10 - LIABILITY

10.1. EUSPA shall not be liable for any loss or damage sustained by the Contractor, including any loss or damage to third parties, in relation to the performance of the Contract except in the event of wilful misconduct or gross negligence on the part of EUSPA.

10.2. The Contractor shall be held liable for any loss or damage sustained by EUSPA 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 two 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 its personnel or subcontractors, the Contractor shall have unlimited liability for the amount of the damage or loss.

10.3. EUSPA shall not be liable for any act or default on the part of the Contractor in relation to the performance of the Contract. If a third party asserts any claim against EUSPA in relation to the performance of the Contract, the Contractor shall, upon request, cooperate with EUSPA to the extent

necessary for due defence against such claim. If EUSPA's liability towards the third party is established and such liability is caused by the Contractor in relation to the performance of the Contract, the Contractor shall fully indemnify EUSPA and hold EUSPA harmless.

10.4. If the Contractor is composed of two or more economic operators, they are all jointly and severally liable to EUSPA for any obligation under the Contract.

ARTICLE 11 - FORCE MAJEURE

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

11.2. Without prejudice to Article 2.6 hereof, if either contracting party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.

11.3. Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Contractor is unable to perform his contractual obligations owing to force majeure, he shall have the right to remuneration only for tasks actually executed.

11.4. The contracting parties shall take the necessary measures to reduce damage to a minimum.

ARTICLE 12 – ASSIGNMENT

12.1. The Contractor shall not assign the Contract or its part or the rights and obligations arising from the Contract, in whole or in part, without prior written authorisation from EUSPA.

12.2. In the absence of such authorisation, or in the event of failure to observe the terms thereof, assignment by the Contractor shall not be enforceable against and shall have no effect on EUSPA.

ARTICLE 13 – TERMINATION

13.1. EUSPA may terminate the Contract, *inter alia*, in the following circumstances:

- (a) to the extent permitted by law, where the Contractor or any person that assumes unlimited liability for the debts of the Contractor is bankrupt, subject to insolvency or winding-up procedures, its assets are being administered by a liquidator or by a court, it is in an arrangement with creditors, its business activities are suspended, or it is in any analogous situation arising from a similar procedure provided for under Union or national law;
- (b) where it has been established by a final judgment or a final administrative decision that the Contractor and/or the Contractor Parties are in breach of their obligations relating to the payment of taxes or social security contributions in accordance with the applicable law;
- (c) where it has been established by a final judgment or a final administrative decision that the Contractor and/or the Contractor Parties are guilty of grave professional misconduct by

- having violated applicable laws or regulations or ethical standards of the profession to which they belong, or by having engaged in any wrongful conduct which has an impact on their professional credibility where such conduct denotes wrongful intent or gross negligence, including, in particular, any of the following:
- (i) fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of eligibility or selection criteria or in the implementation of the legal commitment;
 - (ii) entering into an agreement with other persons or entities with the aim of distorting competition;
 - (iii) violating intellectual property rights;
 - (iv) attempting to influence the decision-making of the authorising officer responsible during the award procedure;
 - (v) attempting to obtain confidential information that may confer upon it undue advantages in the award procedure;
- (d) where it has been established by a final judgment that the Contractor and/or the Contractor Parties are guilty of any of the following:
- (i) fraud, within the meaning of Article 3 of Directive (EU) 2017/1371 of the European Parliament and of the Council (1) and Article 1 of the Convention on the protection of the European Communities' financial interests, drawn up by the Council Act of 26 July 1995 (2);
 - (ii) corruption, as defined in Article 4(2) of Directive (EU) 2017/1371 or active corruption within the meaning of Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997 (3), or conduct referred to in Article 2(1) of Council Framework Decision 2003/568/JHA (4), or corruption as defined in other applicable laws;
 - (iii) conduct related to a criminal organisation as referred to in Article 2 of Council Framework Decision 2008/841/JHA (5);
 - (iv) money laundering or terrorist financing within the meaning of Article 1(3), (4) and (5) of Directive (EU) 2015/849 of the European Parliament and of the Council (1);
 - (v) terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA (2), respectively, or inciting, aiding, abetting or attempting to commit such offences, as referred to in Article 4 of that Decision;
 - (vi) child labour or other offences concerning trafficking in human beings as referred to in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council (3);
- (e) where the Contractor and/or the Contractor Parties have shown significant deficiencies in complying with main obligations in the implementation of a legal commitment financed by the budget, which has:
- (i) led to the early termination of a legal commitment;
 - (ii) led to the application of liquidated damages or other contractual penalties; or
 - (iii) been discovered by an authorising officer, OLAF or the Court of Auditors following checks, audits or investigations;
- (f) where it has been established by a final judgment or final administrative decision that the Contractor and/or the Contractor Parties have created an entity in a different jurisdiction with the intent to circumvent fiscal, social or any other legal obligations in the jurisdiction of its registered office, central administration or principal place of business and/or it has been established by a final judgment or final administrative decision that an entity has been created with this intent referred;
- (g) where it has been established by a final judgment or a final administrative decision that the Contractor and/or the Contractor Parties are in breach of other environmental, social and labour law in accordance with the legal provisions of the European Union, the country in which they are established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed or by the international environmental,

- social and labour law provisions listed in Annex X to Directive 2014/24/EU¹;
- (h) where a change in the Contractor's legal, financial, technical or organisational situation could, in EUSPA's opinion, have a significant effect on the performance of the Contract;
 - (i) where execution of the tasks has not actually commenced within the delivery or performance period set in the Purchase Order, and the new date proposed, if any, is considered unacceptable by EUSPA;
 - (j) where the Contractor is unable, through his own fault, to obtain any permit or licence required for the performance of the Contract;
 - (k) where the Contractor, after receiving notice to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period, but not more than fifteen (15) working days, following receipt of the notice, remains in serious breach of his contractual obligations.

13.2. In the absence of a final judgment or, where applicable, a final administrative decision in the cases referred to in Article 13.1, EUSPA may terminate the Contract on the basis of a preliminary classification in law of a conduct as referred to in Article 13.1. Prior to termination, EUSPA shall give Contractor the opportunity to submit his observations. Where a final judgment or final administrative decision holds that the Contractor and/or the Contractor Parties are not guilty of the conduct subject to a preliminary classification in law, on the basis of which the Contract has been terminated, EUSPA shall reimburse any financial penalty imposed. For the avoidance of doubt, the Contract shall remain terminated.

13.3. In case of force majeure, notified in accordance with Article 11 hereof, either contracting party may terminate the Contract, where performance thereof cannot be ensured for a period corresponding to at least one-fifth of the period laid down in the Purchase Order.

13.4. Termination under this Contract shall take effect on the date on which the communication of termination is received by the Contractor or on any other date indicated in the communication of termination.

13.5. Consequences of termination:

In the event of EUSPA terminating the Contract and without prejudice to any other measures provided for in the Contract, the Contractor shall not have, and to this end also shall waive, any claim for consequential damages, including any loss of anticipated profits for uncompleted work. 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 for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty (60) days from that date. EUSPA may claim compensation for any damage suffered and recover any sums paid to the Contractor under the Contract. Performances shall be returned pursuant to the applicable law. On termination, EUSPA may engage any other Contractor to perform and/or complete the delivery/provision of goods, services or works. EUSPA shall be entitled to claim from the Contractor all extra costs incurred in making good and performing and/or completing the delivery/provision of goods, services or works, without prejudice to any other rights or guarantees it has under the Contract.

ARTICLE 14 - SUBSTANTIAL ERRORS, IRREGULARITIES AND FRAUD ATTRIBUTABLE TO THE CONTRACTOR

¹ [Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC](#), as amended by [Commission Delegated Regulation \(EU\) 2015/2170 of 24 November 2015](#).

Where, after the award of the Contract, the award procedure or the performance of the Contract proves to have been subject to substantial errors, irregularities or fraud, and where such errors, irregularities or fraud are attributable to the Contractor, EUSPA may refuse or reduce payments, may recover amounts already paid or may terminate all the contracts concluded with the Contractor, in proportion to the seriousness of the errors, irregularities or fraud.

ARTICLE 15 - LIQUIDATED DAMAGES

15.1. Should the Contractor fail to perform his obligations under the Contract within the time limits set by the Contract, then, without prejudice to the Contractor's actual or potential liability incurred in relation to the Contract or to EUSPA's right to terminate the Contract, EUSPA may decide to impose liquidated damages of 0.2 % of the amount specified in the Purchase Order per calendar day of delay. For the avoidance of doubt, this Article applies only to the failure of Contractor to perform his obligations under the time limits set by the Contract (delays).

15.2. The Contractor may submit arguments against this decision within fifteen (15) working days of notification by e-mail. In the absence of (a) reaction on his part or (b) written withdrawal by EUSPA within fifteen (15) working days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable.

15.3. EUSPA and the Contractor 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 that may be reasonably anticipated from such failure to perform obligations. No exercise of the right to any liquidated damages hereunder shall further affect EUSPA's right to require compensation for any damage or loss exceeding the amount of the relevant liquidated damages. Liquidated damages may be imposed together with a reduction or recovery of payment in terms of Article 2.7 hereof.

ARTICLE 16 - CHECKS AND AUDITS

16.1. The European Court of Auditors shall be empowered to audit the documents held by the natural or legal persons receiving payments from the budget of the European Union from the signature of the Contract up to five years after payment of the balance.

16.2. 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 from the date of payment of the balance.

16.3. Upon notice, EUSPA shall be entitled to access, inspect and audit the documents held by the Contractor in connection with the performance of this Contract up to five years after the last payment is made to the Contractor by EUSPA. The Contractor shall allow 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 checks or audit and, if so requested, that information be handed over in an appropriate form. EUSPA shall not be obliged to pay any compensation to the Contractor in connection to exercising its right under this Article.

16.4. The Contractor further acknowledges that the European Anti Fraud Office may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 and Parliament and Council Regulation (EU, Euratom) No 883/2013 and agrees to submit thereto.

ARTICLE 17 – AMENDMENTS

Any amendment to the Contract shall be the subject of a written agreement concluded by the contracting parties. An oral agreement shall not be binding on the contracting parties.

ARTICLE 18 - SUSPENSION OF THE CONTRACT

Without prejudice to EUSPA's right to terminate the Contract, EUSPA may at any time and for any reason suspend execution of the tasks under the Contract or any part thereof. The suspension shall take effect on the day the Contractor receives notification by e-mail or at a later date where the notification so provides. EUSPA may at any time following suspension give notice to the Contractor to resume the work suspended. The Contractor shall be entitled to claim compensation on account of suspension of the Contract or of part thereof, to the extent he demonstrates the occurrence of unavoidable expenses during the suspension period, and the suspension is not owed to circumstances attributable to him.

ARTICLE 19 - DATA PROTECTION

19.1. Any personal data included in the Contract must be processed in accordance with the applicable rules on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data². Such data shall be processed by the data controller (EUSPA) and the data processor (the Contractor) solely for the purposes of the performance, management and monitoring of the Contract without prejudice to its possible transmission to the bodies charged with monitoring or inspection tasks in the application of Union law.

19.2. The following categories of personal data are expected to be processed by the data controller: contact details of the Contractor's personnel or its Contractors that may be included in deliverables, such as name and last name, gender, telephone number, e-mail address, postal address, organisation and position within the organisation. The provision of the aforementioned data is a contractual requirement.

19.3. The recipients of the personal data mentioned under Article 19.2 shall be (1) a limited number of staff of EUSPA managing the Contract, (2) a limited number of staff of EUSPA Contractors assisting EUSPA staff in the management of the Contract, (3) a limited number of staff of EUSPA Contractors providing hosting services for EUSPA servers. The personal data will be stored in the premises of the aforementioned recipients, all of which are located within Union territory, and will be retained for up to 7 (seven) years after the expiry of the present Contract for audit and discharge purposes.

19.4. The Contractor shall have the right to request from the data controller access to, rectification or erasure of its personal data, restriction of processing, the right to object to the processing and the right to data portability, provided that there are grounds for the exercise of any of these rights, as per the applicable rules.

19.5. The Contractor shall have the right of recourse at any time to the European Data Protection Supervisor.

19.6. If throughout the duration of the Contract, the Contractor is required to process any personal data (acting as a data processor), the Contractor shall

² [Currently Regulation \(EU\) 2018/1725.](#)

- (i) inform in writing without delay the data controller and act only on documented instructions from the data controller, in particular with regard to the purposes of the processing, the categories of data that may be processed, the recipients of the data and the means by which the data subject may exercise its rights;
- (ii) with regard to transfers of personal data to a country outside the European Union or an international organisation, act only on documented instructions from the data controller, unless required to do so by Union or Member State law to which the processor is subject; in such a case, the processor shall inform the data controller of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;
- (iii) ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- (iv) without prejudice to Article 19.8, take all necessary measures to ensure the security of the processing of personal data, as may be instructed by the controller;
- (v) not engage another processor or sub-processor without the prior specific written authorisation of the controller;
- (vi) taking into account the nature of the processing, assist the controller by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the controller's obligation to respond to requests for exercising the data subject's rights laid down in the applicable rules;
- (vii) assist the controller for the fulfilment of its obligations to
 - a. ensure compliance with its 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
- (viii) 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.
- (ix) 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;
- (x) delete all the personal data after the end of the provision of services relating to processing;
- (xi) make available to the data controller all information necessary to demonstrate compliance with the obligations laid down in this Article and allow for and contribute to audits, including inspections, conducted by the controller or another auditor mandated by the controller.

19.7. The Contractor shall grant personnel access to the data to the extent strictly necessary for the performance, management and monitoring of the Contract.

19.8. The Contractor shall adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to ensure:

- (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.

ARTICLE 20 - APPLICABLE LAW AND JURISDICTION

The Contract shall be governed by the EU law complemented by the substantive law of Belgium. Any disputes between the parties resulting from the interpretation or application of the Contract, which cannot be settled amicably, shall be brought before the French-speaking courts of Brussels, Belgium.

ARTICLE 21 - SEVERANCE

If any of the provisions hereof is or becomes ineffective or invalid, the remaining provisions hereof shall not be affected thereby. The ineffective provisions shall be replaced by other effective provisions that shall be identical to the commercial purpose of the original provisions or as close thereto as possible.

ARTICLE 22 – NON WAIVER

The failure of EUSPA to exercise any right, power or remedy provided under the present general conditions of Contract or otherwise available in respect hereof at law, or to insist upon compliance by the Contractor with its obligations hereunder, shall not constitute a waiver by EUSPA of its right to exercise any such or other right, power or remedy or to demand such compliance. No term or condition of these general conditions of Contract shall be deemed to have been waived by EUSPA, except by a statement in writing signed by the latter. Any written waiver shall not be deemed a continuing waiver unless specifically stated, shall operate only as to the specific term or condition waived and shall not constitute a waiver of such term or condition for the future or as to any act other than that specifically waived.

ARTICLE 23 - COMMUNICATION BETWEEN THE PARTIES

23.1. Form and means of communication

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

- (a) be made in writing in paper or electronic format in the language of the purchase order;
- (b) bear the purchase order number;
- (c) be made using the relevant communication details set out in the purchase order; and
- (d) be sent by mail or email.
- (e) If a party requests written confirmation of an e-mail within a reasonable time, the other party must provide an original signed paper version of the communication as soon as possible.
- (f) The parties agree that any communication made by e-mail has full legal effect and is admissible as evidence in judicial proceedings.

23.2. Date of communications by mail and e-mail



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

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

Mail sent to EUSPA is deemed to have been received by EUSPA on the date on which the department responsible referred to in the purchase order registers it.

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